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VISHUNDAS HUNDUMAL, ETC.

v.

STATE OF MADHYA PRADESH & ORS.

March 13, 1981

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[D.A. DESAI, A.D. KOSHAL AND A.P. SEN, JJ.]

Motor Vehicles Act, 1939—Scheme No. 50-M reserving notified routes for exclusive operation by the Madhya Pradesh Road Transport Corporation—Certain operators' permits only were curtailed and they were prohibited from operating their stage carriages on a portion of their routes which were overlapping with the notified route leaving 19 others untouched, through oversight—Whether such an action amounts to hostile discrimination.

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Allowing the petitions, the Court

HELD : (1) Undoubtedly, the error or omission was on the part of the Regional Transport Authority in the instant case, in not supplying full information to the Special Secretary about all the valid permits in force at the relevant time and which were either to be curtailed or cancelled consequent upon the approval of the scheme. This error or omission on the part of the Regional Transport Authority has resulted in gross discrimination between the transport operators in the same class in that some have their permits remaining intact with right to ply their vehicles on the notified route and some others whose permits are curtailed. When discrimination is glaring the State cannot take recourse to inadvertence in its action resulting in discrimination. [237 D-E & 238 B-C]

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(2) Conceding that this was discrimination unconsciously indulged into by inadvertence or oversight on the part of a governmental agency, the error should be rectified. To reject the whole scheme would be destructive of a wholesome effort towards nationalisation of bus transport which is generally undertaken in public interest. In this case denial of equal protection, complained off flows from State action and has a direct impact on the fundamental rights of the petitioners. A constructive approach by removing the discrimination by putting the present petitioners in the same class as those who have enjoyed favourable treatment by inadvertence on the part of the Regional Transport Authority will meet the ends of justice. The benefit of this order would be available, if and only if, the petitioners have valid permits for operating stage carriage and if such permits are there, they would be without restriction for operating on that part of the route of each of the petitioners which overlaps with the notified route but it would be open to the Regional Transport Authority to impose corridor restrictions; so, however, that such restriction does not suffer from the defect of discrimination which is found to be constitutional. [238A-B-D, E-G]

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Ramnath Verma v. State of Rajasthan; [1963] 2 S.C.R. 152, distinguished.

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CIVIL APPELLATE JURISDICTION : Special Leave Petitions (Civil) Nos. 6150 & 7839/79.

From the Judgment and Order dated 15-1-79 of the High Court of Madhya Pradesh at Jabalpur in C.W.C. No. 15/79 and M.P. No. 12/79 respectively.

AND

Writ Petitions Nos.435, 763 & 813 of 1979.

(Under Article 32 of the Constitution.)

G. L. Sanghi, S. K. Mehta, P. N. Puri and M. K. Dua for the Petitioners.

Kameshwar Nath for the Respondent.

S. K. Gambhir for the Respondent-(State)

The Judgment of the Court was delivered by

DESAI, J. Petitioners in this group of petitions under Article 32 of the Constitution and petitions for special leave to appeal were at the relevant time holders of stage carriage permits granted to them under the Motor Vehicles Act, 1939 ('Act' for short), and were operating stage carriages on the routes for which permits were granted. A Scheme No. 50-M was framed and publicised by the Madhya Pradesh State Road Transport Corporation ('Corporation' for short), covering certain routes including (i) Rewa-Shahdol; and (ii) Satna-Ramnagar, which were to be reserved for exclusive operation by the Corporation. After objections were invited and heard, the scheme was finally approved and it came into force on January 20, 1979. On the approved scheme coming into force part of the routes on which petitioners were operating overlapped with the notified routes. Consequently their permits were curtailed prohibiting them from operating their stage carriages on a portion of their routes which were overlapping with the notified route. This action was challenged by filing writ petitions under Art. 226 of the Constitution in the High Court of Madhya Pradesh at Jabalpur. A Division Bench of the High Court rejected all the petitions except one. Hence some petitions for special leave and other writ petitions filed by the petitioners who are operators of the stage carriages and who are affected by the curtailment of their permits consequent upon the approved scheme coming into force.

Number of contentions were raised before the High Court, about the validity of the scheme, the procedure adopted while

A approving the scheme, the opportunity to raise objections and the consideration of the objections. None of them found favour with the High Court and the reasons which appealed to the High Court rejecting those contentions are so convincing that we adopt them and reject all those contentions.

B The only contention that survives for our consideration is that while cancelling and/or curtailing certain permits for routes parts of which overlapped with the notified routes there were other permit holders in the same class having stage carriage permits for certain routes parts of which were overlapping with the notified route and yet in the case of petitioners their permits were curtailed prohibiting them from operating their stage carriages on that portion of the route for which they had permit which was overlapping with the notified route while others in all 19 who, though similarly situated, were favourably treated by neither curtailing nor cancelling their permits and were permitted to ply their stage carriages on the routes for which they had permits passing over a portion of the notified route without any let or hindrance. The contention is that this is hostile discrimination by executive act without any valid criteria for picking and choosing and that the discrimination is so writ large on its face that the Corporation and the State Government did not try to justify the same before either the Special Secretary who heard the objections or the High Court and took convenient refuge under the plea of unconscious and unintentional discrimination through oversight relying upon *Ramnath Verma v. State of Rajasthan*.⁽¹⁾ Those 19 operators who received a favourable yet unjustified treatment are listed at page 45 in Special Leave Petition No. 6150/79. Neither the learned counsel for the Corporation nor Mr. Gambhir for the State of Madhya Pradesh attempted to justify classification amongst operators holding stage carriage permits and plying vehicles on routes part of which was overlapping with the notified route.

G Before we examine what has been laid down by this Court in *Ramnath Verma's* case (supra) it would be advantageous to recall how the Special Secretary appointed to hear objections and approve the scheme dealt with this contention of the petitioners. In paragraph 13 of his order he has observed as under :—

H “It is clear from the evidence that certain permits which were valid on the date of the publication of the scheme were left out and have not been included in the scheme

(1) [1963] 2 S.C.R. 152

which was published under section 68-C. The question to be considered is whether the permits have been left out by the Corporation consciously and whether this is an act of conscious discrimination. And also if it is conscious discrimination, what will be its effect. The law relating to left out permits has been laid down by the Supreme Court in *Ramnath Verma v. State of Rajasthan*".

After referring to the facts in *Ramnath Verma's* case (supra), he held that error or omission was on the part of the Regional Transport Authority in not supplying particulars of all those permits which were valid and which were either to be curtailed or cancelled consequent upon the approved scheme coming into force and on this account the Corporation cannot suffer and the whole scheme cannot be struck down. For almost identical reasons the High Court has negatived this contention.

Undoubtedly, the error or omission was on the part of the Regional Transport Authority in not supplying full information to the Special Secretary about all the valid permits in force at the relevant time and which were either to be curtailed or cancelled consequent upon the approval of scheme. This error or omission on the part of the Regional Transport Authority has resulted in gross discrimination between the transport operators in the same class in that some have their permits remaining intact with right to ply their vehicles on the notified route and some others whose permits are curtailed. That this is discrimination between persons in the same class does not call for any discussion. Maybe, the discrimination may arise out of error or omission on the part of a governmental agency but the question is : Can it be overlooked on that account? *Ramnath Verma's* case (supra) cannot help the respondents in this behalf because a Constitution Bench of this Court held in that case that discrimination under Art. 14 is conscious discrimination and not accidental discrimination that arises from oversight which the State is ready to rectify. We did not find any willingness on the part of the State authorities to rectify the error either in the High Court or before this Court. There was some vague suggestion of another scheme which was under examination which may ultimately result in rectification of this discrimination. No concrete or adequate information was laid before the Court as to whether that scheme is pending and how long would it take to reach its final destination. And further, there is no guarantee that it will be approved. We, however, take note of a submission by Mr. Gambhir, learned

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A counsel for the State Government that the said scheme would be finalised within a period of six months.

B Conceding that this was discrimination unconsciously indulged into by inadvertence or oversight on the part of a governmental agency, by this order we only propose to rectify the same and not reject the whole scheme. Such an approach would be destructive of a wholesome effort towards nationalisation of bus transport which is generally undertaken in public interest. When discrimination is glaring the State cannot take recourse to inadvertence in its action resulting in discrimination. The approach is, what is the impact of State action on the fundamental rights of citizen. In this case denial of equal protection is complained of. And this denial of equal protection flows from State action and has a direct impact on the fundamental rights of the petitioners. We, therefore, propose to take a constructive approach by removing the discrimination by putting the present petitioners in the same class as those who have enjoyed favourable treatment by inadvertence on the part of the Regional Transport Authority.

D Accordingly we hereby direct that order/conditions in permits curtailing the permits of the petitioners prohibiting them from passing over the overlapping portion of their route with the notified route be quashed and declared to be of no consequence till all the operators including those excluded similarly situated are similarly treated.

E Before concluding it may be noticed that we were told that the petitioners' permits have expired. This order is not to be interpreted or used for even remotely or indirectly suggesting that under the effect of this order or as a result of this order petitioners are entitled to renewal of their permits. The benefit of the order hereinabove made would be available, if and only if, the petitioners have valid permits for operating stage carriages and if such permits are there, they would be without restriction for operating on that part of the route of each of the petitioners which overlaps with the notified route but it would be open to the Regional Transport Authority to impose corridor restrictions. So, however, that such restriction does not suffer from the defect of discrimination which we have held by this judgment to be unconstitutional.

F Order accordingly. We allow the special leave petitions and the writ petitions to the extent hereinabove indicated with no order as to costs.

H S.R.

Petitions allowed