

(1987) 10 KAR CK 0028

In the Karnataka High Court

Case No : Writ Petition No's. 14917, 12598 and 13638 of 1987

Bharath Motor Service and etc.

APPELLANT

Vs

The Regional Transport Officer and Another

RESPONDENT

Date of Decision : 08-10-1987

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Motor Vehicles Act, 1939 — Section 47 (3), 57, 62

Citation : AIR 1988 Kar 190 : (1987) 3 KarLJ 288

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

Bench : Single Bench

Advocate : M.R.V. Achar, C.V. Kumar and Anandashetty, for the Appellant; N. Rangaswamy and P.R. Ramesh High Court Govt. Pleader, for the Respondent

Judgement

1. In all these petitions under Arts. 226 and 227 of the Constitution the petitioners have sought for quashing the resolution dated 17/18th July 1987 passed by the R., T. A. Mangalore in subject No. 147/8788 granting a temporary stage carriage permit to the 2nd respondent (M. Vitobha) on the route Kankanady to Udupi and back via Mulky with one round trip for the period from 1-8-1987 to 30-11-1987 to be operated by the Motor Vehicle bearing registration No. CTX. 6352 which is also attached to the pucca stage carriage permit No. 39/DK/7879 on the route Mangalore Railway Station to Manipal and back via Mangalore B us Stand, Mulky, Udupi (One round trip). To this pucca permit one more additional round trip to be operated by the very same vehicle has also been granted by the R.T.A. in subject No. 481/81-82-638 and 209/83-84 in December 1986.

2.1. The petitioner in writ petition No. 14917/87 is operating on the route Mangalore to Gangoli under a pucca stage carriage permit. "The common line or travel between the permanent route of the petitioner and that of the 2nd respondent granted under the temporary stage carriage permit in question is between Lady Hill to Udupi measuring 54 Kilometers.

2.2. The petitioner in writ petition No. 12598/87 is operating on the Amavasebail to Mangalore via Udupi, Mulky under a pucca stage carriage permit. The common portion of the route between this petitioner and the 2nd respondent is from Udupi to Mangalore.

2.3. The petitioner in writ petition No. 13638/1987 is operating under a pucca stage carriage permit on the route Mangalore to Manipal. Thus the entire route of this petitioner is common.

3.1. It is contended on behalf of the petitioners that the temporary stage carriage permit granted to respondent-2 is opposed to sub-sec. (1) of S. 42 and sub -sec. (I) of S. 48 of the Motor Vehicles Act, 1939 (hereinafter referred to as the Act); that the temporary permit is granted to the 2nd respondent only with a view to enable the 2nd respondent to use the vehicle bearing registration No.CTX 6352 during its spare hours as that vehicle is ,covered by the pucca permit No. 39/DK/7879granted to the petitioner on the route from Mangalore-Railway Station to Manipal; that there is no permit enabling the petitioner to go to Mangalore Railway Station to Kankanady; therefore, the temporary permit which is granted from Kankanady to Udupi is opposed to S. 42 of the Act; that the application for variation of the conditions of the pucca stage carriage permit in respect of the very identical route filed by respondent-2 has been rejected and the grant of temporary stage carriage permit in question results in granting the very same variation of the conditions of the permit which has been rejected, therefore there is arbitrary and colourable exercise of power by the R.T.A. under S. 62 of the Act; that having regard to the decisions of this Court in W.P. No. 13070 of 1987D/- 14-9-1987, W.P. No. 4919 of 1984. D,-/ 23-3-1984and W.P.Nos. 5348and 5349 of 1984 D/- 20-3-1984, the temporary permit is liable to be quashed.

3.2. On the contrary, Sri M. Rangaswamy. learned Counsel for the 2nd respondent submits that the temporary permit granted to the 2nd respondent does not suffer from any illegality or infirmity and the contentions raised by the petitioners are not sustainable. He has also place4 reliance on the definition of the expression "route" as contained in CL (28A) of S. 2 and S. 76 of the Act and also R. 142 of the Karnataka Motor Vehicles Rules, 1963 thereafter referred to as the "Rules").

4. Having regard to the facts and circumstances of the case, it appears to me that it is not necessary to consider all (fie contentions except the one which will hereinafter be considered.

5. The facts of the case which are not in dispute are as follows: The 2nd respondent holds a pucca stage carriage permit on the route Mangalore Railway Station to Manipal via Mangalore Bus stand. Udupi, Manipal and back. The R.T.A. Mangalore by its resolution dated 24/25th April 1987 passed it subject No. 157/86-87 has opened two routes under S. 470) of the Act. It is necessary to reproduce that resolution

"Subject No. 157/ 86-87 :-

To assess the need and to consider the proposal for providing additional bus service under S. 47(1) of M. V. Act, 1939 on the route Udupi to Mangalore and back via Kaup Padubidri Mulki Baikampady Panambur Koolur and to fix the number of services under S. 47(3) of M. V. Act, 1930.

Resolution :

R.T.A. perused the records. The distance of the route is 60 Kms. Udupi one of the terminal is a Taluk Head Quarters and it is also a traffic junction as people bound towards Kundapur Baindur Bhatkal etc., have to traverse via Udupi as the famous Sri Krishna Temple is situated there. Moreover Manipal Hospital which is attracting a large number of people is near by Mangalore, the another terminal has grown rapidly during the past decade due to opening of Harbour Project and other allied small scale industries. The quantum of traveling public on the coastal route has increased many fold and the traveling public are finding it extremely difficult to travel from Udupi to Mangalore and vice versa.

The Secretary, R.T.A. has himself conducted traffic survey and submitted a detailed report recommending to introduce 2 bus services.

Of late there is a heavy concentration of traffic in Mangalore City area, i.e., Hampankatta area. The flow of traffic in and around Hampankatta area has increased to an enormous proportion and the existing roads in Mangalore City are unable to take such a huge number of vehicles. Thus the area in and around Mangalore City has become accident prone due to heavy traffic. Considering this aspect, the R.T.A. resolved 14L) open the route from Udupi to Kankanady via Kaup Padubidri Mulky Surathkal , Baikampady. Panambur Kottara Urva Stores, Lady Hill, Bunt's Hostel, Jyothi, Kankanady with halts only at Baikampady and Panambur in respect of 2 buses, one bus each in opposite direction. Each bus to perform 2 round trips. They shall operate as Express service.

The Secretary shall notify the route u/s 57(2) of M. V. Act, 1939.

Sd/- Chairman".

Thus in the month of April 1987, the R.T.A. opened the routes from Kankanady to Udupi and Vice Versa, via Kaup Padubidri Mulky Surathkal, Baikampady Panambur Kottara Urva Stores, Lady Hill, Bunt's Hostel, Jyothi, Kankanady with halts only at Baikampady and Panambur to be operated by 2 buses, i.e., one bus each in opposite direction and each bus to perform two round trips as express services.

6. By the time the aforesaid routes were opened the 2nd respondent (Vitobha) had made an application on 3/1/1987 for grant of additional trip to the stage carriage permit No. 29/DK/78-79 held, by him on the route Mangalore Railway Station to Manipal which was registered as subject No. 112/87-88. This application was considered by the R.T.A. Mangalore on 19/20th July, 1987 and

was rejected. The reasons given by the R.T.A. are as follows :-

"R.T.A. perused the records. The IMV attached to RTO Udupi has conducted the traffic survey on the route in question recommending the variation application. There is considerable force in the arguments of the Counsel for the objectors that there is no need to grant the variation since the earlier applications are pending for consideration and the route is adequately served. Moreover number of applications for grant of variation have been rejected on the very route recently. Therefore, RTA is of the opinion that his application also deserved to be rejected. Further, no new circumstances have taken place on this route. Therefore, the RTA resolved to reject the application".

Thereafter the 2nd respondent has filed an application for grant of temporary stage carriage permit on 8-7-1987 on the route Mangalore Railway Station to Manipal and back (IR.T.) with halts at Mangalore bus stand Mulki Udupi (timings as proposed or any other suitable timings as maybe assigned by the R.T.A.). By the time this application came to be filed it is not in dispute the resolution dated 24/25th April, 1987 was passed in subject Na. 157/86-87 opening the routes from Udupi to Kankanady and vice versa via Kaup Padubidri Mulky Surathkal, Baikampady Panambur Kottara Urva Stores, etc. This resolution was challenged before the Karnataka State Transport Appellate Tribunal which stayed the operation of that resolution and thereby disabled the RTA from considering the applications filed for grant of pucca stage carriage permits pursuant to the opening of the routes. In this background the application filed by the 2nd respondent for grant of temporary stage carriage permit came up for consideration. The 2nd respondent also filed a memo before the R.T.A. bringing to its notice the opening of the route Kankanady to Udupi and also submitted that the permanent need co-existed with the temporary need; therefore the temporary permit may be granted, even on modification of the route as prayed for by him. In the meanwhile the 2nd respondent had also challenged the resolution dated 19/20th June, 1987 passed in Sub. No. 112/87-88 rejecting the application filed by him for grant of variation of the conditions of the permit by inclusion of additional trip, in the appeal preferred before the Karnataka, State transport Appellate Tribunal and that appeal being appeal No. 644/87 is still, pending before the Karnataka State Transport Appellate Tribunal (hereinafter referred to as, the Tribunal).

6. The application filed by the 2nd respondent for grant of temporary permit was considered by the R.T.A on 17th April, 1987. The R.T.A. also heard all those operators who appeared and objected to the grant including the petitioner in writ petition No.12598/87 and granted the temporary permit. The relevant portion of the resolution of the R.T.A. reads as follows :--

"R.T.A. perused the records. The arguments advanced by the Counsel for the applicant and as well as the objectors, they raised mainly three points, i.e. 1) uneconomical 2) difference between Mangalore and Mangalore Rly. Station and 3) whether the route is, adequately served or not Point of uneconomical cannot

be taken into consideration, the paramount consideration is whether there exists a temporary need. As far as need is concerned this Authority has already taken a decision by opening of the route under S. 47(1) and (3) of M.V. Act 1939bn the route Kankanady to Udupi and vice versa. Regarding Mangalore Railway Station, Mangalore and Kankanady, there is no difference as defended by Counsel for the applicant with regard to whether the route is adequately served or not, is for the authority to consider as per the provisions of S.47(3) of M. V. Act which fact has already been considered by this Authority and there .is no dispute about the need. As the permanent and temporary need co-exist it has become necessary to grant the temporary permit till the pucca permit is issued.

7. These facts are not in dispute. What emerges from these facts is that the route in respect of which temporary permit is granted to the,2nd respondent is substantially the same in respect of which he has sought for grant of variation of the conditions of the permit by inclusion of an additional trip from Mangalore Railway Station to Manipal. In fact Kankanady and Mangalore Railway Station, as argued by Sri M. Rangaswamy, learned Counsel for the. 2nd respondent are part of Mangalore City itself because the City has developed to such an extent that the old bus stop at Hampankatta in Mangalore City is found inadequate, therefore another new bus stop at Kankanady has been established. Therefore for all purposes it is the cast of the.21id respondent, though it is riot accepted by the petitioners. That Kankanady is a part of Mangalore City itself, Thus, even as per the case of respondent No. 2 the route from Mangalore Railway

Station to Udupi is identical. The only slight deviation is from Udupi to Manipal which is stated to be of 5 Kilometers. Thus it cannot be disputed that the route in respect of which the temporary stage carriage permit is granted. Is substantially the same in respect of which the application filed by the 2nd respondent for grant of additional trip by way of variation of the conditions of the pucca permit is, rejected. One of the established principles regarding grant of temporary permit is that it, should not result in over coming the procedure laid down in S. 57 of the Act. In other words, it should, not result in granting variation of .the conditions of the permit for which the procedure laid down in S. 57 of the Act has to be followed. No doubt Sri M. Rangaswamy learned Counsel appearing for the 2nd respondent is correct in contending that as the route has been opened under S. 47(3) of, the Act, and that decision of the R.T.A. has been stayed in revision by the Tribunal, sub- sec. (2) of S. 62 of the Act is attracted and the grant of temporary permit is justified. No doubt -if any other person had applied he would have been granted the temporary: permit for a period of four months or till the interim stay granted by the Tribunal subsists whichever is earlier. In the instant case unfortunately for the 2nd. respondent it so happens that his application for grant of, variation of the conditions of the pucca permit, has been rejected and it is not for this Court at this stage to express any opinion on that but the fact remains and it cannot be disputed that the grant of temporary permit on the very route to the very same person virtually results in granting variation of the conditions of the permit which has been rejected. Such .exercise of power under

S.62 of the Act even if the case falls under sub-sec. (1) or (2) of S. 62 of the Act should not be allowed to take place because it will defeat the very procedure laid down in S. 57 of the Act and would be nothing but colourable exercise of, the jurisdiction t-y the R.T.A. under S. 62 of the Act, as pointed out by this Court in C. R. Gouda v. R.T.A. Bangalore W. P. Nos. 3060 and.3061 of 1973 (1974) 2 Kar LJ 34.page, 13, This being the resultant effect of the grant of temporary permit in question it is not possible to sustain it though it is possible to grant temporary permit to another person on the very route as the case falls under S. 62(2) of the Act. However on that ground it is not possible to sustain the grant of temporary permit made in favour of respondent No. 2. having regard to the rejection of the application filed by him for grant of variation of conditions of the permit in respect of the very route Grant of temporary permit under these circumstances amounts to colourable exercise of jurisdiction under S. 62 of the Act. To put it in different words, what respondent No. 2 could not get in the regular proceeding (i.e. proceeding for variation of the conditions of the permit) cannot be allowed to achieve it by a short cut method (i.e. by obtaining the temporary stage carriage permit).

8. In view of the conclusion arrived at by, me on the aforesaid point I do not consider it necessary to consider other contentions.

9. For the reasons stated above these-writ petitions are allowed. The resolution dated 17/18th July, 1987 passed in subject No. 147/87-88 by the R.T.A., D.K. is hereby quashed. Consequently the temporary permit issued to the 2nd respondent being temporary permit No. 405/87-88 on the route Kankanady to Udupi is also quashed. I deem it necessary to observe that it is now open to the 2nd respondent to have his appeal expeditiously decided; but for the rejection of his application for variation of conditions of permit the grant of temporary permit would have been sustained. Unfortunately the 2nd respondent is placed in a very inconvenient position for having filed an application for variation of the conditions of the permit. If he had not filed an application for grant of variation of the conditions of the permit, probably the temporary permit in question would have been sustained.

10. Sri M. Rangaswamy, learned Counsel for the 2nd respondent submits that the 2nd respondent is desirous of availing the right of appeal and as he is operating the service pursuant to the temporary permit in question the operation of the order just now pronounced may be stayed for a period Or three weeks. Accordingly the operation of the order is stayed till 28-10-1987.

11. Sri Ramesh learned High Court Government Pleader is permitted to file the memo of appearance on behalf of first respondent within 6 weeks.

12. Order accordingly.