

(1997) 02 KAR CK 0040
In the Karnataka High Court
Case No : Writ Petition No. 7719/91

Neelakanteshwara Motor Service

APPELLANT

Vs

Karnataka State Appellate Tribunal and Others

RESPONDENT

Date of Decision : 21-02-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 57 (8), 68 (FF)
Motor Vehicles Act, 1988 — Section 104, 80 (3)

Citation : (1997) 02 KAR CK 0040

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : B.R.S. Gupta, for the Appellant; Jayakumar S. Patil, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

Hari Nath Tilhari, J.—By this petition under Article 226 of the Constitution of India, petitioner has sought the quashing of the order passed by respondent No. 1 i.e., Karnataka State Appellate Tribunal in Appeal No. URA 400/ 87 dt. 22.3.1991 whereby the State Transport Appellate Tribunal had allowed the appeal filed by the Karnataka State Road Transport Corporation and set aside the order passed by Karnataka State Transport Authority, Bangalore, whereby Karnataka State Transport Authority, Bangalore, had permitted the variation of the route by increasing number of trips from 2 to 4 with reference to route B.T. Project to Bellary via Rayadurga, Kanekal.

2. The petitioner's counsel Sri B.R.S. Gupta, submitted that the Appellate Tribunal committed error of law apparent on the face of record as well as acted contrary to law in setting aside the order passed by the State Transport Authority which is contained in Annexure "A" to the Writ Petition and whereby the Transport Authority had allowed 4 trips to be made by the petitioner on the route concerned instead of 2 which were contained originally. The application for

increasing number of routes and the modification of alteration in the permit had been made u/s 57(8) of Motor Vehicles Act, 1939, which is analogous of Section 80(3) of Motor Vehicles Act, 1988. The application as was made on 6.11.1978 as such it is governed by the provisions of the Motor Vehicles Act, 1939, referred herein as Act of 1939. There is no dispute that so far as the route in question is concerned that it is a part of the nationalised route, under Bellary Scheme. The question that has been raised by the learned Counsel for the petitioner is whether in view of Section 57(8) it was open to the Transport Authority to grant or to permit the increase in number of trips which were granted under original permit and particularly in view of the exemptions contained in the scheme with reference to existing permit-holders. Learned Counsel for the petitioner Sri Gupta submitted that under the scheme known as Bellary Scheme exemption has been granted in favour of existing operators, subjected to the said exemption, the State Transport Corporation has been granted monopoly over the route covered by Bellary Scheme. Learned Counsel also admitted that there is no such clear expression in the scheme with reference to the extension of route or with reference to increase in number of trips under the scheme indicating if it is open to authorities to vary the terms of permit in relation to trips or extent or extension of routes. It would have been better if the counsel for the petitioner would have got filed a copy of this scheme or atleast the exemption clause of and under the Bellary Scheme with extracted in the Writ Petition for the perusal of the Court, as the question before the Court is interpretation of the scheme and its exemption clause, qua Section 57(8) of the Act of 1939, Learned Counsel for the petitioner urged that it should be taken that exemption clause is there with respect of existing operators without any specific clause in the scheme as to if the conditions can be changed or not. Section 68(FF) of the old Act is relevant and material to be referred to. Section 68(FF) of the Motor Vehicles Act, 1939 and Section 104 of Motor Vehicles Act, 1988 are paramaterial. Section 68(FF) of Motor Vehicles Act, 1939, reads as under:

"Section 68(FF):- Where a scheme has been published under Sub-section (3) of Section 68D in respect of any notified area or notified route, the State Transport Authority or the Regional Transport Authority, as the case may be, shall not grant any permit except in accordance with the provisions of the scheme.

Provided that where no application for a permit has been made by the State transport undertaking in respect of any notified area or notified route in pursuance of an approved scheme, the State Transport Authority or the Regional Transport Authority, as the case may be, may grant temporary permits to any person in respect of such notified area or notified route subject to the condition that such permit shall cease to be effective on the issue of a permit to the State Transport undertaking in respect of that area or route."

A reading of Section 68(FF) clearly discloses that Section 68 (FF) of the Act provides and in effect really operates as issuing negative mandate to the transport authority that once an area or the route has been notified u/s 68-D(3)

of the Act, then these authorities shall not grant any permit except and subject to the exception. This general principle is subject to the terms and exception provided, if any, in the scheme. In other words, if the scheme provides for partial monopoly of the State Transport Corporation or provides for partial prohibition then the permit may be granted only to that extent or if it grants exemption in favour of those permits, then those persons may enjoy the same to the extent provided and not beyond that, and if there is total prohibition against private operators and full or complete monopoly has been conferred upon and in favour of the State Transport Undertaking, then no private operator can be granted any permit in respect of or on that route. The proviso to the Section 68(FF) of the Act no doubt provides exceptional conditions in which temporary permit may be granted in respect of such route to private operators. The effect of Section and the principle of law under the Section cannot be allowed to be nullified indirectly. The scheme no doubt makes and provides exemption from the scheme and provides that existing operators, and in my opinion, it means that existing permit holders will be entitled to ply the vehicle subject to the terms and conditions that are contained in those permits which they are holding and not beyond that. As I have mentioned, the petitioner has neither filed the copy nor the extract of the scheme but counsel has stated that the existing holders were allowed to ply their vehicles, I -may take, that existing permit holders were allowed to ply their vehicles under the permits subject to the terms and conditions as contained in the existing permits because section says that even according to the permit, it shall not be done except in accordance with the provisions of the scheme. The rights that have been conferred under the exemption clause cannot be widened indirectly. Section 57 of the Act particularly deals with the grant of new permits. It provides vide Sub-section 2 that the Transport Authority - State or Regional shall have power to make variation in the permits and contents of permit including the extent of the route or number of trips. Sub-section 8 of Section 57, which is material, reads as under:-

"Section 57(8): An application to vary the conditions of any permit, other than a temporary permit, by the inclusion of a new route, or routes or a new area or, in the case of a stage carriage permit, by increasing the (number of trips above the specified maximum, or by altering the route covered by it), or in the case of a contract carriage permit or a public carrier"s permit, by increasing the number of vehicles covered by the permit, shall be treated as an application for the grant of a new permit:

Provided that it shall not be necessary so as to treat an application made by the holder of a stage carriage permit who provides the only service on any route or in any area to increase the frequency of the service, so provided, without any increase in the number of vehicles."

The expression used in the section the application for variation of terms as to the matters referred therein is to be treated as an application for grant of new permit is expressive and communicative of the Legislatures intent. The applications that

may be considered are those specified in this clause i.e., variation of the conditions such as to number of trips, inclusion of new route, increase in the number of vehicles etc. These are the applications for a change in the permit as indicated in Section 57(8) which may be considered as an application for grant of new permit. The section itself mandates such an application for variation of such conditions as above is to be treated as an application for grant of new permits. The question is why the application in respect of variation of condition of permit by extending the route under the permit i.e., for inclusion of new route or new area thereunder or therein or for increase of number of new trips or increasing the number of vehicles covered by permit which is to be treated and is required to be treated as application for new permits if it is not so treated the prohibition contained in Section 68(FF) would not be applicable. In my opinion, that would definitely apply when Legislature required it to be treated as an application for grant of new permit the restriction applicable u/s 68(FF) to applications for grant of new or fresh permit would have to be taken as applicable and in my opinion, the bar that is created by the provisions of Section 68(FF) would be applicable in the matters of granting extension of route or addition or inclusion of new route or area or increase of number with reference to notified area as well as in the matter of increasing of number of trips with reference to notified route or notified areas. Learned Counsel for the petitioner sought to place reliance on the decision of their Lordships of the Supreme Court in the case of Karnataka State Road Transport Corporation, Bangalore Vs. B.A. Jayaram and Others, in which it was held by a Bench consisting of two learned Judges, that Section 57(8) does not create a legal fiction, and the grant of an application for variation in the condition of the existing permit in respect of matters set out in Section 57(8) does not result in the grant of new permit. Learned Counsel pointed out to the Clause (D) of the Scheme which was the subject matter of consideration in 1984 Supreme Court and submitted same clause also existed in Bellary Scheme. I may quote that clause which reads as under:

"The State Transport Undertaking will operate the services on all routes to the complete exclusion of other persons except the following:

"C" The operation of services by permit holders who have already been granted permits by the Transport Authorities on the date of publication of the modified scheme on interstate routes which are included in the interstate agreement entered into by the Government of any other State provided that the operator on such route shall not be entitled to pick up and set down passengers in such portions of the notified route."

Clause (C) which has been relied by the Learned Counsel when I read it, it creates an exception in favour of permit holders who have already been granted permits by the Transport Authority on the date of publication of the scheme. This expression in my opinion mean the permit as has been granted by the authority and as is or has been existing on the date of enforcement of the modified scheme. It means permit with all its terms and the conditions as existed in the

permit on the date of enforcement of scheme and as operative on that date, permitting the operation of services. The right under the permit, as on the date of enforcement of scheme has been preserved and nothing more, as otherwise some further exception would have been provided either in Section 68(FF) of the Act or the Scheme preserving power to permit variation of terms and conditions of existing permit in light of Section 57(8). Neither Section 68(FF) nor the Scheme do not provide for such thing. Therefore, the reading of this Clause (C) per se reveals that exemption has been granted with reference to operation of service by permit-holders who have been granted permit by the Transport Authority subject to terms and conditions as contained therein and as existing on the date of publication of the modified scheme. A reading of this section along with Section 68(FF) in my opinion very clearly manifests the intention that the permit-holders can operate only subject to the conditions as existed on the date of the introduction of the scheme, in their permit and this really leads to nothing but one thing that no change or variation can be permitted during the course of operation of the scheme in view of provision of law as contained in Section 68(FF) and exemption keeping in view the basic principle what law prohibits from being done. That should not be allowed to be done indirectly. It is to be held that what cannot be done directly by granting new permit in view of Section 68(FF) of the Act read with the scheme and prohibition contained therein, the Legislature would not have intended that the same be allowed to be done indirectly, in breach of prohibition contained in Section 68(FF) read with the scheme. Thus considered in my opinion, the variation of the condition either with respect to inclusion of new route or routes or alteration of extent of the route or for increasing the number of trips from those which were contained in the permit on the date of the scheme coming into force could not be permitted. When I so opine; I find support from the principle laid down by Supreme Court in *R. Raghuram Vs. P. Jayarama Naidu and Others*, in which case, the case of *KSRTC v. Jayaram* had been considered in as well. In the case of *R. Raghuram Vs. P. Jayarama Naidu and Others*, Hon'ble Venkataramaiah C.J., as it involves has been pleased to observe as under:

3. In *Adarsh Travels Bus Service and Another Vs. State of U.P. and Others*, a Constitution Bench of this Court has held that where a route is nationalised under Chapter IVA of the Act, a private operator with a permit to ply a stage permit over route but which has a common overlapping sector with the nationalised route, cannot ply his vehicle over that part of the overlapping common sector, even with corridor restrictions, such as that he would not be able to pick up or drop passengers on the overlapping part of the route unless such an exemption had been allowed in the scheme itself. Even when the scheme provides that an existing operator is exempted from the operation of the scheme it only means that he can continue to operate his services with the existing number of trips on the date on which the scheme is published and it does not authorise him to apply for a variation of his permit so that he can increase the number of trips on the overlapping portion of the notified route thus increasing the burden of private

operation of vehicles on the notified route in question. The variation authorising increasing the number of trips in fact amounts to granting of a fresh permit to run one more stage carriage service doing one round trip on the notified route and that would be in violation of the scheme itself because the scheme protects only the number of trips which were being operated at the time of its publication.

4. Our attention, is however, drawn to another decision of this Court in Karnataka State Road Transport Corporation, Bangalore Vs. B.A. Jayaram and Others, in which it has been held by a Bench consisting of two learned Judges that Section 57(8) does not create a legal fiction and grant of an application for variation in the conditions of one existing permit in respect of matter set out in Section 57(8) does not result in the grant of new permit in every case. With great respect to the learned Judges who decided the said case we feel that the said opinion is erroneous because the increase in the number of trips of vehicles which were being run under the permit to operate one more stage carriage. Such a thing could not be permitted particularly in view of the decision in Dalip Singh and Others Vs. State of Punjab, . The decision of this Court in Karnataka State Road Transport Corporation, Bangalore Vs. B.A. Jayaram and Others, referred to above must be deemed to have overruled in Adarsh Travles's case (supra). The prejudice of the finances that is caused to the State Transport Undertaking for whose benefit the scheme is made is not so much by the number of vehicles used but by the number of trips that are operated on the notified route in question. The economy and co-ordination, two of the factors governing a scheme would also be affected. On the basis of the above view, another Division Bench has disposed of another petition at the stage of admission.

5. Even if there is an inter state agreement u/s 63 of the Act for increasing the number of trips, such as agreement cannot override the provisions of Chapter IV-A by virtue of Section 68-B of the Act. Section 63 being in the Chapter IV of the Act the scheme approved under Chapter IV-A prevails over it.

6. We therefore feel that the order dated 24th January, 1989 in Civil Appeal No. 4126 of 1986 has got to be reviewed in view of the fact that there was an approved scheme in for which did not authorise the increase in the number of trips of the vehicles belonging to the existing operators on the date of the scheme. The above observations in para 6 will reveal that the Hon''ble Supreme Court vide the Judgment delivered by Hon''ble Venkataramaiah C.J., opined and expressed the view that when there are approved schemes in force which did not authorise the increase of number of trips of the vehicle belonging to the existing operators on the date of the scheme then even if there was any agreement between the two State u/s 63, such agreement could not override the effect of the scheme, instead the scheme has to prevail and increase in the number of trips cannot be permitted and after taking this view the Court referred the matter to the Constitution Bench for review of the Judgment given in Civil appeal No. 4126/86 dated 24.1.1989. It is well settled principle of law if there are two decisions of the Supreme Court of the Benches consisting of same strength then

the later decision is to be followed and particularly when the earlier decision has been taken into consideration by the later Division Bench. In this view of the matter, that the Supreme Court Decision in the case of R. RAGHURAM v. JAI RAM being latest one than that given in KARNATAKA STATE ROAD TRANSPORT CORPORATION v. BAAI RAM, I feel bound to follow the principle laid down in R. RAGHURAM'S case. Thus considered in my opinion the application for increase in the number of trips cannot be granted by the Transport Authority and the Appellate Authority was justified in taking this view.

3. When I so opine that increase in the number of trips cannot be granted to a permit holder with reference to the route covered by an approved scheme, I find support from the Division Bench Judgment of this Court in W.A.No. 2280/853 AIR 1994 SC 790 decided by Hon'ble Mr. Justice S. Mohan C.J., and the Hon'ble Justice N.Y. Hanumanthappa where the same view has been taken. Similarly in the KSRTC v. KARNATAKA STATE ROAD APPELLATE TRIBUNAL AND ORS., W.A.No. 3092/86 decided on July 16th, 1990, the Division Bench of this Court has also followed the decision and the law laid down in R. Raghuram Vs. P. Jayarama Naidu and Others, . In that case, learned Single Judge relied on the decision in 1984 SC of Kolar Scheme had taken the view that so-long as 3rd respondent in that case had a valid permit he could seek for variation. The Division Bench following the principle of law laid down in the case of R. RAGHURAM v. P. JAYARAM NAIDU reported in 1990 SC 412 allowed the appeal and set-aside the Judgment of the learned Single Judge and opined that variation cannot be granted as sought in the permit for existing permit for extension of either route or variation in the number of trips. This decision of the Division Bench of this Court is binding on this Court as well.

4. In this view of the matter in my opinion, the State Transport Appellate Tribunal did not commit any error of law or jurisdiction by allowing the appeal filed by the State Transport Corporation or State Transport undertaking and in setting aside the order of State Transport Authority whereby the Transport Authority had varied the conditions of the permit and allowed increase in number of trips. The order of the State Transport Appellate Authority setting aside the order of the State Transport Authority is hereby affirmed and maintained. The Writ Petition in my opinion has got no merits and is hereby dismissed with costs.