

(1997) 03 AP CK 0035
In the Andhra Pradesh High Court
Case No : Writ Petition No. 1124 of 1997

Gopal Shankar

APPELLANT

Vs

Secretary, State Transport Authority of A.P. and Others

RESPONDENT

Date of Decision : 31-03-1997

Acts Referred:

Motor Vehicles Act, 1988 — Section 70, 71, 72, 80

Citation : (1997) 4 ALT 7

Hon'ble Judges : Y.V. Narayana, J

Bench : Single Bench

Advocate : M. Ravindra Nath Reddy, for the Appellant; Govt. Pleader for Respondent No. 1, C.V. Ramulu, SC for APSRTC for Respondent Nos. 2 and 3 and H. Ravi Shankar, for the Respondent

Final Decision : Dismissed

Judgement

Y.V. Narayana, J.—The petitioner herein is plying his stage carriage bus in the inter-State route - Parlakhemundi to Berhampur (via) Vasundhara, Meliaputti, Chapara, Pattupuram, Garabanda, Gopili and Mandasa, under the stage Carriage permit which was granted by the Transport Authority, Orissa. It is further stated by the petitioner that the State Transport Authority, Orissa has also granted one temporary permit in favour of the 4th respondent herein to ply his bus on the route Sherango to Bhimapur (via) Parlakhemundi, Vasundhara, Meliaputti, Chapara, Pattapuram, Garabanda and Goppili. The said permit is valid from 8-1-97 to 6-5-1997. It is the submission of the petitioner that the said route of the 4th respondent overlaps the notified routes in G.O.Ms. No. 1159 dated 9-11-1987 for a distance of about 25 Kms. and G.O.Ms.No. 584 dated 30-12-1978 by about 12.5 Kms. It is, therefore, submitted that the same is prohibited as the overlapping is more than 8 Kms. in the said schemes. The grievance of the petitioner that prompted him to file this writ petition is that there is a common sector of 32 Kms. in between the petitioner's route and the route on which the 4th respondent is plying his vehicle. Thus, the petitioner was

put to serious loss. The petitioner also submitted a representation dated 16-1-1997 to the State Transport Authority, Orissa and also to the 1st and 3rd respondents requesting them to prevent the 4th respondent from plying his bus on the route in question and also to cancel the permit issued to him. But, no action is taken. It is further stated that as per Section 88 of the Motor Vehicles Act, 1988, the permit granted to the 4th respondent has to be countersigned by the State Transport Authority or the Regional Transport Authority in Andhra Pradesh. But, it is submitted that, no such counter-signature was obtained by the 4th respondent on his permit. It is, therefore, submitted that the permit granted in favour of the 4th respondent is liable to be cancelled.

2. Counter is filed denying the allegations raised in the affidavit filed in support of the writ petition.

3. The object behind enacting the Motor Vehicles Act (Act 59 of 1988), as observed by a Full Bench of this Court in *The Secretary, Regional Transport Authority, Guntur and another Vs. E. Rama Rao and Others*, is to liberalise the grant of permits. As per Section 72 of the Act, the may grant a stage carriage permit in accordance with the application, which is to be filed u/s 70 of the Act. A plain reading of Section 80 further makes it clear that a Regional Transport Authority will not ordinarily refuse to grant an application for permit of any kind made at any time under the Act. On a combined reading of the provisions of the old Act, i.e., Motor Vehicles Act, 1939 and the new Act i.e., M.V.Act, 1988, the Full Bench observed as follows :

"It is important to note that there is no reference to any representation in Section 71 of the new Act, which corresponds to Section 47(1) of the Old Act. All that Section 71(1) states is that the R.T.A., shall, while considering the applications for stage carriage permit, have regard to "the objects of the Act". While Section 47(3) of the old Act permitted the R.T.A. to limit permits in all routes without reference to the extent of population, the new Section 71(3) permits such a limit to number of permits to be imposed only in towns with population of not less than 5 lakhs, that too provided the Central Government and the State Government so direct, as stated in Section 71(3) of the new Act. There is also no reference to the factors (a) to (f) referred to in Section 47(3) or to the filing of any representations by the existing operators of associations, local authority or police authorities. Nor is there any reference to submission of representations in Section 80(2) of the new Act which corresponds to Section 57(3) of the old Act. Further, under the first proviso to section 80(2), the applications for permits are liable for summary rejection if the grant thereof will result in exceeding the number of permits limited u/s 71(3) for city routes in towns with population of not less than five lakhs. Under the second proviso to Section 80(2), a right of hearing is limited to the applicant alone and if the permit is to be refused, reasons shall have to be given."

After comparing the provisions of the old Act and the new Act, the Full Bench held as follows :

"Whenever fresh applications are filed u/s 72 read with Sections 70, 71 and 80 of the new Motor Vehicles Act, 1988, existing operators have no legal right to file representations before the R.T. A. Nor can they claim any right to be heard by the R.T.A. It may however be open to them to send whatever representations they may like to send, as a matter of information, to the R.T.A but this they cannot claim as of right. If any representations are sent, it is open to the R.T.A to consider them if there is anything relevant in the said representations. But, the R.T.A. may or may not consider every such representation sent by the existing operators. Nor can the existing operators claim any legal right to be heard before the R.T.A. under any circumstances."

The settled legal position that is prevailing as on today is that the existing operators cannot object to the grant of permits in favour of others. In this case, the petitioner seeks for a direction to the Regional Transport Authorities in Andhra Pradesh to cancel the temporary permit granted in favour of the 4th respondent herein. In similar circumstances, a learned single Judge of this Court in *P. Rehana Begum v. Joint Transport Commissioner & Secretary*: 1997 (1) AnWR. 693 : 1996 (4) ALD 1197, after referring to the Judgment rendered by the Full Bench of this Court (1 supra), held :

"In view of the special procedure contemplated u/s 87 of the Act for granting temporary permits and in view of the fact that the temporary permits can be granted by S.T.A. under Circulation system depending upon the nature of public requirement and urgency. I hold that the existing operator is precluded from making any representation in respect of grant of temporary permits to the others and, hence he has no right much less legal right for making any objection or representation."

Thus, following the Judgment of the learned single Judge of this Court (2nd supra), I hold that the petitioner being the existing operator has no legal right to question the validity or otherwise of the temporary permit granted in favour of the 4th respondent. In this connection, it is pertinent to quote the observations of the Full Bench, which reads as follows:

"We may point out that even after the grant of such permits, the existing operators, have, as conceded before us, no right of appeal under S.89 of the Act. There is no provision for appeal by existing operators."

It is further held that:

"from the perspective of Article 19(1)(g) and (6) of the Constitution of India, it is clear that the existing operators have no "legal right" to object to the grant of a permit to rival operators. Any injury by way of loss of business to the existing operators cannot, in law, be treated as a "legal injury". There would be no legal injury if such injury was the result of exercise of a Fundamental Right by another person."

The above quoted paragraphs makes it abundantly clear that the existing

operator has no locus standi at any time to question on whatever ground it may be or object to the grant of permit in favour of others. Thus, I am of the view that this writ petition is not maintainable.

4. The writ petition is, therefore, dismissed. No costs.