

(1989) 01 KAR CK 0005

In the Karnataka High Court

Case No : Writ Petition No's. 8006, 8195, 8189, 7465, 7466, 8476 and 7657 of 1988

M.G. Automobiles, Bellary and etc.

APPELLANT

Vs

Karnataka State Transport Authority, Bangalore and others

RESPONDENT

Date of Decision : 03-01-1989

Acts Referred:

Motor Vehicles Act, 1939 — Section 2, 45 (2), 63 (1), 68 F (1D), 68 F (2)

Citation : AIR 1990 Kar 151

Hon'ble Judges : H.G. Balakrishna, J

Bench : Single Bench

Advocate : M.R.V. Achar, C.S. Shanthamallappa, P.R. Srirangaiah and M. Rangaswamy, for the Appellant; P.R. Ramesh, Govt. Pleader and K. Balakrishna, for the Respondent

Judgement

1. Since common questions of fact and law are involved, these writ petitions are disposed of by this common order.

2. The following are the material facts of the cases :

The scheme of nationalisation of road transport routes under the Chitradurga - Davanagere City was approved on 23-9-1987. The petitioners are existing operators as asserted by them, entitled to operate on the inter State routes subject to consider restrictions. Writ Petitions Nos. 14722 to 14724 of 1987 and other connected writ petitions were filed by the existing operators challenging the notices issued by the Regional Transport Authority under purported exercise of power in proviso to S.68F(1D) of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act"), seeking leave to question the approved scheme in due course, should a necessity arose.

3. The above writ petitions were allowed by this Court by orders dt. 7-10-1987, 13-10-1987 and 16-10-1987 disposing of the entire batch of writ petitions granting leave to the petitioners to challenge the approved scheme while at the

same time, directing the S.T.A. or the R.T.A. as the case may be to proceed in accordance with the provisions of S. 68F(2) of the Act as well as under the State Transport Undertaking Rules 10 to 12, 14 and 15 by initiating proceedings for the implementation of the approved scheme.

4. Thereafter, the S.T.A. issued Notification dt. 10-10-1987 applicable to all the petitioners in these writ petitions.

5. In Writ Petition Nos. 16574 to 16579 of 1987 and other connected petitions, the petitioners challenged the said approved scheme as well as the proceedings under S. 68F(2) of the Act. But the writ petitions were dismissed on merits by the Division Bench of this Court on 5-1-1988 with an observation that no arguments were advanced in regard to the challenge made to the proceedings u/s. 68F(2) of the Act. The unsuccessful petitioners approached the Supreme Court by filing petitions for Special Leave to appeal in C.P. No's. 1032 to 1043 of 1988 preferred against the orders of the Division Bench of this Court dt. 5-1-1988. But the Civil Petitions were dismissed on 28-1-1988 and so also the petition for Special Leave to appeal (Civil) No. 3353 of 1988 filed by M/s M. G. Automobiles against the orders of the Division Bench of this Court dt. 5-1-1988 the order of dismissal being on 23-1-1988.

6. The same petitioners have filed writ petitions Nos. 7465 and 7466 of 1988 along with the connected writ petitions before this Court challenging the proceedings initiated by the S.T.A. u/s. 68F(2) of the Act. That no decision on merits in regard to the proceedings of the S.T.A. taken u/s. 68F(2) of the Act, is an undisputed fact.

7. I shall now refer to S. 68F(2) of the Act :

"68F. Issue of permits to State transport undertakings :

XX XX XX XX XX (2) For the purpose of giving effect to the approved scheme in respect of a notified area or a notified route the State Transport Authority or, as the case may be, the Regional Transport Authority concerned may, by order,--

(a) refuse to entertain any application for the grant or renewal of any other permit or reject any such application as may be pending;

(b) cancel any existing permit;

(c) modify the terms of any existing permit so as to -

(i) render the permit ineffective beyond a specified date;

(ii) reduce the number of vehicles authorised to be used under the permit;

(iii) curtail the area or route covered by the permit in so far as such permit relates to the notified area or notified route".

8. The case of the petitioners is that they are existing operators operating on the inter-State routes which form a part of the inter-State agreement and, therefore,

their routes are not liable to be curtailed.

9. The point for consideration is whether the routes in question are inter-State in character and whether the petitioners are entitled to be free from curtailment of the routes on which they are operating.

10. Section 68F(2) of the Act is an enabling provision for the implementation of the approved scheme in respect of a notified area or notified route either by the S.T.A. or by the R.T.A. as the case may be who may refuse to entertain any application for grant or renewal of any other permit or reject any such application as may be pending, cancel any existing permit, modify the terms of any existing permit so as to render the permit ineffective beyond a specified date, reduce the number of vehicles authorised to be used under the permit and curtail the area or route covered by the permit in so far as such permit relates to the notified area or notified route. That the decision taken and implemented under S. 68F(2) of the Act is conclusive as could be seen from the provisions of S. 68F(3) of the Act which declares that no appeal shall lie against any action taken or order passed by the concerned authority under sub-sec. (1) or sub-sec. (2) of S. 68F of the Act.

11. According to the learned Counsel for the Karnataka State Road Transport Corporation ("the Corporation" for short), the scheme became final after approval and all the rights of the petitioners ceased to exist and that the petitioners who have been deprived of their rights cannot be permitted to question the implementation of the approved scheme. The other contention is that the routes sought to be curtailed by the competent authority are not inter-State routes in so far as the petitioners are concerned, particularly in view of the fact that the starting and ending point (the two termini) of the routes in question are situated within the State of Karnataka even though the routes passed through the neighbouring State of Andhra Pradesh by traversing through an enclave.

12. If the petitioners belong to the category of saved operators who are entitled to operate on the inter-State routes without the right to pick up or set down passengers, they would come within the exception provided under the scheme of nationalisation and, therefore, they will be entitled to freedom from curtailment of their routes. In order to determine the point arising for consideration in these cases, reference to the second proviso to S. 63(1) of the Act would be relevant which reads as follows :

63. Validation of permits for use outside region in which granted :

(1) Except as may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region shall not be valid in any other region, unless the permit has been counter-signed by the Regional Transport Authority of that other region, and a permit granted in any one State shall not be valid in any other State unless countersigned by the State Transport Authority of that other State or by the Regional Transport Authority concerned :

Provided.....

Provided further that where both the starting point and the terminal point of a route are situated within the same State, but part of such route lies in any other State and the length of such part does not exceed sixteen kilometres, the permit shall be valid in the other State in respect of that part of the route which is in that other State notwithstanding that such permit has not been counter-signed by the State Transport Authority or the Regional Transport Authority of that other State".

The exception clause of the approved scheme of nationalisation reads as follows :

"The existing inter-State operators who are operating the entire inter-State routes with duly countersigned permits issued by the authorities of respective States may continue to operate such inter-State routes in relation to such trips and vehicles only specified in the permit subject to the condition that their permits shall be rendered ineffective by the competent authorities for the overlapping portions in the District of Chitradurga".

13. Thus the second proviso provides that even though the starting point and the terminal point of a route are situated in the same State but a part of such route lies in any other State and the length of such part is within 16 K.Ms., such a permit shall be valid in the other State in respect of that part of the route lying in the other State even though the permit is not countersigned by the S.T.A. or the R.T.A. of the other State. According to this proviso, the three statutory requirements to operate the services on an existing route without countersignature are as follows :

- (1) The length of the route lying in another State shall not exceed 16 K.Ms.;
- (2) The starting point and the terminal point should be located in the home State; and
- (3) The permit should have been granted originally by the competent authority of the home State.

14. If the above criteria is applied to the facts of the instant cases, all the ingredients do exist to satisfy the requirements of law and the petitioners are entitled to operate their services without countersignature from the R.T.A. or the S.T.A. of the other State. In other words, by virtue of the second proviso to S. 63(1) of the Act, countersignature of the S.T.A. or the R.T.A. of the other State becomes redundant. If that is the position, the petitioners would be entitled to the rights arising under the exception clause of the approved scheme of nationalisation.

15. However, it was forcefully contended by the learned Counsel for the Corporation that the route is not inter-State in character at all since it passes through an enclave though short of 16 KMs after the route passes into the other State but, nevertheless, the starting point and the terminal point being located

within the home State.

16. The point is whether the existence of an enclave lends support to the argument of the learned Counsel for the Corporation that the route in question is not inter-State in character.

17. Section 45(2) of the Act reads as follows :

"Notwithstanding anything contained in sub-sec. (1), the State Government may, by notification in the Official Gazette, direct that in the case of any vehicle or vehicles proposed to be used in two or more regions lying in different States, the application under that sub-section shall be made to the State Transport Authority of the region in which the applicant resides or has his principal place of business".

Sub-section (28 A) of S. 2 of the Act defines "route". It reads as follows :

" "route" means a line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus and another".

18. According to the learned counsel for the Corporation, the inter-State route in respect of which the approved scheme of nationalisation has come into existence is from Chitradurga to Davanagere and it never contemplated an inter-State route passing through the neighbouring State of Andhra Pradesh and merely because the route incidentally passes through an exclave to a distance which is less than 16 K.Ms., the route does not become inter-State in nature. In support of this proposition of law, the learned Counsel for the Corporation relied upon the decision in *K. Venkamma Vs. The Government of Andhra Pradesh and Others*, The question which arose for consideration in the said case was "Can a route, whose termini lie within the same State but which traverses in its course one or more other States, be designated as inter-State route"? Answering this question, the Supreme Court said in para 5:

Ch. Khazan Singh and Others Vs. State of U.P. and Others, dealt with a case where the termini of the concerned routes were located in different States and so, by any test, were inter-State routes. There, in passing and not as ratio of the case, an observation fell from the Court.

"An inter-State route is one of which one of the termini falls in one State and the other in another State."

Undoubtedly, where the termini fall in different States the route is inter-State. But that does not exclude other categories of inter-State routes such as where it crosses a State other than the originating State although gets back into it later. If the territory of more than one State is covered, even if both the termini eventually fall within the same State, the route is inter, not intra-State. Ordinarily not invariably the "two termini" test is a working solution, not an inflexible formula. *B.H. Aswathanarayan Singh and Others Vs. State of Mysore and Others*, had something to say on inter-state route :

"An inter-state route is one in which one of the termini is in one State and the

other in another State. In the present case both the termini are in one State. So it does not deal with inter-State routes at all. It is urged that part of the scheme covers roads which continue beyond the State and connect various points in the State of Mysore with other States. Even if that is so that does not make the scheme one connected with inter-State routes, for a road is different from a route. For example, the Grand Trunk Road runs from Calcutta to Amritsar and passes through many States. But any portion of it within a State or even within a District or a sub-division can be a route for purposes of stage carriages or goods vehicles. That would not make such a route a part of an inter-State route even though it lies on a road which runs through many States. The criterion is to see whether the two termini of the route are in the same State or not. If they are in the same State, the route is not an inter-State route and the proviso to S. 68-D(3) would not be applicable. The termini in the present case being within the State of Mysore, the scheme does not deal with inter-State routes at all, and the contention on this head must be rejected."

Again in para 6 of *K. Venkamma Vs. The Government of Andhra Pradesh and Others*, , the Supreme Court observes :

"The facts and discussion bear out abundantly that there is nothing in the ruling to suggest that even if a route traverses territory of another State it is nonetheless an intra-State route if the points of beginning and ending fell within one State. It is a fallacy so to construe that decision. What is repelled in that case is the contention that if a highway runs through many States, any portion of that highway which is picked out for running a bus service as a route, should also be deemed to be inter-State for the only reason that such a route (though its entire length falls within a single stage) overlaps a road which crosses many States. The very definition of route in S. 2(28-A) is sufficient to extinguish that argument and this Court rightly, if we may so with respect, rejected it. We cannot confuse between road and route. If the whole of the route lies within a single State it is intra-State and not inter-State, even though the road over which the route lies runs beyond the borders of that single State as national highways do".

After an elaborate discussion, ultimately, the Supreme Court held that the route in question passing as it does through part of Tamil Nadu is inter-State.

19. - It was vehemently contended by the learned Counsel for the petitioners that the routes in question in the instant cases cannot be construed as routes overlapping a road which crosses another State and what is involved in the instant cases is a route and not a road and what is running into another State is the route analogous a national highway and, therefore, the route is inter-State in character.

20. I have carefully examined the facts of these cases and after applying the ratio of the decision enunciated by the Supreme Court in *K. Venkamma Vs. The Government of Andhra Pradesh and Others*, , I am of the view that the route in

question is inter-State and not intra-State.

21. The additional factor which reinforces my conviction is that the second proviso to sub-sec. (1) of S. 63 of the Act provides in unmistakable terms an exemption from countersignature of a permit where both the starting point and the terminal point of a route are situated within the same State even though part of such route lies in any other State falling short of 16 K.Ms, in length. If the route was not inter-State in character, the question of granting exemption from countersignature would not have been necessary at all. Section 63(1) second proviso deals with an inter-State route and the Legislature has duly considered the question of grant of exemption from countersignature by introducing the second proviso therein which came into force with effect from 2-3-1970 by Act No. 56/69. There is no merit in the contention that the route is not inter-State in character.

22. Even though the exception clause in the scheme of nationalisation provides that the permit should be countersigned, the necessity for countersignature is removed by law under the second proviso to S. 63(1) of the Act. In a way, it can be said that, by operation of law or by a legal fiction, there is a deemed countersignature if not actual countersignature.

23. Taking an over all picture of the cases, I am of the opinion that the petitioners are existing stage carriage operators of inter-State routes with deemed countersignature entitled to the benefit of the exception clause of the scheme to operate their services on the inter-State route in question subject to corridor restrictions and that the competent authority is not empowered to curtail the routes in so far as the petitioners are concerned.

24. Several authorities have been cited by the learned Counsel for the petitioners and for the Corporation. In the circumstances of the cases, I do not think it is necessary to refer to all the decisions.

25. In the result, for the reasons stated above, the writ petitions are allowed. The impugned resolution dt. 5-2-1988 passed by the Kamataka State Transport Authority, Bangalore, only in so far as the petitioners are concerned, is hereby quashed.

26. In the circumstances of the cases, there, will be no order as to costs.

27. Petitions allowed.