

(1997) 04 KAR CK 0024

In the Karnataka High Court

Case No : Writ Petition Nos. 20387 and 7581 of 1986

Karnataka State Road Transport Corporation, Bangalore

APPELLANT

Vs

Karnataka State Transport Appellate Tribunal, Bangalore and
Others

RESPONDENT

Date of Decision : 16-04-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 7 KarLJ 658

Hon'ble Judges : Harinath Tilhari, J

Judgement

1. In these writ petitions as the facts of the case reveal the permit was granted originally on 26-3-1981 by the State Transport Authority, vide Resolution dated 24/25/16-3-1981 in subject No. 266 of 1980.

2. Feeling aggrieved from the grant of permit in favour of respondent No. 3 in Writ Petition No. 20387 of 1986, the K.S.R.T.C., filed the appeal before the Karnataka State Transport Appellate Tribunal. The Karnataka State Transport Appellate Tribunal, by Order dated 25-3-1986 in Appeal No 503 of 1981, while dismissing the appeal of the K.S.R.T.C., which is arrayed as respondent No. 3 in W.P. No. 7581 of 1986 and as petitioner in W.P. No. 20387 of 1986, the Karnataka State Transport Appellate Tribunal imposed certain conditions and had passed the order operative, which read as under:-

"Appeal is dismissed. However, the permit issued to the 2nd respondent pursuant to the impugned resolution is rendered ineffective on the overlapping portion between Bidar and Hulsoor by directing the 2nd respondent not to pick up or set down any passengers on the said portion in both journeys. Secretary of the 1st respondent shall incorporate the said condition in the permit of the 2nd respondent".

3. Having felt aggrieved from this Order of the Appellate Tribunal, the K.S.R.T.C., has filed the Writ Petition No. 20387 of 1986 and the permit-holder B.R. Patil who is now represented by his legal heirs filed the Writ Petition No. 7581 of

1986, have been listed together for hearing.

4. I have heard the learned Counsel for the petitioner in Writ Petition No. 20387 of 1986. Learned Counsel for the petitioner contended that no permit should have been granted to the private operator because major operation of the route in question is nationalised route. Learned Counsel contended that out of total length of 82 Kms. of route from Bidar to Aurad, major portion thereof namely Bidar to Hulsoor measuring about 74 Kms., fall within the Karnataka State and it being the subject matter of nationalised route, permit should not have been granted in favour of 3rd respondent in Writ Petition No. 20387 of 1986, namely the original petitioner in Writ Petition No. 7581 of 1986.

5. As it is the settled law that where there is overlapping, then if under the scheme there is nationalised route or monopoly route of the K.S.R.T.C. no permit could be granted in favour of the private operator, and if it is to be granted, it has to be granted only keeping in view the nationalisation scheme, relating to that route. Learned Counsel contended that because major portion of the route in question measuring about 74 Kms., did fall under the nationalisation scheme and only 8.8 Kms., which falls in Maharashtra State, may not be subject matter of nationalisation scheme, but permit could not be granted in favour of 3rd respondent. Learned Counsel referred to the decision of the Supreme Court in the case of M/s. Adarsh Travels Bus Service and Another v State of Uttar Pradesh and Others, AIR 1986 SC 319 and in this connection made a particular reference to the observations of their Lordships in paragraphs 6 and 7 of that judgment.

6. I have perused the decision in M/s. Adarsh Travels Bus Service case. In the Adarsh Travels Bus Service case, their Lordships made a reference to an earlier decision in Mysore State Road Transport Corporation v Mysore State Transport Appellate Tribunal, AIR 1974 SC 1940 and in particular quoted with approval the following observations -

"It is, therefore, apparent that where a private transport owner makes an application to operate on a route, which overlaps even a portion of the notified route i.e., where the part of the highway to be used by the private transport owner traverses on a line on the same highway on the notified route, then that application has to be considered only in the light of the scheme as notified. If any conditions are placed then those conditions have to be fulfilled and if there is a total prohibition then the application must be rejected.....".

"This Court has consistently taken the view that if there is prohibition to operate on a notified route or routes no licences can be granted to any private operator whose route traversed or overlapped any part or whole of that notified route. The intersection of the notified route may not, in our view, amount to traversing or overlapping the route because the prohibition imposed applied to a whole or part of the route on the highway on the same line of the route. An intersection cannot be said to be traversing the same line, as it cuts across it".

7. The learned Judges expressly dissented from the decision of Beg and

Chandrachud, JJ, in Mysore State Road Transport Corporation v Mysore Revenue Appellate Tribunal, 1975(1) SCR 493 and approved the decisions of the Court in Nilkanth Prasad v State of Bihar, AIR 1962 SC 1135 and S. Abdul Khader Saheb v Mysore Revenue Appellate Tribunal, AIR 1973 SC 534 and observed "We agree with the view taken by this Court in Mysore State Transport Appellate Tribunal's case, supra and dissent from the view taken in Mysore Revenue Appellate Tribunal. We however wish to introduce a note of caution. When preparing and publishing the scheme under Section 68-C and approving or modifying the scheme under Section 68-D care must be taken to protect, as far as possible, the interest of the travelling public who could in the past travel from one point to another without having to change from one service to another en route. This can always be done by appropriate clauses exempting operators already having permits over common sector from the scheme and by incorporating appropriate conditional clauses in the scheme to enable them to ply their vehicles over common sectors without picking up or setting down passengers on the common sectors. If such a course is not feasible the State Legislature may intervene and provide some other alternative as was done by the Uttar Pradesh Legislature by the enactment of the Uttar Pradesh Act No. 27 of 1976 by Section 5 of which the competent authority could authorise the holder of a permit of a stage carriage to ply his stage carriage on a portion of a notified route subject to terms and conditions including payment of licence fee. There may be other methods of not inconveniencing through passengers but that is entirely a matter for the State Legislature, the State Government and the State Transport Undertaking. But we do wish to emphasise that good and sufficient care must be taken to see that the travelling public is not to be needlessly inconvenienced".

In view of these observations, there may be some force in the contention made on behalf of the K.S.R.T.C., but in the present case there is one hurdle, namely the Motor Vehicles Act of 1988, which came into operation with effect from 1st July, 1989. Section 217, sub-section (2) of the Motor Vehicles Act of 1988 provides - "Notwithstanding the repeal of the earlier Act of 1939 by sub-section (1), any certificate of fitness or registration or licence or permit issued or granted under the repealed enactments shall continue to have effect after such commencement under the same conditions and for the same period as if this Act had not been passed".

8. Permit that had been granted in 1981 could in the first instance be granted at the most for a period of 5 years under the Old Act and the five years period would have expired in 1986. It might have been got renewed in 1986. The renewal of the permit even if it had been renewed in 1986, it could have been for a further period of five years that is for a period up to 1991, during this period, the new Act came into force. As an impact of the repealed clause, the permit granted or renewed under the old Act, remained alive only for the remainder of the period if any, namely for or up to March 1991. The said permit would have automatically expired and died its death in 1991 and it is well settled by the Supreme Court that there could not be any renewal of the old permit after the

enforcement of the new Act and really an application under Section 217(2) of the Act etc., for grant of fresh permit had to be made and thereafter process of renewal may come into picture under the Old Act. Therefore, for the purpose of the present case, in my opinion, as the old permit granted, that is the permit granted under the Act of 1939 by virtue of Section 217(2) has come to an end and its life had expired and came to an end by virtue of the provisions of Section 217(2) of the new Act, there is no reason to interfere with the order impugned in these two writ petitions, because the permits granted afresh has now ceased to exist with effect from 1991. During the pendency of these two writ petitions, it appears proper to dismiss both the writ petitions as having become infructuous, but keeping it open to the parties to proceed in accordance with law, that is under new Motor Vehicles Act and the scheme of nationalisation, permit issued under the Act of 1939 cannot be renewed. The petitioner in Writ Petition No. 7581 of 1986 may have a recourse under the provisions of the new Act for fresh permit, if he is so entitled at all and the route is nationalised one or a major part thereof form the part of nationalised route, it is always open to the Karnataka State Road Transport Corporation to raise its objection on the basis that the route is nationalised one or there is overlapping etc., and on that ground it may put its defence, which is being put here today by the learned Counsel that no permit can be granted in respect of nationalised route.

9. Subject to these observations, both the writ petitions are hereby dismissed as having become infructuous, with the passage of time and coming into force of the new Act.