

(1994) 06 AP CK 0028

In the Andhra Pradesh High Court

Case No : Writ Petition No. 778 of 1994 and 1654/94

B. Satyam

APPELLANT

Vs

Secretary, State Transport Authority, Andhra Pradesh,
Hyderabad

RESPONDENT

Date of Decision : 23-06-1994

Acts Referred:

Constitution of India, 1950 — Article 141, 226
Motor Vehicles Act, 1939 — Section 2(28A), 48(3), 57, 57(8), 68C
Motor Vehicles Act, 1988 — Section 104, 72(2), 80

Citation : AIR 1994 AP 327 : (1994) 2 ALT 385

Hon'ble Judges : P. Venkatarama Reddi, J; K.M. Agarwal, J

Bench : Division Bench

Advocate : Govt. Pleader for Transport, for the Appellant; Mr. R. Venugopal Reddy and Mr. R. Vijayanandan Reddy, for the Respondent

Judgement

1. These two writ petitions between the same parties relate to the same subject-matter and they can be disposed of by a common judgment.

2. W.P. No. 778/94 is filed by a stage carriage operator seeking for a writ of mandamus to direct the respondents (Secretary and Asst. Secretary

of the State Transport Authority, Hyderabad) to implement the order of the State Transport Appellate Tribunal in A.P. No. 29/93 dated 3-1-

1994. The Secretary, State Transport Authority, Hyderabad filed W.P. No. 1654/94 praying for a writ of certiorari to quash the order of the State

Transport Appellate Tribunal, Hyderabad in A.P. No. 29/93 dated 3-1-1994. The petitioner in W.P. No. 778/94 and the State Transport

Appellate Tribunal are the party-respondents in this writ petition. (The petitioner in W.P. No. 778/94 is referred to hereinafter as "the petitioner").

3. Thus, the legality of the order passed by the State Transport Appellate Tribunal

(hereinafter referred to as "the Tribunal") in A.P. No. 29/93

falls for consideration in these two writ petitions. By that order, the Tribunal allowed the appeal filed by the petitioner, set aside the order dated

24-12-1992 passed by the Secretary, State Transport Authority and directed the Secretary, STA to grant the application of the petitioner for two

additional single trips on the route -- Parvathipuram to Itchapuram with one more bus and with revised timings.

4. The petitioner holds a stage carriage permit to ply on an inter-state route -- Parvathipuram to Itchapuram (via) Pala-konda and Sompeta. The

length of the route is an extent of 225 Kilometers. Under the permit issued to him, he is authorised to make two single trips a day i.e., one round

trip. The same route with the road length of 225 Kms is covered by the approved scheme notified by the State Government u/s 68D(2) of the

Motor Vehicles Act, 1939 through G.O.Ms. No. 1139 (Transport) IV, dated 9-11-1987. The permit is valid upto 17-4-1995. As pointed out by

the Secretary, State Transport Authority, the route attained the character of an inter-state route as it passes through an enclave portion in Orissa

State. The petitioner filed an application before the Secretary, STA on 27-11-1992 to grant two more additional single trips by inclusion of one

more vehicle in the existing permit and to frame revised timings. Pursuant to the direction of this Court in W.P. No. 14252/92, the said application

was taken up for consideration by the Secretary, STA who, by his order dated 24-12-1992 declined to grant the petitioner's request. The

Secretary. STA held that the variation sought for i.e., increase in number of trips on the same permit is prohibited by sub-section (3) of Section 80

of the Motor Vehicles Act, 1988 and moreover, the application of the petitioner is not saved by the terms of approved scheme. On an appeal filed

to the Tribunal, the learned Presiding Officer, relying upon the Judgment of this Court in W.A. Nos. 1083 & 1084/84 and the judgment of the

Supreme Court in Karnataka State Road Transport Corporation, Bangalore Vs. B.A. Jayaram and Others, took the view that the variation of the

conditions of permit by increasing the number of vehicles or trips could be allowed to the existing permit- holders. Incidentally we may mention that

the Appellate Tribunal observed that it is not the case of the respondent that there is any overlapping in the said inter-state route. This observation

is contrary to the facts and it seems to have blurred the approach of the Tribunal.

5. The learned Government Pleader for Transport submits that after the advent of the new Motor Vehicles Act, there is no provision for the grant

of a single permit covering more than one vehicle and therefore the request of the petitioner was rightly rejected by the Secretary, S.T. A. He

points out the difference in the language between Section 48(3) of the old Act and Section 72(2) of the new Act. It is also contended by the

Government Pleader that in view of the Full Bench decision of this Court in K. Pamanna Vs. The State Transport and Appellate Tribunal, A.P.,

Hyderabad and others, and the Division Bench decision in W.A. No. 382/94 dated 18-4-1994, the variation sought for amounts to infringement of

the approved scheme and it is not saved by the terms of the scheme because it involves introduction of an additional vehicle. The learned Senior

Counsel Mr. R. Venugopal Reddy appearing for the petitioner has, apart from raising a preliminary objection is to the maintainability of the writ

petition, contended that there is no prohibition against a single permit covering more than one vehicle and that the variation as sought for falls within

the purview of the Savings clause contained in the scheme. He points out that by asking for additional trips with an additional vehicle on the same

route, the existing stage carriage permit-holder cannot be said to have applied for a new permit or gone against the terms of the approved scheme.

Adverting to the Full Bench decision cited supra, the learned Counsel argued that the observations made in paragraph 34 of the judgment shall be

read in a proper perspective and if construed otherwise, it will go against the law enunciated by the Supreme Court in Karnataka State Road

Transport Corporation, Bangalore Vs. B.A. Jayaram and Others, which still holds the field. He therefore submits that the order of the Appellate

Tribunal is legally sustainable.

6. As far as the preliminary objection is concerned, we see no merit in the same. The learned Counsel submits that the very authority which passed

the order impugned before the Tribunal ought not to have filed the writ petition. If at all, the Road Transport Corporation or some other authority

of the Government could have filed the writ petition if they felt aggrieved by the order passed by the Tribunal. The learned Counsel has relied upon

the judgment of the Supreme Court in Syed Yakoob Vs. K.S. Radhakrishnan and

Others, where in the Supreme Court pointed out that the authorities and Tribunals whose orders are challenged in writ proceedings are like Courts and they are not interested in the merits of the dispute in any sense and their representation by lawyers is unnecessary and inappropriate. The Supreme Court refused the request of the Counsel for respondents 2 and 3 (probably STA and STAT) for award of costs. We do not think that the observations made in the context of the request for costs could be appropriately applied to decide the question of locus standi of the Secretary, STA to file the writ petition. It is seen from the order of the Tribunal that the Secretary, STA was the only respondent impleaded before the Tribunal and it is his order that has been set aside by the Tribunal. The issue decided by the Tribunal is of general importance with which the State Transport Authority, as a statutory body, cannot be said to be unconcerned. It may be in the fitness of things if the Road Transport Corporation or some authority representing the State had filed the writ petition impleading the Secretary, STA also as one of the respondents. But whatever may be the considerations of propriety, we do not see any legal bar against the Secretary, STA himself filing the writ petition. On the issue of locus standi, we are not inclined to take a narrow or technical view in exercise of jurisdiction under Article 226 of the Constitution. Hence we have no hesitation in rejecting the preliminary objection.

7. We may now deal with the main point that has cropped up for consideration i.e., whether by virtue of the approved scheme covering the same inter-state route, the grant of additional singles with an additional vehicle could be made in favour of an existing stage carriage permit-holder such as the petitioner.

8. Section 104 of the Motor Vehicles Act, 1988 (corresponding to Section 68FF of the old Act) places an embargo against the grant of any permit except in accordance with the provisions of the scheme when once a scheme has been published in respect of any notified area or route.

The approved scheme published by the State Government on 9-11-1987 contains, inter alia, the following saving clause :

The Scheme shall not affect :

(1)... ..

(2)... ..

(3) the holders of existing stage carriage permits in respect of inter-state routes overlapping on the notified route.

(4)

(5)

Placing reliance on this saving clause, the learned Counsel for the petitioner has strenuously contended that the application submitted by the

petitioner if granted merely amounts to variation of the conditions of permit and would be in continuation of the existing stage carriage permit. It

does not amount to grant of a new permit. It is therefore his contention that notwithstanding such variation, the saving clause comes into play. The

learned Counsel has, as already stated, relied upon the observations of the Supreme Court in KSRTC case (supra). In that case it was held that by

reason of variation of the conditions of the permit under sub-section (8) of Section 57, the permit so varied cannot be treated as a new permit. The

next question considered was ""Whether in the case of an existing inter-state permit exempted under the approved scheme, an increase in the

number of trips or the number of vehicles allowed to be operated under such a permit would not be consistent with the provisions of the approved

scheme?"" While answering the question in the negative, Madon, J. speaking for himself and Sabya-Sachi Mukharji, J. (as he then was) held at

Page 801 :

We fail to see any inconsistency between an increase in the number of vehicles of trips allowed under such a permit and the provision is of the said

scheme. So far as the portions of the inter-State route covered by the said scheme are concerned, the permits of the existing permit-holders have

been rendered ineffective. Further, by the said scheme as modified, the existing permit-holders are not allowed to pick up or set down passengers

on these portions of the modified routes. Whether one vehicle or more traverse these portions or whether the same vehicle traverses such portion

more than once cannot in any manner affect the services operated by the appellant on such portions since no passengers are allowed to be picked

up or set down on such portions. All that would happen is that these vehicles, in the course of their inter-State operation, would traverse these

portions of the notified routes without in any way operating as stage carriage for such portions.

The learned Counsel submits that the principle laid down in this decision will hold good even in the context of the provisions of the new Act. It is

also contended by the learned Counsel for the petitioner that this judgment holds the field notwithstanding the disapproval of the same by a Bench

of two Judges in *R. Raghuram v. P. Jayarama Naidu* AIR 1990 SC 413 while referring the review petition to a Constitution Bench.

9. While on the question of applying the ratio of the judgment in *Karnataka State Road Transport Corporation, Bangalore Vs. B.A. Jayaram and*

Others, to the present case, we would like to mention one material difference in facts between that case and the case on hand. In the case dealt,

with by the Supreme Court, the route between Bangalore and Rayolpad in the State of Karnataka formed part of the inter-state route -- Bangalore

to Cuddaph and it was covered by the scheme. As a result thereof, the existing permit of the 1st respondent for the portion Bangalore to Rayolpad

became ineffective inasmuch as the operator could not either pick up or set down passengers on that portion of the route. The operator therefore

made an application to the Road Transport Authority for varying the conditions of the stage carriage permit by increasing the number of trips on the

Bangalore -- Cuddapah route from one trip per day to two trips per day. Thus, in the notified route, there was only a small overlapping portion

and even that portion was covered by corridor restrictions. In the present case, the length and breadth of the entire route in respect of which the

petitioner has sought for an additional round trip with an additional vehicle, is a notified route. It is not the case of the petitioner herein that he had

offered not to pick up or set down passengers en-route. In fact, where the entire route is a nationalised route, such "corridor restrictions will be

inappropriate. In the light to these variant facts, it is difficult to hold that the ratio in the judgment in *KSRTC* case could be pressed into service by

the petitioner herein. After all, a judgment takes its colour from the particular facts of the case and the principle laid down therein has to be

understood in the light of those facts (*Vide Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd.*, . There is another hurdle in

the way of seeking support from the aforesaid decision of the Supreme Court. We cannot lightly ignore the definite view expressed by the

Supreme Court in *R. Raghuram Vs. P. Jayarama Naidu and Others*, that the decision in *KSRTC* must be deemed to have been overruled by the

Constitution Bench decision in Adarsh Travels Bus Service and Another Vs. State of U.P. and Others, . The learned Counsel for the petitioner is

not right in saying that having regard to the observations of the Full Bench in K. Pamanna Vs. The State Transport and Appellate Tribunal, A.P.,

Hyderabad and others, the ratio in KSRTC case must be followed. We do not think that it is a correct understanding of the judgment of the Full

Bench. The Full Bench did not say that KSRTC case should still be followed notwithstanding what was observed in Raghuram case. According to

the Full Bench, it is only the decision in Raghuram case that still holds the field and has a binding effect under Article 141 of the Constitution. That

decision of the Supreme Court proceeded on the assumption that there was a draft scheme. The observations made therein do not therefore relate

to an approved scheme. The Full Bench did not comment anything on the binding force of the decision in KSRTC case.

10. What are the consequences of nationalisation of a route and what effect it will have on the private operators has been succinctly laid down by

the Constitution Bench of the Supreme Court in Adarsh Travels Bus Service and Another Vs. State of U.P. and Others, . Dealing with the

provisions of Section 68C, Section 68D, Section 68FF and Section 2 (28A) of the Motor Vehicles Act, 1939, Chinnappa Reddy, J. speaking for

the Supreme Court observed at page 324 of AIR :

A careful and diligent perusal of Sections 68C, 68D (3) and Section 68FF 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 68D in relation to any area or route or portion thereof, whether to the

exclusion, complete or partial or 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 of 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.

The Supreme Court deprecated the practice of granting permits in relation to

overlapping parts of the notified route subject to "corridor restrictions" which were described as "mere ruses or traps to obtain permits and to frustrate the scheme". It was then observed :

If indeed there is any need for protecting the travelling public from inconvenience as suggested by the learned Counsel we have no doubt that the

State Transport Undertaking and the Government will make a sufficient provision in the scheme itself to avoid inconvenience being caused to the travelling public.

Probably taking clue from these observations, a provision has been made in the present scheme excepting the existing stage carriage permits in respect of the inter-state routes overlapping the notified route.

11. Having regard to the legal position enunciated and the observations made by the Constitution Bench of the Supreme Court in the

aforementioned case, the question is how we should view and apply the saving clause to the facts of the present case. When the Scheme says that

it would not touch the existing stage carriage permits in respect of the inter-state routes, we cannot countenance the argument that the existing

permits can be so amended as to allow any number of vehicles to ply on the notified route any number of times. That is not clearly the intendment

of the saving clause. The saving clause should be strictly construed and in a manner effectuating the purpose of the nationalisation scheme. The test

to be applied is whether the scheme authorises the private operator to run the stage carriage on the notified route otherwise than in accordance

with the terms and conditions of the permit held by him and if so to what extent. That question has to be decided on the very terms of the Scheme

rather than from the stand-point of Section 80 of the Act (old Section 57). At the same time, the object and purpose of the Scheme should be kept

in view. This is the approach we have to adopt in view of what was said in Adarsh Travels case. Viewed from the angle, whatever may be the

position with regard to short extension of routes (adverted to in Shiv Chand Amolak Chand Vs. Regional Transport Authority and Another,) we

do not think that the application of the nature with which we are concerned falls within the purview of the saving clause. If the application is

granted, it would amount to substantial modification of the scope and ambit of the existing permit. The character and amplitude of the existing

permit will be materially altered. By allowing the amendment to the existing permit as sought for by the petitioner, the efficacy of nationalisation

scheme might be whittled down and it may result in detriment to public interest. We do not think that the saving clause authorises such a type of

modification of the permit. In this context, we may point out that the judgment of the Supreme Court in Shiv Chand Amolak Chand Vs. Regional

Transport Authority and Another, (relied upon by the Supreme Court in KSRTC case) is an authority for the proposition that labelling the

application as an application for variation of the conditions of permit is not decisive and it could be seen whether in fact such an application is only

a device to obtain a new permit.

12. Keeping all the relevant considerations in view, we find ourselves unable to accept the contention that the terms of the existing scheme do not

preclude, nay, permit the variation of the existing permit to such an extent as to allow additional trips with an additional vehicle on the very same

notified route.

13. The issue is left in no doubt by the Full Bench in K. Panna case 1990 (2) ALT 385 (supra). The Full Bench posed the following question for

consideration :

Whether the conditions of a stage carriage permit can be varied u/s 57(8) of the Act when there is an approved scheme published u/s 68D of the

Act ?

The Full Bench answered the question in negative taking the view that the question was no longer res integra in view of the decision in Adarsh

Travels Bus Service and Another Vs. State of U.P. and Others, . After quoting the passage extracted hereinabove, the Full Bench said at

paragraph 34 :

Once a scheme is published u/s 68D of the Act, the area to which it relates is called ""notified area"" and the route to which it relates is called

notified route"". Sri G. Suryanarayana, learned Counsel, who led the arguments on behalf of the private operators, contended that what is

prohibited by Section 68FF of the Act is only "granting of any permit" but not "variation of the conditions of permit". In view of the aforesaid

decision of the Supreme Court, it is not possible to accept the contention of the learned Counsel for the private operators. It is clear from the

above that after the approved scheme is published, the embargo u/s 68FF of the Act operates even to the grant of variation of a permit in respect

of any notified area or notified route, except in accordance with the provisions of the scheme.

14. The learned Counsel Mr. Venugopal Reddy has submitted in the first instance that the Full Bench decision does not go against his contention.

He relies upon the phraseology ""except in accordance with the provisions of the scheme"". Then he falls back upon the saving clause in the scheme.

We have already discussed about the parameters of the Saving clause and we reiterate that none of the provisions of the Scheme would enable the

petitioner to apply for modification of the permit in the manner in which he wants. It is therefore futile to draw any support from the judgment of the

Full Bench. Faced with this difficulty, the learned Counsel has persuaded us to make a reference to a larger Bench inasmuch as the Full Bench did

not consider the judgment of the Supreme Court in KSRTC case. We do not find any warrant for making a reference to a larger Bench in view of

what we have said above regarding the applicability of KSRTC case to the facts of the present case. We may point out that the judgment of the

Full Bench was followed by a Division Bench of this Court in Writ Appeal No. 382/94 dated 18-4-1994 in which a similar contention advanced

by the learned Counsel for the petitioner herein was rejected by the Division Bench while dismissing the writ appeal at the admission stage. In view

of the settled law, we are not inclined to prolong the matter further by referring it to a larger Bench.

15. In the light of the foregoing discussion, we hold that the order of the Tribunal in A.P. No. 29/93 dated 3-1-1994 is erroneous in law and

cannot be sustained.

16. In the view we have taken, it is not necessary to go into the other question -- whether the new Motor Vehicles Act, 1988 restricts the permit to

a single vehicle only.

17. In the result, we set aside the order of the Tribunal in A.P. 29/93 dated 3-1-1994 and allow W.P. No. 1654/94. As the order of the Tribunal

is set aside, the question of implementing the same does not arise. We therefore dismiss W.P. No. 778/94. We make no order as to costs in both

the writ petitions.

Order accordingly.