

State Of Rajasthan And Ors vs Shri Noor Mohammad on 9 August, 1972

Equivalent citations: 1973 AIR 2729, 1973 SCR (1) 841, AIR 1973 SUPREME COURT 2729, 1972 SCC 454, 1972 2 SCWR 508, 1972 SCD 943, 1973 (1) SCR 841

Author: D.G. Palekar

Bench: D.G. Palekar, K.S. Hegde, A.N. Grover

PETITIONER:
STATE OF RAJASTHAN AND ORS.

Vs.

RESPONDENT:
SHRI NOOR MOHAMMAD

DATE OF JUDGMENT 09/08/1972

BENCH:
PALEKAR, D.G.
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PALEKAR, D.G.
HEGDE, K.S.
GROVER, A.N.

CITATION:
1973 AIR 2729 1973 SCR (1) 841
1972 SCC (2) 454

ACT:
Motor Vehicles Act (4 of 1939) ss. 43 and 44(3) (b)-When State Transport Authority can take over functions of Regional Transport Authority.

HEADNOTE:
The-respondent submitted an application to the Regional Transport Authority for the grant of a stage carriage permit on an inter-regional and inter-state route. The Regional Transport Authority declined to consider the application, because, by a resolution of the State Transport Authority, the State Transport Authority took over the functions of the Regional Transport Authority with regard to inter-state routes. In a writ petition filed by the respondent the High

Court held, (1) that under s. 44(3) (b) of the Motor Vehicles Act, 1939, the State Transport Authority was entitled to perform the duties of a Regional Transport Authority in only two cases, namely, (a) where there is no Regional Transport Authority in a region and the State Transport Authority thinks it fit to perform the duties of the Regional Transport Authority and (b) when the Regional Transport Authority is functioning only in respect of inter-regional routes and on the request of the Regional Transport Authority; and (2) that the resolution of the State Transport Authority taking over the functions of the Regional Transport Authority was contrary to the direction given by the State under s. 43 the High Court therefore, directed the Regional Transport Authority to dispose of the application of the respondent.

Dismissing the appeal to this Court,

HELD : (1) Under s. 44(3) (b) the State Transport Authority is entitled to perform the duties of the Regional Transport Authority in three contingencies, namely (a) where there is no Regional Transport Authority functioning, (b) when the State Transport Authority thinks, it fit to perform the duties of the Regional transport Authority in respect of any route common to two or more regions, and (c) where the State Transport Authority is requested by the Regional Transport Authority to perform those duties in respect of an inter-regional route. [845H-846A]

There is no limitation in the case of the first contingency. When a Regional Transport Authority is not functioning. the State Transport Authority shall perform the duties of a Regional Transport Authority, The provisions of the Act with regard to issue of permits are in the public interest, and it will lead to great public inconvenience if in the absence of the Regional Transport Authority the public is left entirely to the mercy of the State Transport Authority whether it will exercise its discretion to perform the duties of the Regional Transport Authority or not. The other two contingencies however limited in their 'scope. Since the State Transport Authority is for the whole State and has wider jurisdiction than the separate regional authorities it may in a fit case take over the functions of the Regional Transport Authority with regard to any route common to two or more region-, and similarly, when a request is made by the Regional Transport Authority the State Transport Authority would be entitled to perform the duties of the Regional Transport Authority in respect of an inter-regional route. Since two types of contingencies-one unlimited in

842

scope and the other limited-are combined in One Place the word 'and' has been used after the first contingency. The High Court's construction of the section that there are only two contingencies as mentioned by it is erroneous. [846C-H]; 847A-C]

Poonam Chand v. State of Rajasthan, I.L.R. 11 Raj. 1031, approved.

(2) But this power under el. (b) could only be discharged by the State Transport Authority, (i) subject to any directions given to it under S. 43 of the Act by the State Government, and (ii) save as otherwise expressly provided by or under the Act. [847D-E]

(a) It cannot be contended that since the Regional Transport Authority is a separate authority on which duties referred to in el. (b) have been imposed by other provisions of the Act there is express provision by or under the Act and that therefore the State Transport Authority would be disentitled to take over these functions. If the expression is so construed the very object of the clause providing for the exercise by the State Transport Authority of the powers of the Regional Transport Authority would be frustrated. Therefore, the expression "save as otherwise, expressly provided by or under the Act." would, in the context, mean "save as expressly barred by or under the Act." Since there is no express provision which bars the performance by the State Transport Authority of the duties referred to in el. (b), the State Transport Authority would not, be barred from performing those duties. [847F-H; 848A-C]

(b) However, s. 44(3) provides that the State Transport Authority is required to give effect to any direction issued by the State Government. The section gives the State Government power to control road transport and to that end is entitled, from time to time, by notification in the Official Gazette, to issue directions to the State Transport Authority in four specified cases. One of them is contained in el. (iv) of sub-s. (1), and, in the present case, the State Government has, by notification, issued directions under that sub-section to the State Transport Authority to the effect that the Regional Transport Authority was to invite applications for grant of permits on inter-state routes or to select applicants for the grant of permits. This direction is binding on the State Transport Authority and since it has to give effect to the direction, it cannot 'function contrary to it. Therefore, the resolution of the State Transport Authority taking over the functions of the Regional Transport Authority with regard to inter-state routes was contrary to the direction and hence invalid. [848C-H; 849A-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : C. A. No. 1882 (N) of 1970. Appeal by special leave from the Judgment and order date April 14, 1970 of the Rajasthan High Court in D.B.W.P. No. 453 of 1969.

Narayan Sinha, Solicitor-General for India and K. Baldev Mehta for the appellants.

B. P. Maheshwari, for the respondent.

The Judgment of the Court was delivered by Palekar, J. Orders have been already passed dismissing the appeal and the reasons will be given now.

This appeal arises out of an order passed by the High Court of Rajasthan in Writ Petition No. 453 of 1969. The respondent Noor Mohammad, a resident of Jaipur, submitted an application on 11-3-1968 to the Regional Transport Authority, Jaipur, for the grant of a non-temporary stage carriage permit on Jaipur Rohtak route via Shahpura- Katpulli, Behror-Jahar-Rewari. Objections were invited but no objections were filed. Besides the respondent, however, the State Road Transport Corporation and two other persons had applied for the grant of permit on this route. These two other persons were also absent. Only the respondent and the Corporation were present. The Regional Transport Authority did not take the application of the respondent into consideration by reason of a resolution passed by the State Transport Authority, Rajasthan, which was in force. That Resolution dated January 27, 1969 and numbered Tr.S.T. A/69/31743 was duly notified and published on February 6, 1969 as follows "In exercise of the powers under section 44 and section 3(b) of the Motor Vehicles Act the State Transport Authority, Rajasthan resolves that with effect from the date of the publication of this resolution in the official Gazette, (1) The State Transport Authority shall hereinafter grant all types of permits, renewals, transfers etc. on inter-regional and inter-statal routes. In respect of these routes State Transport Authority shall perform all the duties hitherto being performed by the Regional Transport Authority; (2) All types of permits on inter-statal routes shall be countersigned by the State Transport Authority."

Relying principally on the above resolution the Regional Transport Authority Jaipur, declined to consider the respondent's application, which it is admitted, was for an inter regional and inter-state route.

Aggrieved by the decision, the respondent filed the above Writ Petition challenging the validity of the above resolution of the State Transport Authority. The challenge was two-fold. One was that under Chapter IV of the Motor Vehicles Act, 1939 dealing with the control of transport vehicles it was the Regional Transport Authority which could entertain such an application and not the State Transport Authority. It was true that under section 44(3) the State Transport Authority was entitled to perform the duties of the Regional Transport under certain conditions but this was not a case answering those conditions. In the second place, it was contended that there was an agreement between the States of Rajasthan and Haryana about the grant of Inter- State Permits and to order to give effect to that agree-

ment, the State Government had issued to the State Transport Authority on December 14, 1966 a direction under section 43(1) of the Motor Vehicles Act to the effect that the Regional Transport Authority was to invite applications for stage carriage or public carrier Permits and that it had to select applications for the grant of permits keeping in view the conditions laid down by the Inter State Transport Commission in this behalf. The cases of these selected candidates were then to be referred to the Transport authorities of the other States concerned for granting the counter-signature under the agreement. It was contended that the State Transport Authority was bound to obey this

direction issued by the State Government under section 43(1) with regard to the grant of Inter State permits and, therefore, ;the resolution of the State Transport Authority dated January 27, 1960 was illegal being contrary to the direction given by the State.

The contention of the respondent was upheld by the High Court on both these grounds and a direction was issued to the Regional Transport Authority to dispose of the application of the respondent for the grant of permit on Jaipur-Rohtak route in accordance with the law. It is from this Order that the present appeal has been filed. Chapter IV of the Motor Vehicles Act, 1939 contains detailed provisions with regard to the control of the control of transport vehicles. Two transport authorities are constituted under section 44. One is the State Transport Authority which is constituted for the whole State and it is to exercise and discharge, the powers and functions specified in sub-section (3) The other authority is the Regional Transport Authority. The area of the State is divided into regions and a region is allotted to the control of the Regional Authority. These Regional Transport Authorities had to exercise the powers and functions conferred On them by several other sections in Chapter IV. Sub-sections (3) &(4) of Section 44 are as follows;

(3) A State Transport Authority (shall give effect ,to any directions issued under Section 43, and subject to such directions and save as otherwise provided by or under this Act) shall exercise and discharge throughout the State the following powers and functions, namely:-

(a) to co-ordinate and regulate the activities and policies of the Regional Transport Authorities if any, of the State;

(b) to perform the duties of a Regional Transport Authority where there is no such Authority and, if it thinks fit or if so required by a Regional Transport Authority, to perform those duties in respect of any route common to two or more regions;

(c) to settle all disputes and decides all matters on which differences of opinion arise between Regional Transport Authorities; and

(d) to discharge such either functions as may be prescribed.

(4) For the purpose of exercising and discharging the powers and functions specified in sub-section (3), a State Transport Authority may, subject to such conditions as may be prescribed, issue directions to any Regional Transport Authority and the Regional Transport Authority shall (in the discharge of its functions under this Act, give effect to and) be guided by such directions."

It is clear from the above provisions that the State Transport Authority is a superior Authority with jurisdiction over the whole of the State while the Regional Transport Authority is subordinate to it with its jurisdiction generally confined to the region for which it is appointed. It is also clear from sub-section (3) clause

(b) that the State Transport Authority can perform the duties and functions of the Regional Transport Authority under certain circumstances. The High Court has held on the construction of clause (b) aforesaid that the State Transport Authority is entitled to perform the duties of a Regional Transport Authority in only two cases namely (1) Where there is no Regional Transport Authority in a region and the State Transport Authority thinks it fit to perform the duties of the Regional Transport Authority, and (2) where the Regional Transport Authority is functioning the State Transport Authority can discharge the functions of the Regional Transport Authority only in respect of inter- regional routes and on the request of the Regional Transport Authority. In thus construing section 44(3) (b) the learned Judges have departed from the view taken by that High Court earlier in Poonam Chand v. State of Rajasthan and Another(' -). It was held in that case that the provision in section 44 (3) (b) contemplated three contingencies under which the State Transport Authority can act to perform 'the duties of the Regional Transport Authority, viz. (1) where there is no such authority; (2) Where the State Transport Authority itself thinks fit to perform those duties in respect of any route common to two or more regions; and (3) where the State Transport (1) I.L.R. It Raj 1031.

Authority is so required by the Regional Transport Authority to Perform those duties in respect of any such common route. We do not think that there was any sufficient reason for the learned Judges in the present case to depart from the view which ,had been taken by an earlier division bench of that court. Moreover, neither grammar nor convenience compels the construction adopted by the learned Judges. The State Transport Authority is a superior Authority, and if for any reason no Regional Transport Authority is functioning, one does not see why the duties and functions of the Regional Transport Authority should not be left to be performed by the State Transport Authority. The provisions in the Act with regard to the issue of permits and the like are made in the public interest and it will lead to great inconvenience if in the absence of a Regional Transport Authority the public should be entirely left to the mercy of the State Transport Authority whether it will exercise its discretion to perform the duties and functions of the Regional Transport Authority or not. In our opinion, the first contingency is the one when a Regional Transport Authority is not functioning. In that contingency, all the duties and functions of the Regional Transport Authority are expected to be carried out by the State Transport Authority. Then we have two more contingencies in which the State Transport Authority may take over the duties and functions of the Regional Transport Authority. Both these contingencies arise in a situation where the duties of the Regional Transport Authority have to be performed in respect of any route common to two or more regions. These two contingencies are (2) if it thinks fit, or (3) if so required by the Regional Transport Authority, to perform those duties in respect of any route,common to two or more regions. In other words, we have to read the words "to Perform those duties etc." once after the word "fit" and a second time after the words "Regional Transport Authority." That will explain the importance of the conjunction "and" which is found in sub-clause (b) after the words "such authority". The first contingency brooks of no limitation while contingencies (2) and (3) are limited in scope. Since these two types of contingencies-one unlimited and the other limited were combined into one place, the word 'and' has been used after the first contingency. The second contingency takes into account the authority of the State Transport Authority to take over the specific duties of Regional Transport Authority with Since the State regard to a common route if it thinks fit. Transport Authority is for the whole State and has a wider jurisdiction than the separate regional

authorities, it is only To be expected that the state Transport Authority may, in a fit case, take over the functions of the Regional Transport Authority with regard to any route common to two or more regions. The third contingency is also a matter of convenience.

A Regional Transport Authority, though clothed with the powers to issue permits with regard to a route common to two or more regions, may for several reasons think it appropriate that his function may be more conveniently performed by the State Transport Authority being a superior Authority with jurisdiction over the several regions and in such a case when a request is made by the Regional Transport Authority, the State Transport Authority would be entitled to perform the duties of the Regional Transport Authority. In our opinion, the view which found favour with the learned Judges with regard to the construction of clause (b) is erroneous, and the State Transport Authority is entitled to perform the duties of the Regional Transport Authority (i) where there is no such authority; (ii) when the State Transport Authority thinks it fit to perform the duties of the Regional Transport Authority in respect of any route common to two or more regions or (iii) where the State Transport Authority is required by the Regional Transport Authority to perform those duties in respect of any route common to two or more regions.

This power under clause (b), however, is subject to certain limitations. Sub-section (3) begins with the words "A State Transport Authority shall give effect to any directions issued under section 43, and subject to such directions and save as ,otherwise provided by or under this Act shall exercise and discharge throughout the State the following powers and functions, including those in sub-clause (b). It is clear, therefore, that the functions under sub-clause (b) could be discharged by the State Transport Authority subject to directions given to it under section 43 of the Act and save as otherwise provided by or under the Act. In the present case it is urged that directions have been issued by the State Government under section 43. We shall deal with this point in another place. The other limitation is that the State Transport Authority could perform the duties of the Regional Transport Authority under sub-clause (b) save as otherwise provided by or under this Act. It was con- tended that the Regional Transport Authority is a separate authority on which the duties referred to in clause (b) have been imposed by other provisions in Chapter IV, and since the State Transport Authority is required to act save as otherwise provided by or under the Act" it would be disentitled to take over the functions under sub-clause (b). Such an interpretation would obviously lead to grave incongruity. Sub-clause (b), as we have already seen, provides for the exercise of- the powers of the Regional Transport Authority by the State Transport Authority in certain contingencies. If the expression "save as otherwise provided by or under the Act" is construed in a manner to negative the function,,; permitted to be performed under subclause (b), the very object with which sub-clause (b) have been accordance with the directions issued by the State Government enacted will be frustrated. We have, therefore, to construe the expression. ', 'save as otherwise provided by or under the Act" in a harmonious manner so that sub-clause (b) is not reduced to a nullity. In our opinion the expression "save as otherwise provided by or under the Act" would in the context mean, "save as expressly barred by or under the Act". If there is a provision which expressly debarrs the exercise of the power under subclause (b) in any case then only the State Transport Authority will not be able to exercise the power and discharge ;the functions given in sub-clause (b). Otherwise there would be no such bar. It is not shown to us that there is any express provision which bars the performance by the State Transport Authority of the duties referred to in sub-clause

(b) and, therefore, we are of the view that the State Transport Authority in this particular case would not be barred from performing the duties under sub-clause (b).

That brings us to the second ground on which the respondent's request was granted. Section 44(3) provides that a State Transport Authority is required to give effect to any direction issued under section 43 and would be entitled to exercise and discharge the powers and functions in sub-clauses (a) (b) (c) and (d) subject to any such directions. Section 43 gives the State Government the power to control road transport and to that end is entitled from time to time by notification in the official Gazette to issue directions to the State Transport Authority in 4 specified cases. One of them is contained in clause (iv) of sub-section (1). The State Government is entitled to give direction to the State Transport Authority regarding any matter which may appear to the State Government necessary or expedient for giving effect to any agreement entered into with the Central Government or any other State Government or the Government or any other country relating to the regulation of motor transport generally, and in particular to its co-ordination with other means of transport and the conveying of long distance goods traffic. It is not disputed before us that the State Government of Rajasthan has by notification dated December 14, 1966 issued directions under section 43 (1) (iv) to the State Transport Authority to the effect that the Regional Transport Authority was to invite applications for grant of permits on inter-state routes or to select applications for the grant of permit. Now this direction is binding on the State Transport Authority and since it has to give effect to this direction, it cannot function contrary to this direction. It is obvious that the resolution passed by the State Transport Authority on January 27, 1969 by which it took over the functions of the Regional Transport Authority with regard to interstate routes contrary to this direction and, therefore, to that extent was invalid. It is also not in dispute that the route with which we are concerned, is also an inter-state route and, therefore, in it was the Regional Transport Authority alone which could have exercised the functions with regard to the grant of permits on inter-state routes and not the State Transport Authority. This position is not contested before us by the learned Solicitor General appearing on behalf of the appellants. His main complaint in the appeal before us was that the High Court had interpreted section 44(3)(b) in a manner which would have created grave public inconvenience. That was the chief reason why the appellants felt compelled to come to this Court.

The final order passed by the High Court requiring the Regional Authority to proceed in accordance with law is correct. In the circumstances of the case the appeal had to be dismissed with no order as to costs. That order has been already passed on 20-7-1972.

V.P.S.
dismissed.

Appeal