

(1998) 12 AP CK 0079
In the Andhra Pradesh High Court
Case No : WA No. 2111 of 1998

APSRTC

APPELLANT

Vs

Dy. Transport Commissioner and Secretary, RTA, Guntur and
Others

RESPONDENT

Date of Decision : 24-12-1998

Acts Referred:

Motor Vehicles Act, 1988 — Section 68

Citation : (1999) 2 ALD 113 : (1999) 1 ALT 561

Hon'ble Judges : P. Venkatarama Reddi, Acting C.J.; V. Bhaskara Rao, J

Bench : Division Bench

Advocate : Mr. K. Harinath, SC for APSRTC, for the Appellant; Government Pleader for Transport and Mr. Noushad Ali, for the Respondent

Judgement

P. Venkatarama Reddi, ACJ

1. Aggrieved by the judgment in WP No.29447 of 1998, the present writ appeal is filed by the A.P. State Road Transport Corporation. The 2nd and 3rd respondents herein who have pucca stage carriage permits to ply their buses on the town service route-Bapatla to Narasayapalem via Jammulapalem, had applied for grant of variation of route by issuing temporary permit to ply the buses on the deviated route-Bapatta to Narasayapalem via Kankatapalem. Such request was made for the reason that the road between Jammulapalem and Narasayapalem (3.1 Kms.) was badly damaged and not fordable at present. The Regional Manager of APSRTC objected to the grant of temporary permits to ply the buses on deviated route on the ground that the entire route is overlapping the notified/nationalised route. It was pointed out that the grant of variation violates the conditions of approved scheme framed in G.O.No.291, dated 19-9-1998. The Regional Manager stated in his objections that APSRTC is operating three buses with 38 singles on the proposed variation route without full occupancy. He also pointed out that the extent of overlapping is 11 Kms. and the scheme prohibits grant of permit if the overlapping is more than 8 Kms. Keeping

these objections in view, the Secretary, Regional Transport Authority, Guntur rejected the applications of respondents 2 and 3. Hence, they filed the writ petition questioning the said order of the Secretary dated 30-9-1998 and seeking a direction to permit them to operate their buses on the route-Bapatla to Narasayapalem via Kantkatapalem on the basis of temporary permit till the road is repaired. This writ petition was allowed by the learned single Judge. The learned single Judge while quashing the impugned order directed the writ petitioners to take passengers at Bapatla and drop them at Narasayapalem without setting down or picking up the passengers enroute. It was further directed that as soon as the road is repaired or on the expiry of four months whichever is earlier, this order shall cease to operate. It is against this judgment, the present writ appeal is preferred by the APSRTC.

2. The approved scheme framed in G.O. Ms. No.291, Transport, Roads and Buildings (Tr.IV), dated 19-9-1998 has admittedly, notified the routes-Bapatla-Cherukuru, Bapatla, Kankatapalem and Narasayapalem and Bapatla to Chcrukuru via Narasayapalem and Kankatapalem u/s 68-D(2) of the old Motor Vehicles Act and the scheme shall not affect inter alia the holders of the stage carriage permits in respect of town services and the holders of stage carriage permits in respect of such route or routes overlapping not more than 8 Kms. on the notified route. The learned Counsel for the respondents-writ petitioners submits that the route-Bapatla to Narasayapalem via Jammulapalem for which the stage carried permits are held by his clients is a town service route and therefore, the savings clause will apply. It is contended that by plying on the deviated route for temporary period till the road is repaired, does not change the character of the permit and the learned single Judge is justified in granting a direction permitting the writ petitioners to operate the buses on the route-Bapatla to Narasayapalem with added restriction that only direct passengers between the two destinations can alone be permitted to travel. The practical difficulty in plying the buses on the usual route can be taken into account.

3. We find it difficult to accept this contention. Section 104 of the Motor Vehicles Act, 1988 places an embargo on the grant of any permit except in accordance with the provisions of the scheme published in respect of any notified area or notified route. The proviso enables the State Transport Authority or the Regional Transport Authority to grant temporary permits, if no application for permit has been made by the State Transport Undertaking in respect of the notified area or notified route. This is not a case where the proviso applies. The only other exception is to be found in the scheme itself. In the instant case, there is no scope to invoke the saving clause for the simple reason that the varied route i.e., Bapatla to Narasayapalem via Kankatapalem is not notified as town service route. The varied route-Bapatla to Narasayapalem which is of the length of 13 Kms. cannot be considered to be a town service route. The Supreme Court in A.P.S.R.T.C. Vs. State Transport Appellate Tribunal and Others, , held as under:

"When the scheme provides an exception for the holder of stage carriage permit

in respect of town service any applicant for permit claiming the benefit thereof has to necessarily satisfy the Regional Transport Authority that the route for which the permit is sought is a town service route. In order to establish the same the applicant for permit has to approach the Transport Commissioner in the first instance if the route for which permit is sought extends more than 8 Kms. beyond the limits of the Municipality or town from which it starts. In such cases, it is only when the Transport Commissioner grants specific permission for extension of the route for more than 8 kilometres beyond the limits of the Municipality or town, the Regional Transport Authority can consider the application for grant of permit and proceed to pass orders. It is only on the basis of the Transport Commissioner's permission the Regional Transport Authority can determine the town service routes. Hence the permission of the Transport Commissioner contemplated in Rule 258(2) of the rules has to be obtained before an application for permit is filed for a route covered by a scheme notified under the Act."

4. In *Adarsh Travels Bus Service and Another Vs. State of U.P. and Others*, , while construing the corresponding provisions of Chapter IV-A of the Motor Vehicles Act, 1939, their Lordships succinctly laid down the legal position as follows :

"A careful and diligent perusal of Section 68-C, Section 68-D(3) and Section 68-FF in the light of the definition of the expression "route in Section 2(28-A) appears to make it manifestly clear that once a scheme is published u/s 68-D in relation to any area or route or portion thereof, whether to the exclusion, complete or partial of other persons or otherwise, no person other than the State Transport Undertaking may operate on the notified area or notified route except as provided in the scheme itself. A necessary consequence of these provisions is that no private operator can operate his vehicle on any part or portion of a notified area or notified route unless authorised so to do by the terms of the scheme itself. He may not operate on any part or portion of the notified route or area on the mere ground that the permit as originally granted to him covered the notified route or area."

5. The argument that the stage carriages having permits can be allowed to traverse a part of notified route with corridor restrictions in the interests of public convenience was emphatically repelled by the Supreme Court. The decision in *Adarsh Travels* case (*supra*) is sought to be distinguished by the learned Counsel for the respondent-writ petitioners on the ground that there is a total prohibition in the scheme whereas the prohibition here is not absolute. This distinction does not rest on any principle. So long as exceptions in the scheme do not apply, there is no possibility of permitting the vehicle to ply wholly or partly on the notified route even by prescribing the corridor restrictions.

6. For the reasons aforesaid, we allow the writ appeal by reason of which the writ petition stands dismissed. No costs.