ASHUTOSH SWAIN ETC. ETC.

v.

STATE TRANSPORT AUTHORITY & ORS.

March 1, 1985

[D. A. DESAI AND AMARENDRA NATH SEN, JJ.]

All-India Permits, concept of—Whether the holder of an existing contract carriage permit alone is eligible to make an application for endorsement of his existing permit enabling the permit holder to ply a tourist vehicle on all-India operation and not new applicants for the contract-carriage permits —Orissa Tourist Vehicles Rule, 1967, Rule 3 (2), (3) and (4) applicability of —Motor Vehicles Act, 1939 section 63 (7) as introduced by amending Act 56 of 1969 with effect from 1st October, 1970 read with sections 2 (25), 2 (29-A), 2 (33), 49, 50, 51, 57, 58, 59, 60, 61 and 63 (7), scope of

In response to an advertisement dated 25th June, 1974 issued by the State Transport Authority, Orissa inviting applications in the prescribed forms, from the operators for all-India Tourist Permit, a number of intending operators including the appellants submitted their applications and at the meeting held on February 2, 1975, the State Transport Authority granted to the appellants all-India Tourist Permits for omnibus with passenger capacity not exceeding 29. Some of the applicants who failed to obtain a permit filed three appeals being M. V. Appeals Nos. 15, 16 and 17 all of 1975 to the State Transport Appellate Tribunal under sec. 64 (2) of the Motor Vehicles Act, 1939. The Appellate Tribunal dismissed all the appeals and confirmed the order made by the State Transport Authority granting all-India tourist permits to the appellants. Three unsuccessful applicants for permit filed three writ petitions styled as C.J.C. No. 381, 182 and 881, all of 1976 questioning the correctness of the order granting the permit and dismissal of their appeals in the High Court of Orissa. A Division Bench of the High Court, by a common judgment, allowed all the three writ petitions quashing and setting aside the order of the State Transport Authority. Consequently, these appellants surrendered their permits. Hence these three appeals by special leave. During the pendency of these appeals, the appellants were granted temporary all-India tourist permits in compliance with the interim orders made by the Court.

Allowing the appeals, the Court

A HELD : 1.1 It was not necessary that the applicants for an all-India tourist permit must have a pre-existing contract carriage permit which could could be endorsed so as to convert it into all-India tourist permit. [11B-C]

1.2 By introducing sub-section 7 in section 63 of the Motor Vehicles Act the concept of all-India permit to be granted by a State Transport B Authority of a State within the limits of the quota prescribed by the Central Government which would enable the holder of the permit to operate in the whole of India, was introduced, for the first time with effect from Ist October, 1970. The underlying object for creating this new class of permit was to promote tourism and to remove the barrier caused by the earlier system under which if a tourist vehicle is hired by a tourist party for moving from State to State, the vehicle cannot be taken to another State C from the place of commencement of journey unless a valid contract carriage permit of that State is obtained or the existing permit is counter-signed. [6G-H, 7A-B]

1.3 An application for an all-India tourist permit has to be processed in accordance with the provisions of sections 49, 50, 51, 57, 58, 59, 60, 61 and 63 (7). An all-India tourist permit is primarily a contract carriage D permit but while the ordinary contract carriage permit can be granted by the Regional Transport Authority, for operation within local jurisdiction, or when counter-signed by Regional Transport Authority of adjacent area in more than one such jurisdiction but not at any rate outside the State and not in any case on an all-India basis. To this extent, an ordinary contract carriage permit differs from an all-India tourist permit but an all-India tourist permit is none-the-less a contract carriage permit. Sub-section (7) E of section 63 on the other hand confers power on the State Transport Authority to grant an all-India tourist permit which in effect is a contract carriage permit but which permits plying of tourist vehicle throughout India. Even for obtaining such a permit, section 51 will apply with this modification that the application for all-India tourist permit has to be made to State Transport Authority of the State in which their permit is sought. This scheme of law nowhere expressly or by necessary implication suggests that F an applicant for an all-India tourist permit must of necessity or as a prerequisite have a contract carriage permit which alone can be endorsed for the purpose of all-India operation. Sub-section (7) of section 63 if read thus would render nugatory the affirmative provision that on a proper application being made and legally processed, the State Transport Authority can grant an all-India tourist permit. [6D; 7E-H, 8C-D]

G 1.4 The fact that an application for an all-India tourist permit has to be made under section 49 which prescribes procedure for obtaining a contract carriage permit, because in substance an all-India tourist permit is none-the-less a contract carriage permit but with a much wider area of operation, however, does not permit an inference that before obtaining an all-India tourist permit, the intending operator must obtain a contract carriage permit from the Regional Transport Authority and then get it endorsed from the State Transport Authority to make it valid for the whole H or any part of India. Sub-section (7) of section 63 does not speak of any

endorsement on permit, though endorsement may be another mode of enlarging the area of operation. It speaks of granting a permit valid for the whole or any part of India when granted by a State Transport Authority in exercise of the power conferred by sub-section (7) of section 63 without any further endorsement of any other authority. [8E-H]

2. Sub-Rules (2), (3) and (4) of Rule 3 of the Orissa Tourist Vehicles Rules, 1967 had absolutely no application to the proceedings of the State Transport Authority held for consideration of applications for all-India Tourist Permit and granting them to the appellants. These Rules were enacted in the year 1967 in exercise of the power conferred by section 68 of the Motor Vehicles Act, 1939 and were brought into operation on 19/20 June, 1967. These rules were made at a time when the only way to enlarge the area of operation in respect of a permit was by endorsement by various authorities on the original permit granted by a Transport Authority. All-India tourist permit was not conceptualised by the time 1967 Rules were framed. Therefore, the rules at the relevant time catered to a situation when the area of operation specified in a contract carriage permit could be enlarged by endorsement by authority other than the grantor only. [9F-H; 10A]

3. The applications of the appellants with all relevant information were complete and the blanks in their application forms were irrelevant. In the advertisement issued by the State Transport Authority on June 24, 1974 inviting applications for permits in respect of omnibus authorising it to ply as an all-India tourist vehicle in the prescribed forms, two prescribed forms were annexed. The first form was meant for those who had no existing contract carriage permit and were applying straightaway for the first time for an all-India tourist permit. The form itself shows that the application had to be made to the State Transport Authority for a contract carriage permit with an all-India operation. There was another form which catered to the needs of the holder of the existing contract carriage permits who wanted the area of operation to be enlarged by converting an ordinary contract carriage permit into all-India tourist permit. For a fresh applicant like the appellants who had no existing contract carriage permit, therefore, the blanks could not have been filled in. [10F-H; 11A]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2498-2500 of 1978.

From the Judgment and Order dated 15th November, 1978 of the High Court of Orissa at Cuttack in O.T C. No. 381: 182 and 881 of 1976.

Shantt Bhushan and *P. N. Misra* for the appellants.

L. N. Sinha, R. K. Mehta and *A. P. Mohanty*, for the Respondents.

A The Judgment of the Court was delivered by

DESAI, J. These three appeals are directed against the common judgment rendered by the High Court of Orissa at Cuttack in three writ petitions styled as C.J.C. No. 381, 182 and 881, all of 1976 B moved by the appellants in these appeals. A common question of law permeates these three appeals and therefore, factual matrix will be extracted from C. A. No. 2499/78 filed by one Mr. Ashutosh Swain as representative of the facts necessary for disposal of these appeals.

C State Transport Authority, Orissa issued an advertisement dated June 24, 1974 inviting applications in the prescribed form for endorsement in the permit of the motor cabs or omnibuses enabling the holders of the permit to ply the vehicle as a tourist vehicle with all-India operation. In other words, applications were invited from the operators for all-India tourist permit. The last date for receiving the applications was July 13, 1974 In response to the advertisement number of intending operators including the appellants in these appeals submitted their applications for grant of all-India tourist permit to the concerned authority within time. The State Transport Authority processed these applications and disposed of the applications at its meeting held on Feb. 2, 1975. The appellants herein were granted all-India tourist permits for omnibus with E passenger capacity not exceeding 29. Some of the applicants who failed to obtain a permit filed three appeals being M. V. Appeals Nos. 15, 16 and 17, all of 1975 to the State Transport Appellate Tribunal ('Appellate Tribunal' for short) under Sec. 64 (2) of the Motor Vehicles Act, 1939 (Act for short). The Appellate Tribunal dismissed all the appeals and confirmed the order made by the State F Transport Authority granting all-India tourist permits to the appellants. Three writ petitions came to be filed by three unsuccessful applicants for permit questioning the correctness of the order granting the permit and dismissal of their appeals A Division Bench of the High Court by a common judgment allowed all the three writ petitions quashing and setting aside the order of the State Transport G Appellate Tribunal as well as the State Transport Authority. Consequently, these appellants surrendered their permits. Hence these three appeals by special leave. During the pendency of these appeals, appellants were granted temporary all-India tourist permits in compliance with the interim orders made by this Court.

Mr. Shanti Bhushan, learned counsel who led on behalf of the appellants urged that the High Court erred in holding that only the holder of an existing contract carriage permit alone was eligible to make an application for endorsement of his existing permit enabling the permit holder to ply a tourist vehicle on all-India operation, and consequently quashing the all-India tourist permits granted to the appellants on the sole ground that the appellants did not have or hold existing contract carriage permit. It was next contended that the High Court was further in error in holding that the applications made by the appellants were incomplete as some of the columns were found blank. It was further submitted that the High Court was in error in relying upon sub-rules (2), (3) and (4) of Rule 3 of the Orissa Tourist Vehicles Rules, 1967 (1967 Rules for short) because the concept of all-India tourist permit received for the first time a legal format on the introduction of sub-s. (7) in Sec. 63 of the Act by Amending Act 56 of 1969 which came into force on October 1, 1970.

The scheme of the Motor Vehicles Act forbids an owner of a transport vehicle to use or permit the use of a vehicle in any public place (whether or not such vehicle is actually carrying any passenger or goods) save in accordance with the conditions of a permit granted or countersigned by the authority therein mentioned authorising the use of the vehicle in the place and in the manner in which the vehicle is to be used. The expression 'transport vehicle' is defined in Sec. 2 (33) of the Act to mean 'a public service vehicle or a goods vehicle'. 'Public service vehicle' is defined in Sec. 2 (25) of the Act to mean 'any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a motor cab, contract carriage, and stage carriage'. Thus the scheme of the Act envisages three kinds of permits in respect of a public service vehicle, namely, permit for the use of motor cab or a permit to use an omnibus for contract carriage or a permit to use the same as a stage carriage. Sec. 46 provides for application to be made for stage carriage permit. The holder of a stage carriage permit can use the vehicle to carry passengers for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey. The second kind of permit in respect of a public service vehicle is the one contemplated by Sec. 49 and styled as 'contract carriage permit.' A vehicle in respect of which there is a contract carriage permit can be used for carrying passengers for hire or reward under a contract express or implied for the use of the vehicle as a whole at or for a fixed or agreed rate

of sum—(i) on a time basis whether or not with reference to any route or distance, or (ii) from one point to another, and in either case without stopping to pick up, or set down along the line of route passengers not included in the contract, and includes a motor cab notwithstanding that the passengers may pay separate fares. By the Amending Act 56 of 1969, a concept of a tourist permit for a tourist vehicle was introduced in the Act. 'Tourist vehicle' is defined in Sec. 2 (29A) to mean 'a contract carriage constructed or adapted and equipped and maintained in accordance with such specification as the State Government may, by notification in the Official Gazette, specify in that behalf'. By the same Amending Act, sub-s. (7) of Sec. 63 was introduced enabling State Transport Authority of any State to 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 such applications have to be dealt with according to the provisions of Sections 49, 50, 51, 57, 58, 59, 59-A, 60, 61 and 64. Section 44 confers power on the State Government to set up such transport authorities in the State being State Transport Authority and Regional Transport Authority. The State Transport Authority will have its jurisdiction over the whole State and the State will be divided into various regions in respect of which a Regional Transport Authority will be specified. Any one desiring to obtain either a stage carriage permit or a contract carriage permit has to apply to the Regional Transport Authority in whose jurisdiction the vehicle is sought to be operated. Sec. 63 provides that permit granted by the Regional Transport Authority of any region, shall not be valid in any other region unless the permit has been counter-signed by the Regional Transport Authority of that region and a permit granted in one State shall not be valid in any other State unless counter-signed by the State Transport Authority of that other State or by the Regional Transport Authority concerned. This scheme of law would manifestly reveal that a permit without the necessary counter-signatures as hereinabove indicated, enabling the permit-holder to have the whole of India as its area of operation was unknown to the Act. By introduction of sub-sec. (7) in Sec. 63, the concept of a permit to be granted by a State Transport Authority of a State within the limits of the quota prescribed by the Central Government which would enable the holder of the permit to operate in the whole of India, was introduced. For the sake of brevity, this permit is described as all-India tourist permit.

Sub-sec. (7) of Sec. 63 provides that for obtaining such a permit as envisaged therein which enables the holder of such a permit to ply vehicle as a tourist vehicle in the whole of India has to make an application to the State Transport Authority constituted for the State under Sec. 44. The underlying object for creating this new class of permit was to promote tourism. If a tourist vehicle is hired by a tourist party for moving from State to State, the vehicle cannot be taken to another State from the place of commencement of journey unless a valid contract carriage permit of that State is obtained or the existing permit is counter-signed. This would impede tourism causing inconvenience to the tourists. To remove this barrier, Parliament introduced sub-sec. (7) in Sec. 63 envisaging a new kind of permit to be granted by the State Transport Authority of the State within the prescribed quota which would enable the holder of the permit to ply the tourist vehicle in the whole or any part of India. The impediment in the free flow of tourist traffic was sought to be suitably removed by this provision.

Sub-sec. (7) of Sec. 63 further provided that an application for such a permit has to be made to the State Transport Authority from whom the permit is sought to be obtained. The State Transport Authority has to process the application in the manner prescribed in the sections set out in sub-s.(7), which amongst others includes Sec. 49. Sec. 49 provides for making an application for a contract carriage permit. Therefore, an all-India tourist permit is primarily a contract carriage permit but while the ordinary contract carriage permit can be granted by the Regional Transport Authority, for operation within local jurisdiction, or when countersigned by Regional Transport Authority of adjacent area in more than that one such jurisdiction but not at any rate outside the State and not in any case on an all-India basis. To this extent, an ordinary contract carriage permit differs from an all-India tourist permit but an all-India tourist permit is none-the-less a contract carriage permit. Sec. 50 prescribes the procedure for processing an application for contract carriage permit. Sec. 51 confers power on the Regional Transport Authority to grant contract carriage permit. Sub-s. (7) of Sec. 63 on the other hand confers power on the State Transport Authority to grant an all-India tourist permit which in effect is a contract carriage permit but which permits plying of tourist vehicle throughout India. Even for obtaining such a permit, Sec. 51 will apply with this modification that the application for all-India tourist permit has to be made to State Transport Authority of the State in which the permit is sought. Such an application may be further

processed according to the provision contained in Sec. 57 which prescribes procedure for applying and granting permit. Sec. 58 prescribes duration of a permit and renewal of it. Sec. 59 sets out general conditions attaching to all permits. Sec. 59-A prescribes general form of permits. Sec. 60 confers power on the authority granting the permit to cancel or suspend permits. Sec. 61 makes the permit heritable on the death of the holder and Sec. 64 provides for appeals against the orders of the Regional Transport Authority and the State Transport Authority. An Application for an all-India tourist permit has to be processed in accordance with provisions contained in sections set out herein above.

A resume of the relevant provisions and a brief outline of the Scheme of the Act sheds light on the concept of an all-India tourist permit. This scheme of law nowhere expressly or by necessary implication suggests that an applicant for an all-India tourist permit must of necessity or as a pre-requisite have a contract carriage permit which alone can be endorsed for the purpose of all-India operation. Sub-s. (7) of Sec. 63, if read thus would render nugatory the affirmative provision that on a proper application being made and legally processed, the State Tranport Authority can grant an all-India tourist permit. If sub-s. (7) of Sec. 63 is read as interpreted by the High Court, one will have to redraft the section to read that the holder of a contract carriage permit may apply for an all-India tourist permit. There is no warrant for reading the section like this. Undoubtedly, an application for an all-India tourist permit has to be made under Sec. 49 which prescribes procedure for obtaining a contract carriage permit. This ought to be so because in substance an all-India tourist permit is none-the-less a contract carriage permit but with a much wider area of operation. That however, does not permit an inference that before obtaining an all-India tourist permit, the intending operator must obtain a contract carriage permit from the Regional Transport Authority and then get it endorsed from the State Transport Authority to make it valid for the whole or any part of India. Sub-s. (7) of Sec. 63 does not speak of any endorsement on permit. It speaks of granting a permit. Endorsement may be another mode of enlarging the area of operation. But that is not contemplated by sub-s. (7) of Sec. 63. It speaks of granting a permit valid for the whole or any part of India when granted by a State Transport Authority in exercise of the power conferred by Sub-Sec. (7) of Sec. 63 without any further endorsement of any other authority. Therefore, with respect, the High Court was not right in observing that 'it is clear from the

aforesaid provision of the rules and Schedule I that an holder of a permit issued in the State in relation to a motor cab or an omnibus is only competent to apply to the State Transport Authority for endorsement on that permit to the effect that the vehicle to which the permit relates is a tourist vehicle.' There is nothing in sub-s. (7) of Sec. 63 to warrant this construction. The High Court unfortunately did not look at the substantive provision enacted in sub-s. (7) of Sec. 63, did not analyse it to ascertain its width and content but merely referred to rules which would be presently shown to be not applicable and reached the conclusion on the meaning of sub-s. (7) of Sec. 63 without reference to it.

The High Court referred to sub. cls. (2), (3) and (4) of Rule 3 of 1967 Rules. Rule 3 confers power on the State Transport Authority to endorse any permit granted in the State in relation to any motor cab or omnibus to the effect that the vehicle to which the permit relates is an all-India tourist vehicle. Sub-rule (2) provides that 'any person who holds a permit issued in the State in relation to a motor cab or an omnibus may apply in the forms specified in Schedule I, to the State Transport Authority for an endorsement on the permit to the effect that the vehicle to which the permit relates is a tourist vehicle.' Sub-rule (3) provides that an application under sub-rule (2) shall be made in the manner provided therein and within the time limit prescribed therein. Sub-rule (4) provides for the procedure before granting the necessary endorsement. Having referred to these three sub-rules, the High Court held that there must be a pre-existing contract carriage permit granted in the State which alone can be endorsed subsequently as an all-India tourist permit. These rules were enacted in the year 1967 and were put into operation on 19/20 June, 1967. They were enacted in exercise of the power conferred by Sec. 68 of the Motor Vehicles Act. Sec. 68 confers powers on a State Government to make rules for the purpose of giving effect to the provisions of Chapter IV. These rules were made at a time when the only way to enlarge the area of operation in respect of a permit was endorsement by various authorities on the original permit granted by a Transport Authority. All-India tourist permit was not conceptualised by the time 1967 Rules were framed. All-India tourist permit as contemplated by sub-s. (7) of Sec. 63 was not on the statute book at the time when these rules were enacted. Therefore, the rules at the relevant time caters to a situation when the area of operation

A specified in a contract carriage permit could be enlarged by endorsement by authority other than the grantor. The concept of all-India tourist permit without any necessity of any endorsement by any authority save and except the grantor was then not known to law. In order to avoid endorsements by various authorities so as to enlarge the area of operation of a contract carriage permit and with B avowed object of facilitating unimpeded free flow of tourist traffic, the concept of all-India tourist permit was introduced with effect from October 1, 1970. It also introduced a new type of vehicle specified as tourist vehicle. The aforementioned rules enacted in June 1967 when an all-India tourist permit not necessitating any endorsement save the grant of it by the State Transport Authority C and the concept of a tourist vehicle were foreign to the Motor Vehicles Act cannot be held to apply unless a provision to that effect was made in the substantive enactment conferring power on the State Transport Authority to grant an all-India tourist permit which needs no endorsement for operation throughout India. One cannot read the concept of endorsement envisaged in the 1967 Rules D in respect of a permit that can be granted as an all-India tourist permit under sub-s.(7) of Sec. 63 of the Act by insisting upon, as per the scheme of rules a pre-existing contract carriage permit which alone can be endorsed. Therefore the conclusion is inescapable that these rules were not at all attracted while considering the applications for all-India tourist permit made by the appel. E lants under sub-s. (7) of Sec. 63.

The High Court with respect fell into another error when it failed to take notice of the advertisement issued by the State Transport Authority on June 24, 1974 inviting applications for permits in respect of omnibus authorising it to ply as an F all-India tourist vehicle in the prescribed form. Two prescribed forms were annexed to the advertisement. The High Court overlooked the first form and only took notice of the second form. The first form was meant for those who had no existing contract carriage permit and were applying straightway for the first time for an all-India tourist permit. The form itself shows G that the application had to be made to the State Transport Authority for a contract carriage permit with an all-India operation. There was another form which catered to the needs of the holder of the existing contract carriage permits who wanted the area of operation to be enlarged by converting an ordinary contract carriage permit into all-India tourist permit. After referring H to the second form, the High Court found fault with the applica-

tions made by the present appellants by observing that some of the columns were left blank. For a fresh applicant who had no existing contract carriage permit, the blanks could not have been filled in. This is another unfortunate error in which the High Court fell while granting a writ of certiorari quashing the order under which permits were granted to the applicants.

Having thus examined the various aspects which appealed to the High Court in reversing the decision granting all-India tourist permit to the appellants, we are of the opinion that none of them can be sustained. Firstly, it was not necessary that the applicants for an all-India tourist permit must have a pre-existing contract carriage permit which alone could be endorsed so as to convert it into an all-India tourist permit. Secondly, the applications of the appellants for all relevant information were complete and the blanks were irrelevant and lastly sub-rules (2), (3) and (4) of Rule 3 had absolutely no application to the proceedings of the State Transport Authority held for consideration of applications for all-India tourist permit and granting them to the appellants. These were the grounds on which the High Court reversed the decision of the State Transport Authority and the State Transport Appellate Tribunal. But as these reasons are unsustainable, these appeals will have to be allowed. Accordingly these three appeals are allowed and the judgment of the High Court is quashed and set aside and the decision of the State Transport Authority granting all-India tourist permits to the appellants is restored.

As the appellants surrendered their all-India tourist permits, when they lost in the High Court and they plied their vehicles on temporary permits, it must be held that if the duration of the original permits has expired, they have to make a fresh application for all-India tourist permit but in that event they will be treated as applications for renewal of all-India tourist permit as contemplated by Sec. 58 of the Act and not as fresh applications under Sec. 63(7) read with Sec. 49. The appeals are accordingly allowed with no order as to costs.

S.R.

Appeals allowed.