

(1982) 08 KAR CK 0029
In the Karnataka High Court
Case No : Writ Appeal No. 699 of 1981

D.P. Sharma

APPELLANT

Vs

The Karnataka State Transport Authority, Bangalore and
Others

RESPONDENT

Date of Decision : 06-08-1982

Acts Referred:

Motor Vehicles Act, 1939 — Section 57, 57 (1), 57 (2), 63 (7)

Citation : AIR 1983 Kar 178 : (1983) 1 KarLJ 1

Hon'ble Judges : D.M. Chandranshekhar, C.J;N. Venkatachala, J

Bench : Division Bench

Advocate : A.V. Albal, G.B. Raikar and S.V. Krishnaswamy, D. Ponnurangam, for the Appellant; P.R. Ramesh, for B.T. Hegde, for the Respondent

Judgement

Venkatachala, J.—This appeal is from the common order of K. A. Swami, J., dismissing Writ Petition No. 5850 of 1978 and connected writ petitions (reported in B.A. Jayaram Vs. State Transport Authority, The petitioner in Writ Petition No. 5850 of 1978 has presented this appeal and for the sake of convenience, he will hereinafter be referred to as the petitioner.

2. The undisputed facts necessary for deciding this appeal, are briefly these : Under sub-section (7) of Section 63 of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act"), the Central Government issued the notification dt. 19-12-1977 (produced as Exhibit-B in the writ petition) increasing the quota of tourist vehicles in respect of which the State Transport Authority (hereinafter referred to as "the S. T. A.") could grant All India permits for promoting tourism. Pursuant thereto, by its resolution dt. 4/5-4-1978 (produced as Exhibit-C in the writ petition), the S. T. A. resolved to invite applications u/s 57(2) read with Section 63(7) of the Act for grant of All India permits in respect of the increased quota of 16 tourist vehicles. Accordingly, by its notification published in the Karnataka Gazette dated 11-5-1978 (produced as Exhibit-D in the writ petition), the S. T. A. invited applications from the public for grant of such permits. In that

notification, it was stated, inter alia, that the last date of receipt of such applications was 3-6-1978 and that those persons who had already made applications for grant of All India permits for tourist vehicles, need not again apply.

3. The petitioner was among those who had made applications to the S. T. A. for grant of All India permits in respect of tourist vehicles, long before the aforesaid notification of the Central Government increasing the number of All India Permits in respect of tourist vehicles which the S. T. A. could issue. They presented writ petitions impugning the aforesaid resolution and the notification of the S. T. A. inviting applications for grant of All India Permits for 16 tourist vehicles. Their main grievance in the writ petitions was that for grant of All India Permits in respect of 16 tourist vehicles, only their applications should have been considered and that it was not open to the S. T. A. to invite applications for grant of such permits and to consider applications received in response to such invitations.

4. The learned single judge who heard the writ petitions, dismissed them upholding the action of the S. T. A. in inviting applications for such All India Permits in respect of tourist vehicles.

5. In this appeal, Shri A. V. Albal, learned Counsel for the appellant-petitioners, reiterated before us the contention which was urged unsuccessfully before the learned single judge, on behalf of the petitioner. He contested the correctness of the view of the learned single judge that sub-section (7) of S. 63 of the Act empowered the S. T. A. to invoke sub-section (2) of Section 57 for inviting suo motu applications from public for grant of All India Permits in respect of tourist vehicles. According to him, sub-section (2) of Section 57 could be invoked by the S. T. A. only for inviting applications from the public for grant of a stage carriage permit or public carriers permit and not for grant of an All India Tourist Permits in respect of tourist vehicle, as it is a species of contract carriage as defined under S. 2(29A) of the Act. He maintained that it was sub-section (1) that was applicable for grant of an All India Tourist Permit in respect of a tourist vehicle, because that sub-section deals with the procedure for applying for and grant of a contract carriage permit.

6. We shall proceed to examine the contention of Shri Albal with reference to the relevant provisions of the Act.

7. The relevant part of sub-section (7) of Section 63 of the Act reads:

"(7)..... 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 Sections 49, 50, 51, 57, 58, 59, 59-A, 60, 61 and 64 shall, as far as may be apply in relation to such permits.

Provided that preference shall be given to applications for permits from

(I) the Indian Tourism Development Corporation;

(ii) a State Tourism Development Corporation;

(iii) a State Tourism Department;

(iv) such operators of tourist cars or such travel agents, as may be approved in this behalf by the Ministry of the Central Government dealing in tourism."

8. The relevant parts of sub-secs. (1) and (2) of Section 57 of the Act, read;

"(1) An application for a contract carriage permit may be made at any time.

(2) An application for a stage carriage permit or a public carrier's permit shall be made, if the Regional Transport Authority appoints dates for the receipt of such applications on such dates."

9. It is seen that sub-section (7) of Section 63 incorporates therein, inter alia, Section 57 by reference, subject to the qualification that the application of that Section to sub-section (7) of Section 63, should be as far as may be.

10. Elaborating his contention Shri Albal said thus : Both sub-sections (1) and (2) of Section 57 provide for the procedure in applying for permits. While sub-section (1) thereof prescribes the procedure in applying for a contract carriage permit, sub-section (2) prescribes the procedure in applying for a stage carriage permit or a public carrier's permit. Clause (29A) of S. 2 defines a "tourist vehicle" as a contract carriage constructed or adopted or equipped in a particular manner. Hence sub-section (1) of Section 57 which prescribes the procedure in applying for a contract carriage permit, should apply and not sub-section (2) of S. 57 which prescribes the procedure in applying for a stage carriage permit or a public carrier's permit.

11. The argument of Shri Albal, though may look attractive, is not sound for the reasons which we shall presently state.

12. The words "as far as may be" in sub-section (7) of S. 63 indicate that the procedure in S. 57 should be adopted to grant of permit under S. 63 (7) to the extent it is reasonably possible to do so.

13. If the legislature intended that the provisions of only sub-section (1) of S. 57 should apply in relation to All India Permits, a reference would have been made in S. 63 (7) only to sub-section (1) and not to the entire S. 57. Of the two different procedures set out in sub-section (1) and sub-sec, (2) of S. 57, the one appropriate to the nature of the All India Permits should be adopted. As pointed out by the learned single Judge, contract carriage permits and private carrier's permits stand on a different footing from All India Permits. As regards contract carriage permits and private carrier's permits, there are no quotas for such permits and such permits can be granted at any time as and when applications

therefore are made. As regards All India Permits, the number of permits that can be granted is fixed. Further, a responsibility is cast upon the S. T. A. to select the best transport operators for granting such permits but no such responsibility is cast on Transport Authorities while granting contract carriage permits and public carrier permits. It is only when applications are invited by the S. T. A. for grant of All India Tourist Permits, that transport operators in the field will come to know of the availability of such permits and will apply therefore and the S. T. A. will be in a position to select the best amongst them for grant of the limited number of such permits, also taking into account the priorities under the proviso to sub-section (7) of Section 63.

14. The object of granting All India Tourist Permits, is as stated in subsection (7) of S. 63, to promote tourism. Hence, promotion of tourism by selecting the best operator should be the paramount consideration although private claims to operate tourist vehicles through All India Permits, have to be evaluated. When the number of All India Permits that can be granted is very small compared to the number of intending operators of tourist vehicles, it will be a healthy procedure to call for applications for grant of such permits, instead of granting permits in secrecy as and when applications are received, because the latter procedure opens a floodgate for manipulation, favouritism and monopoly.

15. Shri Albal next contended that the appellant-petitioner had acquired a substantive right for grant of a permit in respect of a tourist vehicle as he had made an application for grant of such permit and that such substantive right could not have been defeated by the S. T. A., by inviting the applications from public for grant of tourist vehicle permits which became available by reason of the notification issued by the Central Government in that behalf. We find it difficult to comprehend as to how a person who makes an application for grant of a permit in respect of a tourist vehicle, could get any substantive right in respect of such permit. His right is only to be considered along with other applicants for grant of a permit.

16. Shri Albal lastly sought to rely upon the decision of the Division Bench of this Court in Writ Petitions Nos. 7060 to 7062 of 1981 in support of his contention that sub-section (7) of Section 63 does not enable the S. T. A. to invite applications for grant of permits for tourist vehicle suo motu.

17. We have carefully gone through that decision. Therein, it was specifically stated that it was not necessary to express any opinion on the question whether Section 63 (7) contemplates calling for applications for grant of tourist vehicle permits. That decision does not in any way support the contention of Shri Albal.

18. Thus, we do not see any good reason to dissent from the order of the learned single Judge.

19. In the result, we dismiss this appeal.

20. However, in the circumstances of this appeal, we direct the parties to bear

their own costs.

21. After we pronounced the above judgment in Court, the learned Counsel for the appellant-petitioner made an oral application for grant of a certificate of fitness to appeal to the Supreme Court from our judgment.

22. In our view, no substantial question of law of general importance, which needs to be decided by the Supreme Court, can be said to arise from our judgment.

23. Hence, we decline to grant the certificate prayed for and dismiss the oral application.

24. The learned counsel for the appellant-petitioner has now made an application for an interim order staying the operation of our above judgment so that he may approach the Supreme Court and obtain an order of stay of operation of our judgment.

25. Pursuant to our judgment, the S. T. A. has to issue fresh notices to the applicants, who have sought for grant of All India Permits in respect of the tourist vehicles, and hear them before granting or refusing such application. All this would necessarily occupy a considerable time. Hence, we see no reason to grant the interim order sought.

26. Accordingly, we dismiss the application now made on behalf of the appellant-petitioner.

27. If learned Counsel for parties make proper copy applications with requisite number of copying sheets, let copies of our judgment and orders on the oral application for grant of a certificate of fitness to appeal to the Supreme Court and the application for stay, be furnished to them forthwith.

28. Order accordingly.