

(1997) 07 KL CK 0043

In the High Court Of Kerala

Case No : O.P. No's. 1576/93-K, etc. 17919 of 1994 etc. and 808, 4473, 6126 and 15655 of 1996 etc. etc.

Kerala State Road Transport Corpn.

APPELLANT

Vs

Regional Transport Authority, Ernakulam and Others

RESPONDENT

Date of Decision : 16-07-1997

Acts Referred:

Kerala Motor Vehicles Rules, 1989 — Rule 242
Motor Vehicles Act, 1939 — Section 68
Motor Vehicles Act, 1988 — Section 103, 104

Citation : (1998) 2 ACC 234 : AIR 1998 Ker 46 : (1997) 3 ILR (Ker) 691

Hon'ble Judges : K.G. Balakrishnan, J;B.N. Patnaik, J

Bench : Division Bench

Advocate : V. Bhaskara Menon, for the Appellant; K.V. Gopinathan Nair, for the Respondent

Judgement

Patnaik, J.—A common question of law on similar facts has arisen in all these O.P's. Hence this common judgment is being passed in all the cases.

2. The Kerala State Road Transport Corporation (for short "the Corporation") challenges the judgment in M.V.A.A. Case No. 300/95 rendered by the State Transport Appellate Tribunal, Ernakulam. By the judgment, the Tribunal allowed the applications of the respondents for extension of permit and to operate on the approved routes which is envisaged in the Scheme.

3. The respondents who are operating regular stage carriage service applied for permits to ply the vehicles on the routes of approved scheme framed u/s 68-D of the Motor Vehicles Act, 1939. The respondent Regional Transport Authority rejected the applications on the ground that the approved route and routes applied for overlap at some points. Hence they preferred appeals u/s 89 of the Motor Vehicles Act, 1988 against the said orders before the S.T.A.T., Ernakulam. The Tribunal allowed the appeal and directed the R.T.A. to settle the timings in accordance with law and endorse the variation of the permit. It was held by the

Tribunal that the respondent transport operators had been operating the services on those routes permitted by the R.T. A. for a long time. Grant of permit as applied for will not affect the approved scheme if there is overlapping of some routes over short distances.

4. The petitioner contended that the Government of Kerala notified the scheme under the provisions of Section 68-D of the M. V. Act, 1939. As per the provisions of the said scheme, no permit can be granted to private operators except the existing services operated on portions of the route. The grant of permit to the respondent operator in violation of Sections 103 and 104 of the M. V. Act, 1988 and in violation of the approved scheme is illegal. The scheme being in the nature of a total exclusion scheme, no private operator is entitled to operate on those routes. The petitioner Corporation is operating sufficient number of buses on the notified routes as per the scheme. It is also prepared to operate any number of buses in accordance with the requirements. Hence it is prayed that the impugned order passed by the S.T.A.T. may be quashed with a direction that no permit should be granted to the respondent operators on the nationalised route in violation of the scheme. The respondent operators contended that the scheme is only a supplemental scheme for two vehicles on the same route and it is not a complete exclusion scheme. Hence grant of permit is not prohibited. The petitioner did not raise objections for the extension of the permits when they asked for it. The petitioner Corporation is not operating any service in most of the approved nationalised routes. Enough number of buses are not provided by the Corporation to meet the needs of the growing population. The permit issued to the private operators are therefore in public interest. The distance that overlaps on various routes are very short. The travelling public will be put to great difficulties and hardship in case the private operators are prohibited from plying their vehicles in the absence of substituted service by the Corporation.

There is no dispute that these private operators had been carrying on the service for quite a long time even after the scheme was published.

5. The scheme in question was published u/s 68-D(3) of the M. V. Act, 1939. The scheme continues to have its validity even after coming into force of the M. V. Act, 1988. In *Adarsh Travels Bus Service and Another Vs. State of U.P. and Others*, the Supreme Court while considering similar such questions of a scheme framed by the State of Uttar Pradesh held as follows at page 323 :

"Where a route is nationalised under Chapter IV-A of the Act, a private operator with a permit to ply a stage carriage permit over another route but which has a common overlapping sector with the nationalised route cannot ply his vehicle over that part of the overlapping common Sector, even if with corridor restrictions, that is, he does not pick up or drop passengers on the overlapping part of the route.

While the provisions of Chapter IV-A are devised to override the provisions of Chapter IV and it is expressly so enacted, the provisions of Chapter IV-A are

clear and complete regarding the manner and effect of the "take over" of the operation of a road transport service by the State Transport Undertaking in relation to any area or route or portion thereof. While on the one hand, the paramount consideration is the public interest, the interest of the existing operators are sufficiently well-taken care of and slight inconvenience to the travelling public as may be inevitable are sought to be reduced to a minimum.

A perusal of Section 68-C, Section 68-D(3) and Section 68-FF in the light of the definition of the expression "route" in Section 2(28A) appears to make it manifestly clear that once a scheme is published u/s 68-D in relation to any area or route or portion thereof, whether to the exclusion, complete or partial of other persons or otherwise, no person other than the State Transport Undertaking may operate on the notified area or notified route except as provided in the scheme itself. A necessary consequence of these provisions is that no private operator can operate his vehicle on any part or portion, of a notified area or notified route unless authorised so to do by the terms of the scheme itself. He may not operate on any part or portion of the notified route or area on the mere ground that the permit as originally granted to him covered the notified route or area. The private operator cannot take the plea of inconvenience of the public. If indeed there is any need for protecting the travelling public from inconvenience the State Transport Undertaking and the Government will make a sufficient provision in the scheme itself to avoid inconvenience being caused to the travelling public.

A note of caution may be introduced that when preparing and publishing the scheme u/s 68-C and approving or modifying the scheme u/s 80-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 on 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 methods. But that is entirely a matter for the State Legislature, the State Government and the State Transport Undertaking.

In such a case the question really turns on the terms of the Scheme rather than on the provisions of the Statute."

A similar view has been taken by a Division Bench of this Court in *Kerala State Road Transport Corporation v. Regional Transport Authority* ILR (1991) 3 Ker 40. It has been held that once a scheme of nationalisation under Chapter IV of the M. V. Act, 1939 is finalised, private operators whose route overlaps the nationalised route are not entitled to renewal of the permit covering the overlapping distance. In *Ram Krishna Verma and Others Vs. State of U.P. and Others*, the Supreme Court held that (at page 1892 of AIR) :

"By operation of Section 98 of the new Act, the existing scheme under the repealed Act or made under Chapter VI of the new Act shall have overriding effect on Chapter V notwithstanding any right given to private operators in Chapter V of the new Act. The draft scheme u/s 68-C and approved u/s 68-D of Chapter IV-A of the repealed Act (Chapter VI of the new Act), is a law and it has overriding effect over Chapter IV of the repealed Act (Chapter V of the new Act). It operates against everyone unless it is modified. It excludes private operators from the area or route or a portion thereof covered under the scheme except to the extent excluded under that scheme itself. The right of private operators to apply for and to obtain permits under Chapter IV of the repealed Act (Chapter V of the new Act) has been frozen and prohibited. No corridor protection to private operators is permissible."

In *Secretary, Quilon District Motor Transport Workers Co-operative Society Ltd. v. Regional Transport Authority* 1994 (2) Ker LT 605 : AIR1994 SCW 4095 it has been held by the Supreme Court that a permit obtained under M. V. Act, 1939 cannot be automatically renewed after the coming into force of the 1988 Act. The right of renewal stands repealed to the period of grant of the permit under Repealed Act.

6. The overlapping distances with reference to the notified scheme have been shown in the consolidated statement filed by the learned counsel for the petitioner-K.S.R.T.C. There is no serious objection to this statement.

7. In view of the aforesaid decisions of the Supreme Court as well as of this Court, no permit to a private operator can be issued to ply the stage carriage on a nationalised route. The impugned judgment of the S.T.A.T., therefore, cannot be sustained.

8. However, we have found that the Corporation has not plied sufficient number of stage carriages in all the nationalised routes during the last 25 to 30 years. Proviso to Section 104 of the M. V. Act, 1988 lays down that where no application for a permit has been made by the State Transport Undertaking in respect of any notified area or notified route in pursuance of an approved scheme, the State Transport Authority or the Regional Transport Authority, as the case may be, may grant temporary permit to any person in respect of such notified area or notified route subject to the condition that such permit shall cease to be effective on the issue of a permit to the State Transport Undertaking in respect of that area or route. Thus the State Transport Authority or the Regional Transport Authority are not totally forbidden to grant temporary permits to private operators to ply their stage carriages in the notified routes if no application for a permit has been made by the State Transport Undertaking namely the petitioner herein in respect of any notified route in pursuance of the scheme. Learned counsel for the petitioner submitted that the Corporation has not applied for issue of permits to ply stage carriages in all the notified routes. If it is so, the S.T.A. or the R.T.A. may continue to grant temporary permits to the private operators to ply their vehicles on those routes for which no permit has been applied for or granted to

the petitioner-Corporation.

Hundreds of private operators are operating the transport service in various notified routes by obtaining temporary permits. It would be unjust to restrict only these few respondents and at the same time allowing other private operators to ply their vehicles.

9. Rule 242 of the Kerala Motor Vehicles Rules, 1989 reads as follows :

"242. Cancellation of existing permits:--

(a) The State or Regional Transport Authority concerned shall, before making an order either cancelling any existing permit under Clause (b) or modifying the terms of any existing permit under Clause (c) of Sub-section (2) of Section 103 of the Act, for the purpose of giving effect to an approved scheme, issue notice in Form "C" informing the affected operators, of the action proposed to be taken and giving them time of not less than thirty days to make representations against the proposed action.

(b) Any person making the representation under Clause (a) shall send his representation addressed to the Secretary of the Regional Transport Authority or the State Transport Authority, as the case may be, and simultaneously send a copy to the State Transport Undertaking." We, therefore, direct that the State or Regional Transport Authorities shall issue general notice calling upon the objections from all the private operators operating on the nationalised routes as envisaged in the Scheme for cancellation or modification of the existing permit in terms of Sections 103 and 104 of the M. V. Act, 1988. This exercise shall be completed within a period of six months from the date of receipt of a copy of this judgment. The existing permits granted to the private operators shall not be cancelled until then.

The Writ Petitions are disposed of accordingly with the above observations. No costs.