

(1998) 09 KAR CK 0066
In the Karnataka High Court
Case No : Writ Appeal No. 4528 of 1997

M. Ramaswamy

APPELLANT

Vs

Karnataka State Transport Authority, Bangalore and Another

RESPONDENT

Date of Decision : 10-09-1998

Acts Referred:

Motor Vehicles Act, 1988 — Section 102 (2), 2 (28-A), 62 (1)

Citation : (1999) 1 ACC 230 : (1998) 6 KarLJ 214

Hon'ble Judges : G.C. Bharuka, J;Chidananda Ullal, J

Bench : Division Bench

Advocate : Sri C.S. Shanthamallappa, for the Appellant; Sri B.E. Kotian, Government Advocate and Sri P.R. Ramesh, for the Respondent

Judgement

G.C. Bharuka, J.—The appellant is the holder of a stage carriage permit on the route between Bangalore and Hosur via Agara, Sarjapura and Bagalur, for six single trips. In the present appeal he is aggrieved of the order dated 9-7-1997 passed by the learned Single Judge directing the appellant that he can operate only on the aforesaid route covered by his permit and not on the deviated route permitted by the State Transport Authority (in short "the S.T.A.").

2. There is no dispute about the foundational facts which lie in a short compass. Admittedly, for travelling from Bangalore to Hosur there are two routes from Madiwala check-post, which is located at a distance of 8 kms from Bangalore. One goes via Agara , Sarjapura, Bagalur and the other via Hebbagodi-Chandapura-Attibele (hereinafter referred to as Route Nos.1 and 2 respectively). Admittedly, the said routes are notified routes under the Anekal Pocket Scheme approved on 23-9-1959 and published u/s 66-D(2) of the Motor Vehicles Act, 1939, (in short "1939 Act") and modified by notification dated 3-1-1994 published u/s 102(2) of the Motor Vehicles Act, 1988 (in short "1988 Act"). It is also not in dispute that the scheme as originally published was of complete exclusion i.e., on the said routes the private operators could not at all have operated as held by a Bench of this Court in Karnataka State Road Transport

Corporation Vs. Narayana Rao, .

3. Subsequently, the State Government in order to remedy the hardships of the existing inter-State private operators, like the present appellant, modified the scheme under the aforesaid notification dated 3-1-1994. The modification as notified is to the following effect:

"MODIFICATION OF SCHEME OF STATE TRANSPORT UNDERTAKINGS, ANEKAL SECTION

In the approved scheme published in Notification No. HD80(2) TMF 59, dated 15th April, 1959, under sub-section (3) of Section 68(2) of the Motor Vehicles Act, 1939, in Mysore Gazette on 23rd April, 1959, for Item No. 3, the following shall be substituted, namely:--

3. The route or routes with their starting points termini intermediate stations and route length in which the State undertaking and certain private operators shall operate their services.

The Karnataka State Transport undertaking and the State Transport undertaking of other States will operate their services on the route indicated in Statement-I:

Provided that the existing inter-State private operators as on the date of publication of this notification who are operating inter-state services with permits issued by the respective authorities may continue to operate in relation to such trips and vehicles or vehicles specified in the permit on the routes indicated in Statement-I, subject to the condition --

(i) that the existing inter-State private operators shall not pick up and let down passengers in Anekal Pocket Area:

and

(ii) that the permits shall be rendered ineffective by the competent authority for the overlapping portion.

STATEMENT-I

Sl.No.

Route

Intermediate Points

Route Length

No. of buses to be operated

Maximum Number of trips to be performed on route

Max. Min.

1

2

3

4

5

6

7

1.

Bangalore to Anekal or any portion thereof

Agara, Attibete

31-2

4

2

6

2.

Bangalore to Sarjapura or any portion thereof

Agara, Dommasandra

17-3

2

1

2

3.

Bangalore to Anekal or any portion thereof

Varthur, Gunjur, Dommasandra, Sarjapura and Attibele

38-3

4

2

10

4.

Anekal to Hoskote or any portion thereof

Attibele, Sarjapura, Varthur, Whitefield, Hoskote

34-0

1

1

2

5.

Bangalore to Samandur border or any portion thereof

Bannerghatta, Jigani, Anekal

27-5

1

1

4

6.

Bangalore to Solur border or any portion thereof

Bannerghatta, Jigani, Anekal

26-1

1

1

2

7.

Bangalore to Anekal or any thereof

Bannerghatta, Jigani

22-4

4

3

10

8.

Anekal to Dommasandra or any portion thereof

Chandapur, Muttanallur

16-2

1

1

2

9.

Bangalore to Attibele portion thereof

Madiwala, Hebbagodi, Chandapura

19-1

6

3

15

10.

Bangalore to Solur border or any portion thereof

Madiwala, Hebbagodi, Chandapura, Attibele

25-4

2

1

2

11.

Bangalore to Anekal or any portion thereof

Madiwala, Hebbagodi, Chandapura Marsur cross

21-7

3

1

5

12.

Bangalore to border or any portion thereof

Madiwala, Hebbagodi, Chandapura, Marsur cross, Anekal

27-0

1

1

2

13.

Bangalore to Bailnarsapur or any portion thereof

Hoskote, Sulibele

38-0

2

1

2

14.

Bangalore to Chikkathirupathy portion thereof

Hoskote

38-0

2

1

2"

4. In the present case admittedly on the date of publication of the above modification of the scheme, the appellant was operating on Route No.1 at six single trips per day as is evident from the S.T.A.'s order. Out of the said six single trips, first four single trips were based on the counter signature of the S.T.A., Tamil Nadu, while the other two single trips were being operated on the strength of the temporary permits granted and issued by the S.T.A. from time to time. As noticed by the S.T.A., the appellant was operating all the single trips right from the year 1982 on the basis of temporary permits granted from time to time till upto 23-11-1996. Accordingly, the S.T.A. held the appellant to be a saved operator within the meaning of the proviso of the modified scheme and as per the application filed by him permission was accorded for deviation and inclusion of a new route from Hosur to Bellur via I.S.D.O. Industrial Estate and State border in respect of two single trips under order dated 23-11-1996. Since this deviation of the route resulted in overlapping of Route No. 2 notified under the Anekal Pocket Scheme from Madiwala check-post to Attibele (27 Kms.), therefore the said order came to be challenged by the Karnataka State Road Transport Corporation by filing a writ petition wherein the impugned order came to be passed by the learned Single Judge.

5. The learned Counsel for the appellant has assailed the impugned order primarily on the ground that keeping in view the savings permitted under the proviso of the modified scheme, it was competent on the part of the S.T.A. to permit a deviation of the route even if the same was notified as a part of the approved scheme, so long as the starting and terminating point remains

unaltered.

6. In order to weigh the rival contentions it is better to first refer to some of the Supreme Court judgments which in our opinion has conclusively decided the issue like the one at hand. In *Adarsh Travels Bus Service and Another Vs. State of U.P. and Others*, , a Constitution Bench of the Supreme Court had the occasion of considering the effect of an approved scheme and the corresponding right of the private operators in the notified area or the routes. It has been held that:--

"A careful and diligent perusal of Sections 68-C, 68-D(3) and 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 vehicles on any part or portion of a notified area or notified route unless authorised so to do away 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".

7. After referring to the above decision the Supreme Court again in the case of *Smt. Afsar Jahan Begum etc. Vs. State of Madhya Pradesh and others*, , has held that.--

" "In this view of the matter, the only relaxation from the frozen notified route or area from the scheme is as provided in the scheme itself. If any operator, or any route intersecting the notified route, has of necessity, to ply the vehicle strictly in conformity with the restrictive corridor shelter and no more. The relaxation is not meant to sabotage the approved scheme but to subserve public interest.

8. Recently in the case of *C. Kasturi and others, etc. Vs. Secretary, Regional Transport Authority and another etc.*, , the Supreme Court has again summarised the law on the issue at hand. It has been held that the schemes covered by Chapter IV-A are now saved by the 1988 Act in Chapter IV unless it is modified according to the said Act and continues to be valid law under the 1988 Act. It has further been held that.-

" "Route" has been defined u/s 2(28-A), to dispel any confusion consequent upon seeming acceptance by this Court in *Nilkanth Prasad v State of Bihar*, it means "a line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus and another". Permit is an authorisation to use stage carriage vehicle etc. to use such vehicle. The permit having been granted on the notified route, the holder of the stage carriage permit on the notified route is to operate or perform the trips on the route only within the narrow exceptions engrafted in the scheme itself.

8-A. Since the law on the subject has been succinctly clarified by the Supreme

Court now what remains to be examined by us is only the scope and extent of the rights of the private operators which has been saved or preserved under the modified scheme. The material part of the scheme relevant for the present purpose and as already quoted above is to the following effect:

"Provided that the existing inter-State private operators as on the date of publication of this notification who are operating inter-State services with permits issued by the respective authorities may continue to operate in relation to such trips and vehicles or vehicles specified in the permit on the routes indicated in Statement-I".

9. A reading of the above provision makes it clear that the inter-State private operators who were operating on the notified routes covered by the Anekal Pocket Scheme on any length thereof on 3-1-1994 i.e., on the date of publication of the modified scheme on the strength of valid permits were allowed to continue to operate in relation to, inter alia, such trips as were specified in the permit on the routes indicated in Statement-I. Therefore, as held by the Supreme Court in C. Kasturi's case, *supra*, their rights to operate on the notified route or portion thereof are restricted to the extent they were operating on the date of publication of the modified scheme. Even the S.T.A. can have no jurisdiction to permit any deviation from the same as has sought to be done by it in the present case. At the cost of repetition it has to be held that since the scheme framed, approved and notified under Chapter IV of the 1988 Act, has itself been held to be a law, the S.T.A. cannot claim any authority to keep passing orders by violating the provisions thereof. Accordingly, in our opinion the order of the S.T.A. cannot be sustained and has rightly been quashed, by the learned Single Judge.

10. Before parting, we may add few words regarding grant of temporary permits and its validity as enunciated by the Supreme Court in C. Kasturi's case, *supra*. We find it necessary to do so since the S.T.A. has specifically noticed that the appellant had been operating its vehicle on the basis of temporary permits granted since 1982. In paragraph 13 of the judgment it has been held by the Apex Court that:

"The decision relied on by Sri G. Ramaswamy in A. Viswanathan v State Transport Appellate Tribunal, Pondicherry, lays down the law and we approve of it to be the correct law; u/s 62(1) of the Act, if temporary permit is granted, it outlives its existence on expiry of four months and it cannot be intended to be continuous one for a number of years except when permanent permit was given and application for renewal was pending as envisaged in Section 62(1). If any renewal is to be made to a temporary permit, it will be a violation of the statute".

11. In our opinion it is high time for the S.T.A. to take notice of the law laid down by the Apex Court as also by this Court in various judgments or else on some day keeping in view the law laid down by the Supreme Court in the case of Shri Baradakanta Mishra Ex-Commissioner of Endowments Vs. Shri Bhimsen Dixit, , they may find themselves trapped in a contempt proceedings.

12. With the said observations and directions the appeal is dismissed. No costs.