

Before M. M. Punchhi, J.

UNION OF INDIA AND ANOTHER,—*Petitioners.*

*versus*

ISHWAR PAL ATTRI AND OTHERS,—*Respondents.*

Civil Revision No. 1898 of 1985.

September 16, 1985.

*Code of Civil Procedure (V of 1908)—Section 91 and Order 39 Rules 1 & 2—Motor Vehicles Act (IV of 1939)—Section 38, 69, 69-A and 70—Punjab Motor Vehicles Rules 1940—Rule 3.10—Suit for injunction filed against State Transport Authorities by private persons with the leave of the Court—Public transport alleged to be in complete mess resulting in numerous accidents making it hazardous for people to move on roads—State buses stated to be not road-worthy and drivers physically not fit—Application for temporary injunction seeking interim relief—Court appointing a committee of experts to ascertain road worthiness of the vehicles and fitness of the drivers—Appointment of such a committee—Whether legal and proper.*

*Held*, that though the power of the Court is quite wide in section 91 of the Code of Civil Procedure, 1908, the discretion of the Court in granting interim relief has to be governed by well recognized judicial principles. Grant of the appointment of a local commission, though permissible, is again a matter which has to be decided judicially in the circumstances of the case. Appropriate relief is sought on the basis of 'wrongful commissions' of the State Transport Authorities in not keeping their buses roadworthy and their drivers fit and healthy capable of sitting on the steering wheel. Even assuming that a wrongful act conceived of in section 91 of Code is inclusive of 'wrongful omissions' as well but still in a welfare State of ours, where all citizens are co-participants in the democratic process, persons who have specifically been assigned public functions cannot be made suspects outright if something is remiss in the rendering of public services. It is that certificate of fitness, as envisaged under section 38 of the Motor Vehicles Act, is not a positive guarantee for the road-worthiness of the vehicle thereafter, yet is a working basis to go on with, signifying that on a particular date the vehicle, when tested, was road-worthy and thus certified to be fit for being used as a transport vehicle. The period of fitness, whether it expires after six months, one year or two years, as the case may be, only means that the expectancy of its remaining roadworthy has been put to that date but not as an absolute guarantee that it would remain roadworthy. Thus, the claim that the Board of Inspection serves no purpose at all is rather fallacious. Later, even if in the course of running a

vehicle it gets a defect, it is required to be repaired before renewal of certificate of fitness can ever be asked for. This method serves dually towards keeping the vehicles roadworthy and by periodic certification, ensuring their upkeep. On the spot inspection, even if some vehicles would be found defective, does not go to show that the entire fleet of buses are defective in the matter of running the transport fleet. If the plaintiffs have specific knowledge of any particular vehicle being not roadworthy and the same was being plied on the road as a hazard to the safety of citizens, they could easily approach the Court for an interim relief to have that vehicle put off the road, but this kind of fishing enquiry by the appointment of a Committee as a super Board of Inspection is totally uncalled for and would be a slur on the legislative wisdom reflected in the Motor Vehicles Act and the rules framed thereunder. So far as the details pertaining to the drivers are concerned, those could also be obtained by the Court from the plaintiffs. The Committee has no functions to perform in the matter as these are ordinary details and no experts are needed. Thus, for these reasons, the constitution of the Committee for the purpose is hereby upset.

(Paras 5, 6 & 7)

*Petition under Section 115 C.P.C. against the order of Shri A. S. Katari, S.J.I.C., Chandigarh, dated 24th May, 1985, appointing a Committee consisting of Shri H. L. Vij, Shri Harbhajan Singh and Shri Suresh Misri. The Chandigarh Transport Undertaking shall pay Rs. 1,000/- each as remuneration to each of them and afford the access to inspect five buses in the yard of Chandigarh Transport undertaking at random for a period of one month from the date of this order. The Chandigarh Administration is also directed to supply particulars of all the drivers plying its buses and their complete bio-data regarding facts of rash and negligent driving committed by each of the driver. To come up for report of the committee of the Chandigarh Administration on 16th July, 1985.*

Ashok Bhan, Senior Advocate with H. K. Mukhi, Advocate, for the petitioner.

R. K. Mittal, Advocate, for the Respondents.

#### JUDGMENT

M. M. Punchhi, J., (Oral):

(1) This petition for revision reveals a unique effort made by a few citizens of Chandigarh to put the authorities responsible for running bus transport in the city on its toes. Taking aid of section 91 of the Code of Civil Procedure, where under any two or more

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persons with the leave of the Court can, in the case of wrongful act, affecting or likely to affect the public, seek a declaration and injunction and such other relief as may be appropriate in the circumstances of the case, the plaintiff-respondents approached the Court of Shri Amarjit Singh Katari, P.C.S., Sub-Judge, 1st Class, Chandigarh, complaining that the public transport provided by the Chandigarh Transport Undertaking was in a complete mess inasmuch as neither were its buses roadworthy nor their drivers physically fit which had resulted in numerous accidents in the town making it hazardous for people to move on roads. The Court having granted leave to them, as envisaged under section 91, Civil Procedure Code, also entertained their application for interim relief and passed the following order, now sought to be impugned in this petition:—

“Thus, the plaintiffs have the right to know the condition of buses being run by the Chandigarh Transport Undertaking so that they cease to be a death hazard to the citizens who travel in them. Citizen of our country, especially of Chandigarh, are also entitled to know as to whether the drivers who drive the buses are mentally and physically fit so that the accident caused by them daily due to the rash and negligent driving of the buses could be avoided so as to maintain the constitutional guarantee given to every citizen of India by the Constitution of the country for right to live. Accordingly a committee consisting of following automobiles Engineers is appointed to report roadworthiness of the buses plied by the Chandigarh Transport Undertaking:—

- (i) Shri H. L. Vij.
- (ii) Shri Harbhajan Singh.
- (iii) Shri Suresh Misri.

The Chandigarh Transport Undertaking shall pay Rs. 1,000/- each as remuneration to each of them and afford the access to inspect five buses in the yard of Chandigarh Transport Undertaking at random for a period of one month from the date of this order. The Chandigarh Administration is also directed to supply particulars of all the drivers plying its buses and their complete bio-data regarding facts of rash and negligent driving committed by each of the

driver. To come up for report of the committee of the Chandigarh Administration on 16th July, 1985.”

(2) The operation of this order was stayed *ad interim* on motion by this Court.

(3) Mr. Ashok Bhan, learned counsel for the petitioners, Chandigarh Administration and the General Manager, Chandigarh Transport Undertaking, Chandigarh, has challenged the approach of the learned Judge in face of the statutory provisions under the Motor Vehicles Act, 1939 and the rules framed thereunder. In particular, my attention has been invited to section 38 of the Motor Vehicles Act whereunder it is incumbent for a transport vehicle to be carrying a certificate of fitness in form 'H' as set forth in the First Schedule for all time in order to remain validly registered for the purpose of section 22. Sub-section (2) specifically provides that a certificate of fitness shall remain effective for such period, not being in any case more than two years or less than six months, as may be specified in the certificate by the prescribed authority. The requirements essential to be fulfilled for obtaining a certificate of fitness are those as given in Chapter V of the Act comprising of section 69, 69-A and 70 of the said Act. Therein, a variety of considerations come into play before a vehicle can be granted a certificate of fitness. Further, under the Punjab Motor Vehicle Rules, 1940, a certificate of fitness is required to be given by a Board of Inspection comprising of two members. One of them, as is clear from rule 3.10, is to be an Assistant Commissioner, Extra Assistant Commissioner, Gazetted Officer or a Magistrate deputed for the purpose by the District Magistrate. The second one is to be one experienced motor mechanic appointed by the State Government. The Board of Inspection cannot alone be of Police Officers. In the event of difference of opinion between the two members with regard to the fitness of a vehicle, the decision has to be negative in character. The method adopted is uniform for the grant or renewal of the certificate of fitness as also the cancellation thereof. Now in the presence of these provisions, Mr. Ashok Bhan says that when the vehicles with the Chandigarh Transport Undertaking are presumed to be carrying certificates of fitness valid for such period, as individually applicable to each vehicle, there was no occasion for the learned trial Judge to appoint a Committee of so-called experts to displace the Board of Inspection constituted under the rules. Rather, he was emphatic that the Board of Inspection exists and is effectively functioning when required to initially grant and then renew the

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certificates of fitness from time to time. He also emphasised the point that in the pleadings before the Court below, the plaintiffs had nowhere alleged that the vehicles run by the Chandigarh Transport Undertaking were not carrying certificate of fitness.

(4) Mr. R. K. Mittal, learned counsel for the plaintiff-respondent, does not dispute the existence of the statutory provisions and the constitution of the Board of Inspection. What his precise grievance is that this Board no doubt keeps from time to time carrying out the purposes of the Act and the rules framed thereunder but that inspection, so far as the Government vehicles are concerned, is a mere formality and in any case the Board is not there to check the day-to-day functioning of the public passenger transport in the city when defective vehicles plying on the roads are a common sight. He urges that Chandigarh being a town of the educated and the elite has more awareness, which is reflected in the filing of the suit by the plaintiff-respondents. He further says that the only way to vouchsafe and ensure safety on the roads was by prohibiting plying of defective vehicles and to ask for an independent Committee of Experts to go into the question. And thus the Court has for the purpose appointed a Committee with limited powers only to give it facts and figures on the basis of which it could mould the relief, if at all the plaintiffs were entitled to.

To this stance of the plaintiff-respondents, Mr. Ashok Bhan has vehemently urged that the suit as such was not maintainable and there was thus no question of appointing a Committee to inter-meddle with the affairs of the Chandigarh Transport Undertaking. He is otherwise of the view that in case the Court requires any information with regard to the vehicles owned by the Chandigarh Transport Undertaking, generally or specifically, the petitioners would be willing to supply the same. Further he states that any information with regard to the drivers, their length of service, convictions and punishment for misconduct, etc., can also be supplied to Court directly without the intermeddling of the Committee.

(5) Principally on examining the respective contentions of the learned counsel for the parties, I am of the view that though the power of the Court is quite wide in section 91, Civil Procedure Code (not in any event holding that the suit is maintainable), the discretion of the Court in granting interim relief has to be governed by well recognised judicial principles. Grant of the appointment

of a local commission, though permissible, is again a matter which has to be decided judicially in the circumstances of the case. As far as I have been able to discern from the frame of the suit, appropriate relief is sought on the basis of wrongful omissions of the defendant-petitioners in not keeping their buses roadworthy and their drivers fit and healthy capable of sitting on the steering wheel. I can even go to the length of assuming that the wrongful act conceived of in section 91, Civil Procedure Code, is inclusive of 'wrongful omissions' as well, taking aid of section 3(2) of the General Clauses Act where the word 'act' can also mean to extend to a legal omission also. But still in a welfare State of ours, where all citizens are co-participants in the democratic process, persons who have specifically been assigned public functions cannot be made suspects outright if something is remiss in the rendering of public services. It is true that certificate of fitness, as envisaged under section 38 of the Motor Vehicles Act, is not a positive guarantee for the roadworthiness of the vehicles thereafter, yet is a working basis to go on with, signifying that on a particular date the vehicle, when tested, was roadworthy and thus certified to be fit for being used as a transport vehicle. The period of fitness, whether it expires after six months, one year or two years, as the case may be, only means that the expectancy of its remaining roadworthy has been put to that date but not as an absolute guarantee that it would remain roadworthy. Thus, the claim of the plaintiff-respondents that the Board of Inspection serves no purpose at all is rather fallacious. Later, even if in the course of running a vehicle it gets a defect, it is required to be repaired before renewal of certificate of fitness can ever be asked for. This method serves dually towards keeping the vehicles roadworthy and by periodic certification, ensuring their upkeep.

(6) The confidence expressed by the plaintiff-respondent that on a spot inspection, some vehicles would be found defective, even if true, does not go to show that the entire fleet of buses are defective in the matter of running the transport fleet. It is not uncommon to observe that though each vehicle of a particular make comes from the same plant, each has different marks of wear and tear, totally uncommon to the other. Further in the matter of running, wear and tear cannot be uniform and no vehicle, while running, can satisfy the ideal test. Thus, if the plaintiff-respondents have specific knowledge of any particular vehicle being not roadworthy and the same was being plied on the road as a hazard to the safety of citizens, they could easily, and can even now, approach the Court

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for an interim relief to have that vehicle put off the road. But this kind of fishing inquiry by the appointment of a Committee as a super Board of Inspection is totally uncalled for and would be a slur on the legislative wisdom reflected in the Motor Vehicles Act and the rules framed thereunder. Thus, in my view, the constitution of the Committee for the purpose must be and is hereby upset, leaving it open to the Court to seek such information from the petitioners as it may require of the vehicles, generally or specifically, as the circumstances of the case may warrant.

(7) So far as the details pertaining to the drivers are concerned, those, as said before, can also be obtained by the Court from the petitioners. The Committee has no function to perform in the matter. These are ordinary details and no experts are needed, much less mechanical experts which the Committee Members are styled to be, to gather details about the drivers, their convictions and misconduct. These details are a matter of record and can otherwise be summoned by the Court to effectuate justice between the parties and mould the relief accordingly, whether finally or as an interim measure. For that purpose too, the constitution of the Committee is upset.

(8) For the foregoing reasons, this petition succeeds but without any order as to costs. The impugned order is quashed in the light of the observations afore-made.

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N.K.S.

*Before Pritpal Singh, J.*

DARYA SINGH,—*Petitioner.*

*versus*

THE COLLECTOR BHIWANI AND OTHERS,—*Respondents.*

Civil Writ Petition No. 4205 of 1978.

September 19, 1985.

*Haryana Relief of Agricultural Indebtedness Act (18 of 1978)—Sections 2(g), 8 and 13—Creditor making application under section 8 for settlement of debt—Debt settlement officer allowing application and determining amount of debt—Debtor filing appeal to the*