

(1986) 01 KAR CK 0034
In the Karnataka High Court
Case No : W.P. No. 11012 of 1977

Mohammed Hashim K.

APPELLANT

Vs

The Karnataka State Transport Appellate Tribunal and Others

RESPONDENT

Date of Decision : 24-01-1986

Acts Referred:

Motor Vehicles Act, 1939 — Section 63(3)(A)

Citation : (1986) 1 KarLJ 320

Hon'ble Judges : M. P. Chandrakantharaj Urs, J

Judgement

1. The brief facts necessary for disposing of this long pending writ petition are as follows: The petitioner was an existing stage carriage operator on the inter-State route Tumkur to Hindupur via Beladhara, Koratagere, Madhugiri, Kodigenahally and Muddenahalli gate and back. That permit was valid for one round trip. In the year 1976 the State of Karnataka and the State of Andhra Pradesh entered into an agreement as provided for in Sec. 63(3)(A) of the Motor Vehicles Act, 1939, (hereinafter referred to as the Act). In that agreement for the aforementioned route the two round trips were agreed upon between the States. In the light of that agreement coming into force between the two States, the petitioner made an application under sub-sec. (8) of Sec. 57 of the Act for variation of the conditions of his permit by increasing the number of trips i.e., by adding one more round trip. That application is dated 8-1-1976. Similarly, some of the respondents herein also made applications for grant of a fresh permit on the same route or somewhat similar route. One of them had a different route. All the applications were clubbed together by the 2nd respondent-State Transport Authority and heard at its meeting held on 13-7-1976 in Subject Nos. 189, 190, 191 and 193. Each of the applicants had among others several other objectors also. All of them were heard. In the two main arguments, in addition to advancing their respective claims for the grant of the permit or the variation as the case may be, were that without ascertaining whether the need existed for an additional service on the route in question, the State Transport Authority could not proceed. The thrust of that argument was that the procedure for granting

variation or a new permit being the same as found in Sec. 57(8) of the Act. Sec. 47(1) of the Act was attracted and the conditions must first be examined by the State Transport Authority and if those conditions do not exist, the question of granting permit or varying the conditions of the permit would not arise. The other argument was that once the inter-State agreement was entered into between the two States and the two State Governments agreed not only on the routes but also on the number of trips that each route should have, it tantamounted to determining the need and therefore there would be no need for the State Transport Authority to go into that question afresh and re-examine the need under sub-sec. (1) of Sec. 47 of the Act. To the respondent-State Transport Authority, the latter argument appealed and accepting that as the basis it concluded that it need not re-examine the existence of the need for an additional trip to be granted to the petitioner or to grant a fresh permit to one of the others. After reaching that conclusion it proceeded to consider the rival claims and found that from the point of view of economy of operation and in public interest the petitioner's claim for variation should be granted and that would meet the requirements of the agreement. Aggrieved by the same, the appeals were filed before the 1st respondent-State Transport Appellate Tribunal, Bangalore. The State Transport Appellate Tribunal, Bangalore, in turn, clubbing together all the appeals before it in Appeals Nos. 822, 856, 893, 897 and 892/1976 formulated three questions for determination:

(1) Whether the need was established: by the inter-State agreement between Karnataka and Andhra Pradesh;

(2) Whether the broad sheet was necessary to be prepared when all the applications for the same route were taken up for consideration;

(3) Whether the timings affect the services of the appellants.

2. Apparently, the last question formulated was in regard to the timings assigned to the present petitioner in this Court for the additional round trip granted to him. But that question did not remain to be answered nor the second. In the light of the answer given by the Tribunal to the first question discussing apparently a number of decisions of this Court and the other High Courts cited before it, the Tribunal came to the conclusion that inter-State agreement not having the force of law does not have the effect of superceding the prescribed procedure under the Indian Motor Vehicles Act any grant of variation of a permit or a fresh permit. The core of the reasoning was that despite the agreement the R.T.A or the S.T.A. in every case has to examine the existence of the need before granting the variation or a new permit in terms of Sec. 47 of the Act. Having answered that question with reference to the facts of the case of the petitioner against him, it remanded the matter to the State Transport Authority to consider a fresh the need for additional trip on the route in question and then determine the most suitable applicant for grant of variation or a new permit. Aggrieved by the same, the petitioner has approached this Court inter alia contending that the reasoning of the Tribunal was totally unwarranted; that it was nobody's case

before the Tribunal; that the agreement superceded the procedure under the Act and therefore reliance placed on those decisions which declared an agreement not to have the force of law was no more than stating the obvious; and that the Tribunal, therefore, erred in its conclusion.

3. I think there is much force in the contention advanced for the petitioner. An agreement entered into between the two States enabled to do so under the provisions of the Act does not by any stretch of imagination affect the law under which it has been entered into. But when the two State Governments sit together and decide the routes to be opened up as inter-State routes and determine on the date of the agreement the number of trips each route shall have, then the presumption is that the number of trips and the routes have been decided upon after collecting necessary data as to the existence of the need for opening of such new routes or determining the number of trips required on such routes existing or the ones opened up under the agreement. If the Government has felt that the need is established and entered into an agreement, then an agency of the Government need not further examine that need merely because it is one of the procedural requirements under the Act. If it takes notice of it, it is more than adequate. For the reasoning I have given above I derive full support from the decision of this Court in the case of *K.S.R.T.C. v. K.S.T.A.T. and another* [1981(1) Karnataka Law Journal. 438] where this question fell for consideration directly. This Court in the said decision has held that an enquiry by the S.T.A. regarding the need to grant permit on any route included under an inter-State agreement is totally unnecessary and that Sec. 47(3) of the Act stands excluded for opening routes lying in two States. The decision to open inter-State routes could only be taken by agreement between the States and once the decision is taken by the States under the agreement as to the number of services to be permitted on inter-State routes, it is unnecessary for the S.T.A. to collect information justifying the need to grant such permits. This, on all fours covers the case of the petitioner. Therefore, the Tribunal was clearly in error in setting aside the grant and remanding the case for fresh consideration after establishing the need.

4. In the result, the Tribunal's orders is set aside, Mr. Gupta learned Counsel appearing for one of the respondents contended that there are several other writ petitions pending in this Court where this identical question has been raised and in all of them merit of each applicant also is required to be considered to get the permit or variation of the permit as the case may be on the route in question. It may be so. When these petitions come up for hearing, each of them will be considered in regard to the claim of merit. But in regard to the question of law raised and answered by the Tribunal, the Court has to follow the decision in this case. Therefore, disposal of this writ petition will not in any way prejudice the claims of the petitioner in the other writ petitions.

5. With the above observation, this writ petition is allowed. The rule is made absolute and there will be no order as to costs.