

(2001) 11 AP CK 0058
In the Andhra Pradesh High Court
Case No : WA No's. 983 and 1099 of 1999

P. Manjula

APPELLANT

Vs

State Transport Appellate Tribunal, Hyderabad and Others

RESPONDENT

Date of Decision : 09-11-2001

Acts Referred:

Andhra Pradesh Motor Vehicles Rules, 1964 — Rule 282(2)
Andhra Pradesh Motor Vehicles Rules, 1989 — Rule 258(2)
Constitution of India, 1950 — Article 226

Citation : (2002) 2 ACC 86 : (2002) 1 ALD 37 : (2002) 1 ALT 317 : (2002) 1 APLJ 1

Hon'ble Judges : S.B. Sinha, C.J.;V.V.S. Rao, J;S.R. Nayak, J

Bench : Full Bench

Advocate : V. Narasimha Reddy and P. Rajagopalachary, for the Appellant;
Government Pleader and K. Harinath, SC for APSRTC, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—Both these appeals involving common questions of law and facts were taken up for hearing together and are being disposed of by this common judgment. The petitioners in the writ petitions are the appellants.

Facts in Writ Appeal No. 983 of 1999:

2. The appellant herein was holder of stage carriage permit on town service route Kintali to Collectorate in the town of Srikakulam. The said route was subsequently varied as Collectorate to Pillalavalasa on 26.2.1985. For the said purpose, prior permission of the Transport Commissioner, Hyderabad as is required under Rule 282 (2) (ii) of the Andhra Pradesh Motor Vehicles Rules, 1964 (for short "1964 Rules"), which is equivalent to Rule 258 (2) (ii) of the Andhra Pradesh Motor Vehicles Rules, 1989 (for short "1989 Rules"). Such prior permission is required if the town service route is varied to such an extent that it would be beyond eight kilometres from the municipal limits.

3. The permit was transferred in favour of the appellant on 23.5.1987. By reason of an order dated 11.11.1987, the said permit was cancelled by the second respondent in implementation of the approved scheme in G.O.Ms.No.1093 and 1094 dated 9.11.1987. A revision petition was filed thereagainst before the first respondent, which was marked as R.P.No.248 of 1987, and it was partly allowed by an order dated 5.12.1987 holding that the Regional Transport Authority has no jurisdiction to grant variation of mofussil service route to town service and the appellant's town service route from Collectorate to Kintali was set aside. By reason of an order dated 28.11.1987 the second respondent sought to curtail the route of the appellant between Srikakulam to Kintali. A revision petition was filed thereagainst before the first respondent, which was marked as R.P.No.250 of 1987, and it was dismissed. In the writ petition filed against the said order, by reason of an interim order dated 5.7.1988, the appellant was permitted to ply the vehicle on the original town service route.

Facts in Writ Appeal No. 1099 of 1999:

4. The appellant herein was granted a permit to ply on the town service route Kintali to Collectorate in Srikakulam town in the year 1982. A variation was sanctioned in the year 1985 in terms whereof the distance covered by the route exceeded eight kilometres beyond the municipal limits. No permission of the Transport Commissioner in terms of Rule 282 (2) (ii) of 1964 Rules was obtained. He had been plying his transport vehicle on the extended portion since 12.8.1985. By reason of an order dated 11.11.1987 the said permit was cancelled by the second respondent in implementation of the approved scheme in G.O.Ms.Nos. 1093 and 1094 dated 9.11.1987. A revision petition was filed thereagainst before the first respondent, which was marked as R.P.No.260 of 1987, and it was dismissed. In the writ petition filed by the appellant against the said order, by reason of an interim order dated 10.5.1988, he was permitted to operate the vehicle in between Kintali to Collectorate in Srikakulam town.

5. It is admitted that taxes payable for the mofussil service routes have been paid by the appellants.

6. The contention of the learned Counsel for the appellants is that in the absence of any order of conversion of route from town service to mofussil service, they cannot be deprived of the benefit granted under the aforementioned scheme.

Question:

7. The only question, which arises for consideration, is as to whether the writ petitioners/appellants having plied their vehicles in the extended route - treating the same as mofussil service - and having paid the requisite taxes therefor, can now be permitted to turn round and contend that such extension in the absence of order of conversion was illegal.

Findings:

8. Before adverting to the aforementioned question, we may notice that the

entire case of the appellants is based upon a Full Bench judgment of this Court in Andhra Pradesh State Road Transport Corporation Vs. State Transport Appellate Tribunal and Others, wherein it has been held that having regard to the difference in the nature of permits in town service and mofussil service, if the scheme issued under Chapter IV-A of the Motor Vehicles Act, 1939 (for short "1939 Act") refers only to mofussil service, the persons operating in the town service are excluded from the operation of the said scheme.

9. It is well settled that a scheme under the Act must be given its full effect (See: RAHUL TOM v. K.S.R.T.C. 2001 (3) Ker.LT 261 (FB)).

10. In this case, as noticed hereinbefore, the writ petitioners/appellants have all along been treating the service as mofussil service and not as town service. They derived the benefit therefrom. They have voluntarily paid the taxes treating the route to be mofussil service route. Only because no permission was obtained from the Transport Commissioner or no order of conversion was passed, the same by itself, in our opinion, would not entitle the writ petitioners/ appellants from changing their stand and contending that they had been plying their vehicles on the said route illegally; It is a well settled principle of law that he who takes the benefit out of an illegality cannot at a subsequent stage be permitted to resile from the said benefit and contend that he had taken the said benefit under an illegal order. We may notice that even the contention raised before us had not been raised in the revision petition or before the learned single Judge. Had such a contention been raised, the respondents herein could have shown that the order of conversion has been passed and they had paid the taxes voluntarily so as to avail the benefit.

11. A learned single Judge of this Court in P.S. PRASADA RAO v. REGIONAL TRANSPORT AUTHORITY 1997 (2) ALD 727, has held:

"Having got the route converted into a town service route and enjoyed the benefit of the said order till the date of nationalisation, it is not open to the petitioner to turn round and claim that it should be treated as mofussil route in view of the orders of the High Court. It must be remembered that this route had been specifically referred to in the approved scheme as one of the nationalised routes and the petitioner never raised any objection for its nationalisation. His permits were cancelled and he stopped plying his vehicle since 1990. It is well settled that an approved scheme is law and contrary to the approved scheme no one has a right to ply on the nationalised routes."

Even assuming that no order of conversion was passed, the appellants would be estopped or precluded from contending otherwise inasmuch as it was on their representation the route was extended. The town service has a definite connotation. In terms of the provisions of the Motor Vehicles Act, 1988 and the rules framed thereunder, they should operate within the municipal limits of the town and would ordinarily, except in cases of prior permission, cannot ply their buses beyond a distance of eight kilometres from the municipal limits of the

town. The appellants were aware of the aforementioned legal position, but despite the same they applied for extension of their route. It will bear repetition to state that they paid the taxes payable for mofussil service also. The doctrine of estoppel by representation will, therefore, squarely apply in their case.

12. In *Rajendra Singh Vs. State of Madhya Pradesh and others*, , the Apex Court has referred to an earlier decision in *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*, , and held in the following terms:

"It has been held by a Constitution Bench of this Court in *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*, , that "(T) he writ jurisdiction of High Court under Article 226 of the Constitution is not intended to facilitate avoidance of obligations voluntarily incurred." At the same time, it was observed that the licencees are not precluded from seeking to enforce the statutory provisions governing the contract. It must, however, be remembered that we are dealing with parties to a contract, which is a business transaction, no doubt governed by statutory provisions. While examining complaints of violation of statutory rules and conditions, it must be remembered that violations of each and every provision does not furnish a ground for the Court to interfere. The provision may be a directory one or a mandatory one. In the case of directory provisions, substantial compliance would be enough. Unless it is established that violation of a directory provision, has resulting in loss and\\or prejudice to the party, no interference is warranted. Even in the case of violation of a mandatory provision, interference does not follow as a matter of course. A mandatory provision conceived in the interest of a party can be waived by that party, whereas a mandatory provision conceived in the interest of public cannot be waived by him. In other words, wherever a complaint of violation of a mandatory provision is made, the Court should enquire-in whose interest is the provision conceived. If it is not conceived in the interest of public, questions of waiver and\\or acquiescence may arise-subject, of course, to the pleadings of the parties. This aspect has been dealt with elaborately by this Court in *State Bank of Patiala and others Vs. S.K. Sharma*, and in *Krishan Lal Vs. State of Jammu & Kashmir*, on the basis of a large number of decisions on the subject. Though the said decisions were rendered with reference to the statutory Rules and statutory provisions(besides the principles of natural justice) governing the disciplinary enquiries involving Government servants and employees of statutory corporations, the principles adumbrated therein are of general application. It is necessary to keep these considerations in mind while deciding whether any interference is called for by the Court-whether under Article 226 or in a suit. The functions of the Court is not a mechanical one. It is always a considered course of action.

13. The conduct of the petitioners amounts to approbation and reprobation and would disentitle them to any relief. The law on this point is now well settled. In *Suneeta Aggarwal Vs. State of Haryana and Others*, , it has been held:

"...The appellant having appeared before the Selection Committee without any

protest and having taken a chance, we are of the view that the appellant is estopped by her conduct from challenging the earlier order of the Vice-Chancellor. The High Court was justified in refusing to accord any discretionary relief in favour of the appellant."

14. In view of the aforementioned authoritative pronouncement, we are of the opinion that the learned single Judge has rightly held that the writ petitioners cannot be permitted to approbate and reprobate at the same time.

15. As regards the contention of Mr. Venkata Ramana to the effect that this Court by an interim order has allowed the writ petitioner to ply the bus from Kintali to Collectorate in Srikakulam town, we are of the opinion that such an order could not have been passed keeping in view the provisions of Chapter IV-A of the 1939 Act. The scheme is a law. No interim order can be passed in violation of law. No interim order should be passed, which in terms whereof a person would be contravening a legal provision. Although the writ petitioners/ appellants might have been operating the service pursuant to the aforementioned order, but having regard to our findings aforementioned the appellants cannot be permitted to get the benefit of an interim order as they have utterly failed to show existence of an legal right in themselves to ply their buses despite the aforementioned scheme.

16. For the foregoing reasons, the answer to the aforementioned question is rendered in negative. We, therefore, find no merit in these writ appeals, which are dismissed accordingly with costs.