dismiss the present petitions with costs. The counsel's fee in the thirteen petitions are consolidated as Rs. 100 for each of the respondents. The stay order will accordingly be vacated.

Tej Ram
v.
The Union of India and others

Falshaw, J.

D. K. M.

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APPELLATE CIVIL

Before Falshaw and Mehar Singh, JJ.

THE ITHAD MOTOR TRANSPORT, LTD.,—*Appellant*

versus

KARNAL CO-OPERATIVE TRANSPORT SOCIETY,—*Respondent.*

R. F. A. 175-D of 1956.

1957

August, 28th

Specific Relief Act (I of 1877)Section 54—Motor Vehicles Act (IV of 1939)—Sections 42(1), 47, 48, and 123—Permit issued to transport companies A and B to ply passenger vehicles subject to condition that company B will not pick passengers from within certain specified areas—Company B, violating this condition of the permit—Suit by company A for damages on account of loss suffered by the violation of the condition—Such suit, whether maintainable —Permit, nature of—Whether right in property.

Held, that there is nothing under the Motor Vehicles Act which goes to give, what to say directly, even by implication any right to a permit-holder to maintain a suit for damages. On the contrary the Act is a complete code in itself and provides all the remedies for breaches of its provision, in fact, it provides a far more effective remedy to meet a breach of the conditions of a permit by cancellation of the permit and seizure and detention of the vehicle than by giving such right of action as is claimed by the plaintiff company. These provisions completely negative any implied right of action in the plaintiff company based on a breach of the conditions of their permit by the defendant-companies to maintain a suit for damages. The statutory protection and benefit from which an implied civil right of action has been inferred must arise out of statutory provisions and refer to defined individual or individuals but where the

provisions of a statute are enacted for public benefit and incidentally they also benefit individuals then it is the dominant purpose of the statute that will prevail and not the incidental. The statutory power to issue permits with certain conditions for stage carriages are not meant for the benefit and protection of the permit-holders, but they are obviously meant for the benefit and protection of the general public.

Held, that the position of a grantee of a permit is more of a licensee than of a person vested with an enforceable right as it can be cancelled, altered and varied at any time by the granting authority. If it were to be considered as an enforceable right, it should have some enduring basis. It is a precarious interest and not a fixed and settled interest. It is not right in property. The holder of such a permit has not even a monopoly of the route and it is open to the proper authority to grant on the same route more permits of the same type.

Regular First Appeal from the order of Shri Prem Nath Thukral, P.C.S., Sub-Judge, 1st Class, Delhi, dated the 19th March, 1951, dismissing the suit and leaving the parties to bear their own costs.

P. S. SAFEER, for Petitioner.

D. D. CHAWLA and D. K. KAPUR, for Respondent.

JUDGMENT

Mehar Singh, J. MEHAR SINGH, J.—This is a plaintiff's appeal from the judgment and decree, dated March 19, 1951, of the Subordinate Judge, First Class of Delhi, dismissing its suit on the ground that it is not competent in a civil court.

The plaintiff company holds a permit for plying buses between Delhi and Panipat via Sonepat passing on the loop line. The two defendant-companies hold similar permit between Delhi and Kaithal via Karnal. The plaintiff company alleges that the permit in favour of the defendant-compaines was subject to the condition that no passengers would be picked up by the defendant-companies in the municipal areas of Karnal and

Panipat nor are they to run their buses through Sonepat. In breach of that condition the defendant-companies have started running service through Sonepat and have also started picking up passengers from the municipal areas of Karnal and Panipat thus causing recurring damage to the plaintiff company, which damage has been calculated by it to the date of the suit from the date of the breach of the condition to be about Rs. 10,000. The plaintiff company's case is that the condition in the permit of the defendant-companies was imposed by the Regional Transport authority for its benefit to avoid cut-throat competition between the parties. That is why, says the plaintiff company, it was given exclusive permit for passing over the loop line to Sonepat and picking passengers from the municipal areas of Karnal and Panipat. It is said that the defendants have invaded this right of the plaintiff company which is, therefore, entitled to a perpetual injunction against them restraining them from invasion of that right and also a decree for the amount of the damage suffered by it because of that invasion. A number of defences have been taken by the defendant-companies and one of those defences, on the basis of which the suit has been dismissed, is that the suit is not competent in a Civil Court. This defence has prevailed with the learned trial Judge and the result has been the dismissal of the suit of the plaintiff company but leaving the parties to their own costs. This is the only question that is a matter for argument between the parties in this appeal.

The learned counsel for the plaintiff refers to section 54 of the Indian Specific Relief Act and contends that though the plaintiff does not base his claim as arising out of any contractual relationship, but as the defendant-companies have in

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breach of a statutory condition committed tort in causing damage to it, the plaintiff is entitled to the relief sought from a civil court and in support of this contention reference has been made to *Municipal Committee, Montgomery*, v. *Master Sant Singh* (1), *Rit Lal Mallah* v. *Raghubar Ram, etc.* (2), *Bhujendra Nath Biswas and others* v. *Suohamoyee Basu and another* (3), *Saiyid Manzur Hassan and others* v. *Saiyid Muhammad Zaman and others* (4), *Balkishen v. Emperor* (5). In my opinion, none of these cases has any relevancy to the facts of the present case. All that was decided in the first case was that an inhabitant of a muncipality has a right not to be taxed illegally and the committee has a corresponding obligation not to impose an illegal tax. Such an obligation might well arise between a municipality and its inhabitant according to law and as it would obviously be for the benefit of the inhabitants, an inhabitant may obtain relief under section 54 of the Specific Relief Act; but I fail to understand how this has any reference to the facts of the present case. In the second case there was interference with the cartmen in the use of a certain in road in the shape of demanding a certain charge from them for passing the carts over the road. The learned Judge held that this was an invasion of the right of the cartmen who were thus entitled to a perpetual injunction. In the present case there has been no obstruction to the plaintiff company plying its buses on the route in accordance with the permit granted to it. The case has on facts no relevancy. The third case relates to a stranger to a contract enforcing the contract on the ground that it was made for his benefit. There is no question of con-

(1) A.I.R. 1940 Lah. 377
(2) 58 I.C. 714
(3) A.I.R. 1936 Cal. 67
(4) A.I.R. 1925 P.C. 36
(5) A.I.R. 1930 All. 280

ractual relationship in this case and so this case lso is not concerned with the facts of the present ase. The last two cases refer to the right to con- uct a religious procession along a highway and ; again is somewhat difficult to appreciate how hose two cases can have any bearing on the facts of the present case.

The provisions of section 54 of the Specific Relief Act are :—

"54. Subject to the other provisions contained in, or referred to by, this Chapter a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication.

When such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II of this Act.

When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases (namely) :—

(a) Where the defendant is trustee of the property for the plaintiff;

(b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused by the invasion;

(c) where the invasion is such that pecuniary compensation would not afford adequate relief;

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(d) where it is probable that pecuniary compensation cannot be got for the invasion;

(e) where the injunction is necessary to prevent a multiplicity of judicial proceedings."

Paragraph 2 does not arise for consideration because here is no contractual relation either between the parties or between the Regional authority and either or any of the parties. In regard to paragraph 1 of this section the learned counsel has contended that according to the conditions of their permit the defendant companies were under obligation to run their service strictly in accordance with the conditions of the permit and not otherwise, but under that paragraph the obligation must be in favour of the person making the claim and here the obligation, if any of the defendant-companies to comply with the conditions of the permit was no obligation in favour of or connected with the plaintiff company. It has nothing to do with the plaintiff company. It has been said on behalf of the plaintiff that the condition was for the benefit of the plaintiff. I will come back to this aspect of the case presently. The learned consel for the plaintiff has further contended with reference to paragraph 3 of the section that under its own permit the plaintiff company has a right to property inasmuch as it has right under that permit to ply buses on the route to which it refers. The reply of the learned counsel on behalf of the defendant-companies is that a permit to ply buses on a certain route does not confer any right on the party to whom the permit is granted but is a mere licence granted by the Regional Transport authority to run buses subject to the conditions of the permit.

The reason is that the permit can be cancelled, altered, and varied at any time by the granting authority. Accordingly to the statutory provisions that is so and it appears that the correct position of the grantee of a permit, in circumstances as in this case, is more that of a licensee than of a person vested with an enforceable right. If it were to be considered as an enforceable right, it should have some enduring basis, but, as said, its basis can be taken away by a stroke of pen by the authority concerned. It is a precarious interest and not a fixed and settled interest. I do not consider that it can be said to be a right in property. The holder of such a permit has not even a monopoly of the route and it is open to the proper authority to grant on the same route more permits of the same type. In A.I.R. 1938, Lahore 585 a similar question arose in regard to a licence granted to an Electric Supply Company under the Electricity Act and the learned Judges held that the grant to supply electricity being without consideration cannot be held to be a contract and they were prepared to go further and say that the right to sell electric current was no property within the meaning of section 54 and felt extremely doubtful whether an injunction could be granted under that section.

The learned counsel for the defendant companies has also contended that accepting the allegation of the plaintiff company, what has happened is that the enjoyment of its interest by the plaintiff company under its permit has somewhat been lessened by the conduct of the defendant-companies and that by itself is not sufficient for the grant of an injunction under section 54. He is supported in this by the case reported in A.I.R. 1952, Calcutta 364 in which it has been held

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that simply because the enjoyment of the plaintiff is rendered less beneficial that would not entitle him to obtain an injunction unless he can show that there was legal duty on the part of the defendant towards him and that by non-performance of that legal duty the enjoyment of his property is materially affected. Obviously in the present case there is no legal duty of the defendant companies to the plaintiff company under either their own permit or the permit of the plaintiff company.

The question raised by the plaintiff company is whether breach of a permit granted according to a statutory provision, for which breach the statute has provided remedy by way of penalty, confers impliedly a right of action in a civil Court, though the statute is silent about such a right. Similar question arose before the House of Lords in *Culter* v. *Wandsworth Stadium Ltd.* (1). In that case the plaintiff, a book-maker, brought an action against the defendants, the occupiers of a licensed dog-racing track for breach of their statutory duty under the Betting and Lotteries Act, 1934 Section 11 (2) not to exclude book-makers from the track and to secure that space was available on the track for book-making purposes. The plaintiff sought damages, declaration and an injunction. He succeeded before the learned trial Judge but failed in appeal and in the House of Lords the decision of the Court of appeal was upheld. It was observed in the House of Lords that the question whether an individual who has suffered damage through breach of a statutory duty is entitled to maintain an action must in the last resort depend on the true construction of the statute. However, in the speeches delivered reference is to be found to cases in

(1) (1949) 1 A.E.L.R. 544

which the principle, on which such question should be considered, has been stated as in *Pasmore* v. *Oswaldtwistle Urban District Council* (1),—

> "The principle that where a specific remedy is given by statute, it thereby deprive the person who insists on a remedy of any other for of remedy than that given by the statute, is one which is very familiar and which runs through the law. I think Lord Tenterden accurately states that principle in the case of *Doe* v. *Bridges* (2). He says 'where an Act creates an obligation and performance in a specified, manner, we take it to be a general rule that performance cannot be enforced in any other manner."

It was conceded that there are exceptions to the principle and reference to them may best be made in the words of Lord Normand at page 551 of the report, which are:—

> "If there is no penalty and no other special means of enforcement provided by the statute, it may be presumed that those who have an interest to enforce one of the statutory duties have an individual right of action. Otherwise the duty might never be performed, but if there is a penalty clause, the right to a civil action must be established by a consideration of the scope and purpose of the statute as a whole. The inference that there is a concurrent right of civil action is easily drawn when the predominant purpose is manifestly the protection of a class of workmen by impos-

(1) (1898) A.C. 387.
(2) 1 B. and Ad. 859.

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ing on their employers the duty of taking special measures to secure their safety. The penalties provided by the Act apply when a breach of the duty occurs, but each workman has a right to sue for damages if he is injured in consequence of the breach."

Thus the first consideration is the specified remedies provided by the statute for breach of statutory duty and the existence of such remedies, without more, is an indication that no right of civil action arises out of such a breach, unless the case is one of the exceptions and the exceptions noted above are when no penalty for the breach has been provided or where the duty is imposed for the protection or benefit of individuals in certain circumstances as in the case of Factories Act. This means that reference to the provisions of the Motor Vehicles Act is necessary.

It is Chapter 4 of the Motor Vehicles Act, 1939, that deals with the control of transport vehicles. Subsection (1) of section 42 provides that no owner of a transport vehicle shall use or permit the use of the vehicle in any public place, save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority authorising the use of the vehicle in that place in the manner in which the vehicle is being used. The remaining provisions of this section are not material for the purposes of the present case. Breach of this provision is punishable under section 123 with a fine of Rs. 500 for the first offence and a fine of not less than Rs. 100 and extending to Rs. 1,000 for any subsequent offence if committed within three years of the commission of a previous similar offence. But this is not all for according to section 129A if a vehicle is used without permit the police has been

given authority to seize it. The section runs thus—

> "129A. Any police officer authorized in this behalf or other person authorized in this behalf by the State Government may, if he has reason to believe that a motor vehicle has been or is being used in contravention of the provisions of section 22 or without the permit required by subsection (1) of section 42 or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, seize and detain the vehicle, and for this purpose take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle."

Not only a penalty for breach of the conditions of a permit under the Act has been provided for but the penalty is enhanced on repetition on the offence within a certain period, and what is more significant and more effective is that under section 129 A, use of the vehicle in contravention of the conditions of the permit or the provisions of section 42(1) lead to its immediate seizure and detention by the police, thus making it impossible for the motor vehicle being used contrary to the conditions of the permit and the statutory provisions relating to the permit. Then there is section 60 according to which on breach of any condition of a permit, the permit can at once be suspended or cancelled. The Legislature has, therefore, taken care to provide not only for imposing penalty for breach of the conditions of the permit under sections 42(1) and 123, but it has also made adequate and effective provision for cancellation of the

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permit and to make it impossible for the vehicle to be used in contravention of the conditions of the permit and the statutory provisions relating to the permit. There is nothing in the Act which goes to give what to say directly, even by implication any right to a permit-holder to maintain a suit of the present type to proceed against another permit-holder for breach of the conditions of the permit. On the contrary the Act is a complete code in itself and provides all the remedies for breaches of its provisions. In fact, it provides a far more effective remedy to meet a breach of the conditions of a permit as in this case by cancellation of the permit and seizure and detention of the vehicle that by giving such right of action as is claimed by the plaintiff company. These provisions completely negative any implied right of action in the plaintiff company based on a breach of the conditions of their permit by the defendant-companies.

It has been said that what is described as corridor condition was included in the permit of the defendant-companies for the benefit of the plaintiff company. The statutory protection and benefit from which an implied civil right of action has been inferred must arise out of statutory provisions and refer to defined individual or individuals, but where the provisions of a statute are enacted for public benefit and incidentally they also benefit individuals then it is the dominant purpose of the statute that will prevail and not the incidental. The following are the relevant sections with regard to attachment of conditions to stage carriage permits—

"S. 47. (1) A Regional Transport Authority shall in deciding whether to grant or

refuse a stage carriage permit, have regard to the following matters, namely:—

(a) the interest of the public generally;

(b) the advantages to the public of the service to be provided including the saving of time likely to be effected thereby and any convenience arising from journeys not being broken;

(c) the adequacy of existing road passenger transport services between the places to be served, the fares charged by those services and the effect upon those services of the service proposed;

(d) the benefit to any particular locality or localities likely to be afforded by the service;

(e) the operation by the applicant of the other transport services and in particular of unremunerative services in conjunction with remunerative services; and

(f) the condition of the roads included in the proposed route or routes;

and shall also take into consideration any representations made by persons already providing road transport facilities along or near the proposed route or routes or any local authority or police authority within whose jurisdiction any part of the proposed route or routes lies or by any association interested in the provision of road transport facilities.

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(2) A Regional Transport Authority shall refuse to grant a stage carriage permit if it appears from any time table furnished that the provisions of this Act relating to the speed at which vehicles may be driven are likely to be contravened:

Provided that before such refusal opportunity shall be given to the applicant to amend the time table so as to conform to the said provisions.

S. 48. A Regional Transport Authority may, after consideration of the matters set forth in subsection (1) of section 47,—

(a) limit the number of stage carriages or stage carriages of any special type for which stage carriage permits may be granted in the region or in any specified area or on any specified route within the region;

(b) issue a stage carriage permit in respect of a particular stage carriage or a particular service of stage carriages;

(c) regulate timings of arrival or departure of stage carriages whether they belong to a single or more owners; or

(d) attach to a stage carriage permit any prescribed condition or any one or more of the following conditions, namely:—

(i) that the service specified in the permit shall be commenced not later than a specified date and be continued for a specified period;

(ii) that the service may be varied only in accordance with specified condition;

(iia) that the stage carriage or stage carriages shall be used only on specified routes or in a specified area;

(iii) that copies of the fare table and time table shall be exhibited on the stage carriage and that the fare table and time table so exhibited shall be observed;

(iv) that not more than a specified number of passengers and not more than a specified amount of luggage shall be carried on any specified vehicle at any one time;

(v) that within municipal limits and in such other areas and places as may be prescribed passengers shall not be taken up or set down at or except at specified points; or

(vi) that tickets shall be issued to passengers for the fares paid."

These sections of the Act are unmistakably clear indication that the statutory powers to issue permits with certain conditions for stage carriages are not meant for the benefit and protection of the permit-holders, but they are obviously meant for the benefit and protection of the general public. The dominant purpose of the Act in enacting these provisions is the benefit of the public and not of the permit-holders. In the House of Lords case also facilities on dog-racing tracks so that both the totalisator and the book-maker should be available for betting and the Act was not meant to be a protection for the book-makers as was claimed. The situation in the present case is for all practical purposes similar. So, under the provisions of the Act no implied right of

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action in favour of permit-holders as in this case, can be spelled out. The Act, in no provision, says that the conditions that are to be imposed in a permit are to be for the benefit of some other permit-holder on a different route. No provision in the Act justifies consideration of any such benefit as is claimed by the plaintiff company in this case. If in actually granting permits the Regional Transport authority takes into consideration such matters and adjusts the grant of permits to different claimants on different routes, then any such benefit arising out of such adjustment is not a benefit accruing in consequence of statutory provisions upon which a right of action can be founded but is, if at all it can be described as a benefit, a benefit allowed as a measure of expediency or convenience by the authority concerned. It is not this type of benefit upon the basis of which the case can be brought under the exception to the general rule that where a statute provides remedy by way of penalty for breach of statutory provisions, then that remedy, and no other, is to be looked to.

In consequence, I would dismiss the appeal with costs.

FALSHAW, J.—I agree.

D. K. M

Falshaw, J.

APPELLATE CIVIL.

Before Chopra and Gosain, JJ.

MST. KESRO, WIDOW OF CHATRU,—*Defendant-Appellant*

versus

MST. PARBATI (DAUGHTER OF PHULGARI),—*Plaintiff-Respondent.*

Regular Second Appeal No. 350 of 1949.

1957

August, 29th

Punjab Custom—Widow—Unchastity—Gaddis of Kangra —Unchastity, whether causes forfeiture—Whether such forfeiture causes extinction of the line of the donee—Gift—Reversion—Rule whether applies to non-ancestral property —Gift made to a stranger, whether reverts.