

Supreme Court of India

Goverdhan Lal Dhawan vs State Of Bihar & Others on 27 July, 1988

Equivalent citations: 1988 AIR 1676, 1988 SCR Supl. (1) 593

Author: E Venkataramiah

Bench: Venkataramiah, E.S. (J)

PETITIONER:

GOVERDHAN LAL DHAWAN

Vs.

RESPONDENT:

STATE OF BIHAR & OTHERS

DATE OF JUDGMENT 27/07/1988

BENCH:

VENKATARAMIAH, E.S. (J)

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VENKATARAMIAH, E.S. (J)

DUTT, M.M. (J)

CITATION:

1988 AIR 1676                      1988 SCR Supl. (1) 593

1988 SCC Supl. 642              JT 1988 (3) 135

1988 SCALE (2) 91

ACT:

Motor Vehicles Act, 1939 Whether without a prior agreement between two or more. Regional Transport Authorities of regions through which an inter-regional route passes, it is open to anyone of the said Regional Transport Authority to grant a permit to ply a stage carriage on the said inter-regional route, under provisions of.

HEADNOTE:

The short point which arose for consideration in this case was whether without a prior agreement between two or more Regional Transport Authorities of the regions through which an inter-regional route passes, it was open to any one of the said Regional Transport Authorities to grant a permit to ply a stage carriage on the said inter-regional route under the provisions of the Motor Vehicles Act, 1939 ('the Act').

The North Bihar Regional Transport Authority invited applications for granting stage carriage permits in respect of inter-regional routes connecting certain places within its jurisdiction and certain other places within the jurisdiction of the South Bihar Regional Transport Authority. The petitioner filed a writ petition in the High

Court, questioning the power of the North Bihar Regional Transport Authority to grant permits above-said without a prior agreement between it and the South Bihar Regional Transport Authority. The High Court dismissed the writ petition. Aggrieved by the order of the High Court, the petitioner moved this Court for relief by this petition for special leave.

Dismissing the petition, the Court,

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HELD: Under section 45(1) of the Act, an application for a permit for a vehicle proposed to be used in two or more regions within the same State, has to be made to the Regional Transport Authority of the region in which the major portion of the proposed route or area lies, and in case the portion of the proposed route or area in each of the regions is approximately equal, to the Regional Transport Authority of the region in which it is proposed to keep the vehicle. [596F-G]

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Under section 63 of the Act, in the absence of any rules to the contrary under the Act, a permit granted by the Regional Transport Authority of one region is not valid in any other region unless the permit has been counter-signed by the Regional Transport Authority of the other region, while counter-signing a permit, it is open to the Regional Transport Authority of the other region to impose its own conditions which it might have imposed if it had granted the permit. If there are any rules framed by the State Government under the Act, they supersede the provisions of section 63. If there is an agreement between the States concerned with regard to the grant and the counter signature of the permits, then it is not necessary to comply with the procedure prescribed by section 63, for counter-signature of permits. In this case, the provisions of section 63 of the Act applied to all the inter-regional permits in the State of Bihar. as no rule framed under the Act by the State of Bihar regarding the procedure to be followed in the case of counter-signature of permits was brought to the notice of the Court. [598R-H;599A]

Section 47(3) being inapplicable to the inter-State or inter regional permits, it is open to the Regional Transport Authority concerned to decide whether there is any necessity to issue the permit applied for. The Act does not contain any procedure for two or more Regional Transport Authorities entering into an agreement before an application for an inter-regional permit is granted. The only provision which provides for an agreement to be arrived at for purposes of counter-signature is the agreement between two or more States referred to in the first proviso to sub-section (3) of section 63 of the Act. An inter-State agreement of that nature can be arrived at only after following the procedure prescribed under sub-section (3A) of section 63 when it is open to the parties affected by the proposal to make

representations. In one sense, the procedure prescribed in sub-section (3A) of section 63 takes the place of procedure to be followed by a Regional Transport Authority while granting or counter-signing permits. In this case, since there is no provision in the Act or in the Rules made by the State Government, requiring the existence of such a prior agreement, it is difficult to hold that in the absence of such a prior agreement between the Regional Transport Authorities concerned, an application for the grant of an inter-regional permit should not be taken up for consideration by a Regional Transport Authority which had the jurisdiction to grant it under section 45 of the Act. If a permit is issued by a Regional Transport Authority and it is not counter-signed by the other Regional Transport Authority, the permit will not be effective in the other region. What has been observed above is in accord with the deci-

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sion of a Constitution Bench of this Court in M/s. Bundelkhand Motor Transport Co., Nowgaon v. Behari Lal Chaurasia and Anr., [1986] 1 SCR 485. [599B; 601F-G; 602E-G]

The North Bihar Regional Transport Authority had jurisdiction to consider the applications for the grant of the inter-regional permits in question. After they were granted, it was open to the South Bihar Regional Transport Authority to consider whether they should be counter-signed or not after following the prescribed procedure. The High Court was right in dismissing the Writ Petition. [603C-D]

Mohd. Ibrahim etc. v. State Transport Appellate Tribunal, Madras, etc., [1971] 1 SCR 474; M/s. Bundelkhand Motor Transport Company, Nowgaon v. Behari Lal Chaurasia and Another, [1966] 1 SCR 485, referred to.

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 6495 of 1988.

From the Judgment and order dated 3.5.1988 of the Patna High Court in C.W.J.C. No. 2063/88.

K.K. Gupta for the Petitioner.

The Judgment of the Court was delivered by VENKATARAMIAH, J. The short point which arises for consideration in this case is whether without a prior agreement between two or more Regional Transport Authorities through which an inter-regional route passes it is open to any one of the said Regional Transport Authorities to grant a permit to ply a stage carriage on the said inter-regional route under the provisions of the Motor Vehicles Act, 1939 (hereinafter referred to as 'the Act').

After the opening of the 'Mahatama Gandhi Sethu' connecting South Bihar and North Bihar by road there was a great need for granting permits to operate stage carriage services between places which are situated in North Bihar and the places in South Bihar. Therefore, in order to satisfy the demand of the travelling public, the North Bihar Regional Transport Authority issued an advertisement inviting applications for granting stage carriage permits in respect of inter-regional routes connecting certain places situated within its jurisdiction and certain other places which are situated within the jurisdiction of South Bihar Regional Transport Authority. A number of applications were received for the grant of the permits on the said inter-regional routes. The North Bihar Regional Transport Authority issued notices to all the persons concerned stating that the said applications would be taken up for consideration at its meeting to be held on 7th April, 1988.. The petitioner who was operating some stage carriages on some of the inter-regional routes filed a writ petition in C.W.J.C. No. 2063 of 1988 on the file of the High Court of Patna questioning the power of the North Bihar Regional Transport Authority to grant permits on the inter-regional routes without a prior agreement between it and the South Bihar Regional Transport Authority and obtained an order of stay of the said proceedings from the High Court on 6th April, 1988 pending disposal of the Writ Petition. The Writ Petition was heard by the High Court on 3.5.1988 and it was dismissed. Aggrieved by the order of the High Court the Petitioner has filed this petition.

When the Writ Petition was filed before the High Court the petitioner did not implead the applicants who had made applications for the grant of stage carriage permits. The applicants, however, appeared before the High Court as interveners and made their submissions. They contended that the Writ Petition was liable to be dismissed since they (the applicants for permits) had not been impleaded as parties and that the contention of the petitioner that a prior agreement between the two Regional Transport Authorities was necessary before any one of them could grant a permit was erroneous. The High Court has upheld both the contentions.

Under section 45(1) of the Act every application for a permit has to be made to the Regional Transport Authority of the region in which it is proposed to use the vehicle or vehicles but if it is proposed to use the vehicle or vehicles in two or more regions lying within the same State, the application has to be made to the Regional Transport Authority of the region in which the major portion of the proposed route or area lies, and in case the portion of the proposed route or area in each of the regions is approximately equal, to the Regional Transport Authority of the region in which it is proposed to keep the vehicle or vehicles. The application for stage carriage permit should contain the particulars required to be furnished under section 46 of the Act. Section 57 of the Act provides for the procedure to be followed for granting permits. On receipt of an application for a stage carriage permit the Regional Transport Authority should make the application available for inspection at the office of the Authority and is also required to publish the application or the substance thereof in the prescribed manner together with a notice of the date before which representations in connection therewith may be submitted and the date, not being less than thirty days from such publication, on which, and the time and place at which, the application and any representations received would be considered. The Regional Transport Authority should, while considering an application for a stage carriage permit, have regard to the matters specified in section 47 of the Act, namely, the interest of the public generally, the adequacy of the passengers, the stage carriages operating or likely to operate in the near future whether by road or other means

between the places to be served, the benefit to any particular locality or localities likely to be afforded by the service etc. At the hearing it is open to any one of the parties who has objected to the grant of the permit to raise all contentions which are open to him under the Act including that there is no need for issuing the permit applied for under sub-section (3) of section 47 of the Act a Regional Transport Authority may limit the number of stage carriages generally or of any specified type for which stage carriage permits may be granted in the region or in any specified area or on any specified route within the region. It has been held by this Court in Mohd. Ibrahim etc. v. State Transport Appellate Tribunal, Madras, etc., [1971] 1 S.C.R. 474 that sub-section (3) of section 47 is confined in its operation to the permits under which the stage carriages are to be operated between two or more places within the same region and that section 47(3) does not apply to applications for inter-State permits or to inter-regional permits. We shall refer to this decision again at a later stage. The relevant part of section 63 of the Act reads thus:

63. Validation of permits for use outside region in which granted-(1) Except as may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region shall not be valid in any other region, unless the permit has been counter-signed by the Regional Transport Authority of that other region, and a permit granted in any one State shall not be valid in any other State unless counter-signed by the State Transport Authority of that other State or by the Regional Transport Authority concerned. ....

(2) A Regional Transport Authority when counter-

signing the permit may attach to the permit any condition which it might have imposed if it had granted the permit, and may likewise vary any condition attached to the permit by the Authority by which the permit was granted.

(3) The provisions of the Chapter relating to the grant, revocation and suspension of permits shall apply to the grant, revocation and suspension of countersignatures of permits:

Provided that it shall not be necessary to follow the procedure laid down in Section 57 for the grant of counter signatures of permits, where the permits granted in any one State are required to be counter-signed by the State Transport Authority of another State or by the Regional Transport Authority concerned as a result of any agreement arrived at between the States after complying with the requirements of sub-section (3- A), or for the grant of countersignatures of permits in pursuance of any direction issued by the Commission under clause (c) of sub-section (2) of section 63-A."

A reading of the provisions of section 63 of the Act, extracted above, shows that in the absence of any rules to the contrary framed under the Act a permit granted by the Regional Transport Authority of any one region is not valid in any other region unless the permit has been counter-signed by the Regional Transport Authority of the other region and a permit granted in any one State is not valid in any other State unless it is countersigned by the State Transport Authority of the

other State or of the Regional Transport Authority concerned. When countersigning a permit it is open to the Regional Transport Authority of the other region to impose its own conditions which it might have imposed if it had granted the permit. The provisions of Chapter IV relating to the grant, revocation or suspension of permits apply to the grant, revocation or suspension of the countersignature of the permits also. If there are any rules framed by the State Government under the Act they shall supersede the provisions of section 63 of the Act and the rules framed in that regard have to be followed by the Transport Authorities in the case of inter-regional permits. If There is an agreement between the States concerned with regard to the grant and the countersignature of the permits, then it is not necessary to comply with the procedure prescribed by section 63 of the Act for countersignature of permits. No rule framed under the Act by the State of Bihar with regard to the procedure to be followed in the case of countersignature of permits has been brought to our notice. We shall, therefore, proceed on the basis that the provisions of section 63 of the Act would be applicable to all inter-regional permits in the State of Bihar. Since section 47(3) is held to be inapplicable to inter-State permits or inter regional permits it is open to the Regional Transport Authority concerned to decide the question whether there is any necessity to issue the permit applied for at the time of consideration of the application for the grant of a permit in the light of the representations made before the Regional Transport Authority by the applicants, objectors and other concerned parties. In Mohd. Ibrahim etc. v. State Transport Appellate Tribunal, Madras etc., (supra) dealing with the question whether there was any necessity for a prior determination of the maximum number of stage carriages which can be permitted to operate on an inter- State route, this Court observed at page 483 of the Report thus:

"These provisions establish that in the case of an inter-State permit an application has to be made to the Regional Transport Authority of a State as mentioned in section 45 of the Act and the permit is to be countersigned by the State Transport Authority of the other State or by the Regional Transport Authority concerned as mentioned in section 63 of the Act. Chapter IV consists of sections 42 to 68. Section 57 deals with procedure for application and grant of permits. That section will, therefore, apply for the grant of inter-State permits. The effect of the proviso to section 63(3) is that in the case of inter-State permits where an agreement has been arrived at between the State the provisions of section 57 of the Act need not be followed for the grant of countersignatures of permits. In other cases the procedure in section 57 of the Act will apply in regard to grant, revocation and suspension of permits and to countersignatures of permits as well. Section 48 of the Act which relates to power to grant of stage carriage permits will also apply to inter-State permits. The provisions contained in sub-section (1) generally and sub-section (2) of section 47 will apply to the Regional Transport Authority at the time of consideration of the application for inter-State stage carriage permit. Section 47(3) of the Act will not in our opinion apply to inter- State permits because that provision relates to a Regional transport Authority limiting the number of stage carriages for which stage carriage permits may be granted in the region or in any specified area or on any specified route within the region."

(underlining by us) The Court proceeded to observe:

"In other words, section 47(3) of the Act is confined in its operation in or within the region. The provisions of section 47(3) of the Act do not apply to inter-State permits because an inter- State permit cannot be effective unless it is countersigned by the Authority of the other State. The suggestion that in regard to inter-State permits a limit has to be fixed in regard to number of stage carriages for inter-State routes will have the effect of adding words to the provisions in section 47(3) of the Act. That will not be the proper way of giving effect to section 47(3) of the Act. It will be misreading section 47(3) of the Act if it will be applied to inter- State permits. The combined effect of sections 63, 63-A, 63-B and 63-C is that the inter-State Commission will deal with inter-State permits. The Central Government under section 63-C of the Act is authorised to make rules in regard to the procedure to be followed in considering an application for grant and countersignature . Of permits. In the absence of specific rules, the best way of harmonising the powers and functions is to allow these inter-State authorities to exercise their power within their respective spheres in regard to grant and countersignature of permits by agreement and accord. "

(underlining by us).

The last sentence in the above extract of the judgment contains only a suggestion made by the Court to the inter-

State authorities concerned regarding the manner in which the inter-State authorities should exercise their powers with regard to the grant and countersignature of permits to avoid any possible difference of opinion between them. It does not, however, require a Regional Transport Authority in one State to enter into an agreement with the Regional Transport Authority in the other State before granting an inter-state permit under the Act. The observation referred to above is not a part of the ratio of the decision. It may also be noted that a similar observation is not made by the court while dealing with the case of an inter-regional permit within a State. In fact, in the case of inter-State permits there is already an express provision enabling two or more States to enter into an inter-State agreement. In the same decision at Pages 483-484 the Court made the following observations in respect of inter-regional permits:

"In the case of inter-regional permits an application under section 45 of the Act has to be made to the Regional Transport Authority of the region in which the major portion of the proposed route or area lies and in case the portion of the proposed route or area in each of the regions is approximately equal, to the Regional Transport Authority of the region in which it is proposed to keep the vehicle or vehicles. Then under section 63 of the Act a permit granted by the Regional Transport Authority of one region shall not be valid in any other region unless the permit is countersigned by the Regional Transport Authority of that other region. Section 63(3) of the Act makes the provisions of Chapter IV applicable relating to the grant, revocation and suspension of permits to the grant, revocation and suspension of countersignature of permits. The result is that sections 47 to 68 which occur in Chapter IV are therefore attracted in case of inter-regional permits. In view of the fact that section 47(3) of the

Act is restricted in its field in or within the region, the provisions in terms do not become applicable to inter-regional permits. Section 68 of the Act contemplates rules and conditions subject to which and the extent to which, a permit shall be valid in another region within the State without countersignature. We have not been shown any rules to that effect. The reasons which do not make section 47(3) applicable to inter-State permit apply *proprio vigore* to inter-regional permits. "

It is significant that the Act does not contain any procedure for two or more Regional Transport Authorities entering into an agreement before an application for an inter-regional permit is granted. The only provision which provides for an agreement to be arrived at for purposes of countersignatures is the agreement between two or more States referred to in the first proviso to sub-section (3) of section 63 of the Act. An inter-State agreement of that nature can be arrived at only after following the procedure prescribed under sub-section (3-A) of section 63 of the Act which provides for the publication of the proposal to enter into an agreement between the concerned States in the official Gazette and calling for representations in connection therewith from the affected parties and also the publication of the time and place at which the proposal or any representation is received in connection therewith will be considered by the Government concerned. At that stage it is open to the parties who are affected by the proposal to make all representations which they wish to make including the representation that there is no necessity to introduce any more stage carriages on the inter-State routes in question. In one sense the procedure prescribed in sub-section (3-A) of section 63 of the Act takes the place of the procedure to be followed by a Regional Transport Authority while granting or counter-signing permits. If any State Government is of opinion that in the case of inter-regional permits within its territory there should be a similar agreement between the Regional Transport Authorities concerned before granting any inter-regional permit, it may frame appropriate rules providing for publication of the proposal to enter into an agreement, inviting objections to the proposal and hearing objections and representations of the affected parties by the concerned Regional Transport Authorities before entering into any such agreement. In the absence of any such rules being there, it is open to the affected parties to raise the contention that there is no necessity to issue any additional inter-regional permit before the Regional Transport Authority to which application for the grant of a permit is made as well as the Regional Transport Authority to which an application for counter-signature of the permit is made.

In the instant case since there is no provision in the Act or in the Rules made by the State Government requiring the existence of such a prior agreement, it is difficult to hold that in the absence of such a prior agreement between the Regional Transport Authorities concerned an application for the grant of an inter-regional permit should not be taken up for consideration by a Regional Transport Authority which has the jurisdiction to grant it under section 45 of the Act. If a permit is issued by a Regional Transport Authority and it is not countersigned by the other Regional Transport Authority the permit will not be effective in the other region. What we have observed above is in accord with the decision of a Constitution Bench of this Court in *M/s. Bundelkhand Motor Transport Company, Nowgaon v. Behari Lal Chaurasia and Another*, [1966] 1 S.C.R. 485. In that case at Page 492 the Constitution Bench has observed thus:



"Under s. 63 a permit granted by the Regional Transport Authority of one region is not valid in any other region, unless the permit has been countersigned by the Regional Transport Authority of that other region. The clearest implication of this provision is that even an inter-regional permit when granted is valid for the region over which the Authority granting the permit has jurisdiction, and when it is countersigned by the Regional Transport Authority of the other region, the permit becomes valid for the entire route. We are unable to agree with counsel for the respondent that the permit has no validity whatever until it is countersigned by the Regional Transport Authority of the other region "

The North Bihar Regional Transport Authority has, therefore, jurisdiction to consider the applications for the grant of the inter-regional permits in question. After they are granted, it is open to the South Bihar Regional Transport Authority to consider whether they should be countersigned or not after following the prescribed procedure.

The High Court was, therefore, right in dismissing the Writ Petition. This Special Leave petition, therefore, fails and it is dismissed.

S.L.

Petition dismissed.