

(1964) 01 MAD CK 0038
In the Madras High Court
Case No : Writ Appeal No. 293 of 1962

A. Somasundara Reddiar	Vs	APPELLANT
K.M.S. Roadways (P) Ltd. Jayankondan and Others		RESPONDENT

Date of Decision : 08-01-1964

Acts Referred:

Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 21
Motor Vehicles Act, 1988 — Section 43
Tamil Nadu General Clauses Act, 1891 — Section 15

Citation : AIR 1965 Mad 58 : (1964) ILR (Mad) 662

Hon'ble Judges : S. Ramachandra Iyer, C.J.; Ramakrishnan, J

Bench : Division Bench

Judgement

S. Ramachandra Iyer, C.J.

(1) This appeal from the judgment of Veeraswami J. raises a question as to the validity of an order of the State Government, purporting to be

made under S. 43-A(2) of the Motor Vehicles Act, whereby two existing routes for running stage carriages were curtailed in part and extended in

another direction.

(2) The appellant, a bus operator, had permits to run stage carriages over two routes, namely, Tiruchirapalli-Jayankondan-Sendurai and

Tiruchirapalli-Jayankondan-Madanathur. In both the cases, the buses have to run over the same road from Tiruchirapalli to Jayankondan;

thereafter, the route to Sendurai goes north, while that to Madanathur goes south. Originally, the buses ran only from Tiruchirapalli to

Jayankondan. That route was sanctioned sometime prior to the years 1938. Subsequently, the routes were varied by the Regional Transport

authority, so that the buses destined for Jayankodan were allowed to run to Madanathur and Sendurai. Those changes were effected in the years

1949 and 1954 respectively. The appellant, who held the two permits, moved the Government to issue an order under S. 43-A(2) of the Act, so

as to extend the routes to Mayuram, situate east of Jayankondan, after passing through several populous villages. His proposal was that in the

existing routes, the sectors, from Jayankondan to Madanathur and to Sendurai should be cut out and the rest of the route extended from

Jayankondan to Mayuram. This was acceded to by the Government, who by G. O. No. 98 Home, dated 5-1-1962 notified the extension.

The appellant followed up that order by an application under S. 57(8) of the Act for variation of the conditions of his permit, so as to enable him to

run his two buses up to Mayuram, abandoning the service available to passengers from and to places between Sendurai and Madanathur to

Jayankondan.

(3) It was at this stage that the first respondent, another bus operator, filed two applications to this court under Art. 226 of the constitution for the

issue of writ of certiorari to quash the order of the Government or, in the alternative, for a writ of mandamus to direct the concerned Regional

Transport authority to forbear from giving effect to that order. The order of the Government being an administrative one, no question of issue of a

writ of certiorari can arise. The learned Judge, therefore, dismissed that application. But the petition for the issue of a writ of mandamus was

successful; the learned Judge held that it was not competent for the Government to extend a route after curtailing a part of it.

(4) At first we entertained certain doubts whether the power of the Government to vary the route, in the way they had done it, could be justified

under S. 21 of the General Clauses Act (Central Act X of 1897), corresponding to S. 15 of the Madras General Clauses Act I of 1891. But it

was conceded that the opening up of the original route from Tiruchirapalli to Jayankondan was not by virtue of any direction of the State

Government under S. 43-A(2) of the Act, which was introduced in the Act only subsequently, i.e. in the year 1954. If the original notification

regarding the opening up of the route was not by virtue of any statutory power to issue notifications, an extension of that route cannot be justified

under the provisions of S. 21 of the General Clauses Act.

(5) Now coming to the main point in the case, S. 43-A(2) says:

The State government may, on a consideration of the matters set forth in sub-section (1) of S. 47, direct any Regional Transport authority or the State Transport authority to open any new route or to extend an existing route or to permit additional stage carriages to be put, or to reduce the number of stage carriages on any specified route." But the power of the Government under the aforesaid provision is only a general administrative power, which cannot be utilised for the benefit of any individual operator. Mr K. Rajah Iyer, appearing for the appellant, contends that the power to extend conferred under the aforesaid provision must imply a power to curtail and extend. A similar question arose in *S.R. Kuppuswami Chettiar Vs. M. Ramachandran and Another*, where an operator applied for a variation of his route by cutting out a portion of it and diverting the bus to a different destination. It was held that it was not a permissible variation under the provisions of the Act. That view has been accepted by the majority of Judges in the Full Bench decision in *S.V. Natesa Mudaliar, Proprietor, S.L.N.S. Transports Vs. Sri Dhanapal Bus Service Private Ltd. and Others*, .

(6) But, what we have to considering the present case is different. S. 43-A(2) confers a power on the State Government to extend a route. The word "extend" means, "to prolong, to enlarge." Extension of a route from a point at the middle of it by abandoning a portion of the original route, cannot be held to be a case of extending the route within the meaning of S. 43-A(2). As has been pointed out in *S.R. Kuppuswami Chettiar Vs. M. Ramachandran and Another*, when a permit fixes two termini on a particular route, the cutting up of a part of the route and abandonment of one of the termini thereby, will affect the integrity of the route for which the permit had been granted. But learned counsel for the appellant has contended that as extension is only a form of variation, the word "extend" in S. 43-A(2) should be read as including a power of variation.

Variation, it is said, will include a power to abandon a part of the route and get the rest of it extended. In the Full Bench decision, to which we referred just now, *Jagadisan J.* defining the word "variation" said, that it, means a departure from the former or a normal condition or from a standard or

type. any deflection of the route, whether it be by way of curtailment and engrafting of another area, or whether it be a mere extension of the pre-existing route by a few miles, or whether it be by way of a change of the two termini, would amount to a variation".

This has been relied on to support the interpretation put forward Fallacy underlies the argument. The word "extend" in the statute must, in the absence of any indication in the enactment itself, be given its popular meaning. To say that the word "extend" will be comprehended by the word "variation" and that the "variation" in turn might in certain circumstances mean curtailment, and therefore the word "extend" should involve the idea of curtailment, is wrong logic amounting to quibbling. For, if that method of interpretation were to be adopted the court will have to give a meaning which will be the very reverse of the actual meaning of the word.

(7) Mr. Rajah Aiyar, however, invited our attention to a recent judgment of ours in P.M.ST.P.L.CT. Palaniappa Chettiar Vs. E.S.S.S. Varusai

Muhammad Rowther, where speaking of Sec. 43-A(2) it was observed, Section 43-A(2) deals with a general power in the Government to alter or vary routes without reference to the qualification of particular applicants for permits".

Relying upon this statement, he argued that Section 43-A(2) would empower the State Government to vary the route, whether by extending or curtailing the same. We regret that in making the observation above extracted, we have not been quite accurate, as the section only refers to a power of extension of a route and not of variation. It will be noticed that the actual decision in that case did not depend upon that observation, which was incidental. We cannot, therefore, accept the contention that the power of extension granted under S. 43-A(2) would include the power to curtail a part of the route and extend the rest. To accept that contention and interpret the statute in that way would mean that it would be open to the State Government to retain only a vestige of an old sanctioned route, which was presumably opened for the benefit of the public, and divert the buses to a different destination altogether. That could hardly have been the intention of the legislature when it conferred an administrative power upon the State Government to issue general instructions for the purpose of extending a route, which implies keeping intact, the two termini of the

sanctioned route.

(8) It has next been argued that the present route should on the principle of S.R. Kuppuswami Chettiar Vs. M. Ramachandran and Another, be

regarded as a new route, and as the State Government has the power of opening up of a new route, it should be held to have so done in the instant

case. But the Government did not purport to open up any new route under the impugned notification. What it did was to permit the curtailment of a

part of the existing route and to extend the remaining part to Mayuram. If the argument were to be accepted, then the old route must be held to

have been entirely abandoned in which case the appellant would have to surrender his permit. This, however, he is not prepared to do. Nor is it the

case of any party that the new routes are in addition to the old ones. What the appellant wants is that his permits should be altered in such a way

that he is able to take his buses from Tiruchirapalli straight to Mayuram, without serving the area between Jayankondan to Madanathur and

Jayakondan to Sendurai. It will be a misnomer to call this either a new route or the extension of an old one.

(9) We, therefore, agree with the learned Judge that G. O. No. 98 Home, dated 5-1-1962 was one beyond the powers of the Government not

being authorised by S. 43-(2) of the Motor Vehicles Act.

(10) The appeal fails and is dismissed with costs.

(11) Appeal dismissed.