

(2012) 09 KAR CK 0270
In the Karnataka High Court
Case No : Writ Appeal No. 2952 of 1997 (MV)

Neelakanteshwara Motor Service

APPELLANT

Vs

The Karnataka State Transport Appellate Tribunal, The
Karnataka State Transport Authority and The Managing
Director, Karnataka State Road Transport Corporation

RESPONDENT

Date of Decision : 22-09-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 104, 68 D (3), 80 (3)

Citation : (2012) 09 KAR CK 0270

Hon'ble Judges : Vikramajit Sen, C.J.;B.V. Nagarathna, J

Bench : Division Bench

Advocate : B.R. Sundararaja Gupta, for the Appellant; Basavaraj Karedy, Principal Government Advocate for R-1 and 2 and Shri. P.R. Ramesh, Advocate for Mr. Hareesh Bhandary Advocate for R-3, for the Respondent

Final Decision : Dismissed

Judgement

Vikramajit Sen, C.J.—This Appeal assails the concurrent conclusions arrived at by the writ Court as well as the Karnataka State Transport Appellate Tribunal ["KSTAT" for brevity] to the effect that the Karnataka State Transport Authority ["KSTA" for brevity] was not empowered or competent to vary the conditions of the existing permits by increasing their number of trips, post the nationalization of the concerned routes. By its decision dated 13.04.1987 the KSTA had permitted an increase by two additional trips in the existing inter state agreement of the petitioner pertaining to Bellary Scheme; and a direction to Secretary of the KSTA, Bangalore to assign suitable timings for all the four trips had been also issued. Reliance appears to have been placed on the Judgment in Karnataka State Road Transport Corporation, Bangalore Vs. B.A. Jayaram and Others, , as well as the Constitution Bench decision in Adarsh Travels Bus Service and Another Vs. State of U.P. and Others, which had the effect of the overruling the earlier decision of the smaller benches. A Stage Carriage Permit was granted to the Appellant on the interstate route between B.T. Project to Bellary via

Rayadurga, Kanakal, authorizing him to operate two trips which are equivalent to one round trip. The Bellary Scheme, nationalizing this route, was published on 18.04.1964. An inter State agreement was entered into between the States of Karnataka and Andhra Pradesh on 01.09.1975. On 06.11.1978 the Appellant sought for doubling the number of trips from 2 to 4 (being equivalent to two round trips). On 10.01.1980 Bellary Scheme specifically saved the grants that were in operation on that date. It appears that this Scheme was modified by the Notification which appeared in the Karnataka Gazette dated 07.05.1984 and is to the following effect:

The State Transport Undertaking will operate services on all the routes to the complete exclusion of other persons except in regard to the portions of inter district routes lying outside the limits of Bellary district. The existing permits holders on interstate routes may continue to operate such interstate routes, subject to the condition that their permits shall be rendered ineffective by the competent authority for the overlapping portion in the district of Bellary.

As mentioned above on 13.04.1987 the KSTA granted the Appellant's request for variation/increase in the trips which decision was set aside by the KSTAT on 22.03.1991 in URA No. 400/1987. Thereafter, in terms of the impugned Order, the writ petition No. 7719/1991, filed by the Appellant was dismissed with costs. Thereupon the Appellant had filed Writ Appeal No. 2952/1997 which, by Orders dated 06.06.1997, came to be dismissed. However, the Hon'ble Supreme Court set aside the Order of the Division Bench passed in Writ Appeal No. 2952/1997 only on the grounds that the reasons were not disclosed and the matter was remitted back for fresh consideration. This is how we are confronted with the controversy.

2. The provisions of law which are relevant for consideration are Section 57(8) of the Motor Vehicles Act, 1939 (which is in pari materia of Section 80(3) of the Motor Vehicles Act 1988); and Section 68(FF) of the Motor Vehicles Act, 1939 (which is in pari materia of Section 104 of the Motor Vehicles Act, 1988). The above provisions of the 1939 Act are reproduced below for facility of reference:

57: Procedure in applying for and granting permits:

(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 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.

68 (FF): Restriction on grant of permits in respect of a notified area or notified route: 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.

3. It appears to us that the conundrum stands conclusively unraveled by the decision of the Constitution Bench in *Adarsh Travels* in which it was laid down that once a Scheme stands published in relation to any route, be it in complete or partial exclusion of then existing routes, only the concerned State Transport Undertakings can operate services on the notified areas or routes, as per the Scheme itself. The permit originally granted to any person would be rendered ineffective. The permit holder cannot operate on any part or portion of the notified route or area merely on the ground that the permit as originally granted to him covered the notified route or area. Their Lordships specifically observed that if there is any need for protecting the traveling public from inconvenience, it was for the State Transport Undertaking and the Government to increase their own bus services. It may be noted that the appeals filed by the Private Operators were dismissed with costs. In view of the dictum of the Constitution Bench, the decision in *Jayaram* is otiose and overruled, and any analysis thereof will needlessly result in prolixity of our Judgment. We therefore desist from discussing the Judgment rendered prior to *Adarsh Travels*. This is also because of adumbrations to this effect in *R. Raghuram Vs. P. Jayarama Naidu and Others*, Supreme Court Cases 361, in these words:

3. In *Adarsh Travels Bus Service v. State of U.P.* a Constitution Bench of this Court has held that where a route is nationalized under Chapter IV-A of the Act, a private operator with a permit to ply a stage permit over another route but which has a common overlapping sector with the nationalized 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 authorize 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 authorizing 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 v. B.A. Jayaram 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 matters 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 existing permit does amount to grant of a new permit to operate one more stage carriage. Such a thing could not be permitted particularly in view of the decision in Adarsh Travels case. The construction on the statute placed by the decision of this Court in Karnataka State Road Transport Corporation case referred to above must be deemed to have been overruled in Adarsh Travels case. The prejudice to 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 coordination, 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.

4. For these very reason we also find it sufficient merely to mention, without more, the decisions of the Division Benches in KSRTC Vs. The Karnataka State Transport Authority [WP. Nos. 27594/1982 and 27595/1982] decided on 06.04.1983; The Karnataka State Road Transport Corporation Vs. The Karnataka State Transport Appellate Tribunal [W.A. No. 2280/1985] decided on 29.05.1990; K. Ananthraju Vs. The Karnataka State Transport Appellate Tribunal [W.A. No. 247/1986] decided on 14.03.1991; G.V. Lokanath Vs. North East Karnataka Road Transport Corporation [W.A. Nos. 5450-5456/2004] decided on 20.01.2005; and KSRTC Vs. R. Maheshwari ILR 2003 KAR 3562 wherein the Full Bench held that it is impermissible to grant any variation of the conditions of the Stage Carriage Permit, applying Adarsh Travels despite discussing Gajraj Singh etc. Vs. The State Transport Appellate Tribunal and others etc., . All these decisions actually militate against the proposition of law advanced by the learned counsel for the Appellant. Based on the above analysis we are also of the view that the decision in G.T. Venkataswamy Reddy and Others Vs. The Karnataka State Transport Authority, Bangalore and Others, is no longer good law. Reflecting back to the case in hand, there can be no manner of doubt that the Appellant has no legal right to seek for any variation or increase in the number of trips by the Bellary Scheme. We do not find any infirmity or illegality in the concurrent conclusions of the KSTAT dated 22.03.1991, in URA No. 400/1987 which in turn came to be

upheld by the learned Single Judge in the impugned Order dated 21.02.1997. In view of the pronouncements of the Constitution Bench in Adarsh Travels and subsequent decision, we also think it appropriate to dismiss the appeal with costs, inasmuch as it is devoid of merit.