
(1998) 02 AP CK 0080

In the Andhra Pradesh High Court

Case No : Writ Petition No. 4320 of 1998

APSRTC, Hyderabad

APPELLANT

Vs

State Transport Appellate Tribunal A.P. and others

RESPONDENT

Date of Decision : 26-02-1998

Acts Referred:

Andhra Pradesh Motor Vehicles Rules, 1989 — Rule 258(2), 282(2)
Motor Vehicles Act, 1988 — Section 47, 57, 70, 72

Citation : (1998) 5 ALD 171

Hon'ble Judges : B. Sri Atchutanand Swamy, J

Bench : Single Bench

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

Judgement

1. Aggrieved by the orders of the State Transport Appellate Tribunal (S.T.A.T) in AP No.886 of 1996 dated 6-11-1997 whereunder the Orders of the Regional Transport Authority, Cuddapah, were set aside and a direction was given to grant stage carriage permit for the route applied by the petitioner, the Andhra Pradesh State Road Transport Corporation (APSRTC) the objector before the S.T.A.T filed the present writ petition.

2. The third respondent herein filed an application before the Regional Transport Authority (R.T.A) for grant of stage carriage permit on the town route Cuddapah Old Bus Stand to Yerramachupalli and the length of the route is 7.9 K.Ms. This application was rejected by R.T.A. vide its order dated 24-9-1996 on the ground that on the routes selected by the third respondent, there is no motorable road. On an appeal filed by the third respondent herein, the S.T.A.T- allowed the appeal and directed R.T.A. to grant stage carriage permit as applied by the third respondent herein. Questioning the said orders of the S.T.A.T., the present writ petition is filed.

3. Sri K.Harinath, learned Standing Counsel appearing for the petitioner-

A.P.S.R.T.C., strenuously contended that unless R.T.A. determines that the route applied can be classified as town service, the application of the third respondent for grant of town service cannot be considered. Assuming that the route selected by the third respondent is town service, the authorities cannot grant permits as there is total exclusion of the new applicants on the town service as per the terms of the scheme approved in G.O. Ms. No.176 and 265 both dated 28-6-1990 for the routes of Kumool to Tirupathi and Cuddapah to Tenali respectively.

4. In support of his first contention, Sri K.Harinath relied upon certain observations made in an unreported Judgment by Justice Jeevan Reddy as he then was, in WP No.2215 of 1983. The same are extracted below:

"A reading of Section 28(2)(ii) would indicate that before the Transport Commissioner could grant permission contemplated by Clause (ii) of sub-rule (2) there must be a route in existence, and as stated above a route comes into existence only when it is approved by the Regional Transport Authority".

Admittedly, the said Judgment was rendered under the old Motor Vehicles Act and it is not in dispute. In the New Motor Vehicles Act, several in roads were made liberalising grant of stage carriage permits. Rule 282(2) (ii) of the rules framed under the Old Act refers to the present Rule 258(2) (ii) under the New Act.

5. Now, we have to examine how far the observations made by the learned single Judge can be pressed into service in this case. u/s 47 of the Old Act, the R.T.A. has to first determine the route, ascertain the need to operate the service on that route and then calls for applications u/s 57 of the Old Act for grant of stage carriage permit. Under the New Act, the procedure has been completely changed and a liberalised procedure was prescribed for grant of stage carriage permit. u/s 70 a permit of any kind may be made at any time and the same has to be granted for mere asking as per the Judgment of the Hon'ble Supreme Court in Mithilesh Garg, Vs. Union of India and others etc. etc., . Section 70 of the New Act deals with the application for grant of stage carriage permit. The applicant shall submit his application specifying the route or routes, area or areas, to which the application relates. The other conditions are not germane to the issue and they are not referred to. u/s 72 of the New Act, the R.T.A. after following the procedure i.e., submission of the report by the departmental officers, considers the application filed by the individual for grant of stage carriage permit and it is open to the authorities either to grant the stage carriage permit in accordance with the application or with such modifications as it deems fit or it may refuse to grant stage carriage permit. The provisions says that no permit would be granted in respect of any route or area not specified in the application. Hence, under the provisions of the New Act, an option is given to the applicant to select the route on which he intends to ply and the R.T.A. has to decide the feasibility of allowing the application to ply his bus or not, if the applicant has satisfied all other conditions for grant of permit. Hence, the route

need not be in existence as a condition precedent for considering the request for grant of stage carriage permit. Like wise, under the Old Act, applications for grant of a stage carriage permits have to be applied as and when called for by the R.T.A. whereas under the New Act, application for grant of any kind of permit can be submitted by the operator at any time and the same has to be considered by the R.T.A. on merits and in accordance with the provisions of the Act.

6. Coming to the applicability of the above judgment, old Rule 282(2)(ii) is now shown as 258(2)(ii). It is better to extract Rule 258(2) in its entirety for appreciation of the controversy involved in this writ petition.

"(2) The Regional Transport Authority shall, subject to the following restriction, 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.

7. Under this rule, the R.T.A. has to determine whether the route applied is a town service route or not subject to the guidelines given in the rule itself. Under Clause (i) of this rule, at least one terminus of every town service shall be within the limits of Municipality or any built up place which is notified as town by the R.T.A. with the prior concurrence of the State Transport Authority. Under Clause (ii) of this rule, no town service shall extend more than 8 kilometres. If this clause is to be interpreted in the light of the changes brought under the New Act, the question of determining whether the route is in existence or not would not arise even before the consideration of the application because the classification can be made by the R.T.A. while considering the application as per Section 72 of the Motor Vehicles Act and also because the applicant can himself specify the route in application. It is purely the choice of the applicant to select the route, and once the permit is granted to ply the vehicle on the route, then the route comes into existence. Till then the route as held by His Lordship Justice Jeevan Reddy, as he then was, cannot come into existence. That Judgment was rendered at a time when the R.T.A. has to formulate the routes and call for applications and that being not the case now, the said Judgment has no relevance under the New Act. But, under Rule 258(2) of the New Act while considering the applications, the R.T.A. has to decide whether the route applied is a town service route or not. For that, guidelines were also given in the rule itself. When once the conditions specified in Clause (i) and (ii) of sub-rule (2) to Rule 258 are satisfied,

the question of taking any other view by the R.T.A. docs not arise. The same view has been taken by this Hon"ble Court in a case reported in R. Venaiah v. Stale Transport Appellate Tribunal, A.P., 1993 (I) APLJ 55 , 1993 (1) AnWR 26 . (Copy enclosed).

8. Admittedly, the route selected by the third respondent herein is from Cuddapah Old Bus Stand to Yerrumachupalli, which is less than 7.9 K.Ms. As per the Clause (i) of Rule 258(2), at least one terminus should be in municipal limits, i.e., in this case Cuddapah Old Bus Stand. Under Clause (ii) of the said Rule, the route shall not extend 8 K.Ms. and in this both the parties agreed that the route is only 7.9 K.Ms. Hence, even if the R.T.A. did not record a finding that it is a town service under the provisions of the New Act, it has no option except to notify the route as town service. Accordingly, the first contention of the learned Standing Counsel for the petitioner is rejected.

9. With regard to the second contention of the learned Standing Counsel for, the petitioner, it is true that the existing town service operators on the notified route were saved. But, in this Scheme, no restrictions were placed while saving existing routes. In other words, the existing town service routes are saved irrespective of the overlapping on the notified route. But, the question to be decided is whether that clause comes into conflict for grant of new town service route in future. The Act does not classify the routes as mofussil service route or town service route. It is only under Rules, that too, while considering the application for grant of permit on town service the question . of classifying the route will arise. That is because, the tax payable on town service is less than the tax payable in respect of other routes.

10. Coming to the issue on hand, Clause 2 of the same Scheme says that the holders of the stage carriage permits for a distance not exceeding 5 K.Ms. on the notified route are also saved. Sri K.Harinath, learned Standing Counsel for the petitioner, fairly conceded that this Court interpreted the words "the holders of stage carriage permit" as past, present and future stage carriage permit holders. The stage carriage permit can be obtained either on mofussil service or on town service route as no such distinction was made in the Act. That being the situation, new stage carriage permit holder while selecting his route should take care to see that the routes selected by him does not overlap more than 5 K.Ms. If Clauses 2 and 3 are harmoniously interpreted, as the Clause 3 does not throw any light on grant of any new stage carriage permits on town service route, the stage carriage permits holder can operate both on mofussil route as well as town service route. The view more favourable to the citizens has to be taken as per the catena of decisions of the Supreme Court. If a view favourable to the citizen is taken in this case, according to me, Clause 2 comes into operation which covers both mofussil as well as town service routes. The only restriction places is that the route selected shall not overlap more than 5 K.Ms, and it is not in dispute that the overlapping in this case is only 1.2 K.Ms, even according to the learned Standing Counsel for the petitioner and hence there cannot be any

difficulty in considering the application of the third respondent. In fact the view taken by me is supported by the Judgment of a Division Bench of this Court dated 5-11-1997 in D. Gangadhar v. the State Transport Appellate Tribunal, WP No.13319 of 1994. The learned Standing Counsel for A.P.S.R.T.C. also fairly agreed that this was the interpretation given by this Court in the above referred judgment.

11. In the light of the foregoing discussion, the orders of the S.T.A.T. dated 6-11-1997 are confirmed and the writ petition is dismissed. No costs.