
(1979) 08 KAR CK 0029
In the Karnataka High Court
Case No : W.P. 5533 to 5535/79

K.S.R.T.C.

APPELLANT

Vs

R.T.O., Bangalore and Others

RESPONDENT

Date of Decision : 02-08-1979

Acts Referred:

Motor Vehicles Act, 1939 — Section 62

Citation : (1980) 1 KarLJ 109

Hon'ble Judges : Swami, J

Judgement

1. In these three writ petitions, the validity of the temporary permits issued by the Regional Transport Authority, Bangalore, to respondents 2, 3 and 4 on the route Bangalore to Kanakapura, to respondents 2 and 3, and Kanakapura to Bangalore to respondent No. 4, has been assailed by the Karnataka State Road Transport Corporation, which is the petitioner in all these writ petitions.

2. The case of the petitioner is that the temporary permits issued to respondents 2 and 4 are in respect of the notified route under the Kanakapura Pocket Scheme and that Scheme is one of total exclusion of private operators except in relation to existing permit holders on inter-State routes operating stage carriage services overlapping the notified route from Bannur to Mandya cross. Further case of the petitioner is that the routes in question are also covered by the Anekal Pocket Scheme which was published in the Karnataka Gazette dated 23-4-1959 and the said scheme is one of partial exclusion and the first respondent has not also recorded necessary findings to enable them to grant the permit. The Notifications pertaining to the Kanakapura Pocket Scheme and the Anekal Pocket Scheme are produced at Exts. A and B respectively. The resolutions granting the permits to respondent Nos. 2, 3 and 4 have been produced at Exts. "D", "F" and "H" respectively. The temporary permits granted to respondents 2 and 4 will expire on 15-9-1979 and 15-8-1979 respectively and the one granted to respondent No. 3 expired on 31-7-1979.

3. Sri M. Rangaswamy, the learned counsel appearing for the petitioner

submitted that in view of the provisions contained in Ss. 68B, 68D(3), 68F (2)(a) and 68FF read with S. 2(20) of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act"), the Regional Transport Authority had no jurisdiction to grant the temporary permits in respect of the routes overlapping the nationalised route covered by the Kanakapura Pocket Scheme which is a scheme of total exclusion published on 30-12-1975. On the contrary, the learned counsel appearing for respondents 2, 3 and 4 contended that the petitioner is not operating the services in accordance with the Kanakapura Pocket Scheme and the required number of trips are not being operated by the petitioner, therefore it was contended that the mere fact that the routes covered by the temporary permits overlap the notified route" covered by Kanakapura Pocket Scheme, will not in any way, affect the jurisdiction of the RTA and the grant of temporary permit made by it, because the petitioner is not operating the services in accordance with the scheme.

4. In view of these rival contentions, the question that arises for consideration is as to whether the first respondent was justified in law in granting the temporary permits to respondents 2 to 4 in respect of the routes overlapping the routes covered by the Kanakapura Pocket Scheme. It is not in dispute that the Kanakapura Pocket Scheme is one of total exclusion. This Court, while dealing with the total exclusion scheme and also the scheme of partial exclusion, in the case of Mysore State Road Transport Corpn. v. MRAT, AIR 1968 Mys. 1, has held as follows:

"Our answer to the question referred to the Full Bench is:

"(1) That it is competent for the authorities under the Motor Vehicles Act, to grant to a private operator, in respect of a route which overlaps any part of a notified route in an approved Scheme, a permit (or renewal of a permit) subject to the condition that he should not pick up or set down passengers on the notified route, depends upon the nature and extent of the exclusion of private operators brought about by a Scheme.

(2) If the approved Scheme is construed as one providing for complete or total exclusion of private operators from the notified area or route, the authorities under the Act have no jurisdiction to grant them a permit even with the restriction of making it ineffective in respect of the overlapping part of the notified area or route.

(3) Where the approved Scheme does not exclude private operators completely and the manner of partial exclusion is also incorporated in the Scheme itself, any grant or renewal of permit by the Authorities under the Act to a private operator in respect of a notified route should conform to the said provision for partial exclusion.

(4) Where, though the approved Scheme does not make an express provision for the manner of partial exclusion, but it is clear that the Scheme does not intend to totally exclude private operators from the notified routes, the authorities

under the Act may grant or renew permits rendering them ineffective in respect of the overlapping parts provided the Authorities are satisfied that by grant or renewal the Scheme will not be impaired."

5. S. 68B of the Act provides that the provisions of Chapter IVA of the Act and the Rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in Chapter IV of the Act or in any oilier law for the time being in force or in any instrument having effect by virtue of any such law-Chapter IVA of the Act contains special provisions relating to State Transport Undertakings and the provisions contained in Chapter IVA of the Act in view of S. 68B of the Act, will prevail over the provisions contained in Chapter IV of the Act in respect of the matters contained in Chapter IVA of the Act. S. 62 of the Act relating to temporary permits falls under Chapter IV of the Act. That being se, the said provisions must yield to the provisions contained in Chapter IVA of the Act.

6. S. 68D(3) of the Act provides that the scheme as approved or modified under sub-section (2) shall then be published inthe Official Gazette by the State Government and the same shall thereupon become final and shall be called the approved scheme and the area or route to which it relates shall be called the notified area or notified route. Kanaknpura Pocket Scheme was published in the Official Gazette of the State dated 30.121975. Thus, the Kanakapura Pocket Scheme has become an approved scheme and the routes mentioned in the scheme have become notified routes.

7. S. 68F(2)(a) provides that for the purpose of giving effect to the approved scheme in respect of a notified area or notified route, the State Transport Authority or as the case may be, the Regional Transport Authority concerned may, by order refuse to entertain any application for the grant or renewal of any other permit or reject any such application as may be pending.

8. Thus, a reading of these provisions makes it clear that once the scheme is published in the Official Gazette under S. 68D(3) of the Act, the routes mentioned therein will become notified routes and the pending applications for grant or renewal of permits will have to be rejected by the Authorities concerned and further they cannot entertain fresh applications for grant of permits in respect of route or routes overlapping the notified route or routes by the private operators thereof.

9. S. 68FF of the Act further provides that where a scheme has been published under sub-section (3) of S. 68D in respect of any notified area or notified route, the State Transport Authority or the Regional Transport Authority as the case may be, shall not grant any permit except in accordance with the provisions of the scheme. The proviso to the said section further provides 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 permits 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 power that is given to the State Transport Authority or the Regional Transport Authority as the case may be for granting the temporary permits in respect of a route or routes covering partially or fully the notified route or routes is only when there is no application filed by the State Transport undertaking in respect of any notified area or notified route. In the instant case, it is not in dispute that the State Transport Undertaking namely, the petitioner had not only applied for permits in respect of the notified routes but had also obtained permits. The notified routes relevant to the present case are nine in number and in respect of all the nine routes, the petitioner has obtained permits. That being so, there was no scope whatsoever for entertaining any application for grant of temporary permits by the Regional Transport Authority. The proviso is clear in this regard and it specifically provides that the R.T.A. or the S.T.A as the case may be, may grant the temporary permits only when no application for a permit has been made by the State Transport Undertaking in respect of any notified area or notified route. That being so, the Regional Transport Authority acted without jurisdiction in granting permits to respondents 2 to 4 under S. 62 of the Act. The power under S. 62 of the Act can be exercised in respect of the notified area or notified route subject to the provisions contained under S. 68FF of the Act.

10. Consequently, the 1st respondent Regional Transport Authority, had no jurisdiction to grant the temporary permits in question to respondents 2 to 4 as the routes covered by the temporary permits overlap the notified routes of Kanakapura Pocket Scheme in respect of which the petitioner-State Transport Undertaking has obtained the permits and has been running the services. Now, the question is whether the temporary permits granted in favour of respondents 2 to 4 should be quashed. As far as the petitioner is concerned, the legal position as indicated above has been made clear and this will protect the interest of the petitioner in future as it is not open for the 1st respondent-Regional Transport Authority to entertain applications for grant of temporary permits in respect of the notified area or notified routes covered by the Kanakapura Pocket Scheme. As already indicated above, the temporary permit granted to the 3rd respondent expired on 31.7.1979 and the one granted to the 4th respondent is to expire on 15th of this month and that of the 2nd respondent expires on the 15th of next month. In view of the fact that the respondents have been operating for all these days and there is a very short period left for the expiry of the permits and further taking into consideration the interests of the travelling public, I think it is not necessary to quash the permits. Accordingly, these writ petitions are disposed of as stated above.