

(1991) 03 KAR CK 0005
In the Karnataka High Court
Case No : W.A. No. 247 of 1986

K. Anantharaju

APPELLANT

Vs

Karnataka State Transport Appellate Tribunal

RESPONDENT

Date of Decision : 14-03-1991

Acts Referred:

Motor Vehicles Act, 1939 — Section 6 D, 63, 68 FF

Citation : (1991) ILR (Kar) 1292 : (1991) 2 KarLJ 324

Hon'ble Judges : Mohan, C.J.; Shivaraj Patil, J

Bench : Division Bench

Advocate : V.T. Gopal and M.R.V. Achar, for the Appellant; N.K. Gupta, Government Advocate for R-1 and R-2, P.R. Srirangaiah, for R-3, C.S. Shanthamallappa, for R-4 and N. Viswanathan and J.S. Patil for R-5, for the Respondent

Final Decision : Dismissed

Judgement

Mohan, C.J.—The appellant is a holder of stage carriage permit bearing No. B.P. 10/1957-58 authorised to operate on the route from Bangalore to Madanapalli via Hoskote, Chintamani, T. Cross, Royalpad and State Border, to operate two round trips per day. The said permit is an Inter State permit. It has been countersigned by the State Transport Authority, Andhra Pradesh. The appellant is a saved operator under the Kolar Pocket Scheme.

2. The appellant filed an application on 22-6-1979 before the Karnataka State Transport Appellate Authority, Bangalore praying for the grant of variation of the condition of the permit. The variation sought was by way of extension from Madanapalli to Thirupathi via Vayalpad, Pileru, Bakrapet and Chandragiri. The application was published in the Karnataka Gazette dated 23-8-1979 u/s 57(3) of the Motor Vehicles Act of 1939 (hereinafter referred to as "the Act"). Objections-representations were invited in this regard. It also called for report from the concerned authorities on the need for extension. In response to the said Notification, respondents 3 and 4 filed their objections, opposing the grant of

variation.

3. The second respondent considered the matter at its Meeting held on 19-1-1982 and thereafter granted the variation with a condition that the appellant shall operate the service with two vehicles instead of one subject to the counter-signature of the variation by the Transport Authorities of Andhra Pradesh in relation to the portion lying within the said State. Against this Resolution respondents 3 and 4 filed appeals before the Karnataka State Transport Appellate Tribunal. These appeals were numbered as Appeal Nos. 182/1982 and 189/1982 respectively. In so far as the appellant was directed to put the second bus on the route he also preferred an appeal which came to be numbered as W.A.215/1982. All these Appeals came to be dealt with by a common order. The Tribunal by its order dated 28-12-1984 allowed the appeals and set aside the grant of variation in favour of the appellant. Against the said order, the appellant preferred Writ Petition No. 2669/1982. The learned single Judge for reasons stated in his Judgment, dismissed the Writ Petition and confirmed the order of the Appellate Tribunal. Under these circumstances, the present Appeal has been preferred.

4. Mr. V.T. Gopal, learned Counsel for the appellant strenuously urges that having regard to the Inter State Scheme which was notified by publication in the Karnataka Gazette on 1st of September, 1975, it would be clear that in case of Inter-State routes where the variation is sought in reciprocating State, it will be decided by the respective State Transport Authorities by mutual agreement having due regard to the principle of parity of service kilometer age. It is also further provided that there should be parity of service kilometer age as far as possible in respect of Inter-State routes. This principle will apply both to the existing routes as well as to the new routes to be opened. Therefore it is naturally a matter for the two Authorities to satisfy themselves because the agreement provides, in the event of any problem arising in respect of the existing Inter-State permit duly countersigned and approved by the Authorities concerned of both the States because of its non-inclusion in the agreement the matter will be resolved by the Transport Commissioners in consultation with each other. Having regard to this, if the original authority felt that there was need that cannot be got over by merely holding that there is a scheme for nationalisation which overlaps the variation extended. Even otherwise, what is it that has been done by the State Transport Authority of Karnataka. It had granted the variation knowing there was need. Thereafter it is a matter for the countersigning authority who undoubtedly will have regard for the scheme. Therefore, to shoot out the appellant on the threshold of the matter on the ground that there exists a scheme, is not a proper way of approach. In Shiv Chand Amolak Chand Vs. Regional Transport Authority and Another, it has been held that the consideration u/s 47(3) will not be applicable to cases of this character. That in turn relies on a Decision reported in Mohd. Ibrahim, etc. Vs. The State Transport Appellate Tribunal, Madras, etc., . There again it has been held that for Inter-State routes the considerations set out u/s 47(3) of the Act will not apply.

5. It is also urged that the appellant cannot be denied the benefit of variation on the ground that the extended route is of 167 kms. while the original route was only 144 kms. As a matter of fact, in W.A.Nos. 815 and 816/1989, R.M. Vijayakumar v. State Transport Authority DD-12-1-1990 this Court has taken the view that there being no statutory limit for variation of the route, such an argument about the length of variation cannot be countenanced. In any event, it is submitted that a Draft has been proposed with regard to Inter-State Agreement concerning the very route which is the subject matter. Therefore, whatever observations are made by this Court that may not affect the right of the appellant to move the Government to have that draft agreement between the two States finalised.

6. In opposition to this, Mr. Rangaswamy, learned Counsel for respondent-3 submits, here is a case where the route which is sought to be varied is covered under a scheme for nationalisation. If that be so, there is a clear bar on the part of the authority to consider the grant of variation itself. It has been held in Pandiyan Roadways Corporation Ltd. Vs. M.A. Egappan, that even with regard to variation the scheme for nationalisation would cover. This is because of the overlapping effect of Chapter IV-A of the Act and particularly in view of Section 68FF of the Act. No doubt in R. Raghuram Vs. P. Jayarama Naidu and Others, what has come to be referred to a larger Bench is with reference to increase of number of buses by variation, but not variation of this character. In this case the variation substantially and drastically alters the nature of routes. Therefore by no sense of the term it could be called variation. In other words, the submission is, where the proposed extension could be by means of grant of a new permit, in the guise of variation those provisions cannot be circumvented. As a matter of fact Shiv Chand Amolak Chand Vs. Regional Transport Authority and Another, is a clear authority on this. Hence the decision in W.A.Nos. 815 and 816 of 1989 cannot be said to lay down the correct law. Therefore there is a clear bar in view of the scheme of nationalisation and in any event unless and until the counter signature is obtained from the Transport Authority of the Andhra Pradesh it cannot be contended that the appellant is enabled to operate on the extended route.

7. In this case, it is admitted on both sides that the original route on which the appellant was plying was Bangalore to Madanapalli, that is a distance of 144 kms. The variation by way of extension which is granted by the original authority and set aside by the Appellate Authority, is for a distance of 167 kms. This background must be kept in view to appreciate whether the variation drastically alters the nature of the route. Leaving that for a moment, we will now go to the question as to what is the effect of a scheme for nationalisation of Inter-State routes. The Draft Scheme u/s 68D was published in G.O.No.1120 (Transport, Roads and Buildings) (Transport File) dated 7-12-1976 published in the Andhra Pradesh Gazette on 9-12-1976. The route covered by the scheme is Madanapalli to Puttur via Vayalapad, Kalkeri, Peeleru, Kallur, Pakala, Thirupathi and Renigunta (167 kms). Therefore, it cannot be denied the route Madanapalli to Thirupathi for

which the extension is sought by the appellant is covered by the scheme. Then the question would be whether there is jurisdiction on the part of the State Transport Authority of Karnataka to grant the variation. It is in this context, remembering Chapter IV-A has got overlapping effect over the provisions of chapter IV of the Act, we shall look at Section 68FF that places restrictions on the grant of permit in respect of the notified area or notified route. In this case it has already been seen what the notified route is. The Section in no mistaken terms says that where a scheme has been published under Sub-section (3) of Section 68D [in the case on hand G.O.Misc.No. 1120 (Transport, Roads and Buildings) dated 7-12-1976] in respect of any notified area or route the State Transport Authority or Regional Transport Authority as the case may be shall not grant any permit except in accordance with the provisions of the scheme. Therefore what boils down is the State Transport Authority of Karnataka has no jurisdiction whatever to grant the permit. Then the question would be whether variation could be granted? The answer to that is contained in *Pandiyan Roadways Corporation Limited v. Thiru M.A. Egappan*. In paragraph-5 of the said Judgment it has been held as follows:

"In view of the above observation we have to hold that in the instant case the respondent is not entitled to operate his stage carriage on the notified route or a portion thereof even though he may have been granted variation of his permit to operate on a sector of the notified route."

Therefore it is now settled that the power even with regard to grant of variation in the teeth of the scheme is taken away.

8. However, what is pressed into service is that question is no longer a concluded matter in view of the observations contained in the Decision in *R. Raghuram v. P. Jayarama Naidu* in paragraph- 7 of the said Judgment which reads:-

"In view of the above we feel that this review petition should be referred to a Constitution Bench to decide whether on the publication of an approved scheme the number of trips of the vehicles of the existing operators can be increased by granting the variation of a permit even when the existing operators are allowed to carry on their business as on the date of the publication of the scheme. We, therefore, refer this case to a Constitution Bench. Since the matter is urgent and requires to be decided early it may be posted before the Constitution Bench for final hearing on the first Tuesday of February, 1990 subject to over night part heard case."

Mr. Gopal places reliance on the above para. It may at once be seen that what came up for consideration was the increase in the number of trips and not the variation as such viz., extension of the original route. Therefore this does not advance the case of the appellant.

9. Then coming to the second aspect of the matter, as to what is the effect of the Inter-State Agreement in the teeth of the scheme for, nationalisation we need not pass to consider because whatever may be the terms of the Inter-State

Agreement there is nothing in law which clothes the State Transport Authority of Karnataka with the power to grant a permit. After all it is well known that an Inter State Agreement entered into u/s 63 of the Act is only for the purpose of maintaining the reciprocity between the two States to enable the operator to pay only one of the taxes. Beyond that it cannot override the scheme, because as we have observed already the provisions of Chapter IVA have overlapping effect and that is evident from Section 68B, which reads as follows:-

"The provisions of this Chapter and the Rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in Chapter IV of this Act or in any other law for the time being in force or in any instrument having effect by virtue of any such law."

Therefore the reliance placed on the agreement entered into between the State of Karnataka and Andhra Pradesh Which agreement has been published in Karnataka Gazette dated 1-9-1975, is out of context.

10. Then the question will be whether in the guise of variation or extension the provisions of Sections 57 and 47 are sought to be circumvented. We have already seen the variation is to add 116 kms. to the original route of 144 kms. In deciding whether it really circumvents or not we would rather do well to quote Shiv Chand Amolak Chand Vs. Regional Transport Authority and Another,

"It may be possible to say that where a totally new route is sought to be included by an application to vary the conditions of a permit or the alteration of the route sought by such an application is of such a drastic character that it becomes substantially a new route the application, though in form an application to vary the conditions of the permit, would in effect and substance, be an application for grant of a new permit and in such a case, a view may conceivably be taken with some degree of plausibility that the number of stage carriages for which permits may be granted on such new route should first be determined u/s 47 Sub-section (3) before the application to vary the conditions of the permit can be entertained. An application for a permit on a route which is not merely technically, but in truth and reality a different route, distinct from the original route, may not be permitted to defeat the provision enacted in Section 47 Sub-section (3) by labelling his application as one for varying the conditions of the permit and in such a case, the procedure set out in Section 47 Sub-section (3) may have to be complied with before the R.T.A. can consider and grant the application. But where an application merely seeks a short extension of the route specified in the permit as in the present case, it would not be appropriate to say that it is an application for grant of a new permit, though technically the extended route may not be regarded as the same as the original route and where such is the case, it would not be necessary to comply with the procedure set out in Sub-section (3) of Section 47."

This is exactly the position here. The alteration of the route is so drastic in character that it becomes substantially a new route. The application though in

form an application to vary the conditions of the permit, would in effect and substance, be an application for grant of a new permit. Therefore this Ruling squarely applies to the facts of this case. We do not think the decision in W.A.Nos. 815 and 816 of 1989 lays down the correct law:-

"The second contention of the appellants is, that as the distance of the original route was only 32 kms. the granting of extension to the extent of 108 kms. was illegal. We see no substance in this contention, for no such limitation is imposed by the Act (See: Sri Ram Vilas Service Ltd., Kumbakonam Vs. Raman and Raman Private Ltd. and Another, This contention is therefore rejected."

Reliance placed on Mohd. Ibrahim v. The State Transport Appellate Tribunal, Madras is again out of context. That related to fixation of limit of the number of buses u/s 47(3) for inter State Permit. That would be evident from the following at page 1547:

"The provisions contained in Sub-section (1) generally and sub- section (2) of Section 47 will apply to the Regional Transport Authority at the time of consideration of the application for inter-State stage carriage permit. Section 47(3) of the Act will not in our opinion apply to inter-State permits because that provision relates to a Regional Transport Authority limiting the number of stage carriages for which stage carriage permits may be granted in the region or in any specified area or on any specified route within the region. In other words, Section 47(3) of the Act is confined in its operation in or within the region. The provisions of Section 47(3) of the Act do not apply to inter-State permits because an inter-State permit cannot be effective unless it is countersigned by the Authority of the other State. The suggestion that in regard to inter-State permits a limit has to be fixed in regard to number of stage carriages for inter-State routes will have the effect of adding words to the provisions in Section 47(3) of the Act. That will not be the proper way of giving effect to Section 47(3) of the Act. It will be misreading Section 47(3) of the Act if it will be applied to inter-State permits. The combined effect of Sections 63, 63A, 63B and 63C is that the inter-State Commission will deal with inter-State permits. The Central Government u/s 63C of the Act is authorised to make Rules in regard to the procedure to be followed in considering an application for grant and counter-signature of permits. In the absence of specific rules, the best way of harmonising the powers and functions is to allow these inter-State authorities to exercise their power within their respective spheres in regard to grant and countersignature of permits by agreement and accord."

But here we are not dealing with a situation of this character.

In the result, we hold that no case is made out for interference. The appeal fails and is dismissed. No costs.

We may add in the end that whatever we have said relates only to the variation granted by the Regional Authority and will not in any way fetter the discretion of the Government to enter into the Inter State Agreement u/s 67 of the Act.