

(1980) 02 KAR CK 0013

In the Karnataka High Court

Case No : Writ Appeal No's. 1261 to 1263 and 1285 to 1287 of 1979

G.T. Venkataswamy Reddy and Others

APPELLANT

Vs

The Karnataka State Transport Authority, Bangalore and Others

RESPONDENT

Date of Decision : 22-02-1980

Acts Referred:

Motor Vehicles Act, 1939 — Section 48 (3), 57 (8), 68 D

Citation : AIR 1980 Kar 199 : (1980) ILR (Kar) 993 : (1980) 2 KarLJ 1

Hon'ble Judges : P.P. Bopanna, J;D.M. Chandrashekhara, J

Bench : Division Bench

Advocate : Shanti Bhushan for M. Rangaswamy and H.B. Datar for S.C. Narasimhachar, for the Appellant; S.G. Doddakalegouda, Govt. Pleader, H.B. Datar for Narasimhachar, Ananda Shetty, for C.S. Shanthamallappa and R. Thilaka Hegde, for the Respondent

Judgement

Bopanna, J.—These appeals arise out of the common order of Chandrakantharaj Urs, J., in Writ Petitions Nos. 16247 to 16249 of 1979. Writ Appeals Nos. 1261 to 1263 of 1979, are by G. T Vankataswami Reddy, respondent-3 in those writ petitions and writ Appeals Nos. 1285 to 1287 of 1979, are by the writ petitioner A P. Sharma. For the sake of convenience, the Parties will hereinafter be referred to according to their respective positions in the writ petitions.

2. The facts in these appeals lie within a narrow compass and they are not in dispute. Respondent-3 is holding three stage carriage permits on the following inter-State routes

(a) Bangalore to Kalahasti

(b) Bangalore to Vellore

(c) Bangalore to Cuddapah.

On 25-1-1968, the Government of Karnataka approved u/s 68D of the Motor Vehicles Act, 1939 (in short, "the Act") a scheme known as the "Kolar & Pocket

Scheme" (in short "the Scheme") which in effect nationalised the passenger transport services between Bangalore and various places in the Kolar, District as also certain routes within the Kolar District as set out in the appendix to that Scheme. Under the Scheme, the services on all these routes came to be operated by the State Transport Undertaking, namely, the Karnataka State Road Transport Corporation (hereinafter referred to as the Corporation) to the complete exclusion of other persons. However, the existing permit-holders on the inter-state routes were permitted to continue to operate on such inter-State routes, subject to "the condition that their permits be rendered ineffective for the overlapping portions of the notified routes.

3. 1-2-1979, the State Government under sub-section (2) of Section 68-E of the Act, published its proposal, to modify the Scheme providing, inter alia, for exemption of all services included in the inter-State reciprocal agreement between the Governments of Karnataka and Andhra Pradesh. The notification containing this proposal and inviting objections to this proposal is produced as Exhibit-A in the writ petitions. The relevant part of the proposed modification reads:

"The State Transport Undertaking will operate services on all routes to the complete exclusion of other persons except the following: -.

"(a) Operation of services by other State Transport Undertakings as defined in clause (b) of Section 68A of the Motor Vehicles Act, 1939;

(b).

(c) Operation of services on all inter-State routes which are included in the inter-State Transport Reciprocal Agreements entered into by the Government of Karnataka with the Governments of other States either existing or in future agreement provided the operator on such route shall not be entitled to pick up and set down passengers in such portion of the routes which overlap on any portion of the notified route.

The State Government, by its Notification dated 10-1-1980, (published in Karnataka Gazette Extraordinary), has approved the modification of the Kolar Pocket Scheme by adding one more clause, clause (c), to the exemption provision in that scheme. That clause reads.

"(c) The operation of services by the permit holders who have already been granted permits by the Transport Authorities on the date of publication of the modified scheme on inter-State routes which are included in the inter-State agreement entered into by the Government of any other State provided that the operator on such route shall not be entitled to pick up and set down passengers in such portion of the routes which overlaps on any portion of the Notified routes."

On 7-6-1979, the petitioner filed an application before respondent-1, the Karnataka State Transport Authority, Bangalore, (in short, "S. T. A.") for grant of

a new inter-State permit on the route Cuddapah to Bangalore. This was notified in the Gazette on 5-7-1979. On 11-6-1979, respondent-3 made an application before the S. T. A. for grant of variation of the conditions of his three existing permits on the three inter-State routes, namely, Bangalore-Kalahasti, Bangalore-Vellore and Bangalore-Cuddapah. The variation sought for were:

- (a) an additional vehicle on each route;
- (b) an increase in and the number of trips from two to four on each route i. e., two round trips.

The petitioner did not prefer any objections to those applications of respondent-3 and when his application for grant of a permit on the Cuddapah-Bangalore route, came up for consideration before the S. T. A. on 3/4-10-1979, he himself moved for an adjournment, which was granted. The S. T. A. granted the variation sought for by respondent-3, in respect of his three-inter-State permits.

Feeling aggrieved by the three resolutions of the S. T. A. (produced as Exhibits G, H, and J in the writ. Petitions) granting the variations of the conditions of the permits sought for, the petitioner filed the three writ petitions from which these appeals have arisen.

While allowing these petitions, the learned single Judge held that -

(a) the petitioner could not be regarded as an aggrieved person who could move this Court under Article 226 of the Constitution for issue of a writ in the nature of either prohibition or certiorari and therefore his petitions were not maintainable; and

(b) the impugned resolution of the S. T. A. varying the conditions of respondent-3's permits u/s 57 (8) of the Act were not in accordance with law insofar as they permitted the use of an additional vehicle under each of such permits.

4. These appeals could "have been disposed of on the short ground as to whether the learned single Judge was justified in pronouncing upon the validity of the impugned resolutions of the S. T. A. after having held that the petitioner had no locus standi to maintain the writ Petitions. As our decision in these appeals, is likely to be taken up in appeal to the Supreme Court, in order to avoid the possibility of remand by the Supreme Court if it disagrees with our finding on the question of locus standi, we have considered it advisable to decide the question of the validity of the impugned resolution of the S. T. A. varying the conditions of the permits held by respondent. Moreover, our decision on the question of the validity of the variations of the conditions of the permit will be of guidance to the State Transport Appellate Tribunal and the S. T. A. who have to deal with that question from time to time.

5. Shri B. Thilaka Hegde, learned counsel for the Corporation, sought for permission to intervene in these appeals on the ground that its interests would

be affected by our decision on the interpretation of Section 57 (8) of the Act. We permitted him to intervene and to address arguments. We also permitted objectors to the application of respondent-3, before, the S. T. A. to intervene and they have adopted the arguments of Mr. H. B. Datar.

6. The questions that arise for deter- in these appeals are: -

(i) whether under sub-s. (8) of S.57 of the Act, a variation of the conditions of a permit in respect of a route. can in an increase in the number of vehicles that may be operated on that route under that permit;

(ii) Whether the exemption granted under the Kolar Pocket Scheme to an existing inter-State permit, can be extended to increase the number of vehicles operating under such permit on inter-State routes; and

(iii) Whether D. P. Sharma had locus standi to challenge in the writ petitions the resolution of the S. T. A. granting the variation of the conditions of the permits held by Venkata Swamy Reddy by increasing the number of vehicles operated under such permits.

7. We shall now deal with these questions seriatim. As stated earlier, the learned single Judge held that the variation of conditions of permit under S.57 (8) could not extend to increasing the number of vehicles that could be operated under a permit. Mr. Shantibhushan assailed the correctness of this view, learned counsel for Venkataswamy Reddy in these appeals. Mr. Datar, learned counsel for D. P. Sharma and Mr. Thilaka Hegde sought to support the view taken by the learned single Judge.

8. Before dealing with the rival contentions of learned counsel on the first of the above questions, it is convenient to start with the ruling of the Full Bench of this Court in Writ Appeal No.949 of 1974 (the Karnataka State Road Transport Corporation v. B. A. Jayaram). The Full Bench held that a variation of the conditions of a permit for operating a stage carriage over a route by increasing the maximum number of trips over that route does not amount to grant of a new permit. In other words according to the Full Bench it is permissible under sub-section (8) of Section 57 of the Act to vary the conditions of a stage carriage permit in respect of a route so as to increase the maximum number of trips which can be operated on that route under that permit.

An increase in the number of trips over a route, can be effected either by increasing the frequency of operation of the existing number of vehicles plying on that route without increasing the existing number of vehicles operating on that route or by increasing the number of vehicles operating on that route without increasing the frequency of operation of the existing number of vehicles or by increasing both such frequency and the number of vehicles. The opinion of the Full Bench is silent as to which of these methods of increasing the maximum number of trips on a route or in an area, can be permitted by varying the condition of the permit under sub-section (8) of Section 57.

9. We shall now examine whether an increase in the number of trips provided in sub-s. (8) of S. 57 includes an increase in the number of vehicles to be operated under an existing permit. It is necessary to set out the provisions of the Act bearing on this question.

The relevant parts of Section 46 of the Act read:

"46, Application for stage carriage permit:-

An application for a permit in respect of a service of stage carriages or to use a particular motor vehicle as a stage carriage (in this Chapter referred to as a stage carriage permit) shall, as far as may be contain the following particulars, namely.

(a)

(b) the number of vehicles it is proposed to operate in relation to each route or area and the type and seating capacity of each such vehicle;

(C)

(d) the number of vehicles intended to be kept in reserve to maintain the service and to provide for special occasions." .

(Underlining is ours)

The relevant parts of sub-section (3) of Section 48 of the Act read:

"48. Grant of stage carriage permits: -

(1)

(2)

(3)The Regional Transport Authority, if it decides to grant a stage carriage permit, may grant the permit for a service of stage carriages of a specified description or for one or more particular stage carriages and may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions namely: -

(i) that the vehicle or vehicles be used only in a specified area, or on a specified route or routes;

.....

.. .. (ix) that vehicles specified types fitted with bodies conforming to approved specifications shall be used;

.....

.. .. (xvi) the reserve of vehicles to be kept by the holder of the permit to maintain the service and to provide for special occasions ;

.....

....."

(Underlining is ours)

Sub-section (8) of Section 57 of the Act reads:

"An application to vary the conditions of any permit, other than a temporary permit, by the inclusion of a new route or routes or a new area, or, in the case of a stage carriage permit, by increasing the number of trips above the specified maximum or by altering the, route covered by it or in the case of a contract carriage permit or a public carrier's permit, by increasing the number, of vehicles covered by the permit, shall be treated as an application for the grant of a new permit:

Provided that it shall not be necessary so to treat an application made by the holder of a stage carriage permit who provides the only service on any route or in any area to increase the frequency of the service so provided, without any crease in the number of vehicles."

10. It is seen from clause (b) of Section 46 that it is permissible to apply for a stage carriage permit, which will cover more than one vehicle in relation to a route or area, and that it is not necessary to apply for a separate permit in respect of each of such vehicles. Likewise, it is seen from Cls. (i) (ix) and (xvi) of Section 48 that a stage carriage permit may be issued authorising use of more than one vehicle on a specified route or in a specified area and that it is not necessary that there should be a separate stage carriage permit in respect of each of such vehicles.

If a stage carriage permits when originally granted, can cover more than one vehicle to be operated on a route or in a area, there is no reason why the conditions of such permit cannot be altered to authorise more number of vehicles to be operated under such permit. We do not see any good reason to insist that the holder of a stage carriage permit who intends to increase the number of vehicles operating on a route or in an area covered by such permit, should apply for a new permit and not ask for variation of the conditions of such permit by increasing the number of vehicles to be operated under that permit.

11. However, Mr. Datar contended that sub-section (8) of Section 57 which deals with an application for variation of the conditions of a permit, provides for increase the number of vehicles covered by only a contract carriage permit or a public carrier's permit, that in that subsection there is no mention of increasing the number of vehicles covered by a stage carriage permit and hence the only reasonable inference that can be drawn from such non-mention, is that increasing the number of vehicles operating under a stage carriage permit, is outside the ambit of variation of the conditions of a stage carriage permit. This argument of Mr. Datar overlooks the important distinction between a contract carriage permit and a public carrier's permit on; the one hand and a stage carriage permit on the other. A contract carriage permit or a public carrier's permit does not contain any condition as to the number of trips that a contract carriage or a public carrier can perform. But in a stage carriage permit, the

maximum number of trips, which the stage carriage can perform, on the specified route or in the specified area will be specified. Hence that sub-section speaks of increasing the number of trips in the case of a stage carriage permit and increasing the number of vehicles in case of a contract carriage permit or a public carrier's permit. As said earlier, an increase in the number of trips on a specified route or in a specified area, can be effected either by increasing the frequency of operation of the existing vehicles or by increasing the number of vehicles. The expression "by increasing the number of trips above the specified maximum" occurring in that sub-section is, in our opinion, wide enough to include an increase in the number of vehicles covered by a stage carriage permit.

12. Mr. Datar next sought to derive support for his contention from the proviso to sub-section (8) of Section 57, which states that where there is only one stage carriage operator providing service on any route or in any area, his application for increase in the frequency of his service so provided, without any increase in the number of vehicles, shall not be treated as an, application for grant of a new permit. From this proviso Mr. Datar wanted us to infer that only an increase in the, frequency, of operation of a vehicle used as stage carriage, comes within the ambit of variation of conditions of permit and that in increase "in the number of such vehicles falls outside such ambit. We are unable to accept this contention. All that the proviso states is, that while dealing with an application of a stage carriage operator providing the only service on any route or in any area for increasing the frequency of his service without increasing the number of vehicles, the elaborate procedure for dealing with an application for a new stage carriage permit. Provided in Section 57, need not be followed. The rationale of such exception appears to be as follows:

Where there is a sole stage carriage permit holder providing transport service on any route or in any area, any increase in the number of trips by him on such route or in such area, will not affect any other stage carriage operator. Hence, when he makes an application for permitting such increase in the number of trips, it would not be necessary to hear the objections of any other operator. If such increase in the number of trips is effected without increase in the number of vehicles, it would not be necessary to hear any public authorities like the Police because such increase in the number of trips would not involve more vehicles being used which may result in congestion of traffic on roads or in areas. Thus, the proviso cannot, in our opinion, lead to an inference that increasing the number of vehicles operating under a stage carriage permit, does not come within the ambit of variation of the conditions of a stage carriage permit.

However, Mr. Datar contended that the conditions of a stage carriage permit which was granted initially for one vehicle could not be so varied as to include another vehicle or more and that a variation of the conditions of that permit by increasing the number of trips there under, could be granted only by increasing the frequency of the trips made by the existing number of vehicles under the original permit and not by increasing the number of such vehicles.

We do not find anything in the language of the said sub-section to accept this contention of Mr. Datar.

13. The learned single Judge followed the following observations of Jagannatha Shetty, J., in Writ Petition No. 3366 of 1974 (Kant).

"The scheme does not prohibit the existing operators from increasing their trips on the route. What it prohibits is the grant of permit on the notified routes. If the petitioner is asking for a fresh permit, certainly he is not entitled to. Again, if the variation of condition of permit by the inclusion of one additional trip on the existing route, amounts to grant of a new permit, equally he is not entitled to."

No reasons have been given by Jagannatha Shetty, J. for holding that the inclusion of an additional vehicle on the route covered by a permit amounts to grant of a new permit and not a mere variation of the conditions of the existing permit.

We are unable to agree with the conclusion of the learned single Judge that the grant of variation of the conditions of the permits held by Venkataswamy Reddy by the addition of a vehicle in my respect of each such permit, was invalid.

14. We shall now proceed to deal with the second question namely, whether the exemption granted under the Kolar Pocket Scheme to an existing holder of an inter-State permit, prohibited any increase in the number of vehicles operated under such permit. The relevant portion of the Kolar Pocket Scheme reads:

"The State Transport Undertaking will operate services on all the routes to the complete exclusion of other person s except that: -

(a) that existing permit holders on the Inter-State routes, may continue to operate such inter-State routes, subject to the condition that their permit shall be rendered ineffective for the over-lapping portions of the notified routes;"

15. Mr. Shanthi Bhushan contended that the exemption granted under the Kolar Pocket Scheme to the existing permit holders on the inter-State routes, was wide enough to include any variation of the conditions of their permits and that such exemption did not contain any prohibition against increasing the number of trips by such permit holders either by increasing the frequency of operation of the existing number of vehicles or by increasing the number of vehicles. Mr. Shanthi Bhushan further submitted, that growth of population and increase in the volume of traffic subsequent to the commencement of the Kolar Pocket Scheme, may warrant increasing the number of trips on such inter-State routes either by increasing the frequency of operation of the existing number of vehicles or by increasing the number of vehicles operating on such inter-State routes. He maintained that the framers of Kolar Pocket Scheme could not have intended that such number of trips or such number of vehicles should be freezed at the level prevailing on the date of that Scheme coming into force without providing for future growth of traffic.

16. On the other hand, Mr. Datar and Mr. Thilaka Hegde contended that the object of giving exemption under the Kolar Pocket Scheme to the existing holders of inter-State permits, was merely to save them from the hardship that would have been caused if they were totally eliminated, that such exemption was not intended to enable them to expand their operation on such inter-State routes by increasing the number of trips either by increasing the frequency of operation of the existing vehicles or by increasing the number of vehicles. It was pointed out that if the existing permit holders on inter-State routes could go on increasing the number of vehicles operated by them on such routes, that would result in their having a monopoly on those routes, while no new operator could apply for permits on those routes. Mr. Datar maintained that it could not have been the intention of the framers of the Kolar Pocket Scheme to encourage such monopoly.

17. It is true that grant of variation of the conditions of existing inter-State permits by increasing the number of vehicles operating under such permits, would create an anomalous situation, namely, such existing permit holders can go on expanding their operation while no new operator can enter the field. But that is a matter for the framers of the Kolar Pocket Scheme to remedy by appropriate amendment of the Scheme. On the ground of such anomaly, we cannot construe the exemption clause in the Kolar Pocket Scheme in a narrow way not warranted by the plain language of that clause. Moreover, while granting a permit or variation of conditions of a permit, the interest of the traveling public is paramount. Grant of variation of conditions of a permit, by increasing the number of vehicles operating under that permit, should not be refused where such grant is warranted by the increase in the volume of traffic, merely because such grant results in a monopoly of existing permit holders.

18. In the light of the foregoing discussion, we hold that the exemption granted under the Kolar Pocket Scheme to the existing permit holders on inter-State routes, does not prohibit variation of the conditions of such permit by increasing the number of vehicles to be operated under such permits.

19. We shall now deal with the question of locus standi. Mr. Datar assailed the finding of the learned Single Judge that D. P. Sharma had no locus standi to challenge the resolutions of the S. T. A. granting variation of the conditions of the permits held by Venkataswamy Reddy by increasing the number of vehicles operated under those permits. Mr. Datar referred to several decisions of the Supreme Court and of this Court in support of his contention that D. P. Sharma was aggrieved by such grant in favour of Venkataswamy Reddy and hence had sufficient legal interest to maintain the writ petitions. But none of those decisions are applicable to the facts of these cases.

20. As stated earlier, D. P. Sharma had not filed any objections to the applications made by Venkataswamy Reddy for grant of variation of the conditions of his permits and when his (D. P. Sharma's) application for grant of a permit on an inter-State route came up for consideration before the S. T. A., he himself prayed for postponement of consideration of his application by the S.T.A.

presumably to await the decision of the Government on the proposal modify the Kolar Pocket Scheme. The learned single Judge has rightly held that since D. P. Sharma had not objected to Venkataswamy Reddy's application for grant of variation of conditions of the latter's permits, the former could not be said to be aggrieved by grant of such variation.

21. However, Shri Datar submitted that the State of Karnataka and the State of Andhra Pradesh had agreed for a few more permits being granted on certain inter-State routes between these two States, the application made by D. P. Sharma for grant of a permit on one of such inter-State routes, was still pending before the S. T. A., that if the variation of the conditions of the permit held by Venkata Swamy Reddy by increasing the number of vehicles operated under those permits was allowed to stand, such increase in the number of vehicles operating on inter-State routes would absorb all the additional vehicles contemplated by the recent agreement between the State of Karnataka and Andhra Pradesh, and that D. P. Sharma's application for such inter-State permit would become infructuous even if the Kolar Pocket Scheme were to be modified by the Government as Proposed, and that hence he should be regarded as being aggrieved by the said resolutions of the S. T. A. and as having locus standi to challenge those resolutions.

22. The learned single Judge has rightly held that the interest claimed by D.P. Sharma was too remote because so long as the Kolar Pocket Scheme remained as it was, no new application for a permit on any inter-State route overlapping any portion of the notified routes under the Kolar Pocket Scheme, could be entertained by the S.T.A. D. P. Sharma had no subsisting interest and he could not depend on the mere chance of the State Government modifying the Kolar Pocket Scheme at some future date.

23. As stated earlier, the subsequent modification of the Kolar Pocket Scheme under the Government Notification dated 10-1-1980, has extended the exemption from that scheme, only to the operation of services by the permit holders who had already been granted permits (prior to such modification) on inter-State routes which were included in the inter-State agreements between this State and other States, subject to such permits being rendered ineffective over the overlapping portions of the notified routes under that Scheme. As D. P. Sharma had not been granted any permit on any such inter-State route prior to 11-1-1980, the modification of the Kolar Pocket Scheme, does not help him in any way.

24. The finding of the learned single Judge that D. P. Sharma had no locus standi to maintain the writ petition challenging the grant of variation of the conditions of the permit held by Venkataswamy Reddy, has not been affected by the subsequent modification of the Kolar Pocket Scheme. If anything, the correctness of that finding has been strengthened by such modification of that Scheme.

25. In the result, we allow Writ Appeals Nos. 1261 to 1263 of 1979 and reverse

the finding of the learned single Judge that the resolutions of the S.T.A. granting variation of the conditions of the permit held by Venkataswamy Reddy, were invalid. We dismiss Writ Appeals Nos. 1285 to 1287 of 1979, presented by D. P. Sharma.

26. In the circumstances of these cases, we direct the parties to bear their own costs.

After we pronounced the aforesaid judgment, Shri B. Thilaka Hegde, learned counsel for the Corporation, who had been permitted to intervene in these appeals, made an oral application praying that we may clarify our judgment by stating that our judgment should not influence the decision of the appeals preferred by the Corporation and other operators impugning the grant of variation of the conditions of the inter-State permits held by Venkataswamy Reddy.

In these appeals, we have decided the following question of law :-

(i) Whether under sub-section (8) of Section 57 of the Motor Vehicles Act, the conditions of a stage carriage permit may be varied so as to allow more number of vehicles being operated under that permit; and

(ii) Whether an existing holder of permit on an inter-State route overlapping the notified routes under the Kolar pocket Scheme, can be granted a variation of the conditions of permit so as to allow him to increase the number of vehicles operating under that Permit

We have not decided anything as to the merits of the application of Venkataswamy Reddy for grant of such variation of the conditions of the permits held by him. We clarify our judgment accordingly.

27. Judgment accordingly.