

(1963) 10 MAD CK 0033

In the Madras High Court

Case No : Writ Appeal No"s. 106 to 111 of 1962

P.M.ST.P.L.CT. Palaniappa Chettiar

APPELLANT

Vs

E.S.S.S. Varusai Muhammad Rowther

RESPONDENT

Date of Decision : 04-10-1963

Acts Referred:

Motor Vehicles Act, 1988 — Section 43

Citation : AIR 1965 Mad 54

Hon'ble Judges : S. Ramachandra Iyer, C.J;Ramakrishnan, J

Bench : Division Bench

Judgement

Ramakrishna, J.

(1) These six writ appeals arise from the order of Srinivasan J. in six petitions, which comprise of three pairs. Each pair appertains to the grant of

variation in the route of stage carriage permit. According to an order of the State Government issued under S. 43-A(2) of the Motor Vehicles Act,

in G. O. No. 91 Home dated 5-1-1962, the State Government extended the existing route of 48 miles in length between Udukottai to

Manapparai, by tacking to it an extra distance of 43 miles, upto Esanttam. W. P. 229 of 1962 was for a writ of certiorari to quash this government

order, and W. P. 230 of 1962 was for a writ of mandamus to direct the Regional Transport authority not to give effect to this Government Order.

These two writ petitions are the subject matter of W. A. 106 and 107 of 1962. The second pair (W. P. Nos. 159 and 160 of 1962 leading to W.

A. 108 and 109 of 1962) arises out of Government order No. 28 Home dated 3-1-1962, by which a pre-existing route from stature to

Thiruvengadam was directed to be extended upto, Sankarankoil. The two relief"s like those mentioned above were sought in this pair of writ

petitions. The third pair (W. P. 53 and 54 of 1962 leading to W. A. 110 and 111 of 1962) deal with Government order No. 4376 Home dated

14-12-1961, by which a pre-existing route Paganeri to Nattarasankottai was varied by extending the route as the Paganeri to Madurai via

Nattarasankottai and Sivagangai.

(2) We will briefly put down the prior facts which led to the passing of the impugned Government Orders in the three pairs of writ petitions. In W.

P. 229 and 230 of 1902, the petitioner, Palaniappa Chettiar had a permit on certain routes in Ramanathapuram and Thiruchirapalli Districts. One

M. A. K. Motor Service, the first respondent had a permit from Pudukottai to Manapparai and from Pudukottai to Tiruchi. He applied to the

Regional Transport authority for the variation of the route Pudukottai to Thiruchirapalli to be extended to Palayam, and he also applied for the route

Pudukottai to Manapparai extended upto Esanatham. He was prepared to have the extra trips, which he was having on the pre-existing routes,

curtailed. When this application was pending before the Regional Transport authority for disposal, the petitioner was one of the objectors, but

while the enquiry was pending, the State Government passed the order impugned, purporting to act under S. 43-A(2) of the Act, directing the

Regional Transport authority of Tiruchirappalli and Madurai to vary the two routes in the manner requested by the first respondent.

(3) In W. P. 159 and 160 of 1962, it was contended that the first respondent in the two petitions had applied to the Regional Transport authority

for extending the route, but the application was dismissed in 1956. Then he applied in 1957 and got the extension upto a place called

Thiruvengadam. Again in 1960 he applied for an extension from Thiruvengadam to Sankarankoil. The petitioner objected. However, the Regional

Transport authority recommended the proposal but it was not approved by the Transport Commissioner. While the matter was at this stage, the

Government passed the impugned order under S. 43-A (2) of the Act.

(4) In the third pair of the writ petitions similar grounds were urged to attack the validity of the Government Order permitting the extension of the

route.

(5) The first contention of the petitioners before Srinivasan J was this Section 43A(2) of the Motor Vehicles Act under which the State

Government issued the impugned orders, was a provision introduced in the Motor Vehicles Act by an amendment by the State Legislature in 1954.

the Central Legislature, by a subsequent amendment in 1956, under Act C of 1956, enacted S. 57(8) of Motor Vehicles Act. It was contended

that, to the extent that S. 43-A(2) was found to be repugnant to the Central enactment mentioned above, it should be held that the provisions of S.

43-A(2) would stand automatically abrogated. This would make the Government Orders referred to above, invalid. The second contention was

that even if the relevant portion of S. 43-A(2) was not void for repugnancy, the State Government had exercised their power in a colorable manner

to benefit certain individuals and the orders were therefore vitiated by mala fides.

(6) The learned Judge (Srinivasan J.) negated both these contentions, and the petitioners have come in appeal before us. The same two points

mentioned above were reiterated before us, for supporting the appeals. We proceed to consider them below.

(7) Section 43-A(1) and (2) may be put down, so that the specific provisions in S. 43-A(2) may be considered in their proper perspective.

Section 43-A(1): The State Government may issue such orders and directions of a general character as it may consider necessary, in respect of

any matter relating to road transport, to the State Transport authority or a Regional Transport authority; and such Transport authority shall give

effect to all such orders and directions.

(2) The State Government may, in a consideration of the matters set forth in subsection (1) of S. 47, direct any Regional Transport Authority or

the State Transport authority to open any new route or to extend an existing route or to permit the additional stage carriages to be put, or to reduce

the number of stage carriages, on any specified route.

Prior to the amendment in 1954, S. 43-A contained only the portion extracted above as 43-A(1). Section 43-A(2) was a new addition to the Act

by the amendment effected by the State Legislature in 1954. In 1956, the Parliament passed Act C of 1956 making substantial alterations to

several provisions of the Motor Vehicles Act. Section 57(8) was added in this connection and it reads thus:

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 services above the specified maximum, 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 of 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"".

Prior to the introduction of S. 57(8), the Regional Transport authorities were dealing with application of the kind envisaged in S. 57(8) under rule

208 of the Motor Vehicles Rules, which reads thus:

208(a) Upon an application made in writing by the holder of any permit, the Transport authority may at any time, in its discretion, vary the permit

or any of the conditions thereof subject to the provisions of sub-rule (b)"".

(b) If the application is for the variation of the permit by the inclusion of an additional vehicle or vehicles or if the grant of variation would authorise

transport facilities materially different from those authorised by the original permit, the Transport authority shall deal with the application as if it were

for a permit;

Provided that nothing contained in this rule shall prevent the Transport authority or its Secretary if authorised in this behalf from summarily rejecting

an application for the variation of the stage carriage permit so as to provide transport facilities on a road which has been or its certified to be unfit

for motor vehicular traffic by an officer not below the rank of a Divisional Engineer of the Highways department"".

The Regional Transport authorities, while dealing with these applications for variation of the conditions of a permit by the inclusion of a new route

or for variation of the existing route, were, in fact, treating them as applications for the grant of a new permit, issuing notices to the interested

parties and also publishing a notification, by adopting the procedure in S. 47 for dealing with applications for a new permit.

After arriving at a decision whether the required new route or variation of the route should be granted, the Regional Transport authorities used to

submit their decision to the Transport Commissioner for approval. After such

approval had been obtained, they used to advertise again for the grant of the permit, and then dispose of the applications, according to the procedure prescribed in S. 57 of the Act. That such a practice was followed in the present case also is seen by a recital of the facts in the case of W. A Nos. 108 and 109 of 1962, where at the first stage, the Regional Transport authority recommended the proposal, but the Transport Commissioner did not approve of it A precise account of the procedure adopted by the Regional Transport authorities is summarised at page 129 of the Full Bench decision in Swami Motor Transport (Private) Ltd. Vs. Raman and Raman (Private) Ltd. and Others, .

.....the application of the appellant (for variation of the route) was notified under S. 47 of the Motor Vehicles Act. The procedure to be observed in respect of notification under this section has been provided by way of Standing orders..... apart from what is contained in the section itself. It has also been held that the procedure in S. 47 (adopted at the first stage) is merely to decide whether or not it is necessary in the interests of the public to vary or extend any route without reference to any particular operator; where as the procedure in S. 57 (which is second stage) is with a view to decide which operator is to be given the variation of the route in respect of which buses, if the proposal to vary or extend is approved of and the order passed is a judicial one." It is common ground in all these petitions that the matter had not reached the second stage above mentioned at the time, when the Government passed the orders impugned under S. 43-A(2) of the Act. As observed in the above Full Bench decision, at the stage where the Regional Transport Authority, Relying on the procedure indicated in S. 57(8) notifies the application of a particular person for variation of a route as if it was an application for a new permit. Only the first stage in the disposal of the application is in contemplation, that is the stage, where the Regional Transport authority decides whether the variation of the route is necessary in the light of the considerations set out in S. 47 of the act, which include the interests of the public, to the locality and so on. At that stage, no decision could be taken as to whether the applicant was to get the benefit of the permit for the new route or some one else. Objections could be heard only with reference to the variations of the route, but not about the merits of the applicants. It is also

admitted to have been the practice that decisions taken at the stage by the Regional Transport authority, are subject to the approval of the State Transport authority, the procedure being treated as one where the actual question of the grant of permit to a particular operator was not in issue.

(8) In the case now before us, the State Government issued notifications under S. 43-A(2) in some cases when the matter was pending at the first stage mentioned above before the Regional Transport authority, and in some cases even though that stage was over, the actual notification calling for application for permits for the new route had not been issued. It is the intervention of the State Government by issuing orders under S. 43(2) that is the substance of the attack made in the writ petitions, on the ground of repugnancy between the provisions of S. 57(8) introduced by the Central Government and the provisions of Sec. 43-A(2) introduced by the State enactment.

(9) The principles to be applied for finding out whether there is repugnancy in such a situation are well known. They are:

1. Whether there is direct conflict between the two provisions;
2. Whether the Parliament intended to lay down an exhaustive code in respect of the subject matter replacing the Act of the State Legislature; and
3. Whether the law made by Parliament and the law made by the State Legislature occupy the same field"" Deep Chand Vs. The State of Uttar

Pradesh and Others, .

It is also laid down that there is a presumption in favour of the validity of every legislation and every effort should be made to reconcile the

conflicting legislations and consider both, so as to avoid their being repugnant to each other, and care should be taken to see whether the two do

not really operate in different fields without encroachment, AIR 1939 74 (Federal Court)

(10) Now it is clear on a perusal of the Central act C of 1956, that Parliament did not lay down an exhaustive Code in respect of the entire subject

matter of legislation in regard to the control of motor vehicles. They took up only particular provisions in the existing law to rectify any defect in

their working, by way of making amendments. There is also no question of the law made by the Parliament and the law made by the State

Legislature occupying the same field, because this enactment namely, the Motor

Vehicles Act, though initially it was a Central Act when it was passed in 1939, had become the subject matter of amendments effected thereto from time, both by the Central Parliament, because the subject is one which, falls in the Concurrent List of the Constitution. Therefore the repugnancy of two provisions in the Act one introduced by the State Legislature by an amendment and other by the central Parliament also by an amendment, should be examined not from an abstract point of view of the fields being concurrent, but in the light of the actual provisions found in the two amendments. Thereafter the State enactment could be struck down as repugnant, only after every effort had been made to reconcile the two, and it is found that the effort is not feasible and that the two enactment could not stand together.

(11) Srinivasan J. examined the two enactments in the light of the principles laid down above and came to the conclusion that there was no repugnancy. He expressed his by conclusion thus:

I am not satisfied that the Central Act C of the 1956 enacted an exhaustive code with regard to the extension of an exciting route or that the

inclusion of a new route by variation of the condition of a permit contemplated in S. 57(8) deals only with the variation of the conditions of a permit

by the inclusion of a new route, while the extension of an existing route contemplated under S. 43-A(2), though it might partly cover the field in the

sense that the route is altered does not deal with the grant of or the variation of any permit. If the area of operation of the two provisions in this

regard is not identical, it cannot be said that S. 43-A(2) is in any way repugnant to S. 57(8) of the Act".

(12) Section 43-A(2) deals with a general power in the Government (?) to alter or vary routes without reference to the qualifications to the

qualification of particular applicants for permits. Assuming that the reference in Sec 57(8) to conditions of a permit, includes the route over which

the permit is to operate, and that therefore an application to vary the conditions of a permit will include also a right to get the route altered or varied

that provision cannot be considered as being in conflict with the general power of the Government under S. 43-A(2). The view expressed by

Srinivasan J., appears to us to be reasonable in the light of the principles laid down above.

(13) Apart from this, subsequently, a Full Bench of this court by a majority, in S.V. Natesa Mudaliar, Proprietor, S.L.N.S. Transports Vs. Sri

Dhanapal Bus Service Private Ltd. and Others, examined the scope of S. 57(8) and other related provisions of the Motor Vehicles Act. The Full

Bench reached the following conclusions:

1. The route for which stage carriage permit is granted is not one of the conditions attached to it, but is part of permit itself.
2. Section 57(8) is only a procedural provision being practically a substitute of the old rule 208(a);
3. Section 57(8) consists of three parts and provides what application should be treated as an application for the grant of a new permit

The first category comprises applications to vary the conditions of any permit other than a temporary permit by the inclusion of a new route or

routes in a new area. The second comprises applications in regard to stage carriage permit for increasing the number of services above the

specified maximum. The third comprises applications in the case of a contract carriage permit or a public carrier permit for increasing the number

of vehicles covered by the permit. The first category uses the expression "any permit". Necessarily even a stage carriage permit would fall within its

ambit. But if the route is not a condition of the permit relating to a stage carriage, then obviously that group I category should have regard only to

permits in regard to other kinds of transport vehicles like contract carriage or a public carrier.

(14) Because of the above conclusion of the Full Bench, it would follow that in this case the Regional Transport authority had no power to vary the

route in exercise of its powers under S. 57(8) treating it as an alteration or change of the conditions of the permit. Consequently there will be no

question of any conflict or repugnancy between S. 57(8) and S. 43-A(2) because they deal with different subjects in so far as the variation or

alteration of an existing route for which a permit has been granted is concerned. We therefore confirm the decision of the learned judge on this

point for the reasons given above.

(15) So far as the mala fides of the Government are concerned, no other point was urged before us except that, when the Government issued the

orders in question, in some cases the matter was pending before the Regional

Transport authorities, and in some other cases, the Regional

Transport authorities had taken one view and the State Transport authority had taken a different view. But no other ground had been alleged or

made out to show how the Government were actuated by mala fides. Without any data, other than the mere fact, when the Government issued the

orders acting within the scope of their general power under S. 43-A(2) applications were pending at different stages before the Regional Transport

authorities, it will not be proper to reach the conclusion that the Government Orders were issued mala fide. This point is also found against the

appellants.

(16) In the result the appeals are dismissed with costs.

(17) Appeals dismissed.