

CASE NO.:
Appeal (civil) 1385-1406 of 1998

PETITIONER:
State of Andhra Pradesh & Others

RESPONDENT:
B.Noorulla Khan & Another etc.

DATE OF JUDGMENT: 06/05/2004

BENCH:
R.C. LAHOTI & ASHOK BHAN.

JUDGMENT:
J U D G M E N T

BHAN, J.

State of Andhra Pradesh & Others have filed these appeals challenging the impugned judgment passed by a Division Bench of Andhra Pradesh High Court wherein it has struck down Rules 297-A(1)(c) and 297-A(6)(f) of The Andhra Pradesh Motor Vehicles Rules, 1989 (for short 'the State Rules') being ultra vires the provisions of The Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') and Article 19(1)(g) of the Constitution of India. The Division Bench has also held that the rules framed by the State Government under sections 95 and 96 of the Act and the further conditions prescribed in section 74 of the Act are not applicable to all-India tourist permit vehicles.

Original writ petitioners, respondents herein, are either the holders of contract carriage permits granted under Section 74 of the Act or holders of all-India tourist permits granted under Section 88 of the Act. The checking officials seized and detained the vehicles being of the opinion that the vehicles were being used as Stage Carriages. This action of the authorities was challenged by the respondents by filing a set of writ petitions which were disposed of by a Division Bench on 12th September, 1995. Vires of the Rules were not challenged in these writ petitions. The writ petitions were dismissed and it was held that the authorities had the power to detain vehicles during transit as and when any violation of the rules was found at the time of checking. The vehicles were again seized and detained and thereafter the respondents filed the present set of writ petitions challenging the constitutional validity of Rules 185 (e)(v), 297-A(1)(c), 297-A(2)(b) read with 297-A(6)(b)(i) and 297-A(6)(f) of the State Rules being ultra vires the provisions of the Constitution of India and the Act. By the impugned judgment, the High Court has upheld the validity of Rules 185(e)(v), 297-A(2)(b) and 297-A(6)(b)(i). The respondents have not carried appeals to challenge the part of the judgment by which the High Court has upheld the constitutional validity of the Rules, referred to above.

Section 2(4) of the Act defines the Stage Carriage. Section 2(7) defines the Contract Carriage. Chapter V deals with the control of the transport vehicles. Section 72 vests the Regional Transport Authority with the power to grant State carriage permit [or refuse it] subject to the Rules framed and attach any one or more of the conditions mentioned under Section 72(2) of the Act. Section 74 enables the concerned authority to grant contract carriage permit. Section 84 envisages the general conditions attaching to all permits. Section 86 vests the authority with the power to cancel or suspend the permits. Section 88 provides for validation of permits used outside the region in which it is granted. Section 88(9) enables the State Transport Authority to grant all-India tourist permits subject to the Rules framed by the Central Government under clause 14 of Section 88 for the whole of India or in such contiguous States, not less than 3 in number,

including the State in which the permit is issued, as per choice indicated in the application. The provisions of Sections 73, 74, 80 to 86 and Clause (d) of sub-section (1) of Section 87 and Section 89 shall as far as may be apply in relation to such permits. Section 88(11) lays down the condition of every permit granted under sub-section (9) of Section 88. Section 88(11)(iii) empowers the Central Government to prescribe other conditions of permit. Sub-section (14)(a) of Section 88 empowers the Central Government to make rules to carry out the provisions of section 88. Section 95 of the Act empowers the State Government to make rules as to Stage Carriages and Contract Carriages and the conduct of passengers in such vehicles. Section 96 empowers the State Government to make rules for the purpose of Chapter V to carry into effect the provisions of the said Chapter.

The High Court held that reading of Section 2(7) indicated that the 'common purpose' means that all the passengers travelling in the contract carriage must have a common destination, but it could not be stretched beyond that and to hold that purpose of going to a common destination must also be the same. That it could not be held that the travelling party, as a whole, must have one 'common purpose'; it was enough if they had a common destination. If common purpose as defined by rules is read into the definition of Section 2(7) then it would amount to amending or modifying the said section which is within the purview of the legislature only. The High Court has further held that the rules could not go beyond the Act and therefore rule 297-A(1)(c) was ultra vires the provisions of the main Act as well as the Constitution of India.

The High Court has also held that Rule 297-A (6)(f) contemplates that where a public service vehicle has been, as a whole, engaged by a hiring party, an agreement shall be drawn up in writing and executed by the agent and the hiring party or its authorised representative containing the particulars mentioned therein. The rule obligates the agent to enter into a written agreement with the hiring party.

According to the High Court, under Section 2(7), a contract could be either express or implied. The express contract could be taken to include a written contract but implied contract itself denotes that it is not mandatory to have a written contract. Rules could not go beyond the purview of the Act or contrary to the Act. Since the definition of contract carriage contemplates express as well as implied contract, an oral contract could also be entered into. The provision made under Rule 297-A(6)(f) mandating the agent to enter into written contract was ultra vires the Section 2(7) and therefore liable to be struck down.

In so far as all-India tourist permits are concerned it has been held by the High Court that under Section 88(14)(a), it is the Central Government alone which can frame the Rules to carry out the provisions of Section 88 and the State Government has no authority to frame rules in regard to all-India tourist permits in exercise of its powers under Sections 95 and 96 of the Act. Since the rules framed by the State Government as made applicable to all-India tourist permits run contrary to the Rules framed by the Central Government the same were bad in law being repugnant.

Section 93 of the Act provides that an agent or canvasser who is engaged in the sale of tickets for travel by public service vehicles or in otherwise soliciting customers for such vehicles is required to obtain a licence from such authority and subject to such conditions as may be prescribed by the State Government. Sub-section (2) enumerates the conditions of such a licence as to the duration of the licence, fee payable, deposit of security, provision as to the insurance of goods in the transit, and the circumstances under which the licence may be suspended or revoked. Clause (f) vests the State Government with the authority to lay "such other conditions as may be prescribed by the State Government".

Rule 297-A of the State Rules makes special provisions for licensing of agents engaged in the sales of tickets or in otherwise soliciting customers for public service vehicles. Rules 297-A(1)(c) and 297-A (6) (f) which have struck down by the High Court, read as follows:

"297-A. Special provisions regarding licensing of agents engaged in the sales of tickets or in otherwise soliciting customers for public service vehicles:-

(1) In this rule, unless the context otherwise requires.

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(c) "Common purpose of journey" means the intention shared alike by all the persons travelling by the public service vehicles;

(i) to attend a meeting, gathering or function, social, religious, political and the like, or
(ii) to go on a pilgrimage or tour to visit places of tourist's interest or both. But it shall not include the intention or the act of such persons of merely travelling from one common point to another."

Section 297-A (6) (f):

"An agent's licence shall be subject to the following conditions:

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(f) Where the public service vehicle has been, as a whole, engaged by a hiring party an agreement shall be drawn up in writing and executed by the agent and the hiring party or its authorised representative containing the following essential particulars and stipulations, namely:

(i) Name, Father's/Husband's Name, Age/Occupation and full postal address of the members or/representative of the hiring party who executes the agreement;
(ii) An Annexure containing the list of all members of the hiring party giving their particulars in the following form:

1. Serial number,
2. Name of the Member:
3. Father's/Husband's name:
4. Age:
5. Full Postal Address:

(iii) The nature of the common purpose of the journey;
(iv) The period for which the vehicle is engaged by the hiring party;
(v) The places to be visited by the hiring party;
(vi) The place or places to be specified where all or some to be specified of the members of the hiring party are to be picked up or let down under the agreement;
(vii) Hire charges,

a) if payable in a lumpsum, the amount so

payable; or
b) if calculable at a rate, the rate so agreed upon; and
c) in either case, the amount if any paid in advance and the time for the payment of the balance.

(viii) Additional charges, if any, payable in case the journey is delayed or extended at the instance of the hiring party."

"Contract Carriage" in Section 2(7) has been defined as:

"2(7): 'Contract Carriage' means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether express or implied, for the use of such vehicle, as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum, -

- (a) on a time basis, whether or not with reference to any route or distance; or
- (b) from one point to another;

and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes\027

- (i) a maxicab; and
- (ii) a motorcar notwithstanding the separate fares are charged for its passengers."

Definition of contract carriage makes it clear that:

1. In order that a vehicle can be used to transport passenger/passengers there must a prior contract express or implied;
2. Contract shall have to be entered into by a person with the holder of the permit or any person authorised by him;
3. Engagement under the contract must be for use of the vehicle as a whole;
4. Contract must indicate the names of passengers to be carried in the vehicle;
5. Vehicle is engaged on a fixed or an agreed rate or sum on a time basis whether or not with reference to any route or distance;

or

from one point to another;

6. Without stopping to pick up or set down passengers not included in the contract anywhere during the journey.

In Rule 297-A(1)(c) 'common purpose of journey' has been explained to mean common intention shared by all the persons travelling by the vehicle under the contract to attend a meeting, gathering or function which may be social, religious, political and the like or to go on a pilgrimage or place of tourist's interest but it shall not include the intention or the act of such persons of merely travelling from one common point to another.

High Court has held that 'common purpose' means that the passengers travelling together need to have the common intention to travel to a common destination but they need not share the common intention of travelling for the same purpose as well. For instance, where a group of persons engage a contract carriage vehicle for travelling from Delhi to Agra they have the common intention of travelling to the same destination i.e. from Delhi to Agra but their purpose of travel from Delhi to Agra could be different. In other words, according to the High Court, the words "under a contract" would include both single contract and more than one contract.

This point was examined by this Court in Brijendra Kumar Chaudhari & Anr. Vs. State of U.P. & Ors., 1992 (4) SCC 703. It was held that it was not correct to read the words "under a contract" occurring in Section 2(7) of the Act to mean as referring to both a single contract and more than one contract. And in case such a construction is placed then the distinction between the contract carriage and the stage carriage permits would be lost and obliterated. It was held:

"10. The definition makes it clear that in order that a vehicle could be used to transport passenger or passengers there must be a prior contract express or implied; that the contract must indicate as to who are the passengers to be carried; that the contract shall have been entered into by a person with the holder of the permit or any person authorised by him; and that the engagement under "a contract" is for use of the vehicle as a whole. It is not possible to read the words "under a contract" in the context as referring to both a single contract and more than one contract. If the construction placed by the learned counsel is accepted there would be no distinction between stage carriage and contract carriage permits. Both these classes of permits are intended to meet different requirements. A stage carriage is intended to meet the requirements of the general travelling public. But the contract carriages are for those who want to hire the vehicle collectively or individually for a group or party for their transport from place to place and the whole vehicle is at their disposal. This is also made clear in Section 88(8) of the Act corresponding to Section 63(6) of the old Act wherein it is provided:

"88(8) Notwithstanding anything contained in sub-section (1), but subject to any rules that may be made under this Act by the Central Government, the Regional Transport Authority of any one region or, as the case may be, the State Transport Authority, may, for the convenience of the public, grant a special permit in relation to a vehicle covered by a permit issued under Section 72(including a reserve stage carriage) or under Section 74 or under sub-section (9) of this section for carrying a passenger or passengers for hire or reward under a contract, express or implied, for the use of the vehicle as a whole without stopping to pick up or set down along the line of route passengers not included in the contract, and in every case where such special permit is granted, the Regional Transport Authority shall assign to the

vehicle, for display thereon, a special distinguishing mark in the form and manner specified by the Central Government and such special permit shall be valid in any other region or State without the countersignature of the Regional Transport Authority of the other region or of the State Transport Authority of the other State, as the case may be."

That the contract shall be prior and the persons who are to be carried shall be known prior to the journey is also clear from the other limitation that the vehicle cannot stop to pick up or set down passengers not included in the contract anywhere during the journey. As pointed out by this Court in *Roshan Lal Gauthan v. State of U.P* (AIR 1965 SC 991).:

"The contract carriage is engaged for the whole of the journey between two points for carriage of a person or persons hiring it but it has not the right to pick up other passengers on route. The stage carriage, on the other hand, runs between two points irrespective of any prior contract and it is boarded by passengers en route who pay the fare for distance they propose to travel."

If as contended by the learned counsel contract carriage permit holder can pick up individual passengers at the starting point of the journey it is virtually a stage carriage with corridor restriction. Some express buses and stage carriages with corridor restriction pick up passengers at the starting point of the journey and drop them at the last terminus of the route without the right to pick up or drop passengers on the notified route between the two termini. Further the definition in the Act has added the words "for the carriage of passengers mentioned therein (contract)" which were not there earlier. These words clearly show that there must be a prior contract and the passengers shall be settled in advance."

[Emphasis supplied]

Another case on the point is *Nirmala JagdishChandra Kabra Vs. Transport Commissioner & Ors.*, 1997 (9) SCC 227. In this case a writ was filed by an agent who had hired on contract the vehicle from the carriage permit holder seeking an appropriate writ or direction declaring and holding that the authorities had no legal right or power to either seize or detain his vehicles solely on the allegation of collection of individual fare from the passengers at the starting point of journey without picking up or dropping the passengers en route. Petitioner was collecting individual fares per passenger from one destination to another but was not using the vehicle as a tourist vehicle hired to one group party. Writ petition was dismissed by the High Court. Dismissing the appeal it was held by this Court:

"4. It is contended by Shri Arun Jaitley, learned Senior Counsel for the petitioner, that the petitioner has taken the vehicle on hire basis from the owner of the vehicle who had the permit for contract carriage of the passengers from one destination to another. They are not collecting any

individual fare en route by picking up or setting down the passengers. They are picking up passengers from one place and taking them for tour to the other destination and, therefore, it is a "contract carriage" within the meaning of Section 2(7) of the Act. It is not a stage carriage permit but one of contract carriage and, therefore, the view taken by the High Court is not correct in law. It is true that if the holder of the vehicle obtains a contract carriage, the owner may carry a passenger or passengers for hire or reward on contract, whether express or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum. In other words, the very permit which grants the contract for carriage of the passengers should contain the names of the passengers to carry from one destination to another destination without picking up or setting down en route for hire or reward but when the holder of a permit is another and permits them to carry the passengers and makes the contract dehors those mentioned in the list of passengers enclosed to the permit as contract carriage and takes the passengers from one destination to another, even without picking up or setting down en route the necessary consequence would be that the vehicle has been or is being used as a stage carriage but not a contract carriage. Under those circumstances, obviously, the authority had rightly detained the vehicle for the contravention of the conditions of the permit. Therefore, the mandamus, as sought for, was rightly refused by the high Court. The learned counsel sought reliance on a judgment of the Madras High Court in N. Krishnasami Chetty v. Licensing Officer, Dy. Transport Commr. and Secy RTA, AIR 1988 Mad. 274. The learned Judges have not correctly appreciated the legal position. Therefore, it is not correct in view of the above law. It is accordingly overruled."

[Emphasis supplied]

The distinction between a stage carriage permit or a contract carriage permit as envisaged by the Legislature has to be maintained as the two types of permits are intended to meet different requirements. The contract carriages are for those who want to hire the vehicle collectively or individually for a group or a party for their transport to a destination/destinations. The vehicle has to be hired as a whole for the carriage of passengers mentioned in the contract. There has to be only one contract for carrying the passengers mentioned in the contract from one destination to another. An agent or a group of persons/individuals cannot hire a public service vehicle for going from one place to another with passengers having different purposes. If such a construction is put then there would be no distinction between stage carriage or contract carriage permits. If contract carriage permit holder is permitted to pick up individual or a few of them from the starting point of journey and drop them at the last terminus of the route it would virtually be a Stage Carriage with corridor restriction. Stage carriage is intended to meet the requirements of the general public travelling from one destination to another having different purposes whereas a contract carriage is meant for those who want to hire a public service vehicle as a whole collectively for their transport from one destination to

another having the same purpose. High Court was not right in holding that the travelling party as a whole need not have a common purpose for their travel and it was sufficient if they had a common destination. The view taken runs counter to the law laid down by this Court in Brijendra Kumar Chaudhari & Anr. and Nirmala JagdishChandra Kabra cases (supra) and, therefore, bad in law. High Court was not right in declaring ultra vires the Rules framed by the State Government providing that the party hiring the contract carriage vehicle should, not only, have the intention of travelling to the same destination but should also have the common purpose of travelling as well. In Rule 297-A (1)(c) 'common purpose' has been defined to mean the intention shared alike by all the persons travelling by the public service vehicles to attend a meeting, gathering or function, social, religious, political and the like, or to go to a pilgrimage or visit to place of tourist's interest or both. That it would not include the intention or the act of such persons merely travelling from one common point to another. This Rule framed by the State Government does not run counter to the provisions of Section 2(7) of the Act either in its intent or in its expression. The rule is in consonance with the intent of Section 2(7) of the Act. The same has been framed to fulfill the object with which Section 2(7) has been enacted. Any other interpretation would obliterate the distinction between a stage carriage permit and a contract carriage permit.

High Court has struck down Rule 297-A(6)(f) as it provides for the execution of a written contract between the hiring party and the agent while hiring a public service vehicle. According to the High Court the contract can be in writing as well as an implied contract. Under Section 2 (7) a contract could be either express or implied and therefore it was not mandatory to have a written contract only. It could be an oral contract as well. The Rule providing to have a written contract mandatorily goes beyond the purview of the Act and therefore bad in law. Contract could be implied also as the definition of the contract carriage contemplates express as well as an implied contract.

Rule 297-A(6)(f) provides for drawing up of an agreement in writing, providing therein the list of all the members of the hiring party giving particulars of their names, father's/husband's name, age, full address, the period for which the vehicle is engaged, places to be visited etc. and "the nature of the common purpose of the journey". This Court in Brijendra Kumar Chaudhari & Anr. (supra) while interpreting Section 2 (7) of the Act has held that the contract entered between the parties shall be prior and persons who are to be carried shall also be known prior to the journey. Similarly, in Nirmala JagdishChandra Kabra case (supra) it has been held that the permit which grants the contract for carriage of the passengers should contain the names of the passengers to be carried from one destination to another without picking up or dropping the passengers en-route. Contract may be express or implied as contemplated by Section 2 (7) but the names of the passengers to be carried have to be settled prior to undertaking the journey. Rule 297-A (6)(f) does not go beyond the purview of the Act. Rather it carries out the purpose of the Act. Essentially it provides for settling the names of the passengers undertaking the journey under an agreement for hiring a public service vehicle. Passengers who are to be carried are to be known prior to the journey as the definition of contract carriage in Section 2 (7) includes the words "for the carriage of passengers mentioned therein". These words clearly show that there must be a prior contract and the passengers shall also be settled in advance. High Court erred in striking down Rule 297-A (6)(f).

For the reasons stated above both the Rules 297-A(1)(c) and 297-A (6) (f) are held to be intra vires of the Act and the findings recorded by the High Court to the contrary are set aside.

Coming to the last point wherein the High Court has held that the rules framed by the Central Government under Section 88 (14) would alone be applicable to all-India tourist permit and not the Rules framed by the

State Government, it was contended by the learned counsel for the appellants that all-India tourist permits were basically contract carriages. 'Tourist vehicle' is defined under Section 2 (43) to mean a contract carriage. The permits granted under Section 88 (9) enable these vehicles to be used in more than one State but only for tourist purposes. Apart from this difference in the actual area of operation there is no other difference between a contract carriage and an all-India tourist vehicle. An all-India tourist vehicle has to comply with the norms of a contract carriage. The vehicle in any case has to be restricted for the journey as a whole from one end to the other without picking up any passenger in between. The journey is one contract of a round trip for the whole journey to and from with one common purpose. On checking it was found that all-India tourist vehicles were indulging in illicit operation as stage carriages and not as contract carriages.

We do not find any force in this submission. Section 88 provides that except as may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region shall not be valid in any other region, unless the permit has been countersigned by the Regional Transport Authority of that other region, and a permit granted in any one State shall not be valid in any other State unless countersigned by the State Transport Authority of that other State or by the Regional Transport Authority concerned. Sub-section (9) which provides for the grant of all-India tourist permits, which reads as:

"9. Notwithstanding anything contained in sub-section (1) but subject to any rules that may be made by the Central Government under sub-section (14), any State Transport Authority may, for the purpose of promoting tourism, grant permits in respect of tourist vehicles valid for the whole of India, or in such contiguous States not being less than three in number including the State in which the permit is issued as may be specified in such permit in accordance with the choice indicated in the application and the provisions of sections 73, 74, 80, 81, 82, 83, 84, 85, 86 [clause (d) of sub-section (1) of Section 87 and Section 89] shall, as far as may be, apply in relation to such permits."

It is clear from the reading of this provision that the State Transport Authority has been empowered to grant all-India tourist permit for the purpose of promoting tourism, notwithstanding anything contained in sub-section (1) of Section 88 and subject to the Rules to be made by the Central Government under sub-section 14 of Section 88, for the whole of India or such contiguous States not less than three in number including the State in which the permit is issued. Further the provisions of sections 73, 74, 80, 81, 82, 83, 84, 85, 86 clause (d) of sub-section (1) of Section 87 and Section 89 are applicable as far as may be in relation to such permits. Sub-section (11) reads as under:

"(11) The following shall be conditions of every permit granted under sub-section (9), namely: -

- (i) every motor vehicle in respect of which such permit is granted shall conform to such description, requirement regarding the seating capacity, standards of comforts, amenities and other matters, as the Central Government may specify in this behalf;
- (ii) every such motor vehicle shall be driven by a person having such qualifications and satisfying such conditions as may be specified by the Central Government; and
- (iii) such other conditions as may be prescribed

by the Central Government."

Sub-section (11) provides that every motor vehicle to which all-India tourist permit has been granted shall conform to the description, requirement of seating capacity, standards of comforts, amenities and other matters, as specified by the Central Government in this behalf. Further, such vehicles have to be driven by persons having such qualifications and satisfying such conditions as may be specified by the Central Government. Other such conditions have also to be prescribed by the Central Government.

Sub-section 14 reads as under:

"(14) (a) The Central Government may make rules for carrying out the provisions of this section.

(b) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(i) the authorisation fee payable of the issue of a permit referred to in sub-sections (9) and (12);

(ii) the fixation of the laden weight of the motor vehicle;

(iii) the distinguishing particulars or marks to be carried or exhibited in or on the motor vehicle;

(iv) the colour or colours in which the motor vehicle is to be painted;

(v) such other matters as the appropriate authority shall consider in granting a national permit.

Explanation.- In this section,

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This sub-section empowers the Central Government to frame Rules for carrying out the provisions of this Section as well as for providing for all or any of the matters mentioned in sub-clause (b) of this Section. From the conjoint reading of sub-sections (9), (11) and (14), referred to above, it is abundantly clear that it is the Central Government alone which has been authorised to frame the Rules as well as to prescribe the conditions for the purposes of all-India tourist vehicles. The power to make rules under Sections 95 and 96 would not include the power to frame rules applicable to all-India tourist permit which is exclusively vested in the Central Government. The power to frame rules and prescribe conditions for the all-India tourist permit is exclusively vested in the Central Government and the High Court was right in holding that the State Government would have no jurisdiction to either frame the Rules or prescribe conditions for the all-India tourist permits. Such permits would be exclusively governed by the Rules framed by the Central Government or the conditions prescribed by the Central Government. The judgment of the High Court in so far as it has held that it is the Rules framed by the Central Government only which would be applicable to all-India tourist permits and not the Rules framed by the State Government is upheld.

For the reasons stated above, the appeals are accepted partly to the extent indicated in the foregoing paragraphs. No order as to costs.