

The Mor Modern Cooperative Transport ... vs Financial Commissioner And Secretary ... on 9 July, 2002

Equivalent citations: AIR 2002 SUPREME COURT 2513, 2002 (6) SCC 269, 2002 AIR SCW 2826, 2002 (7) SRJ 44, (2002) 5 JT 125 (SC), 2002 (5) SCALE 145, 2002 (3) LRI 230, 2002 (5) JT 125, 2002 (4) SLT 340, (2002) 3 SCJ 290, (2002) 5 SUPREME 55, (2002) 3 RECCIVR 553, (2002) 5 SCALE 145, (2002) 2 ACC 501, (2002) 48 ALL LR 472, (2002) 4 CIVLJ 12, (2002) 3 CURCC 188, (2002) 2 CURLJ(CCR) 541, (2003) SC CR R 365

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Bench: H.K. Sema, Bisheshwar Prasad Singh

CASE NO.:
Appeal (civil) 6974 of 2001

PETITIONER:
THE MOR MODERN COOPERATIVE TRANSPORT SOCIETY LTD.

Vs.

RESPONDENT:
FINANCIAL COMMISSIONER AND SECRETARY TO GOVT. HARYANA & ANR.

DATE OF JUDGMENT: 09/07/2002

BENCH:
MB.IBS.HESSHHAWHA,R PRASAD SINGH, H.K. SEMA.

JUDGMENT:

Bisheshwar Prasad Singh, J.

The core question which arises for consideration in this appeal by special leave is whether the Transport Commissioner of the State of Haryana has any financial interest within the meaning of Section 68 (2) of the Motor Vehicles Act, 1988 in the Government Undertaking known as the Haryana Roadways so as to render him ineligible for appointment as Chairman of the Regional Transport Authority. The appellant had challenged by a writ petition the Notification dated March 27, 1998 whereunder the Transport Commissioner was appointed as Chairman of the Regional

Transport Authority. Since the aforesaid Notification was superseded by a subsequent Notification of December 31, 1998 appointing the Secretary, Regional Transport Authority as Chairman and the Traffic Manager of the Haryana Roadways as a member of the authority, apart from a representative of the District Administration, the appellant amended the writ petition and challenged the Notification of December 31, 1998 also. The High Court of Punjab and Haryana dismissed the writ petition by its impugned judgment and order dated February 21, 2000. Later by a Notification dated February 20, 2001 in supersession of the earlier Notification, the Transport Commissioner of Haryana was again appointed as Chairman of the Regional Transport Authority and the District Transport Officer to act as Secretary, Regional Transport Authority of concerned region as member. Before us, the counsel has challenged only the appointment of the Transport Commissioner as Chairman of the Regional Transport Authority and not the appointment of the District Transport Officer who has been appointed to act as the Secretary of the Regional Transport Authority.

The appellant herein is a cooperative society duly registered under the Haryana Cooperative Societies Act. It deals in the business of passenger transport and for that purpose obtains stage carriage permits issued through the Regional Transport Authority, Hissar. Presently, it holds one permit to operate four return trips on Hansi - Bad Chhappar route which falls within the District of Hissar.

The case of the appellant pleaded in the writ petition was that the Haryana Roadways is a department of the State of Haryana. It also carries on business of providing passenger transport facility. It competes with private stage carriage operators and owns and operates a fleet of motor vehicles. The Haryana Roadways is also subject to the provisions of the Motor Vehicles Act (hereinafter referred to as "the Act") and the rules framed thereunder. Stage carriage permits are issued by the concerned Regional Transport Authority constituted under Section 68 of the Act.

It was contended that for about two decades the entire passenger transport service in the State of Haryana remained nationalized and stage carriage service was operated only by the State Transport Undertaking known as the Haryana Roadways. However, in the year 1993 by Notification issued under Section 100 of the Act, a provision was made for grant of stage carriage permits to private operators but confined to cooperative societies. Under the Notification, the routes falling within the districts with not more than 10 kilometers falling on the National or State Highways, were available for operation by cooperative societies. Accordingly, stage carriage permits are being granted to cooperative societies under Chapter V of the Act by the concerned Regional Transport Authorities of which the Transport Commissioner, Haryana was, and again is, the Chairman. By Notification dated March 27, 1998 the Government of Haryana in exercise of the powers conferred by Section 68 of the Act, in supersession of its earlier Notification dated December 30, 1996 constituted Regional Transport Authorities for each of the regions of Ambala, Hisar, Faridabad, Rohtak, Karnal and Rewari consisting of Transport Commissioner as Chairman and Secretary, Regional Transport Authority of the concerned region as member to exercise and discharge the powers and functions conferred by or under Chapter V of the Act on such authorities in the areas specified in the Notification. The aforesaid Notification of March 27, 1998 was challenged by the appellant cooperative society on the ground that the Notification was illegal in as much as Section 68(2) of the Act was a complete bar to the appointment of the Transport Commissioner as Chairman of the

Regional Transport Authority, he being an employee of the State Government having financial interest in the Government undertaking namely, Haryana Roadways, within the meaning of Section 68(2) of the Act. In the writ petition the High Court issued a show cause notice to the respondents by order dated 5.12.1998. However, on 31.12.1998 another Notification was issued in supersession of the Notification dated March 27, 1998 whereunder the Secretary, Regional Transport Authority of concerned region was appointed as Chairman of the Regional Transport Authority and the Traffic Manager concerned of the office of General Manager, Haryana Roadways at District Headquarters as member of the authority. Another member was appointed who was a representative of the District Administration to be nominated by the Deputy Commissioner concerned.

The High Court by the impugned judgment and order of February 21, 2000 dismissed the writ petition challenging the validity of the Notification dated 31.12.1998 on the ground that the appellant had failed to show that the appointment of Traffic Manager as a member of the Regional Transport Authority had adversely affected the business of the appellant. It was not averred that the Regional Transport Authority consisting of Traffic Manager as a member had passed any order adversely affecting the interest of the appellant or had acted in any manner prejudicial to their interest. In such circumstances the High Court was of the opinion that the challenge to the Notification was purely academic and did not warrant exercise of writ jurisdiction by the High Court. On these findings the High Court did not consider it necessary to examine the question as to whether the appointment of Traffic Manager, working in the office of General Manager, Haryana Roadways as a member of the authority was illegal, being in breach of the provisions of Section 68, particularly Section 68 (2) of the Act.

During the pendency of this appeal another Notification has been issued by the Government of Haryana on February 20, 2001 superseding the Notification dated 31.12.1998. Under the latest Notification the Transport Commissioner, Haryana has again been appointed the Chairman of the Regional Transport Authorities, and the District Transport Officer concerned as the Secretary of the Regional Transport Authority of the concerned region as member to exercise and discharge the powers and functions conferred by or under Chapter V of the Act.

It was submitted before us by counsel appearing on behalf of the appellant that the Transport Commissioner of the State of Haryana as well as the Traffic Manager working in the office of the General Manager, Haryana Roadways, though officials of the State of Haryana have a financial interest within the meaning of Section 68(2) of the Act in the Transport Undertaking owned by the State namely the Haryana Roadways. By express words, Section 68(2) of the Act prohibits the appointment of such a person as a member of the State or Regional Transport Authority. The Haryana Roadways is a department of the State of Haryana and is a competitor in the passenger transport business. It competes with private operators and therefore, under the Act its employees are ineligible for appointment as members of the Regional Transport Authority. The Regional Transport Authority exercises powers and functions conferred on it under Chapter V of the Act which includes inter-alia the power to grant stage carriage permits, suspend or even cancel such permits. Having regard to the nature and extent of powers conferred on the Authority, the legislature in its wisdom sought to exclude any person having any financial interest in any transport undertaking from membership of the Regional Transport Authority with a view to ensure its

independent and impartial functioning.

The respondents on the other hand contended before us, as was contended before the High Court, that the Transport Commissioner has been appointed as the Chairman of the authority in accordance with law. It is not disputed that he manages the State undertaking namely, the Haryana Roadways, but it is contended that he has no personal interest and it is only the interest of the State that he protects. No doubt, the transport department of the State runs the commercial wing known as Haryana Roadways which has several depots. It is also clearly averred that the Transport Commissioner is overall incharge of the Haryana Roadways and is therefore intimately connected with its management including accountability for its performance resulting in profit or loss, but all the same his interest is not personal and his appointment is in the interest of better administration of the undertaking which is run with a view to provide economical and efficient transport service for the people at large.

In their additional affidavit filed before this Court the same stand has been reiterated. It is admitted that the passenger transport service is provided to the people by the transport department of the Government. There are 20 depots each headed by a General Manager who is usually a Class - I Officer. The three senior most functionaries of the transport department are the Minister for Transport, Secretary Transport, and the Transport Commissioner. Various schemes have been notified whereunder, but for the routes specified therein, all the passenger transport routes have been reserved for exclusive operation by the Haryana Roadways. It is being run as a purely departmental entity unlike other States where corporate entities have been constituted to provide transport facility on commercial considerations.

The counter affidavits filed by the respondents make the factual position clear that the Transport Commissioner is overall incharge of the State undertaking which is departmentally managed. He is also accountable to the government for its performance and the profits earned or losses suffered by it. It logically follows that the Transport Commissioner carries the burden of financial accountability. The undisputed facts also establish that the private operators provide transport service on the routes on which they are permitted to operate, and though their competition with Haryana Roadways may be limited, having regard to the fact that they operate fewer routes, the existence of competition between the two cannot be denied. In these facts and circumstances, the question whether the Transport Commissioner has a financial interest in the Haryana Roadways within the meaning of that term in Section 68(2) of the Act falls for our consideration.

Unfortunately, the High Court did not consider the question which directly arose before it, namely, whether the appointment of the Transport Commissioner/Traffic Manager as Chairman/member of the Regional Transport Authority was not in breach of statutory provisions. The High Court did not exercise its writ jurisdiction in the absence of any averment to the effect that the aforesaid officers had misused their authority and acted in a manner prejudicial to the interest of the appellants. In our view the High Court should have considered the challenge to the appointment of the officials concerned as members of the Regional Transport Authority on the ground of breach of statutory provisions. The mere fact that they had not acted in a manner prejudicial to the interest of the appellant could not lend validity to their appointment, if otherwise, the appointment was in breach

of statutory provisions of a mandatory nature. It has, therefore, become necessary for us to consider the validity of the impugned Notification said to have been issued in breach of statutory provision.

Section 68 of the Motor Vehicle Act empowers the State Government to constitute a State Transport Authority and the Regional Transport Authorities which may exercise the powers and functions conferred by or under Chapter V on such authority. Sub-section (2) is most relevant which reads as follows :

"(2) A State Transport Authority or a Regional Transport Authority shall consist of a Chairman who has had judicial experience or experience as an appellate or a revisional authority or as an adjudicating authority competent to pass any order or take any decision under any law and in the case of a State Transport Authority, such other persons (whether officials or not), being more than four and, in the case of a Regional Transport Authority, such other persons (whether officials or not), not being more than two, as the State Government may think fit to appoint; but no person who has any financial interest whether as proprietor, employee or otherwise in any transport undertaking shall be appointed, or continue to be, a member of a State or Regional Transport Authority, and, if any person being a member of a any such Authority acquires a financial interest in any transport undertaking, he shall within four weeks of so doing, give notice in writing to the State Government of the acquisition of such interest and shall vacate office:

Provided that nothing in this sub- section shall prevent any of the members of the State Transport Authority or a Regional Transport Authority, as the case may be, to preside over a meeting of such Authority during the absence of the Chairman, notwithstanding that such member does not possess judicial experience or experience as an appellate or a revisional authority or as an adjudicating authority competent to pass any order or take any decision under any law:

Provided further that the State Government may, -

(i) where it considers necessary or expedient so to do, constitute the State Transport Authority or a Regional Transport Authority for any region so as to consist of only one member who shall be an official with judicial experience or experience as an appellate or a revisional authority or as an adjudicating authority competent to pass any order or take any decision under any law;

(ii) by rules made in this behalf, provide for the transaction of business of such authorities in the absence of the Chairman or any other member and specify the circumstances under which, and the manner in which, such business could be so transacted:

Provided also that nothing in this sub section shall be construed as debarring an official (other than an official connected directly with the management or operation

of a transport undertaking) from being appointed or continuing as a member of any such authority merely by reason of the fact that the Government employing the official has, or acquires, any financial interest in a transport undertaking".

It was argued before us by the respondents that Haryana Roadways is neither a company nor a statutory corporation. It is run as a departmental entity and is a wing of the department of transport. It was faintly urged that since Haryana Roadways is neither a company nor a statutory corporation, as is the case in other States, it cannot be considered to be an undertaking within the meaning of that term in sub-section (2) of Section 68. It being a departmental entity, it was not an undertaking. The submission is devoid of force and must be rejected. Sub-section (2) of Section 68 mandates that no person who has any financial interest, whether as proprietor, employee or otherwise in any transport undertaking shall be appointed or continue to be a member of a Regional Transport Authority. The person concerned may be a proprietor, or an employee, or he may otherwise have financial interest in the transport undertaking. Clearly a proprietary concern also comes within the ambit of sub-section (2) of Section 68. It is, therefore, futile to contend that Haryana Roadways being a departmental agency is not an undertaking for the purpose of sub-section (2) of Section 68. The question as to whether it is an undertaking at all has to be answered having regard to the language of sub-section (2) of Section 68 and the legislative intent. In Webster's Third New International Dictionary "undertaking" has been assigned the meaning "The act of one who undertakes or engages in a project or business; the business of an undertaker: a business, work, or project which one engages in or attempts". In Words and Phrases legally defined, Third Edition "Undertaking has been defined thus:

'Undertaking' includes any trade, business or profession and, in relation to a public or local authority, includes any of the powers or duties of that authority, and, in relation to any other body of persons, whether corporate or unincorporated, includes any of the activities of that body". Even applying the dictionary meaning of the word "undertaking", an entity such as the Haryana Roadways, which is engaged in the business of providing transport service to the people must be held to be an "undertaking". The use of the words "any undertaking" also makes it abundantly clear that the undertaking may be either a private undertaking or a Government or public sector undertaking including a statutory corporation. We have, therefore, no hesitation in holding that a State undertaking such as Haryana Roadways is within the contemplation of sub-section (2) of Section 68 of the Act.

The next question which falls for consideration is what is the nature of the "financial interest" contemplated by the said sub-section. The expression financial interest is capable of a narrower as well as a wider meaning. In the narrower sense it implies direct personal benefit of an economic nature. In the wider sense it may include any interest direct or indirect which a person has in relation to the finances of the undertaking. Such an interest may be the interest of an official who manages the

finances of the undertaking or on whom rests the burden of financial accountability. It is trite to say that the intention of the Legislature must be found by reading the statutes as a whole. The Court must ascertain the intention of the Legislature by directing its attention not merely to the Clauses to be construed but to the entire statute; it must compare the Clause with the other parts of the law, and the setting in which the Clause to be interpreted occurs. The rule is of general application as even plainest terms may be controlled by the context. Expression used in a statute should ordinarily be understood in a sense in which they best harmonize with the object of the statute, and which effectuate the object of the Legislature. Therefore, when two interpretations are feasible the Court will prefer that which advances the remedy and suppress the mischief as the Legislature envisioned. Keeping these principles in mind we shall now consider what meaning has to be given to the expression "financial interest" in sub-section (2) of Section 68 of the Act.

Looking to the scheme of the Act it cannot be disputed that the Regional Transport Authorities exercise powers and perform functions which are conferred upon them by or under Chapter V of the Act. The power includes the power to grant stage carriage permits, attach conditions thereto, to determine the duration of permits and their renewal, to transfer permits, the cancellation and suspension of permits, grant of temporary permits etc. Having regard to the fact that the State undertaking competes with private operators in the business of providing transport service, the Legislature advisedly has barred the appointment of any person as a member of the Regional Transport Authority who has any financial interest, whether as proprietor, employee or otherwise in any transport undertaking, which must necessarily include a Government undertaking. This is considered necessary with a view to ensure the impartial functioning of the Regional Transport Authority which is envisaged by the Act.

Counsel for the appellant drew support from the observations made by this Court in *Krishna Bus Service Pvt. Ltd. Vs. State of Haryana and Ors.* (1985) 3 SCC 711 where the appointment of the General Manager of Haryana Roadways to exercise powers of Deputy Superintendent of Police under the Punjab Motor Vehicles Rules was challenged on the ground that it was violative of the fundamental rights of the private motor vehicles operators guaranteed by Articles 19(1)(g) of the Constitution. Upholding the challenge the Court observed :-

"The General Manager of Haryana Roadways who is a rival in business to the private operators of motor vehicles in the State and is intimately connected with the running of motor vehicles cannot be expected to discharge his duties in a fair and reasonable manner. An unobstructed operation of the motor vehicles by private owners operating along the same route or routes would naturally affect the earnings of the Haryana Roadways. There is, therefore, every likelihood of his being overzealous in discharging his duties of stopping a vehicle and in searching, seizing and detaining motor vehicles belonging to others and at the same time excessively lenient in the case of vehicles belonging to his own department. If in discharging his duties in the case of vehicles belonging to others he fails to give due regard to the interests of the owners thereof he would be violating their fundamental right to carry on business in

a reasonable way. If he is too lenient in inspecting the vehicles belonging to his own department, the interests of the traveling public at large would be in peril. In both the cases there is a conflict between his duty on the one hand and his interest on the other.

Moreover administration must be rooted in confidence and that confidence is destroyed when people begin to think that the officer concerned is biased".

Counsel also relied on the observations made by this Court in *Ishwar Singh Bagga & Ors. Vs. State of Rajasthan* (1987) 1 SCC 101. That was a case where employees of the State Road Transport Corporation were empowered to exercise powers that can be exercised under Section 129-A by police officers who were empowered in that behalf. Their appointment was challenged as being in violation of Article 19(1)(g). The challenge was upheld. Though, the question involved in that case was whether an employee of the State Road Transport Corporation was included in the expression 'other person' in Section 129-A of the Act, some observations made in the judgment are apposite. It was observed :

"It is thus clear that the Corporation is one of the many operators of the motor vehicles in the State though the fleet of the motor vehicles owned by it and the magnitude of the operations carried on by it may be very large. The police officers who are empowered to exercise certain powers under the Act should exercise those powers in respect of motor vehicles owned by the private operators and also in respect of the motor vehicles owned by the Corporation. Negligence on the part of the Transport Authorities, the Motor Vehicles Department and the police officers in exercising their powers of supervision, inspection and control in respect of the motor vehicles of the Corporation leads to grave public suffering and sometimes to disasters. They should not take it for granted that the motor vehicles of the Corporation do not need to be checked or inspected only because it is established by the State Government. Omission on their part in discharging these duties amounts to dereliction of public duty".

Relying on these observations, though made in a different context, it was submitted that the Legislature had in mind the constitution of an impartial Regional Transport Authority having regard to the powers and functions conferred on it and with this objective in mind, an express provision was made debarring from membership of the Regional Transport Authority such persons who had any financial interest in any transport undertaking.

Having regard to the language of Section 68 we are of the considered view that the fact that the Transport Commissioner has no personal financial interest in the State undertaking, is of no consequence. Section 68(2) in express terms refers to a person having "any financial interest" as proprietor, employee or otherwise in any transport undertaking. The words employed are of the widest amplitude and expressly include an "employee" of an undertaking. If a very narrow meaning is given to the expression "any financial interest" as contended by the respondents, the word "employee" will be rendered redundant, because in all cases it may be argued that an employee has

no personal financial interest in the undertaking and his interest, whatever it may be, financial or otherwise, is his official interest and duty to protect the interest of his employer, including his financial interest. The wide sweep of the language employed in Section 68(2) particularly the use of the word "any" before "financial interest" leads us to hold that the financial interest of the person concerned need not be direct personal financial interest, but includes the financial interest which he may have even as an employee of the undertaking.

The third proviso of sub-section (2) of Section 68 affirms this conclusion. The express language of the said proviso clearly debars "an official connected directly with the management or operation of a transport undertaking"

from being appointed as a member, or continuing as a member, of the Regional Transport Authority. Therefore, Section 68(2) read with third proviso makes it explicit that an official of the State Transport Undertaking who is directly connected with the management or operation of the transport undertaking is debarred from being appointed a member of Regional Transport Authority. So far as the Transport Commissioner is concerned he is undoubtedly such an official, and moreover in the discharge of his official duties he shoulders financial responsibility and is accountable to the State Government in that regard. The conclusion is, therefore, irresistible that he is a person who has financial interest in the transport undertaking within the meaning of that expression in Section 68(2) of the Act. The same can be said of the Traffic Manager who functions under the General Manager of the Haryana Roadways.

The appellants had originally challenged the Notification dated March 27, 1998, whereunder the Transport Commissioner was appointed as Chairman of the Regional Transport Authorities. However, during the pendency of the writ petition, since that Notification was superseded by another Notification dated 31.12.1998 appointing the Secretary, Regional Transport Authority of the concerned region as Chairman of the Regional Transport Authority, and the Traffic Manager concerned of the office of the General Manager, Haryana Roadways concerned located at District Headquarters as member, the appellant amended the writ petitions and challenged the later Notification. During the pendency of this appeal the position as it existed when the writ petition was filed, has been restored so far as the appointment of Chairman of the Regional Transport Authority is concerned, in as much as the Transport Commissioner has again been appointed as Chairman of the Regional Transport Authority by the Notification dated February 20, 2001. Since we have found that the Transport Commissioner is an official of the Haryana Roadways and has a financial interest in that undertaking within the meaning of that expression in Section 68(2) of the Act, the Notification in so far it relates to the appointment of Transport Commissioner as Chairman, Regional Transport Authority must be quashed. We may however record that counsel for the appellant did not challenge before us the appointment of the District Transport Officer to act as Member Secretary of the Regional Transport Authority.

In the result, this appeal is allowed, the impugned judgment and order of the High Court set aside and the Notification dated February 20, 2001 quashed in so far as it relates to the appointment of the Transport Commissioner as Chairman of the Regional Transport Authorities. There will be no order as to costs.