

(1980) 10 KAR CK 0017

In the Karnataka High Court

Case No : Writ Petition No's. 5826 to 5830, 5642, 6206, 6207, 4389, 4792, 5723 and 5850 of 1978

B.A. Jayaram

APPELLANT

Vs

State Transport Authority

RESPONDENT

Date of Decision : 27-10-1980

Acts Referred:

Motor Vehicles Act, 1939 — Section 40, 49, 50, 61, 63 (7)

Citation : AIR 1981 Kar 179

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : M.R. Venkatanarasimhachar, M. Rangaswamy, C. Narasimhachar and Ramesh, for B. Thilak Hegde, for the Appellant; M.H. Motgi, Govt. Pleader, C.S. Shanthamallappa, P.R. srirangaiah, S.P. Shankar and C. Narasimhachar, for the Respondent

Judgement

1. Except Writ Petitions 4389, 4792 and 5723 of 1978, in all these Writ petitions, the petitioners have sought for quashing of the resolution dated 4/5-4-1978 passed by the respondent (Karnataka State Transport Authority --- hereinafter referred to as "KSTA") in Subject No. 6 of 1977-78 resolving to call for the applications for grant of permits under S. 63 (7) of the Motor Vehicles Act (hereinafter referred to as the Act) and also to quash the notification dated 3-5-1978 issued by the KSTA published in the Karnataka Gazette dated 11-5-1978 calling for the applications for grant of 16 permits. It is also Prayed for issue of a writ in the nature of Prohibition restraining the KSTA from considering the applications received Pursuant to the aforesaid notification. In Writ Petitions 4389, 4792 and 5723 of 1978, the prayer of the petitioners is to direct the KSTA to consider their applications filed for grant of Permits under S. 63 (7) of the Act along with the applications of the petitioners in the other writ petitions.

2. The brief facts necessary for the purpose of deciding the question involved in these writ petitions are as follows: The KSTA, pursuant to the quota made

available by the Central Government u/s 63(7) of the Act, for grant of permit to Tourist vehicles resolved to call for applications for grant of permits by the resolution dated 4/5-4-1978 in Subject No. 6/7778, marked as Exhibit-G in Writ Petitions 5826 to 5830 of 1978. Pursuant to that resolution, the notification dated 3-5-1978 came to be published in the Karnataka Gazette dated 11-5-1978 (Exhibit-H) calling for the applications. In the notification, it was specifically stated that those who have already applied in the prescribed form with prescribed fee need not apply again if they so desire. The last date fixed for receipt of applications was 3-6-1978. All the petitioners have filed their applications even prior to the issue of the aforesaid notification, whereas, the contesting respondents have filed their applications pursuant to the notification.

3. It is submitted by Sri M. Rangaswamy and also by Sri M. R. Narasimhachar, learned counsel appearing for the petitioners in Writ Petitions 5826 to 5830 of 1978, connected with W. Ps. 5642, 6206, 6207 and 5850 of 1978, that as per S. 63 (7) of the Act, the provisions contained in Ss. 49, 50, 57, 58, 59, 59 (a), 60, 61 and 64 of the Act, shall, as far as may be, apply to the grant of permits in respect of tourist vehicles also. It is submitted that the tourist vehicle is defined to mean a "contract carriage" as per, the definition contained in S. 2 (29A) of the Act, therefore, the provisions contained in Section 57 (1) of the Act are applicable for, grant of permits for tourist vehicles as per the quota made available u/s 63 (7) of the Act, and as such, it is contended that there is no power vested in the KSTA to call for, the applications, because, as per the provisions contained in S. 57 (1) of the Act, the applications for contract carriage permit of a private carriers, permit may be made at any time. It is also further submitted that the Act specifically provides for calling applications in respect of a stage carriage permit or a public carries permit as per Section 57 (2) of the Act, whereas, it does not provide for calling applications in respect of a contract carriage permit or a private carrier's Permit; therefore, by reason of the express provision contained in the Act, in respect of a stage carriage Permit and a public carrier's permit and there being no similar provision in respect of a contract carriage ova Private carrier's Permit, it should be held that the KSFA has no authority to call for applications for grant of permits under S. 63 (7) of the Act, as it has to entertain the applications as and when filed by the applicants.

4. On the contrary, it is contended on behalf of the contesting respondents that the provisions relating to S. 57 (1) of the Act read with S. 63 (7) of the Act, are applicable only as far as may be and as such, it cannot be held that KSTA has no power to call for the applications. It is also submitted by Sri H. B. Datar, learned counsel for the contesting respondents, that the availability of the quota is known to the granting authority and there is a responsibility cast on the granting authority to grant permit to the best person and that is possible only if the applications are called for. Otherwise, all the persons interested for providing transport facilities will not come to know the availability of the quota and as a result thereof many of the transport operators or the persons intending to enter the field of transport may not come forward with the applications. Consequently,

the object will be defeated and the KSTA will not be in a position to discharge its responsibility in a proper manner. It is also further submitted that the words "as far as may be" found in Section 63 (7) of the Act must be interpreted as far as it is possible to apply to the grant of tourist vehicle permit. It is also further submitted that a Division Bench of this Court, in Writ Petitions 7060 to 7062, 8963, 8964, 8974 and 8975 of 1978, has issued a direction to KSTA to consider all the applications together and as such, - it is not now open for the petitioners to seek a direction to the KSTA to consider only those applications which have been made suo motu and not those which have been made pursuant to the notification.

5. Sri Ramesh, learned counsel appearing for the petitioners in Writ Petitions 4389, 4792 and 5723 of 1978, adopts the argument of Sri H. B. Datar and further submits that in view of the direction issued by this Court in the aforesaid writ petitions, for clubbing all the applications, the relief as sought for by the petitioners cannot be granted.

6. In reply to the aforesaid contentions, it is submitted by Sri M. Rangaswamy, learned counsel for the petitioners, that this Court in the aforesaid writ petitions has specifically left out the question as to whether KSTA is competent to call for applications having regard to the provisions contained in S. 57 (1) of the Act and as such, any thing stated in that decision cannot be held out against the petitioners.

7. Having regard to the rival contentions of the parties, the following questions arise for consideration:

(1) Whether it can be held that the KSTA has no power to call for applications for grant of tourist vehicle permits u/s 63 (7) of the Act ?

(2) Having regard to the judgment of this Court in Writ Petitions 7060 to 7062 of 1978 and the connected writ petitions, is it open for the petitioners to seek the relief sought for in these writ petitions?

8. The relevant provisions of the Act in this regard, are as follows :-

"Section 63 (7): Notwithstanding any-thing contained in sub-section (1) but subject to any rules that may be made under this Act, any State Transport Authority may, for the purpose of promoting tourism, grant Permits valid for the whole or any part of India, in respect of such number of tourist vehicles as the Central Government may, in respect of that State, specify in this behalf, and the provisions of Ss. 49, 50, 51, 57, 58, 59, 59-A, 60, 61 and 64 shall, as far as may be, apply in relation to such permits."

Section 57 (1) and (2):

(1) An application for a contract carriage permit or a private carrier's permit may be made at any time.

(2) An application for a stage carriage permit or a public carrier's permit shall be

made not less than six weeks before the date on which it is desired that the permit shall take effect, or, if the Regional Transport Authority appoints dates for the receipt of such applications on such dates.

Section 2 (29A) ""tourist vehicle" means a contract carriage constructed or adapted and equipped and maintained in accordance with such specifications as the State Government may, by notification in the Official Gazette, specify in this behalf ";

No doubt, "tourist vehicle" is defined to mean a contract carriage and S. 57 (1) of the Act provides that an application for a contract carriage permit or a private carrier's permit may be made at any time. Further, having regard to the provisions contained in Section 63 (7) of the Act, the provisions contained in S. 57 of the Act, shall apply as far as may be for the grant of permits in respect of tourist vehicles. But the contention of the Petitioners is that as there is no provision to call for applications for grant of a tourist vehicle permit and as there is a specific provision in S. 57 (1) of the Act, for making suo motu application and as that provision is applicable for grant of permit for a tourist vehicle, it must be held that the KSTA has no jurisdiction to call for applications for grant of a tourist vehicle permit. The existence of specific provisions in Section 57 (2) of the Act, to call for applications for grant of a stage carriage permit or a public carrier's permit is also relied upon to support the aforesaid contention. I am of the opinion that the aforesaid contention cannot be accepted. The provisions contained in S. 57 (1) of the Act are themselves not applicable for grant of a tourist vehicle permit. It is only by reason of the provisions contained in S. 63 (7) of the Act, the provisions of Section 57 and other provisions of the Act mentioned therein are made applicable as far as may be, to the grant of a tourist vehicle permit. That being so, the provisions of Section 57 of the Act are applicable only to the extent the said provisions are consistent with the grant of a tourist vehicle permit. The provisions contained in S. 57 (1) of the Act relate to a contract carriage permit or a private carrier's permit. In the case of a contract carriage permit or a private carrier's permit, there is no question of calling for applications for grant of permits because there will not be any definite route for a contract carriage permit or a private carrier's permit and also there will not be any quota of permits. As such, an application for contract carriage permit or a private carrier's permit may be made at any time. Whereas, in the case of a tourist vehicle permit, there is a quota prescribed and the KSTA alone will be in the know of the availability of the permits. Further, there is a responsibility cast upon the KSTA to select the best transport operators for granting permits. That responsibility can be discharged properly only if the applications are called for. Further, availability of the permits can be made known to the persons engaged in the field of transport only when the applications are called for.

The power to call for applications for, grant of a tourist vehicle permit emanates from the power to grant such permits as otherwise, the power to grant such permits cannot be effectively and efficiently exercised and the intended object to

provide best transport facilities to the travelling public will not be achieved. Therefore, the power to call for applications is essential for the exercise of the power to grant tourist vehicle permit and as such it must be held that the Act impliedly confers the jurisdiction on the authority empowered to grant tourist vehicle permits to call for applications for grant of such permits. This is also the principle stated in Maxwell on Interpretation of Statutes, 11th Edn., at page 350. The Supreme Court also in the case of The Sub-divisional Officer, Sadar, Faizabad Vs. Shambhoo Narain Singh, , has held that

"it is a well recognised principle of law that where an enactment confers a jurisdiction, it impliedly grants the power of doing all such acts or employing such means as are essentially necessary to its execution. But, what is required to be seen is as to whether the existence of such a power is absolutely essential for the exercise of the power conferred and not merely that it is convenient to have such a power."

It has already been pointed out that the existence of a power to call for applications is essential for the exercise of the power to grant tourist vehicle permit. Any other view will not only not advance the object of the Statute and the interest of the travelling public, but it will also adversely affect the interests of the travelling public and also at the same time, the authority will not be in a position to select the best operators as it will have to select only from among the applicants who voluntarily come forward with the applications for grant of such Permits.

Added to this, what S. 63 (7) of the Act provides is that the provisions of Section 57 and other provisions mentioned therein shall apply as far as may be in relation to grant of tourist vehicle permits. The words "as far as may be" can be understood to mean as far as is consistent with the grant of tourist vehicle permits. Therefore, the provisions contained in Section 57 of the Act cannot be taken to apply in their entirety to the grant of tourist vehicle permit. In the case of Arthur Richard Hinde v. Ponnath Brayan, reported in ILR (1884) Mad 52, while interpreting the words "as far as may be" in Section 587 of the then Code of Civil Procedure, a Division Bench of -the High Court of Madras has held that "as far as may be" in S. 587 (by which the provisions of Chap. XLI are made applicable, to appeals from appellate decrees) must be taken to mean "as far as is consistent with the principles on which appeals from appellate decrees are admitted and determined". Therefore, the contention of Sri M. Rangaswamy, the learned counsel for the petitioners, that having regard to the provisions contained in S. 57 (1), the KSTA cannot be said to possess the power to call for applications for grant of tourist vehicle permits, cannot be accepted. If such an interpretation is accepted, it will not be possible for the KSTA to exercise its power of granting tourist vehicle permits efficiently and properly as it will have to consider only die applications which are made suo motu. On the contrary, if the applications are called for by the KSTA, several persons engaged in the transport field will come to know about the availability of the tourist vehicle permit and will apply for

grant of the same. In that event the KSTA will be in a better position to select the best among the applicants and thereby it will be in a position to provide better, transport facilities to the travelling public.

9. In this connection, it is also relevant to notice the observations made by the Supreme Court in the case of *R. Obliswami Naidu Vs. The Additional State Transport Appellate Tribunal, Madras and Others*, , and also a Full Bench decision of this Court in the case of *Revanappa Sangappa Motti Vs. The Regional Transport Authority, Bidar and Others*, , that if a person makes suo motu application to the R. T. A. for grant of a permit for a stage carriage over a new route in respect of which there is no prior determination u/s 47 (3) of the Act and there-after, the R. T. A. makes a determination under S. 47 (3), it will not be legally impermissible for the R. T. A. to consider and decide at its next sitting whether a permit should be granted to that person. Prudence and propriety and consideration of promotion of public interest might well require and persuade the R. T. A. that applications be invited and -the pending applications be disposed of along with applications so received in response to the notification inviting applications.

Though the aforesaid observations are made while considering the provisions contained in S. 47 (3) of the Act, nevertheless, the said observations may very well be applicable to the case of grant of a tourist vehicle permit, inasmuch as in both the cases, the object is the same i.e., to select the best transport operators for grant of permit.

10. However, it is the contention of Sri Rangaswamy, learned counsel for the petitioners, that when there is an express provision providing for calling for the applications for grant of a stage carriage permit or a public carrier's permit and the absence of any such provision for the grant of a tourist vehicle permit, it could be taken as an indication that the legislature has not intended to grant such a power to the authority to call for applications for grant of tourist vehicle permit and as it is not open for the authority to exercise the power & any other manner than the one provided in the Act In this connection, the learned counsel relied upon the observations made in para 12 of the decision of the Supreme Court in the case of *Patna Improvement Trust Vs. Smt. Lakshmi Devi and Others*, , which are as follows :-

"The law on the subject is very well settled and, in my view the learned judges of the High Court have correctly appreciated it and applied it to the facts of the case. Two principles noticed by the High Court are apposite. The first principle is *generalia specialibus non derogant*. The first principle is exemplified by the decision of the Privy Council in AIR 1931 149 (Privy Council) The second principle is that if a statute directs a thing to be done in a certain way that thing shall riot, even if there be no negative words, be done in any other way. This principle is illustrated by the decision in *ex parte Stephens* (1876) 3 Ch D 659. A combined effect of the said two principles may be stated thus : a general Act must yield to a special Act dealing with a specific subject-matter and that if an Act directs a

thing to be done in a particular way, it shall be deemed to have prohibited the doing of that thing in any other way. Under the Act, the Trust is authorized to implement the improvement schemes in a particular way and for the purposes of implementing them to acquire land in a prescribed manner. If that be so, the Trust is bound to implement the scheme in the manner prescribed and cannot resort to any other method, that is to say, it can acquire land for trust purposes only by resorting to the provisions of the Land Acquisition Act as modified and incorporated by reference in the Act."

The learned counsel also relied upon a certain passage from Maxwell on Interpretation of Statutes based on the legal maxim "*expressio unius alterius exclusio*".

As pointed out above, the provisions contained in Section 57 of the Act are applicable only as far as the said provisions Act must yield to a special Act dealing with are consistent with the grant of tourist vehicle permit. Further, it has also been pointed out that the power to call for a specific subject-matter and that if an Act applications flows from the power to grant permits and such a power is necessary for the exercise of the power to grant directs a thing to be done in a particular permits. As such, the aforesaid principles cannot be made applicable to the present case. Accordingly, it is held that the KSTA has got power to call for applications for grant of tourist vehicle permit under S. 63 (7) of the Act.

11. The second contention is based upon the decision of this Court in Writ Petitions 7060 to 7062 of 1978 and other connected petitions. But in that decision, Their Lordships have refrained from expressing any opinion on the question and have specifically stated that it is not necessary to express any opinion on the question whether as modified and incorporated by reference Section 63 (7) contemplates calling for applications for grant of tourist vehicle permits. As such, Sri Rangaswamy, learned counsel for the petitioners, is right in contending that in spite of the aforesaid decision, it is open for the petitioners to put forth the aforesaid contention in these petitions. Accordingly, I have considered and have held that the KSTA has got power to call for applications for grant of tourist vehicle permits. That being so, the contention raised on behalf of the contesting respondents that by reason of the decision of this Court, in Writ Petitions 7060 to 7062 of 1978, it must be held that the petitioners are not entitled to put forth the aforesaid contention, shall have to be negatived. It is also necessary to point out that the very object of recalling the orders passed in the earlier batch of writ petitions by the order dated 16-11-1978 passed in Writ Petitions 7060 to 7062 of 1978 was to enable the KSTA to consider together all the applications filed for grant of tourist vehicle permits. This is clear from paras 15 and 16 of the order, which are as follows:

""15. For reviewing our order dated 19-4-1978 in the earlier batch of writ petitions, two courses are open. We can set aside in toto our earlier order and direct the earlier batch of writ petitions to be reheard, treating as additional respondents the present petitioners and such other persons who desire to be

impleaded as parties. The other course is to modify our order dated 19-4-1978 made in the earlier batch of writ petitions. We think the latter course is more convenient. The grievance of the present petitioners can be remedied by modifying our order dated 19-4-1978 only in regard to the authority who should be directed to dispose of afresh the applications of those ten appellants before the Tribunal. In our opinion, it would be sufficient to modify our earlier order by directing the S. T. A. instead of the Tribunal to dispose of afresh the applications of those ten appellants. Then the S. T. A., can consider those applications along with the applications of the present petition and to who have made applications in pursuance of the notification of the S. T. A., dated 3-5-1978 calling for applications for all the tourist permits available for grant. However, we do not express any opinion about the relative merits of the claims of different applicants.

16. In the result, we allow these petitions partly, and review our common order dated 19-4-1978 in the earlier batch of writ petitions and modify that order by directing the S. T. A., instead of the Tribunal, to consider the applications of those ten appellants before the Tribunal (whose applications have been rejected by the S. T. A. and in whose appeals the Tribunals had remanded their applications to the S. T. A.)."

From the aforesaid decision, it is clear that the KSTA shall have to consider the applications of the petitioners along with the other applications made for grant of tourist vehicle permits.

12. For the reasons stated above, it is held that the KSTA is right in calling for the applications for grant of tourist vehicle permits as it is possessed of jurisdiction to call for applications u/s 63 (7) of the Act.

13. It is submitted by Sri Ramesh, learned Counsel for the petitioners in Writ Petitions 4389, 4792 and 5723 of 1978, that as a result of grant of permits made in pursuance of the decisions of this Court, only 14 permits are available. It is not necessary to give any finding on this question as it is open for the KSTA to consider the applications received even earlier to the issue of notification and also those received up to the last date mentioned in the notification and to consider all the applications in respect of the quota available at the time of consideration of the applications.

14. Accordingly, writ petitions 5826 to 5830 of 1978 connected with W. Ps. 5642, 6206, 6207 and 5850 of 1978 fail and the same are dismissed.

15. As stated above, the petitioners in Writ Petitions 4389, 4792 and 5723 of 1978 have submitted their applications even prior to the publication of the notification in question and as such, their applications if found valid and pending, are also required to be considered along with the other applications for grant of tourist vehicle permits. As such, no direction need be given in these writ petitions and they are disposed of accordingly.

16. Sri Motigi. learned High Court Government Pleader, is permitted to file his

memo of appearance on behalf of the K. S. T. A. in all these writ petitions, in six weeks.

17. Petitions dismissed.