A HARI OM GAUTAM

*v.*

DISTRICT MAGISTRATE, MATHURA & ANR.

B MARCH 27, 1987

[E.S. VENKATARAMIAH AND M.M. DUTT, JJ.]

*Motor Vehicles Act, 1939, Sections 68(2)(r), 76 and 91 read with Rule 93 of the U.P. Motor Vehicles Rules, 1940, scope of—Whether the District Magistrate has the power to appoint any area as a bus stand/* C *halting places and whether the Town Area Committee has the power to levy fees, for the use of the area so fixed as Bus stand, from the bus operators.*

**Chapter VI of the Motor Vehicles Act, 1939 contain provisions** D **relating to "control of transport vehicles". Section 68 confers the power on the State Government to make rules for the purpose of the said chapter. Clause (r) of sub-section (2) of section 68 of the Act specifically confers on the State Government without prejudice to the generally of the power conferred under sub-section (1) of section 68 of the Act the power to frame rules regarding "prohibiting the picking up or** E **setting down of passengers by stage or contract carriages at specified places or in specified areas or at places other than duly notified stands or halting places and requiring the driver of a stage carriage to stop and remain stationary for a reasonable time when so required by a passenger desiring to board or alight from the vehicle at a notified halting place." Section 76 empowers the State Government or any** F **authority authorised in this behalf by the State Government to determine parking places and halting stations. Clause (e) of sub-section (2) of section 91 of the Act confers the power on the State Government specifically to make rules regarding the maintenance and management of parking places and stands and the fees, if any, which may be charged for their use. Rule 93 of the Uttar Pradesh Motor Vehicles Rules, 1940** G **similarly authorises the District Magistrate to specify places within the limits of any municipality, notified area, town area or cantonment or within such other limits as he may define where alone public service vehicles or any specified class or classes of public service vehicles and/or goods vehicles may stand indefinitely or for such period as may be specified or public service vehicles may stop for a longer time than is** H **necessary for the taking up and setting down of passengers.**

The District Magistrate, Mathura by his order dated 22.5.1986 declared and determined plot Nos. 701 and 702 in the Town Area, Baldev (Mathura) as a bus stand/halting place of Baldev, where the stage carriages were directed to stand for the purpose of allowing the passengers of Baldev to get into and to get down from the stage carriages. Accordingly, the Town Area Committee gave a contract to a private contractor to collect the necessary fees payable by the bus operators for making use of the area in question which was within its jurisdiction for stopping their buses in accordance with the order passed by the District Magistrate. The appellant, a person providing transport service in the District of Mathura, challenged the said order dated May 22, 1986 and the order of the Town Area Committee the levy fees by filing a Civil Writ Petition No. 501 of 1986 before the High Court of Allahabad. The Writ Petition was dismissed by the High Court on 8.9.1986. Hence the appeal by special leave.

Allowing the appeal, the Court,

HELD: Rule 93 of U.P. Motor Vehicles Rules, 1940 only authorises the District Magistrate to exercise the powers under Section 76 of the Motor Vehicles Act, 1939 which is confined to the question of determination of parking places and halting places which are not the same as bus stands which can only be notified by the Regional Transport Authority under section 68(2)(r) of the Act. [721B]

In the instant case no order has been passed by the Regional Transport Authority, Mathura to determine the area in question as a bus stand and the District Megistrate cannot be equated with the Regional Transport Authority constituted under the Act. Therefore, the order dated 22.5.1986 passed by the District Magistrate and also the letter dated 10.10.1986 written by the Executive Officer of Town Area Committee, Baldev to the President of the Union requiring the bus operators to stop their buses at the bus stand and to start from there and to permit the passengers to get into and to get out of their buses at that bus stand is not in order. [721C-E]

*T.P. Ibrahim* v. *Regional Transport Authority, Tanjore*, [1953] SCR 290; *Municipal Board, Puskar* v. *State Transport Authority, Rajasthan and Ors.*, [1963] Supp. 2 SCR 373; and *Municipal Council, Bhopal* v. *Sindhi Sahiti Multipurpose Transport Co-op. Society Ltd. & Anr.*, [1974] 1 SCR 274, followed.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 687 of 1987.

A From the Judgment and Order dated 8.9.1986 of the Allahabad High Court in C.W.P. No. 501 of 1986.

Yogeshwar Prasad, Vishal Jeet, S.R. Srivastava and Ms. Rachna Gupta for the Appellant.

B S. Markandeya for the Respondents.

The Judgment of the Court was delivered by

**VENKATARAMIAH, J.** The appellant is a person providing transport service in the District of Mathura. He questioned the validity of the Order dated May 22, 1986 passed by the District Magistrate, C Mathura declaring Plot Nos. 701 and 702 in the Town Area, Baldev (Mathura) as a bus stand/halting place of Baldev, where the stage carriages were directed to stand for the purpose of allowing the passengers of Baldev to get into and to get down from the stage carriages in a writ petition, Civil Miscellaneous Writ Petition No. 501 of 1986 D filed before the High Court of Allahabad under Article 226 of the Constitution of India. That petition was dismissed by the High Court on September 8, 1986. This appeal by special leave is filed against the said decision of the High Court.

The case of the appellant was that the District Magistrate had no E power to appoint any area as a bus stand under section 76 of the Motor Vehicles Act, 1939 (hereinafter referred to as 'the Act') under which he purported to pass the impugned order. According to the appellant the power to fix any area as a bus stand was vested in the Regional Transport Authority having jurisdiction over the area and not in the District Magistrate. The High Court was of the opinion that section 76 F of the Act conferred wide powers on the District Magistrate 'to fix the places for the bus stand/halting place'. It was further of the view that the place where the appellant and other bus operators were asked to stop their buses was only a halting place and hence the order made under section 76 of the Act was unassailable. It further observed that since the impugned order did not specifically state that the bus G operators could allow the passengers to get down and pick up the passengers, it could not be construed as an order fixing the area as a bus stand. It should be stated at this stage that after the impugned order was passed the Town Area Committee gave a contract to a private contractor to collect that fees payable by the bus operators for making use of the area in question which was within its jurisdiction for H stopping their buses in accordance with the order passed by the

District Magistrate. After the Writ Petition was filed in the High Court, the appellant had obtained an order of stay preventing the Town Area Committee from collecting the fees. Immediately after the Writ Petition was dismissed, the Executive Officer of the Town Area Committee, Baldev (Mathura) wrote a letter on 10.10.1986 to the President of the Mathura-Sadabad-Manikpur-Eta Motor Operators Union, Mathura requiring all the bus operators to stop their buses at the bus stand fixed by the District Magistrate. The letter reads thus:

"President—Mathura-Sadabad-Manikpur-Eta
Motor Operators Union Mathura.

Letter No. 192/TAB/86
Dated: 10.10.86

Subject: Civil Miscellaneous Writ Petition No. 501/86 Shri Hari Om Gautam Versus District Magistrate, Mathura.

Sir,

The aforesaid Writ Petition which was filed against the order of District Magistrate, Mathura dated 22.5.1986 declaring the old bus stand of T.A. Baldev (Mathura) as authorised Bus stand/Halting place, has been dismissed by High Court, Allahabad on 8.9.86 and the stay order concerned has also been cancelled. Now the order of District Magistrate dated 22.5.86 has become effective again. As a result of which all the buses of the union are bound to stop and start from the authorised Bus stand/Halting place of Baldev allowing the passengers to get in and get down from the bus and for booking at this very stand and to pay stand-commission to T.A.

Faithfully,
Sd/-8/10
illegible
Executive Officer
(Seal)
Town Area Committee,
Baldev, Mathura."

The relevant provisions of the Act which govern the case are these. Section 68, which is in Chapter IV of the Act containing the provisions relating to 'control of transport vehicles' confers the power on the State Government to make rules for the purpose of the said chapter. Clause (r) of sub-section (2) of section 68 of the Act specifically confers on the State Government without prejudice to the generality of the power conferred under sub-section (1) of section 68 of the Act the power to frame rules regarding or 'prohibiting the picking up or setting down of passengers by stage or contract carriages at specified places or in specified areas or at places other than duly notified stands or halting places and requiring the driver of a stage carriage to stop and remain stationary for a reasonable time when so required by a passenger desiring to board or alight from the vehicle at a notified halting place.' Section 76 of the Act reads thus:

> "76. Parking places and halting stations—The State Government or any authority authorised in this behalf by the State Government may, in consultation with the local authority having jurisdiction in the area concerned, determine places at which motor vehicles may stand either indefinitely or for a specified period of time, and may determine the places at which public service vehicles may stop for a longer time than is necessary for the taking up and setting down of passengers."

Section 91 of the Act, which is in Chapter VI dealing with 'control of traffic', confers the power on the State Government to make rules for the purpose of carrying into effect the provisions of Chapter VI. Clause (e) of sub-section (2) of section 91 of the Act confers the power on the State Government specifically to make rules regarding the maintenance and management of parking places and stands and the fees, if any, which may be charged for their use. Section 76 is also in Chapter VI.

The first question which arises for consideration is whether the area in which the bus operators were asked to stop their buses is a bus stand or a halting place. The next question is whether, if the said area is a bus stand, the District Magistrate had the power to pass the impugned order. It is not disputed before us that the District Magistrate had passed the impugned order in question with the object of establishing a bus stand in the area in question. That appears to be so from the order passed by the District Magistrate and the letter dated 10.10.1986 written by the Executive Officer of Baldev Town Area

Committee. We shall proceed on the basis that the District Magistrate fixed the area as a bus stand. Regarding the authority which had the power to notify an area as a bus stand, there are at least three decisions of this Court. In *T.P. Ibrahim* v. *Regional Transport Authority, Tanjore,* [1953] S.C.R. 290 this Court took the view that the expression 'duly notified stand' in section 68(2) (r) of the Act meant a stand duly notified by the Transport Authority and not a stand notified by the municipality within whose jurisdiction the area was situated. This Court held that the fixing and alteration of bus stands was not a purpose foreign to the 'control of transport vehicles' which was governed by Chapter IV of the Act and, therefore, rules could be framed by the State Government regarding the said subject under section 68(2)(r) of the Act. At page 297 of the Reports this Court has observed thus:

> "The expression 'duly notified stands' is not defined in the Act, but it is reasonable to presume that a duly notified stand must be one which is notified by the Transport Authority and by none other."

It accordingly affirmed the view of the High Court against whose judgment the said appeal had been filed that section 76 of the Act which contained the provision relating to parking places and halting places had no application to a permanent bus stand which was a sort of radiating centre of all the bus traffic in the town. A similar question arose for consideration in *Municipal Board, Pushkar* v. *State Transport Authority, Rajasthan and Ors.*, [1963] Supp. 2 S.C.R. 373. Following the decision in *T.B. Ibrahim's* case (supra) this Court held in this case that section 76 of the Act had nothing to do with the fixation or alteration of a bus stand and the power to issue a notification fixing a bus stand was implied in section 68(2)(r) of the Act. It further held that the power under section 68(2)(r) of the Act could be exercised only by the Regional Transport Authority having jurisdiction over the area and therefore, the order passed under that provision was open to revision under section 64-A by the State Transport Authority. The last case to which reference has to be made is *Municipal Council, Bhopal* v. *Sindhi Sahiti Multipurpose Transport Co-op. Society Ltd. & Anr.*, [1974] 1 S.C.R. 274 where the two decisions referred to above were applied for purposes of deciding the said case. The facts of this case were these. The Municipal Council of Bhopal had made bye-laws under the provisions of section 358(7)(f) and (m) read with section 349 (ii) of the Madhya Pradesh Municipalities Act, 1961. Bye-law 2 provided that no person incharge of a motor-bus plying for hire shall for

A the purpose of taking up or setting down of passengers, park or stop his bus anywhere within the limits of the municipality except at the Municipal Bus Stand. The other bye-laws provided for a levy of a fee of Re.1 for every 8 hours or part thereof in respect of the use of the bus stand by such buses and for the issue of a permit on such payment. The respondent in that case filed a writ petition in the High Court of B Madhya Pradesh challenging the said bye-laws. The High Court held that bye-law 1(c), which defined the expression 'Municipal Bus Stand' and bye-law 2 were valid but held bye-laws 3 to 7 which provided for the payment of fee and the giving of permit etc., as invalid and restrained the Municipal Council from giving effect to those bye-laws in any manner. In that case this Court affirmed the decision of the C High Court holding that the power to regulate or prohibit the use of municipal land as a halting place of vehicles could not be used to compel people to use such land as halting place. Such a power should be given specifically by the statute and that the power to compel persons in charge of motor buses to stop only at certain places for the purpose of taking up or setting down passengers was a matter which D relating to motor traffic and that there was a specific provision in section 68(2)(r) of the Act for that purpose. Accordingly this Court held that the bye-laws which compelled persons in charge of motor buses to use the Municipal Bus Stand could not be passed by the Municipality. In that case also the District Magistrate had declared the Bhopal Municipal Bus Stand as a bus stand. The Municipal Council E contended before this Court that the District Magistrate had been authorised by the State Government under section 76 of the Act to pass an order fixing the Municipal Bus Stand as a bus stand for purposes of the Act. Rejecting the said contention this Court held that the District Magistrate could not exercise the power of fixing a bus stand under section 76 of the Act and that could be done only under F section 68(2)(r) of the Act. The Court further observed that while the Municipal Corporation had no power to compel persons plying motor buses for hire to use only the Municipal Bus Stand for the purpose of taking up and setting down passengers, there can be no objection to its providing a bus stand for anybody who chooses to use it voluntarily and to such person being required to pay for such use.

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In the instant case reliance is placed by the learned counsel for the Town Area Committee of Baldev on rule 93 of the U.P. Motor Vehicles Rules, 1940 which authorises the District Magistrate to specify places within the limits of any municipality, notified area, town area or cantonment or within such other limits as he may define where H alone public service vehicles or any specified class or classes of public

service vehicles and/or goods vehicles may stand indefinitely or for such period as may be specified or public service vehicles may stop for a longer time than is necessary for the taking up and setting down of passengers. We do not think that the Town Area Committee can derive any assistance from this rule. It only authorises the District Magistrate to exercise the powers under section 76 of the Act which is confined to the question of determination of parking places and halting places which are not the same as bus stands which can only be notified by the Regional Transport Authority as held by this Court in *T.B. Ibrahim's* case (supra). It is not disputed that in the instant case no order has been passed by the Regional Transport Authority, Mathura to determine the area in question as a bus stand and the District Magistrate cannot be equated with the Regional Transport Authority constituted under the Act. The High Court was, therefore, in error in upholding the impugned order passed by the District Magistrate. We, therefore, set aside the judgment of the High Court and quash the order dated 22.5.1986 passed by the District Magistrate. We also quash the letter dated 10.10.1986 written by the Executive Officer of Town Area Committee, Baldev to the President of the Union requiring the bus operators to stop their buses at the bus stand and to start from there and to permit the passengers to get into and to get out of their buses at that bus stand. It is open to the Regional Transport Authority to take action immediately for determining any convenient place or places within the Town Area of Baldev (Mathura) as a bus stand.

The appeal is accordingly allowed. There shall, however, be no order as to costs.

S.R. Appeal allowed.