

(1997) 04 KAR CK 0001
In the Karnataka High Court
Case No : Writ Petition No. 15140 of 1995

H.T. Annaji

APPELLANT

Vs

The District Magistrate and the Deputy Commissioner, Hassan
and Others

RESPONDENT

Date of Decision : 03-04-1997

Acts Referred:

Constitution of India, 1950 — Article 19 (1) (a)
Karnataka Police Act, 1963 — Section 31 (1) (b), 31 B, 31 D

Citation : (1998) 4 KarLJ 75

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Sri B.R.S. Gupta, for the Appellant; Sri N.P. Singri, Government
Pleader, for the Respondent

Judgement

1. By this petition, the petitioner has challenged the decision arrived at on 8-3-1995 at the meeting of Divisional Controller, Hassan District, Hassan, District Superintendent of Police, Hassan, Divisional Traffic Officer, Hassan Division, Hassan in presence of All India Tourist Omni Bus Owners and communicated to the petitioner vide annexure-A and B dated 8-3-1995 and 20-3-1995 to the writ petition. The petitioner has also challenged the notifications dated 6-3-1994 and 28-3-1994 copies of which have been annexed as annexure-C and D to the writ petition.

2. Petitioner is the holder of All India Tourist Vehicles Permit issued by Karnataka State Transport Authority enabling the petitioner to ply the Tourist Bus all over India subject to the conditions viz, in Section 84 of the Motor Vehicles Act and the additional conditions prescribed under Rule 85 of the Central Motor Vehicles Rules, 1989. According to the petitioner one of the conditions is that the Tourist Vehicle shall not be parked in any bus stand used by Stage Carriage Permit holders nor shall they operate their buses from such bus stands. Petitioner has alleged that he has got his office at K.R. Puram, Hassan under name of Manjunatha Transport, near KSRTC Bus Stand. According to the petitioner, the

respondent 1 on 6-3-1994 issued a notification purported to be u/s 31-G of the Karnataka Police Act, 1963 which had been modified subsequently by notification dated 28-3-1994. The two notifications dated 6-3-1994 and 28-3-1994 have been annexed as annexure-C and D to the writ petition. Under Annexure-C it was originally provided that parking of private vehicles such as private buses, matador vans, tempos, cars, taxies and lorries etc., was prohibited either in front of or near KSRTC bus stands of Hassan City, Channarayapatna, Belur, Saka-leshpur, Holenarasipur or within a radius of 500 mtrs. from the bus stands as well. This notification was modified slightly by notification dated 28-3-1994 Annexure-D and the modification was that the prohibitory order was to the effect that no parking of the private vehicles such as Matador and other private buses shall be done near or in front of or within a radius of 250 mtrs. from the aforesaid bus stations in the Division of Hassan viz., Hassan City, Channarayapatna, Belur, Saka-leshpur, Holenarasipur and distance of 500 mtrs. had been reduced to 250 mtrs. Subsequently according to the petitioner on 20-5-1995, the petitioner received a communication from 2nd respondent to the effect that in the meeting of the office, of the Deputy Commissioner, Hassan District, Divisional Controller, KSRTC and Divisional Traffic Officer, KSRTC, Hassan, the decision was taken to the effect that Tourist Buses should not be parked within a distance of 250 mtrs. nor the All India Tourist Omni Bus Owners shall open their Offices within this radius as aforesaid nor shall the arrival or departure of their vehicles be exhibited or published at KSRTC bus station or near those stations or stands nor shall their time schedule of arrival or departure of their buses be published in local or largely circulated papers of Karnataka, and the conditions incorporated in the permit and the licence shall not be violated. This decision which had been taken had been communicated by Annexure dated 20-3-1995 by the Secretary of the RTA, Hassan.

3. Notice of the writ petition having been received on behalf of the respondents, counter affidavit has been filed. The respondents have asserted in the counter affidavit that occasion to issue the impugned notification did arise on a letter dated 18-2-1994 from the Superintendent of Police, Hassan-respondent 4 to the petition and a report was submitted that due to innumerable private buses, matadors and tourist buses operating in KSRTC Bus Stand, public and the pedestrians were facing difficulties in entering and exiting from the bus stand. So a request was made to restrict the movement of the private buses and vehicles near KSRTC Bus Stand. The notification dated 8-3-1994 was issued banning of parking private buses and private vehicles near and around 500 mtrs. of the KSRTC Bus Stand. Subsequently respondent 2 issued another notification relaxing the restriction and the extent of ban limited to an area of 250 mtrs. from the Bus Stand on either side. It has been asserted that the said notification have been issued u/s 31-G of the Police Act and Section 133 of Criminal Procedure Code and therefore the respondents have asserted that notifications were justified. It has been stated that the restrictions have been imposed to get rid of the inconvenience that had been caused to the public's movement.

4. I have heard learned Counsel for the petitioner, Sri B.R.S. Gupta and Sri N.P. Singri, learned Government Pleader who has appeared on behalf of respondents 1 to 4.

5. Learned Counsel for the petitioner challenged the validity of the orders including Annexure-C but at a later stage conceded that notification annexure-C and D issued by the District Magistrate, Hassan have been valid. Learned Counsel for the petitioner very clearly pointed out that this Court has taken the view on an earlier occasion also in Smt. Zubedunnisa v State of Karnataka and Others, that though the notification purported to have been issued u/s 31-G of the Karnataka Police Act but Expression-G used in the notification is a mistake, really notification could be issued u/s 31(1)(b) of the Karnataka Police Act, 1963 (Karnataka Act No. 4 of 1964) and therefore he does not wish to press that point. The fairness of the Counsel is appreciated. In view of the provisions of Section 31(1)(b) and the law laid-down by this Court in the above mentioned writ petition to the effect that when power is vested in the authority to issue notification under a different clause of Section 31(1) of Karnataka Act No. 4 of 1964 then mere wrong mentioning of Clause-G will not vitiate the order or notification. annexure-C and D are held to be legal and perfectly valid and the said notifications appear to have been issued in the context of the facts mentioned above which indicate that the power has been exercised u/s 31(1)(b) of the Karnataka Police Act, 1963. So these notifications are held valid and relief No. (ii) in Para 18 claimed in the claim petition is hereby rejected. Learned Counsel for the petitioner further contended that An- annexure-A and B have been issued by persons not authorised under provision of law and so annexure-A and B are illegal. Annexure-B is a communication of the decision taken at the Office of the Deputy Commissioner on 8-3-1995 with regard to the matter of controlling the picking-up of the passengers near KSRTC Bus Station. The decision appears to have been taken by the Deputy Commissioner at the meeting of Officers mentioned therein in presence of All India Tourist Omni Bus Owners as appears from Annexure-A, and in that meeting the District Controller, Hassan District, Superintendent of Police, Hassan, Divisional Controller, KSRTC, Hassan and Divisional Traffic Officer, KSRTC, Hassan were present. No doubt at the time of taking the decision the other persons were also present but the decision appears to have-been taken by the Deputy Controller and the District Superintendent of Police in consultation with other officers with the tacit consent of the All India Tourist Omni Bus Owners as they were also present. As regards the I decision that Tourist Vehicle shall not be parked near or within a distance of 250 mtrs. from KSRTC Bus Station that decision had already been taken and notification had already been issued. That communication or direction is only reiteration of what had been ordered as per notification issued in 1994 - Annexure-C and D and this decision cannot be said to be suffering from any illegality nor it appears to be without jurisdiction. The decision is also that the All India Tourist Omni Bus Owners shall in addition to non-parking of their vehicles within a distance of 250 mtrs. from the KSRTC Bus Stand, shall not open any

office within a radius of 250 mtrs, nor shall they publish their time table of arrival and departure of vehicles. Learned Counsel contended that this restriction could not be imposed. As regards the opening of the Office, the buses have to be parked and stopped for the purpose of taking and allowing the passengers, to have entrance in the bus after taking tickets. So if they are allowed to have office within a radius of 250 mtrs. then the result thereof would indirectly render nugatory. the prohibition that has been provided under the notification that All India Tourist Omni Bus owners shall not stop or park vehicles near or within a radius of 250 mtrs. from the Bus Stand. This direction is nothing but an ancillary one to the first direction which could be issued and passed u/s 31-B of Karnataka Police Act. When a power to do certain thing is given to certain authority it carries within itself the power to do what is necessary to fulfill the object for which the power has been given. In this view of the matter, in my opinion, the decision that has been taken as Decision No. 1 in Annexure-A can well be said to be covered by Section 31-B of the Karnataka Police Act. There is power u/s 31-D also to put a restriction or prohibition on the displaying of any pictures, advertisements, news hoards or public notices as well on the vessels or boat in territorial waters. So this is a prohibition on display of the time table on the KSRTC Bus Stands may be also said to be covered u/s 31(1)(b)(d). In this view of the matter, the decision of the Deputy Commissioner and Decision No, 1 appears to be perfectly valid and the petitioners i.e., The All India Tourist Omni Bus Owners having been present in the meeting as well in which the said decision was taken, so having been a party to that do not have a right to challenge that as well, particularly when it is reasonable and legal. The decision which has been taken to the effect under Clauses 2 and 3 of Annexure-A is concerned before dealing with the second decision incorporated in Annexure-B. I think it would suffice to say that the decision which has been taken in Sl. No. 3 that conditions incorporated in the permit shall not be violated is nothing but in consonance with the principles of law whereunder the permits are granted and whereunder it is and has been provided that breach of conditions and terms of permit may be subject matter of penal consequence. This is necessarily implied when the permit is granted that person plying the vehicle under permit or license issued that he shall comply with the conditions of the permit or licence. So this clause or decision No. 3 which has been communicated by Annexure-A and B as well in my opinion, cannot be said to be illegal nor does it call for any interference and that decision or implementation of that decision appears to be perfectly valid. The decision had been taken by the Commissioner when permit holders including the All India Tourist Omni Bus Owners were present that they will have to comply with the conditions of the permit and licences and it is nothing but making them aware that rule of law and the conditions imposed under law, licence or permit have to be followed and there is nothing for this Court to exercise its power u/s 226 so far as this decision communicated to the petitioner is concerned.

6. The 3rd decision that has been communicated to the petitioner is that they

shall not publish the tune table for publication either in any local or largely circulated news papers in Karnataka. The learned Counsel for the petitioner contended that this decision and order which has been communicated by Annexures-1 and 2 read with annexure-A is illegal. He submitted that this is not only the right of the plier of the bus or the owner of the bus but it is the right of information of the travelling public to know the timings of the bus and the train etc. This order when it puts a bar really affects the right of information to be given and the right to have information be it from the owners of the bus or from anywhere. In my opinion, there is much substance and force in this contention of the petitioner's Counsel. When a particular bus has to ply from a particular Bus station is the information which every person is entitled to know. It is the right of the traveller to know either from the State Transport or a Private Transport plying Buses and it is their duty to communicate and circulate such information to the travelling public and in absence of such information the right of travelling public or citizen right to travel is likely to adversely affect which is enshrined under Article 19(1)(d) of the Constitution. Right to information, part and parcel of right to which subject it relates and it also part takes subject-matter of Article 19(1)(a) of the Constitution. The information may be received in various manners including by publication in newspapers and by publication through other media. Such being the position I am of the opinion that this decision which has been taken and issued to the petitioner that they shall not publish the time schedule or the time table of the arrival or departure of vehicles either in local or largely circulated papers in the State really interferes with the right of the information of the travelling public which is enshrined under Article 19(1)(d) of the Constitution. In the case of Secretary, Ministry of Information and Broadcasting, Govt. of India and others Vs. Cricket Association of Bengal and others, , Hon'ble Supreme Court has been pleased to lay it down that fundamental right of freedom of speech includes in itself right to receive and impart information and Clause 2 of Article 19 does not permit a monopoly in the matter of freedom of Speech and Expression as is permitted by Clause 6 of Article 19 vis-a-vis right guaranteed under Article 19(1)(a).

7. Their Lordships of Supreme Court in Tata Press Ltd. Vs. Mahanagar Telephone Nigam Limited and Others, , have been pleased to lay it down the commercial advertisement is a form of speech. Commercial Speech is a part of the Freedom of Speech and Expression guaranteed under Article 19(1)(a) of the Constitution. In a democratic economy free flow of commercial information is indispensable. Therefore any restraint or curtailment of advertisement would affect the fundamental right under Article 19(1)(a) on the aspects of propagation, publication and circulation. The protection of Article 19(1)(a) of the Constitution is available to both the speaker as well as to recipient and the recipient of "Commercial Speech" may have deeper interest in publication of advertisement than the one who is behind the publication of advertisement.

8. The publication of time table of arrival and departure of the buses by private bus owners or public service vehicle owners is nothing but publication and

advertisement of the Transport Service Vehicles amounting to commercial advertisement or commercial speech covered by protection guaranteed under Article 19(1)(a) of the Constitution.

9. The direction issued to the petitioners by the respondents directing them not to advertise and publish in newspaper local as-well-as others having large circulation in the State of Karnataka the time schedules of arrival and departure of the Motor Service Vehicle etc., in the area, being one which does not appear to be a reasonable restriction on the petitioners right covered by Article 19(1)(a) of the Constitution and appears to be hit by Article 19(1)(a) and to be illegal, null, void and unconstitutional from inception and is so held to be.

10. Thus considered in my opinion, as decision bearing seriatim No. 2 in annexure-A is illegal, null and void. The decision Nos. 1 and 3 contained in annexure-A as-well-as notification contained in annexure-C and D are perfectly valid. Having thus considered in my opinion, the writ petition is to be allowed in part and it is hereby clarified that though Annexure-B is perfectly valid, annexure-A is valid with respect to decisions A and B, the decision incorporated under Head 2 in Annexure-A is illegal, null and void and inoperative and Annexure-B should not be taken to direct the petitioner to implement or adhere to the decision No. 2 that it shall not publish this time table for publication in local or largely circulated papers in Karnataka. A mandamus is issued to the respondents not to implement that direction nor to enforce the same on the petitioners. The writ petition is thus allowed. Costs made easy.