
(1988) 02 MAD CK 0001
In the Madras High Court

G.T. Venkataswamy Reddy

APPELLANT

Vs

The State Transport Authority and Others

RESPONDENT

Date of Decision : 23-02-1988

Acts Referred:

Motor Vehicles Act, 1939 — Section 57(8)

Citation : (1988) 02 MAD CK 0001

Hon'ble Judges : K. Govindarajan, J

Bench : Division Bench

Judgement

K. Govindarajan, J.—The petitioner had applied for grant of counter-signature for variation of the conditions of permit allowed by the State

Transport Authority, Karnataka in respect of Stage Carriage CAM 3663, on the inter-State route, Bangalore to Tirupathur (via.) Madivala,

Chandapur, Attibala, Hosur, Krishnagiri and Bargur by way of grant of additional single trips with inclusion of one more Vehicle bearing MED

5969 to perform the additional trips. The said application was notified and in response to the Notification, representations were received. After

hearing the respective counsel appearing on behalf of the representators, the State Transport Authority, Tamil Nadu in his order dated 26.12.1985

rejected the application for counter-signature for variation. Aggrieved against the same, the petitioner filed an appeal before the State Transport

Appellate Tribunal, Madras in Appeal No. 91 of 1986. The learned Appellate Authority also concurred with the findings of the State Transport

Authority, and dismissed the appeal. Aggrieved against the same the petitioner has filed the above revision.

2. It is not in dispute that the State Transport Authority, Karnataka State originally granted permit to the petitioner with two singles. The said

permit was countersigned by the State Transport Authority, Tamil Nadu. Anna Transport Corporation challenged the said counter-signature in

C.R.P. No. 2515 of 1985. This Court confirmed the order of State Transport Authority, Tamil Nadu and the SLP filed by the Anna Transport

Corporation was also dismissed. Thereafter also, the State Transport Authority, Karnataka granted two additional singles to the petitioner which

was also countersigned by the State Transport Authority, Tamil Nadu. The same was also challenged by Anna Transport Corporation by filing

appeal before the State Transport Appellate Tribunal, Madras in Appeal No. 1099 of 1983, and further revision before this Court in C.R.P.No.

2485 of 1986. But, both the appeal and revision ended in dismissal. The SLP filed against the said orders was also dismissed. Thereafter the

petitioner made an application before the State Transport Authority, Karnataka for increase of 2 additional singles with inclusion of one more bus

on 29.7.1982. Originally, the State Transport Authority, Karnataka rejected the application, on 28.1.1983. On appeal, the State Transport

Appellate Tribunal, Karnataka allowed the variation of permit by inclusion of 2 additional singles with one more bus. To get counter-signature the

petitioner filed an application on 25.5.1985 before the State Transport Authority, Tamil Nadu. The same was rejected mainly on the ground that

the route is covered by the approved scheme of nationalisation published in Tamil Nadu Government Gazette No. 143, dated 12.4.1972 and by

granting such variation, it will nullify the spirit of the approved scheme. The State Transport Authority, Tamil Nadu has also relied on Section 57(8)

of the Motor Vehicles Act, 1939 in support of his conclusion. The State Transport Appellate Tribunal on appeal by the petitioner has found that

the route of the petitioner overlaps the draft scheme route in respect of the portion Athibelli border -- Burgur which lies in Tamil Nadu, and is more

than 16 Kms. in length. According to the said draft scheme, the private operators are completely excluded from operation in the route and/or

sectors of the route for 16 Kms., except the State Transport Undertakings of Tamil Nadu State and other person of other State operating under

existing or future inter-state agreements. It has also found that the petitioner's route for which the petitioner wanted to get counter signature is not

covered by any interstate agreement. With the above findings, the Appellate Tribunal, Tamil Nadu rejected the appeal.

3. The learned Counsel appearing for the petitioner has submitted that according to Section 57(8) read with Section 48(3)(i) and Rule 208 of the

Motor Vehicles Act, inclusion of one more vehicle is permissible. She has further submitted that the draft scheme will not prevent the petitioner

from getting counter signature in view of the fact that the route is covered by the existing inter-State agreement under G.O.Ms.No. 1178, dated

1.5.1973. According to the learned Counsel, as per the agreement, the route Bangalore to Tirupathur is allotted for the operation of both Tamil

Nadu and Karnataka operators. She has further submitted that the need of the public and the high occupancy ratio were taken into consideration

by the Karnataka State and variation has been granted. But, the State Transport Authority and State Transport Appellate Tribunal, Madras did not

consider all these aspects. I am not in a position to accept such submission of the learned Counsel, in view of the subsequent developments.

4. While construing the similar issue, the Division Bench of this Court in W.A.No. 331 of 1994 etc., dated 29.6.1994 has held as follows:

Thus on a reading of the provision of the scheme, as pointed out above, we are of the view that overlapping of the notified route is not permissible.

Even the saved operator also cannot claim such a right to have an addition to the existing route overlapping the route included in the scheme as his

permit is saved only to the extent mentioned in the scheme for the purpose of maintaining the continuity of the existing service on the route or the

area not covered by the scheme and the duration.

5. To decide whether the existing operator can increase the number of trips when the approved scheme was in force the Apex Court in R.

Raghuram Vs. P. Jayarama Naidu and Others, has held as follows:

Even, when the scheme provides that an existing operator is exempted from the operation of the scheme it only means that he can continue to

operate his service with the existing number of trips on the date on which the scheme is published and it does not authorise him to apply for a

variation of his permit so that he can increase the number of trips on the overlapping portion of the notified route thus increasing the burden of

private operation of vehicles on the notified route in question. The variation authorising increasing the number of trips in fact amounts to granting of

a fresh permit to run one more stage carriage service doing one round trip on

the notified route and that would be in violation of the scheme itself

because the scheme protects only the number of trips which were being operated at the time of its publication.

In view of the above decision any variation authorising increasing number of trips amounts to grant of fresh permits. So, in view of the Division

Bench decision cited above, even the existing operators cannot claim such a variation even on the basis that the route is covered by inter-state agreement.

6. The Tamil Nadu Act 41 of 1992, published on 31.7.1992, was enacted to make certain special provisions in respect of permits for such

carriage operators under the Motor vehicles Act, 1988 and in relation to the schemes and routes notified under Chapter VI of the Act. Section 6 of

the said Act speaks about the renewal or variation of permits. According to the said section, variation of permit of a small operator overlapping the

draft scheme is permissible only in accordance with the rules made in this behalf, which was framed under G.O.Ms.No. 718, (Home), dated

18.5.1995. Moreover, Tamil Nadu Act 41 of 1992 will not apply to other State operators. I seek aid in support of my conclusion to the decision

of the Division Bench of this Court stated supra wherein it has been held as follows:

One more contention urged on behalf of the grantee requires to be considered; it is contended that in the light of the provisions contained in Section

6 of Act No. 41 of 1992 (Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992), in spite of the provisions contained in the approved

scheme, as the permit holder in question is a small operator, she is entitled to grant of variation of the conditions of the permit. It may be pointed

out that it is the Pondicherry State Transport Authority, which has granted the permit to K.R. Sriramulu and Borthers, who has transferred the

permit to the third-respondent. It is the Pondicherry State Transport Authority which has . to grant the variation to the conditions of the permit. Act

No. 41 of 1992 does not apply to the Union Territory of Pondicherry. As such, the State Transport Authority of Pondicherry cannot also avail the

provisions contained in Section 6(1) of the Act 41 of 1992. That being so, it is not possible to hold that the appellant in Writ Appeal No. 331 of

1994 is entitled to avail the benefit of the provisions contained in Section 6 of the

Act.

7. Moreover, as held by the Division Bench in *Tvl. Jeeva Transport Corporation Ltd. v. The Regional Transport Authority*, 1997 Writ L.R. 407,

the variation of the conditions of the permit by inclusion of an additional vehicle to perform additional service cannot be granted in view of the

prohibition u/s 104 of the said Act read with provisions of the scheme.

8. The State Transport Authority and the State Transport Appellate Tribunal, are correct in rejecting the request of the petitioner. They have

factually found that the operation of the route of the petitioner overlaps the draft scheme route which lies in Tamil Nadu, and is more than 16 kms.,

in length and not covered by any inter-state agreement. So, in view of the scheme, and as held by the State Transport Authority and the State

Transport Appellate Tribunal, Tamil Nadu, the petitioner cannot claim countersignature from the State Transport Authority to increase the number

of trips by inclusion of one more vehicle in the permit. I do not find any merits in this revision. Accordingly the same is dismissed. No costs.