

(1995) 03 KL CK 0040

In the High Court Of Kerala

Case No : O.P. No's. 1550, 1774 and 1817 of 1995-N

Quilon Dist. Private Bus Operators Association and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 20-03-1995

Acts Referred:

Motor Vehicles Act, 1988 — Section 68(3)

Citation : AIR 1996 Ker 104

Hon'ble Judges : V.V. Kamat, J

Bench : Single Bench

Advocate : Sumathi Dandapani, for the Appellant; V.K.N. Yousuff, Govt. Pleader, M.K. Chandramohan Das and K.P. Satheesan, for the Respondent

Judgement

V.V. Kamat, J.—Motor Vehicles Act (59/88) as compared to the old Act of 1939 is not only liberalised but also is people oriented in the matter of grant of permits. This has been focussed by the Supreme Court, so much so that it is observed in various context that an intended operator can get a permit for asking irrespective of the number of operators already in the field. Objections and the provisions to impose limit on the number of permits have been taken away, because there is no similar provision to that of Sections 47 and 57 under the new Act. The Supreme Court has also examined the statement of objects and reasons of the Act 59/88 to highlight of the purpose of bringing in the Act of 1988 was to liberalise the grant of permits. It is made clear that there is no threat of any kind whatsoever from any authority and in fact more operators are accepted. It is observed that more operators mean healthy competition and efficient transport system.

2. Various aspects have been laid around that overcrowded buses, passengers standing in the aisle, persons clinging to the bus-doors and even sitting on the roof-top are some of the Common sights and as a result thereof more often one finds a bus which has noisy engine, old upholstery, uncomfortably seats and continuous emission of black smoke from the exhaust pipe. Taking all these

aspects into consideration it is thought necessary that there should be plenty of operators on every route to provide ample choice to the commuter-public to board the vehicle of their choice and patronise the operator who is providing the best service. The Supreme Court has also visualised restricted licensing under the hands of few persons thereby giving rise to a kind of monopoly, adversely affecting the public interest and it is said that too many operators on a route are not likely to affect adversely the interest of weaker section of the profession because the transport business is bound to be ironed out ultimately by the rationale of demand and supply. In the process only such number of vehicles would finally remain in operation on a particular route as are economically viable. The public oriented approach is also emphasized by stating that in any case the transport system in a State is meant for the benefit and convenience of the public. The wisdom of the Parliament has been highlighted in completely effacing the stringent features in the earlier Act.

3. At the same time matters which are supposed to be within the apprehension of the transport authorities have also been specified as regards the discretion to take into consideration the conditions of roads, social status of the applicants, possibility of small operators being eliminated by big operators, conditions of hilly routes, fuel availability and pollution control and in the context it is stated that there is no dispute that the Regional Transport Authority has the power under the Act to refuse an application for grant of permit by giving reasons and, therefore, it is ultimately for the authority to take into consideration all the relevant factors at the time of consideration of the applications for grant of permits. A confidence is reposed by stating that the statutory authorities under the Act are bound to keep a watch on the erroneous and illegal exercise of power in granting permits under the liberalised policy.

4. There is yet another aspect with regard to the domain of the existing operators, and their right in regard to the grant of permit either to another operators or to new entrants and in this context also this Court, making it clear that the right of the existing operators to file objections and the provision to impose limit on the number of permits have been taken away. This Court has infact carried forward the torch light in *Mithilesh Garg, Vs. Union of India and others etc. etc.*, observing that the existing operators have no right against the grant of permit to a new operator in accordance with the provisions of the new Act, 1988.

5. Under the old Act, Government had powers to issue orders and direction of a general character in respect of any matter relating to road transport and such orders and directions would be issued to the State Transport Authority, Regional Transport Authority or such Transport Authority was bound to give effect to all such orders and directions. This was in the matter of opening in new route or to extend the existing route or to permit additional stage carriage to be put or to reduce the number of stage carriages already existed. Such powers was regulating the powers of the transport authority. This was by virtue of the

provisions of Section 43(A) in regard to the procedure under Sections 47 and 57 of the old Act. Reading these provisions and in the context of powers of the Government as regards orders and directions occasions were for the Courts to consider the powers and functions of the authorities vis-a-vis the powers of the Government and the approach of the Writ Court in regard thereto. In regard to the provisions of the old Act referred to above in relation to the powers of the Government the Supreme Court considered the position with reference to orders and directions on the one hand and the rules on the other and observed that whenever the legislature intended to affect the rights of the parties it uses the word "rules" and with regard to the words "directions and orders" it is observed that directions contain most of the instructions in it and directions are to be followed and orders are to be obeyed. It is also observed that the directions are addressed to those who are unable to act for themselves and it becomes necessary to order those whose business it is to execute the orders. In the process it is observed that the same meaning of these words would be more appropriate to administrative control rather than to rules of law affecting the rights of the party. They are not laws because if they are laws, no such declaration is necessary and therefore they need not be published. In a given situation whether a particular situation, a particular fiat is a law or authorised administrative direction depends upon the character or nature of the orders or directions authorised to be issued in exercise of the powers conferred. In appreciating these aspects the discretion is logically extended to state that the orders made and the directions issued would cover only the administrative field of the officers concerned and therefore the said orders or directions issued could not be considered as law regulating the rights of the parties. Such situation therefore could not be questioned. This approach to consider the nature of the powers of the Government under the old Act would have to be treated as a settled position. The Andhra Pradesh High Court is also carrying the same logic in appreciating the orders and directions in the context, directions being purely administrative acts and could not be considered to be in exercise of statutory functions enjoining on the validity and therefore the existing operators would not have locus standi to object in the matters of fixing the number of stage carriages and such other matters left to the domain of the authorities under the Act, holding that no interference in writ jurisdiction would be possible.

6. These three petitions would be required to be considered in the light of the above principles. All these three petitions are prevented mainly by the Associations (O.P. 1817/95 and 1774/95 relate to Quilon and O.P. 1550/95 relate to Palakkad district) with regard to the matters covered by Chapter V of the Motor Vehicles Act 1988 especially in connection with the provisions of Section 68(3)(ca) of the Act. It is contended that the transport authorities would have to stay their hands in this State till in accordance with the provisions of Section 68(3)(ca) that routes are formulated by the Government for plying stage carriages. This provision of Section 68(3)(ca) is introduced by Amendment Act 54 of 1994 vide its Section 22.

7. Broadly stated the contentions are that the petitioners are existing operators in Palakkad and Quilon districts. It is urged that under the provisions of the new Motor Vehicles Act of 1988 applications can be submitted at any time for permits and under provisions of Section 71(3) in the light of the decision of the Supreme Court (*supra*) in curbing on the grant of permit could be done by respective authority and the applications have to be granted as and when they are submitted. It is submitted, as a result of the liberalised policy, that almost all the routes are saturated. The applications are submitted according to the whims and fancies of the applicants and therefore certain interior routes are not connected with stage carriage services. It is probalised that to obviate this difficulty by Act 54/94 introduced with effect from January 14, 1994 having been published in the gazette -- Karnataka Government extraordinary part 4(1) dated August 31, 1994 and thereafter by this State Section 68(3)(ca) is brought on the statute. The provision provides that the Government has to formulate routes for plying stage carriages. It is submitted that directions are required to be issued to exercise and discharge the functions by co-ordinating and regulating the activities and policies of the transport authorities and it is for this purpose Sub-clause (ca) has been introduced.

8. In the context it is submitted that all the routes for operation with reference to the stage carriages are to be formulated, by the Government only and unless the routes are formulated, it is urged, by framing the rules in the context alone further steps could be taken according to the legal position. It is submitted that disposing of the applications made by the permit holders at random would cause great hardship and injury to the existing operators. It is submitted that the purpose of introduction of Section 68(3) (ca) as per Act 54/94 is obviously one to curb the introduction of permits as much as possible and if the authority proceeds to deal with the applications it would be against the spirit of the amending Act. It is submitted that the representations in this context are already submitted and therefore the process of dealing with applications for permit without the routes being formulated by the Government as per Section 68(3)(ca) of the Act should be stopped.

9. During the pendency of these petitions by separate C.M.P.'s, illustratively C.M.P. Nos. 6506/95 and 6770/95 in O.P. 1817/95 were preferred and granted because petitioners in these C.M.P.'s had applied for the permits and were affected by the interim orders of stay of this Court, initially granted in C.M.P. 2795/95 in O.P. 1550/95 and then followed in C.M.P. 3317/95 in O.P. 1817/95. Similar C.M.P. No. 3718/95 also came to be filed in O.P. 1550/95. Learned counsel through these C.M.P.'s placed on record that they had preferred applications and their applications were to be considered in the meeting of the authority. Particulars of their applications and consideration by the authorities is given in the said C.M.P.'s.

10. It is these circumstances, finding that the interim order granted in O.P. 1817/95 in pursuance of the one granted in O.P. 1550/95 created a situation of

confusion, these petitions were taken up for hearing and final decision and the counsel for petitioners, added respondents and for the authorities were heard in extenso.

10A. On hearing counsel the question for consideration in these petitions would be as to whether as submitted by the petitioners, the new permits could be considered by the authorities without any step being taken by the Government in accordance with the provisions of Section 68(3)(ca) introduced and brought on the statement by the amendment Act 54/94, or whether in accordance with the spirit of the Act as spelt out the authorities can proceed. The question also for consideration is as to what is the exact core and content of the provision brought on the book by reason of the amendment. The question is whether what is accepted to be done by the Government in formulating the routes would be law or would be in the nature of orders and directions.

11. The material on record would show that the petitioners in O.P. 1817/95 had already approached this Court for similar though not identical reliefs before the amendment in question. This Court by its judgment dated December 16, 1994 in O.P. 11036/92 considering the provisions of Chapter V of the Act of 1988 as observed (Ext. R4(b)) in paragraph 10 to the effect that the Regional Transport Authority can be refused to grant a stage carriage permit only if it appears from the time table furnished that the provisions of the Act relating to the speed at which the vehicles may be driven are likely to be contravened. It is further observed that the normal rule in respect that the application of permit is to allow the grant and refusal is only an exception. In this process of reasoning reliance is placed on the decision of the Calcutta High Court also noting that the Act 59 of 1988 provides liberal policy for the grant of permits to those who intend to enter the motor transport business.

12. It may be in the fitness of the extension of the same logic the question of approach with reference to the provisions of Section 68(3)(ca) of the Act of 1988 would have to be considered.

13. In this context the objectionable reasons for Act No. 54 of 1994 would have to be taken into consideration and even in regard thereto it is observed that liberalised schemes for grant of stage carriage permit on non-nationalised routes, All India Tourist permits and also national permits for goods carriage is the object of the said amendment with an intention that a greater flow of passengers and freight with the least impediments is also the object behind the amendment. In other words the object of the amending Act No. 54 of 1994 is also in the pattern of the liberalised approach of the Act of 1988.

14. The matters can be looked up yet from another angle. Section 68 deals with the function for the transport authorities and in regard thereto more especially Section 68(3) enacts that the State Transport Authority and every Regional Transport Authority is obliged to give effect to directions issued u/s 67 and has to perform exercise and discharge the powers and functions specified herein. These

exercise and discharge of the functions is subject to such directions and save as otherwise provided by or under the Act. In the context Section 68(3)(c) relates to the settlement of disputes and decide all matters on which there are differences of opinion between the Regional Transport Authority and it is in this context that we find the enactment of Section 68(3)(ca) with regard to the formulation of routes for plying stage carriages by the Government. On principles of legislation the fact that Section 68(3)(ca) appears after Section 68(3)(c) would have to be understood to enact all matters covered by Section 68(3)(ca) of the Act. The said provision cannot be read either in isolation or also independent of Section 68(3)(c) of the Act and would have to be understood on interpretation to have been enacted in the matter of settlement of dispute and decision in regard thereto relating to differences of opinion between the, Regional Transport Authority. The expression "save as otherwise provided by or under the Act" and the fact that Section 68(3)(ca) appears as qualifying Section 68(c) of the Act would have to be understood and construed in a harmonious manner so that the position is not reduced to a nullity. Therefore apart from the position that this is in the nature of a direction with reference to a situation of differences of opinion, the provision also will have to be read to amplify the enactment in Section 68(3)(c) of the Act only.

15. In the light of the above discussion the question to be considered in the process would be whether it is necessary to direct the authorities to wait till the routes are formulated. In my judgment it become unnecessary when the provision is in the nature of administrative directions or guidelines and are to be considered as relevant only relating to the occasion of settlement of disputes and consequent decisions on matters of which differences of opinions arrive between Regional Transport Authorities. In such a situation it is unnecessary to contemplate a situation with regard to the new applicants for permits.

16. Learned counsel for the petitioners submitted that on occasions new permits are necessary to be stopped for various considerations. Reliance was placed on the decision of this Court, when this Court had an occasion to consider the Government insisting on permit holders to offer more amenities and comforts to the travelling public with regard to Fast Passengers Services. In this connection reliance is placed on the observations in para 16 in the said decision that Government has not fixed any guideline in the form of rules prescribing the requirements of vehicles to be used as Fast Passenger, Super Fast, Express, Super Express, Deluxe or Super Deluxe, observing as follows:--

"The absence of such rule leads to arbitrary grant of such permits. Therefore, we think it proper to direct State Transport Authority, Regional Transport Authorities and the State Transport Appellate Tribunal not to grant permits for Fast Passenger, Super Fast, Express, Super Express, Deluxe or Super Deluxe till the Government lay down the standard and requirements of the vehicle which can be put in use as Fast Passenger, Super Fast, Express, Super Express, Deluxe or Super Deluxe. We do so."

17. Learned counsel submitted that this Court has issued directions not to grant permits. With anxiety at my command I have considered the judgment and the observations. Firstly the observations are against the declaration of law by the Supreme Court in *Mithilesh Garg, Vs. Union of India and others etc. etc.*, . Secondly, the observation would not be the ratio decidendi. Additionally the said decision of the Supreme Court does not appear to be present to the minds when Sebastian's case (1995 (1) KLT 421) was decided because there is no reference to the emphatic observations regarding the people oriented approach of the Act of 1988 as declared by the Supreme Court. If the provisions of the Act are to be understood in favour of new entrants entitled to claim transport permit in time then such a direction not to grant permits, being contrary to the law declared by the Supreme Court would not be avail for consideration. Apart therefrom it is also urged by the learned counsel for the new applicants that such observations directing the Government to frame rules, trade on the absent advisory function of the Court. At any rate, in view of the above discussion it is not possible to continue the interim orders even for a minute in such a situation.

For the above reasons all the three petitions stand dismissed and interim orders that are passed stand vacated forthwith and the authorities would be free to deal with the situation within their own rights and powers under the Act.