

(2013) 04 KL CK 0065

In the High Court Of Kerala

Case No : Writ Petition (C) No. 25905 of 2010

Kerala State Road Transport Corporation

APPELLANT

Vs

Regional Transport Authority

RESPONDENT

Date of Decision : 04-04-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 100

Citation : AIR 2013 Ker 120 : (2013) 2 KHC 278 : (2013) 2 KLJ 384 : (2013) 2 KLT 280

Hon'ble Judges : V. Chitambaresh, J

Bench : Single Bench

Advocate : P.C. Chacko, P. Benjamin Paul and Babu Joseph Kuruvathazha, for the Appellant; L. Murleedharan, Saju J. Vallyara and V.K. Rafeek, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

V. Chitambaresh, J.—Can a private operator of stage carriage service traversing the same line of travel on a notified route be permitted to overlap for a distance beyond the limit prescribed on the ground that it is an "inevitable intersection"? The Regional Transport Authority, Kollam granted a fresh regular permit to the third respondent to operate his stage carriage bearing registration No. KL 04/H 2131 on the route Charummoodu - Karunagappally High School. This was notwithstanding the objection raised by the petitioner that the route for which the regular permit was applied for overlaps the notified route beyond the permitted distance. The decision of the Regional Transport Authority as affirmed in revision by the State Transport Appellate Tribunal is impugned in this Writ Petition on several grounds.

2. The petitioner Corporation contended that the route applied for overlaps Thiruvananthapuram - Kannur and Thiruvananthapuram - Palakkad routes comprised in the supplementation scheme covered by notification. It was pointed out that the overlapping extends to 2.5 kms, which is more than 5% of the total

route length of 25 kms. from Charummoodu to Karunagappally High School. The third respondent on the other hand maintained that the overlapping on the notified route even if assumed to be in excess has to be treated as an inevitable intersection. This plea of the third respondent has found favour with the State Transport Appellate Tribunal on the premise that the overlapping extending to a short distance even if in excess by 750 meters was necessary to have access to the town.

3. I heard Mr. Chacko, P.C., Advocate on behalf of the petitioner Corporation, Mr. Rafeek V.K., Government Pleader on behalf of the authorities and Mr. Saju J. Vallyara, Advocate on behalf of the third respondent.

4. The Government of Kerala in exercise of the powers conferred by sub-section (2) of S. 100 of the Motor Vehicles Act, 1988 ("the Act" for short) approved the proposal regarding the Scheme for passenger road transport service. The relevant part of the Supplementation Scheme published by the Transport (B) Department of the Government of Kerala by notification dated 14.7.2009 is extracted herein below:-

Thus the private stage carriages of other routes are permitted to overlap 5 kms. or 5% of the length of their own routes which ever is less on the notified routes for purposes of intersection as per the Scheme published. The total route length in the instant case covered by the permit sought for by the third respondent is 25 kms. and 5% of the same extends to 1.25 kms. and the alleged overlapping is in excess by 750 meters. Whether such an overlapping even if of short length could be brushed aside and a route permit granted is the further question to be considered in the facts and circumstances.

5. No permit can be granted to operate on a notified route or a portion thereof if the Scheme prohibits such operation by a private operator and the only exception is where a private operator has to intersect a notified route. An intersection of a notified route does not amount to traversing or overlapping the notified route because the prohibition imposed applies to the whole or part of the route on the same line only. An intersection cuts across the notified route and does not permit traversing the same line of travel on a notified route as held in Karnataka State Road Transport Corporation Vs. Ashrafulla Khan and Others, . It has been held therein as follows:

In other words, if the vehicle is to ply on the same line of travel on a notified route, it is an overlapping and if a non-notified route cuts across a notified route for its onward journey, it is an intersection.

The expression "intersection" has been employed by this Court only to provide facility to a private operator operating on a non-notified route to continue an onward journey if it cuts across a notified route. It appears that this exception was carried out only to avoid hardships to the travelling public; otherwise a Scheme which is for total exclusion of private operation was held to be untouchable.

The Supreme Court in the aforesaid decision has followed the Constitution Bench decision in Adarsh Travels Bus Service and Another Vs. State of U.P. and Others, which takes note of the earlier divergent views on the point.

6. The third respondent finally contended that the alleged excess overlapping on the notified route is only 750 meters and that the same was necessary to have access to the town as found by the State Transport Appellate Tribunal. The answer to the contention urged can be found from the decision in Asharafulla Khan's case afore quoted wherein it is observed as follows:- Merely because a private operator has to traverse on the line of a notified route for 5 kms. or for 1.5 kms. only is no ground to dispense with the mandate of law. Such an overlapping also cannot be sustained on the ground that it relates to a small town. If such a view of law as propounded by the Full Bench is to be accepted, it is difficult to be applied where a notified route passes through bigger towns where involvement is of 10 to 20 kms. within that town.

The reasoning of the State Transport Appellate Tribunal to justify the alleged excess overlapping as an inevitable intersection to have access to the town cannot be sustained in view of the categoric pronouncement of the Supreme Court.

The matter needs a re-look by reckoning the correct length of the route for which the regular permit was sought and the extent it overlaps on the notified route in the light of the observations as above. I set aside the decision of the Regional Transport Authority as affirmed in revision by the State Transport Appellate Tribunal and remit the matter to the original authority for de novo consideration. The third respondent who has been operating on the route pursuant to the regular permit issued shall be permitted to continue the stage carriage service till a fresh decision is taken. The Writ Petition is allowed. No costs.