

**(1956) 10 AP CK 0001**  
**In the Andhra Pradesh High Court**  
**Case No : Writ Appeal No. 84 of 1956**

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|--------------------------------|----|------------|
| P. Balaramakrishna Rao         | Vs | APPELLANT  |
| P. Suryaprakasa Rao and Others |    | RESPONDENT |

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**Date of Decision :** 09-10-1956

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 47, 47(1), 48A, 59(1), 64A

**Citation :** AIR 1957 AP 978

**Hon'ble Judges :** Subba Rao, C.J; Satyaisrar Vijana Raju, J

**Bench :** Division Bench

**Advocate :** P. Babulu Reddy and P. Sadasiva Reddy, for the Appellant; M.B. Rama Sarma for Respondent No. 1 and N. Rajeswara Rao, Govt. Pleader for Respondent No. 2 and 3, for the Respondent

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## Judgement

Satyanarayana Raju, J.—This is an appeal from the order of our learned brother Mr. Justice Bhimasankaram quashing the order passed by the Government in G.O. Ms. No. 700 (Public Works and Transport Department), dated the 17th of March, 1956.

2. The facts which have given rise to this appeal may be briefly stated: That Appellant and the first Respondent are transport operators in the Krishna District. They are near relatives, the Appellant being the brother's son of the first Respondent. While the Appellant's father was operating his bus M. D. K. 181 on the Vijayawada Bandar route, the first Respondent was operating his stage carriage M. D. K. 221 on the Vijaya-wada-Jaggayyapeta route. In 1944, the owners of the two buses and some others formed themselves into a private limited company under the name of Sri Ramamohan Motor Service Co., Ltd.

While the buses were being run in the name of that company, the Managing Director obtained permission from the Transport Authorities in March, 1945, for the interchange of the stage carriage M. D. K. 181 from the Vijayawada-Bandar route to the Vijayawada-Jaggayyapeta route and M. D. K. 221 from the Vijayawada-Jaggayya-peta route to Vijayawada-Bandar route. Thus the

Appellant's stage carriage which had a Permit originally to run to the Vijayawada-Bandar route has come to ply on the Vijayawada-Jagga-yyapeta route; and similarly the first Respondent's bus which originally had a permit to ply on the Vijayawada-Jaggayyapeta route has come to ply on the Vijayawada-Bandar route. Subsequently Sri Ramamqhan Motor Service Co. Ltd., was amalgamated with another transport company and the amalgamated transport service was run in the name of Sri Saraswati Motor Transport Co.

While so, M. D. K., 181 was replaced by M. D. K. 1389 and M. D. K. 221 was replaced by M. D. K. 1789. In the year 1948, Sri Saraswati Motor Transport Co., went into liquidation and M. D. K. 1389 was handed over to, the Appellant's father with the permit to operate on the Vijayawada-Jaggayyapeta route; and M. D. K. 1789 was handed over to the first Respondent to operate on the Vijayawada-Bandar route. On the 18th of May, 1954, the Appellant and first Respondent presented an application to the Regional Transport Officer, Vijayawada, praying for the mutual transfer of their permits to their original routes. On the 25th of May, 1954, "the first Respondent, however, wrote a letter to the Regional Transport Authority stating that he withdrew the application for transfer and asked for a return of his application.

In this proceeding, dated the 18th of June, 1954, the Regional Transport Officer, Vijayawada, informed the parties that further action in the matter was dropped in view of the withdrawal of the application by the first Respondent. Against that order, the Appellant filed a revision petition before the Government. . In G. O. Ms. No. 2028, Public Works and Transport Department, dated the 14th of December, 1954, the Government set aside the order of the Regional Transport Officer holding that the Authority competent to sanction or refuse the transfer of permits is the Regional Transport Authority and not the Regional Transport Officer and remitted the case to the Regional Transport Authority for disposal according to law. Onr the 10th of August, 1955, the Regional Transport Authority made the following order:

Both the parties are "not agreed about"the transfer consequent on certain disputes between them. It is not for this Authority to go into the merits of the said dilutes and srive a finding on the claims of the: different parties. Inasmuch as there is no mutual agreement now, there is no need "for this authority to proceed further and accordingly (they) decline to transfer the permits". Against; this order, the Appellant again preferred a irevision petition to the Government. In and by G. O. Ms. No, 700 (Public Works and Transport Department) dated the 17th of March, 1956, the Government held that it was just and proper thai the" Appellant should be enabled to ply his bus on the Vijayawada-Masulipatam route and the first Respondent made to go back to the Vijaya-wadarJaggayyapeta route in conformity with the position existing prior to the amalgamation of the companies.

The Government set aside the order of the Regional Transport Authority holding that its refusal to sanction the interchange of routes was improper and directed

the Regional Transport Officer, Vijayawada, to permit the Appellant's bus M. D. K. 1389 to ply on the Vijayawada-Masulipatam route and to change the route of the Respondent's bus M. D. K. 1789 as Vijayawada-Jaggay-yapeta. The first Respondent filed an application under Article 226 of the Constitution for quashing the order of the Government.

3. Mr. Justice Bhimasankaram held that the Regional Transport Authority took the right view and there was nothing either illegal or irregular or improper in its order so as to call for interference by the Government in exercise of its powers u/s 64-A of the Motor Vehicles Act. The learned Judge found that the Government by its order was only seeking to enforce an agreement, a matter manifestly beyond its jurisdiction. On those findings, he held that the order of the Government was without jurisdiction and must be quashed and directed the issue of a writ accordingly. Hence this appeal.

4. Mr. Babulu Reddy, learned Counsel for the Appellant, raised the following contentions. The view taken by the learned Judge that the Government in seeking to enforce an agreement acted in excess of its jurisdiction, is not warranted by the relevant statutory provision; that the Government properly exercised the jurisdiction in it u/s 48-A of the Act without any reference to the validity or otherwise of the agreement; that the variation of a route made u/s 48-A is not a matter affecting public interests and that the conditions prescribed u/s 47 are not therefore attracted.

5. In order to appreciate these contentions, it is necessary to refer to the relevant provisions of the Motor Vehicles Act (hereinafter referred to as the Act") and the rules made thereunder (hereinafter referred to as "the Rules").

6. Section 59 (1) of the Act provides for the transfer of permits while S. 61 provides for the transfer of a permit on the death of a holder.

7. Section 59 (1) reads thus: "Save as provided in Section 61, a permit shall not be transferable for one person to another except with the permission of the Transport Authority: which granted the permit and shall not without such permission operate to confer on any person to whom a vehicle covered by the permit is transferred any right to use that vehicle in the manner authorised by the permit."

8. The material rules relating to the transfer of a permit are Rules 196, 197 199 and 200(a), and it is necessary to set out those rules: 196. When the holder of a permit desires to transfer the permit to some other person under Sub-section (1) of Section 59 of the Act, he shall, together with the person to whom he desires to make the transfer, make joint application in writing to the Transport Authority by which the permit was issued, setting forth the reasons for the proposed transfer. Such joint application shall be accompanied by a treasury receipt for one hundred rupees.

197. On receipt of an application under Rule 196 the Transport Authority may

require the holder and the other party to state in writing whether any premium, payment or other consideration arising out of the transfer, is to pass or has passed between them and. the nature and amount of any such premium, payment or other consideration.

199. The Transport Authority may summon both the parties to the application for the transfer of a permit to appear before it and may, if it deems fit, deal with .the application as if it were an application for a permit.

200 (a) If the Transport Authority is satisfied that the transfer of a permit may properly be made, it shall call upon in writing the holder of the permit and the other party to forward within one month from the date of receipt of the order sanctioning the transfers, Parts A and B of the permit and the certificate of registration of the vehicle with the particulars of the transfer of ownership of the vehicle stated thereon. In the event of the parties concerned failing to produce the relevant records within the period of one month aforesaid, the Transport Authority shall revoke the sanction:

Provided that the Secretary of the Transport Authority may, if satisfied, on an application made to him in writing by the parties concerned within the period of one month aforesaid that there is sufficient ground, grant an extension or extensions of time not exceeding four months in the aggregate, for the production of the records.

9. Now, the essential prerequisite for the transfer of a permit from one person to another under Rule 196 is the filing of a joint application accompanied by the payment of the prescribed fee to the Transport Authority by which the permit is issued. On receipt of such an application, the Transport Authority may require the holder of the permit & the intended transferee to state in writing whether any premium, payment or other consideration has been paid or received. It is open to the Transport Authority to summon both the parties to the application to appear before it, but it is not obligatory on the Authority to do so. It is also open to the Transport Authority to deal with the application as if it were an application for a permit if it deems fit. Here again, it is not obligatory on the Authority to treat the application as if it were an application for a permit. These provisions do not contemplate a withdrawal of the joint" application by either of the parties.

10. Anew rule, numbered as Rule 199A, which is in the following terms, has been subsequently enacted by the Government:

When the consent of either or both the parties to the trrrnsfer of a-permit is withdrawn before transfer is sanctioned the Transport Authority shall drop further proceedings in regard to the transfer of that permit:

Provided that when either of the parties withdraws such consent the Transport Authority shall before dropping such proceedings inform the other rty of the withdrawal of consent:

Provided further that this rule shall not apply respect of applications which are

pending on the A "date of coming into force of this rule.

11. But this new rule is not retrospective and it does not govern pending applications. It is common ground that this rule has no application to the instant case.

12. The contention of the learned Counsel for the first Respondent is that the Government cannot compel a transfer, that it is not open to it to enforce agreements for transfer or to enquire into the truth or validity of those agreements and when one of the parties to the joint application resiles from the agreement, then the Transport Authority has no jurisdiction to consider the application, he argued that on a plain reading of the rule, the "desire" referred to in Rule 196 must subsist upto the date of the final disposal of the application by the Regional Transport Authority.

13. On a proper construction of the language employed, in R. 196, it is manifest that the word "desires" qualifies the expression "to transfer the permit". What all the rule contemplates in a joint application which posits an anterior agreement between the parties for a mutual transfer, and the "desire" to transfer the permit is embodied in the joint application. It is the joint application that gives jurisdiction to the Regional Transport Authority and once that jurisdiction is conferred, the Authority can decide the question whether the agreement is true.

It is true that even if there is an agreement between the parties who desire the transfer, it is not obligatory on the Regional Transport Authority to direct a transfer or interchange of permits. But the fact that one of the parties resiles from the agreement does not by itself deprive that Authority of the jurisdiction to deal with the matter. In the present case, however, the Regional Transport Authority refused to deal with the application on the ground that both the parties are not agreed about the transfer consequent on some disputes between them and that it is not for the Authority to go into the merits of the disputes and give a finding on the claims of the parties. The Transport Authority is not right in its view that it had no jurisdiction to deal with the matter.

14. In exercising the powers of revision vested in it u/s 64-A, the Government could have gone into the question as to whether the agreement was true and recorded a finding or it could have directed the Regional Transport Authority to consider that question. But the Government did not choose to follow either of these courses. The order of the Government cannot, therefore, be supported.

15. The learned Counsel for the Appellant sought to support the order of the Government by contending that the Government properly exercised the jurisdiction vested in it u/s 48 figs without any reference to the validity or otherwise of the agreement. Section 48-A which empowers the Government to vary the conditions attached to; a stage carriage permit, itself makes mention of Clause (d) Of Section 48 which itself refers to the conditions set forth in Sub-section (1) of Section 47 Sub-section (1) of Section 47 lays down the conditions which must be taken into consideration in deciding whether to grant or refuse a

stage carriage permit and the first of the conditions enumerated therein is the interest of the public generally. The same conditions as would apply to the grant or refusal of a stage carriage permit must also apply In the; case of its variation. To read the rule as the learned Counsel for the Appellant wants us to read it, would result in ignoring altogether the provisions of Section 47 which enumerates the considerations germane to the grant or refusal of stage carriage permits.

16. The learned Counsel for the Appellant then contended that the considerations germane to the grant or refusal of stage "carriage permit mentioned in Section 47 (1) of the Act, are satisfied in the present case, inasmuch as" it would" be by the public interest to allow an operator who had previous experience of a particular route, to operate upon that route. It must be stated at the outset that that was not the basis of the order made by the Government. There is no mention anywhere in the Government Order, that any of the conditions laid down in Section 47 (1) were satisfied. This contention of the learned Counsel for the Appellant cannot, therefore, be accepted.

17. In the result we agree with the learned Judge in his conclusion that the impugned .order of the Government must be set aside. But this would not preclude the Government from allowing either of the courses open to it, viz., (1) to Consider the question as to whether the agreement between the Appellant and the 1st "Respondent is true or (2) to remit the case to the Regional Transport Authority to consider that question. We hold that the appeal must fail but in view of .our conclusion that the Regional Transport Authority failed to exercise the jurisdiction vested in It by law, we direct that there be no order as to costs either here or before the learned Judge.