

(1999) 03 KAR CK 0010

In the Karnataka High Court

Case No : Writ Petition No's. 27574, 27575, 27576, 27580 and 27870 of 1998

North-West Karnataka Road Transport Corporation, Hubli

APPELLANT

Vs

M/s. Durgamba Motors, Kundapura and Others

RESPONDENT

Date of Decision : 15-03-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Motor Vehicles Act, 1939 — Section 102, 68 (ii)

Citation : (1999) ILR (Kar) 2464 : (1999) 6 KarLJ 545

Hon'ble Judges : S.R. Venkatesha Murthy, J

Bench : Single Bench

Advocate : Sri S. Prakash Shetty, for the Appellant; Sri R.K. Hatti, High Court Government Pleader and Sri B.R.S. Gupta, for the Respondent

Judgement

1. In "these writ petitions by the State Transport Undertaking (for short, "S.T.U.") grant of stage carriage permit by the State Transport Authority (for short, "S.T.A.") on routes overlapping Uppunda, in the erstwhile district of Dakshina Kannada and now in Udupi District, and Bhatkal in North Kanara District, are questioned as being contrary to what is popularly called "Dharwad Scheme".

2. The writ petitioner, a S.T.U., has challenged the aforesaid grant, as being contrary to the scheme, besides raising a contention that the petitioner was not afforded an opportunity of contesting the claim for the grant of permit; that a route survey was not conducted for verification and overlap on the notified route Uppunda to Bhatkal and that the S.T.A., had no jurisdiction to entertain the application, muchless grant the permits sought.

3. There is no contest that the route/s applied for in the impugned grants overlap on the Route No. 160 Uppunda to Bhatkal or part under the Dharwar Scheme.

4. The approved scheme as published in the Mysore Gazette reads as follows:

"NOTIFICATION

No. RD 111 TMP 59, Bangalore, dated 11th July, 1959

Whereas, the Mysore State Transport Undertaking has published a scheme in the Mysore Gazette, on pages 481 to 488 of Part III-2 of the Gazette, dated the 26th February, 1959 u/s 68(ii) of the Motor Vehicles Act, 1939, and after considering the above scheme, the Government of Mysore hereby approves the scheme u/s 68(ii) of the said Act subject to the modification that it should come into force from the 16th July, 1959.

Now, therefore, the scheme so approved and modified is hereby published as required u/s 68(ii) of the said Act.

APPROVED SCHEME

1.

The area in relation to which the scheme is approved.

Dharwar and North Kanara Districts and part of Belgaum and Bijapur Districts.

2.

Whether City or town service or mofussil service:

City, town and mofussil service.

3.

The route or routes (with their starting points, terminal, intermediate stations and route length) in which the State Transport Undertaking will introduce its services to the exclusion of private operators.

As in statement appended & quot;.

(Only the relevant portion of the scheme for purposes of this case is extracted above).

5. Under Clause 3 a number of routes were included in the statement appended to the approved scheme. It is admitted that the routes are lying not only in the district of Dharwad, North Canara, parts of Belgaum and Byapur Districts but also in the district of Shimoga. The relevant route under the scheme is at SI. No. 160 Bhatkal to Uppunda. It is not, and cannot be, denied that this route lies partly in the district of Karwar and partly in the erstwhile district of Dakshina Kannada. Very recently the district of Udupi is carved out of the erstwhile district of the Dakshina Kannada. Presently the Route No. 160 Bhatkal to Uppunda would lie in the districts of Karwar and Udupi.

6. Suffice it to state that prior to the decision of the Supreme Court in Adarsh Travels Bus Service and Another Vs. State of U.P. and Others, , case interpretation of the schemes like the one in question was to the effect that "exclusion" mentioned in the scheme could not be regarded as total exclusion, unless the scheme expressly stated that the operation by the S.T.U., was for total

exclusion of private operators. On the basis of such interpretations of the scheme, permits came to be granted and validity of such permits granted were upheld. It is admitted on all sides that, though previously there were pronouncements as to the scope of the Dharwar Scheme by this Court there has not been any conclusive pronouncement regarding the scope of the Dharwar Scheme, by reason of the pronouncements being set aside in appeal, on the parties curtailing the routes to conform to the notified routes, at the stage of appeal and the appellate bench leaving the contention to be adjudicated in an appropriate proceedings.

7. In the case of *Mis. Adarsh Travels Bus Service*, supra, the Supreme Court has enunciated the law thus:

"6. A careful and diligent perusal of Section 68-C, Section 68-D{3) and Section 68-FF in the light of the definition of the expression "route" in Section 2(28-A) appears to make it manifestly clear that once a scheme is published u/s 68-D in relation to any area or route or portion thereof, whether to the exclusion, complete or partial of other persons or otherwise, no person other than the State Transport Undertaking may operate on the notified area or notified route except as provided in the scheme itself. A necessary consequence of these provisions is that no private operator can operate his vehicle on any part or portion of a notified area or notified route unless authorised so to do by the terms of the scheme itself. He may not operate on any part or portion of the notified route or area on the mere ground that the permit as originally granted to him covered the notified route or area.

.....

.....

.....On the other hand it is quite well known that under the guise of the so-called "corridor restrictions" permits over longer routes which cover shorter notified routes or "overlapping" parts of notified routes are more often than not misutilised since it is next high impossible to keep a proper check at every point of the route. It is also well known that often times permits for plying stage carriages from a point a short distance beyond one terminus to a point a short distance beyond another terminus of a notified route have been applied for and granted subject to the so-called "corridor restrictions" which are but mere ruses or traps to obtain permits and to frustrate the scheme.. ..".

It is clear that whatever may have been the interpretation of the scheme earlier, scheme for monopolistic operation of road transport services by S.T.U.; would have to be, interpreted in the manner laid down in *Adarsh Travels* case, referred to above.

8. It is sought to be contended on behalf of the respondents that the renewal of permit No. 24/JK/79-80 granted in favour of one Chandrashekara Nayak was questioned by the KSRTC, in a revision filed before the Karnataka State Transport

Appellate Tribunal and the Karnataka State Transport Appellate Tribunal by its order held that the Dharwar Scheme was one for total exclusion and therefore the renewal of the aforesaid permit was liable to be set aside being contrary to the scheme. Chandrashekar Nayak filed Writ Petition No. 29409 of 1994 challenging the rejection of renewal of the permit on the route Bhatkal to Mangalore. This Court by its order held that by virtue of the modification of the Dharwar Scheme dated 13-7-1992, the petitioner before it would be an inter-regional operator and being a saved operation was entitled to renewal of the permit. On the basis of this decision, the impugned permits have been granted and therefore it would not be open to the petitioners to challenge the validity of the grants now made.

9. On behalf of the respondents it was sought to be contended that the decision in Writ Petition No. 29409 of 1994 is not set aside by the Division Bench and this Court cannot examine the correctness of the decision without making a reference to the Division Bench.

10. The petitioner-S.T.U., contends that the order of the learned Single Judge relied upon was appealed against it and while dismissing the writ appeals, the Division Bench held that the learned Judge did not examine the scope of the scheme and kept open all the contentions to be urged at the time the renewal of the very same permits or at any time earlier. The order of the Division Bench in Writ Appeal No. 2006 of 1995, dated 26th August, 1997 filed against the decision in Writ Petition No. 29409 of 1994 reads as follows:

"So far as the first question is concerned, the learned Single Judge does not seem to have examined the scope of the scheme with reference to the route in question. Therefore, we keep open that question as also the point raised by the appellant as to whether the new Act would be applicable requiring counter-signature. That question also can be considered at the time of renewal. Keeping open these questions to be considered at the time of renewal, we dismiss this appeal. It is certainly open to the 3rd respondent to raise all such contentions available to him".

In *Karnataka State Road Transport Corporation v R.T.A. and Others*, where a similar question was raised, the Division Bench made the following observation:

"The effect of the terms of modification has not been as such considered by the learned Single Judge. All authorities appear to have proceeded on the basis that on the said route, the existing operators can operate. It is now argued that it is not the effect of such modification. Prima facie, there appears to be some basis for the appellant to urge such a contention. But, we do not propose to express any final opinion in the matter. Notwithstanding the order made by the learned Single Judge it would be appropriate for the authority concerned to examine this question with reference to the modified scheme and make appropriate orders or resolution thereto in accordance with law at the time of renewal or any other relief being granted".

On the basis of these observations, the Counsel for the State Transport Undertaking sought to contend that the order in writ petition of Chandrashekar Nayak, could not form the basis on which the impugned grant could be sustained. The contentions of the parties leads to the question as to whether the order of the learned Single Judge stood affirmed by the dismissal of the writ appeal or whether the finding of the learned Single Judge was set aside and at the same time, no relief was granted to the State Transport undertaking by keeping open the question till such time as the dispute surfaced again before the State Transport Authority or Road Transport Authority as the case may be.

11. In Commissioner of Income Tax, Bombay Vs. Amritlal Bhogilal and Co., , the Supreme Court has observed thus regarding the doctrine of merger:

"There can be no doubt that, if an appeal is provided against an order passed by a Tribunal, the decision of the Appellate Authority is the operative, decision in law. If the Appellate Authority modifies or reverses the decision of the Tribunal, it is obvious that it is the appellate decision that is effective and can be enforced. In law the position would be just the same even if the appellate decision merely confirms the decision of the Tribunal. As a result of the confirmation or affirmance of the decision of the Tribunal by the Appellate Authority the original decision merges in the appellate decision and it is the appellate decision alone which subsists and is operative and capable of enforcement".

12. The contention of the respondents has to be examined in the light of the observations referred to above. A perusal of the order in Writ Petition No. 24909 of 1994 would show that permits have been granted on the notified route Bhatkal to Uppunda on an assumption that the Dharwar Scheme was one of partial exclusion. The order would show that the Court merely held that the petitioner before it was an inter-regional operator and the route an inter-regional route and by the modified scheme he was entitled to continue the operation subject to restrictions placed by the modified scheme dated 13-7-1992. The Division Bench while dealing with the order in appeal before it held that the impugned order did not actually examine the scope of Dharwar Scheme and therefore all contentions of the State Transport Undertaking in regard to grant of permits were left open to be urged at a suitable time namely, when the renewal of the permit is sought and that the State Transport Authority would have to decide the issue independently. Having regard to the observations of the Division Bench regarding the order in Writ Petition No. 29409 of 1994, which is binding on the State Transport Authority, reliance on the order in Writ Petition No. 29409 of 1994, cannot be sustained. To say that the order in Writ Petition No. 29409 of 1994 still bound the State Transport Authority would be to go against the principle of merger of the original order with the appellate order. For all intents and purposes the appellate order in Writ Appeal No. 2006 of 1995 is the only operative order. The observation in the appellate order supersedes any observation/finding to the contrary in the order appealed against. In these circumstances, the contention on behalf of the respondents that the order of the learned Single Judge is still

valid and binds the State Transport Authority and consequently, the order of the State Transport Authority granting the permits impugned cannot be questioned, in my opinion, is not tenable.

13. The learned Counsel for the State Transport Undertaking sought to contend that the true scope of the Dharwad Scheme is spelt out clearly in the above extracted clauses (1) and (3) of the Dharwad Scheme. It is needless to state that clause (1) and (3) of the above scheme would have to be read together to determine the scope of the scheme. Clause (1) of the above scheme relates to the area in relation to which the scheme is approved; whereas clause (3) specifies the route or routes on which the State Transport Undertaking will introduce its services to the exclusion of private operators. The route or routes on which the State Transport Undertaking would operate its services undisputably spreads over the districts of Dharwar, North Canara, part of Belgaum, part of Bijapur Districts and also includes routes which lie within the district of Shimoga. An examination of the routes appended to the approved scheme would show that they emanate from the districts specified in column No. 1 of the approved scheme, and terminate in districts beyond the named districts in Item No. 1 of the approved scheme. The operation of the approved scheme is not confined to the districts specified in column No. 1 of the approved scheme, but extends to other neighbouring districts such as Shimoga and Mangalore. When once the scheme is approved, all the routes on which the State Transport Undertaking will introduce services to the exclusion of private operators would constitute notified routes. The operation of stage carriage services is regulated to the extent permitted by the scheme.

14. The validity of the Dharwar Scheme as modified by the notification dated 13-7-1992 was assailed in Writ Petition No. 26891 of 1992 and by an order dated 11th December, 1997 the modification of the scheme as per notification dated 13th July, 1992 was upheld by this Court. The modified Dharwar Scheme by the notification dated 13-7-1992 reads as follows:

"The number of existing stage carriages on each route with the number of trips and names of their operators.

The State Transport Undertaking will operate the service on all routes to the complete exclusion of other persons except the existing number of services in regard to the portions of inter-district routes lying in the district of Shimoga:

Provided that in the case of operation of services by permit holders who have already been granted permits by the Transport Authorities prior to the date of publication of the modified scheme, on inter-regional routes overlapping the road section of the notified route lying in the districts of Dharwad and Uttar Kannada, the operators on such route shall not be entitled to pick up or set down passengers in such portions of the route which overlap on any portion of the notified route lying in the districts of Dharwad and Uttar Kannada".

What is significant to note is by this amendment dated 13-7-1992, the existing

permit holders on the inter-district routes were entitled to operate on the route overlapping portions of the notified route lying in the districts of Dharwar and North Canara without picking up or setting down passengers. Otherwise after the issuance of notification dated 13-7-1992 there is no jurisdiction conferred on the State Transport Authority or Road Transport Authority to entertain applications for grant of fresh permits to private operators on the notified route under the Dharwar Scheme. This exception has been incorporated in the modified Dharwar Scheme to prevent hardship to those existing operators on the notified routes, who had been granted permits on the then perception of the scope of Dharwar Scheme, by reason of decisions rendered by this Court. It is significant to note that the amendment of the Dharwar Scheme as modified by the notification dated 13-7-1992 emphasises the scope of the scheme, as extending beyond the area specified therein. The vital clauses (1) and (3) of the Dharwar Scheme and the subsequent amendment clearly emphasises the true nature of the scheme, viz., that it is a partly area and partly route scheme.

15. The modified scheme of 13-7-1992 spells out that the State Transport Undertaking would operate its services on all routes to the complete exclusion of other persons except the existing number of services in regard to portions of the inter-district routes lying in the district of Shimoga. Even in regard to services operating on the date of the modified scheme, on portions of the inter-district routes lying in the district of Shimoga, there is a condition that so far as the road portions of the notified routes lying in the district of Dharwad and Uttar Kannada, the operators would not be entitled to pick up or set down passengers. Thus it is clear that in regards to inter-district route, lying in the districts of Shimoga, Dharwad and Uttar Kannada, the protection to S.T.U. is confined to only those road portions of notified route lying within the districts of Dharwad and Uttar Kannada, by imposing corridor restrictions. Otherwise there is no dilution of the scheme.

16. Without any dispute the Route No. 160 Bhatkal to Uppunda lies within the district of Uttar Kannada and Udupi district. The exemption granted under the Notification dated 13-7-1992 will not be of any avail to any of the respondent-grantees as no part of the route specified in their permits lies within the district of Shimoga. Consequently the route Uppunda to Bhatkal does not admit of an exception being made in favour of private operators.

17. A scheme was formulated in accordance with Chapter VI of the Motor Vehicles Act of 1988 and the Motor Vehicles Act of 1939 and the State Transport Authority can only grant permits to the extent permitted by the scheme, and not otherwise, as laid down in Adarsh Travels case, *supra*.

18. The jurisdiction of the State Transport Authority to grant stage carriage permits overlapping notified routes is dependent on the Dharwad Scheme itself. If the scheme, as in this case, does not empower the S.T.A. or the Road Transport Authority to grant permits overlapping the notified route, the said Authorities do not get jurisdiction to entertain the application, muchless exercise

the power to grant permits overlapping the notified route. Sub-section (2) of Section 103 of the Act reads as follows:

"103. (2) For the purpose of giving effect to the approved scheme in respect of a notified area or 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 insofar as such permit relates to the notified area or notified route".

A reading of the above sub-section would show that the authority would have to examine whether the route applied for, overlaps any notified route and if it finds that the application for grant or renewal of the permit is in violation of the approved scheme, it has to refuse to entertain an application for grant or renewal of such a permit and even reject any such application as may be pending on the day the scheme becomes operative. The power conferred by Section 103(2) of the Act is not confined to a one time exercise at the inception of a notified scheme. This power is exercisable as long as permits are sought and are capable of being granted by the Authorities, including claims for renewals of permit already granted. Indeed the Supreme Court has held that objection relating to overlap on a notified route could be raised even after several renewals of permits.

19. The State Transport Authority or the Regional Transport Authority being quasi-judicial authorities are obliged to find their jurisdiction before they seek to exercise the power conferred on them by the statute. Indeed that is the reason why this Court laid down in *Karnataka State Road Transport Corporation, Bangalore Vs. Karnataka State Transport Authority, Bangalore and Another*, , following the decision of the Supreme Court in *Gajraj Singh etc. Vs. The State Transport Appellate Tribunal and others etc.*, , how the applications for grant of permits should be dealt with. To say the least the State Transport Authority has not complied with the directions contained in the Judgment.

20. When the S.T.A. seeks to decide a claim for a permit on a route, which is alleged to be a notified route under an approved scheme, the S.T.A. must specify in its order how the grant proposed to be made is permitted by the approved scheme in question.

21. The learned Counsel for the respondent-grantees sought to contend that this Court ought not to exercise the power under writ jurisdiction having regard to

the fact that an alternative efficacious remedy is available to the petitioners. This contention, in my opinion, is untenable having regard to catena of decisions on the point against the respondents. Suffice it to quote one decision of this Court in Karnataka State Road Transport Corporation and Another Vs. Karnataka State Transport Authority and Another, , in para 9 of the Judgment wherein it is observed as follows:

"In our opinion, the refusal of the "STA" to consider the application of the petitioner dehors the inter-State agreement on the grounds set out in the order would show that there is a failure to exercise jurisdiction vested on it besides constituting an error of law apparent on the face of the record. Even where an equally efficacious alternative remedy exists, where, however, fundamental rights are affected where rules of natural justice are violated, or where there is a failure on the part of the authority concerned to confine itself within the bounds of its legitimate jurisdiction or where there is a failure to exercise a jurisdiction vested in it or where there is an error of law apparent on the face of the record, a person aggrieved can invoke the extraordinary jurisdiction of this Court under Article 226 without reference to any remedy however equally efficacious it be. The existence of an alternative remedy does not oust the jurisdiction of the High Court under Article 226 when there is an equally efficacious alternative remedy is not a rule of law, but is a principle the Courts have evolved for the guidance of their own discretion".

In the instant case, the exercise of the power by the State Transport Authority to grant the permits impugned constitutes an error of law apparent on the face of the records inasmuch as the State Transport Authority never tried to find out whether the Route 160 of Bhatkal to Uppunda was a route notified under Dharwar Scheme conferring jurisdiction on it to grant the permits sought. In the circumstances, the contention of the contesting respondents is without force and is rejected.

22. A contention was raised that a number of permits have been granted on the route in question by the authorities and so the grant of permits impugned is not open to question by the State Transport Undertaking. This contention in my opinion is wholly untenable. The repetition of illegality by the granting authorities does not vest such grants with validity which they do not otherwise possess. A series of illegalities committed by the granting authorities cannot modify the scheme, for the scheme can only be modified in accordance with the procedure laid down in Chapter VI of the Act. The Supreme Court in Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others, , observed as follows:

"24. That apart, Article 14 has no application or justification to legitimise an illegal and illegitimate action. Article 14 proceeds on the premise that a citizen has legal and valid right enforceable at law and persons having similar right and persons similarly circumstanced, cannot be denied of the benefit thereof. Such person cannot be discriminated to deny the same benefit. The rational

relationship and legal back-up are the foundations to invoke the doctrine of equality in case of persons similarly situated. If some persons derived benefit by illegality and had escaped from the clutches of law, similar persons cannot plead, nor the Court can countenance that benefit had from infraction of law and must be allowed to be retained. Can one illegality be compounded by permitting similar illegal or illegitimate or ultra vires Acts? Answer is obviously no.

28. A host of other decisions in that context have laid the same principle. It is not necessary to burden the judgment any further. Suffice it to hold that the illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalised. In other words, judicial process cannot be abused to perpetuate the illegalities".

It is clear that any number of void grants by the authorities cannot legitimise them or those that are impugned here. Fortunately Section 103 of the Act of 1988 empowers the granting authorities to undo the mischief and prevent heart burn of some person operating stage carriage services, while those involved in litigation being denied such illegal operation. It is indeed the duty of the State Transport Authority to exercise its power to revoke grants made in contravention of an approved scheme, especially when the matter is decided by this Court.

23. It is, therefore, ordered that the authorities who have granted permits overlapping the routes Bhatkal to Uppunda or any part thereof should secure all the permits and curtail the routes to the extent of overlap on the notified route as aforesaid. It is needless to state that the granting authorities would have to take action after hearing the parties concerned. It is ordered that the process of review of all grants for operation on the route Uppunda Bhatkal shall, in any event, be completed by the Regional .Transport Authority or the State Transport Authority, as the same may be, within a period of six months from the date of receipt of this order and report compliance thereafter to this Court.

24. Admittedly the Dharwar Scheme was first published in the year 1959 and the only modification that came to be effected in the scheme was on 13-7-1992 that too so far as regards the Shimoga sector only. Even after lapse of nearly 50 years, no attempt has been made to modify the scheme u/s 102 of the Act to alleviate the hardship caused to the travelling public. The magnitude of illegality committed in the grant of permits contrary to the scheme and ignored by the State, only emphasizes the stark reality namely the need for modification of the scheme in question, and in general all the schemes, for Monopolistic operation by the S.T.U. The growth of population, the establishment of industries and other development works really change the pattern of movement of the travelling public and any approved scheme which does not take into consideration these and other changes affecting smooth flow of traffic are bound to cause great hardship and inconvenience to the travelling public, rendering the schemes counter-productive. The need to modify the schemes at regular intervals is highlighted by the observations of the Supreme Court in Adarsh Travels case,

supra, at page 325.

". . . .If indeed there is any need for protecting the travelling public from inconvenience as suggested by the learned Counsel we have no doubt that the State Transport Undertaking and the Government will make a sufficient provision in the scheme itself to avoid inconvenience being caused to the travelling public".

25. It is to be hoped that in the interest of the travelling public, a general review of the schemes formulated for Monopolistic operation by S.T.U. would be undertaken at the earliest. Otherwise the very schemes formulated for Monopolistic operation by S.T.U. would become oppressive for the travelling public, if not such an event has not already taken place and at the same time frustrate the very object of monopolistic operation of the stage carriage services by the S.T.U., viz., to provide an efficient, adequate, economical and properly coordinated road transport service.

26. Having regard to the finding that under the approved scheme operation on the route Bhatkal to Uppunda is exclusive for the S.T.U., all the grants impugned herein would have to be curtailed to the extent of the overlap on the route Bhatkal to Uppunda or any part thereof with effect from the date of this order by reason of the impugned grant being declared to be without jurisdiction and void. The granting authorities shall have to take steps to curtail the routes in the permits impugned herein. It would be open to the operators to seek appropriate modification of the timings on the curtailed route as aforesaid.

27. In terms stated above, the writ petitions are allowed.