

Policy Options Note

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Anti-competitive Provisions in the Motor Vehicles Act, 1988

Case Study of Private Bus Operators in Nathdwara

This CUTS Policy Options Note captures a case of hardships faced by private bus operators and common masses in Nathdwara¹ because of the archaic provisions in the Motor Vehicles Act that result in loss of consumer welfare, competition distortion and give undue advantage to a lethargic government bus operation with loss of revenue for the state exchequer as well.

Background

As per the legislative mandate of Section 68C of the Motor Vehicles Act 1939 (that corresponds to Section 99 of the Motor Vehicles Act, 1988) a state transport undertaking may prepare a scheme ousting private bus operators in relation to any area or route and ply their own buses. However, the grounds to apply this provision rest on the ground of public interest, i.e. to provide efficient, adequate, economical and properly coordinated road transport services. Although, *prima-facie* this provision seems anti-competitive especially when new sectors are being opened up for private players; due to public interest considerations, the judiciary has justified such provisions.²

But, there are provisions in the Motor Vehicles Act, 1988 which invariably and clearly dampen competition in the market. Let us analyse Section 104 of the Motor Vehicles Act, which provides for the restriction on grant of permits in respect of a notified area or route. The proviso to Section 104, in utter violation of competition, mandates that temporary permits to private parties in respect of notified area or route can be provided only if the State Transport Undertaking has not applied to ply their vehicles on that particular route. And in case the State Transport Undertaking applies for permit on such routes, the existing permits to private parties will stand cancelled. Thus, merely on the basis of application a route can be reserved for the State Transport Undertaking even if they are not plying any vehicle on the route. Such provisions (Section 99 and proviso to Section 104) raise many questions such as:

1. Why is there a negative presumption against private bus operators that they cannot provide efficient, adequate, economical and properly coordinated road transport services?
2. Assuming but not conceding that the government on the ground of public interest can exercise monopoly over some routes, can a route be reserved just on the basis of application by the State Transport Undertaking even if they are not operating any vehicle in reality?
3. Is the imperative of public interest behind aforementioned provisions being served?

We try understanding the legal issue better through a real case study that not only highlights this anomaly but also demonstrates that general and indigent masses are put to hardships because of these archaic, unwise and anti-competitive provisions.

The Case Study of Private Bus Operators in Nathdwara

At the 12th meeting of the National Road Safety Council held on March 25, 2011, Babubhai Chaudhari, Founding Secretary, Srinath Private Bus Owner Society and a Member of the Council narrated his woes about being unable to ply buses on the *Nathdwara-Choti Sadri* route in spite of all his efforts, while commuters remain at the mercy of illegal private transporters who are plying as the Rajasthan State Road Transport Corporation (RSRTC) is not plying its buses.

A team of CUTS visited Nathdwara on April 06, 2011 and met with Babubhai Chaudhari, along with Shankar Chaudhari, President; Kiranlal Lohra, Secretary; and Suresh Gurjar, Member. The matter was discussed at length with the CUTS team and they also provided supporting documents. From the brief provided by them and perusal of documents the following picture emerged:

The RSRTC vide notification dated March 19, 1976 and later on October 05, 1985 published a draft scheme under Section 68-C of the Motor Vehicles Act, 1939, for the notification of various routes, to the complete exclusion of other persons, i.e. private bus operators. The reason for exclusion of private operators or the nationalisation of the routes was to provide efficient, adequate, economical and properly co-ordinated road transport services, and thus it was necessary in the public interest that road transport services on various routes including *Nathdwara-Choti Sadri* was run and operated by the RSRTC to the complete exclusion of other persons. As per the same gazette notification it was declared that commuters would be provided several facilities such as better buses, regular schedules, extra buses on important occasions etc.

Consequent upon the notification of these routes, private bus operators stopped operating their vehicles. Taradevi Chaudhari, a relative of Babubhai Chaudhari, applied for temporary permit for the route of *Nathdwara-Choti Sadri* on September 19, 2000 under Section 104 of the Motor Vehicles Act, 1988, that empowers the authorities to grant temporary permits on the routes where no RSRTC bus operates. Chaudhari mentioned in her application to the Regional Transport Authority (RTA) that there was no RSRTC bus operating on that route for the past eight years.

However, the application of Chaudhari was turned down as per the proviso to Section 104 citing that an application to operate on *Nathdwara-Choti Sadri* route was already made by RSRTC. Such a provision did not take into account that RSRTC was in fact not operating on that route and thus the objective of nationalising/notifying the routes to complete exclusion of private parties was getting frustrated. Aggrieved by this, Chaudhari made a complaint to the Regional Transport Officer, Udaipur under Section 86 of the Motor Vehicles Act, 1988. Section 86 provides that in case after the grant of permit no buses are operated by the operators, licence of the operator is liable to be cancelled or a penalty may be imposed.

In view of the allegation that there was no RSRTC bus on this route a departmental investigation was carried out which revealed the following facts:

1. The RSRTC accepted that there was shortage of buses with the corporation and that for the past eight years no bus was plying on *Nathdwara-Choti Sadri* route.
2. Fearing that private bus operators would be given permit to cater the mentioned route, RSRTC temporarily started the bus service which stopped after a short while citing shortage of buses as an excuse.
3. It was also found that instead of the complete route RSRTC was plying buses only on a part of it as it was not economically viable to operate buses on the complete route.

In spite of the findings by the Regional Transport Officer, till date, no final decision has been taken on this complaint and the common/poor commuters are left in the lurch.

Conclusion

Such instances of legislative provisions resulting in anti-competitive practices highlight the crying need to have a holistic competition policy. The policymakers should wake up to the imperative of ensuring competition in various sectors rather than stifling it. We realised that competition matters are closely knitted with consumer welfare. Poor commuters on the *Nathdwara-Choti Sadri* route wait for hours to board small jeeps and other such vehicles which are invariably overloaded. *Nathdwara*, being a famous pilgrimage site is thronged by people coming from every part of the country. A proper and efficient transport service thus may have contributed to the growth of adjoining areas.

Apathy by the RSRTC, short sightedness of the administration and the legislative provisions in the Motor Vehicles Act have resulted in other related problems. In the absence of State buses, illegal transportation is mushrooming on various routes, which is resulting in huge revenue loss to the state governments everywhere (this needs to be assessed). Further, in illegal vehicles commuters are herded together and safety measures are completely neglected. This very often leads to accidents. Thus, precious human life is also lost!

RSRTC is incurring losses from last 14 years and faces cash liquidity problems. The accumulated losses in the year 2009-2010 were ₹686.56 crore. Such whopping losses also justify the need to have an alternative. When it has become too cumbersome to operate, private players should also be allowed to operate their services.

A lesson here can be drawn from the deregulation of the Airline sector after the liberalisation era in 1991. This industry has witnessed tremendous growth and air travellers have benefited hugely by competition among the players. This success story includes cheaper air fares and better quality of services.

The justification for having state run bus services is that private operators often do not adhere to safety norms, overcharge consumers, and the quality of service is also poor etc. However, these problems can be tackled by having an effective regulatory system as in the airline sector. Thus, what is really important is to check the regulatory deficit in the road transportation sector rather than ousting private players and thus stifling competition.

Endnotes

1 Famous for Srinath Ji's temple, close to Udaipur, Rajasthan

2 A P State Road Transport vs P V Ramamohan Chowdhary and Ors, 1992 SCR (1) 830

Excerpt- Section 68-C of the Motor Vehicles Act, whose constitutional validity can no longer be questioned, gives power to the State Transport Undertaking to exclude the private operators completely or partially from an area or route or part thereof in the draft scheme. It gives exclusive power to offer transport service in that area or route or part thereof.

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