

**(2003) 07 KAR CK 0050**

**In the Karnataka High Court**

**Case No :** Writ Appeal No's. 4227-4231 of 2000 and 4828-30 of 2001 and W.P. No's. 2690 of 1991, 13681 of 2001, 20359 of 2002 and 7586 of 2003, etc. etc.

Karnataka State Road Transport Corpn.

APPELLANT

Vs

R. Maheshwari and Others

RESPONDENT

---

**Date of Decision :** 25-07-2003

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 80 (3)

**Citation :** AIR 2003 Kar 456 : (2003) 4 KCCR 2768 : (2004) 1 RCR(Civil) 532

**Hon'ble Judges :** N.K. Jain, C.J.;V.G. Sabhahit, J;H.G. Ramesh, J

**Bench :** Full Bench

**Advocate :** S. Prakash Shetty, A.S. Vishwanath, Puttige R. Ramesh, M.R.V. Achar, A.S.P. Kumar, B.R. Sundararaja Gupta, N.S. Rajanna, S.V. Krishnaswamy, Jayakumar S. Patil and M.R. Venkatanarasimhachar and Sateesh M. Doddamani, A.G.A. for appearing Parties, for the Appellant;

---

**Judgement**

N.K. Jain, C.J.—A Division Bench of this Court, while considering these appeals vide order dated 6-1-2003, found that the Division Bench decision of this Court in Sri Balashyam Singh v. Karnataka State Road Transport Authority, (W.A. No. 4163/2002 decided on 19-8-2002) has expressed a view contrary to the decision in Karnataka State Road Transport Corporation, Bangalore Vs. Karnataka State Transport Authority, Bangalore and Others, and that it was appropriate that the matter be considered by the Full Bench to decide the following question :

"Whether it is permissible to grant variation of the conditions of a stage carriage permit held by a saved operator under the Kolar Packet Scheme/Bellary Pocket Scheme, by increasing the number of trips or number of vehicles ?"

Accordingly, the Division Bench directed the Registry to place the matters before the Chief Justice for constituting a larger Bench.

2. Thus, as per the order dated 2-7-2003 the matter has come up before this Bench.

3. The necessary facts for the disposal of this reference are as follows :

One R. Maheshwari, who filed W.P. Nos. 43544/99 and 43601-603/99, is a holder of permit bearing No. 33/64 operating on the route from Thirupathi to Bangalore and back performing one round trip per day, countersigned by the State Transport Authority, Bangalore (for short "KSTA") on single point tax and is a saved operator under the Kolar Pocket Scheme. The said petitioner sought for variation of the condition of the permit by way of grant of one more round with inclusion of one more vehicle. The said variation was granted by the State Transport Authority, Andhra Pradesh, (for short "STA, AP") subject to the condition that counter-signature was obtained by the KSTA on double point tax. The permit was originally valid up to 15-5-1987, which was subsequently renewed up to 15-5-1992 and thereafter up to 15-5-1997. The STA, AP under Rule 174(1) of the Rules replaced the permits and the permit was renewed from 16-5-1997 to 15-5-2002, which was counter-signed by the KSTA by its order dated 5-3-1999 on double point tax and the signature was endorsed in permit with effect from 26-5-1999. Respondents 3 to 6 filed W.P. Nos. 16763 to 765/1999 and W.P. No. 29754/1999 questioning the grant of counter-signature in favour of the petitioner and the same were dismissed. The appeals by respondents 4 to 6 in W. A. Nos. 4813-4815/1999 were also dismissed. Thereafter respondent No. 3 preferred R. P. No. 1420/99 and respondents Nos. 4 to 6 preferred R. P. Nos. 965-967/1999. The Karnataka State Transport Appellate Tribunal framed the following two questions :--

"Whether the first respondent has power to grant counter-signatures by way of an additional trip with additional vehicle in respect of the said permit in the notified area which falls under Kolar Pocket Scheme ?

Whether the first respondent has power to grant counter signatures in respect of the said permit in the light of the law laid down by the Hon"ble Supreme Court in Gajraj Singh etc. Vs. The State Transport Appellate Tribunal and others etc., and the Hon"ble High Court in Karnataka State Road Transport Corporation, Bangalore Vs. Karnataka State Transport Authority, Bangalore and Another, ?"

The Tribunal by its order dated 3-12-1999 answered the 1st question in favour of the petitioner and the 2nd question in favour of the respondent and came to the conclusion that the R.Ps. cannot be allowed and the petitioner was not entitled for counter-signature. Aggrieved by the finding of the Tribunal on the second question, the above writ petitions were filed by R. Maheshwari. The Karnataka State Road Transport Corporation (for short "KSRTC") challenging the findings of the Tribunal on the 1st question filed W. P. No. 1331/2000 and W. P. Nos. 43826/28/1999 were filed by G. V. Chandrasekhar and two others challenging the very same order as regards the findings arrived at, against them. The learned single Judge by an elaborate order allowed the writ petitions filed by R. Maheshwari, setting aside the finding of the Tribunal on the 2nd question and dismissed the writ petitions filed by the KSRTC and G. V. Chandrasekhar challenging the finding of the Tribunal on the 1st question and dismissed the

revisions filed by them. The same was challenged in writ appeals.

4. This Court on 28-11-2001 in W. A. Nos. 4227-31/2000 observed that no fresh route can be created on inter-State nationalised route without reciprocal agreement between the two States and in view of the order passed in W. A. Nos 4828/4830/2001 on that day, I.A.I/2001 for stay was allowed and the matter was posted for hearing along with W. A. Nos. 4828-30/2001 in February, 2002. Thereafter, the matter was adjourned to 11-4-2002 and 10-6-2002, on which date this Court directed the Registry to list all the identical cases. On 18-7-2002, this Court found that SLP (Civil) Nos. 22508-12/2001 filed by Maheswari challenging stay order of this Court dated 28-11-2001 was rejected by the Supreme Court on 10-1-2002, and it was ordered to list the appeals for final hearing in the first week of September, 2002. However, the Division Bench by its order dated 6-1-2003, referred the matter to be placed before the Full Bench, which has come up before us, as stated.

5. The undisputed facts in these matters, which pertain to grant of variation of stage carriage permit u/s 80(3) of the Motor Vehicles Act, 1988, (for short "the Act") are: The Kolar Scheme of Nationalisation and the Bellary Scheme of Nationalisation were approved with saving clause, by orders dated 10-1-1968 and 18-4-1964 respectively. On 10-1-1980, the above schemes were modified introducing prohibitive clause, the relevant portion of which reads as follows :

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

(a) Operation of services on inter-State routes, by the State Road Transport Corporation of other States established under the Road Transport Corporation Act, 1950 (Central Act 64 of 1950) or registered under the Companies Act, 1956 (Central Act 1 of 1956).

(c) (sic) 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 agreement entered into by the Government of any other State provided that the operator on each route shall not be entitled to pick-up and set down passengers in such portion of the routes which overlaps on any portions of the Notified route."

6. A Full Bench of this Court, while dealing with W. A. No. 949/1979 as regards the grant of variation held that if the conditions of a permit for operating a stage carriage over a route is altered by increasing the maximum number of trips over that route specified earlier in the permit, such variation of the condition of the permit does not amount to grant of a new permit, vide order dated 19-9-1979. The Karnataka State Road Transport Corporation (hereinafter referred to as "Corporation") preferred an appeal before the Apex Court against the order in W. A. No. 949/ 1979, and the Two Judge Bench of the Supreme Court dismissed the same on 31-10-1984 (reported in) Karnataka State Road Transport Corporation, Bangalore Vs. B.A. Jayaram and Others, . Thereafter, three Judge Bench of the

Apex Court in its decision in *Karnataka State Road Transport Corporation, Bangalore Vs. Karnataka State Transport Authority, Bangalore and Others*, held that, variation of condition of permit does not violate the scheme and it was also noticed that the transport authorities were convinced that the requirement of Section 57(8) of the 1939 Act has been followed and defects if any can be agitated before the appellate forum. Further, a Bench of the Apex Court consisting of 5 Judges, in its decision reported in *Adarsh Travels Bus Service and Another Vs. State of U.P. and Others*, , held that when the scheme prohibits plying of stage carriages, then the private operator cannot be permitted to ply even with corridor restrictions. A Division Bench of the Apex Court rendered its judgment *Gajraj Singh etc. Vs. The State Transport Appellate Tribunal and others etc.*, to the effect that there was no provision to renew the permit granted under the 1939 Act, However, it was made clear that the benefit of the saving clause was available only to saved operators but they were required to file an application not under the 1939 Act, but under the 1988 Act, Learned counsel also brought to the notice a decision of the Apex Court reported in *Karnataka State Road Transport Corporation Vs. Ashrafulla Khan and Others*, holding that Kolar Scheme is a scheme for total exclusion and no permit could be granted to private operators on the notified route or portion thereof. The Apex Court in CA No. 7371/1996 affirmed the order dated 29-5-1990 in W. A. No. 2230/1985 setting aside the grant of variation made in favour of saved operator.

7. In the instant, case, admittedly, the notification dated 10-1-1968 approved the Kolar Pocket Scheme. The appendix thereto specifies the route in relation to which the scheme is approved, the maximum and minimum number of vehicles to be operated and daily service on such routes by State Transport Undertaking. At Sl. No. 2 of the Appendix on Bangalore-Tayalur route, the maximum and minimum number of vehicles to be operated is 3 and 1, and the maximum and minimum number of daily services is 3 and 1; at Sl. No. 38 on Kolar Gowribidanur route, it is 2 : 1 and 2 : 1; at Sl. No. 64, on Chintamani-Royalpad route, it is 2 : 1 and 4 : 1 and at Sl. No. 65 on Chitamani-Venkatagirikota, it is 3 : 1 and 3 : 1 respectively. The new Motor Vehicles Act of 1988 came into force with effect from 1-7-1989 with Sections 99(2) and 104. The same scheme is in existence and is not disputed.

8. Sri S. Prakash Shetty, learned counsel for the appellant-Corporation submits that on inter-State routes, permit cannot be granted above the scheme and the operators cannot take additional permit in the garb of benefit given under the saved clause and the Division Bench has wrongly referred the matter observing that there the decision in *Balashyam Singh case (supra)* expresses a contrary view to the decision in *Karnataka State Road Transport Corporation, Bangalore Vs. Karnataka State Transport Authority, Bangalore and Others*, , and therefore, there was no question of referring the matter to a larger Bench. He also submits that the Division Bench has not considered the latest decision of the Supreme Court in *R. Venkatesham Chetty v. The State of Karnataka (In C. A. No. 7371/1906 decided on 16-1-2003)*, which has decided the controversy, and

granting variation of the permit by allowing additional trip on the inter-State route is not permissible.

9. Sri P.R. Ramesh, the learned counsel appearing for KSRTC, reiterated the arguments of Sri S. Prakash Shetty and further submitted that variation cannot be permitted by including additional trips with or without additional vehicle on a notified route in respect of a permit saved under the Scheme and the controversy has already been answered in the decision of the Supreme Court: in Venkatesham Chetty's case subsequent to the decision of Supreme Court in Karnataka State Road Transport Corporation, Bangalore Vs. Karnataka State Transport Authority, Bangalore and Others, .

10. On the other hand, learned counsel for the saved permit holders submits that variation of permit by including additional trips with or without additional vehicles would not violate the Kolar or Bellary Pocket Scheme as held by Supreme Court in Karnataka State Road Transport Corporation, Bangalore Vs. Karnataka State Transport Authority, Bangalore and Others, . He also submits that the earlier decision of the 3 Judge Bench of the Apex Court in Karnataka State Road Transport Corporation has not been considered in the later decision of the Apex Court in R. Venkatesham Chetty's case and as such they are entitled for grant of variation in the permit as saved operators. He has also relied upon the decision of the Supreme Court in Ramnath Verma Vs. State of Rajasthan, and the decision of this Court in Mysore SRTC v. Mysore Revisional Appellate Tribunal (1967) 1 Mys LJ 148 : (AIR 1968 Mys 1).

11. We have heard the learned counsel for the parties, perused the materials on record and the case law.

12. It will be appropriate to consider the decision in Balashyam Singh's case. The petitioner initially filed W.P. No. 25353/2001 challenging the order of the Karnataka State Transport Authority rejecting the grant of variation of condition of permit and also the inclusion of one more vehicle in the permit, and the writ petition was rejected vide order dated 28-6-2002. The same was challenged before the Division Bench in W. A. 4163/ 2002, on the ground the appellant was entitled to get the benefit of the saving clause and relied on Gajraj Singh etc. Vs. The State Transport Appellate Tribunal and others etc., . The Division Bench, on consideration, vide order dated 19-8-2002, dismissed the writ appeal observing :

"A bare reading of the saving clause reveals that the Scheme has saved the right of the existing operator, but it cannot be extended to consider the additional vehicles or to give additional trips or to revise the time taken and therefore, the order of the KSTAT cannot, be said to be wrong and the learned single Judge has rightly not interfered with the order of the KSTAT."

In this case, the State of Andhra Pradesh approved the scheme relating to the route Hindupur-Madakasira and also noted that the scheme shall not affect the operators of other States in respect of routes included in the existing as well as future inter-State agreements in pursuance of Section 63-B(3) of the Motor

Vehicles Act, 1939 between Andhra Pradesh and other State's, the holders of existing stage carriage permits in respect of inter-State routes, the holders of existing and future stage carriage permits in respect of town service route and in respect of such route or routes which overlap not more than 8 Kms., on the notified route in Andhra Pradesh State.

13. As stated in the said appeal, the Court was considering the validity of order passed in respect of a permit for inter-State route granted as per agreement between Karnataka and Andhra Pradesh and was not in respect, of permit saved under Kolar Pocket or Bellary Pocket Scheme. In Karnataka State Road Transport Corporation, Bangalore Vs. Karnataka State Transport Authority, Bangalore and Others, , the matter was not considered in respect of saved operators of this scheme and the observation is confined to the facts of the above case. Therefore, the said judgment is not relevant to consider the question before us.

14. In view of this, the decision in Balashyam Singh case cannot be said to be contrary to the decision in Karnataka State Road Transport Corporation, Bangalore Vs. Karnataka State Transport Authority, Bangalore and Others, as in that case the scheme authorised continued operation by inter-State stage carriage permit holders subject to corridor restrictions and it was held that the condition imposed in the scheme had not been violated.

15. But the question in issue is whether it is permissible to grant variation of the conditions of a stage carriage permit held by a saved operator under the Kolar Pocket Scheme/Bellary Pocket Scheme, by increasing the number of trips or number of vehicles. To our mind, the Scheme is inter-State scheme and the grant of variation can be permitted as per the scheme under the agreement. In the absence of any agreement as per the scheme, granting variation of permit by allowing to ply additional vehicle and increasing the number of trips is impermissible and same cannot be granted.

16. It is also seen that in the decision rendered by the Apex Court in Karnataka State Road Transport Corporation, Bangalore Vs. Karnataka State Transport Authority, Bangalore and Others, , the Apex Court considered the below two questions framed by the High Court-

(1) Whether the Transport Authority has the power to grant variation of the condition of the inter-State Stage Carriage Permits by increasing the number of trips operated (with or without the increase of the number of vehicles covered by the stage carriage permit) overlapping the notified routes of Kolar Pocket Scheme after its modification on 10-1-1980 and

(2) Whether the Transport Authority has power to grant variation of the conditions of the inter-State stage carriage permits by increasing the number of trips operated (with or without the increase of number of vehicles covered by the stage carriage permit) overlapping the notified routes of the Kolar Pocket Scheme beyond the maximum provided in any inter State agreement.

And observed that the Division Bench examined these two aspects at length, negated both and dismissed the writ petitions. Considering the judgment of the Constitution Bench in *Adarsh Travels Bus Service and Another Vs. State of U.P. and Others*, the Apex Court held :

"Once a scheme under the Motor Vehicles Act came into operation no person other than the State Transport Undertaking could operate in the notified area or the notified routes except as provided in the route itself. He also sought support from the said decision for his contention that after the scheme, private operators were totally prohibited from plying even on a part of the notified route or routes."

Their Lordships also observed that :

"As noticed earlier, the scheme authorises the continued operation of the services by the existing permit holders subject to corridor restrictions. Having heard learned counsel, we are of the view that the condition imposed in the scheme has not been violated. There is nothing said in the case of *Adarsh Travels* which would support the appellant in the facts of the present case. Learned counsel also made grievance by alleging non-compliance of the provisions of the Motor Vehicles Act in the matter of granting extension of trips. The order of the State Transport Authority indicates that parties were heard and prima facie there was compliance of the requirements of the provisions of Section 57(8) of the Act. Defects, if any, in the matter of extension of trips could be agitated before the Appellate forum under the Act. Before the High Court the main contention was confined to the argument, relating to plying in contravention of the law based upon the scheme. We do not find any merit in the appeals and they are dismissed with costs."

17. It may be noted that the Apex Court in *Karnataka State Road Transport Corporation Vs. Ashrafulla Khan and Others*, having regard to the terms of the Kolar Pocket Scheme, has held that the Scheme is to the total exclusion of other operators. Same observation would apply to Bellary Scheme also containing identical terms. However, by the amended Scheme published on 10-1-1980 under both Schemes where pursuant to inter-State agreement entered into by Government of any other State permit had already been granted by Transport Authority as on 10-1-1980 were saved subject to the corridor restriction as per Clause (c) referred to above.

18. The Apex Court in *R. Raghuram Vs. P. Jayarama Naidu and Others*, has held that:

"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 services with the existing number of trips on the date on which the scheme is published and it does not authorize 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 authorizing 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."

Further, the Apex Court observed:

"Our attention is, however, drawn to another decision of this Court in Karnataka State Road Transport Corporation, Bangalore Vs. B.A. Jayaram and Others, , wherein the Division Bench held that Section 57(8) does not create a legal fiction and grant of an application for variation in the conditions of one existing permit in respect of matters set out in Section 57(8) does not result in the grant of new permit in every case. With great respect to the learned Judges who decided the said case we feel that the said opinion is erroneous because the increase in the number of trips of vehicles which were being run under the existing permit does amount to grant of a new permit to operate one more stage carriage. Such a thing could not be permitted particularly in view of the decision in Adarsh Travels Bus Service and Another Vs. State of U.P. and Others, . The construction on the statute placed by the decision of this Court in KSRTC's case (supra) referred to above must be deemed to have been overruled in Adarsh Travel's case (supra). The prejudice to the finances that is caused to the State Transport Undertaking for whose benefit the scheme is made is not so much by the number of vehicles used but by the number of question. The economy and coordination, two of the factors governing a scheme would also be affected. On the basis of the above view, another Division Bench has disposed of another petition at the stage of admission.

Even if there is an inter-State agreement u/s 63 of the Act for increasing the number of trips, such an agreement cannot override the provisions of Chapter IVA by virtue of Section 68 of the Act. Section 68 being in Chapter IV of the Act the scheme approved under Chapter IV-A prevails over it.

We therefore feel that the order dated 24-1-1988 in Civil Appeal No. 4126/1986 has got to be reviewed in view of the fact that there was an approved scheme in force which did not authorize the increase in the number of trip of the vehicles belonging to the existing operators on the date of the scheme."

Their Lordships also referred the matter to a Constitutional Bench. However, the Constitutional Bench did not decide the question and remitted the matter to the Division Bench of the Apex Court.

19. A Division Bench of this Court in W. A. No. 2280/1985 (KSRTC v. KSTAT R 3-R. Venkatesham Chetty) held on 29-5-1990 as follows:

"This is a case in which the respondent had been granted additional trips on a nationalized route, concerning which the Scheme has become final. The question is whether the grant of additional trips would amount to grant of fresh permits. Whatever might have been the position earlier, as on today, contrary view taken



in the Karnataka State Road Transport Corporation, Bangalore Vs. B.A. Jayaram and Others, has been held no longer good law in view of the decision of the Supreme Court in Adarsh Travels Bus Service and Another Vs. State of U.P. and Others, , which position has been exactly set out in R. Raghuram Vs. P. Jayarama Naidu and Others, . We do not think we need labour on the same. Therefore, applying the ratio of this ruling, we hold that fresh permits cannot be granted in a nationalized route, apropos it should apply to additional trips as well. Accordingly, the writ appeal shall stand allowed."

It may be noted that against the above decision, R. Venkatesh Chetty filed C. A. No. 7371/1996, which was dismissed on 16-1-2003 and in this way the question referred has already been answered and the controversy has been set at rest. In that case, an application for variation of the conditions of permit by granting one more additional return trip on the inter-State route was made, which was opposed by the Corporation. The Karnataka State Transport Authority overruling the objection granted one more additional return trip on the inter-State route. An Appeal was filed by the Corporation, which was dismissed. Thereafter the Corporation filed a writ petition and the learned single Judge while dismissing the petition observed that appellant shall not pick up or set down passengers between the notified portions of the inter-State route, and also pay taxes. The Corporation filed a writ appeal against that order which was allowed. The matter went to the Supreme Court and it was held that there was no scope for further grant of an additional return trip, and that the appellant could not have been granted variation in permits by granting additional return trip on the inter-State route, and accordingly dismissed the appeal.

20-21. It will be appropriate to quote the relevant para of the judgment dated 16-1-2003 rendered in R. Venkatesham Chetty's case:

"Learned counsel appearing for the appellant urged that the view taken by the High Court was erroneous in as much as the appellant had a valid permit, the conditions of which could be varied by adding one more trip. We do not find any substance in the argument. Section 63 of the Repealed Act provides that no vehicle can be allowed to ply on an inter-State route unless there is an reciprocal agreement between the two States providing for numbers of vehicles and trips to be operated on the inter-State route by two or more States and published in the respective Gazettes. It is not disputed that the said agreement provided for two permits having one return trip each from each State and since there were already two return trips being operated from the side of Karnataka, there was, no scope for further grant of an additional return trip. For these reasons, the appellant could not have been granted variation in permits by granting additional return trip on the inter-State route.

Consequently, we do not find any merit in the appeal. It is accordingly dismissed. There shall be no order as to costs".

The above decision, resolves the controversy in these cases also.

22. The argument of learned counsel M. R. A. Achar is that in the later decision, the earlier decision was not followed. The controversy is not acceptable as it is well settled law of precedent that where there are two judgments rendered by the Benches consisting of equal number of Judges as in this case, the later in time would prevail and hence we are bound by the decision of the Supreme Court in R. Venkatesham Chetty's case referred to above. In the light of the said decision, we answer the question referred to us as follows:

It is not permissible to grant variation of the conditions of a stage carriage permit held by a saved operator under the Kolar Pocket Scheme or Bellary Pocket Scheme by increasing the number of trips or number of vehicles unless the reciprocal agreement between the States so permits as held by the Supreme Court in R. Venkatesham Chetty's case.

The writ appeals and writ petitions shall now be posted before appropriate Bench for disposal on merits.