S. SHAMSHUDDIN & ORS. ETC

v.

STATE OF KARNATAKA & ORS.

April 18, 1984

[D.A. DESAI AND RANGANATH MISRA, JJ.]

Motor Vehicles Act, 1939 as amended by Motor Vehicles (Amendment) Act 56 of 1969 s.63(7)-Interpretation of. Quota of 50 all India tourist permits fixed by Central Government by Notification No.S.O.22 dated December 19, 1977—Whether valid. Power to fix quota and power to grant all India permits—Whether separable. The expression in respect of such number of tourist vehicles as the Central Government may, in respect of that State, specify in this behalf—Whether severable.

In order to promote tourism, the Motor Vehicles Act, 1939 was amended by the Motor Vehicles (Amendment) Act 56 of 1969. Sub-s. (7) which was introduced in s. 63 by the Amending Act provided that notwithstanding anything contained in Sub-s. (1) but subject to any rules that may be made under this Act, any State Transport Authority may, for the purpose of promoting tourism, grant permits valid for the whole or any part of India, in respect of such number of tourist Vehicles as the Central Government may, in respect of that State, specify in this behalf. In exercise of this power the Central Government by its notification No. S. O. 22 dated December 19, 1977 fixed a quota of 50 as the all India tourist permits for each State. The petitioners challenged this quota as discriminatory and violative of Art. 14 of the Constitution.

Dismissing the writ petitions,

HELD : It appears that s. 63 (7) was introduced after ascertaining the needs of developing tourist trade. The Central Government fixed quota of 50 permits for each State. It may be that a smaller State like Himachal Pradesh or Jammu and Kashmir may have larger number of places of tourist interest. Equally area-wise the biggest State Madhya Pradesh may have few spots of tourist interest. Therefore, unless all the relevant facts are placed on record which may point to the invidiousness of fixing a flat quota, the petitioners contention that the quota is arbitray and violative of Art. 14 of the Constitution has no force. [528D-F, 525E]

The Parliament enacted Sub-s. (7) of s. 63 conferring an enabling power or State Transport Authority to grant a permit valid for the whole of India which but for the provision contained in Sub-s. (7) of s. 63 it was not entitled to grant and that this power to grant was subject to the condition that the Central Government will specify the quota. Therefore, the quota is not severable from the power to grant the permit. Assuming that the quota is is severable from the enabling provision, no material has been placed on record to point out the needs of each State, the places of tourist interest, the influx of tourists, the facility for their boarding and lodging and the condition of roads in respect of each State. In the absence of this fact situation, the petitioners' submission that the expression, in respect of such number of tourist vehicles as the Central Government may, in respect of that State, specify in this behalf' is severable and therefore the enabling part of sub-s. (7) will permit State Transport Authority in each State to grant all India tourist permit keeping in view the need of the tourists and the needs of the State, cannot be examined on merits. [527H, 528A-B, 527G]

It is recommended that in view of the vast expanding tourist traffic the Central Government must undertake an exercise within a reasonable time and at regular intervals to re-evalute the quota of all India tourist permists to keep pace with developing notion of attracting tourists. [529C-D]

ORIGINAL JURISDICTION : Writ Petitions Nos. 13033—38 13650—52, 13197, 13355—58, 13389, 13393—97, 13003—08, 13488,13654—67, 13850—58, 13790 to 13801, 13836—49, of 1983, 8—22,24—30, 34—35, 126-130 and 223-26 of 1984

(Under article 32 of the Constitution of India)

Advocates for the appearing parties :

S.S. Javali, Mr. B.P. Singh, Ranjit Kumar, Shanti Bhushan, K.R. Nagaraja, K.S, Hegde, S.K. Prasad, K.N. Bhatt, Ms. Madhu Mulchandani, R.B. Datar, N.K. Sharma, P.N. Ramalingam, R. Ramachandran, V.K. Verma, K.G. Bhagat, Addl. Sol. General, M.N. Shroff, P.K. Pillai, Mrs. H. Wahi, M. Veerappa, Swaraj Kaushal, Vineet Kumar, S. Chatterjee and *J.R. Das*.

The Judgment of the Court was delivered by

DESAI, J. The intrepid *albeit* affluent transport operators again succeeded in their none-too-legal designs to operate vehicles not by obtaining statutory permits but to put it mildly by abuse of the court's process.

By a judgment rendered by this Court in *S. Kannan and Ors.* v. *Secretary, Karnataka State Road Transport Authority etc.*[1] on August 29, 1983, this Court held that grant of a temporary all-India tourist permit is foreign to the very concept of all-India tourist permit as envisaged by sub-s.(7) of Sec.63 of the Motor Vehicles Act, 1939 and accordingly an unusually large number of temporary all-India tourist permits obtained persuant to the interim relief granted by this Court were set at naught. Some of the present petitioners were directly parties to the petitions disposed of by that judgment. Indefatigueable as they are, they again approached this Court by a camouflage of challenging the validity of quota of fifty such permits fixed by the Central Government in respect of all-India tourist permit for each State as per Notification No. S.O. 22 dated December 19, 1977 as also failure to fill-in the vacancies by the State Transport Authority in Karnataka State to the extent of the sanctioned quota. The challenge was a clever camouflage, the sole, underlying motive being to obtain some interim relief by which again temporary permits in compliance with the interim relief granted by this Court may be obtained and the impermissible trade being carried on without a break. To unravel this plot engineered by the petitioners, it may be mentioned that even though the Court by the judgment in the case of *S. Kannan & Ors.* rendered on August 29, 1983 set at naught all temporary all-India tourist permits obtained as a consequence of the interim relief granted by this Court, at the special request of some of the petitioners, the Court keeping in view the investment made by the petitioners in providing tourist vehicles continued the interim relief which kept operative the temporary permits till December 31, 1983. The present petitions were filed somewhere in November, 1983. By the order dated November 23, 1983 notice directed to be issued both on the main petition as well as on the stay application was made returnable on December 6, 1983. The petitioners were in no hurry to snatch the interim relief because the order made earlier had infused life into their so-called temporary permits and kept them operative upto December 31, 1983. On December 16, 1983 in the renewed attempt the Court granted interim relief to the effect that those operators of vehicles who had held all-India tourist permit on October 23, 1983 and who were plying their vehicles shall be permitted to ply the vehicles until April 30, 1984. It is necessary to point out that the petitioners who obtained this interim relief were plying their vehicles on October

(1) [1984] 1 S.C.C. 375.

23, 1983 under an earlier interim relief which had exhausted itself on August 29, 1983 and this very relevant aspect which would be determinative of the issues involved in the matter appeared not to have been brought even to the notice of the Court which granted interim relief. A

The respondents appeared and pointed out the facts hereinabove delineated with the result that the petitions were set down for hearing on March 23, 1984. B

Mr. Shanti Bhushan who led on behalf of the petitioners raised three contentions. It was urged that even though a quota of 50 tourist permits has been sanctioned by the Central Government for each State, the State of Karnataka has not utilised the quota to the maximum and there are either 25 or 14 vacancies which have been kept unfilled for a long time and therefore, a mandamus must be issued directing the State Transport Authority, Karnataka to perform its statutory duty by considering the applications received for all-India tourist permits and dispose of the same within a reasonable time. It was next contended that if the object underlying the enactment of Sec.63(7) was to promote tourism and facilitate movement of tourists, a flat quota of 50 permits for each State completely ignoring the needs of the State, capacity to cater to the tourist traffic, significant number of places of tourist interest, the local population and other relevant factors, is violative of Art. 14 of the Constitution and the Central Government must be directed to refix the quota. The last submission specifically referring to the State Transport Authority of Karnataka was that it has failed to perform its statutory duty by not granting all-India tourist permit in existing 14 vacancies according to the State Transport Authority and 25 vacancies according to the petitioners, and that by a mandamus the State Transport Authority should be directed to examine all the applications received for the same and to grant permits and thereby perform its statutory duty. C D E F

The mere enumeration of the contentions raised by Mr. Shanti Bhushan shows that the first and the third contentions are almost identical except that the fact situation with regard to the existing number of vacancies in the sanctioned quota of all-India tourist permit for Karnataka State is in controversy. It would have been necessary to probe in depth the statutory duty or State Transport Authority on whom power is conferred by Sec.63(7) to grant permit valid for the whole or any part of India for the G H

purpose of promoting tourism. But we are spared this exercise because Mr. Swaraj Kaushal, learned counsel who appeared for the State of Karnataka undertook that the State Transport Authority would dispose of all applications pending before it for a permit as contemplated by Sec.63(7) by April 30, 1984. He also stated that the State Transport Authority of Karnataka State will as far as possible fill in all the vacancies if sufficient number of applications are pending before it and there are eligible applicants among them. We leave it to the State Transport Authority to determine how many vacancies at present exist and fill in the same by considering the applications pending with it for the type of permit as contemplated by Sec.63(7).

Therefore, there remains one contention to be examined by us. It was urged that Regional Transport Authority can grant a stage carriage or a contract carriage permit, as the case may be, valid for operation in the region and when countersigned by the State Transport Authority valid for contiguous regions in the same State. A necessity was felt that tourist vehicles having an inter-State and intra-state operational area throughout the country, may be licensed by all-India tourist permits so that facility of easy road transport is available to both the domestic and foreign tourists. To achieve this end and with a view to promoting tourism, sub-s.(7) was introduced in Sec. 63 of Motor Vehicles Act, 1939 by Motor Vehicles (Amendment) Act 56 of 1969 which reads as under :

> "63(7) : Notwithstanding anything contained in sub-section (1) but subject to any rules that may be made under this Act, any State Transport Authority may, for the purpose of promoting tourism, grant permits valid for the whole or any part of India, in respect of such number of tourist vehicles as the Central Government may, in respect of that State, specify in this behalf, and the provisions of Sections 49, 50, 51, 57, 58, 59, 59-A, 60, 61 and 64 shall, as far as may be, apply in relation to such permits :
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> Provided that preference shall be given to applications for permits from—
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> (i) the India Tourism Development Corporation ;
>
> (ii) a State Tourism Development Corporation ;
>
> (iii) a State Tourist Department ;

(iv) such operators of tourist cars or such travel agents as may be approved in this behalf by the Ministry of the Central Government dealing in tourism."

The power to grant permit valid for the whole or any part of India was conferred on the State Transport Authority of each State. To guard against the big fish not swallowing the smaller one, Parliament took care to statutorily provide that the Central Government will have power to fix quota of such permits that can be granted by State Transport Authority in each State. In exercise of this power, the Central Government has fixed a quota of 50, euphemistically called, all-India tourist permit, but statutorily described as permit valid for whole of India for each State by the Notification No.S.O.22 dated December 19, 1977.

Mr. Shanti Bhushan pointed out that the large and sprawling States like Maharashtra, Madhya Pradesh, Karnataka, Tamil Nadu and Uttar Pradesh each have a quota of 50 permits and also Assam, Nagaland, Manipur, etc. which are geographically and populationwise small States have the same quota. It was urged that this equal treatment of unequals is clearly arbitrary and violative of Art.14. It was submitted that quota can be fixed with a view to promoting tourism by keeping in view the population, places of tourist interest, facility for tourist halt, conditions of roads etc. and that having not been done the fixation of flat quota of 50 permits for each State must be struck down as discriminatory and arbitrary.

While hearing this argument, a question was posed to Mr. Shanti Bhushan that if the quota of 50 permits for each State is struck down, not a single State Transport Authority in any State will be entitled to grant a single tourist permit because fixation of quota is an integral part of Sec. 63(7). Mr. Shanti Bhushan urged that the expression in respect of such number of tourist vehicles as the Central Government may, in respect of that State, specify in this behalf is severable and therefore, the enabling part of Sub-s.(7) will permit State Transport Authority in each State to grant the all-India tourist permit keeping in view the needs of the tourists and the needs of the State. We are not persuaded to accept this submission. The Parliament enacted sub-s(7) conferring an enabling power on State Transport Authority

to grant a permit valid for the whole of India which but for the provision contained in sub-s.(7) of Sec.63 it was not entitled to grant and that this power to grant was subject to the condition that the Central Government will specify the quota. Therefore, the quota is not severable from the power to grant the permit.

Assuming that the quota is severable from the enabling provision, no material has been placed on record to point out the needs of each State, the places of tourist, interest the influx of tourists, the facility for their boarding and lodging and the condition of roads in respect of each State. In the absence of this fact situation, the contention cannot be examined on merits.

It may be pointed out that Sec. 63-A envisages setting up of an Inter-State Transport Commission for the purpose of developing, co-ordinating and regulating the operation of transport vehicles in respect of any area or route common to two or more States (hereinafter referred to as inter-State region) and performing such other functions as may be prescribed under sec. 63-C. It was not made clear whether the Inter-State Transport Commission has been set up but it appears that Sec. 63(7) was introduced after ascertaining the needs of developing tourist trade. The Central Government fixed quota of 50 permits for each State. It may be that a smaller State like Himachal Pradesh or Jammu and Kashmir may have larger number of places of tourist interest. Equally area-wise the biggest State Madhya Pradesh may have few spots of tourist interest. Therefore, unless all the relevant facts are placed on record, which may point to the invidiousness of fixing a flat quota, the contention of Mr. Shanti Bhushan does not commend to us and it may be rejected.

Mr. Javali, learned counsel in some of the petitions urged that notification No.S.O.22 dated December 19, 1977 specifying the number of tourist vehicle of all States at 50 each suffers from the vice of non-application of mind. It was said that the notification does not disclose as to what relevant factors were taken into consideration for fixing the quota. The contention thus raised is the same contention raised by Mr. Shanti Bhushan under a different garb and must be rejected for the same reasons.

It was urged that the Central Government should be asked to refix the quota keeping in view the change in the steep rise in

the influx of tourists from 1977 to 1984. It was submitted that with the rapid increase in tourist traffic, cheaper and speedy air transport and a new culture of augmenting knowledge by visit to places of historical interest has increased manifold tourist traffic. It was urged that tourism is a well-recognised mode for earning foreign exchange badly needed for economic development. It was then urged that better facilitities would attract more tourists. It was urged that a period of 7 years provides a water-shed re-evaluating the demands of time and needs for augmenting the quota fixed way-back in December, 1977. There is considerable force in this submission. We are of the opinion that in view of the fast expanding tourist traffic, the Central Government must undertake an exercise at regular intervals to re-evaluate the quota of all-India tourist permits to keep pace with developing notion of attracting tourists. We therefore, recommend to the Central Government to undertake this exercise within a reasonable time.

As we find no merit in any of the contention, all petitions fail and are dismissed with costs.

H.S.K. *Petitions dismissed.*