

(2001) 11 KAR CK 0033
In the Karnataka High Court
Case No : Writ Appeal No. 6205 of 1997

A. Diwakara Naik

APPELLANT

Vs

The Karnataka State Transport Authority, Bangalore and
Others

RESPONDENT

Date of Decision : 21-11-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 80 (3)

Citation : (2003) 1 ACC 394 : (2002) ILR (Kar) 1357 : (2002) 4 KarLJ 230 :
(2002) 3 KCCR 242 SN

Hon'ble Judges : R.V. Raveendran, J;N.K. Patil, J

Bench : Division Bench

Advocate : D.L.N. Rao, for the Appellant; G. Nagarajulu Naidu, A.G.A. for
Respondents-1 and 2 and Jayakumar S. Patil, for Respondent-3, for the
Respondent

Final Decision : Allowed

Judgement

R.V. Raveendran, J.—The appellant was the third respondent and third respondent herein was the petitioner in W.P. No. 22695 of 1997. Karnataka State Transport Authority ("KSTA" for short) and its Secretary are respondents 1 and 2 in the writ petition as well as in the appeal.

2. One Ratnakar Adhikari was the holder of permit No. TST 9/1994-95 to operate a stage carriage on the route Nethilapadavu to Krishnapura and back (four round trips per day by one vehicle). The details of the route was as follows:-

"Nethilapadavu, Gerukatte, Manjeswara, Talapady, Thokkottu (Pump well Circle, Kankanady), Mangalore bus Stand, Lady Hill, Urva Stores, Panambur, Surathkal, Krishnapura".

3. The said permit holder applied and obtained three variations of conditions of permit, u/s 80(3) of the Motor Vehicles Act, 1988 ("Act" for short) as detailed below:

First variation of conditions of permit:

3.1 The permit holder applied on 21-12-1994 for the following variation of the conditions of permit:

"(a) Curtailment of existing route from Nethilapadavu to Kankanady (three round trips);

(b) Curtailment of existing route from Krishnapura to Kankanady (four round trips); and

(c) Inclusion of the route between Kankanady to Kalpane (seven round trips)".

The said application was considered and granted by the KSTA and by resolution dated 30-12-1994 (pronounced on 9-1-1995) in Subject No. 267/1994-95, on the ground that the distance between Kankanady and Kalpane (extent of extension) was 18 kms. and that the curtailments and extensions sought were within the limits prescribed by Section 80(3) of the Act. In pursuance of it, the Secretary, KSTA issued an endorsement of variation of conditions of permit after harmonising the timings, on 21-3-1996. The effect of the curtailments and extension on the route covered by the permit were as follows:

(i) Nethilapadavu to Mangalore bus stand [one trip];

(ii) Mangalore bus stand to Kalpane [seven round trips];

(iii) Mangalore bus stand to Nethilapadavu [one trip].

Second variation of conditions of permit:

3.2 The permit holder again applied on 6-9-1995 for variation of conditions of permit by extension from Mangalore Bus Stand to Mangalore Railway Station (stated to be about a distance of one km.). That was granted by KSTA as per resolution published on 7-2-1996 in Subject No. 292/1995-96, on the ground that there was virtually no distinction between Mangalore Bus Stand and Mangalore Railway Station. A consequential endorsement of variation of conditions of permit was issued by the Secretary, KSTA, after harmonising the timings, on 29-3-1996. As a result, the altered route covered by the permit got further altered as follows:

(a) Nethilapadavu to Mangalore Railway Station via Gerukatte, Manjeswara, Talapady, Thokkottu (Pump well Circle, Kankanady), Mangalore Bus Stand (one trip);

(b) Mangalore Railway Station to Kalpane (seven round trips) via Mangalore Bus Stand, Kankanady, Alape, Arkala, S. Katte, Nethirakere, Kodman and Benjanpadavu;

(c) Mangalore Railway Station to Nethilapadavu (reverse trip of (a) above).

Third variation of conditions of permit:

3.3 The permit holder made a third application dated 19-8-1996 for grant of variation of condition of the permit as follows.-

"Curtailement of the route from S. Katte to Kalpane (in regard to four round trips) and extension from S. Katte to Abbettu (four round trips)".

According to permit holder the variation of condition of permit involved curtailement of route from S. Katte to Kalpane (7 kms.) and extension from S. Katte to Abbettu (7 kms.) in regard to four trips. The said application was considered and granted by KSTA and as per proceedings dated 30/31-8-1996 published on 2-9-1996, in Subject No. 193/1996-97. The Secretary, KSTA, issued a consequential endorsement dated 10-10-1996 assigning the revised timings. As a result, the route has again stood altered as follows:

- (a) Nethilapadavu to Mangalore Railway Station (one trip);
- (b) Mangalore Railway Station to Kalpane (three round trips);
- (c) Mangalore Railway Station to Abbettu (four round trips); and
- (d) Mangalore Railway Station to Nethilapadavu (reverse trip of (a) above).

4. Third respondent herein is a rival operator holding two permits to operate on the route State Bank to Adyar Katte (Adyar Launch Jetty). The entire route operated by him is common with the route covered by the aforesaid permit of Rathnakar Adhikari. Feeling aggrieved by the variations of the conditions of permit obtained by Rathnakar Adhikari, the third respondent filed W.P. No. 22695 of 1997 seeking the following reliefs:

(i) To quash the proceedings of KSTA dated 30/31-8-1996 (pronounced on 2-9-1996) in Subject No. 193/1996-97 (Annexure-F) granting the (third) variation of conditions of permit regarding stage carriage permit No. 9/1994-95, held by Rathnakar Adhikari;

and

A declaration that KSTA has no power or jurisdiction to grant variation of conditions of permit more than once and therefore the second and subsequent variations granted to Rathnakar Adhikari are null and void (vide Annexure-F, dated 30/31-8-1996);

(ii) To declare that all variations of conditions of stage carriage permits granted by Transport Authorities more than one time are null and void and without jurisdiction (vide Annexure-F, dated 30/31-8-1996).

(Note.--Though prayers, second part of prayers (i) and (ii) are general in nature, as the other affected permit holders are not impleaded, the third respondent has restricted the second part of prayers (i) and (ii) only to the validity of Annexure-F, dated 30/31-8-1996).

In the said writ petition filed by him, the third respondent herein contended that

Rathnakar Adhikari had adopted the ingenious method of making successive applications for variation of conditions of permit to get over the bar regarding extension/variation exceeding 24 kms. It was contended that variation of conditions of permit could be granted only once and that the KSTA granted three extensions to the route covered by the permit of Rathnakar Adhikari without application of mind and the aggregate of the three extensions exceed 24 kms., which is impermissible u/s 80(3) of the Act.

5. During the pendency of the writ petition, Rathnakar Adhikari transferred his stage carriage permit to appellant herein. Therefore, the name of appellant was substituted as third respondent in the writ petition in place of Rathnakar Adhikari.

6. The writ petition was allowed by order dated 6-11-1997. The learned Single Judge held that the said three variations of conditions of permit obtained by Rathnakar Adhikari were invalid, as KSTA, while granting the three variations of conditions of permit, had failed to record its satisfaction that such variations of condition of permit will serve the convenience of the public and that it is not expedient to grant a separate permit in respect of the original route as so varied/extended, as required u/s 80(3) of the Act. Therefore, he quashed the three resolutions of KSTA, Annexure-B, dated 30-12-1994, (published on 9-1-1995), Annexure-D published on 7-2-1996 and Annexure-F, dated 30/31-8-1996 (published on 2-9-1996) reserving liberty to the appellant to approach the Transport Authority afresh, for variation.

7. Feeling aggrieved, appellant has filed this appeal. The appellant contends that there is no ceiling on the number of variations of conditions of permit that could be obtained in regard to a permit. He also contends that the aggregate of the extensions does not exceed 24 kms. It is also pointed out that the learned Judge could not have quashed the first variation granted as per resolution dated 30-12-1994, as that was under challenge at all.

8. On the contentions urged, the following points arise for consideration in this appeal:

(i) Whether a Transport Authority has jurisdiction or power to vary the conditions of a permit more than once?

(ii) Where a permit holder seeks curtailment of a part of the route and extension from the point of curtailment to another terminus, whether the distance covered by the "curtailment" should be counted as part of "extension" for calculating the limit of 24 kms. u/s 80(3)?

(iii) Whether the learned Single Judge was justified in quashing the first and second variations of conditions of permit granted as per KSTA Resolutions dated 30-12-1994 and 7-2-1996?

(iv) Whether the third resolution of the KSTA, varying the conditions of the permit (Annexure-F) suffers from any infirmity and requires to be quashed?

Re: Point (i):

9. Third respondent has contended that having regard to the scheme of the Act, a stage carriage permit holder can apply for varying the conditions of permit only once and successive grants of applications for varying the conditions of the permits are not permissible.

10. Section 80 deals with the procedure in applying for and granting permits. Sub-section (3) of Section 80 deals with varying the conditions of permit. The relevant portions of the said sub-section are extracted below:

"80(3) An application to vary the conditions of any permit, other than a temporary permit, by the inclusion of a new route or routes or a new area or by altering the route or routes or areas covered by it, or in the case of a stage carriage permit by increasing the number of trips above the specified maximum or by the variation, extension or curtailment of the route or routes or the area specified in the permit shall be treated as an application for the grant of a new permit:

XXX XXX XXX

Provided further that.-

(i) in the case of variation, the termini shall not be altered and the distance covered by the variation shall not exceed twenty-four kilometers;

(ii) in the case of extension, the distance covered by extension shall not exceed twenty-four kilometres from the termini,

and any such variation or extension within such limits shall be made only after the transport authority is satisfied that such variation will serve the convenience of the public and that it is not expedient to grant a separate permit in respect of the original route as so varied or extended or any part thereof.

11. Sub-section (3) of Section 80 of the Act does not impose any ceiling on the number of applications that can be made for varying the conditions of permit, or that can be granted by the Transport Authority. Where the variations or extensions of the route sought, do not exceed 24 kms. with reference to the original route, and where the Transport Authority is satisfied that varying the conditions of permit will serve the convenience of public and that it will not be expedient to grant a separate permit in respect of the original route as so varied or extended or any part thereof, then any number of applications for varying the conditions of permit can be entertained and granted by such authority.

12. This Court has recently held in *R. Venkatesham Shetty and Ors. v. Sree Gajanana Motor Transport Company (Private) Limited, Sagar, Shimoga and Ors.* ILR 2001 Kar. 5085, that a stage carriage permit holder can file any number of applications for varying the conditions of permit provided that the variation of the route or extension of the route did not exceed 24 kms. from the termini of the original route.

13. We may also notice the fact that in addition to Section 80(3) dealing with grant of variations of the conditions of the permit on the application/s filed by the permit holder, there is a provision in the Act enabling the Transport Authority to suo motu vary the conditions of the permit. Section 72(2) authorises the Regional Transport Authority to attach to the permit the following among other conditions, while granting the permit:

(i) that the vehicle shall be used only in a specified area, or on a specified route or routes;

XXX XXX XXX

(xxii) that the Regional Transport Authority may, after giving notice of not less than one month,--

(a) vary the conditions of the permit;

(b) attach to the permit further conditions:

Provided that the conditions specified in pursuance of Clause (i) shall not be varied so as to alter the distance covered by the original route by more than 24 kilometres, and any variation within such limits shall be made only after the Regional Transport Authority is satisfied that such variation will serve the convenience of the public and that it is not expedient to grant a separate permit in respect of the original route as so varied or any part thereof.

When such a condition is attached to a permit, the Transport Authority can at any time during the currency of such permit (either suo motu or at the request of passengers/commuters/residents of an area) vary the conditions of such permit, after due notice to the permit holder, if he is satisfied that such variation will serve the convenience of the public and it is not expedient to grant a separate permit in respect of the original route as so varied or any part thereof. Even while exercising such suo motu power to vary the conditions of the permit, he cannot alter the distance covered by the original route by more than 24 kms. We do not propose to express any opinion as to whether such suo motu power gets exhausted on being exercised once u/s 78(2)(xxii) or whether such power can be exercised repeatedly. Suffice it to say that the interpretation we have placed on Section 80(3) does not automatically apply to exercise of power u/s 72(2)(xxii) of the Act. Be that as it may.

14. We hold that subject to fulfillment of the requirements of Section 80(3), there is no objection for grant of more than one variation of the conditions of the permit, u/s 80(3).

Re: Point (ii):

15. Sub-section (3) of Section 80 refers to applications to vary the conditions of a stage carriage permit by increasing the number of trips or by variation, extension or curtailment of the route or routes or area specified in the permit. Therefore, the sub-section contemplates alteration of a route by (i) variation; (ii)

extension; and (iii) curtailment. Each refers to a distinct and different change of the route. As there is a tendency to interchange these terms, we will clarify these terms with reference to Section 80.

15.1 In a "variation" of a route, both termini of the original route remain the same but the route between one end point and another end point gets altered by adopting a different route wholly or partly. In short, it refers to a deviation in the route without altering the starting point and termination point. When a change in route involves either of the termini of the original route being changed, then it is not a "variation" but may be an extension or curtailment.

15.2 In a "curtailment" of a route, a part of the original route is deleted or excised resulting in shortening of the route and consequent shifting of one of the termini to an earlier point on the original route.

15.3 In an "extension" of a route, the original route gets extended beyond one of the terminus resulting in creation of a new terminus, beyond the original terminus. Consequently, the old terminus becomes a point on the extended route.

15.4 In a "curtailment-cum-extension" of the route, a part of the original route upto one of the end points is excised and an extension is made on a different direction from the cut-off point, resulting in a new terminus.

15.5 These may be clarified by way of an illustration (not exhaustive, but only indicative). Let us say a permit has been granted for the route "town W" to "town X", to pass through the villages A, B and C. The original route is therefore "W-A-B-C-X". Let us assume that "town X" can be reached from town W through an alternative route through the villages D, E and F; that Y is a town beyond X; and that Z is a town lying in a direction different from that of town X.

(i) In a variation of route, the termini W and X remain unaltered, but there is change in the route. "W-A-B-C-X" may become "W-A-E-C-X" or "W-D-E-F-X".

(ii) In a curtailment of route, a part of the original route gets excised and consequently one of the points on the route becomes the termini. "W-A-B-C-X" may become "W-A-B-C" or "W-A-B" or "A-B-C-X" or "B-C-X".

(iii) In an extension of route, the original route is extended beyond one of the termini. Consequently, one of the termini becomes a point on the route. The original route "W-A-B-C-X" may become "W-A-B-C-X-Y".

(iv) In a curtailment-cum-extension of the route, a part of the original route is cut-off and from the cut-off point on the original route, a diversion is made in a different direction. The original route "W-A-B-C-X" thus becomes "W-A-B-C" on curtailment, and on extension from the cut-off point, becomes "W-A-B-C-Z".

15.6 Section 80(3) uses the terms "vary the conditions of any permit" and "variation of the route". The word "variation" when used in the term "variation of the conditions of the permit" has a meaning different from the meaning it has, when used in the term "variation of the route". "Variation of conditions of

permit" refers to any alteration of the conditions of the permit, inter alia, including an extension of the route or a curtailment of the route or a variation of the route or increase/decrease in the number of trips. "Variation of the route" refers to alteration of the route without changing the termini and is one of the several alterations falling under "variation of the conditions of the permit".

16. Section 80(3) prescribes a limit of 24 kms. as variation in route or extension of route, while varying the conditions of permit. But there is no such restriction or ceiling in regard to the extent of curtailment. Therefore, curtailment can be of any extent, that is even more than 24 kms. In *H.N. Jayamma v. Karnataka State Transport Authority*, a learned Single Judge (one of us) held that there is no limit in regard to curtailment and the extent of curtailment will not count, for calculating the limit of 24 kms. imposed for variations or extensions of the route. As curtailment is different from variation or extension and as the statute prescribes the ceiling of 24 kms. only in regard to variation and extension, it follows that there is no limit in regard to the extent of curtailment that can be effected. Further, the extent of curtailment cannot be counted for calculating the extent of variation or extension permitted. For example, if the route is from points A to C (60 kms.) via B, and if the permit holder seeks curtailment from B to C (20 kms.) retaining the remaining part of the route A to B (40 kms.) and seeks extension from B to D (15 kms.), then the extension is only 15 kms. and not 20 kms. + 15 kms. (35 kms.). We answer point (ii) accordingly.

Re: Point (iii):

17. The first and second variations of the conditions of permit was granted by KSTA by resolutions dated 30-12-1994 and 7-2-1996. The prayers in the writ petition (extracted in para 4 above) seek quashing of only the third variation, of the conditions of the permit (Annexure-F) and not the first and second variations of conditions of the permit. The third respondent has sought a general declaration that KSTA has no power to grant more than one variation of the conditions of contract and all variations granted by Transport Authority beyond the first variation of conditions of permit are null and void. He has however restricted prayer for quashing only in regard to permit No. TST 9/94-95, and that too, in regard to the third variation of conditions of permit granted by resolution dated 30/31-8-1996 and not the earlier two resolutions. There is no prayer at all relating to first variation and there is no consequential prayer for quashing in regard to second variation. Therefore, the learned Single Judge ought not to have quashed the first and second resolutions dated 30-12-1994 and 7-2-1996.

18. Secondly, even assuming that the writ petition contains a challenge to the first and second variations of conditions of permit granted on 30-12-1994 and 7-2-1996, the same will have to be rejected on the ground of delay and laches as the writ petition was filed only on 18-8-1997 i.e., more than two and a half years after the date of first resolution of KSTA and more than one and half year after the date of second resolution. No satisfactory reason is forthcoming to explain the delay. The third respondent did not file any revision u/s 90. The appellant

(and earlier his predecessor) have been operating the service based on such variations for a considerable time before the challenge.

19. We therefore hold that the learned Single Judge ought not to have quashed the first and second variations of conditions of permit.

Re: Point (iv):

20. We will now examine whether the third resolution dated 30/31-8-1996 (Annexure-F) varying the conditions of permit of KSTA suffer from any infirmity. In the said resolution, KSTA has stated that the curtailment sought is about 7 kms. and the extension sought is 7 kms., in regard to non-monopoly route and therefore there can be no objection for grant of variation of the conditions of the permit.

21. Sub-section (1) of Section 80 provides that the application for a permit of any kind may be made at any time and Sub-section (2) provides that the Transport Authority shall not ordinarily refuse to grant an application for permit of any kind made at any time. Sub-section (1) and (2) of Section 80 have liberalised the procedure for grant of permits under the Act to such an extent that the Supreme Court has observed that intending operators can get permits for the asking irrespective of the number of operators already in the field (vide *Mithilesh Garg, Vs. Union of India and others etc. etc.*, . Sub-section (3) enables filing of applications to vary the conditions of any permit. But grant of variation of conditions of permit by way of extension, variation or curtailment of the route is permissible only if the following conditions are satisfied: (i) where the change of the route sought, is an extension or variation of the route, the same shall not exceed 24 kms.; (ii) the Transport Authority should be satisfied that such variation will serve the convenience of the public and that it is not expedient to grant a separate permit in respect of the original route as so varied or extended or any part thereof.

22. It is therefore clear that before granting any extension, variation or curtailment of the route, the Transport Authority should examine the matter and record a finding that (a) the variation or extension of the route sought does not exceed 24 kms. with reference to the original route; (b) such variation/extension will serve the convenience of public; and (c) it is not expedient to grant a separate permit in respect of the original route as so varied or extended or any part thereof. If any of the three conditions is not satisfied, the request for variation of the conditions will have to be rejected. Further, if the resolution/order of the Transport Authority does not expressly or impliedly indicate the application of mind and decision on these three aspects, the resolution/order of the Transport Authority will not be in accordance with Section 80(3) and thus, will be open to challenge. We therefore agree with the learned Single Judge that recording of findings on these three aspects by the Transport Authority is necessary, to confer validity on the order granting variation of the conditions of the permit.

23. KSTA has not recorded its satisfaction that the variations in conditions of permit will serve the convenience of the public, and that it is not expedient to grant a separate permit in respect of original route as so varied or extended or any part thereof.

24. We have already held that any number of variations of conditions of permit can be granted provided the aggregate of the "variations" or "extensions" as the case may be, of the route, does not exceed 24 kms. with reference to the original route. In this case, while granting the first variation of conditions of permit, KSTA has stated that extension is 18 kms. The second variation of conditions of permit is stated to be with reference to an extension by 1 km. The third variation of conditions of permit is stated to be 7 kms. The appellant contends that the extension under the third variation of conditions of permit should not be taken into account, as it is not in addition to the earlier extensions, but in lieu of part of the earlier extension; that is, out of the extension of 18 kms. from Kankanady to Kalpane, a portion between S. Katte to Kalpane (7 kms.) has been curtailed and the route has been extended from S. Katte to Abbettu (7 kms.) and therefore the extension continues to be only 18 kms. On the other hand the third respondent contends that the total extension will exceed 24 kms. when reckoned with, reference to the originally sanctioned route. This aspect of the matter has not been examined by KSTA. This disputed question requires to be considered by KSTA with reference to the actual distances. The third resolution dated 30/31-8-1996 is therefore held to have been passed in violation of Section 80(3). Hence, the order of the learned Single Judge does not call for interference insofar as the third variation of conditions of the permit granted by KSTA.

25. The learned Counsel for the appellant submitted that even the challenge to third variation of the conditions of permit was belated and without exhausting the efficacious remedy of revision u/s 90 of the Act and therefore it ought to be deducted. It is no doubt true that approaching this Court under writ jurisdiction without exhausting the remedy by way of revision should be discouraged and deprecated. But where special circumstances or reasons exist justifying exercise of writ jurisdiction, mere availability of an alternative remedy will not be a bar to entertain writ petitions in such matters. The second and third prayers in the writ petition are of a nature which normally cannot be granted by the Tribunal. The delay in challenging the third resolution is also not of an extent, to reject the writ petition on the ground of delay and laches. Therefore, we feel that on facts, the discretion exercised by the learned Single Judge in entertaining the petition and granting relief in regard to third resolution is not open to challenge.

26. In view of above, this appeal is allowed in part as follows:

(a) Order of the learned Single Judge dated 6-11-1997 in W.P. No. 22695 of 1997 is set aside insofar as it relates to quashing of resolutions dated 30-12-1994 (Annexure-B) and 7-2-1996 (Annexure-D) passed by the KSTA, Bangalore;

(b) The order dated 6-11-1997 is W.P. No. 22695 of 1997 quashing of resolution dated 30/31-8-1996 (Annexure-F) passed by KSTA is, however, upheld;

(c) As a result, the first respondent (KSTA) shall now reconsider the application dated 19-8-1996 for third variation of the conditions of the permit (by treating the appellant as the applicant in place of Rathnaiar Adhikari) in accordance with law and the observations above, after giving an opportunity of hearing to the appellant and the third respondent. Compliance within four months from the date of receipt of a copy of this order;

(d) Pending such decision by KSTA, appellant will be entitled to continue operation of existing services on the basis of third variation of conditions of permit in pursuance of the resolution dated 30/31-8-1996 (Annexure-F); and

(e) Parties to bear their respective costs.