

(1988) 06 KAR CK 0057
In the Karnataka High Court
Case No : W.P. Nos. 4052 to 4061/1988

Karnataka State Road Transport Corporation	APPELLANT
Vs	
Karnataka State Transport Authority and Others	RESPONDENT

Date of Decision : 10-06-1988

Acts Referred:

Karnataka Motor Vehicles Rules, 1963 — Rule 104a(V)(2)(B)(I)
Motor Vehicles Act, 1939 — Section 68f

Citation : (1988) 3 KarLJ 192

Hon'ble Judges : H. G. Balakrishna, J

Judgement

Balakrishna, J.-Common questions of law and fact emerge from this batch of 10 writ petitions which are preferred by the Karnataka State Road Transport Corporation (for short "the Corporation") against the impugned, composite order passed by the Karnataka State Transport Appellate Tribunal, Bangalore, granting variation of conditions of permit by means of deviation of routes. Hence, by a common order, these writ petitions are disposed of.

2. The material facts which are not disputed are set out hereunder: The Corporation which is the petitioner in all these writ petitions has been operating the services on all the notified routes in the State of Karnataka. By a Gazette notification dated 10-1-1980, the modified approved scheme of nationalisation of road transport routes popularly known as "Kolar Pocket Scheme" was promulgated by the State of Karnataka under the provisions of Section 68-E of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act").

3. Respondents-3 to 12 are the permit holders being private operators, who had already been granted permits by the appropriate transport authority as on the date of publication of the aforesaid modified scheme, operating their services on the interstate routes which were included in the interstate agreement at the relevant time, entered into by the Government of the neighbouring State of Andhra Pradesh, with the State of Karnataka. Subject to the restriction that these permit holders are not entitled to pick-up or set-down passengers in such

portion of the routes which overlaps on any notified routes, they were permitted to continue to operate on the interstate routes covered by the inter-state agreement referred to earlier.

4. Respondents-3 to 12 applied for deviation of routes also known as alteration of routes before the Karnataka State Transport Authority, Bangalore. However, all the applications of the permit holders respondents-3 to 12 were rejected by the State Transport Authority by a common order in pursuance of its resolution dated 14-8-1986 vide Annexure-N. Thereafter, the aggrieved permit holders preferred appeals before the Appellate Tribunal which, by a common order, allowed all the appeals and granted variation of conditions of permit as sought by the permit holders. Against the said order of the Appellate Tribunal, the Corporation preferred Writ Petitions before this Court in W.P.Nos. 12760 to 12766 of 1987 which were allowed by order dated 25-9-1987 vide Annexure-P. In the said order of this Court, direction was given to the Appellate Tribunal that all points including the question of need regarding curtailment as well as deviation should be specifically considered and decided by the Appellate Tribunal. With these direction, this Court remanded the cases to the Appellate Tribunal. After remand, the Appellate Tribunal heard the appeals on merits and passed a common order dated 30-1-1988 vide Annexure-allowing all the appeals and granting variation of conditions of permits. It is this order which is challenged in these writ petitions by the Corporation.

5. Respondent-3 holds a permit for interstate route from Tirupathi to Bangalore; respondent-4 for the route from Bangalore to Palamaneer; respondent-5 for the route from Punganur to Bangalore; respondent-6 for the route from Madanapalli to Bangalore; respondent-7 for the route from Bangalore to Punganur; respondent-8 for the route from Chittoor to Bangalore; respondent-9 for the route from Bangalore to Madanapalli; respondent-10 for the route from Madanapalli to Bangalore; respondent-11 for the route from Bangalore to Madanapalli and respondent No.12 for the route from Bangalore to Palamaneer.

6. In the order passed by the Tribunal vide Annexure-Q, not only the question of grant of variation of conditions of permit, but also the existence of the need for grant of the same have been considered. The petitioner in all these writ petitions has assailed and impugned order of the Tribunal on the ground that the scheme does not permit the grant of variation of the inter-state routes and on the ground that the Tribunal has not properly considered the question of existence of need for grant of variation of conditions of permit if such a power is not taken away by the scheme. The following questions were answered by the Tribunal in the course of its order:

(1) Whether the appellants have made out a case for grant of variation of the conditions of their permits by way of curtailment and deviation on the routes in question in accordance with the provisions of Rule 104-A(v)(2) of the KMV Rules?

(2) Whether there is need to grant the variation of the conditions of the permits

of the appellants?

(3) Whether the grant of variation amounts to grant of new permits?

(4) Whether the grant of variation affects the integrity of the Kolar Pocket Scheme and also the inter-state agreement?

(5) Whether in the absence of revision of timings, the variation sought by the appellants can be granted?

All the questions were answered in the affirmative by the Tribunal.

7. While passing the order, the Tribunal has considered the various authorities of this Court and the Supreme Court. It is the contention of the petitioner that the Tribunal has misconstrued the exemption clause under the Kolar Pocket Scheme. According to the petitioner, the exemption granted under the scheme is confined to the inter-state route which is included in the inter-state agreement under the corresponding permit. Any deviation of a highway between any two terminus even in respect of an existing permit is not exempted under the Kolar Pocket Scheme and that any grant of permit overlapping the notified route as a new permit or as an extension of the route or as a deviation or curtailment of the route unless provided under the scheme is totally devoid of jurisdiction and prohibited under Section 68FF of the Act. It is also contended by the petitioner that the Tribunal has failed to properly consider the question of need in the interest of the travelling public with regard to deviation or curtailment of route. According to the petitioner, the need in respect of a particular route is conclusively established only if the route forms part of an inter-state agreement; but in the instant case, the permit held by respondents-3 to 12 is specifically included in the inter-state agreement thus establishing the need only in respect of that particular inter-state route. The petition has also questioned the perception of what is an existing need as adopted by the Tribunal while considering the same.

8. The Counsels for respondents-3 to 12 have contended that the power to grant variation of conditions of permit is not taken away by the scheme as it stands and the only restriction placed on the saved operators who are also known as existing permit holders is that they cannot pick-up and set-down passengers in such portion of the routes which overlaps on any portion of the notified routes. This restriction, respondents-3 to 12 contend, is being strictly followed by the respondents in the operation of their services. They further contend that though the scheme is stated to be one of total exclusion of all other persons than the Corporation, in fact, exception has been made in the scheme excepting a particular category of persons, namely, the saved operators subject to corridor restrictions only. By corridor restrictions, they mean, the restriction imposed on the existing operators from picking up and setting down passengers in such portion of the routes which overlaps on any portion of the notified routes. According to the respondents, the exception made in the scheme refers to persons and not to operation of services as contended by the learned Counsel for

the petitioner. It is also contended that after excepting saved operators, the scheme imposes a restrictive condition which is nothing other than corridor restriction and no other restriction is contemplated under the scheme.

9. The other main contention of the respondents is that the question of need has been considered in accordance with law vide Rule 104-A(v)(2)(b)(i) of the Karnataka Motor Vehicles Rules, 1963 (hereinafter referred to as "the Rules") to be applied for the purpose of determination of the need and, therefore, in the light of the exhaustive consideration and discussion of the question of need by the Tribunal, the grievance of the petitioner that the question of need has not been properly considered, is contrary to facts.

10. The following questions arise for consideration:

(1) Whether the Transport Authority is invested with the power to accord variation of the conditions of the inter-state stage carriage permits by altering the inter-state routes of Kolar Pocket Scheme after its modification on 10-1-1980?

(2) Whether the Transport Tribunal has considered the need to grant variation of the conditions of permits of respondents-3 to 12 in accordance with law?

11. The relevant portion of the scheme as modified with effect from 10-1-1980 reads as follows:

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

(a) xx xx (b) xx xx (c) that operation of services by the permit holders who have already been granted permits by the Transport Authority on the date of publication of the modified scheme on inter-state routes 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."

Though the scheme purports to be one of complete exclusion, and proclaims that the State Transport undertaking will operate the services on all routes, yet it makes an exception as reflected in the words "to the complete exclusion of other persons except the following: ", of a particular category of persons.

Clause (c) of the Scheme read from the words "that operation of services.....provided", makes it self-explanatory in descriptive language as to who the persons are that are excepted. A reading of the words "provided.....of the notified routes", articulate in unmistakable language as to what such persons are not entitled to do. In short, the portion of the Scheme referred to above not only provides for exception of certain category of persons but also stipulates a restrictive condition which is popularly known as "corridor restriction" This is the only restriction placed on the excepted persons. In the instant cases, the excepted persons are respondents-3 to 12 who answer the

description of excepted persons under the Scheme. Respondents-3 to 12 are permit holders who enjoy the exception conferred by the Scheme. They are known as "saved operators", in common parlance. The fact that respondents-3 to 12 are saved operators as on 10-1-1980 when the modified Kolar Pocket Scheme came into force is undisputed. What is disputed by the Corporation is the power of the Transport Authority to grant variation of permit by altering the inter-state routes.

There is nothing in the Scheme which indicates that there is any restriction which bars the Transport Authority from granting variation of conditions of permit. The one and the only restriction is corridor restriction.

The wordings as well as the language of the Scheme do not present either semantic ambiguity or syntactic vagueness. The words are explicit and do not allow any scope to infer a restriction on variation of conditions of permit, by implication. The scheme is law as held by the Supreme Court in the case reported in H.C. Narayanappa v State of Mysore, AIR 1960 SC 1073, para 12. The rights of the saved operators under the provisions of Section 57(8) to seek variation of conditions of permit are saved. A repeal of the statutory provision conferring such rights cannot be presumed by from the Scheme (which is "Law") by implication. The wordings of the Scheme have to be read and construed as they are. Neither in the Scheme as it existed prior to 10-1-1980 nor in the Scheme which was modified with effect from 10-1-1980, the Scheme-makers inserted into the Scheme any variation restriction analogous to corridor restriction. It would not be improper to presume that the intention of the Scheme-makers was not to prohibit grant of variation of conditions of permit by the Transport Authority. The line lay between the word and the purpose and it is one of non-prohibition of variation of conditions of permit. A compromise between the letter and spirit guides to such an inevitable and logical conclusion.

It would be relevant to consider the provisions of Section 57(8) of the Act which empower the Transport Authority to grant variation to the saved operators. Section 57(8) provides as hereunder:

"An application to vary the conditions of any permit, other than a temporary permit, by the inclusion of a new route or routes or a new area or, in the case of a stage carriage permit, by increasing the number of trips above the specified maximum or by altering the route covered by it or in the case of a contract carriage permit or a public carrier's permit, by increasing the number of vehicles covered by the permit, shall be treated as an application for the grant of a new permit:

Provided that it shall not be necessary so to treat an application made by the holder of a stage carriage permit who provides the only service on any route or in any area to increase the frequency of the service so provided without any increase in the number of vehicles."

According to this provision of the Act, applications for the following variations of

conditions of permit are permissible:

- (1) an application to vary the conditions of any permit, other than a temporary permit, by the inclusion of a new route or routes or a new area;
- (2) an application to vary the conditions of a stage carriage permit by increasing the number of trips above the specified maximum;
- (3) an application to vary the conditions of a stage carriage permit by altering the route covered by it;
- (4) an application to vary the conditions of a contract carriage permit by increasing the number of vehicles covered by the permit; and (5) an application to vary the conditions of a public carrier's permit by increasing the number of vehicles covered by the permit.

The impugned variations come within the amplitude of "alteration of the routes". The above provision, as already observed, has not been repealed by the Scheme in so far as the saved operators (respondents-3 to 12) are concerned. The rights which have enured to the benefit of these saved operators continue to exist coextensively with the continuing power of the Transport Authority to grant variation of conditions of permit. Significantly enough, the saved operators stand on a different footing from other operators. Therefore, it is rational and justifiable to hold that the Transport Authority is invested with the power to accord variation of the conditions of the inter-State stage carriage permits by altering the inter-state routes of Kolar Pocket Scheme after its modification on 10-1-1980. The rights conferred on the existing permit holders under Section 57(8) of the Act do not conflict with any part of the Scheme and therefore remain intact.

12. In a decision rendered by the Supreme Court in the case of *K.S.R.T. Corpn. v K.S.T. Authority, Bangalore*, reported in AIR 1987 SC 711, two questions were considered which have relevance to this case. They are as follows:

- (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;
- (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.

The Supreme Court consisting of a Bench of three Judges held as follows:

"We have heard learned counsel for the parties at length. Appellant's counsel relied upon the Constitution Bench judgment of this Court in *Adarsh Travels Bus Service v State of U.P.*, (1985) 4 SCC 557: (AIR 1986 SC 319), in support of his

contention. 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.

*(sic)

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.....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."

In the above decision, the Supreme Court had occasion to consider variation of condition of permit by increasing the number of trips 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 apart from another question referred to earlier. What applies to variation of conditions of permit in respect of increase in the number of trips applies with equal force to variation in regard to deviation of route (alteration of route). To draw any other conclusion would be less than reasonable.

"The principle or the precedent was the outcome of a quest for probabilities. Principles and precedents thus generated, carry through their lives the birth marks of their origin. They are in truth provisional hypothesis, born in doubt and travail, expressing the adjustment which commended itself at the moment between competing possibilities"

OLIVER WENDELL HOLMES

The scheme represents a compromise between State monopoly and utilitarian interest of the existing inter-State operators with public interest as paramount consideration. The view that the scheme recognises only one kind of variation of condition of permit to the exclusion of others in the absence of express language, is hard to reconcile if words are to be regarded as the "skin of living thoughts". The purpose of the scheme under the exemption clause conditioned by a restriction is to safeguard the notified routes against overlapping while permitting the excepted operators to continue to operate on the inter-State routes with or without variation at the option of the excepted operators and the purpose is not to deny variation of conditions of permit.

I am of the opinion that the ratio of the aforesaid decision of the Supreme Court (AIR 1987 S.C. 711) enables me to hold that the condition imposed in the

scheme has not been violated by the impugned order granting variation of conditions of permit by deviation of routes.

13. Reliance has been placed by Sri Jayakumar S. Patil, the learned Counsel for the petitioner, on a judgment of the Supreme Court in *Adarsh Travels Bus Service v State of U.P.* (AIR 1986 SC 319) in support of his contentions. As observed by the Supreme Court in the decision rendered in *K.S.R.T.C. v K.S.T.A.* (AIR 1987 SC 711), para 4, there is nothing said in the case of *Adarsh Travels* which would support the petitioner in the facts of the case. It has to be emphasised that this observation was made with reference to the larger question whether the Transport authority had no power to grant variation of the conditions of permit. The ratio and the observation in the said case do apply to variation by deviation or curtailment of routes also.

In the decision in *K.S.R.T.C. v B.A. Jayaram* (AIR 1984 SC 790), grant of variation of conditions of permit by increase in the number of vehicles and or trips on inter-State routes was upheld. The questions considered in the said case were:

- (1) Whether the conditions of a permit can be varied so as to increase the number of trips and/or the number of vehicles allowed to be operated under that permit?
- (2) Whether the conditions of a permit held by an existing operator on an inter-State route exempted under the Kolar Pocket Scheme, can be varied so as to allow an increase in the number of vehicles operating under that permit?

The questions were considered and decided in the affirmative and the scheme referred to was the same modified Kolar Pocket Scheme which came into force on 10-1-1980.

In the ruling of the Supreme Court in *M/s. Shiv Chand Amolak Chand v Road Transport Authority* (AIR 1984 SC 9), vide para 5 of the judgment, the only question which arose for consideration was as to whether Section 47 sub-section (3) is attracted when an application is made by a holder of a permit for extension of the route specified in the permit. The facts of the said case are dissimilar to the facts of these writ petitions. It was incidentally observed that where an application merely seeks a short extension of the route, it would not be appropriate to say that it is an application for grant of 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 decision is of no assistance to the petitioner-Corporation in the existing factual situation of these writ petitions.

The decisions in *M. Duraiswami and Sri Murugan Bus Service* (AIR 1986 SC 1980) and in *T.N.R. Reddy v M.S.T. Authority* (AIR 1971 SC 1662) are not applicable to the facts of the instant cases.

In *Pandian Roadways Corporation Ltd., v Thiru M.A. Egappan* (AIR 1987 SC 958), the Supreme Court did not consider the case of a "Saved" or "Existing Operator". The context and the facts are distinguishable from the cases in hand. What was contended in that case was that the publication of a draft scheme under Section 68-C of the Act on June 4, 1976 in respect of a particular route which was common to a subsequent approved scheme was a bar to the grant of a variation of the permit. Hence, this decision is of no avail to the Corporation. In this case, the operator who was granted variation was not protected by any provision in the scheme itself.

In W.P. Nos. 4662 and 4652 to 4654 of 1979 (*A. Pyarajan and others v S.T.A.T. and others*), decided on 2-7-1986, the learned single Judge of this Court held that the State Transport Authority had jurisdiction to grant variation in respect of an inter-State permit under the Kolar Pocket Scheme. Reliance for the decision was placed on the Supreme Court judgment in *K.S.R.T.C. v B.A. Jayaram* (AIR 1984 SC 790) and on the judgment reported in AIR 1984 SC 9 (*M/s. Shiv Chand Amolak Chand v Regional Transport Authority and another*).

I, therefore, hold that the State Transport Authority is fully empowered to grant the deviations sought by variation of conditions of permit in the facts and circumstances of these writ petitions.

14. The remaining question which falls for consideration is whether the Tribunal has considered the need for grant of variation, in accordance with law.

The finding of the K.S.T.A.T. on the existence of need is based on public representation for the grant of variation, the route survey report submitted by the Deputy Transport Commissioner with special emphasis on the inadequacy of the existing transport services and the increase in traffic. These guiding factors adopted by the Tribunal are neither irrelevant nor collateral. The approach is based on broad principles and it is not possible to accept the contention that the existence of need has not been properly assessed or considered. Beyond holding this view, I do not propose to delve into disputed questions of fact. That apart, it would be appropriate to refer to the provisions of Rule 104-A(v)(2)(b)(i) of the Rules which reads as follows:

(b) Variation or extension of route may be allowed when:

(i) new circumstances have arisen since the route was decided, such as the construction of a bridge or road;

(ii) the transport requirements of the area to be served were overlooked or have changed.

The above rules provides for variation of conditions of permit as and when new circumstances arise since the opening of the route and when the transport needs of the area have been overlooked or have undergone change. Prior to the promulgation of the scheme, the existing permit holders operated their services on the inter-State routes without corridor restrictions. But the moment the

scheme came into force, these existing permit holders were prohibited from picking up and setting down the passengers on the notified routes, thus automatically bringing about a new circumstance affecting the economic viability of the operation of services by the existing operators. Besides, the advent of the scheme by itself brought about a substantial change in the transport needs of the area. The needs now covered by the variation of conditions of permit were not fore seeable at the time when the permits were originally granted because the scheme itself was not visualised at that point of time by the Transport Authority.

15. For the reasons stated above, I am of the opinion that the need to grant variation was considered by the Tribunal in conformity with law.

In conclusion, I answer the questions as follows:

(1) The Transport Authority is invested with the power to accord variation of the conditions of the inter-State Stage, Carriage Permits by altering the inter-State routes of Kolar Pocket Scheme after its modification on 10-1-1980;

(2) The Transport Tribunal has considered the need to grant variation of the conditions of permits of respondents-3 to 12 in accordance with law.

16. In the result, the writ petitions are dismissed. The rule issued is discharged. No order as to costs.

ORDER ON ORAL APPLICATION FOR STAY

After the above order was pronounced, the learned counsel for the petitioner orally requested for suspension of the operation of the said order for a reasonable time to enable him to prefer writ appeals before the Division Bench. However, the learned Counsels for the respondents vehemently opposed the said prayer. I consider that the request may be granted. Accordingly, the operation of the order pronounced today in these writ petitions is suspended for a period of 15 days from today.