

BIHAR STATE ROAD TRANSPORT CORPORATION
v.
STATE TRANSPORT APPELLATE TRIBUNAL AND ORS.

FEBRUARY 22, 1991

[MADAN MOHAN PUNCHHI AND K. RAMASWAMY JJ.]

Motor Vehicles Act, 1939: Stage Carriage permits—Grant of—Private Operators—Bhurkunda—Chaibasa route—Part of route Ranchi—Chaibasa a nationalised route covered by notified Scheme under section 68-D(3)—Objections by State Road Transport Corporation rejected and permits granted to two private operators.

Section 2(28-A)—Definition of word 'route'—Notified Scheme dated 1.4.1960 covering 7 routes including Ranchi—Chaibasa route—Bracketed word 'direct service' used only in Serial No. 7 showing Ranchi—Chaibasa route—Interpretation of words 'direct service'—Whether the view taken by High Court in Marwari Motor Service's case is any more relevant in view of the decision of this Court in Adarsh Travels' case.

The State Transport Authority, Bihar invited applications for grant of Stage Carriage permits for the route named, Bhurkhunda-Chaibasa via Patratu-Pithoria-Kanke-Ranchi-Chakradharpur part of which, that is, Ranchi Chaibasa is covered under a notified Scheme dated 1.4.1960, duly in force, under the Act. The Bihar State Road Transport Corporation, a State Undertaking, filed its objections claiming that no private operator could be permitted to operate the said route as part of the route being Ranchi-Chaibasa was itself a notified route and grant of permits on the route in question would contravene the notified Scheme. Taking the view that the over-lapping Ranchi-Chaibasa route was restrictedly notified for direct services only, the objections raised by the Corporation were rejected and permits for the route in question granted to respondents 3 and 4. Corporation's appeal to the State Transport Appellate Tribunal and thereafter Writ Petition before the Patna High Court being unsuccessful, it has come in appeal by special leave against the judgment of the High Court dismissing the Writ Petition in limine. Allowing the appeal and quashing all the three orders, this Court.

HELD: In the light of the observations made in Constitution

- A** Bench decision of this Court in *Adarsh Travels'* case defining the word 'route', the Ranchi-Chaibasa route is identified as the line of travel on which State Undertaking on nationalisation is allowed to run its vehicles. The bracketed words 'direct service' occurring in serial no. 7 when contrasted with entries in serial nos. 1 to 6 reveal that the total route of Ranchi-Chaibasa, without leaving any portion, stood nationalised signifying by its name that Ranchi-Chaibasa route is a straight and direct line of travel which would be traversed by a vehicle by the State Transport Undertaking between two termini rendering all kinds of services. Any further interpretation would frustrate the object of Chapter IV-A whereunder the scheme is prepared. [672G-673B]

- C** If the interpretation put by the Patna High Court in *Marwari Motor Service's* case to the bracketed words 'direct service' is to be kept valid, it would frustrate the very purpose of nationalisation, for any person in that event could operate on a nationalised route by adding thereto, or subtracting therefrom, some kilometerage and keep one terminus as a point of start, or a point of ending, on an un-notified route and put forward his willingness to submit himself to the discipline called 'corridor restrictions' which practice has been deprecated by this Court. [673E-F]

M/s Marwari Motor Service v. Chotanagpur Regional Transport Authority and Others, AIR 1973 Patna (Vol. 60) 273, referred to.

- E** *Adarsh Travels Bus Service & Another v. State of U.P. & Others*, [1985] (Suppl.) 3 SCR 661, followed.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3693 of 1982.

- F** From the Judgment and Order dated 29.1.1982 of the Patna High Court in C.W.J.C. No. 4087 of 1981.

Ranjit Kumar for the Appellant.

Ex-Parti for the Respondents.

- G** The Judgment of the Court was delivered by

PUNCHHI, J. This appeal by special leave is directed against the order of the High Court of Judicature at Patna dated 29-1-1982 passed in Civil Writ Number 4087 of 1981 dismissing the Writ Petition of the appellant *in limine*.

- H** The appellant, Bihar State road Transport Corporation, is a

State Transport Undertaking. Under the provisions of the Motor Vehicles Act, 1939 (hereafter referred to as the 'Act'), the State Transport Authority invited applications for the grant of stage carriage permits for the route named Bhurkunda-Chaibasa via Patratu-Pithoria-Kanke-Ranchi-Chakradharpur part of which, that is, Ranchi-Chaibasa is covered under a notified scheme dated 1-4-1960, duly in force, under the provisions of the Act. On applications received in response to the invitation, the Corporation filed its objections before the State Transport Authority claiming that no private operator could be permitted to operate on the said route, as part of it, being Ranchi-Chaibasa, was by itself a notified route and the grant of permits on the route in question would contravene a notified scheme. The objection of the Corporation was rejected by the State Transport Authority in its meeting held on 23rd and 24th January, 1979 taking the view that the overlapping Ranchi-Chaibasa route was restrictedly notified for direct services only and as such there could be no legal objection to the grant of permits on the Bhurkunda-Chaibasa route. It accordingly granted permits to respondents 3 and 4 herein. Appellant's appeal before the State Transport Appellate Tribunal, Bihar was dismissed and the view of the State Transport Authority was upheld. The Appellate Tribunal in support of its view placed reliance on a division bench of the Patna High Court in *M/s. Marwari Motor Service v. Chotanagpur Regional Transport Authority and Others*, AIR 1973 Patna (Vol. 60) 273 in which such an objection as raised herein was negatived. The appellant's writ petition against the orders of the State Transport Appellate Tribunal, Bihar was dismissed in limine giving cause to the appellant to approach this Court for appropriate relief.

The notified scheme dated 1-4-1960, afore-referred to, whereunder the Ranchi-Chaibasa route was declared a nationalised route was the brain child of the Appellant-Corporation itself. Initially a draft scheme was published in the Bihar Gazette on 13-1-1960 under the provisions of Section 68-C of the Act. Objections were invited to the proposed scheme and after considering the objections received, the State Government approved the scheme with some modifications under section 68-D(2) of the Act. The approved scheme was then notified under section 68-D(3) of the Act in the Bihar Gazette on April 1, 1960. The relevant extract of the scheme is reproduced below:

"The Bihar State Road Transport Corporation shall run and operate stage carriage services relating to routes or portions thereof specified below to the complete exclusion of other persons except those who, on the dates, specified

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below, hold permanent permits to run stage carriages in those routes and are hereby allowed to operate them until the dates of expiration of the existing permits:

B	Sl. No.	Nature of service	Name of route	Name of service	Date from which services as proposed to be plied
C	1.	Stage carriage	Ranchi-Muri or portions thereof	All services	1st April, 1961
D	2.	Ditto	Hazaribag Ranchi or portions thereof	Ditto	1st April, 1960
E	3.	Ditto	Barhi-Bagodar-Dumri-Gobindpur or portions thereof	Ditto	Ditto
F	4.	Ditto	Giridih-Dumri or portions thereof	Ditto	Ditto
G	5.	Ditto	Giridih-Jamua-Kedarma or portions thereof	Ditto	1st April, 1961
H	6.	Ditto	Jamua-Chakai or portions thereof	Ditto	Ditto
	7.	Ditto	Ranchi-Chaibasa (direct service)	Ditto	1st April, 1960

It is evident from the Entry in serial no. 7 that the name of the route is Ranchi-Chaibasa and in this Entry alone that the bracketed words 'direct service' finds mention whereas in the remaining serial nos. 1 to 6, the main routes or portions thereof are contrastingly

mentioned. In *Marwari Motor Service's* case (supra), the then writ petitioner stood already given a stage carriage permit for the route hazaribag-hazaribag Road and when its renewal was objected to by the corporation on the ground that it would overlap hazaribag-Bagodar notified route, the words 'direct service' occurring in the relevant entry of the notification under the notified route was required to be interpreted. The contention of the said writ petitioner before the High Court was that though private operators stood ousted on the Hazaribag-Bagodar route, it could not be ousted from operating on a longer or shorter route even though overlapping wholly or partially on the Hazaribag-Bagodar route. The corporation refuted the argument by contending that no private operator could be permitted to operate on any portion of the route even if he had tended to operate on a longer or a shorter route. Confronted with this situation, the Patna High Court ventured, in the absence of any direct binding judicial precedent, to solve the question by adopting the interpretation given to the bracketed words 'direct service by the Transport Minister of the Bihar Government to mean the exclusion of private operators for direct transport services only and not to the exclusion of private operators thereon overlapping on longer or shorter routes. Another factor which appealed to the High Court was that though the scheme had come into force in 1960 and hazaribag-Bagodar route had been nationalised still the then writ petitioner had thereafter been kept granted route permits on the Hazaribag-hazaribag Road route despite overlapping on the nationalised routes. The High Court in these circumstances made the following observations:

The correct meaning is that private operators who were operating directly on Hazaribag-Bagodar route were excluded, private operators having these two termini were not allowed to operate but private operators having only one terminus out of these two termini or passing through this route having different termini were not excluded in the approved scheme".

Relying on the said ratio the Transport Authorities overruled the objection of the Corporation.

We have had the advantage of hearing Mr. Ranjit Kumar, learned counsel for the appellant only since no one appeared either on behalf of the State of Bihar nor for the permit holders respondents 3 and 4. The sole point for consideration is whether the view taken by the Patna High Court in *Marwari Motor Service's* case (supra in any more rele-

A vant in view of the decision of the Constitution Bench of this Court in *Adarsh Travels Bus Service & Another v. State of U.P. & Others*, [1985] (Supp.) 3 SCR 661.

B In *Adarsh Travels's* case (*supra*), this Court ruled that if the route has been nationalised under Chapter IV-A of the Motor Vehicles Act, a private operator with a permit to ply stage carriage for another route, which has a common overlapping sector with the nationalised route, can ply his vehicle over that part of the overlapping common sector if he does not pick up or drop passengers on the overlapping part of the route, and the question would really get the right answer on the terms of the scheme rather than on the provisions of the statute. The word 'route' was introduced to be defined in section C 2(28A) of the Act by amendment from March 2, 1970 to mean 'the line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus and another'. Spelling out the necessity for its so defining it was recorded:

D "The introduction of section 2(28A) defining the expression 'route' appears to have been necessitated to dispel the confusion consequent upon the seeming acceptance by this Court in *Nilkantha Prasad and Others v. State of Bihar*, [1962] Supp. I SCR 728 of the suggested differences between 'route' and 'highway' by the Privy Council in *Kelani Valley Motor Transit Co. Ltd. v. Colombo Ratnapura Omnibus Co. Ltd.*, [1946] A.C. 338 where it was said, 'A E "highway" is the physical track along which an omnibus runs, whilst a "route" appears to their Lordships to be an abstract conception of line of travel between one terminus and another, and to be something distinct from the highway traversed there may be alternative roads leading F from one terminus to another but that does not make the route any highway the same.' The present definition of route makes it a physical reality instead of an abstract conception and no longer makes it something distinct from the highway traversed."

G In the light of the above observations Ranchi-Chaibasa route is identified as the line of travel on which State Transport Undertaking on nationalisation is allowed to run its vehicles. The bracketed words 'direct service' occurring in serial no. 7 when contrasted with entries in serial nos. 1 to 6 reveal that the total route of Ranchi-Chaibasa, without H leaving any portion, stood nationalised signifying by its name that

Ranchi-Chaibasa route is a straight and direct line of travel which would be traversed by a vehicle by the State Transport Undertaking between two termini rendering all kinds of services. Any further interpretation would frustrate the object of Chapter IV-A whereunder the scheme is prepared. It was observed in *Adarsh Travel's* case (supra) as follows:

"It is well known that under the guise of the so called 'corridor restrictions' permits over longer routes which cover shorter notified routes or 'overlapping' parts of notified routes are more often than not misutilised since it is next to nigh impossible to keep a proper check at every point of the route. Often times permits for plying stage carriages from a point a short distance beyond one terminus to a point at a short distance beyond another terminus of a notified route have been applied for and granted subject to the so called 'corridor restrictions' which are but mere ruses or traps to obtain permits and to frustrate the scheme. If indeed there is any need for protecting the travelling public from inconvenience, the State Transport Undertaking and the Government will have to make sufficient provision in the scheme itself to avoid inconvenience being caused to the travelling public."

If the interpretation put by the Patna High Court in *Marwari Motor Service's* case (supra) to the bracketed words 'direct service' is to be kept valid, it would frustrate the very purpose of nationalisation, for any person in that event could operate on a nationalised route by adding thereto, or subtracting therefrom, some kilometerage and keep one terminus as a point of start, or a point of ending, on an un-notified route and put forward his willingness to submit himself to the discipline called 'corridor restrictions' which practice has been deprecated by this Court.

For the views afore-expressed, we are of the view that *Marwari Motor Service's* case (supra) militates against the principles settled in *Adarsh Travel's* case (supra) and thus it should be left to be confined to the facts of that case and not any more a binding precedent. Having taken that view, we come to the conclusion that the State Transport Authority and State Transport Appellate Tribunal were in error in rejecting the objections of the appellant and High Court too was in error in dismissing the writ petition in limine. Accordingly, instead of remanding the matter to the High Court, we allow this appeal and

- A** quash the aforesaid three orders but without any order as to costs. Since there was no opposition, we permit respondents 3 and 4 to keep plying vehicles on their permits, subject of course to their being subsisting and valid till date, uptill 31st March, 1991, and not any further, to avoid abrupt disruption of transport facilities. We also leave it open to the State Government to take such steps as are further necessary to avoid inconvenience to the travelling public and for that purpose it may coordinate with the appellant corporation by making suitable amendment and provisions in the scheme to further that cause.
- B**

R.N.J.

Appeal allowed.