

(2001) 10 AP CK 0147

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 19561 of 1999 and 14028 of 2001

K. Vijay Kumar

APPELLANT

Vs

Govt. of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 05-10-2001

Acts Referred:

Andhra Pradesh Motor Vehicles Rules, 1989 — Rule 1, 131, 2, 2(1), 2(7)
Constitution of India, 1950 — Article 14, 19(1), 19(6)
Motor Vehicles Act, 1939 — Section 47(1), 57
Motor Vehicles Act, 1988 — Section 2(7), 39, 40, 41, 47(1)

Citation : (2001) 6 ALD 734

Hon'ble Judges : E. Dharma Rao, J; Bilal Nazki, J

Bench : Division Bench

Advocate : B. Sivaramakrishnaiah and V. Narasimha Reddy, for the Appellant;
Government Pleader for Transport, for the Respondent

Final Decision : Partly Allowed

Judgement

1. Since the question involved in both these writ petitions is one and the same, they are being disposed of by this common order.

2. These writ petitions are filed seeking a writ of mandamus declaring the amendment to Rule 2 of the definition of Contract Carriage under Rule (1a) Sleeper Bus and (1b) Sleeper Coach in A.P.M.V. Rules, 1989 insofar as it relates to imposition of restriction viz., by an owner organisation whose fleet exceed 2000 and with a holder of permit vide G.O. Ms. No. 134 Transport, Roads and Buildings (Tr.II) Department dated 14-6-1999 as inconsistent to Section 2(7) of the Motor Vehicles Act, 1988, ultra vires, arbitrary, violative of Articles 14, 19(1) (g) of the Constitution and also contrary to the provisions of the M.V. Rules, 1988 and opposed to basic principles of natural justice and consequently direct the respondents to register the petitioners' vehicle as Sleeper Coach as per Section 39 - 41 of the Motor Vehicles Act, 1988 and permit the petitioner to operate the said motor vehicle, as Sleeper Coach.

3. The petitioners who purchased motor vehicles for valuable consideration and got the body built as a Sleeper Coach with a seating capacity of 20+1 and made an application in form No. 20 to the respondent for registration of the said vehicle under the provisions of Sections 39 - 41 of the Motor Vehicles Act, 1988 to operate as Contract Carriage, but the said application was refused on the ground that as per Sub-rule (1) of Rule 2 of the APMV Rules, a owner or the organisation whose fleet exceeds 2000 can own a Sleeper Coach and there is no evidence to the effect that the petitioners own a fleet exceeding 2000.

4. Assailing the correctness of the said proceedings and the amendment made to Rule 2 of the MV Rules (for brevity the Rules) adding Rule 2(1a) and (1b) to Sub-rule (1) of Rule (2), under the powers vested in the State Government, u/s 111(2) of the Act, being arbitrary, illegal and offending Articles 14 and 19(1)(g) of the Constitution of India. The petitioners further submit that Section 2(7) of the Act defines Contract Carriage to mean a motor vehicle which carries passengers for hire or reward and is engaged under a contract, whether express or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum; on a time whether or not, with reference to any route or distance or from one point to another. It is further submitted that Section 111(2) of the Act empowers the State Government to make rules for regulating the construction, equipment and maintenance of motor vehicles and for various purposes mentioned viz., seating arrangements in public service vehicles and the protection of passengers against the weather; prohibiting or restricting the use of audible signals at certain times or in certain places; prohibiting the carrying of appliances likely to cause annoyance or danger; the periodical testing and inspection of vehicles by prescribed authorities; the particulars other than registration marks to be exhibited by vehicles and the manner in which they shall be exhibited and the use of trailers with motor vehicles. Section 212 of the Act contemplates the power to make rules under the Act subject to the condition of the rules being made after previous publication, the rules shall be published in official gazette and shall unless some later date is appointed come into force from the date of such publication and that every such rule made by any State Government shall be laid, as soon as may be after it is made before the State Legislature.

5. The State Government while exercising power u/s 111(2) of the Act inserted Rule (1a) and (1b) defining Sleeper bus to mean a stage carriage constructed or adapted to carry more than six passengers excluding the driver, with facility of comfortable sleep on a berth, for hire or reward at a separate fare paid by or for individual passengers either for whole journey or the stages of the journey; and Sleeper Coach means a contract carriage constructed or adapted to carry more than six passengers excluding driver with facility of comfortable sleep on berth for hire or reward, and is engaged under a contract whether express or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned

therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or as agreed rate of sum.

6. The learned Counsel for the petitioners has submitted that the State Government has exceeded in exercising its powers in making the above rule insofar as Sleeper Coach is concerned. The existing rule with regard to contract carriage has been amended by adding "..... by an owner/ organisation whose fleet exceeds 2000 and with a holder of permit....." Therefore, the above said amendment is beyond the powers of the Government and it is arbitrary, unconstitutional, unreasonable and violative of Article 14 of the Constitution of India. It is further contended that powers u/s 111 were not properly exercised while amending the said rule and the preliminary notification published in G.O. Rt. No. 485, dated 5-6-1998 does not contain such restrictions viz., by an owner/ organisation whose fleet exceeds 2000 and with a holder of permit, but it is only in final notification i.e., G.O.Ms. No. 134 dated 14-6-1999 the said restriction was added to the amendment. Therefore, the imposition of the said words in the final notification are illegal and arbitrary and contrary to Section 212 of the Act and also offending Article 14 of the Constitution of India. It is further contended that any subordinate legislation or rules must be reasonable and fair and not arbitrary and impracticable. The amendment eliminates almost all the owners of Motor Vehicles and creates monopoly which can only own more than 2000 vehicles. It is further submitted that the State Road Transport Undertaking has already nationalised all the bus routes and there is no private operator/owner owning such a fleet of 2000 and therefore, the restriction is contrary to Article 19(1)(g) of the Constitution of India as it restricts the right to carry on trade or business by imposing such an unreasonable condition so far as operation of Sleeper Coach is concerned and by imposing such a restriction the very object of introducing Sleeper Coach by private operators is frustrated. For the above stated reasons, the petitioners pray to allow the writ petitions.

7. In reply to the averments and contentions raised by the petitioners, the respondent filed counter affidavit supporting the action of the respondents on the grounds that the petitioner have not satisfied Clause 1 (b) or Rule 2(1) of the Andhra Pradesh Motor Vehicles Rules wherein it is specified that a owner/ organisation should own vehicles whose fleet should exceed 2000 vehicles in number for registration of vehicles in the category of Sleeper Coach, therefore, not in conformity with the stipulation of Clause 1(b) of Rule 2(1) of the APMV Rules. This rule was inserted by way of amendment prescribing the standard and norms for maintenance of the sleeper coach taking into consideration the technical and safety aspects of travelling public. It is further submitted that the Government by G.O. Ms. No. 485 Transport, Roads and Buildings (TR.II) Department dated 5-6-1998 called for objections from the public. The A.P. State Transport Corporation alone filed objections and after considering the objection and scheme of the Act and its Rules, necessary amendments are introduced under the GO classifying the Contract Carriage as defined under Rule 2(7) of the

Rules, and necessary claims and amendments were also introduced in Rules 131 and 346 and special provision was also made in respect of Sleeper Bus or Coach by incorporating Rule 351(a) under the GO. The allegation that the amended rule goes beyond the Act and is void and arbitrary is denied and the amendment made to the Section 2(7) is well within the powers of the respondent. The allegation with regard to the amendment imposing condition fixing a minimum of 2000 vehicles for a person who wants to go in Sleeper Coach will amount to unreasonable restriction and the same will effect the petitioners to carry on the business under Article 19(1)(g) of the Constitution is also denied. It is further submitted that the Motor Vehicles Act itself imposed certain restrictions and confers certain benefits in favour of the State Transport Undertakings and such special provisions and the restrictions on the control of the Transport Vehicles was held to be Valid and reasonable while upholding the constitutional validity of the Act by the Supreme Court and the petitioners like persons are not eliminated in any manner from carrying on their business for running Contract Carriage as per the provisions of the Act inasmuch as the restriction is effected only in respect of Sleeper Coaches which were introduced for the first time for the convenience of passengers travelling for long distance. It is further stated that the introduction of new Sleeper Coach service has to be kept under strict supervision keeping in view the main object of safety and convenience of the travelling public and the fleet owners should be capable of handing and delivering improved services to the public which necessitated that owners of large fleet alone should be permitted to operate the same. In case of break down the fleet owner should be in a position to render technical expertise to attend the break down if necessary to substitute the vehicle and provide such amenities which are necessary for smooth running of the vehicles and such amenities can be provided by the fleet owners possessing technical expertise and sufficient number of similar vehicles and single bus owner cannot satisfy the said requirements and hence, the restriction of possessing 2000 vehicles was incorporated in the final notification, irrespective of the fact that such a restriction may confer benefit to the State Transport Undertakings, for that reason it cannot be said that the rule is ultra vires or invalid. The said restriction is imposed to ensure that the Sleeper Coach which are technically superior to other categories of vehicles can be well maintained by the fleet owners owning 2000 or more vehicles, with the infrastructure and qualified persons available at their disposal imposing the condition is neither violative nor inconsistent with the provisions of Section 2(7) of the Act. Ultimately it is submitted that incorporation by amendment Rules 1(b) of Sub-rule 2(1) of the Rules, does not eliminate the private operators and owners and it is not an unreasonable restriction and it is well within the powers conferred on the State Government under the provisions of the Act. Therefore, the amendment made is in the interest of public at large and therefore, cannot be said to offending Articles 19(1)(g) of the Constitution of India.

8. Section 2(7) defines the Contract Carriage. In consonance with the above said definition of the Contract Carriage, introduced by the Central Government, under

the power conferred on it by the provisions of the Act, the State Government have framed the rules. Rule 2(a)(i) contains the same definition of Contract Carriage. Now the State Government intended to add Sleeper Bus and Sleeper Coach (1a) and (1b) under the definition of the contract carriage. Accordingly preliminary notification was issued in the State Gazette in G.O. Rt. No. 485 Transport, Roads and Buildings (TR.II) Department dated 5-6-1998 required to be issued u/s 212 of the Act giving notice to the public calling for objections or suggestions, if any, within a period of 30 days for the consideration of the Government. Definition of Sleeper Bus and Sleeper Coach under Sub-rules (1a) and (1b) respectively reads as under:

9. Sleeper Bus mean a stage carriage constructed or adapted to carry more than six passengers excluding the driver, with facility of comfortable sleep on a berth, for hire or reward at a separate fare paid by or for individual passengers either for whole journey or the stages of the journey; and

10. Sleeper Coach means a contract carriage constructed or adapted to carry more than six passengers excluding driver with facility of comfortable sleep on berth for hire or reward, and is engaged under a contract whether express or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or as agreed rate of sum.

11. As seen from the submission made by the learned Government Pleader for Transport, except A.P. State Road Transport Corporation no other private operator has submitted any objection to the said preliminary notification. After considering the objections and suggestions made by the A.P. State Road Transport Corporation, the Government has issued final notification under G.O. Ms. No. 134 Transport, Roads and Buildings (TR.II) Department, dated 14-6-1998 incorporating the words "... by an owner/organisation whose fleet exceeds 2000 with a holder of a permit" which are not contained in the preliminary notification. Therefore, as seen from the final notification, the Government has added the words "... by an owner/organisation whose fleet exceeds 2000 with a holder of a permit", which according to the petitioners amount to imposing unreasonable restriction on the private operations as their fleet does not exceed 2000 vehicles and that the Government has no power to add the same in the final notification contrary to the preliminary notification inasmuch as the public have no notice of the imposition of such restriction on registration of vehicles and thus they have no opportunity to offer suggestions or objections in respect of such restriction and if the said restriction is allowed, the private owners and operators who have one or two vehicles are prohibited from plying their vehicles on the road of the State of Andhra Pradesh. Therefore, their transport business is affected which was guaranteed under Article 19(1)(g) of the Constitution of India.

12. It is further contended by the learned Counsel for the petitioner that the

amendment made to rules is inconsistent with the definition given under 2(7) of the Act, which is a Central Enactment, therefore, contrary to the provisions of the Act. Further the State Government has no power to extend the definition under the subordinate legislation contrary to the definition contained in Section 2(7) of the Act. Further this amendment was intended only to benefit the A.P. State Road Transport Corporation, which is having fleet of 4000 vehicles. Therefore, this amendment is incorporated eliminating the private bus operators and is, therefore, offending Article 19(1)(g) of the Constitution of India being arbitrary, unreasonable and illegal.

13. It is true that the contention of the petitioner that no notice was given to the public before imposing the above said restriction, issuing notice to the public and consideration of objections and suggestions of the public is a quasi judicial function as held by the Supreme Court. Therefore, the above amendment has to go, offending principles of natural justice, as held by the Supreme Court in *Mithilesh Garg, Vs. Union of India and others etc. etc.,* .

14. The State Government while exercising powers conferred on it u/s 111 of the Act, with a laudable object, has extended the definition of stage carriage by inserting (1a) Sleeper Bus and (1b) Sleeper Coach in order to give better service to the public. It is settled principle of law that healthy competition should be encouraged to promote better service to the public. Therefore, neither this Court nor public has any objection for introduction of Sleeper Bus or Sleeper Coach to give better transport service to the public. But while bringing the Sleeper Bus and Sleeper Coach under the heading Stage Carriage, the Government has exceeded its rule making power and also had deviated from the definition published in the preliminary notification by adding the words by an owner/organisation whose fleet exceeds 2000 and with a holder of a permit. Therefore, as contended by the learned Counsel for the petitioners, this restriction is made only to monopolise the A.P. State Road Transport Corporation, which exceeds 2000. In a decision *Sher Singh Vs. Union of India (UOI) and Others*, , has held that u/s 47(1-H), if other things being equal, the application of the undertaking shall be given preference over other applicants for grant of inter-State carriage permit, but here it is not preference but a monopoly was created in favour of the undertaking by the State under the above amendment which shall not be permissible under Article 19(1)(g) of the Constitution. Therefore, it is correct to contend that the intended amendment would cent per cent eliminate the private bus operators from the arena, on the ground of maintenance of vehicles by efficient technicians to provide better service to the public. The State Government under the guise of providing better service to the public have imposed 100% restriction on the business of transport of the petitioners inasmuch as they cannot fulfil the condition of fleet exceeding 2000. The Legislature and the Supreme Court have recognized healthy competition among the transport operators to render better service to the public. But by virtue of the said amendment, the APS Road Transport Corporation alone is benefited since it is only having a fleet of exceeding 2000. Thus the amendment is not in

consonance with the objects and reasons of the Act. That apart, the respondents have added a condition in the final notification which did not find place in the preliminary notification, on that ground also the restriction imposed under the amendment is liable to be set aside. Therefore, while upholding the insertion of (1a) and (1b) i.e., Sleeper Bus and Sleeper Coach to the definition of Stage Carriage in the interest of public, we are inclined to struck down the amendment to the rule imposing unreasonable restriction to the extent of the owner or organisation whose fleet exceeds 2000 only can operate the Sleeper Bus and Sleeper Coach, as it is not a reasonable restriction contemplated under Article 19(6) of the Constitution of India, inconsistent with Rule 2(7) of the Act and as unconstitutional under Article 14 and Article 19(1)(g) of the Constitution of India. The above conclusion is fortified by the ruling of the Supreme Court in Mithilesh Garg's case, wherein Their Lordships held as follows:

"..... A comparative reading of the provisions of the Act and Old Act (1939) makes it clear that the procedure for grant of permits under the New Act has been liberalised to such an extent that an intended operation can get a permit for asking irrespective of the number of operators already in the field. u/s 57 read with Section 47(1) of the Old Act, an application for a stage carriage permit was to be published and kept for inspection in the office of the Regional Transport Authority so that the existing operators could file representation/objections against the said application. The application, alongwith objections, was required to be decided in a quasi-judicial manner. It was further held that there is no threat of any kind whatsoever from any authority to the enjoyment of their right to carry on the occupation of transport operators. It was held that more operators mean healthy competition and efficient transport system. Overcrowded buses, passengers standing in the aisle clinging to the bus doors and even sitting on the roof-tops are some of the common sights in this country. More often one finds a bus which has noisy engine, old upholstery, uncomfortable seats and continuous emission of black-smoke from the exhaust pipe. It is, therefore, necessary that there should be plenty of operators on every route to provide ample choice to the commuter public to board the vehicle of their choice and patronise the operator who is providing the best service. Even otherwise, the liberal policy is likely to help in the elimination of corruption and favouritism in the process of granting permits. Restricted licensing under the Old Act led to the concentration of business in the hands of the few persons thereby giving rise to a kind of monopoly, adversely affecting the public interest. The apprehensions of the petitioners, that too many operators on a route are likely to affect adversely the interest of weaker section of the profession is without any basis. The transport business is bound to be ironed out ultimately by the rationale of demand and supply. Cost of a vehicle being as it is the business requires huge investment. The intending operators are likely to be conscious of the economics underlying the profession. Only such number of vehicles would finally remain in operation on a particular route as are economically viable. In any case, the transport system in a State is meant for the benefit and convenience of the

public. The policy to grant permits liberally under the Act is directed towards the goal....."

15. In the result, both the writ petitions are partly allowed to the extent indicated above. No order as to costs.