
(2017) 06 KAR CK 0075
In the Karnataka High Court
Case No : 1251 - 1252 of 2016 (MV)

Mr. UMMER KHAYUM KHAN

APPELLANT

Vs

THE REGIONAL TRANSPORT AUTHORITY

RESPONDENT

Date of Decision : 12-06-2017

Acts Referred:

[Motor Vehicles Act, 1988](#), [Section 116](#),
[Section 116](#) - Power to erect traffic signs

Citation : (2017) 06 KAR CK 0075

Hon'ble Judges : S.Sujatha

Bench : SINGLE BENCH

Advocate : B.R.SUNDARA, RAJA GUPTA, VIJAYAKUMAR A. PATIL,
B.PHALAKSHAIAH

Judgement

1. Petitioners have challenged the common order of the Karnataka State Transport Appellate Tribunal ["Tribunal", for short] in Revision Petition Nos.679 and 683 of 2005 dated 7.10.2015 marked at Annexure-G to the writ petitions.

2. The petitioners filed an application for grant of stage carriage permit. A joint route survey was conducted in respect of the route Srinivasapura and Chintamani and back, the route involved herein and the report to that effect was submitted by the concerned Authority to the effect that 0.1 km., is a staggering intersection. The Respondent No.1 after considering the joint route survey and providing an opportunity to the parties, granted permits as prayed for. The Tribunal set aside the permits on the ground that the route in question overlaps the notified route. Against the orders of the Tribunal, the petitioners have approached this Court by filing writ petition No.26908/2005. This Court by order dated 18.6.2012 set aside the orders of the Tribunal and directed the Tribunal to reconsider the matter in the light of the observations made therein. Pursuant to the directions of this Court, the Tribunal reconsidered the matter and held that staggering intersection is "overlapping" and set aside the permits in question. Hence these writ petitions.

3. Learned Counsel appearing for the petitioners submitted that the Tribunal grossly erred in not noticing the legal proposition laid down by the Hon"ble Apex Court in the case of "KARNATAKA STATE ROAD TRANSPORT CORPORATION v. ASHRAFULLA KHAN AND OTHERS" reported in AIR 2002 SC 629, wherein it is categorically held that intersection is not overlapping. Staggering intersection is nothing but an intersection, treating the same as overlapping by the Tribunal is prima facie illegal and not in accordance with law.

4. Learned Counsel submitted that under Section 116 of the Motor Vehicles Act, 1988 ["Act", for short], staggering intersection has been recognized and the overlapping portion is only 0.1 km., which is not vertical intersection, but is a cross intersection. Having regard to the small distance of 0.1 km., the issue would have been examined with reference to the object of the Act and the purpose for which monopoly is created. Setting aside the permits, examining the alleged overlapping portion in highly technical manner is an error apparent on the face of the record which is liable to be quashed. It was further contended that the total distance of the route in question is 30 kilometers out of which 0.1 km., is a staggering intersection and there is no other alternative route. This has to be considered with a pragmatic approach.

5. Learned Counsel appearing for the Corporation, placing reliance on ASHRAFULLA KHAN's case [supra], contended that no permit can be granted to a private operator to operate on a notified route or portion thereof if a scheme prohibits such operation. But, the only exception is as regards the intersection in a notified route. The words "intersection" and "overlapping" were considered and interpreted by the Hon"ble Apex Court in ASHRAFULLA KHAN's case [supra] and it is categorically held that an intersection is not traversing the same line of travel, but it cuts across whereas if the vehicle is to ply on the same line of travel on a notified route, it is an overlapping. If non notified route cuts across a notified route for its onward journey, it is an intersection. In analyzing these aspects, reference to joint route survey is relevant which clearly establishes that there is staggering intersection to the extent of 0.1 km.,. It is immaterial whether the overlapping is for about 0.1 km., or less or more.

6. Heard the learned Counsel for the parties and perused the material on record.

7. The arguments of the learned Counsel for the petitioners is, the line of travel in the notified route is only to the extent of 0.1 km, more over, it is staggering intersection. "Intersection" in its broader view includes staggering intersection also. Instead of cutting across the notified route for its onward journey, the petitioners have to traverse in the notified route for about 0.1 km., and then take a turn. There being no other alternative route for the petitioners to continue their onward journey, the staggering intersection has to be considered as an intersection. The issue relating to the "intersection" and "overlapping" was extensively considered by the Apex Court in ASHRAFULLA KHAN's case [supra] wherein it is categorically held thus: "(20.) The expression "intersection" has neither been employed in the Repealed Act nor in the rules framed thereunder.

But it is a product of the Judgement of this Court in Mysore State Road Transport Corporation V/s. Mysore State Transport Appellate Tribunal (supra) and the relevant extract of the decision runs as under : "This Court has consistently taken the view that if there is prohibition to operate on a notified route or routes no licences can be granted to any private operator whose route traversed or overlapped any part or whose of that notified route. The intersection of the notified route may not, in our view, amount to traversing or overlapping the route because the prohibition imposed applies to a whole or part of the route on the highway on the same line of the route. An intersection cannot be said to be traversing the same line, as it cuts across it." The said decision was approved in Constitution Bench decision in Adarsh Travels Bus Service and another V/s. State of Uttar Pradesh and others (supra). This Court in the said decision held thus : "The learned Judges, expressly dissented from the decision of Beg and Chandrachud, JJ. In Mysore State Transport Corpn. V/s. Mysore Revenue Appellate Tribunal and approved the decisions of the Court in Nilkanth Prasad case and Abdul Khader case We agree with the view taken by this Court in Mysore State Road Transport Corpn. V/s. Mysore State Transport Appellate Tribunal and dissent from the view taken in Mysore State Road Transport Corpn. V/s. Mysore Revenue Appellate Tribunal."1975 (1) SCR 493 (22.) The expression "intersection" has been employed by this Court only to provide facility to a private operator operating on a nonnotified route to continue an onward journey if it cuts across a notified route. It appears that this exception was carried out only to avoid hardships to the travelling public, otherwise a scheme which is for total exclusion of private operation was held to be untouchable. (23.) In our opinion there is a clear and obvious distinction between an "overlapping" and an "intersection" for purposes of Chapter IVA of the repealed Act. In the case of an overlapping a stage carriage is to ply on the same line of travel on a portion of a notified route and it is immaterial whether it is a small distance of four or five kilometers falling within the limits of a village or town. Whereas in the case of an intersection a non-notified route only cuts across a notified route for onward journey. It is only to enable a private operator plying on a non-notified route to a non-notified route to cut across a notified route. The exceptions sought to be made by Full Bench in the form of municipal limit or village limit is totally erroneous and that the same defeats the very object behind the scheme which is for total exclusion of private operation. The consistent view of this Court has throughout been that the scheme is a law and the same has to be preserved and protected in public interest. Any other view taken contrary to the said view would amount to violating the integrity of an approved scheme under Section 68-D of the Repealed Act. Any slight deviation in the scheme may frustrate the entire scheme. (25.) Merely because a private operator has to traverse on the line of a notified route for 5 km. or for 1.5 km. only is no ground to dispense with the mandate of law. Such an overlapping also cannot be sustained on the ground it relates to a small town. If such a view of law as propounded by the Full Bench is to be accepted, it is difficult to be applied where a notified route passes through bigger towns where involvement is of 10 to 20 km. within that town." (26.) The

view taken by the Full Bench that where traversing on a notified route is necessary to continue journey on a nonnotified route could be regarded as an intersection is an erroneous view of law. The High Court under Article 226 of the Constitution is required to enforce rule of law and not pass order or direction which is contrary to what has been injuncted by law.

8. This Court had an occasion to consider the similar issue in the case of K. SUBRAMANI v. THE KARNATAKA STATE TRANSPORT AUTHORITY AND OTHERS" [DD-9.6.2014] wherein it is held thus: "3. Indisputably on a spot inspection, the report submitted reveals that the route in question traverses over the notified route to a distance of 0.1 km (100 meters) and therefore, by no stretch of imagination, it can be treated as an inter-section. Since the report by the Deputy Commissioner for Transport is clear that the modified route overlaps the notified route, petitioners are disentitled to operate their services on the said route on the basis that said overlapping could be treated as an intersection and that too on the basis of lapsed permits."

9. Indisputably, the route in question traverses on the notified route to the extent of 0.1 km.,. ASHRAFULLA KHAN"s case [supra] specifically addresses the issue of a private operator traversing on the line of the notified route to a small extent. It is categorically held that the private operator operating on the line of a notified route for 5 km. or for 1.5 km. only is no ground to dispense with the mandate of law. The Hon"ble Apex Court has explained the expression "intersection" and "overlapping". In view of the said Judgment of the Hon"ble Apex Court as well as the order passed by this Court in the case of K. SUBRAMANI [supra], at no stretch of imagination, the distance of 0.1 km., to be traversed over the notified route can be considered as an intersection. Section 116 of the Act provides for the power to erect traffic signs. The nomenclature "staggered intersection" and the caution signboards erected by the Authorities would not support the petitioners to contend that notwithstanding the traverse on the line of a notified route to the extent of 0.1 km., the same has to be treated as an "intersection". For the aforesaid reasons, the order passed by the Tribunal cannot be found fault with. Accordingly, the writ petitions stand dismissed.