
(1994) 11 MAD CK 0116
In the Madras High Court
Case No : Writ Appeal No. 675 of 1982

Anna Transport Corporation Ltd.

APPELLANT

Vs

K. Ramachandra Naidu

RESPONDENT

Date of Decision : 28-11-1994

Acts Referred:

Motor Vehicles Act, 1939 — Section 57(3), 68B, 68C, 68D, 68F(1D)

Citation : (1994) 11 MAD CK 0116

Hon'ble Judges : K.A. Swamy, C.J.;Raju, J

Bench : Division Bench

Advocate : M. Palani, for the Appellant; P. Vedavalli, for the Respondent

Judgement

Raju, J.—This Appeal is directed against the order of the learned single Judge dated 13.10.1982 in W.P. No. 4343 of 1980. The third Respondent in writ petition, which is a State Transport Undertaking is the Appellant before us. The first Respondent, a private transport operator, operating his stage carriage on the inter-State route Salem (in Tamil Nadu) to Chittoor (Andhra Pradesh) filed W.P. No. 4343 of 1980 before this Court praying for a writ of certiorarified mandamus to call for and quash the scheme for Nationalisation approved u/s 68-D of the Motor Vehicles Act, 1939 in G.O.Ms. No. 579, Home, dated 7.4.1975 and published in the Tamil Nadu Government Gazette dated 16.6.1975 in respect of the inter-state route Salem-Chittoor, and consequently direct the 2nd Respondent to forbear from giving effect to the approved scheme in so far it relates to the Petitioners permit on the route in question.

2. The stand taken for the 1st Respondent herein before the learned single Judge was that he was granted an inter-State permit to ply his stage carriage on the inter-State route Salem-Chittoor covering a distance of 169-5 miles or 271-2 K.Ms that the permit was granted by the State Transport Authority, Hyderabad and the same was duly counter-signed by the State Authority, Madras in the year 1962, that periodically the same was being renewed in accordance with law, that when it was about to expire on 4.6.1980, the 1st Respondent applied for renewal

of the permit within the prescribed time on 3.1.1980 before the State Transport Authority, Hyderabad and that in view of the inter-State agreement between the Government of Tamil Nadu and Andhra Pradesh notified in G.O.Ms. No. 1000, Home, dated 3.6.1975 the permit in question on the route under consideration was allotted to the State of Tamil Nadu as per Serial Number 15 of Part-B of Appendix thereto and, therefore, the application for renewal was transferred to the State Transport Authority, Madras for consideration and disposal. The 1st Respondent also appears to have moved the State Transport Authority, Madras and the said authority notified the renewal application u/s 57(3) of the Motor Vehicles Act, 1939 on 4.4.1980. Except a balated representation objecting to the renewal made by the Appellant-Corporation, no other representations were said to have been received. Since, in the meantime the permit was about to expire, the 1st Respondent was granted with a temporary permit for two months from 5.6.1980 to 4.8.1980, pending disposal of the renewal application.

3. In the meantime, it may be mentioned that on 27.06.1968 the Tamil Nadu State Transport Department published a draft scheme u/s 68-C of the 1939 Act and after undergoing the required formalities, the draft scheme was also finalise and approved in G.O.Ms. No. 579, Home, dated 7.4.1975 and after getting the approval of the Central Government the approved scheme was also duly published in the Tamil Nadu Government Gazette dated 18.6.1975. Having regard to the terms of the scheme, according to the Appellant the 1st Respondent stood excluded from operating his services and was not entitled to the renewal sought for though the stand of the 1st Respondent private transport operator was that notwithstanding the scheme he was entitled to operate his services and, therefore, he would be entitled to his renewal. Anticipating rejection of the renewal application in the wake of rejection of a similar application in respect of some other route the 1st Respondent has filed W.P. No. 4343 of 1980 as noticed supra and obtained as an interim measure, pending disposal of the main writ petition, an order of statu quo in respect of the Petitioner's vehicle and services and as a consequence of the same, the 1st Respondent was continuing his services under temporary permits and direction of this Court.

4. When the main writ petition came up for hearing on behalf of the 1st Respondent-private operator, it was contended before the learned single Judge as hereunder:

(a) That the approved scheme made in modification of the draft scheme was violative of the principles of natural justice for failure to give notice and opportunity to the 1st Respondent who would be adversely affected by the scheme;

(b) The approved scheme only gave effect to the Inter-State agreement and inasmuch as the Inter-State agreement has been struck down by the Andhra Pradesh High Court, the scheme also has to fail and therefore, the entire proceedings are vitiated; and

(c) In any event, on a proper interpretation of the approved scheme, the Petitioner cannot be excluded and would be entitled to run his bus on the route in question.

The Appellant as also the other departmental authorities of the State Government opposed the claim. On consideration of the respective claims made at the hearing, the learned Judge arrived at the following conclusions:

(a) There had been no violation of the principles of natural justice inasmuch as both under the draft as well as the approved scheme there is no exclusion of the Andhra Pradesh State share of permits as per the inter-State agreement from time to time covering the entire route;

(b) As for the contention that the draft as well as the approved scheme did not effectively exclude the 1st Respondent private operator, having regard to the entries 5(a), (b); 6(a), (b); 7(a) and (b) and also the inclusion of the name of the 1st Respondent in Annexure I and II of the draft scheme and Annexure II of the approved scheme, the learned single judge was of the view that the intention of the authorities that the scheme was to the total exclusion of all operators on the route Salem-Chittoor had not been effectively brought out in the scheme as published and, therefore, cannot be implemented as excluding the operation of services by the 1st Respondent and consequently the renewal application deserved to be considered on that basis.

(c) When once the material part of the inter-State agreement dated 03.06.1975 between the State of Andhra Pradesh and State of Tamil Nadu was struck down by the High Court of Andhra Pradesh, then the approved Scheme also has to fall and consequently the 1st Respondent's application for renewal should be considered without reference to the approved scheme which according to the learned Judge was incapable of implementation in so far as the Petitioner was concerned.

5. Hence, the above Writ Appeal by the 3rd Respondent in the writ petition. The other Respondents to the writ petition also appear to have filed a separate writ appeal but with a delay of 150 days with an application for condoning the delay in filing the writ appeal. On 04.03.1986 a Division Bench of this Court declined to condone the delay and rejected the said appeal. When the present writ appeal came up for final hearing, the same was dismissed on 19.09.1989 on the only ground that inasmuch as the writ appeal filed by the other Respondents in the writ petition had already been dismissed the present writ appeal was barred by the principle of res judicata and as such was not maintainable. Thereupon, the Appellant herein pursued the matter before the Supreme Court on appeal and the Apex Court in the judgment reported in Managing Director, etc. Vs. K. Ramachandra Naidu and Another, set aside the order of the Division Bench dated 19.09.1989 dismissing the appeal and remitted the matter to this Court with liberty to the parties to raise all such pleas as are available to them in law in respect of their respective claims before this Court. Consequently, the Writ

Appeal has been set out for hearing and final disposal on merits.

6. Mr. M. Palani, Learned Counsel for the Appellant, contended that the construction and interpretation placed by the learned single Judge on the scope, extent and effect of the approved scheme are contrary to law and cannot be justified. It is stated that inasmuch as it is beyond controversy that the 1st Respondent private operator is operating on the entire route covered by an approved scheme of nationalisation and is not one covered by the protective clause viz., being one not Ming within the share of permits earmarked or allocated to the State of Andhra Pradesh under the inter-State reciprocal agreement dated 3.6.1975 or any subsequent agreement in force, the 1st Respondent who is not only governed by the approved scheme but who stood excluded from performing or continuing his transport services on the nationalised route is not entitled to the renewal sought for. It was also contended that the reasons assigned by the learned single judge for coming to the conclusion that the scheme as approved was incapable of implementation in so far as the 1st Respondent was concerned is unsustainable in law and that the decision of the Andhra Pradesh High Court rendered in respect of the Inter-State agreement does not in any manner undermine the efficacy and binding force of the approved scheme against all those concerned and covered by the scheme including the 1st Respondent. It was further contended that having regard to an earlier decision of Division Bench of this Court dated 29.6.1994 in W.A. No. 331 of 1991, *V. Gowri v. Raman Roadways* represented by its Proprietor R. Venkatavaradan, even a operator cannot claim a right to make an addition to the existing route overlapping the route included in the scheme for the purpose of maintaining the continuity of the existing service on the route or the area not covered by the scheme and the duration, and therefore, the first Respondent cannot claim to be a protected person in respect of the nationalised route in question. Finally, it has been contended on behalf of the Appellant that having regard to the latest decision-reported in *J.T. 1994 (5) S.C. 426 (supra)*, persons like the first Respondent who had their permits or renewals granted under the 1939 Act are not entitled to renewal of such permits under the Motor Vehicles Act, 1988 beyond the currency of the period for which it was earlier granted or renewed under the 1939 Act. Consequently, it was submitted that the first Respondent cannot be granted renewal as on date under the new Act.

7. Miss P. Vedavalli, Learned Counsel appearing for the first Respondent-private operator, while trying to justify the order of the learned single Judge by adopting the reasons assigned therefor in the order, also relied upon the decision reported in 1987 Writ L.R. 144. It was further contended that the first Respondent is entitled to be relegated to the Andhra Pradesh authorities for considering the claim of the third Respondent for renewal and that the order of the learned single Judge is quite in accordance with law and does not call for interference in our hands.

8. We have carefully considered the submissions of the Learned Counsel

appearing on either side. So far as the submission made challenging the construction and interpretation placed by the learned single Judge on the scope, extent and effect of the approved scheme and consequently the further conclusion that the approved scheme is incapable of being implemented in so far as the third Respondent is concerned, the Learned Counsel invited our attention to the relevant clauses in the draft as well as the approved scheme and a reference to the same would be necessary to appreciate the correctness of the stand taken before us. In the draft scheme published inter Section 68-C of the 1939 Act, the route is shown to be Salem to Chittoor in the schedule and particularly in Clauses 2 and 3(i), it is stated as hereunder:

2. Whether operation by the State Transport undertaking shall be the exclusion of other persons or otherwise : To the exclusion of other persons as detailed item 3 below.

3. If the operation shall be to the exclusion of other persons:

(i) Whether such exclusion shall be complete or partial : To the complete exclusion of other persons in respect of permits covering the entire route referred to in item.

In Annexure-I, particulars of private operators operating on the entirety of the route are shown and Serial No. 3 refers to the first Respondent In Annexure-II, particulars of private buses plying on sectors of the proposed new route are furnished and the first Respondent is shown as Serial No. 40. In Column No. 3 of Annexure-II which disclosed details relating to the sector overlapping the scheme of nationalisation, it is stated that the distance is between Thoppur to Chittoor upto district border (65 miles). After approval, when the scheme was finalised, a list was published. Clauses 2 and 3(i) of Schedule - I are as hereunder:

2. Whether operation by the State Transport undertaking shall be to the exclusion of other persons or otherwise. : To the exclusion of other persons as detailed in item 3 below.

3. If the operation shall be to the exclusion of other persons

i) Whether such exclusion shall be complete or partial : To the complete exclusion of other persons other than those with Government of Andhra Pradesh State share of permits as per inter-State reciprocal agreement from time to time in respect of permits covering the entire route referred to against item I above.

In Annexure-I meant for furnishing particulars of private operators operating the route from Salem to Chittoor, it has been stated to be nil apparently for the reason that by then the regular renewed permit came to an end when considered with reference to the particulars disclosed in Annexure-I of the draft scheme and having regard to Section 68-F(1D) of the Act. In Annexure-III wherein particulars of private buses plying on sectors of the proposed new route for nationalisation, the name of the first Respondent finds place as Serial No. 40 and the details relating to the overlapping sector as in the draft scheme are disclosed. A reading

of the clauses relating to the Schedule-I both in the draft scheme as also in the approved scheme would go to show that it was meant to completely exclude operation of services by all persons other than the State Transport Undertaking in respect of permits covering the entire route, other than those whose permits fall within the Government of Andhra Pradesh State share of permits as per the inter-State reciprocal, agreement from time to time in respect of permits covering the entire route. Clause 7 of Schedule - II as found in the draft as well as the approved schemes is as hereunder:

7. Particulars of portion of the route of the area- covered by the scheme :
Number of State carriages Number of service performed

(a) Now operated by other persons : As in Annexure II

(b) Proposed to be permitted to be operated by other persons to maintain continuity of their existing services on routes or areas not covered by the scheme and the duration. : Same as in Annexure-II without prejudice to any future modifications, etc.

A careful perusal of the above would show that the persons shown in Annexure - II who were permitted to operate to maintain continuity of their existing services are of those on particular sectors of the route and not those who are operating on entirety of the route.

9. The approved scheme as duly published u/s 68-D of the 1939 Act is law and by virtue of the provisions contained in Section 68-B of the Act will have overriding effect and in cases of conflict between the provisions of a scheme or the Inter-State Agreement, it is the provisions of the approved scheme that shall prevail. A reading of the scheme particularly the portions in Schedules I and II would make it clear that the same is one of total exclusion when it concerns the operation and grant of permits on the entirety of the route. This is obvious from Clauses 2 and 3(i) of Schedule - I referred to supra. Sub Clauses (a) and (b) of Clause 7 of Schedule II only protect such of those operators who are only performing their service on portions of the sector. For the purpose of maintaining continuity of his existing services on routes or area not covered by the schemes and the duration, the first Respondent cannot legitimately claim himself to be one within the Government of Andhra Pradesh State share of permits as per Inter-State Reciprocal agreement. It is on that account only, his application for renewal itself has been transferred by the authorities of Andhra Pradesh to the authorities in this State for consideration. Therefore, he cannot claim to be one excepted from the operation of the total exclusion clause which has the effect of excluding all persons other than the State Transport Undertaking on the entirety of the nationalised route. The fact that the first Respondent is operating on the entirety of the route and claims a right of renewal to operate and perform his service on the total length and the full sector of the nationalised route Salem to Chittoor is beyond controversy. In view of this, we have no hesitation in holding that the scheme being one of total exclusion of those persons performing the

service on the entirety of the route other than those falling within the excepted category of persons and the first Respondent being one such not falling within any of the excepted class or category cannot claim to be entitled to the renewal sought for. The findings of the learned Judge in so far as he has come to the conclusion that the renewal application of the first Respondent has to be considered without reference to the approved scheme do not have our approval. The conclusions of the learned Judge in this regard, if allowed to remain, would not only be destructive of the very scheme approved and duly published but also would be derogatory of the law governing the matter. The decision as reported in 1987 Writ L.R. 144 (The Regional Transport Authority, Madras-18 v. A.S. Shanmugham) will have no application to the case before us in view of the nature of the excepted class or category concerned in this case and the limited nature of protection accorded in respect of an Inter-State route. Unlike the case considered in 1987 Writ L.R. 144 (supra) the interpretation of the scheme under consideration does not give room for much doubts or difficulties and there is no need for applying the principle of mistake or lapse which alone did not have the approval of the Court in the earlier, when pressed into service to clear a doubt.

10. The next submission that requires to be considered is as to whether the approved scheme could be said to be incapable of being implemented in so far as the first Respondent is concerned. The learned single Judge came to such a conclusion on the ground (a) that the name of the first Respondent found place, in so far as the draft as well as the approved schemes are concerned, in Annexure II; (b) that with the declaration granted by the Division Bench of the Andhra Pradesh High Court in the decision reported in T.N. Raghunatha Reddy Vs. Government of Andhra Pradesh and Others, , the Inter-State Agreement must be considered to have gone and as an inevitable consequence of which the draft scheme also would fall. The Inter-State agreement has not been totally scrapped by the Division Bench of the Andhra Pradesh High Court in the decision reported in T.N. Raghunatha Reddy Vs. Government of Andhra Pradesh and Others, . The interference by the Division Bench was only to the extent of the discrimination perpetuated under the Agreement by a clause which provided that operators of States other than Andhra Pradesh were deprived of their rights to apply for permits on routes specified in Part "A" and operators of States other than Tamil Nadu were deprived of their rights to apply for permits on routes specified in Part-B. As a matter of fact, the learned Judges of the Division Bench found offending portion of the Inter-State agreement to be easily severable without affecting the rest of the agreement which was also considered to be good enough for being given full effect. The assumption of the learned Judge that the Inter-State agreement itself has gone has no basis either on facts or on laws and consequently the conclusion arrived at on that basis by the learned Judge that the scheme also has to fall has to be rejected. Equally, the conclusions of the learned Judge that the entire scheme as approved is inconsistent and the intention of the authorities to bring about a total exclusion of all operators on the route Salem to Chittoor has not been effectively brought out in the scheme as

published are not acceptable. It is only in the draft scheme if at all the name of the first Respondent was shown both in Annexure-I and Annexure-II. In the approved scheme as published, the name of the first Respondent has been shown in Annexure-II. As held by us earlier, having regard to the fact that the approved scheme is one which contemplates complete exclusion of persons other than those excepted and inasmuch as the first Respondent does not fall in the excepted category of persons viz., (a) merely operating on a portion or particular sector of the nationalised route or (b) can claim himself to be a person who belongs to the category of those with the Government of Andhra Pradesh State share of permits as per the Inter-State Reciprocal Agreement from time to time, we have to give full effect to the recitals in the operative portion of the scheme contained in Schedule-I and the mere fact that the first Respondent's name finds place in Annexure-II does not have the effect of undermining the efficacy of the approved scheme or the object of total exclusion proclaimed in the scheme except in respect of those excepted. As a person who operates and one claiming a right to operate on the entirety of the nationalised route Salem to Chittoor, the first Respondent is hit by the total exclusionary clause and for our part we are unable to appreciate or accept or approve the plea of any inconsistency coming to the rescue of the first Respondent to make the scheme either inconsistent or unworkable.

11. In our view, the above conclusions of ours are sufficient in law to reject the challenge to the draft scheme and the consequent right claimed for a renewal of the first Respondent's permit on the entirety of the nationalised route Salem to Chittoor ignoring the draft scheme. At the same time, we consider it necessary to advert to the further plea that after the repeal of the 1939 Act and with the coming into force of the Motor Vehicles Act, 1988 and the Rules made thereunder, the first Respondent is not entitled to any renewal beyond the expiry of the period or duration for which the renewal has been made under the repealed Act except by means of a grant to be made on an application for a fresh grant under the new Act. The decision of the Supreme Court reported in J.T. 1994 (5) S.C. 426 (supra) is directly on the point and is against the first Respondent and on this ground also, the first Respondent cannot have a renewal of his permit as prayed for, since the right of renewal as in the Supreme Court case must be considered to have stood repealed with the period of grant or renewal of the permit under the repealed Act. The fact that the first Respondent has been, all along even after the approved scheme, operating his vehicle and performing services does not in any manner affect the legal principles laid down by us supra. The first Respondent has been operating his vehicle from time to time either under orders of this Court or pursuant to temporary permits issued and not pursuant to any regular grant or regular renewal. The arrangements made pending proceedings before this Court or pursuant to directions issued pending disposal of the application for renewal cannot be pressed into service to claim any vested or legally protected right of renewal on the route in question ignoring the approved scheme which provides for total exclusion of persons other

than those excepted, on the entirety of the route. The order of the learned judge which is the subject matter of this Writ Appeal, therefore, is liable to be and is hereby set aside and consequently the writ petition filed by the first Respondent shall stand dismissed. In the circumstances of the case, there will be no order as to costs.

12. Immediately after we pronounced the judgment, Learned Counsel appearing for the writ Petitioner made, an oral application seeking a certificate that the case involves a substantial question of law of general importance, which needs to be decided by the Supreme Court. We are of the view that the questions decided by us are not new so as to give a certificate to the writ Petitioner that the case involves a substantial question of law of general importance, which needs to be decided by the Supreme Court. Hence, the Certificate is refused.