
(2016) 04 AP CK 0076

In the Andhra Pradesh High Court

Case No : Writ Petition No. 26220 of 2003

P.Ch. Sahoo (Died) per LR

APPELLANT

Vs

The State Transport Appellate Tribunal

RESPONDENT

Date of Decision : 19-04-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 87

Citation : (2016) 6 ALT 694 : (2017) 1 AndhLD 299

Hon'ble Judges : Sri A. Ramalingeswara Rao, J.

Bench : Single Bench

Advocate : Sri P. Durga Prasad, Counsel, for the Respondent No. 3; Govt. Pleader for Transport (TG), for the Respondent Nos. 1 and 2; Sri S. Arifulla, Counsel, for the Petitioners

Final Decision : Disposed Off

Judgement

Sri A. Ramalingeswara Rao, J. - Heard Sri S. Arifulla, learned counsel for the petitioner, learned Government Pleader for Transport for the respondents 1 and 2 and Sri P. Durga Prasad, learned Standing Counsel for the third respondent - Corporation.

2. The States of Orissa and Andhra Pradesh entered into an interstate agreement in respect of inter-state route Parlakhimidi to Berhampur via Garabanda extended up to Chatrapur and notified the same under Notification Nos.4147/T, dated 29.03.1975, and 15582/T, dated 24.09.1991. The agreement enabled the grant of five stage carriage permits by the Orissa State. In view of the same, the State Transport Authority, Orissa granted a pucca stage carriage permit to the petitioner, by an order dated 27.02.1981. The said permit was renewed from time to time till 06.03.1990. He filed an application to renew his permit beyond 06.03.1990 as per Section 81 of the Motor Vehicles Act, 1988 (for short ?the Act?). Since there was delay in disposal of the renewal application by the State Transport Authority, Orissa, the Orissa authorities granted temporary permits, during the pendency of the renewal application, till 19.12.1994. The said permits

were being countersigned by the second respondent from time to time.

3. While so, the State Transport Authority, Orissa rejected the renewal application of the petitioner by an order dated 02.12.1994 on the ground that there was an ex parte money decree pending against the petitioner. The same was questioned before the State Transport Appellate Tribunal, Orissa, in MV Appeal No.87 of 1994 and the said appeal was dismissed. The petitioner filed Writ Petition OJC No.3073 of 1995 in the Orissa High Court. The said writ petition was disposed of, following the ratio laid down by the Hon^{ble} Supreme Court in *Gajra Singh v. State Transport Appellate Tribunal*, AIR 1997 SC 412 : (1997) 1 SCC 650, by directing the State Transport Authority, Orissa to consider the application of the petitioner, if an application for stage carriage permit was made under the Act. But, when the petitioner preferred an appeal in Civil Appeal No.1828 of 1997, the Hon^{ble} Supreme Court confirmed the said order. Pursuant to the order of the Orissa High Court, the application of the petitioner was considered and he was granted pucca stage carriage permit valid from 19.11.1999 to 18.11.2004 to ply on the interstate route Parlakhimidi to Berhampur extended up to Chatrapur by the State Transport Authority, Orissa. Accordingly, the petitioner filed an application before the second respondent seeking countersignature and pending consideration of the grant of pucca countersignature, the second respondent granted temporary permits continuously since 09.02.2000 till his application was considered and granted on 31.05.2003. Consequently, he continued to run his vehicle bearing registration No.OSG 9191 on the inter-state route. Challenging the orders of the second respondent dated 31.05.2003, the third respondent preferred a revision in RP No.211 of 2003 before the first respondent. The first respondent, by its order dated 03.12.2003, set aside the order of the second respondent dated 31.05.2003 granting countersignature to the vehicle bearing registration No.OSG 9191 to ply on the inter-state route. Challenging the said orders of the first respondent, the present Writ Petition was filed.

4. The second respondent filed a counter affidavit admitting that the petitioner was an existing operator on the inter-state route Parlakhimidi to Berhampur extended up to Chatrapur (via) Garabanda, Mandasa and Itchapuram. He was granted a pucca stage carriage permit for vehicle bearing registration No.OSG 9191 by the Orissa authorities in the year 1981 and it was countersigned by the second respondent up to 1994. Orissa authorities granted temporary permits after 1994.

They were also countersigned by the second respondent up to 19.12.1994. It was also admitted that the petitioner challenged the refusal of renewal of pucca stage carriage permit in the Orissa High Court and when the same was disposed of in favour of the petitioner, the matter was carried to the Supreme Court and the Supreme Court dismissed the appeal. Thereafter, a pucca stage carriage permit was issued to the petitioner valid from 09.11.1999 to 08.11.2004. In pursuance of the same, the petitioner filed an application before the second

respondent for countersignature. The petitioner and the third respondent were given a hearing by the Secretary, State Transport Authority, Hyderabad on 20.12.1999 and the Orissa authorities in their letter dated 21.01.2000 clarified that the petitioner was not considered as a fresh and new applicant and his application was considered in the existing fifth vacancy as per the provisions of inter-state agreement published in GO Ms. No.172, dated 23.07.1992 and requested to countersign the same. The petitioner was given successive temporary permits valid up to 06.10.2000 or till the matter was decided by the AP State Transport Authority whichever is earlier. It was further stated that the inter-state agreement enabled the Orissa authorities to issue five permits and they have already issued five pucca permits on the said route. The petitioner was holding pucca permit on the said route from 07.03.1981 to 06.03.1990 and thereafter, he was again operating his services on the strength of temporary permits pending renewal of permit from 09.03.1990 to 19.12.1994. After the orders of the Hon'ble Supreme Court and on the application of the petitioner, pucca permit was granted against permit No.30/85 held by one Baman Ch. Sahoo, valid from 01.08.1985 to 31.07.1988. The Secretary, State Transport Authority, Orissa recommended for grant of countersignature of pucca permit in favour of the petitioner stating that the petitioner was a subsisting operator on the day of nationalization scheme promulgated by the State of Andhra Pradesh. Accordingly, the countersignature was granted on 31.05.2003 valid up to 18.11.2004. However, when the third respondent filed a revision before the first respondent herein, the first respondent, in its order in RP No.211 of 2003 dated 03.12.2003, allowed the revision petition and set aside the impugned order of the second respondent. Consequent to the order of the first respondent the operation of stage carriage permit of the petitioner was stopped. But, by virtue of the interim orders of this Court passed in WPMP No.33123 of 2003 in the present Writ Petition dated 17.12.2003, the vehicle of the petitioner was permitted to ply on the said route until further orders.

5. The pucca stage carriage permit issued earlier was renewed up to 18.11.2014 and, thereafter, the petitioner along with his son applied for transfer of the permit in favour of the son of the petitioner. The transfer was effected for a further period of five years from 19.11.2014 to 18.11.2019. The second respondent countersigned the same with effect from 10.12.2014. Thereafter, the petitioner died on 19.08.2015 and the son of the petitioner filed WPMP No.8503 of 2016 to come on record as the second petitioner and the same is ordered along with the present order.

6. It is contended by the learned counsel for the petitioner that when a pucca stage carriage permit was issued by the Orissa authorities, it is incumbent on the second respondent to grant countersignature of the same, as the original pucca permit comes within the number of permits agreed upon under the inter-state agreement. He further submits that as per Section 88 of the Act, the first respondent has no right to set aside the counter signature of the second respondent and hence, the order of the first respondent is liable to be set aside.

7. Learned counsel appearing for the third respondent, on the other hand, submits that the petitioner was not an existing permit holder as on the date of nationalization of the route and hence he is not entitled for countersignature.

8. In the light of the above rival contentions it has to be seen whether the petitioner is entitled for countersignature on the pucca stage carriage permit issued by the Orissa authorities or not.

9. The facts of the case are not in dispute. The inter-state agreement was entered between the States of Andhra Pradesh and Orissa. It was notified under notification dated 29.03.1975 and 24.09.1991. It provides for five stage carriage permits each in favour of State of Orissa and State of Andhra Pradesh. The petitioner was issued a pucca stage carriage permit on 27.02.1981 and was plying the vehicle till 02.12.1994. In the meanwhile, the Motor Vehicles Act, 1988 came into force and the permit granted under the Act 4 of 1939 expired as such he has to file fresh application under the provisions of 1988 Act. He filed WP OJC No.3421 of 1993 before the High Court, which directed the reconsideration of the application for renewal. When the State Transport Authority, Orissa rejected his renewal application, the said rejection was upheld by the State Transport Appellate Tribunal, Orissa on 15.03.1994 against which the petitioner filed Writ Petition OJC No.3073 of 1995 before the High Court of Orissa. The said Writ Petition was disposed of on 09.08.1996 by directing the reconsideration of the application for renewal and also the application of the contesting respondents. After disposal of the Writ Petition by the Orissa High Court, the petitioner preferred Civil Appeal No.1828 of 1997 before the Hon'ble Supreme Court and the said appeal was dismissed with the observations that in view of the decision of the Hon'ble Supreme Court in Gajraj Singh's case (supra), if any permit was renewed under the provisions of the 1988 Act, the renewal must be treated to be a temporary permit under Section 87 of the Act and before expiry of the same the parties have to make an application afresh under 1988 Act and seek permit in accordance with law. Thereafter, the State Transport Authority, Orissa, at Cuttack granted the permit on 18.11.1999 with effect from 19.11.1999 to 18.11.2004. Pending consideration of the pucca countersignature by the second respondent, temporary permits were issued, by virtue of which the petitioner was plying the vehicle. Later on, on 31.05.2003 the second respondent granted pucca countersignature in favour of the petitioner and an endorsement was made on 25.06.2003. But when the third respondent filed RP No.211 of 2003, the same was allowed on 03.12.2003.

10. In this context, the order passed by the first respondent dated 03.12.2003 has to be considered. The first respondent framed a point whether the petitioner herein can be treated as an existing permit holder for the countersignature to be made on the permit issued by the State Transport Authority of Orissa State and whether the conditions of the schemes in GO Ms Nos.605/75, 1110/76, 584/78, 1111/87 and 1159/87 which prohibit the grant of permits to new entrants are not applicable to the case. Ultimately, after considering the case law cited by

both the parties, the first respondent allowed the revision preferred by the third respondent with the following observations.

"The contention of learned counsel for the 2nd respondent is that the counter signature granted to the 2nd respondent is in the existing vacancy as such the same is not contrary to the provisions of MV Act. This contention is not tenable since that is not the point involved in this case. On account of rejection of the application for renewal by the STA of Orissa State the 2nd respondent stopped plying his bus in 1990 and as per the directions of the Honourable Supreme Court a fresh application was filed and it was disposed of by the STA of Orissa State. Whether the counter signature granted by STA of AP State is contrary to the provisions of MV Act, 1988 as schemes prohibit the grant of counter signature is the question involved in this revision. S stated supra provisions of Chapter VI MV Act of 1988 overrides the provisions of other chapters. The conditions of the schemes referred to above by the APSRTC save only holders of existing permits but not the new applicants seeking permits on the inter-state routes. Therefore grant of counter signature through the impugned order holding that the 2nd respondent is holder of an existing permit is contrary to the provisions of Chapter VI of MV Act 1988.

The merits of the revision, as discussed above, necessitate the interference by this tribunal to set aside the impugned order.

In the result, the revision allowed and the impugned order is set aside."

11. In the light of the observations made by the first respondent, two issues arise for consideration;

(i) Whether the first respondent has got jurisdiction to examine the validity of pucca permit granted by the State Transport Authority, Orissa at Cuttack and deny the countersignature on such permit and

(ii) Whether the first respondent can go into the issue of examining the status of the petitioner as to whether he is an existing permit holder entitled for a pucca permit or a fresh applicant who is debarred from applying for permit.

12. These issues are interconnected and hence considered together.

13. At this stage, it is relevant to notice the letter issued by the State Transport Authority, Orissa, recommending the case of the petitioner for countersignature. After issuing the permit on 18.11.1999, the Transport Commissioner-cum-Chairman, State Transport Authority, Orissa, at Cuttack addressed a letter to the second respondent for countersignature on the permit granted stating that as per the notification, each State is entitled to issue five permits and four permits were already issued to four persons in respect of four vehicles and in the remaining vacancy, permanent permit was issued in favour of the petitioner. It was also stated that he was previously holding permanent stage carriage permit with effect from 07.03.1981, which was renewed up to 06.03.1990. Thereafter, he was operating on the route on the strength of temporary permits pending

renewal of his renewal application from 09.03.1990 to 19.12.1994. In view of the direction of the Hon'ble Supreme Court in Civil Appeal No.1828 of 1997, the petitioner filed fresh application for grant of permanent permit on this route and accordingly permanent permit No.3 of 1999 was granted in his favour in conformity with the reciprocal transport agreement. It was categorically stated that the petitioner was a subsisting operator on the date of nationalization scheme which was promulgated by the State of Andhra Pradesh vide GO Ms No.1111, dated 09.11.1987 and GO Ms No.1107, dated 09.11.1987. On seeking further clarification by the second respondent, another letter was addressed on 21.01.2000 by the Orissa authorities stating that permanent permit was granted to the petitioner against the existing vacancy which was subsisting prior to publication of the scheme of nationalization and it cannot be earmarked for a specific permit holder under the provisions of law, and as such he was not considered as fresh and new applicant as he was a permanent holder on the date of nationalization. Keeping the said communication into consideration, the second respondent countersigned by proceedings dated 31.05.2003.

14. Section 88 of the Act deals with validation of permits for use outside region in which it was granted. The relevant portions of the said section read as follows.

88. Validation of permits for use outside region in which granted.- (1) Except as may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region shall not be valid in any other region, unless the permit has been countersigned by the Regional Transport Authority of that other region, and a permit granted in any one State shall not be valid in any other State unless countersigned by the State Transport Authority of that other State or by the Regional Transport Authority concerned:

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(2) Notwithstanding anything contained in sub-section (1), a permit granted or countersigned by a State Transport Authority shall be valid in the whole State or in such regions within the State as may be specified in the permit.

(3) A Regional Transport Authority when countersigning the permit may attach to the permit any condition which it might have imposed if it had granted the permit and may likewise vary any condition attached to the permit by the authority by which the permit was granted.

(4) The provisions of this Chapter relating to the grant, revocation and suspension of permits shall apply to the grant, revocation and suspension of countersignatures of permits:

Provided that it shall not be necessary to follow the procedure laid down in section 80 for the grant of countersignatures of permits, where the permits granted in any one State are required to be countersigned by the State Transport Authority of another State or by the Regional Transport Authority concerned as a result of any agreement arrived at between the States after complying with the

requirements of sub-section (5).

(5) Every proposal to enter into an agreement between the States to fix the number of permits which is proposed to be granted or countersigned in respect of each route or area, shall be published by each of the State Governments concerned in the Official Gazette and in any one or more of the newspapers in regional language circulating in the area or route proposed to be covered by the agreement together with a notice of the date before which representations in connection therewith may be submitted, and the date not being less than thirty days from the date of publication in the Official Gazette, on which, and the authority by which, and the time and place at which, the proposal and any representation received in connection therewith will be considered.

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15. A perusal of the above proviso to sub-section (4) makes it clear that the procedure laid down in Section 80 need not be followed after complying with the requirements of sub-section (5). It is not in dispute that the inter-state agreement was published in the official Gazette. Section 88 deals with the procedure in applying for and granting permits. After notification of the inter-state agreement, in view of the proviso to sub-section (4) the procedure for applying for and granting permits is not applicable for countersignature. As stated above, the inter-state agreement provides for grant of five pucca stage carriage permits and the permit of the petitioner is one of the five permits granted by the Orissa State Authorities. When once the number is not crossed, it is not open to the countersigning authority to go into the nature of the grant of permit before granting countersignature. The second respondent rightly granted the countersignature but the first respondent travelled beyond the jurisdiction for granting countersignature and examined the issue with regard to status of the petitioner as to whether he was an existing operator or not. In my view, such an enquiry is not warranted at the time of countersignature, in view of the clear language employed in proviso to sub-section (4) of Section 88 of the Act.

16. Learned counsel for the respondents relied on a decision of the Hon^{ble} Supreme Court reported in *TN Raghunatha Reddy v. Mysore State Transport Authority*, 1970(1) SCC 541. The said decision does not lay down any law which is relevant for the purpose of deciding the present case except the proposition that the issuance of permit pursuant to a scheme is only a ministerial act, but not a quasi-judicial function.

17. But, when the issue with regard to power to countersign came up before a learned single Judge of this Court in *E. Ramadoss v. Regional Transport Officer, Nellore*, AIR 1972 AP 116, it was as follows.

"It is the case of the Government Pleader that the Regional Transport Officer, Nellore, is not bound by the decision of the State Transport Appellate Tribunal Madras and that, whatever might be the effect of that order in so far the State of Madras is concerned, it cannot compel the Regional Transport Officer of this state

to counter-sign so as to renew the permits for a period of five years from 10.02.1968. The route for which the permits have been renewed is recognised by both the States and tax has been paid to the home State i.e., the State of Madras. The inter state permits were granted as a result of the agreement arrived at between the two States of Madras and Andhra Pradesh. By reason of the inter-state agreement, when once a valid permit is issued or renewed by the transport authorities of the State of Madras, a competent officer of this State has necessarily to counter-sign the permit. So long as it is a valid permit and the vehicle operates in accordance with the conditions of the permit granted under the agreement, the countersigning officer in this State cannot ignore that agreement and say "I am not bound to countersign" merely for the reason that his counter-part in the other State has renewed the permit for a period of five years. This attitude of the Regional Transport Officer, Nellore, runs counter to the notification referred to above and to the spirit and content of the inter-State Agreement entered into between the two States. The regional Transport Officer, Nellore, had no alternative but to countersign, when once tax is paid to the other State i.e., the home State and a valid renewal of the permits is obtained for a period of five years; and the refusal on the facts of these two cases is clearly not warranted. I therefore, direct the Regional Transport Officer, Nellore to countersign the renewal of the permits so as to make the renewal valid from 10.02.1968."

18. In *A. Venkatakrishnan v. State Transport Authority, Kerala*, (2004) 11 SCC 207, the Supreme Court considered the scope of Sections 80 and 88. The Supreme Court after considering the view taken in *Ashwani Kumar v. Regional Transport Authority, Bikaner*, (1999) 8 SCC 364, held that the proviso appended to sub-section (4) of Section 88 of the Act must be read conjointly with sub-sections (5) and (6) of Section 88 of the Act and it means that there should be an agreement for creation of inter-state routes.

19. In this case, as stated above, there is no dispute with regard to notification of the scheme and entering into an agreement by the State of Orissa and the State of Andhra Pradesh. The agreement provides for grant of five pucca stage carriage permits authorised by Orissa State Government. The Orissa State Authorities recommended the case of the petitioner for countersignature to the second respondent and the second respondent, accordingly, countersigned. In such circumstances, it is not open to the first respondent to travel beyond the ministerial act of the countersignature and examine the validity of the pucca stage carriage permit issued by the Orissa authorities. The countersigning authority cannot have jurisdiction to examine the validity of the permit issued by the competent authority, which has jurisdiction to issue the permit.

20. In view of the same, the order of the first respondent dated 03.12.2003 is liable to be set aside and is, accordingly, set aside.

21. The Writ Petition is, accordingly, allowed. However, in the circumstances, no costs.

22. As a sequel thereto, the miscellaneous petitions, if any pending in this Writ Petition, shall stand closed.