
(1999) 10 AP CK 0044

In the Andhra Pradesh High Court

Case No : Writ Petition No. 20990 of 1997

Divisional Manager, APSRTC, Rajahmundry

APPELLANT

Vs

Ch. Nagamani and others

RESPONDENT

Date of Decision : 20-10-1999

Acts Referred:

Andhra Pradesh Motor Vehicles Rules, 1964 — Rule 282(2)

Andhra Pradesh Motor Vehicles Rules, 1989 — Rule 171, 174, 179, 282(2)

Andhra Pradesh Motor Vehicles Taxation Act, 1963 — Section 100, 104, 69, 70, 71

Citation : (2000) 1 ALD 37

Hon'ble Judges : Goda Raghuram, J

Bench : Single Bench

Advocate : Mr. K. Harinath, SC for APSRTC, for the Appellant; Government Pleader, Mr. K.N. Jwala, for the Respondent

Judgement

1. The first respondent, an intending operator, submitted two applications to the third respondent seeking permits in respect of the route Mandapeta to Anaparthi. The applications were made by the first respondent treating them as applications for town service route.

2. The applications were considered by the 3rd respondent, which by its order dated 18-9-1995 rejected both the applications. The reasons given by the 3rd respondent for the said rejections are:

(a) That the approved scheme of the Andhra Pradesh State Road Transport Corporation in G.O.Ms.No.580 of 1978, dated 30-12-1978 exempts from its operation only stage carriage permits in respect of town services complying with the provisions of Rule 258(2)(ii) of the Andhra Pradesh Motor Vehicles Rules, 1989 (for short "the Rules").

(b) That Mandapeta Bridge is not a convenient point for starting of buses as certified by the Municipal and Police authorities and the bridge is also away from the town and not a traffic generating point.

(c) That there are canals on both sides of the road at Mandapeta bridge, which is highly dangerous for being a starting point or terminus.

The order of the 3rd respondent above also noted the factual situation that the total distance of the route applied for by the first respondent is 12.6 Km., of which the portion overlapping the Road Transport Corporation approved scheme is 6.7 km., and that the distance beyond the Municipal limits is 11.4km.

3. Against the above order of the 3rd respondent in respect of both the applications, the 1st respondent filed two appeals before the 2nd respondent, AP Nos.286 of 1995 and 47 of 1996. The 2nd respondent by a common order dated 2-7-1996 allowed both the appeals and directed the Secretary of the 3rd respondent to grant a permit for the route applied for subject to permission being issued by the Transport Commissioner.

4. Challenging the 2nd respondent's order above, the petitioner (APSRTC) herein filed Writ Petition No. 20987 of 1997 against the order in AP No.286 of 1995 and the present writ petition against the order in AP No.47 of 1996.

5. Writ Petition No. 20987 of 1997 was disposed of by this Court on 27-10-1997 setting aside the 2nd respondent's order dated 2-7-1996, remanding the matter to the 2nd respondent to reconsider the appeal. The judgment of this Court also recorded the fact that in the interregnum and during the pendency of the writ petition pucca permits were granted to the 1st respondent in respect of the applications and that such permits were valid up to the year 2002.

6. Consequent on the remand as stated above, the 2nd respondent heard the appeal and by its order dated 16-6-1998 again allowed the said appeal of the 1st respondent. In the said order, the 2nd respondent considered the fact that the permission of the Transport Commissioner had been obtained by the 1st respondent.

7. At the hearing of the writ petition Sri K Harinath, learned Counsel for the petitioner, contends as under:

(a) That the factual situation at Mandapeta bridge, which is one of the termini for the route applied for by the 1st respondent, renders it inevitable that the services operated by the said respondent should cross the bridge so as to turn back on the return journey to Anaparthi, and if this is done, the approved route of the petitioner viz., Machilipatnam to Visakhapatnam would be overlapped, in fact by the 1st respondent's service in a distance of 1.6 km., and that the said approved scheme does not permit any overlapping and as a consequence and in the circumstances, the permit could not have been granted by the 2nd respondent.

(b) That in view of the provisions of Rule 258(2)(ii) of the Rules and in the light of the interpretation thereon contained in the judgment of the Supreme Court in Andhra Pradesh State Road Transport Corporation v. State Transport Appellate Tribunal, , prior permission of the Transport Commissioner in respect of a route

which extends more than 8 km., beyond the municipal limits alone would enable such a route to be treated as a town service route, and saved from the prohibitions in the approved scheme under G.O. Ms. No.580 of 1978, dated 30-12-1978.

8. As a part of this contention, it is submitted that in the case on hand, since such prior permission of the Transport Commissioner under Rule 258(2)(ii) of the Rules has not been granted at the time that the two applications were submitted by the 1st respondent to the 3rd respondent, the 3rd respondent rightly rejected the permits as in violation of the approved scheme under G.O. Ms. No.580 of 1978, dated 30-12-1978, and that allowing of the appeals by the 2nd respondent is patently an illegal exercise of appellate power and that the consequential order directing grant of permits to the 1st respondent is illegal.

9. On the other hand, it is contended by Sri K.N. Jwala, the learned Counsel for the 1st respondent, that the 2nd respondent's order impugned in this writ petition suffers from no infirmity for the reasons-

(a) that till the judgment of the Supreme Court (supra), interpretation on the provisions of Rule 258(2)(ii) of the Rules was as enunciated by this Court, viz., that the non-availability of Transport Commissioner's report under the said rule at the time of making an application to the Regional Transport Authority was an irregularity, which would not affect the authority of any permission issued and that such irregularity is curable if the permission were to be issued by the Transport Commissioner, subsequently;

(b) that in the facts on hand, the Transport Commissioner had issued a permission during the pendency of this writ petition consequent on the orders of the 2nd respondent impugned herein and since pucca permits were also granted to the 1st respondent, it would be inequitable to apply the judgment of the Supreme Court to these facts, which arose prior to the said judgment;

(c) that the judgment of the Supreme Court can only have prospective operation and fact situations prior to the date of such judgment, would be governed by the pre-existing interpretation of the law as enunciated by this Court to which a reference has been made, in the contentions of the 1st respondent's Counsel.

10. On an analysis of the legal environment (Sections 69 and 70 of the Andhra Pradesh Motor Vehicles Act, 1988 (for short "the Act"), it is clear that applications for a stage carriage permit have to be made to the Regional Transport Authority and such applications shall contain particulars such as route or routes to which the application relates, type, seating capacity of such vehicle, the minimum and maximum number of trips proposed to be provided, the time-table of such normal trips and the like.

Section 89 of the Act provides an appellate remedy to the State Transport Appellate Tribunal against specified categories of orders passed by the Regional Transport Authority (RTA).

Pursuant to the powers under Sections 95 and 96 of the Act, the State of Andhra Pradesh made the Andhra Pradesh Motor Vehicles Rules, 1959. Rule 258 of the Rules reads as under;

"Rule 258: Fixation of stages for carriages :--(1) In the case of stage carriages, the Regional Transport Authority shall, after consultation with such other authority as it may deem desirable, fix stages on all bus routes except town service. The maximum distance of each stage shall not ordinarily exceed 6.4 Km. When stages are so fixed, fares shall be collected according to stages.

Explanation :--When a passenger gets into or gets down from a stage carriage at a place lying in between two stages, he shall pay the fare from the stage preceding the place where he gets into the bus to the stage succeeding the place where he gets down.

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

An analysis of this Rule to the extent relevant to the facts of this case posits the interpretation:

(a) That a route cannot be simultaneously a town and maffasal service route;

(b) That subject to the provisions of sub-rule (2) of the said Rule, the Road Transport Authority shall determine, which are the town service routes.

Sub-rule (2) of Rule 258 prescribes normative conditions which should guide the Road Transport Authority in determining what constitutes a town service routes. Accordingly:

(1) At least one of the termini shall lie within limits of a municipality or any other place notified as a town by the Road Transport Authority with the prior concurrence of the State Transport Authority:

(2) No town service route shall extend more than 8 km., beyond the municipal limits or town limits from which it starts.

To the second norm, the Rule Making Authority engrafted exceptions, viz., (i)

that the restrict would be inapplicable to any town service route which was in existence as such on the date of coming into force of the rules, and (ii) in respect of those routes for which a specific permission of the Transport Commissioner is obtained.

11. On an holistic analysis of the above regulatory provisions it is apparent that the determination by the Road Transport Authority of a town service route is circumscribed by the provisions of sub-rule (2). If one of the termini is within the municipality or a notified town or does not extend more than 8 km., beyond the municipal limits from which the route commences or if it is a town service route existing as on the date of commencement of the rules, the Road Transport Authority may proceed further to determine the same as a town service route. Where, however, a new route extends more than 8 km, beyond the municipal limits, the Road Transport Authority is disabled from determining the same as town service route unless the said route has received the prior permission of the Transport Commissioner. The existence of such a permission is a sine qua non to label a route as a town service route. It is only on such permission having been issued by the Transport Commissioner, that the Road Transport Authority may treat such route as a town service route. This, in the view of this Court, is the meaning of the provisions of Rule 258 of the Rules. Support for this interpretation is available from the unequivocal pronouncement of the Supreme Court (supra). The Supreme Court held as under:

"7. On the above facts, the following questions are debated :--(i) Whether the permission of the Transport Commissioner contemplated in Rules 258(2)(ii) of the rules should be obtained before an application for permit is filed for a route covered by a scheme notified under the Act?

(ii) Whether the Transport Commissioner's power to extend a town service route more than 8 km., beyond the limits of the municipality or town is unlimited?

8. Rule 258 uses the expression "town service" :--Sub-rule (1) enjoins the Regional Transport Authority to fix stages on all bus routes except town service after consultation with such other authority as it may deem desirable. Sub-rule (2) directs the Regional Transport Authority to determine which are town service routes subject to the restrictions mentioned therein. There are three restrictions set out in the sub-rules:

(a) At least one terminus of every town service shall lie within the municipal limits or any built-up place notified in the State Gazette as "town" for the purpose of the Rule by the said authority with the prior concurrence of the State Transport Authority.

(b) The route of town service shall not extend more than 8 kilometers beyond the municipal limits or town limits but such restriction shall not apply to town service routes which already existed on the date of coming into force of the rules or in respect of which routes specific permission of the Transport Commissioner is obtained.

(c) No route shall be determined as both town and mufassal service routes. The expression "town service" has not been used in any other rule or any provision in the Act. The expression has not been defined anywhere.

9. Our attention has been drawn to Sections 70 and 71 of the Act which provide for application for stage carriage permit and prescribe the procedure in considering the said application. Neither section throws any light as to what is a "town-service route". On the other hand, Section 71(3)(a) refers to city routes in towns with a population of not less than five lakhs. We have also been taken through Rules 171 to 174 and 179. There is no guidance in any of the said Rules with reference to the expression "town service". There is no prescribed form of application for permit for a town service route; nor is there any prescribed form of permit.

10. In the normal connotation, "town-service route" would mean a route within a town to enable passengers to go from one place to another in the town. But generally people in the peripheral and neighbouring areas would be frequenting the town and to serve them, buses have to ply between a place in the town and a place outside. Hence, the Rule provides for an extension of 8 km, beyond the limits of the town or municipality.

11. Bearing that in mind, we have to construe Rule 258(2) in the light of Sections 98 to 100 and 104 of the Act. Section 98 provides that the provisions of Chapter VI and the rules and orders made thereunder shall have overriding effect against anything inconsistent in Chapter V or any other law for the time being in force. Section 99 deals with preparation and publication of proposals regarding road transport service of a State Transport Undertaking. Section 100 deals with publication of proposal and a notification of the Scheme after consideration of the objections to the proposal. Section 104, as stated earlier, prohibits the grant of any permit except in accordance with the provisions of the scheme. Hence for the purpose of Rule 258(2), if there is a scheme in force with reference to the route concerned, the authority has to adhere to the terms of the scheme. If there is an absolute bar in the scheme against the grant of any permit for the notified route or any portion of the route, nothing further could be done. On the other hand, if there is any exception provided in the scheme, the applicant for a permit has to satisfy the authority concerned that he would fall within the scope of exception. When the scheme provides an exception for the holder of stage carriage permit in respect of town service any applicant for permit claiming the benefit thereof has to necessarily satisfy the Regional Transport Authority that the route for which the permit is sought is a town-service route. In order to establish the same, the applicant for permit has to approach the Transport Commissioner in the first instance if the route for which permit is sought extends more than 8 km., beyond the limits of the municipality or town from which it starts. In such cases, it is only when the Transport Commissioner grants specific permission for extension of the route for more than 8 kilometres beyond the limits of the municipality or town, the Regional Transport Authority can consider

the application for grant of permit and proceed to pass orders. It is only on the basis of the Transport Commissioner's permission the Regional Transport Authority can determine the town-service routes. Hence our answer to the first question is that the permission of the Transport Commissioner contemplated in Rule 258(2) of the Rules has to be obtained before an application for permit is filed for a route covered by a scheme notified under the Act.

12. Admittedly, in none of these cases such permission was obtained. Learned Counsel for the respondents contended that in all these cases, the actual issue of permit was after the grant of permission by the Transport Commissioner and there was no violation of the rule. According to him, grant of permit and issue of permit are the same. The argument is fallacious. The grant of permit in these cases is by the Tribunal before the grant of permission by the Transport Commissioner. The Tribunal itself directed issue of permit by the Secretary to the Road Transport Authority after receipt of record evidencing the Transport Commissioner's permission. The actual issue of permit was only a ministerial act and it cannot be equated to the grant of permit. The Tribunal acted beyond its jurisdiction in granting permits in all these cases.

..... 16. Reference was also made to C. Kasturi and others, etc. Vs. Secretary, Regional Transport Authority and another etc., , decided by a Bench of three Judges to which one of us (Justice Saghir Ahmad) was a party. Dealing with the corresponding old Rule namely, Rule 282(2)(ii) of the Andhra Pradesh Motor Vehicles Rules, 1964, the Bench observed: (SCC p. 321, Para 14)

"14. It would, thus, be clear that once a notified draft scheme has been approved and published, the private operators operate their services on the notified route strictly in accordance , with the scheme only and within the exceptions engrafted thereunder. By necessary implication, the "town service" as defined in Rule 282 (2)(ii) has to be read subject to the scheme in Chapter IV-A of the repealed Act. If so read, clauses 2, 3 and 4 are to operate as an exception and they provide only a right to overlap not more than 8 km in the notified route. Otherwise, the town service will cease to be town service and would get transformed into a mofussil route and the private operator would run his stage carriage along the line of the notified route which is impermissible. When so read, though under Rule 282 (2)(ii) town service extends up to 8 km. from the municipal limits, that does not give any right to a holder of a town service stage carriage permit to run his vehicle beyond 8 km. on the notified route nor does it extend to 8 km. overlapping on the notified route from municipal limits."

This interpretation is also warranted in as much as otherwise, if the Road Transport Authority were free to consider an application as one for a town service in respect of a route which extends 8 km., beyond the municipal limits, there would be no parameters for the exercise of his discretion. It would be an uncanalised discretion. The extent of the Road Transport Authority's power is to be judged not merely from the particular statutory provisions qua which it exercises power, but within whole of the statutory frame work. Consequently the

Transport Commissioner or the Road Transport Authority while exercising their respective powers will also have to consider various provisions of the Act, at any rate, in particular, the provisions contained in Chapter VI in particular Section 98 as also Rule 258 of the Rules.

12. In the case on hand, the approved scheme prohibits stage carriage permits except a town service route. The Act does not define a "town service route". Rule 258 does. Conformity with the provisions of Rule 258 of the Rules and determination as a town service thereunder is the sine qua non for a route to escape the rigours of the prohibitions contained in the approved schemes. On the established facts on record, as on the date the matter fell for consideration of the Road Transport Authority, viz., 18-9-1995, no permission of the Transport Commissioner was available in terms of the Rule 258(2)(ii) of the Rules. The record also discloses that the route applied for exceeds the municipal limits by more than 8 km. On this established factual scenario, the Road Transport Authority was obligated in law to reject the applications of the 1st respondent as inter alia inconsistent with the approved scheme of the writ petitioner in G.O. Ms. No.580 of 1978, dated 30-12-1978, and it did so and rightly.

13. The 2nd respondent, by the order impugned herein, set aside the orders of the Road Transport Authority and directed the issuance of the permit to the 1st respondent subject to the permission of the Transport Commissioner, impliedly for compliance with Rule 258(2)(ii) of the Rules. In the light of the analysis of the Rule 258 and in the light of the pronouncement of the Supreme Court (*supra*), the conclusion is irresistible that the orders of the 2nd respondent impugned herein are contrary to the declared law, unsustainable and consequently non-est.

14. Mr. Jwala, learned Counsel for the 1st respondent, urged that the judgment of the Supreme Court could have only a prospective operation and would not be applicable to a permit applied for prior to the date of the said judgment and that in respect of an application made anterior to the judgment of the Supreme Court, the earlier interpretation by this Court governs, namely that the absence of a permission by the Transport Commissioner is an irregularity which would not vitiate a permit granted by the State Transport Appellate Tribunal. The contention is misconceived. An interpretation by the Supreme Court of India of the provisions of a Legislation or a rule, constitutes the true meaning of such legislation or a rule, *ab initio*, absent any specific mandate in the judgment of the Supreme Court itself that such interpretation shall have a prospective effect. No prospective effect of a judicial pronouncement can be inferred merely for the reason that the settled view would occasion hardship to any party. This is the settled principle of law and of jurisprudence which is integrated into our tradition. The judgment of the Supreme Court contains no indication expressly or by any necessary implication that its judgment and ratio is to operate prospectively. Consequently the requirement of the Transport Commissioner's permission is a condition precedent to a Road Transport Authority considering as a town service route a new route which extends more than 8 km., beyond the municipal limits.

This is a mandatory requirement and the Road Transport Authority is disabled from considering any such application as one for a town service route sui generis.

15. In the above premises, the order of the Road Transport Authority dated 18-9-1995 is impeccable. The order of the 2nd respondent-STAT dated 2-7-1996 is contrary to law and, therefore, non est. The order of the 2nd respondent is patently illegal and requires to be invalidated by this Court.

16. Accordingly, the writ petition is allowed and the orders of the 2nd respondent dated 2-7-1996 set aside. Any permission granted to the 1st respondent consequent on the orders of the 2nd respondent would also stand cancelled.

17. The writ petition is allowed with the above directions. No order as to costs.