

(1988) 03 KAR CK 0022

In the Karnataka High Court

Case No : W.P. No. 21/1987 connected with W.A. No. 911 to 949/1987

Karnataka State Road Transport Corporation

APPELLANT

Vs

Basavannappa and Others

RESPONDENT

Date of Decision : 30-03-1988

Acts Referred:

Motor Vehicles Act, 1939 — Section 57(8)

Citation : (1988) 1 KarLJ 544

Hon'ble Judges : S. Rajendra Babu, J;M. Rama Jois, J

Judgement

Rams Jois, J.-In these Writ Appeals presented against the order of the learned single Judge, in which the validity of a scheme approved by the State Government under sub-section (3) of Section 68D of the Motor Vehicles Act, 1939 (hereinafter referred to as the "Act") was challenged, the following two questions of law arise for consideration:

(1) Whether the exemption granted in favour of State Transport Undertakings of other States only, regarding the operation of Inter-State routes, in a scheme approved by the State Government under sub-section (3) of Section 68D of the Act is violative of Article 14 of the Constitution?

(2) Whether the embargo placed on the Inter-State permits of private operators, saved in the scheme approved by the State Government under sub-section (3) of Section 68 of the Act, regarding variation of the conditions attached to the permit both in respect of number of trips and number of vehicles to be operated is invalid and cannot prevail over Section 57(8) of the Act?

2. The facts of the case in brief which are relevant for the disposal of these appeals are as follow: A scheme prepared under Section 68C of the Act by the Karnataka State Road Transport Corporation (the Corporation for short) covering as many as 202 routes, for plying stage carriages, in the District of Bidar and Gulbarga was approved by the State Government under Section 68D of the Act. It was published on 7-11-1985. It came into force with effect from the same date. The relevant portion of the notification reads:

d) Whether the services are to be operated by the State Transport undertaking to the exclusion, complete or partial, of other persons or otherwise. The State Transport Undertaking will operate the services on all the routes, as in the statement, appended, to the complete exclusion of other persons, except (i) the State Transport Undertaking as defined under Section 68-A of the M.V. Act, 1939 (ii) The existing Inter-state operators who are operating the entire Inter-state routes with duly counter-signed permits issued by the Authorities of respective States may continue to operate such Inter-state Route (in relation to such trips and vehicle or vehicles only specified in the permits) subject to the condition that their permits shall be rendered ineffective by the Competent Authorities for the overlapping portions."

The respondents in these appeals presented Writ Petitions questioning the legality of the above notification in so far it related to the portions which are underlined. The first underlined portion of Clause (d), gave exemption from the operation of the scheme to the Transport Undertakings as defined under Section 68A of the Act. The second portion while saving the inter-state permits of private operators subject to the usual condition that they shall be rendered ineffective for the overlapping portion of monopoly routes, imposed an embargo regarding the increasing of trips as also regarding increasing the number of vehicles in respect of such Inter-state permits. The learned single Judge held that the clause in so far it related to the granting of exemption in favour of State Transport Undertakings was violative of Article 14 of the Constitution and that the Clause which placed embargo on the Inter-State permits saved under the scheme regarding the increasing of trips or increasing the number of vehicles, was invalid on the ground that it was inconsistent with sub-section (8) of Section 57 of the Act. Aggrieved by the said order, the State Government as also the Corporation have presented these appeals.

3. As far as the first question is concerned, the learned Counsel for the appellants submitted that exemption granted in a scheme approved under Section 68D of the Act in favour of State Transport Undertakings has been held to be not-violative of Article 14 of the Constitution by a Division Bench of this Court in W.Ps. 16574 to 16579 of 1987 and connected cases (Mallamma & Others v. State of Karnataka & Others) decided on 5th of January, 1988. The scheme which was under the subject matter of challenge in the said Writ Petitions was in relation to a route in the District of Chitradurga. In the said scheme also an exemption had been granted in favour of State Transport Undertakings of other States which is similar to the exemption granted in the scheme which has been the subject matter of challenge in the Writ Petitions, out of which these appeals arise. The Division Bench held that State Transport Undertakings operating on Inter-State routes form a class apart and are not comparable to private operators, and therefore the exemption granted was not violative of Article 14 of the Constitution. We are in respectful agreement with the view taken in the said judgment. The State Transport Undertakings of other states as also the Corporation are established under the same Central enactment

viz., the Road Transport Corporation Act, 1950. Having regard to the object and purpose of the Road Transport Corporation Act and the establishment of the Road Transport Corporations, the State Transport Undertakings of each of the States not only form a separate and well defined class, as distinct from Private Operators, the classification is also a reasonable one. The granting of an exemption in a scheme approved under Section 68D(3) of the Act in favour of such Undertakings has a rational nexus to the object sought to be achieved. Therefore, we respectfully disagree with the view taken by the learned single Judge, on the point. Accordingly, we answer the first question as follows:

"The exemption granted in favour of State Transport Undertakings of other States only, regarding the operation of Inter-State routes, in a scheme approved by the State Government under sub-section (3) of Section 68D of the Act is not violative of Article 14 of the Constitution."

4. As regards the second question, the learned Advocate General and the learned Counsel for the Corporation submitted that in view of Section 68D of the Act, the scheme prepared under Chapter IV A of the Act has a over-riding effect on the provisions of Chapter IV of the Act and therefore the restriction imposed in the exemption clause could not be held to be violative of Section 57(8) of the Act.

5. Sri. M. Rangaswamy, learned Counsel appearing for the respondents however submitted that when in a scheme approved under Section 68D(3) of the Act, the Inter-State permits are saved, it enables the holders of the permits to apply for either increasing of trips or increasing the number of vehicles to be operated under such permit and no further condition imposed to the effect that the saving of such permits was only in relation to such trips and vehicles specified in the permits, can be regarded as valid. The learned Counsel submitted that the matter was covered by the judgment of the Supreme Court in the case of Karnataka State Road Transport Corporation, Bangalore And Others v. Karnataka State Transport Authority, Bangalore And Others, reported in A.I.R. 1987 S.C. 711.

6. In order to appreciate the contention it is necessary to set out the provisions of Section 68B of the Act. It reads:

"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." The language of the provision is specific and peremptory. According to the provision, any rules or orders made under Chapter IV A of the Act would have a over-riding effect on the provisions contained in Chapter-IV of the Act. Section 57(8) is a provision contained in Chapter-IV of the Act. Section 68B of the Act was the subject matter of interpretation by the Supreme Court in M/s. Adarsh Travels Bus Service And Another v. State of U.P. And Others (A.I.R. 1986 S.C. 319) Para 14 of the judgment which is relevant reads:

"Shri. R.K. Garg urged that the provisions of Chapter IV and Chapter IV-A must be reconciled in such a manner as to allow permit holders to ply their stage carriages notwithstanding that parts of their route are also parts of notified routes. We fail to understand the argument having regard to the express legislative pronouncement in S. 68B that the provisions of Chapter IV-A and the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in Chapter IV of the Act."

Thus, it is clear that if the conditions incorporated in the scheme approved under Section 68D(3) are such as would exclude the exercise of apart or whole of the power under sub-section (8) of Section 57 of the Act, it is these conditions which would have override the provision of S. 57(8), and not Vice Versa. Sri Rangaswamy maintained that the Supreme Court in the case of Karnataka State Road Transport Corporation referred to earlier, interpreting a clause in the Kolar Pocket Scheme which was similar to the one in the scheme relating to Gulbarga and Bidar, had ruled that the power of the authorities to grant variation of the condition of the permit either regarding trips or regarding the number of vehicles" remain unaffected. In particular, he invited our attention to paragraph 4 of the said judgment. It reads:

"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 or 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 S. 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."

If the relevant clause in the scheme which was the subject matter of consideration by the Supreme Court in the aforesaid case and the relevant clause in the scheme which was the subject matter of challenge in the Writ Petitions, are identical, the contention of Mr. Rangaswamy, would be unexceptionable. But there is difference between the relevant clauses in the scheme which was the subject matter in the Kolar Pocket Scheme, which was the subject matter of the decision of the Supreme Court in the aforesaid case and the clause in the Gulbarga and Bidar scheme which has been the subject matter of the challenge in the Writ Petitions. This would be clear if we set out the two clauses side by side.

Clause "C" of Kolar Pocket Scheme. Clause "D" of Gulbarga & Bidar Scheme.

That 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 route which are included in the inter-state agreement of any other state provided, that the operators on such routes shall not be entitled to pick up and set down passengers in such portion of the routes which overlaps on any portion of the notified routes. The State Transport Undertaking will operate the services on all the routes, as in the statement appended, to the complete exclusion of other persons, except (i) the State Transport Undertaking as defined under Section 68-A of the M.V. Act, 1939. (ii) The existing Inter-state operators who are operating the entire Inter-state routes with duly counter-signed permits issued by the Authorities of respective States may continue to operate such Inter state Routes (in relation to such trips and vehicle or vehicles only specified in the permits) subject to the condition that their permits shall be rendered ineffective by the Competent Authorities for the overlapping portions.

A comparison of the two clauses would show that the clause "in relation to such trips and vehicle or vehicles only specified in the permits" was not there in the Kolar Pocket Scheme, but has been incorporated in the present scheme.

7. Learned Counsel for the Corporation submitted that when the Kolar Pocket Scheme was prepared it was also the intention of the Corporation to save the inter-State permits of private operators, subject to the condition that it should be restricted to the number of trips and number of vehicles as entered in the permits immediately prior to the coming into force of the scheme, but as the clause did not contain a specific condition to that effect the Supreme Court held that the scheme did not impose any restriction regarding seeking variation of the condition of the permit, Under S. 57(8) of the Act. He submitted, that having realised the flaw in the drafting of the relevant clause, while drafting the Gulbarga Bidar Scheme such a condition was expressly incorporated.

8. We are of the view that in view of the specific condition imposed in the scheme there is no escape from the conclusion, that the Inter-State permits of private operators operating in the area in question were saved subject to two conditions. They are (i) those permits shall be rendered ineffective by the competent authority for the overlapping portions of monopoly routes by imposing the condition that they should not pick up or set down passengers on the overlapping portion of the monopoly routes and (ii) That the permits shall be restricted to the number of trips and vehicles mentioned in those permits. In view of the second condition imposed in clause-D of the scheme, in our opinion, any request for variation of the condition of the permits which are saved under that clause in relation to the number of vehicles or number of trips, would be plainly inconsistent with the provisions of the scheme and therefore in view of Section 68B of the Act, it is the scheme which has to prevail over Section 57(8) and not vice-versa.

9. For the aforesaid reasons, we respectfully disagree with the view taken by the learned Judge and answer the second question as follows:

"The embargo placed on the Inter-State permits of private operators saved in the scheme approved by the State Government under sub-section (3) of Section 68 of the Act regarding variation of the conditions attached to the permit both in respect of number of trips and number of vehicles to be operated, is valid and prevails over S. 57(8) of the Act."

10. Before concluding it is necessary to state that in the order made by the learned single Judge in the writ Petitions out of which these appeals arise there was also a challenge to the legality of the entire scheme as approved by the Government under Section 68D(3) of the Act and the learned single Judge has rejected all the contentions and has upheld the scheme. There are appeals preferred against the part of the order of the learned single Judge dismissing the Writ Petitions. Those Writ Appeals will be dealt with separately and the disposal of these Writ Appeals will have no bearing on the questions raised in those appeals.

11. In the result, we make the following:

ORDER

The Writ Appeals are allowed. In reversal of the order made in the Writ Petitions allowing the Writ Petitions in part, the Writ Petitions are dismissed. There will be no order as to costs.

Writ Appeals allowed.