
(1995) 04 SC CK 0061
In the Supreme Court Of India
Case No : SLP (C) No.13757 of 1987

B.S. Padmavathamma

APPELLANT

Vs

A.P. State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 20-04-1995

Acts Referred:

Motor Vehicles Act, 1939 — Section 3(xxi), 48

Citation : (1995) 6 JT 218 : (1995) 4 SCALE 756 : (1995) 5 SCC 433 : (1995) 2 SCR 322 Supp

Hon'ble Judges : R. M. Sahai, J;B. L. Hansaria, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Leave granted.

2. The short question that arises for consideration in this appeal is whether the High court was justified in quashing the order passed by the State Transport Authority permitting variation in the permit for plying vehicle on inter-State routes.

3. Relevant provisions in this regard are S. 45 and 47 of the Motor Vehicles Act, 1939. Section 45 is the general provision regarding application for permits. Ss. (1) of Section 45 provides that every application for permit shall be made to the Regional Transport Authority of the region in which it is proposed to conduct service. It has two provisos. The second proviso lays down that if it is proposed to use the vehicle or vehicles in two or more regions lying in different States, the application shall be made to the Regional Transport Authority of the region in which the applicant resides or has his principal place of business. Ss. (2 of Section 45, reads as under:

"45. (2 Notwithstanding anything contained in Ss. (1, the State government may, by notification in the Official Gazette, direct that in the case of any vehicle, or vehicles proposed to be used in two or more regions lying in different States, the

application under that Ss. shall be made to the State Transport Authority of the region in which the applicant resides or has his principal business."

It provides that if a notification is issued by the State government, then the application for permit for two or more routes lying in different States shall be made before the State Transport Authority. It is not disputed that a notification under this Ss. has been issued. The procedure for applying and granting permit has been laid down by Section 57 of the Act. Ss. (8 of the said section provides for variation of the permit. It reads as under:

"57. (8 An application to vary the conditions of any permit, other than a temporary permit, by the inclusion of a new route or routes or a new area or, in the case of a stage carriage permit, by increasing the number of trips above the specified maximum or by altering the route covered by it or in the case of a contract carriage permit or a public carrier's permit, by increasing the number of vehicles covered by the permit, shall be treated as an application for the grant of a new permit:

Provided that it shall not be necessary so to treat an application made by the holder of a stage carriage permit who provides the only service on any route or in any area to increase the frequency of the services so provided, without any increase in the number of vehicles." The two S. read together make it clear that a person applying for variation of permit for inter-State route may make an application to the State Transport Authority if the notification under Section 45(2 has been issued as the permit can be varied by the same Authority which granted it. In *M. Duraiswamy v. Sri Murugan Bus Service* , it was observed:

"IN this case the Regional Transport Authority of Periyar District should have naturally control over its permit and its sanction should be first obtained before seeking the counter-signature of the Salem Regional Transport Authority. Let us assume that by the application the holder of a permit seeks the variation of his permit by the curtailment of a portion of the route which entirely lies within the jurisdiction of the Regional Transport Authority which has not granted the permit but only countersigned the permit. If the view of the High court is to be accepted even in such a case the application for grant of variation by curtailment may have to be made to the other Regional Transport Authority and not to the Regional Transport Authority which has granted the permit since the portion in respect of which curtailment is sought lies exclusively within the jurisdiction of that authority. More than all, the permit granted by one authority cannot be allowed to be modified by another. In view of these considerations we hold that Section 45 of the Act does not apply to the case of a variation of a permit and that when a variation should be made to the Regional Transport Authority which has granted the permit even though the entire route or area in respect of which extension is sought lies in another region or a major portion of the entire route (including the new route or area) lies within another region. On such application being made it is the duty of the Regional Transport Authority which has granted the permit to consider whether the variation sought should be sanctioned in the

public interest or not".

In view of the above decision, the High court has relied on Ss. (3)(xxi) of Section 48 for coming to the conclusion that the jurisdiction to vary the permit vested in Regional Transport Authority. The relevant Ss. is extracted below:

"48. (3)(xxi) That the Regional Transport Authority may, after giving notice of not less than one month:

(A) vary the conditions of the permit;

(B) attach to the permit further conditions:

Provided that the conditions specified in pursuance of clause (i) shall not be varied so as to alter the distance covered by the original route by more than 24 kilometres, and any variation within such limits shall be made only after the Regional Transport Authority is satisfied that such variation will serve the public convenience and that if it is not expedient to grant a separate permit in respect of the original route as so varied or any part thereof;".

4. In our opinion, the High court in relying on this provision committed an error of law, as that would apply only in those cases where permit had been granted by Regional Transport Authority. Since permit was granted by the State Transport Authority, the power to vary the same vested in him. We may also point out that apart from this, the decision on which reliance was placed was overruled later in *K. Pamanna v. STAT, A.P.* Since the High court had set aside the order of the State Transport Authority only for this reason the order cannot be maintained.

5. In the result, this appeal succeeds and is allowed. The impugned judgment passed by the High court is set aside. The parties shall bear their own costs.