

**(1966) 07 AP CK 0007**

**In the Andhra Pradesh High Court**

**Case No : Writ Appeal No. 106 of 1966**

L. Nagabhushanam

APPELLANT

Vs

A. Ankaiah and Others

RESPONDENT

**Date of Decision : 06-07-1966**

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227  
Motor Vehicles Act, 1939 — Section 42, 47(3), 48

**Citation : AIR 1968 AP 274**

**Hon'ble Judges :** Jaganmohan Reddy, J;Anantanarayana Ayyar, J

**Bench :** Division Bench

**Advocate :** G. Suryanarayana, for the Appellant; V. Lakshmi Devi and 4th Govt. Pleader, for the Respondent

**Final Decision :** Allowed

## Judgement

Jaganmohan Reddy, J.—This Writ Appeal is against the interim orders passed by our learned brother, Gopal Rao Ekbote, J., directing the respondent, pending the disposal of the Writ Petition No. 919 of 1966, to ply a bus on the route Mangalagiri-Vijayawada. It appears that two buses have been permitted on this route u/s 47(3) of the Motor Vehicles Act (hereinafter called the Act). Applications were called for and the respondent and one Gunnaraju were given permits by the Regional Transport Authority Guntur Against this, a number of appeals were "preferred, and the appellate authority set aside the permit granted to the respondent and instead granted a permit to the appellant. In so far as Gunnaraju's permit is concerned, it was confirmed. Against this order of the appellate authority, the respondent filed a revision before the Government. No revision was filed against grant of permit to Gunnaraju. The Government by an order dated 20-5-1966 dismissed the revision and confirmed the appellate authority's order. Pursuant to this order, a permit was issued to the appellant on 24-5-1966 and the respondent was asked to stop plying the bus. In compliance with these orders, the respondent stopped plying the bus from 25-5-1966 onwards.

2. Mr. G. Surayanarayana, the learned Advocate for the appellant, says that he was engaged to oppose any application for stay if a Writ Petition was filed in the last Vacation Court and that he was informed by the Advocate who was engaged in that case for the petitioner that he was not going to file any Writ Petition during the vacation. The Courts reopened on 13-6-1966 and the Writ Petition was filed only on the 14th June. It is contended that having allowed available opportunity to lapse, the respondent alone is to blame for creating a situation unfavourable to the grant of stay. It is true that from 25-5-1966 to 14-6-1966 the appellant has been admittedly plying the bus under a permit. The respondent's permit had been cancelled and he had not been plying any bus on that route during that period. On 16-6-1966, an interim order was passed and immediately thereafter a petition was filed by the appellant to vacate the interim order, but the order was made absolute on 23-6-1966. This Writ Appeal is against this order.

3. Mr. Suryanarayana contends that an order such as the one that has been passed, viz., permitting a third bus to ply on a route where only two buses are authorised to be plied u/s 47(3) of the Act, cannot be legally passed. Vide Abdul Mateen v. Ram Kailash AIR 1963 SC 84; see also the observations of Gopal Rao Ekbote, J. in W. P. No. 370 of 1965, D/- 20-4-1966 (Andh. Pra.), when he found real difficulty in implementation of the interim directions given by the Madras High Court, because u/s 47(3), only one stage carriage permit could be granted on the route, while the Madras High Court "granted two permits", on the specific route. In those circumstances, our learned brother observed;

"In spite of my sincere desire to respect the interim order passed by the Madras High Court, I feel myself unable to accede to the request of the petitioner for the issue of a writ of mandamus." Earlier in the judgment, it was also stated: "In spite of this hardship, it is obvious that it is not possible to issue a writ of mandamus as it will be not only contrary to the provisions of law but not in consonance with the Inter-State agreement also." The Government Advocate also supports the contention and invites a decision on the extent of the powers of the High Court under Article 226 of the Constitution, to pass orders which transgress the legal provisions of the Act.

4. Miss Lakshmi Devi on behalf of the respondent, on the other hand, says that the High Court's powers are not confined to the Act itself but are wide and it could pass any orders it likes which are equitable.

5. In construing these rival contentions, we do not wish to be understood as saying anything which limits the ample powers vested in the High Court under Article 226 to pass any orders which facts and circumstances of any particular case require to restore the parties to the original position, should the Writ Petition be decided in that party's favour. In other words, any interim order can be passed which will not make the final orders passed in the Writ Petition nugatory or infructuous.

6. The learned Advocate for the respondent, Miss Lakshmi Devi emphasises mostly on the practice followed in this Court in passing such interim orders; but she was unable to give us any concrete cases of the circumstances in which such orders have been passed. Be that as it may, even if such orders have been passed in one or two cases, when a question of the validity of such orders is raised in an appeal, it is incumbent upon us to express our views, -- more so when the Government complains that such orders cause difficulty and inconvenience, apart from being un-supportable by any provisions of the Act.

7. Section 42 of the Act provides that no motor vehicle can ply except in accordance with the terms and conditions of the permit granted by the Transport Authority. Section 47(3) authorises fixing up of the number of buses on a particular route. This Section read with Section 48 would empower the Regional Transport Authority to grant a permit subject to the conditions imposed in Section 48. so that if u/s 47(3) two buses are permitted to be plied, only two buses can ply. There is no justification or legal validity for a third bus plying, unless it is specifically empowered u/s 47(3) and the procedure for granting permits for that third bus is followed in accordance with the provisions of the Act. This being the real position, both Sri Surayanarayana and Sri Venkata Reddy, for the appellant and the Government respectively, submit that neither in the main writ petition nor on any interlocutory applications can orders be passed which are not authorised by law. In other words, what they say is that even in disposing of the main Writ Petition itself, the respondent cannot be permitted to ply a bus along with the appellant and Gunnaraju and consequently, no interim relief can be given to him.

8. The learned Advocate for the respondent is unable to meet this point, either by reference to any authority or provision of law. In our view, there is nothing to preclude the Court, as we noticed earlier, in granting interim relief to protect the rights of the respondent if the facts and circumstances deem it necessary. In order to give relief to the respondent, the order of the appellate authority and the Government must first be suspended so far as it affects the respondent and revive the permit of the respondent which was cancelled by the said orders and must further permit him to ply while prohibiting the appellant from plying. Ordinarily, no orders will be passed which will amount to the High Court issuing permits contrary to law, but here again each case must be decided on the merits of that case.

9. Miss Lakshmi Devi contends that this court has got the powers to pass interim orders beyond the provisions of the Act, and cites as an example, interim orders passed for staying the collection of tax where under the particular statute, such as the Sales Tax Act, a right of appeal is given only on payment of the entire tax. In such cases, she says, if our view is right, the High Court under Article 226 of the Constitution would travel beyond the scope of the Act, but nonetheless such orders are passed. We think there is a fallacy in this argument. What is challenged in the Writ Petition under the Taxation Acts is the validity of the

assessment orders, and if the assessment orders are held to be invalid, then the question of payment of tax does not arise. For that reason, interim orders are passed suspending that payment till the consideration of the question whether the assessment order is valid or not. It is not necessary or advisable for us to consider any concrete cases because, as we have said earlier, we do not intend or propose to make any observations which are likely to precisely define or limit the wide powers of the High Court to grant interim relief to suit any particular case. In *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, , their Lordships of the Supreme Court observed at page 414:

"The High Court, while issuing the rule, passed an order on the stay application, which as already indicated, had been misunderstood by the District Excise Authorities, and the appellants were dispossessed and the respondents 1 and 2 put back in possession, without any authority of law. This was a flagrant interference with the appellants' rights arising out of the settlement made in their favour by the highest revenue authorities. The High Court had not and could not have authorised the dispossession of the persons rightfully in possession of the shop."

A little later, their Lordships also observed:--

"The appellants had been deprived of the fruits of their hard-won victory in the revenue courts; without any authority of law; and the High Court failed to right the wrong in time, though moved several times."

After having heard both sides, their Lordships came to the conclusion that no grounds have been made out for interference by the High Court of (sic) orders passed under its powers under Arts. 226 and 227 of the Constitution. In *Writ Petn. Nos. 1807 and 1836 of 1964. D/- 11-10-1965 (Andh. Pra.)*, one of us had occasion to consider the desirability of directing the Regional Transport Authority while setting aside its order and directing it to dispose of the matter afresh, to give further directions permitting the petitioner therein to run buses pending the disposal of the application. This is what was said:

"Whatever may have been the order passed by the Bench at the time of the writ appeals (*W. A. Nos. 42 to 49/63, Chandra Reddy, C. J. (as he then was) and Narasimham, J.*); that situation does not exist now, because when once it has been held that the Regional Transport Authority which initially gave the permits was not properly constituted, there are *prime facie* no permit-holders whose claims were the subject-matter of the interim relief. The position is as if there are no permit-holders for this route, but only applicants. In this view, neither the Regional Transport Authority nor the State Transport Authority nor any authority has any power to authorise the running of buses pending the disposal of the applications unless it be that they are applicants for temporary bus permits, which is not the case. This Court cannot therefore direct "the doing of something for which there is no power."

10. For the reasons stated above, we allow the appeal and set aside the order directing the respondent to ply a bus on the route along with the appellant and Gunnaraju passed in C. M. P. Nos. 4850 and 5118 of 1966 in W. P. No. 919 of 1966 on 23-6-1966. There will be no order as to costs.