

(1987) 04 AP CK 0005

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 939 of 1982 and W.P. No's. 3293 etc. of 1979, 5039 and 6623 of 1980 and 1333 of 1981

G. Satyam and Another

APPELLANT

Vs

Secretary, Regional Transport Authority, Chittoor

RESPONDENT

Date of Decision : 08-04-1987

Acts Referred:

Motor Vehicles Act, 1939 — Section 63(6)

Citation : AIR 1987 AP 247 : (1987) 2 APLJ 271

Hon'ble Judges : Syed Shah Mohammed Quadri, J; Jayachandra Reddy, J

Bench : Division Bench

Advocate : V. Narasimha Reddy, T. Venkata Ramana and K. Manga Chary, for the Appellant; Govt. Pleader, for the Respondent

Judgement

Syed Shah Mohammed Quadri, J.—The writ appeal and the writ petitions raise a common question of law viz., whether the Regional Transport Authority in Andhra Pradesh can grant special permit under S. 63(6) of the Motor Vehicles Act, (Act IV of 1939) (for short "the Act") to enable a public service vehicle to go empty to any other State to pick up passengers of a contracting party there for their journey and return to home State empty, so they were heard together and are being disposed of by a common judgment.

2. The writ appeal is directed against the order of our learned brother Raghuvir, J., dated August 30, 1982 dismissing writ petition No. 5100 of 1982 following the judgment in G. Shaikh Shavalli, Uravakonda and Others Vs. The Secretary, Regional Transport Authority and Another, . The petitioners in the said writ petition have been plying tourist buses and contract carriages both within and beyond the State and on the inter-State routes by obtaining special temporary permits. The petitioners submit that tourist parties belonging to neighbouring States such as, Karnataka and Tamil Nadu take the vehicle on contract, in which case the vehicle has to go empty to the places of tourist party to pick up the passengers, bring them back to the place of boarding after completion of the

journey and then come back empty to their place in the Home State. It is submitted that S. 63(6) of the Act empowers grant of special permit to enable the petitioner and any other operator to ply the vehicle to any other region/State without the counter-signature of the respective Regional Transport Authority or the State Transport Authority. There is an exemption from the payment of taxes for the vehicle in the other State as payment of tax in the home State, is sufficient. But the respondents are preventing the petitioner from carrying the tourist passengers from the places other than the home State, by not granting permit under S. 63(6) of the Act, consequently the petitioners' business is adversely affected, which is violative of Art. 19(1)(g) the Constitution. In the circumstances the petitioners prayed for a writ of mandamus directing the respondents to grant special permit under S. 63(6) of the M. V. Act read with Rules 201 and 202 of the Motor Vehicles Rules (for short "the Rules") to enable them to ply empty from Chittoor to other places in other States viz., Karnataka and Tamil Nadu from where the tourist parties have to be picked up for their to and fro journey to the specified places and come back empty to the home State. In the writ petitions also the same relief is claimed.

3. No counter-affidavit is filed by the respondents.

4. Relying on the decision in *S.R.M.S. Tourist Service Company, Bangalore v. Secretary, Regional Transport Authority* AIR 1975 Kar 166 and *Narayana Bhatta Vs. Secretary, Regional Transport Authority*, , the learned counsel for the appellant and the petitioners submit that S. 63(6) is a special provision for granting special permit which is distinct and separate from the contract carriage permit as such the rules applicable to the grant of contract carriage permit have no application and that S. 63(6) is self contained provision under which they are entitled to special permit.

5. The learned Government Pleader relied on the decision of our learned brother Choudary, J., in *G. Shaikh Shavalli, Uravakonda and Others Vs. The Secretary, Regional Transport Authority and Another*, and submits that special permit under S. 63(6) of the Act is in effect a contract carriage permit to which the provisions applicable to grant of permit to a contract carriage are applicable and under those provisions the special permit asked for by the petitioners cannot be granted.

6. Before dealing with the rival contentions of the parties, it may be useful to notice the relevant provisions of the Act and the Rules. Sec. 2(2) of the Act defines "permit" as a document issued by the authorities named therein authorising: (i) the use of a transport vehicle as (a) a contract carriage, or (b) a stage carriage, (ii) the owner of (a) a public carrier, or (b) a private carrier, to use such vehicle. "Public Service" is defined in sub-sec. (25) of S. 2, so as to include motor cab, contract carriage and stage carriage. S. 42 of the Act puts an embargo on the use of the motor vehicle whether with or without passengers or goods except in accordance with the conditions of the permit granted or counter-signed by the Regional or State Transport Authority or the Commissioner. Ss. 46

to 48 deal with the grant of permit for contract carriage. Private carrier permit is governed by Ss. 52 and 53. While public carriers permit is regulated by Ss. 54 to 56. S. 62 provides, for granting temporary permit for a limited period, not exceeding four months, for any one of the reasons mentioned in cls. (a) to (d) of sub-s. (1) of that section. Sub-s. (4) of S. 63 also provides for granting a temporary permit. Subject to the conditions specified therein, special permit can be granted under S. 63(6) while the tourist permits are granted under S. 63(7) and National permits are granted under S. 63(11) of the Act. Apart from the provisions referred to above, it would be necessary to notice S. 45 and S. 57 which deal with grant of permit generally.

7. We may now read S. 63(6) of the Act which is in the following terms:

"Notwithstanding anything contained in sub-s. (1), but subject to any rules that may be made under this Act the Regional Transport Authority of any one region may, for the convenience of the public, grant a special permit in relation to a public service vehicle for carrying a passenger or passengers for hire or reward under a contract, express or implied, for the use of the vehicle as a whole without stopping to pick up or set down along the line or route passengers not included in the contract and in every case where such special permit is granted, the Regional Transport Authority shall assign to the vehicle, for display thereon, a special distinguishing mark in the form and manner specified by the Central Government and such special permit shall be valid in any other region or State without the counter-signature of the Regional Transport Authority of the other region or of the State Transport Authority of the other State, as the case may be."

A reading of this sub-section suggests that it contemplates grant of special permit by the Regional Transport Authority of any one region in relation to a public service vehicle for convenience of the public subject to the rules that may be made under the Act, for carrying a passenger or passengers for hire or reward under a contract, express or implied, for the use of the vehicle as a whole without stopping to pick up or set down along the line of route passengers not included in the contract. The authority granting the permit has to assign a special distinguishing mark to the vehicle for display thereon which would have the effect of validating the permit in other region or State without the counter-signature of the Regional Transport Authority of the other Region or the State Transport Authority of the other States as the case may be.

8. At the outset we may mention that in the State of Andhra Pradesh no rules have been made with respect to grant of permit under S. 63(6). Rules 201 and 202 of the Rules are the only relevant rules, but they do not deal with grant of permit under S. 63(6) of the Act. Therefore, we are left with S. 63(6) alone. To understand true nature and scope of S. 63(6) it may be useful to read S. 63 in its entirety. S. 63 deals with the validation of permit for use of the vehicle outside the region in which it is granted. A permit granted by the Regional Transport Authority of one region authorising the use of transport vehicle whether as contract carriage, stage carriage, private carrier or public carrier,

under the provisions noticed above, shall not be valid in any other region unless the same is counter-signed by the Regional Transport Authority of the other region. So also a permit granted by authorities in one State shall not be valid in another State unless counter-signed by the State Transport Authority or the Regional Transport Authority concerned of the other State. It is provided under sub-s. (3) of S. 63 that the provisions of this Chapter relating to the grant, revocation and suspension of permits shall apply to the grant, revocation and suspension of counter-signatures of permits. But the proviso dispenses with the necessity to follow the procedure laid down in S. 57 for the grant of counter-signature of the permit where permit is granted in any one State and required to be counter-signed by the State Transport Authority of another State pursuant to an agreement under sub-s. (3-A) or pursuant to any direction of the Commissioner under clause (c) of sub-section (2) of S. 63-A. Sub-sec. (2) authorises the counter-signing Regional Transport Authority to attach any condition to permit which it might have imposed, if it had granted the permit and likewise to vary any conditions attached to the permit by the granting authority. However, sub-sec. (1A) of S. 63 provides that a permit granted or counter-signed by a State Transport Authority shall be valid in the whole State or in such regions within the State as may be specified in the permit without the necessity of counter-signature required under sub-sec. (1).

9. As noticed above sub-ss. (4), (6), (7) and (11) deal with the grant of different types of permit. Sub-s. (4) empowers the R. T. A. of one region to issue temporary permit under clause (a) or (c) of sub-sec. (1) of S. 62 valid in another region or State where there is a general or particular concurrence of the Regional Transport Authority or State Transport Authority of other State. This sub-section specifies the ambit of the grant as provided in S. 62(1)(a) and (c). Here concurrence takes the place of counter-signature. Under sub-sec. (7) for the purpose of promoting tourism, the Regional Transport Authority may grant "Tourist Permits" valid for the whole or any part of India. The number of tourist vehicles available for grant of such permit will be as specified by the Central Government. It is specifically provided therein that Ss. 49, 50, 51, 57, 58, 59-A, 60, 61 and 64 shall as far as may apply in relation to such permits. It has been pointed out above that Ss. 49 to 51 and 57 deal with grant of contract carriage permits. Sub-s. (11) deals with grant of National Permit to which Ss. 54 to 61 and 64 are made applicable. It is significant to note that there is no provision in sub-sec. (6) either applying or excluding other provisions of the Act in relation to special permits. The gamut of the enquiry for grant of permit is left to be provided by the rules. But Rules 201 and 202 of the Rules do not throw any light on these aspects. We shall now examine to what extent S. 63(6) provides answers to the questions : Who is eligible to apply? Is an owner of a public service vehicle in one State entitled to ply the vehicle in another State, if so to which R.T.A. he should apply for the permit? In case of inter-regional or inter-State special permit which R.T.A. is competent to grant permit? Is any procedure required to be followed before the grant of permit?

10. The only condition of special permit laid down in sub-s. (6) is, for carrying a passenger or passengers for hire or reward under a contract, express or implied, for the use of the vehicle as a whole without stopping to pick up or set down along the line of route passengers not included in the contract. From this condition, can it be said that the sub-section provides for grant of contract carriage permit and the provisions relating to grant of contract carriage permit are applicable to grant of special permit under it? We would answer this question in negative.

11. A contract carriage permit is essentially different from special permit under S. 63(6). Contract carriage permit is restricted to a contract carriage as defined in sub-sec. (3) of S. 2, whereas special permit can be granted in relation to any public service vehicle as defined in S. 2(25). The inclusive definition of the public service vehicle takes in its fold, motor cab, contract carriage and stage carriage. A contract carriage permit cannot be granted for a period less than 3 years and more than 5 years during which period the owner of the vehicle may have as many contracts as he may choose, but the special permit is valid for 3 months in respect of a particular specified contract. Before granting contract carriage permit requirements of Ss. 49 to 51 and 57 have to be complied with including hearing of objections. But there is no such requirement before granting special permit. A contract carriage permit requires counter-signature for being valid in the other regions or State under S. 63(1). Whereas the special permit is valid without any counter-signature. Before granting contract carriage permit the R.T.A. has to satisfy the need of the region or area, whereas for special permit the convenience of the public alone will have to be taken into consideration.

12. A learned single Judge of the Karnataka High Court in S.R.M.S. Tourist Service Company's case: (AIR 1975 Kar 166) while considering the question whether a special permit in relation to public service vehicle granted under S. 63(6) of the Act falls within the meaning of contract carriage permit held:

"It is impossible to reach the conclusion that the Legislature intended to equate the contract carriage permit with the special permit.....one is totally different from the other."

In that case the writ petitioner applied for special permit under S. 63(6) for grant of the special permit for two days to convey tourists from place to place. But the application was rejected on the ground that there was scheme, published under S. 68-C of the Act, proposing to nationalise the contract carriages throughout the limits of Karnataka State to the complete exclusion of the other operators with the only exception stated in the scheme itself. This order was challenged in the writ petition. We agree with the view expressed by the learned Judge, that the contract carriage permit is totally different from the special permit.

13. In G. Shaikh Shavalli, Uravakonda and Others Vs. The Secretary, Regional Transport Authority and Another, , our learned brother Choudhary, J., in the circumstances similar to the cases on hand, held that an examination of Sec.

63(6) would show that what is contemplated to be granted under that section is permit to run the contract carriage. With due respect to the learned Judge we cannot agree with the said view.

14. Merely because the condition of the special permit under S. 63(6) of the Act has in common the ingredients of the contract carriage, it cannot be said that the said sub-sec. (6) of Sec. 63 contemplates grant of only contract carriage permit which is regulated by Ss. 49 to 51 and Sec. 57. Grant of permit under Sec. 63(6) cannot be confined to any particular type of vehicle. It appears to us that the definition of "permit" in Sec. 2(26) also cannot be called in aid so as to construe special permit under Sec. 63(6) to mean only a contract carriage permit inasmuch as the special permit is different in its content and scope from the permit defined in Sec. 2. In our view Sec. 63(6) contemplates grant of a special permit which is not controlled by other provisions of Chapter IV. It provides for grant of a special permit in respect of all types of vehicles within the definition of public service vehicle with a common condition "for carrying a passenger or passengers for hire or reward under a contract, express or implied, for the use of the vehicle as a whole without stopping to pick up or set down along the line of route passengers not included in the contract". The vehicle having such special permit is assigned distinguishing mark which enables it to ply in other region or State without counter-signature of the authority concerned.

15. The next question that immediately follows is who has to grant the special permit under Sec. 63(6)?

16. This question has to be answered bearing in mind the inter-regional and inter-State travel requirements and convenience of the public. There is no statutory prohibition from plying a vehicle of one region in any of the other regions of the State. If the vehicles in Hyderabad region are in good conditions, the tourists in the neighbouring region would for their convenience prefer to have the vehicle from Hyderabad region. In such a situation the Regional Transport Authority of Hyderabad region cannot refuse the special permit, because it would defeat the provisions relating to grant of special permit. So also the mere fact of registration of a vehicle in one State is not a bar from plying the vehicle in the neighbouring or in any other States. The question of granting special permit would normally arise on occasions when the vehicle of one region in a State is contracted by the tourists of the neighbouring regions in other States, who would prefer to have the vehicles of neighbouring region although in a different State for their convenience. In such situations the vehicle cannot go to the other regions in another State even empty without the permit having regard to Sec. 42 of the Act. The question will, therefore, arise as to which Regional Transport Authority has to be approached for the permits? Should the Regional Transport Authority of Chittoor be approached by the owner of a public service vehicle in that region, for going empty to the neighbouring regions in Tamil Nadu State or Karnataka State?; and then apply there; or will it be open to apply to the R.T.A. Chittoor for special permit under S. 63(6) so as to go empty to other regions in

other States to pick up the tourists/passengers of a contracting party subject to the condition of the special permit and return back empty?

17. The learned counsel for the appellant and the petitioners relied upon the decisions of the Karnataka High Court in *Narayana Bhatta Vs. Secretary, Regional Transport Authority*, . In that case there was a specific rule, Rule 127, prescribing the authority to which application for grant of permit could be made. In similar circumstances the learned single Judge of the Karnataka High Court held that once the requirements of that rules have been complied with, the authorities are bound to grant the special permit to enable the vehicle to go empty to the specified place in Madras State for complying with the contractual obligations and after the return journey to come back to Home State empty.

18. There is no such rule in Andhra Pradesh Motor Vehicles Rules. That rules incorporate the language of Sec. 45 of the Act. In the absence of any specific rule dealing with this aspect, the general provision contained in Sec. 45 of the Act will apply as the non obstante clause in sub-sec. (C) relates to sub-sec. (1) of Sec. 63 only. Sec. 45 of the Act may usefully be extracted here :

"Sec. 45. General provisions as to application for permits : (1) Every application for a permit shall be made to the Regional Transport Authority of the region in which it is proposed to use the vehicle or vehicles :

Provided that if it is proposed to use the vehicle or vehicles in two or more regions lying within the same State, the application shall be made to the Regional Transport Authority of the region which the major portion of the proposed route or area lies, and in case the portion of the proposed route or area in each of the regions is approximately equal, to the Regional Transport Authority of the region in which it is proposed to keep the vehicle or vehicles;

Provided further 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".

This section provides that every application for permit shall be made to the Regional Transport Authority of the region in which it is proposed to use the vehicle or vehicles. The first proviso deals with the situation where the vehicle is proposed to be used within two or more regions within the same State and requires the application to be made to the R.T.A. of the Region in which major portion of the proposed route or area lies and where the proposed route or area in each region is approximately equal, the application has to be made to the R.T.A. of the Region in which the vehicle is proposed to be kept. Where application is made for special permit to go empty to other region to pick up passengers there, this proviso will be attracted. Where the vehicle is proposed to be used in two or more regions in different States, the second proviso applies. It provides that the application shall be made to the R.T.A. of the region in which the applicant resides or has his principal place of business.

19. Second proviso to Sec. 45 read with Sec. 63(6) of the Act makes it clear that where it is proposed to use the vehicle in two or more regions lying in different States, Regional Transport Authority of any one region in which the applicant resides or has his principal place of business, is the competent authority to grant the special permit. It is for him to verify whether the special permit applied for is for the convenience of the public and the application is bona fide. In the absence of any prescribed procedure he has only to ensure that principles of natural justice are not violated.

20. At first sight it may appear that the above construction of Sec. 63(6) vests extra territorial jurisdiction on a Regional Transport Authority. But a closer scrutiny of the relevant sections which are discussed above, would clear the doubt. In the absence of any rule prescribing that only the Regional Transport Authority of the area in which the contracting party takes up journey or passengers board the vehicle, has power to grant the special permit, the conclusion we have reached is irresistible in view of the second proviso to Sec. 45 and the wording of Sec. 42 which provides that plying of vehicle even without passengers or goods amounts to use of the vehicle requiring permit. We are, therefore, unable to agree with the view expressed by our learned brother P.A. Choudary, J., in *G. Shaikh Shavalli, Uravakonda and Others Vs. The Secretary, Regional Transport Authority and Another*, that the Regional Transport Authority of Andhra Pradesh State are legally incompetent to grant special permit under Sec. 63(6) to go empty to the other State where the contracting party is put up for its journey and return to home State empty. The learned Judge has reached that conclusion on three grounds. Regarding the first ground that Sec. 63(6) contemplates grant of contract carriage permit and the Regional Transport Authority of Andhra Pradesh is not charged with or will not be in a position to assess the travelling need of the public of other State, we have held above that special permit under Sec. 63(6) is different from a contract carriage permit and that need is not the criterion for grant of special permit under Sec. 63(6). The second ground is, before Sec. 63(6) of the Act was amended the law required counter-signature of the Regional Transport Authority within where jurisdiction the permit might be used, to a transport permit granted by the outside the Regional Transport Authority. Now, the amended Sec. 63(6) of the Act says, that where the people living in a travelling region went to travel in a group to outside the State or outside the region, the Regional Transport Authority of the former region on its own satisfaction can grant a special permit which can be availed of by the travelling group of his region without any necessity of obtaining a counter-signature of the outside Regional Transport Authority as earlier required by Sec. 63(1) of the Act. In our view Sec. 63(6) does not merely dispense with the requirement of counter-signature which is required under Sec. 63(1) of the Act, it also provides for grant of special permit subject to the conditions mentioned therein. So to construe and limit the operation of the second we have to read words which are not used in sub-section. Further such a construction would give effect to only the non obstante clause in the first limb but render the second limb

of the section dealing with the grant of special permit otiose. We have held above that sub-sec. (6) of Sec. 63 contemplates grant of special permit which is separate and distinct from the other categories of permit mentioned in sub-sec. (2). The third ground is that Regional Transport Authority of any one of the region in the State of Andhra Pradesh does not have the powers to grant permit so as to cater to the need of the other region or State. This aspect we have already discussed above. These grounds in our view, for the aforementioned reasons, cannot limit the scope of the grant of special permit under Sec. 63(6).

21. From a combined reading of Secs. 45, 42 and Sec. 63(6) it is clear that on the application of the owner of a public service vehicle, the Regional Transport Authority of any one region can grant a special permit under Sec. 63(6) of the Act for a particular occasion so as to enable the vehicle to proceed to another region or State empty, pick up passengers there, bring them back to the point of commencement of the journey and return back to the place of origin empty.

22. For the aforesaid reasons, order of the learned single Judge dated 30th August, 1982, in W.P.No. 5100/82, is set aside and the order of the learned single Judge dated 10-6-1982 in W.P. No. 1811 of 1981 G. Shaikh Shavalli, Uravakonda and Others Vs. The Secretary, Regional Transport Authority and Another, is overruled.

23. The writ appeal and the writ petitions are, accordingly allowed. In the circumstances of the case we direct the parties to bear their own costs. Advocate's fee Rs. 150/- each.

24. Order accordingly.