

(2001) 09 AP CK 0131

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3945 of 1989

L. Raghuraman

APPELLANT

Vs

State Transport Appellate Tribunal, A.P., Hyd. and others

RESPONDENT

Date of Decision : 07-09-2001

Acts Referred:

Motor Vehicles Act, 1939 — Section 2(28)

Citation : (2002) 2 ACC 130 : AIR 2002 AP 86 : (2001) 5 ALD 711 : (2001) 5 ALT 487 : (2001) 3 APLJ 69 : (2002) 2 RCR(Civil) 389

Hon'ble Judges : S.B. Sinha, C.J.; V.V.S. Rao, J.; R. Ramanujam, J

Bench : Full Bench

Advocate : Mr. T. Venkataramana, for the Appellant; Government Pleader for Transport and Mrs. Nanda R. Rao, SC for APSRTC, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—Noticing a conflict in the decisions of the Supreme Court in Karnataka State Road Transport Corporation, Bangalore Vs. B.A. Jayaram and Others, , and Pandiyan Roadways Corporation Ltd. Vs. M.A. Egappan, , MN. Rao, J., (as the learned Chief Justice then was) has referred the matter to a Division Bench or a Full Bench.

Facts :

2. The petitioner is permit holder of an inter-State route from Aragonda to Vellore via Chittoor. Some inter-State routes were nationalised in the year 1976 in relation where to the approved scheme was published in the gazette on 7-12-1976. Admittedly, there has been a partial overlap in the said route on the sector Andalur to Chittoor. The existing inter-State operators have been exempted from the operation of the said scheme.

3. In terms of the said inter-State agreement the maximum number of vehicles that could be plied are two with 12 singles. The petitioner had one vehicle plying six singles.

4. Purported to be in terms of Section 57(8) of the Motor Vehicles Act, 1939 (for short "the Act") the petitioner made an application seeking variation of the conditions of his permit for grant of one extra vehicle and six extra singles. A notification was issued by the State Transport Authority for the aforementioned purpose whereafter permission was granted to the petitioner on 16-2-1982.

5. A writ petition was filed by the Andhra Pradesh State Road Transport Corporation (for short "APSRTC") questioning the notification issued by the State Transport Authority permitting variation of the conditions of the permit. The said writ petition was disposed of directing APSRTC to prefer an appeal thereagainst before the State Transport authority. As no appeal was maintainable a revision petition was filed before the State Transport Appellate Tribunal which was marked as Revision Petition No.222 of 1987. The same was allowed. The present writ petition has been filed questioning the aforementioned order.

Submissions:

6. Mr. T. Venkataramana, the learned Counsel appearing on behalf of the petitioner, would submit that the learned Tribunal having relied upon a Division Bench decision of this Court in M.A. Hari v. Government of A.P. 1988 (1) ALT 541, which has been overruled by K. Pamanna Vs. The State Transport and Appellate Tribunal, A.P., Hyderabad and others, , must be held to have acted illegally. Our attention in this connection has also been drawn to a decision in APSRTC v. STA Tribunal 1987 (2) ALT 900. The learned Counsel would contend that when an approved scheme exists a permit can be varied and in support of the said contention reliance has also been placed on KSRT Corporation (supra) as also R. Raghuram Vs. P. Jayarama Naidu and Others, .

7. The learned Counsel appearing on behalf of the State on the other hand submitted that keeping in view the fact that there exists an approved scheme, increase in the number of vehicles as also number of trips would not be permissible in law. Reliance in this connection has been placed on Adarsh Travels Bus Service and Another Vs. State of U.P. and Others, .

Findings :

8. Stage carriage permit is granted in terms of Section 48 of the Act which reads thus:

Grant of stage carriage permits :--

(1) Subject to the provisions of Section 47, a Regional Transport Authority may, on application made to it u/s 46, grant a stage carriage permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit :

Provided that no such permit shall be granted in respect of any route or area not specified in the application.

(2).....

(3) The Regional Transport Authority, if it decides to grant a stage carriage permit, may grant the permit for a service of a stage carriage of a specified description or for one or more particular stage carriages, and may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely :--

(i) that the vehicle or vehicles shall be used only in a specified area, or on a specified route or routes;

(ii) the minimum and maximum number of daily trips to be provided in relation to any route or area generally or on specified days and occasions;

(xxi) that the Regional Transport Authority may, after giving notice of not less than one month-

(a) vary the conditions of the permit;

(b) attach to the permit further conditions;

Provided that the conditions specified in pursuance of clause (i) shall not be varied so as to alter the distance covered by the original route by more than 24 kms., and any variation within such limits shall be made only after the Regional Transport Authority is satisfied that such variation will serve the public convenience and that it is not expedient to grant a separate permit in respect of the original route as so varied or any part thereof.

9. Section 57(8) of the Act reads thus:

An application to vary the conditions of any permit other than a temporary permit, by the inclusion of a new route or routes or a new area or, in the case of a stage carriage permit, by increasing the number of trips above the specified maximum or by altering the route covered by it or in the case of a contract carriage permit, by increasing the number of vehicles covered by the permit, shall be treated as an application for the grant of a new permit:

Provided that it shall not be necessary so to treat an application made by the holder of a stage carriage permit who provides the only services on any route or in any area to increase the frequency of the service so provided, without any increase in the number of vehicles.

10. In the instant case the petitioner has sought for increase in the number of vehicles and the number of trips by reason of a legal fiction created under the said provision which will be deemed to be a new permit.

11. Section 68-FF of the Act reads:

Restriction on grant of permits in respect of a notified area or notified route - Where a scheme has been published under sub-section (3) of Section 68-D 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 :

Provided 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 permit to the State Transport Undertaking in respect of that area or route.

12. A route may be nationalised in terms of Section 68-C of the Act. The scheme may be modified or approved in terms of Section 68-D. Where a route is nationalised in terms of Chapter IV-A of the Act a private operator with a permit may ply a stage carriage for any route but it cannot ply on a route which has a common overlapping sector with national route unless authorised in this behalf under the scheme.

13. O. Chinnappa Reddy, J., in *Ms. Adarsh Travels Bus Service* (supra) observed:

A careful and diligent 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 (28-A) 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.

14. In terms of the scheme of nationalisation only the existing permits were saved. The scheme shall prevail over an inter-State agreement or conditions of permit. Yet again the conditions of permit will have to be read in juxta-position with subsection (8) of Section 57. If not, by reason of a legal fiction, grant of a permit or an application for variation thereof is to be treated to be a new permit and the same has got to be given full effect to.

15. Thus, any variation of the permit in the existing permit if treated to be a new permit, the same would clearly attract the ratio of the Supreme Court decision in *Adarsh Travels Bus Service* (supra):

The Apex Court in *B.A. Jayaram* (supra) held:

(i) no legal fiction is created in Section 57(8);

(ii) even if a legal fiction is created thereunder the same must be confined to the purposes laid down therefor;

(iii) variation of permit under subsection (8) of Section 57 would not be contrary

to the scheme.

16. Unfortunately, in M/s. Adarsh Travels (supra), the decision in Jayaram, (supra) was not brought to its notice.

17. In B.A. Jayaram (supra), however, the Apex Court did not consider as to whether Chapter 1V-A shall prevail over Chapter IV which has been done in M/s. Adarsh Travels.

18. In M/s. Adarsh Travels (supra), a Constitution Bench of this Court considered the provisions contained in Chapter IV and IV-A of the Motor Vehicles Act holding categorically:

It is thus seen that 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....."

19. Thus, the object and purport of Chapter IV-A clearly shows that no new permit shall be granted and grant of such new permits is discouraged by reason of the legislative policy.

20. This aspect of the matter has also been considered in Pandiyan Roadways Corporation Ltd. Vs. M.A. Egappan, , wherein again the Apex Court referred to Jayaram (supra) and distinguished it saying:

"..... In the context in which Section 68-F(1-D) appears we find it difficult to agree that the application for variation of a permit by permit by including the whole or any part of route in respect of which a scheme is published u/s 68-C of the Act can be treated as falling outside the mischief of Section 68-F(1-D) of the Act, There is no justification to limit the application of Section 68-F(1-D) of the Act to only applications for fresh permits or their renewal and to leave out applications for variation of a permit by the inclusion of the route or a portion of the route in respect of which a scheme is published. The fact that the applicant is the holder of a permit to operate a stage carriage on another route whose variation he is seeking by the inclusion of a route or a part thereof in respect of which a scheme is published u/s 68-C of the Act ought not to make any difference. The principle underlying Section 68-F (1-D) of the Act is that the number of services on such a route should be frozen on the publication of a scheme u/s 68-C of the Act. It is not, however, necessary for us to pursue the applicability of Section 68-F (1-D) of the Act to the present case any further since it is brought to our notice that the very same route is the subject-matter of the approved scheme published u/s 68-D of the Act on June 30, 1976 to which we have already adverted. The approved scheme, as mentioned earlier, excludes the operation by others of stage carriage services on the abovementioned route Madurai to Kumuli except those whose names are mentioned in Annexure II attached thereto. The respondent is not protected by any provision in the

approved scheme itself. He cannot be permitted to operate on any sector of the notified route in question in view of the provisions contained in Sections 68-C, 68-D and 68-FF of the Act....."

21. The Apex Court referred to Adarsh Travels (supra) and held that the respondent is not entitled to operate his stage carriage on the notified route or a portion thereof even though he may have been granted variation of his permit to operate on a section of the notified route.

22. When there exists an approved scheme an exception laid down therein must be strictly construed. When, having regard to the object and purport of Chapter IV-A of the Act, only the existing permit holders have been permitted to operate in their route, they, in our opinion, by reason of filing of an application u/s 57(8) of the Act cannot be permitted to add new buses and operate more singles. To that extent, the legal fiction created in Section 57(8) must be held to be a bar. In Jayaram (supra), as indicated hereinbefore, the effect of Section 57(8) has not been considered in the context of the provisions of contained in Chapter IV-A the Act.

23. Reliance placed by Mr. Venkata Ramana in R. Raghuram Vs. P. Jayarama Naidu and Others, , runs counter to his contention. Therein, it was held:

"Having heard learned Counsel for the parties, we are of the opinion that the High Court erred in taking the view which it did. The draft scheme had not yet been finalised. Objections were to be considered, and it is only after the stage of Section 68-D(3) of the Motor Vehicles Act had been reached and the draft scheme approved with or without modification that the scheme could become operative. Our attention has been drawn to a decision of this Court in Pandiyan Roadways Corporation Ltd. Vs. M.A. Egappan, but on a perusal of the judgment in that case it appears that this Court was dealing with an approved scheme. Nothing has been shown to us to indicate that until the draft scheme becomes operative as an approved scheme, a variation of the conditions of an existing permit on a portion of the route cannot be made. We may also note that the draft scheme specifically exempted the holders of stage carriage permits already plying on a portion of the route intended to be covered by the scheme."

24. Thus, therein Pandian Roadways (supra) was distinguished only on the ground that there existed an approved scheme; thus, it is axiomatic that where there exists an approved scheme, a new permit cannot be granted.

25. Mr. Venkata Ramana has also strongly relied upon the Full Bench decision of this Court in K. Pamanna (supra). The said decision runs counter to his submission as would appear from the answer of the Bench to question No.3, which is to the following terms:

"Re: (3):-

Whether the conditions of stage carriage permit can be varied u/s 57(8) of the Act when there is an approved scheme published u/s 68-D of the Act?

33. The question is no longer *res Integra*. The decision of the Supreme Court in *Ms. Adarsh Travels Bus Service v. State of U.P.*, AIR 1986 319) squarely applies. After considering the provisions of Chapter IV-A of the Act, the Constitution Bench ruled in the above case:

"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 (28-A) 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."

Once a scheme is published u/s 68-D of the Act, the area of which it relates is called "notified area" and the route to which it relates is called "notified route". Sri G. Suryanarayana, learned Counsel, who led the arguments on behalf of the private operators, contended that what is prohibited by Section 68-FF of the Act is only "granting of any permit" but not "variations of the conditions of permit". In view of the aforesaid decision of the Supreme Court, it is not possible to accept the contention of the learned Counsel for the private operators. It is clear from the above that after the approved scheme is published the embargo u/s 68-FF of the Act operates even to the grant of variations of a permit in respect of any notified area or notified route, except in accordance with the provisions of the scheme."

26. For the reasons aforementioned, we are of the opinion that the decision of the Apex Court in *Jayaram* (*supra*) cannot be said to have any application in a case where the scheme is already approved.

27. In view of the findings aforementioned, there is no merit in this writ petitions and the same is accordingly dismissed. There shall, however, be no order as to costs.