

(1999) 08 AP CK 0142

In the Andhra Pradesh High Court

Case No : Writ Petition No. 26711 of 1996

APSRTC, Hyderabad

APPELLANT

Vs

State Transport Appellate Tribunal and others

RESPONDENT

Date of Decision : 24-08-1999

Acts Referred:

Andhra Pradesh Motor Vehicles Rules, 1964 — Rule 282(2)
Andhra Pradesh Motor Vehicles Rules, 1989 — Rule 258(2), 58(2)
Motor Vehicles Act, 1939 — Section 47(3)

Citation : (2000) 2 ACC 377 : (1999) 6 ALD 509 : (1999) 6 ALT 187 : (2000) 1 AnWR 432

Hon'ble Judges : G. Raghuram, J

Bench : Single Bench

Advocate : Mr. C.V. Ramulu, for the Appellant; Government Pleader for Transport and Mr. T. Venkata Ramana, for the Respondent

Judgement

1. The APSRTC has filed the writ petition assailing the orders of the 1st respondent in A.P. No.157 of 1996 dated 17-9-1996.

2. The relevant facts are as under:

(a) The 3rd respondent made an application to the 2nd respondent for grant of permit for a new town service route -Eluru Old Bus Stand to Vasantavada (via) YMHA Hall, Kalyanamandapam, Jute Mill, Bridge, Vengaigudem, Burlampadu, Kothuru, Satyanarayanapuram, Pedapadu, Naidugudem, Pathapedapadu, Rajampeta.

(b) The 2nd respondent while considering the said application recorded the following facts:

1. Total length of the route : 19.4 Kms.
 2. Distance upto municipal limits : 3.3 Kms.
 3. Distance beyond municipal limits : 16.1 Kms.
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4. RTC overlapping : 15.5 Kms.

5. Road condition : BT.road - 18.8 Kms, and Metal road - 0.6 Kms.

On an analysis of the said fact situation in the context of the approved route of the petitioner herein published in G.O. Ms. No.919, dated 24-9-1976, the 2nd respondent found that the new town service route applied for, subverts the approved scheme and falls within the rubric of condition No.2 of the approved scheme and since the said condition disables the grant of stage carriage permit in respect of a route or routes which overlap 8 km., or more on the notified route, declined grant of permit.

(c) Aggrieved thereby, the 3rd respondent preferred an appeal to the 1st respondent. The said appeal A.P. 157 of 1996 having been considered by the 1st respondent, was allowed and the Secretary of the said respondent was directed to issue a permit to the 3rd respondent. While directing as above, the 1st respondent made issuance of permit subject to permission of the Transport Commissioner (obviously in compliance of the requirement of Rule 258(2)(ii) of the A.P. Motor Vehicles Rules, 1989 (for short "the Rules")).

3. Sri Sivaiah, learned Counsel for the petitioner, contends that the impugned orders are unsustainable since apropos the decision of the Supreme Court in A.P.S.R.T.C. v. S.T.A.T., , the prior permission of the Transport Commissioner is a sine qua non to label a route which extends 8 km., beyond municipal limits as a town service route. Relying upon the said decision of the Supreme Court it is contended that since the Transport Commissioner grants the permission as vouchsafed in Rule 258(2)(ii) of the Rules, the route cannot be considered to be a town service route, and in the absence of any such sanction, as in this case, the route will have to be treated by the 2nd respondent only as a non-town service route and if so treated would, on a true and fair interpretation, fall outside the exemption set out in condition No.2 of the approved scheme. Demonstrably and admittedly the route applied for by the 3rd respondent physically overlaps the approved scheme in G.O. Ms. No.919 in an extent of 15.5 km. Admittedly the distance beyond the municipal limit is 16.1 km. Since the distance is beyond 8 km., it cannot be characterised as a town service route unless a prior permission of the Transport Commissioner is obtained under Rule 258 (2)(ii) of the Rules. No such permission having been given as on the date of the consideration by the 2nd respondent of the 3rd respondent's application, the route would have to be treated as non-town service route and if so treated, since it overlaps beyond 8 km., on the approved scheme, would have to be rejected. It has been rightly rejected by the 2nd respondent. The 1st respondent, however, in an extravagant exercise of appellate jurisdiction misconstrued the fundamental requirement of law and treated the route applied for as a town service route and determined that on the said basis it falls within the parameters of condition No. 1 of the approved scheme and consequently granted the permit to the 3rd respondent. In view of the facts on record and the judgment of the Supreme Court APSRTC v. STAT (supra), the 3rd respondent's application could not have

been granted and therefore, the impugned order should fail.

4. Sri T. Venkataramana, learned Counsel for the 3rd respondent, however, contends that till the judgment of the Supreme Court *APSRTC v. STAT* (supra), the procedure and the law in respect of Rule 258(2)(ii) of the Rules, was as declared by the learned single Judge of this Court in WP Nos. 6218 of 1982 and 2219 of 1983 dated 17-2-1984, wherein the learned single Judge of this Court, interpreting Rule 282(2) of the A.P. Motor Vehicles Rules, 1964 (which corresponds *ipssisima verba* with Rule 258 of the Rules), held that before a Transport Commissioner could grant the permit contemplated by Clause (ii) of sub-rule (2), there must be a route in existence and route comes into existence only when it is approved by the R.T.A.

5. The judgment was rendered in the context of the earlier statutory environment operating under Motor Vehicles-Act, 1939, which in Section 47(3) empowers the RTA to regulate the formulation of a route. No such power inheres in the R.T.A. *per se* under the provisions of the present enactment (1989).

6. Sri Venkataramana, learned Counsel for Respondent 3 contends that an identical view has been taken by another learned single Judge of this Court in *R. Venaiah v. State Transport Appellate Tribunal, Hyderabad*, 1993 (1) APLJ 55, even in the context of A.P. Motor Vehicles Act, 1988. An analysis of this judgment discloses that even while considering the issue under the provisions of A.P. Motor Vehicles Act, 1988, this Court while interpreting Rule 258(2)(ii) of the Rules followed the interpretation placed by the earlier judgment dated 17-2-1984 (supra). In view of the unequivocal view and declaration of law by the Supreme Court (supra), the permission of the Transport Commissioner is both *sine qua non* and a condition precedent to make an application to the R.T.A. for grant of permit in respect of a route sought to be considered as a town service route when such a route extends 8 km., beyond the municipal limits. The earlier judgments of this Court thus are no longer good law. Further the governing interpretation of the provisions of Rule 258 (2)(ii) of the Rules is the final and binding interpretation contained in the judgment of the Supreme Court (supra). This is the interpretation that Rule 258(2)(ii) of the Rules is always deemed to have borne. Such is the effect of an interpretive exercise by a Constitutional Court unless the Court itself and specifically postulates a prospective application to a declaration of law by it. The judgment of the Supreme Court contains no such injunction that its interpretation should have a prospective effect. The interpretation of Rule 258(2)(ii) of the Rules qua the judgment of the Supreme Court (supra), is therefore *ab initio*.

7. In the circumstances, this Court is disinclined to accept the contention of the learned Counsel for the 3rd respondent that on account of the previous practice in this State in the application of Rule 258(2)(ii) of the Rules based on the previous judgments of this Court interpreting this and similar Rule under 1964 Rules and also for the reason that hardship would be caused to the Respondent 3, a prospective application alone should be given to the judgment of the

Supreme Court (supra), viz., that it should be applied only to the applications made subsequent to the date of the said judgment. In the result this Court is of the view that the impugned order is invalid and contrary to the provisions of the Act and in particular to Rule 258(2)(ii) of the Rules. Consequently the route applied for by the 3rd respondent cannot be a town service route, would therefore be in the teeth of the approved scheme in favour of the petitioner in G.O. Ms. No.919 dated 24-9-1976 and cannot therefore be granted. The order of the 1st respondent impugned herein directing grant of permit to the 3rd respondent is thus non est and in-operative. The order impugned is accordingly set aside in toto.

8. The writ petition is allowed, but in the circumstances without costs.

9. Sri Venkataramana, learned Counsel for Respondent 3, urges that this Court may stay the operation of this judgment in the context of the fact that pursuant to the permission granted, the 3rd respondent is plying the vehicle after paying tax and in view of the fact that he seeks to canvass the questions arising in this writ petition further since there are, in his contention, gray areas in the judgment of the Supreme Court requiring clarifications. He contends that in these circumstances the 3rd respondent should not be rendered out of business, and that this Court be pleased to suspend the operation of this judgment to enable him to pursue remedies.

10. This Court is of the view that the decision of this Court is a clear result of the application of the judgment of the Supreme Court (supra) and there is no ambiguity in the law, in the considered view of this Court. The request is, therefore, rejected.