

Before I. S. Tiwana, J.

M/S KRISHNA BUS SERVICE (P.) LTD., DELHI—Petitioner

versus

THE STATE OF HARYANA AND OTHERS—Respondents.

Civil Writ Petition No. 1770 of 1978

November 14, 1983

Motor Vehicles Act (IV of 1939)—Section 133-A—Punjab Motor Vehicles Rules, 1940—Rule 10.2—Constitution of India 1950—Articles 14, 19(1)(g) and 166—General Manager of Haryana Roadways—Whether an operator for the purposes of the Act—Conferment of powers of a police officer on the General Manager—Whether permissible—Such conferment—Whether violative of Article 14—Violation of Article 19—Whether could be alleged by a company—Notification conferring such powers—Whether could be issued by the transport department.

Held, that General Manager, Haryana Roadways, who has been authorised to exercise the powers of Deputy Superintendent of Police for the purposes of carrying out the provisions of the Motor Vehicles Act, 1939 cannot be styled as an 'operator' merely on the ground that one of his varied duties is to apply for the grant of transport permits in favour of Haryana Roadways or to present the same for countersignatures by the authorities of other States. He being a Government official has no personal interest in the whole affair. He only manages the transport business on behalf of the State and no *mala fides* and extraneous considerations can be attributed to him or justifiably assumed about his working merely on the ground that an operator's buses have been repeatedly checked by him and challaned for violation of the rules. The only result of the challan is that the operator is made to face a summary but a judicial trial. He is at liberty to take up any defences and show to the Court concerned that it is not guilty of the alleged violation of the rules or the provisions of the Act. Further, the Act does not lay down the class or classes of persons on whom the powers of a police officer exercisable under the Act can be conferred. No restrictions in the exercise of this power by the State Government can be read into the provisions of section 133-A of the Act. If the provisions of section 133-A of the Act are constitutional, which they are, the State Government cannot be required to confer the above powers on a particular category of officers.

(Para 5)

Held, that the mere possibility that there may be abuse of power given by law cannot be a ground to strike down the validity of the

law. Thus, the powers conferred on the General Manager, Haryana Roadways, cannot be described to be excessive or arbitrary merely because they can be misused by him.

(Para 6)

Held, that a corporation or a company is not a citizen for purposes of the Constitution and thus cannot claim the rights mentioned in Article 19 of the Constitution.

(Para 7)

Held, that a bare reading of the provisions of section 133-A and sub-rule (2) of Rule 10.2 of the Punjab Motor Vehicles Rules, 1940 makes it manifestly clear that the police powers conferred by the State Government on some of its officers are for the limited purpose of carrying into effect the provisions of the Act or are exercisable only under the Act. It is not that these officers are appointed as police officers in the general sense and enjoy all the powers of a police officer under the Police Act or the Punjab Police Rules or under any other law including the Code of Criminal Procedure. It is primarily the concern of the Secretary, Transport Department, to see the functioning of that department in accordance with the Act and the Rules framed thereunder and thus it is squarely within his sphere to issue the notification.

(Para 8)

Junta Motor Transport and another *vs.* State of Uttar Pradesh, Lucknow, 1970(1) Allahabad Law Journal 810.

DISSENTED FROM.

Petition under Articles 226/227 of the Constitution of India, praying that this Hon'ble Court, in the exercise of its extraordinary jurisdiction under Articles 226/227 of the Constitution be pleased to :—

- I. Issue a Rule Nisi against the respondents.
- II. Order the respondents to transmit to this Hon'ble Court all relevant records, related to the petitioner's case.
- III. Quash the Notification, dated March 16, 1973, Annexure P. 1 and all other proceedings and action taken thereunder.
- IV. Prohibit the respondents from taking any further action against the petitioners in purported exercise of the powers under Notification, Annexure P 1 and to treat the challans made/issued by the respondents No. 3 as illegal, without jurisdiction and void.

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V. *It is further prayed that the respondent No. 4 be restrained and prohibited from taking any action against the petitioner on the basis of the challans made by respondent No. 3, till the final disposal of the writ petition.*

VI. *Issuance of notices to the respondents be kindly dispensed with.*

C.M. No. 2631 of 1983.

Application under Section 151 of C.P.C. praying that the replication be placed on record.

D. S. Nehra, Advocate with Arun Nehra, Advocate, for the Petitioner.

B. S. Gupta, Advocate with Arun Bansal, Advocate, for the State.

JUDGMENT

I. S. Tiwana, J.

(1) The petitioner transport company impugns the notification issued on March 16, 1973 (Annexure P. 1),—*vide* which the General Manager, Haryana Roadways has been authorised to exercise the powers of a Deputy Superintendent of Police for carrying into effect the provisions of the Motor Vehicles Act, 1939 (for short, the Act) by way of amendment of Rule 10.2 of the Rules, known as Punjab Motor Vehicles Rules, 1940, on a wide variety of grounds. This challenge is based on the following facts :—

(2) Petitioner runs twelve return trips daily on the inter-State Delhi-Hissar route on the basis of the permits granted by the State Transport Authority, Delhi and duly countersigned by the Regional Transport Authority, Hissar. These permits have been granted as a result of the reciprocal arrangement between the States of Haryana and Delhi in terms of section 63 of the Act. For some time past, the State of Haryana has completely nationalised the transport services in the entire State and thus the private operators stand eliminated. General Manager, Haryana Roadways, respondent No. 3, controls the operation of services and staff of the Roadways working in Hissar Depot. Out of his multifarious duties, one is to apply for permits to the transport authorities of the State and to Delhi authorities for the countersignatures of

those permits. According to the petitioner this obligation makes the General Manager, Haryana Roadways, "an Operator running bus services on the above noted route". He, along with the petitioner, is also required to frame a joint time-table for running their buses according to schedule. Since according to the petitioner the buses of the respondent State are 'rickety' and 'frequently out of order' and cannot possibly compete in efficiency and many other matters with the buses run by the petitioner, "a bad blood and unhappy relations have developed between the petitioner and respondent No. 3". On account of the above noted background and in consonance with the avowed policy of the State Government not to allow private operators to operate within the boundaries of the Haryana State, respondent No. 3 started to harass and challan the petitioner company in exercise of his newly conferred powers as a police officer. Petitioner's case further is that as a result of some extraneous reasons and the reckless exercise of the above noted power, the company has been challaned more than fifteen times during the period January 6, 1978 to mid-April, 1978. It is also highlighted on its behalf that for somewhat similar omissions and commissions done by the staff of the Roadways, their buses are not checked or challenged by this officer. Petitioner claims to have made along with other private operators a number of representations to the Chief Minister and the Transport Minister, Haryana, but without any result. In the light of these facts, it is sought to be contended on its behalf that :—

- (i) The Act does not contemplate the conferment of powers of a police officer on an operator or his servants or officers;
- (ii) To confer such powers on State officials who have to perform the role of an operator and not to confer similar powers on private operators, is an act of discrimination and is violative of Article 14 of the Constitution of India;
- (iii) The conferment of the above noted powers on the General Manager, Haryana Roadways, and the exercise of the same in a reckless manner against the petitioner amounts to unreasonable restriction on the carrying on the transport business or trade by the petitioner company and is thus derogatory to the provisions of Article 19(1)(g) of the Constitution; and

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(iv) Secretary to Government, Haryana, Transport Department, under whose signatures the impugned notification has been issued, was not competent to issue the same as in accordance with the delegation of powers under Article 166 of the Constitution the Department of Police and the authority to confer police powers on an officer of the State vests in the Home Department of the State Government and not the Transport Department.

(3) As against this, the case of the respondent State is that the conferment of powers of a Deputy Superintendent of Police on the General Manager, Haryana Roadways, in exercise of its powers under section 133-A of the Act for the limited purpose of carrying into effect the provisions of the Act is not in any way derogatory to any of the provisions of the Constitution of India. Besides justifying the action taken by the said officer and denying that there was any bad blood or unhappy relationship between the parties, it is highlighted on its behalf that the petitioner has all and every opportunity to impugn the action of the General Manager in a Court of law, when it is put on judicial trial as a result of the challans prepared by him against it.

(4) In order to examine the merits of the above noted contentions raised on behalf of the petitioner, it is but necessary to notice the following relevant provisions of the Statute and the Rules : —

“Section 133-A.—Appointment of Motor Vehicles Officer.—

(1) The State Government may, for the purpose of carrying into effect the provisions of this Act, establish a Motor Vehicles Department and appoint as officers thereof such persons as it thinks fit.

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“Rule 10.2.—Classification of officers.—

(1) There shall be five classes of the staff, namely: —

Class I, Class II, Class III, Class IV and Class V.

(2) The officers included in each class and the police powers exercisable by them under the Act, shall be as noted

below against each. The police powers exercisable by officers of the Transport Department are in respect of Motor Vehicles Offences under the Motor Vehicles Act, 1939, only.

Class II

- | | |
|--|--|
| (a) Secretaries, Regional Transport Authorities. | Powers exercisable by a Superintendent of Police. |
| (b) Extra Assistant Transport Controller (O) | Ditto |
| (c) Extra Assistant Transport Controller (T) | Ditto |
| (d) General Manager, Haryana Roadways. | Powers exercisable by a Deputy Superintendent of Police. |

As already indicated, this clause (d) has been added to the above noted rule by way of amendment with the issuance of the impugned notification Annexure P. 1. On examining the above noted contentions ad seriatum in the light of the submissions of the learned counsel, my conclusions are as follows.

(5) To support the first three contentions, the learned counsel for the petitioner places primary reliance on a Single Bench judgment of the Allahabad High Court reported as *Junta Motor Transport and another v. State of Uttar Pradesh, Lucknow* (1). On a perusal of this judgment I find that the first two contentions can straightaway be rejected in the light of the reasoning adopted therein. Otherwise also I am of the considered view that General Manager, Haryana Roadways, who has been authorised,—vide Annexure P. 1 to exercise the police powers of Deputy Superintendent of Police for purposes of carrying out the provisions of the Act cannot be styled as an 'operator' merely on the ground that one of his varied duties is to apply for the grant of transport permits in favour of Haryana Roadways or to present the same for

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countersignatures by the Delhi authorities. He being a Government official has no personal interest in the whole affair. He only manages the transport business on behalf of the State. No *mala fides* or extraneous considerations can be attributed to him or justifiably assumed about his working merely on the ground that the petitioner's buses have been repeatedly checked by him and challaned for violation of the rules. As already pointed out and highlighted by the respondent authorities, the only result of those challans is that the petitioner is made to face a summary but judicial trial. It is at liberty to take up any defences and show to the Court concerned that it is not guilty of the alleged violation of the rules or the provisions of the Act. Further, the Act does not lay down the class or classes of persons on whom the powers of a police officer exercisable under the Act can be conferred. No restrictions in the exercise of this power by the State Government can be read into the provisions of section 133-A of the Act. It deserves to be highlighted here that in this petition there is not even a remote challenge to the vires of the provisions of section 133-A which provisions authorises the State Government to confer the police powers on one of its officers to carry out the provisions of the Act. Rather Mr. D. S. Nehra, learned counsel for the petitioner, very fairly and frankly conceded at the time of arguments that the constitutionality of this provision of the statute cannot possibly be impugned on any ground. If that be so, as it is, then how can the State Government be required to confer the above noted powers on a particular category of officers. It again deserves to be noticed that the learned counsel does not in any way challenge the validity of the conferment of superior powers of a Superintendent of Police on officers mentioned in categories (a), (b) and (c) of Class II Officers in this Rule. Those officers too are as much the officers of the State as the General Manager, Haryana Roadways, mentioned in category (d) is

(6) At the time of hearing, the learned counsel also raised a half-hearted argument that the powers conferred on the General Manager, Haryana Roadways being excessive and arbitrary which can reasonably be misused by him and as per the case of the petitioners, these have actually been misused by him the notification or the rule conferring those powers on him be held as violative of Article 14 of the Constitution. Though the learned counsel did not cite any principle or precedent in support of this contention of his, yet I find the same to be totally devoid of any merit for the reason that the mere possibility that there may be abuse of power given

by law, cannot be a ground to strike down the validity of the law. In their celebrated judgment in *re The Special Court Bill, 1978* (2) a special Bench of seven Hon'ble Judges of the Supreme Court, after examining numerous earlier cases which dealt with different facets of the problems arising under Article 14 of the Constitution, stated thirteen propositions which emerged from those judgments and the proposition stated at No. 10 which is relevant to the facts of this case, in the following words:—

“Whether a law conferring discretionary powers on an administrative authority is constitutionally valid or not should not be determined on the assumption that such authority will act in an arbitrary manner in exercising the discretion committed to it. Abuse of power given by law does occur; but the validity of the law cannot be contested because of such an apprehension. Discretionary power is not necessarily a discriminatory power.”

Thus I repel the first two contentions of the learned counsel.

(7) So far as the challenge mentioned at No. (iii) above is concerned, the above noted Allahabad High Court judgment no doubt completely supports the stand of the learned counsel, yet I find that this pronouncement is in complete disregard of a chain of authorities of the Supreme Court, such as :—

1. *The State Trading Corporation of India Ltd. v. The Commercial Tax Officer and others* (3);
2. *The British India Steam Navigation Co. Ltd. v. Jasjit Singh, Additional Collector of Customs, Calcutta and others* (4);
3. *The Tata Engineering and Locomotive Co. Ltd. v. The State of Bihar and others* (5);

(2) AIR 1979 S.C. 478.

(3) AIR 1963 S.C. 1811.

(4) AIR 1964 S.C. 1451.

(5) AIR 1965 S.C. 40.

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4. *Barium Chemicals Ltd. and another v. Company Law Board and others* (6);
5. *Municipal Committee Amritsar and another v. The State of Punjab and others* (7),

wherein it has been held that a Corporation or a company is not a citizen for purposes of the Constitution and thus cannot claim the rights mentioned in Article 19 of the Constitution. It is the conceded case here that the petitioner is a company registered under the Companies Act with its Head Office in Delhi. Thus the argument raised at No. (iii) is not available to the petitioner and I respectfully decline to follow the reasoning adopted in Allahabad judgment.

(8) So far as the fourth and the last submission of the learned counsel for the petitioner is concerned, a bare reading of the provisions of section 133-A and sub-rule (2) of Rule 10.2 already reproduced above makes it manifestly clear that the police powers conferred by the State Government on some of its officers are for the limited purpose of carrying into effect the provisions of the Act or are exercisable only under the Act. It is not that these officers are appointed as police officers in the general sense and enjoy all the powers of a police officer under the Police Act or the Punjab Police Rules or under any other law including the Code of Criminal Procedure. It is primarily the concern of the Secretary, Transport Department, to see the functioning of that Department in accordance with the Act and the Rules framed thereunder and thus it is squarely within his sphere to issue the impugned notification. Besides this the learned counsel for the petitioner has not even made a remote reference to any of the Rules of Business framed by the Governor as Executive Head of the Government allocating Government business to various functionaries the violation of which might be involved.

(9) For the reasons stated above, the petition is totally meritless and is dismissed with costs which I determine at Rs. 500.

N.K.S.

(6) AIR 1967 S.C. 295.

(7) AIR 1969 S.C. 1100.