
(1998) 08 SC CK 0071

In the Supreme Court Of India

Case No : C.A. No's. 3715 of 1998 arising out of S.L.P. (C) No. 21474 of 1997 with C.A. No's. 3716 to 3738 of 1998 and 3740 to 3742 of 1998 @ SLP (C) No's. 547/98, 598/98, 1116/98, 1171/98, 1139/98, 1118/98, 1122/98, 1138/98, 1168/98, 1128/98, 1117/98, 1172/98,

A.P.S.R.T.C.

APPELLANT

Vs

State Transport Appellate Tribunal and Others

RESPONDENT

Date of Decision : 11-08-1998

Acts Referred:

Andhra Pradesh Motor Vehicles Rules, 1989 — Rule 171, 172, 173, 174, 179
Motor Vehicles Act, 1988 — Section 100, 104, 70, 71(3), 72

Citation : (1998) 2 ACC 173 : AIR 1998 SC 2621 : (1998) AIRSCW 2663 : (1998) 5 JT 417 : (1998) 4 SCALE 445 : (1998) 7 SCC 353 : (1998) 3 SCR 1106 : (1998) 6 Supreme 316

Hon'ble Judges : S. Saghir Ahmad, J; S. C. Agrawal, J; M. Srinivasan, J

Bench : Full Bench

Final Decision : Allowed

Judgement

Srinivasan, J.—Leave granted.

The common questions which arise for decision in these cases depend on the interpretation of Rule 258 of the Andhra Pradesh Motor Vehicles Rules, 1989 (for short, the 'Rules') which is in the following terms:-

"RULE 258:- FIXATION OF STAGES FOR CARRIAGES :

1. In the case of stage carriage, the Regional Transport Authority shall, after consultation with such other authority as it may deem desirable, fix stages on all bus routes except town service. The maximum distance of each stage shall not ordinarily exceed 6.4 kilometres. When stages are so fixed, fares shall be collected according to stages.

Explanation:- When a passenger gets into or gets down from a stage carriage at a place lying in between two stages, he shall pay the fare from the stage

preceding the place where he gets into the bus to the stage succeeding the place where he gets down.

2. The Regional Transport Authority shall, subject to the following restrictions, determine which are town service routes.

(i) at least one terminus of every town service shall lie within the limits of a municipality or any built up place notified in the Andhra Pradesh Gazette as 'town' for this purpose by the Regional Transport Authority concerned, with the prior concurrence of the State Transport Authority.

(ii) No route of town service shall extend more than 8 kilometres beyond the limits of the Municipality or town from which it starts, provided that this restriction shall not apply to any town service routes, which were in existence on the date of coming of these rules into force or in respect of those routes for which specific permission of the Transport Commissioner is obtained.

(iii) No route shall be determined as both town and maffasal service routes".

2. The Government of Andhra Pradesh notified in GOMS No. 695, Transport, Roads & Buildings (P-IV), 20th September, 1988 a Scheme published by the appellant in these cases relating to the route Chilukuru to Gutlapadu. Section 104 of the Motor Vehicles Act, 1988 (for short, the 'Act') prohibits the grant of any permit except in accordance with the provisions of the scheme. The scheme sets out five exceptions and they are:-

1. The State Transport Undertakings;

2. The holders of stage carriage permits in respect of town services;

3. The holders of stage carriage permits in respect of inter-State routes overlapping on the notified route;

4. The holders of stage carriage permits in respect of such route or routes overlapping not more than 8 kms. on the notified route; and

5. The services operated by Devasthanams.

3. The third respondent in S.L.P(C) NO 21474/97 filed an application for grant of pucca stage carriage permit to ply his buses on the route Bhimavaram old bus stand to Losari. The total length of the said route was 19.2 Kms. comprising 4.3 Kms. within the municipal limits of Bhimavaram and 14.9 Kms. beyond the municipal limits with an overlapping of 12.3 Kms on the notified route under the scheme. The Regional Transport Authority rejected it on the ground that the overlapping exceeded 8 Kms. On appeal, the State Transport Appellate Tribunal held that the route applied for was a town service route falling under the second exception set out in the scheme. The Tribunal allowed the appeal and granted the permit to the third respondent on condition that the Transport Commissioner granted permission as contemplated in Rule 258 (2) (ii) of the Rules. The Tribunal directed the Secretary of the Regional Transport Authority to issue

permit on production of permission of the Transport Commissioner.

4. The Tribunal's order was challenged by the appellant in Writ Petition No. 19258 of 1994 in the High Court of Andhra Pradesh. The High Court rejected the contention of the appellant that the permission of the Transport Commissioner under Rule 258(2)(ii) was a condition precedent for filing an application for route permit when there was a scheme governing the route. The High Court also held that the power of the Transport Commissioner under Rule 258(2) (ii) was unlimited. Consequently the writ petition was dismissed. Following that judgment, the writ petitions filed by the appellant against the grants in the other cases were dismissed.

5. Though it is not necessary to set out the facts in each case as they are similar, it will be very useful to reproduce the tabular statement furnished by learned counsel for the appellant containing the particulars of the route, total distance, extension beyond municipal limits and the extent of overlapping in each case.

The SLP in Serial No. 15, that is SLP 1623/98, has been dismissed as 'not pressed' by a separate order

6. On the above facts, the following questions are debated:-

(i) Whether the permission of the Transport Commissioner contemplated in Rule 258 (2) (ii) of the Rules should be obtained before an application for permit is filed for a route covered by a scheme notified under the Act?

(ii) Whether the Transport Commissioner's power to extend a town service route more than 8 Kms. beyond the limits of the Municipality or town is unlimited?

7. Rule 258 uses the expression "town service". Sub-rule (1) enjoins the Regional Transport Authority to fix stages on all bus routes except town service after consultation with such other authority as it may deem desirable. Sub-rule (2) directs the Regional Transport Authority to determine which are town service routes subject to the restrictions mentioned therein. There are three restrictions set out in the sub-rule.

(a) At least one terminus of every town service shall lie within the municipal limits or any built up place notified in the State Gazette as "town" for the purpose of the rule by the said authority with the prior concurrence of the State Transport Authority.

(b) The route of town service shall not extend more than 8 kilometres beyond the municipal limits or town limits but such restriction shall not apply to town service routes which already existed on the date of coming into force of the rules or in respect of which routes specific permission of the Transport Commissioner is obtained

(c) No route shall be determined as both town and mufasal service routes. The expression "town service" has not been used in any other rule or any provision in the Act. The expression has not been defined anywhere.

8. Our attention has been drawn to Sections 70 and 71 of the Act which provide for application for stage carriage permit and prescribe the procedure in considering the said application. Neither section throws any light as to what is a "town service route". On the other hand Section 71(3)(a) refers to city routes in towns with a population of not less than five lakhs. We have also been taken through rules 171 to 174 and 179. There is no guidance in any of the said rules with reference to the expression "town service". There is no prescribed form of application for permit for a town service route; nor is there any prescribed form of permit.

9. In the normal connotation, 'town service route' would mean a route within a town to enable passengers to go from one place to another in the town. But generally people in the peripheral and neighbouring areas would be frequenting the town and to serve them, buses have to ply between a place in the town and a place outside. Hence, the rule provides for an extension of 8 kms beyond the limits of the town or municipality.

10. Bearing that in mind we have to construe Rule 258 (2) in the light of Sections 98 to 100 and 104 of the Act. Section 98 provides that the provisions of Chapter VI and the rules and orders made thereunder shall have overriding effect against anything inconsistent in Chapter V or any other law for the time being in force. Section 99 deals with preparation and publication of proposals regarding road transport service of a State Transport Undertaking. Section 100 deals with publication of proposal and a notification of the scheme after consideration of the objections to the proposal. Section 104 as stated earlier, prohibits the grant of any permit except in accordance with the provisions of the scheme. Hence for the purpose of Rule 258(2), if there is a scheme in force with reference to the concerned route, the authority has to adhere to the terms of the scheme. If there is an absolute bar in the scheme against the grant of any permit for the notified route or any portion of the route nothing further could be done. On the other hand if there is any exception provided in the scheme the applicant for a permit has to satisfy the authority concerned that he would fall within the scope of the exception. 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 kilometres 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 our answer to the first question is that 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.

11. Admittedly in none of these cases such permission was obtained. Learned counsel for the respondents contended that in all these cases the actual issue of permit was after the grant of permission by the Transport Commissioner and there was no violation of the rule. According to him, grant of permit and issue of permit are the same. The argument is fallacious. The grant of permit in these cases is by the Tribunal before the grant of permission by the Transport Commissioner. The Tribunal itself directed issue of permit by the Secretary to the R.T.A. after receipt of record evidencing Transport Commissioner's permission. The actual issue of permit was only a ministerial act and it cannot be equated to the grant of permit. The Tribunal acted beyond its jurisdiction in granting permits in all these cases.

12. Turning to the second question, there is no doubt that rule 258(2) does not specify or indicate the limits of the power of the Transport Commissioner but it is certainly erroneous to think that the power of the Transport Commissioner is unlimited. If that is so, the very purpose of the rule providing for a limit of 8 kilometres of extension beyond the limits of municipality or town will be defeated. The power of the Commissioner cannot be arbitrarily or indiscriminately exercised. According to learned counsel for the appellant, the power is coupled with a duty.

13. Though there is no direct ruling on the point, learned counsel for the appellant has drawn our attention to two passages in de Smith's Judicial Review of Administrative Action, Fourth Edition, pages 283 and 285 which read as follows:

Page 283:-

"An authority may have a discretion whether to exercise a power, and a discretion in the manner of exercising it. But discretionary powers are frequently coupled with duties. A Minister may be empowered to confirm or refuse to confirm a compulsory purchase order. In making his decision he is entitled to exercise a very wide discretion, but he is under a legal duty to determine the application for confirmation one way or the other. Again, to the extent that a discretionary power is not absolute, the repository of a discretion is under a legal duty to observe certain requirements that condition the manner in which its discretion may be exercised."

Page 285:-

"The relevant principles formulated by the courts may be broadly summarised as follows. The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it:

it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. it must act in good faith, must have regard to all relevant considerations and must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously."

14. Reliance is placed on Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another, wherein it is said; "It is now necessary to examine the nature of the discretion conferred by the said Office Memorandum dated January 21, 1997 - "whether it is a discretionary power simpliciter or a discretionary power coupled with a duty?" From the provisions of the Constitution referred to above, it is transparently clear that it is a discretion to be exercised in the discharge of the constitutional duty imposed by Article 335 to take into consideration the claim of the members of the Scheduled Castes and the Scheduled Tribes, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State."

15. Reference was also made to C. Kasturi and others, etc. Vs. Secretary, Regional Transport Authority and another etc., decided by a bench of three Judges to which one of us (Justice Saghir Ahmad) was a party. Dealing with the corresponding old rule namely, Rule 282(2)(ii) of the Andhra Pradesh Motor Vehicles Rules, 1964, the Bench observed:

"It would, thus, be clear that once a notified draft scheme has been approved and published the private operators operate their services on the notified route strictly in accordance with the scheme only and within the exceptions engrafted thereunder. By necessary implication, the "town service" as defined in Rule 282(2)(ii) has to be read subject to the scheme in Chapter IV-A of the repealed Act. If so read, clauses 2, 3 and 4 are to operate as an exception and they provide only a right to overlap not more than 8 Kms in the notified route. Otherwise, the town service will cease to be town service and would get transformed into a mofussil route and the private operator would run his stage carriage along the line of the notified route which is impermissible. When so read, though under Rule 282(2)(ii) town service extends upto 8 Kms from the municipal limits that does not give any right to a holder of a town service stage carriage permit to run his vehicle beyond 8 Kms on the notified route nor does it extend to 8 Kms overlapping on the notified route from municipal limits."

16. Learned counsel for the appellant has pointed out rightly that in these cases the Transport Commissioner has granted permission for extension of the town service route by not less than 12 kilometres excepting in one or two cases. The tabular statement reproduced by us earlier shows that the extension is not only much more than 8 kilometres beyond the municipal limits but also the overlapping on the notified route is more than 12 kilometres excepting in one or

two cases. Thus it is evident that the Transport Commissioner has not applied his mind to the relevant factors in these cases.

17. Learned counsel for the respondents has submitted that without making the Transport Commissioner a party to these proceedings the orders passed by him cannot be questioned by the appellant. We do not find any merit in the contention. There is no necessity for the Transport Commissioner to be a party to these proceedings., We are construing Rule 258(2) and deciding the scope of the power to be exercised by the Transport Commissioner under that rule. While doing so it is open to this Court to point out that in the present case the power has been exercised arbitrarily.

18. Though we do not propose to fix any specific limit upto which the Transport Commissioner can extend the town service route it must be pointed out that in no case the permission granted by the Transport Commissioner should have the affect of converting a town service route into a muffasal service route. In other words a muffasal service cannot be labelled as town service by virtue of the permission granted by the Transport Commissioner though in fact it would be a muffasal service. Apart from the above guidelines, the Transport Commissioner must also bear in mind that in the case of a route covered by a notified scheme grant of permits to any other person is barred except to the extent permitted by the scheme. The Transport Commissioner should, therefore, take care not to convert an exception into a rule. He must bear in mind the provisions of Chapter VI of the Act and see that they are not made illusory by the permission for extension of town service granted by him.

19. Learned counsel for the respondents has submitted that u/s 72 of the Act the Regional Transport Authority can impose conditions while granting permit and it is only such a power which has been exercised by the Tribunal. He placed reliance on Smt. Afsar Jahan Begum etc. Vs. State of Madhya Pradesh and others, . In that case it was held that the Court could not give any direction or relief to the petitioners on the basis of a modification of approved scheme during the pendency of the appeal and they directed the parties to approach the RTA or STA for appropriate reliefs if they had any right thereto. The ruling has no relevancy in the present case. Nor does Section 72 of the Act help the respondents in any manner.

20. In the result, we answer the second question in the negative and hold that the power of the Transport commissioner to extend a town service route more than 8 Kilometres beyond the limits of the municipality or town is to be exercised in an appropriate manner in accordance with the guidelines set out in para 18 above.

21. Consequently, the appeals are allowed and the orders of the High Court as well as those of the State Transport Appellate Tribunal are set aside. The orders of the Regional Transport Authority rejecting the applications of the respondents are restored. There will be no order as to costs.