

(1983) 08 KAR CK 0040

In the Karnataka High Court

Case No : Writ Petition No's. 41706 and 41707 of 1982 and 8442 and 8443 of 1983

Meenakshi and etc.

APPELLANT

Vs

State Transport Appellate Tribunal and Others

RESPONDENT

Date of Decision : 25-08-1983

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Motor Vehicles Act, 1939 — Section 47 (3), 57 (8)

Citation : AIR 1984 Kar 221

Hon'ble Judges : K.S. Puttaswamy, J

Bench : Single Bench

Advocate : M.R. Venkatanarasimhachar and Javaji Srinivasalu, for the Appellant; H.L. Dattu, Govt. Pleader, M. Ramaswamy and A. Ananda Shetty, for the Respondent

Judgement

1. As common questions of law arise for determination in these cases, I propose to dispose of them by a common order.

2. M/s. Hanuman Transport Company, Udupi, Abbas Ali, Mangalore, respondents 3 and 4 in Writ Petitions Nos. 41706 and 41707 of 1992 and S. Chandrasekhar, Respondent 3 in Writ Petitions Nos. 8442 and 8443 of 1983, who will be hereafter referred to as permit holders, hold stage carriage permits issued by the Regional Transport Authority Dakshina-Kannada (hereinafter referred to as the RTA) under the Motor Vehicles Act of 1939 (hereinafter referred to as the Act) to operate their respective vehicles on routes situated in the District of Dakshina Kannada only for the number of trips specified in their respective permits.

3. On different dates, the permit holders applied before the RTA for variation of the conditions of their permits by increasing the number of trips as also the vehicles. In certain applications, the permit holders sought to operate the increased vehicles from the opposite directions. In response to the relevant notifications issued by the RTA u/s 570) of the Act, the petitioners and several

others filed written representations/objections before the RTA

Opposing the variations sought on diverse grounds.

4. On 18-7-1981, the RTA considered the applications made by the permit holders and by its common resolution of that date rejected them with these words:

"It is seen that the inclusion of additional vehicle in the permit would change the character of the permit and also violation of Section 47(3) of the Al. V. Act. Therefore, the RTA is of the opinion that there is no need for variation by inclusion of additional vehicle in the existing stage carriage permits. Hence, the RTA resolved to reject all the above seven variation applications".

5. Against the said resolution of the RTA, the permit holders filed 7 appeals before the Karnataka State Appellate Tribunal, Bangalore (hereinafter referred to as the Tribunal) which by different orders made on 14-6-1982 (Annexure-B in Writ Petitions Nos. 41706 and 41707 of 1982) and 24-3-1983 (Annexure-C in Writ Petitions Nos. 8442 and 8443 of 1983) has allowed them and has remitted the cases to the RTA for fresh disposal. In these petitions under Arts. 226 and 227 of the Constitution, the petitioners have challenged the respective orders of the Tribunal.

6. Before the Tribunal, the petitioners and others also sought to justify the order the RTA on the grounds (i) that the applications made for increasing the number of vehicles were not maintainable; (ii) that before considering the applications for variations the requirements of Section 47(3) of the Act as interpreted by the Supreme Court in *R. Obliswami Naidu Vs. The Additional State Transport Appellate Tribunal, Madras and Others*, should have been complied with; and (iii) that applications to increase the vehicles to operate from the opposite directions were not maintainable. But, the Tribunal in the impugned orders rejected them and remitted the cases to the RTA for fresh disposal.

7. Sriyuths M. R. Venkatanarasimhachar and Javaji Srinivasulu, learned counsel for the petitioners strenuously contend that the requirements of Section 47(3) of the Act, as interpreted by the Supreme Court in *Obliswamy Naidu's* case governs an application for variation of the conditions u/s 57(8) of the Act so long as the existing and the proposed route for variations on intra-regional routes was situated exclusively within the territorial jurisdiction of a Regional Transport Authority. While strongly relying on a Full Bench ruling of the Madhya Pradesh High Court in *Rajmal Vs. State Transport Appellate Tribunal and Others*, , learned counsel for the petitioners maintain that the ratio of the Full Bench ruling of this Court in *K. S. R. T. C., v. B. A. Jayaram* (Writ Appeal No. 949 of 1974 decided on 19-9-1979) does not bear on the point.

8. Sriyuths H. L. Dattu, teamed High Court Government Pleader appearing for respondents I and 2 and M. Rangaswamy, learned Counsel appearing for respondents Nos. 3 and 4 in Writ Petitions Nos, 41706 and 41707 of 1982 and A.

Ananda shetty, learned Counsel appearing for respondent No. 3 in Writ Petitions Nos. 8442 and 8443 of 1983 contended that the enunciation made by the Madhya Pradesh High Court in Rajmal's case which was opposed to the enunciation made by the Full Bench of this Court in K. S. R. T. C's case cannot be followed.

9. The precise question for consideration is whether the requirements of Section 47(3) of the Act, as interpreted by the Supreme Court in R. Obliswami Naidu Vs. The Additional State Transport Appellate Tribunal, Madras and Others, is applicable to a case of a various on an intra-regional route only. On that question, the Full Bench of Madhya Pradesh High Court in Rajmal Vs. State Transport Appellate Tribunal and Others, without any doubt accepts the view strongly pressed before me for the petitioners. But the question is whether that enunciation is opposed to the enunciation made by this Court in K. S. R. T. C's case and if not whether the same is sound.

10. In K. S. R. T. C's case on the validity of a variation granted on an Inter state route earmarked for exclusive operation by the K. S. R. T. C., under a notified scheme popularly called as Kolar Pocket Scheme, the opinion of the Full Bench was sought on the following question of law.

" If the condition of a permit for operating a stage carriage over a route is altered by increasing the maximum number of trips over that route, specified earlier in that permit, does such variation of the condition of the permit amount to grant of a new permit".

This question was referred to the Full Bench as the Division Bench that heard the appeal found it difficult to reconcile somewhat conflicting views expressed in two cases by two Division Benches. The Full Bench speaking through Bhimiah, J., (as he then was) answered the question as hereunder:

"If the condition of a permit for operating a stage carriage over a route is altered by increasing the maximum number of trips over that route specified earlier in the permit such variation of the condition of the permit does not amount to grant of a new permit".

In answering the question, the Full Bench expressed that an application for variation of conditions of permit made tinder Section 57(8) of the Act does not amount to grant of a new permit by observing thus:

"Thus Section 57(8) introduces a legal fiction to treat an application for the variation of the condition of a permit relating to the inclusion or alteration of a route or the increasing of the specified number of trips as an application for the grant of a new permit".

From this it follows that the enunciation made by the Full Bench of the Madhya Pradesh High Court is directly opposed to the enunciation made by the Full Bench of this Court for which reason, it is not open to me to rely on the same.

11. Let me also assume that the matter is not concluded by the Full Bench of this Court in K. S. R. T. C.'s case as contended for the petitioners and examine" whether the principle enunciated in Rajmal Vs. State Transport Appellate Tribunal and Others, is sound in law.

12. An application for variation is and, can be made only with reference to a permit already held by a permit holder. A variation is sought with reference to an existing permit or the very permit of a permit holder. When that is so, it is difficult to conceive as to how the requirements of Section 47(3) of the Act can be followed where the variation is on an intra regional route only.

13. In Rajmal's case, their Lordships have proceeded on the assumption that there is no distinction and difference between an application for variation and an application for grant of a new permit. With respect to their Lordships this assumption, is not warranted by the Act and even runs counter to the Scheme and object of the Act. For all these reasons, I cannot persuade myself to subscribe to the views expressed in Rajmal's- case.

14. On the foregoing discussion, it follows that the requirements of Section 47 (3) as interpreted by the Supreme Court in R. Obliswami Naidu Vs. The Additional State Transport Appellate Tribunal, Madras and Others, cannot be followed for variation of the conditions of an existing stage carriage permit, even if such variation is exclusively on an intra regional route only.

15. Sri Achar next contends that in an application for variation of conditions of an existing stage carriage permit, increase of vehicles was impermissible, as the same would constitute granting a new permit for such vehicles.

16. Learned counsel for the respondents contend that the question is concluded by the Division Bench ruling of this Court in G.T. Venkataswamy Reddy and Others Vs. The Karnataka State Transport Authority, Bangalore and Others, .

17. In Venkataswamy Reddy's case, the very question directly arose for consideration, though that case arose out of a variation of an existing inter-State stage carriage permit. On that question, the Division Bench of this Court speaking through Bopanna, J., has expressly negated the contention urged for the petitioner in these words (at p. 202):

"An increase in the number of trips over a route, can be effected either by increasing the frequency of operation of the existing number of vehicles plying on that route without increasing the existing number of vehicles operating on that route or by increasing the number of vehicles operating on that route without increasing the frequency of operation of the existing number of vehicles or by increasing both such frequency and the number of vehicles

The ratio in Venkataswamy Reddy's case is clearly binding on me notwithstanding the fact that that case arose out of an Inter state stage carriage permit.

18. Even otherwise, the principles stated by the Full Bench in K. S. R. T. C.'s case or the Division Bench in G.T. Venkataswamy Reddy and Others Vs. The Karnataka State Transport Authority, Bangalore and Others, cannot be held, to be inapplicable solely on the ground that the cases did not deal with intra regional routes. From this it follows that there is no merit in this contention of the petitioners and I reject the same.

19. Sri Achar contends that in case of a variation of an existing permit, the permit holder cannot seek to operate additional vehicles from the opposite direction as that would amount to grant of a fresh permit on a new route.

20. Learned counsel for the respondents refuting the contention of Sri Achar urged, variation of every kind can be granted.

21. The term "vary" or variation, that is not defined in the Act means to make it different or change. The Act does not prohibit an increase of a vehicle from the opposite direction. Such a change also would be a variation u/s 57 (9) of the Act, The construction suggested by Sri Achar really restricts the meaning of the term "vary" or "variation, though the legislature in its wisdom does not do so. Whether such an application should be granted or not or a new independent permit should be granted on the route to avoid monopoly is for the RTA to decide. But, that has hardly any relevance either on the maintainability of the application or the power of the RTA to grant an application, For these reasons, I see no merit in this contention of Sri Achar and I reject the same.

22. Sri Achar lastly contends that the variations cannot be granted in view of a "draft scheme" published by -the Kerala State Transport undertaking on 4-6-1974.

23. Before the Tribunals the petitioners had not urged this contention though that was available to them.

24. The question raised is not a pure question of law and involves investigation of facts. In this view, it is not proper to permit the petitioners to urge this question for the first time before this Court I, therefore, decline to go into this question and express my opinion.

25. In these cases, I have not examined the merits of the applications filed by the permit holders or the merits of the contentions urged by the objectors against them. In the very nature of things they are all matters that have to be considered by the RTA to which the cases have now been remitted by the Tribunal.

26. In the light of my above discussion, I hold that these writ petitions are liable to be dismissed. I, therefore, dismiss these writ petitions and discharge the rule. But, in the circumstances of the cases, I direct the parties to bear their own costs."

27. Sri H. L. Dattu, learned High Court Government Pleader is permitted to file

his memo of appearance for respondents 1 and 2 within 15 days from this day.

28. In these cases, the petitioner had challenged a common order made by the Karnataka State Transport Appellate Tribunal, Bangalore on five applications made by respondents 3 and 4 paying a Court-fee of Rs. 200/- only. At the hearing of the cases this defect was noticed and the learned Counsel for the petitioner rightly agreed to furnish deficit Court-fee. Accordingly he has furnished deficit Court-fee of Rs. 300/today. Office is directed to give three more numbers on the same. However, the new cases also stand disposed of by the earlier order made in these cases yesterday, the 25th August, 1983. An appropriate entry in that behalf is made by the office in the records of this Court.

29. Petitions dismissed.