

(2001) 10 AP CK 0102

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 29506 and 30542 of 1998 and WA No's. 983 and 1099 of 1999

Divisional Manager, APSRTC, Vizianagaram

APPELLANT

Vs

State Transport Appellate Tribunal, Andhra Pradesh, Hyd. and Others

RESPONDENT

Date of Decision : 16-10-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(28)

Citation : (2001) 6 ALD 408 : (2001) 6 ALT 79(1)

Hon'ble Judges : S.B. Sinha, C.J.;V.V.S. Rao, J;S.R. Nayak, J

Bench : Full Bench

Advocate : K. Harinath, SC for APSRTC, Govt. Pleader for Transport, M. Vinobha Devi, V. Narasimha Reddy and E. Rajagopala Chary, for the Appellant;

Judgement

S.B. Sinha, C.J.—These two writ petitions involving common questions of fact and law were heard together and are being disposed of by this common judgment.

FACTS:

2. The private operators are operating their bus services from Vizianagaam to Gumpam via old bus stand, Kothapeta temple, Presa Samajam, P.B. Colony junction, Venugopalapuram, Ramathirthalu junction, Moida junction, Jarajapupeta.

The overlapping portions of the State route would appear from the following sketch.

3. The aforementioned route was nationalised by reason of G.O.Ms.No.625, dated 19.5.1975 laying down the scheme, the relevant portions whereof are as follows:

1.

Route (starting point and terminus with important inter-mediate stations and route length)

Visaktiapatnam-Modia (via) Anandapuram, Tagarapu-valasa, Rajapulova Jn, Bhogapuram, Nathavalasa, Deokada, Vizianasaram and Nellimerla (92 Kms).

4.

Maximum and minimum number of vehicles proposed to be operated on each route by the State Transport undertaking to the exclusion, complete or partial, or otherwise of other persons.

The following number of buses are proposed to be operated to the complete exclusion of all other persons holding a stage carriage permit on the proposed route and such other persons holding stage carriage permits on the routes overlapping completely on the proposed route, except to this extent specified in the note hereunder:

(a) Maximum number 4

(b) Minimum number 1

(c) Type Saloon

(d) Capacity 44 - 60 seating capacity

Note appended to the Government Order reads thus:

1. The other State Transport Undertakings:

2. The holders of stage carriage permits in respect of town service routes;

3. The existing holders of stage carriage permits in respect of such route or routes, which partially overlap the proposed route.

4. The 2nd respondent in Writ Petition No. 29506 of 1998 rejected the application of the 3rd respondent for grant of pucca stage carriage permit to ply on the mofussil route, on the ground that the said route overlaps the notified route to an extent of 10.2 kms. The 3rd respondent carried the matter in appeal before the 1st respondent-State Transport Appellate Tribunal which has allowed the appeal by order dated 18.2.1998 which is impugned herein by the petitioner. When the matter came up for hearing before a learned single Judge of this Court, the following order was passed:

.....it is noticed that Clause 4 of G.O.Ms.No. 625, dt 19-5-75 excludes the operation by all other persons holding stage carriage permits on the proposed route and such other persons holding stage carriage permits on the routes overlapping completely on the proposed route, except to the extent exempted under the note. The note specifies three classes of exempted categories. There is a conflict of opinion as regards the interpretation of a clause to clause 4 of the approved scheme in G.O.Ms.No. 625, dt 19-5-75. In W.P.No. 15538/98 by the

order dt 17.9.99 the said conflict has been referred for consideration of Larger Bench of this Court for resolution. The question arising in this writ petition is identical to the question that falls for consideration in W.P.No. 15538/98, which has been referred to Larger Bench.

QUESTION:

5. Interpretation of clause (4) of G.O.Ms.No. 625, dated 19.5.1975 whereby operation of stage carriages by other persons holding stage carriage permits on the proposed route is excluded, is involved in this reference.

SUBMISSIONS:

6. The contention of the writ petitioners is that having regard to the expressions used in clause (4) of the said G.O.Ms.No. 625, dated 19.5.1975 it must be held that grant of new stage carriage permit in respect of the said route whether complete or partial is prohibited. Strong reliance in this connection has been placed on Bihar State Road Transport Corporation Vs. State Transport Appellate Tribunal and Others, .

7. Mr. Venkataramana, the learned counsel appearing on behalf of the respondents, on the other hand, would submit that by reason of clause (4) the exclusion can be either complete or partial. Partial overlapping has not been prohibited by reason of the approved scheme. The learned counsel would contend that the words "complete" or "partial" as mentioned in clause (4) must be read disjunctively and in view of the fact that partial overlapping has not been mentioned therein, the same must be held to have not been the subject matter of prohibition in the notification. The learned counsel would contend that the words "complete" or "partial" qualifies exclusion and unless both are mentioned in clause (4), prohibition of a partial overlapping cannot be presumed. Strong reliance in this connection has been placed on Andhra Pradesh State Road Transport Corporation Vs. D. Ch. Satyanarayana Raju and Others, , A.P.S.R.T.C. v. D.CH.S. RAJA, 1987 (2) ALT 811 and a recent Full Bench decision of this Court in Andhra Pradesh State Road Transport Corporation Vs. State Transport Appellate Tribunal and Others, .

SCHEME OF NATIONALISATION:

8. Control of transport vehicles is provided for in Chapter V of the Motor Vehicles Act, 1988 (for short "the Act") which inter alia contains provisions relating to necessity for permits and grant of stage carriage permit. Chapter VI of the Act contains special provisions relating to State transport undertakings. Section 104 of the Act reads thus:

Restriction on grant of permits in respect of a notified area or notified route :-- Where a scheme has been published under Sub-section (3) of section 100 in respect of any notified area or notified route, the State Transport Authority or the Regional Transport Authority, as the case may be, shall not grant any permit except in accordance with the provisions of the scheme:

Provided that where no application for a permit has been made by the State transport undertaking in respect of any notified area or notified route in pursuance of an approved scheme, the State Transport Authority or the Regional Transport Authority, as the case may be, may grant temporary permits to any person in respect of such notified area or notified route subject to the condition that such permit shall cease to be effective on the issue of a permit to the State transport undertaking in respect of that area or route.

9. The corresponding Chapters in the Motor Vehicles Act, 1939 were Chapters IV and IVA.

10. A route may be nationalised in terms of the provisions of the Act. A detailed procedure had been laid down therefore in the said Act. A draft scheme may be modified or approved in terms of! Section 100 of the Act. When a route is nationalised in terms of Chapter VI a private operator may ply a stage carriage in any route with a permit but the same cannot be allowed on a route which has a common overlapping sector with national route unless authorised in this behalf in terms of the scheme itself. O. Chinnappa Reddy, J., in *Adarsh Travels Bus Service and Another Vs. State of U.P. and Others*, , observed;

A careful and diligent perusal of Section 68C, Section 68-D(3) and Section 68-FF in the light of the definition of the expression "route" in Section 2 appears to make it manifestly clear that once a scheme is published u/s 68-D in relation to any area or route or portion thereof, whether to the exclusion, complete or partial of 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 or 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....

11. The number of buses proposed to be operated had been laid down in terms of clause (4) of the scheme. By reason thereof there shall be complete exclusion of all other persons holding a stage carriage permit on the proposed route. By reason of the second part, only such other persons holding stage carriage permits on the routes overlapping completely on the proposed route except to the extent specified in the note are excluded from the operation of any stage carriage permit on the routes overlapping completely except to the extent specified in the note thereunder. The submission of Mr. Venkataramana to the effect that when partial overlapping is totally excluded the same has to be specifically mentioned in the scheme, in our opinion, is misconceived. The complete exclusion of plying a stage carriage permit on the routes overlapping completely would include partial overlapping also. The entire scheme has to be read in its entirety. It has to be read reasonably. The intention of the maker of the scheme which is itself a legislative function must be understood having

regard to the rules relating to the cardinal principles of interpretation of statutes.

12. The first part of the notification completely excludes plying of any vehicle holding a stage carriage permit on the proposed route. Even plying of vehicle on the overlapping portion of the route is also completely excluded. The note appended to the scheme is only by way of exception. The decision in ADARSH TRAVELS (supra) was referred in R. Raghuram Vs. P. Jayarama Naidu and Others, , wherein it is held:

Having heard learned counsel for the parties, we are of the opinion that the High Court erred in taking the view which it did. The draft scheme had not yet been finalised. Objections were to be considered, and it is only after the stage of Section 68D (3) of the Motor Vehicles Act had been reached and the draft scheme approved with or without modification that the scheme could become operative. Our attention has been drawn to a decision of this Court in Pandiyan Roadways Corporation Ltd. Vs. M.A. Egappan, but on a perusal of the judgment in that case it appears that this court was dealing with an approved scheme. Nothing has been shown to us to indicate that until the draft scheme becomes operative as an approved scheme, a variation of the conditions of an existing permit on a portion of the route cannot be made. We may also note that the draft scheme specifically exempted the holders of stage carriage permits already plying on a portion of the route intended to be covered by the scheme."

13. The apex court in the said decision clearly held that the respondent therein is not entitled to operate his stage carriage on a portion of the notified route when there exists an approved scheme. An exception laid down therein must be strictly construed. Having regard to the object and purport of Chapter VI of the Act only the existing permit holders have been permitted to operate in their route. By process of interpretation, the Court cannot come to a finding that even new permits can be granted in relation to the said route.

14. It will not be out of place to mention that although by reason of the 1988 Act a liberalised policy as regards grant of permit had been contemplated, it has clearly been held by the apex court in Mithilesh Garg, Vs. Union of India and others etc. etc., , that liberalised approach cannot be made in relation to the nationalised schemes.

15. Referring to ADARSH TRAVELS (supra) in BIHAR S.R.T.C. (supra) it was held:

If the interpretation put by the Patna High Court in Manvari Motor Service's case to the bracketed words "direct service" is to be kept valid, it would frustrate _ the very purpose of nationalisation, for any person in that event could operate on a nationalised route by adding thereto, or subtracting therefrom, some kilometerage and keep one terminus at a point of start, or a point of ending, on an unnotified route and put forward his willingness to submit himself to the discipline called "corridor restrictions" which practice has been deprecated by this Court.

16. In T.V. Nataraj and Others Vs. State of Karnataka and Others, , the apex court held:

The submission cannot be accepted in view of overruling of the earlier decision of this court in Mysore State Road Transport Corpn. v. Mysore Revenue Appellate Tribunal- by the Constitution bench. Even though the bench in Mysore State Road Transport Corpn. v. Mysore Revenue Appellate tribunal did not consider it necessary to decide if publication of scheme precludes an interstate operator from plying on notified portion of intra-State route as the bench was satisfied that the scheme did not exclude an inter-State operator from plying but in view of the decision in Adarsh Travels case and in absence of express authorisation in the scheme, the controversy is no more res integra..

17. In A.P.S.R.T.C. v. D.CH.S.RAJA, 1987 (2) ALT 811, it was held:

.... If the unnecessary words ("all other persons holding stage carriage permits on the proposed route and such other persons holding stage carriage permits on the proposed route") are removed, Para 4 reads as under:

Maximum and minimum number of vehicles proposed to be operated on each route by the State Transport Undertaking to the exclusion complete or partial or other wise of other persons

The following number of buses are proposed to be operated to the except to the extent specified in the note hereunder

Note: This scheme shall not affect:

1. The other State Transport Undertakings:
2. The holders of stage carriage permits in respect of town service routes.
3. The existing holders of stage carriage permits in respect of such route or routes, which partially overlap the proposed route.

18. A. Raghuvir, J (as the learned Chief Justice then was) held:

On a reading of paragraph 4, all route holders are excluded except the one who holds a route permit which cover the entire scheme route or the three type of route holders who are specified in the note. Barring the above, all others are prohibited. The language is clear and the prohibition indicated is unequivocal.

19. Upendralal Waghray, J, however, differed with the aforementioned dicta. Two diifferent types of schemes were pressed which would appear from the following:

The particulars regarding the prohibition of private operators are to be mentioned in Column No. 4 of the statutory form. The entries in the present scheme that is in G.O.MS.No. 606, dated 19.5.1975 are as follows:-

"The following number of buses are proposed to be operated to the complete exclusion of all other persons holding stage carriage permits on the proposed

route and such other persons holding stage carriage permits on the routes overlapping completely on the proposed route, except to the extent specified in the note hereunder;

a) 4

b) I

c) Saloon

d) 44-60 seating capacity"

There is also a Note at the foot of the form which from its language has to be read along with the particulars given in para 4 and it reads as follows:-

"Note: This scheme shall not affect:

1 . The other State Transport Undertakings;

2. The holders of stage carriage permits in respect of town service routes;

3. The existing holders of stage carriage permits in respect of such route or routes, which partially overlap the proposed route."

For the purpose of comparison the entries in G.O.MS. No. 607 Home of the same date that is 19.5.1975 in respect of another route are follows:

"4. the following number of buses are proposed to be operated to the complete conclusion (sic exclusion) of all other persons holding stage carriage permits on the proposed route and such other persons holding stage carriage permits on the route overlapping completely or partially on the proposed route, except to the extent specified in the note hereunder:

a) 6

b)2

c) Saloon

d) 44-60 Seating Capacity

The scheme shall not affect:

1) The other State Transport Undertakings.

2) The holders of stage carriage permits in respect of town service routes;

3) The existing holders of stage carriage permits in respect of route or routes, which partially overlap on the proposed route, provided both the termini of such route or routes are not on the proposed route;

4) The existing holders of stage carriage permits in, respect of such route or routes with the same termini as the proposed route, but partially overlapping the proposed route".

The extent of prohibition will have to be determined with reference to the language of the scheme.....

20. The Court was concerned as noticed hereinbefore, with G.O.Ms.No. 606 and not with G.O.Ms.No. 607. It was held thus:

Some important facts viz., even after publication of draft: scheme the authorities administering the Act i.e., the R.T.A. called for application for grant of permit on this route, the Corporation itself applied for a permit and the difference in language in G.O.Ms.Nos. 606 and 607 (which speaks of a total prohibition even on partially overlapping routes) lends support to the interpretation put by the learned single judge that the impugned scheme does not contain a total prohibition for the grant of a permit on the route in question. The controversy has arisen because of suo motu objection having been raised by the STA. Tribunal in an appeal which did not involve this dispute. The language of the entries in column No. 4 and the Note in the scheme in this case and the scheme in the earlier Bench Judgment in W.A.Nos.703 and 717/1977 is similar. But the important facts mentioned above were not before the Bench. It is stated that several schemes have employed language similar to the present one or the one in G.O.Ms.No. 607. By accepting the narrow interpretation suggested by the Corporation the difference between the two types of schemes will disappear. It will amount to a prohibition because of a suo motu objection taken by an appellate tribunal after a lapse of several years after publication of the scheme. It is always open to the Corporation to modify or amend the scheme by following the provisions of the Act. As already mentioned, the Writ Petitioner is plying his vehicle since the last several years. ...

21. Thus, even the learned Judge distinguished the phraseology used in G.O.Ms.Nos. 606 and 607. It has been held that in a case of G.O.Ms.No. 607, a specific provision for grant of either wholly or partially is contemplated. K. Jayachandra Reddy, J observed that the scheme does not provide for total exclusion of all operators plying on the routes which overlap the notified scheme only partially having regard to the fact that the existing holders of stage carriage permits in respect of such route or routes which partially overlap the proposed route had been specifically mentioned.

Therefore, when the interests of the travelling public is paramount and when there is no total exclusion under the scheme, it cannot be said that no operator can be permitted to ply even on a part of a route, particularly when the contents of the scheme show that operators plying their vehicles on the route partially overlapping the notified route, are not excluded. To the same effect is the view taken by another learned single Judge in Writ Petition No. 4475 of 1979 dated 22.10.1979. In Writ Petition No. 2705 of 1981 by an order dated 17.6.1981, I have also taken the same view. I have also perused several approved schemes in G.O.Ms.Nos. 605, 606 (with which we are now concerned) 610, 612, 616, etc. Under some schemes the exclusion is total and in certain other schemes, the operators plying their stage carriages on routes which only partially overlap, are

not excluded and it is an admitted fact that on such routes the permits are also being granted to operators to ply their vehicles in respect of the routes which only partially overlap the route notified under the scheme.

22. We, however, having regard to the terminologies used in the aforementioned scheme which is an approved one have no other option but to hold that new permits cannot be granted in relation to a part of route which would be overlapping the existing routes.

23. A note is appended by way of explanation. In *A.P.S.R.T.C. v. STATE TRANSPORT APPELLATE TRIBUNAL* (supra) it is held:

The note appended to a scheme framed under the statute must be construed having regard to the fact that it is a purposive enactment.

24. It is a well settled principle of law that where the law is not clear, recourse must be taken to purposive interpretation. In *Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others*, , it has been held:

Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.

25. The Full Bench in *A.P.S.R.T.C.'s case* (supra) clearly held that authorisation to ply a vehicle must be express and no implied authorisation is countenanced. In that case the Court was considering a situation where the town service and mofussil service were categorised differently. Only mofussil service was excluded. Only in the note "town service" had been mentioned. In the aforementioned situation the Full Bench has referred to P. Ramanatha Aiyar's *Law Lexicon*, 1997 Edition and the decision of the apex court in *S. SUNDARAM v. R. PATTABHIRAMAN*". The meaning of "note" as per P. Ramanatha Aiyar's *Law Lexicon*, 1997 Edition is "a brief statement of particulars of some fact", a passage or explanation. "Explanation" has various functions. In *S. SUNDARAM's case* it has been held:

Thus, from a conspectus of the authorities referred to above, it is manifest that

the object of an Explanation to a statutory provision is-

- (a) to explain the meaning and intendment of the Act itself;
- (b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve;
- (c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful;
- (d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment; and
- (e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same."

26. The said decision, therefore, runs contrary to the submissions made by Mr. Venkataramana. There is no obscurity or vagueness in the main enactment. The note which was appended by way of explanation of the meaning and intendment of the Act was absolutely clear and unambiguous. It saves the existing permits only. It does not contemplate grant of new permits. It is not a case where the court is concerned with different types of permits.

27. For the aforementioned reasons, we are of the opinion that the impugned orders cannot be sustained. Consequently the writ petitions are allowed and the writ appeals viz., W.A.No. 983/1999 and W.A.No. 1099 of 1999 are dismissed. There shall be no order as to costs.