

(2000) 04 KAR CK 0010

In the Karnataka High Court

Case No : Writ Petition Nos.43544, 43601 to 43603 and 43826 to 43828 of 1999
and 1331 of 2000

R. Maheshwari and Others

APPELLANT

Vs

Karnataka State Transport Authority, Bangalore and Others

RESPONDENT

Date of Decision : 13-04-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 217, 80, 80 (3), 81, 87

Citation : (2001) 2 ACC 608 : (2001) 3 KarLJ 212

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : Sri B.R.S. Gupta and Sri S.Prakash, for the Appellant; Sri B.H. Sathish, High Court Government Pleader and Sri S. Krishnaswamy, for the Respondent

Judgement

W.P. Nos. 43544 and 43601 to 43603 of 1999

1. Facts: The petitioner has a permit bearing No. 33/64 authorising the petitioner to operate on the route Tirupathi to Bangalore and back performing one round trip per day countersigned by the State Transport Authority, Bangalore on single point tax and petitioner was a saved operator under Kolar Pocket Scheme. Petitioner sought for variation of the condition of the permit by way of grant of one more round trip with inclusion of one more vehicle. The said variation was granted by the State Transport Authority, Andhra Pradesh (for short "STA, AP") under Item No. 6, dated 24-3-1984. The Secretary of the STA, AP directed to fix the timings in view of the order of the STA, AP allowing variation timings were fixed on 24-6-1984. The said variation was also endorsed in the permit with effect from 3-7-1984 subject to the condition that the petitioner obtained the counter-signature from the KSTA, Bangalore on double point tax. The permit was originally valid upto 15-5-1987 and the permit was renewed with the variation upto 15-5-1992. Thereafter, it was renewed upto 15-5-1997. The STA, AP under Rule 174(1) of the Rules replaced the permits under sub-section (4) of Section

80 issuing bifurcation of permits as 33/64-A and 33/64-B pursuant to the order passed by the STA, AP under order bearing No. 35454/B1/95, dated 21-10-1995. The permit is now renewed from 16-5-1997 to 15-5-2002 and the same was countersigned by the STA, Karnataka on single point tax and Permit No. 33/64-B was countersigned by the STA, Karnataka on an application filed by the petitioner for grant of counter-signature valid upto 15-5-2002 under Subject No. 601/98, dated 5-3-1999, dated 16-4-1999 on double point tax. The resolution order is at Annexure-A. It is submitted by the petitioner that pursuant signature was endorsed in the permit with effect from 26-5-1999.

2. Respondents 3 to 6 filed writ petitions before this Hon"ble Court in W.P. Nos. 16763 to 16765 of 1999 and W.P. No. 29754 of 1999 questioning the grant of counter-signature in favour of the petitioner. All the petitions were dismissed by this Hon"ble Court with a direction to avail the alternative remedy. An interim order was ordered to be applicable to the petitioner.

3. Respondents 4 to 6 preferred writ appeals in W.A. Nos. 4813 to 4815 of 1999, they were dismissed by the Appellate Court as well. Thereafter, respondent 3 preferred R.P. No. 1420 of 1999 and respondents 4 to 6 filed R.P. Nos. 965 to 967 of 1999.

4. The matter was heard on merits. After hearing the Tribunal passed an order as per Annexure-B, dated 3-12-1999. The Tribunal framed two questions:--

"Whether the first respondent has power to grant counter-signatures by way of an additional trip with additional vehicle in respect of the said permit in the notified area which falls under Kolar Pocket Scheme?

Whether the first respondent has power to grant counter-signatures in respect of the said permit in the light of the law laid, down by the Hon"ble Supreme Court in the case of Gajraj Singh etc. Vs. The State Transport Appellate Tribunal and others etc., and the Hon"ble High Court in the case of Karnataka State Road Transport Corporation, Bangalore Vs. Karnataka State Transport Authority, Bangalore and Another, ?"

After framing these two questions, the Tribunal answered the first question in favour of the petitioner. Insofar as the second question is concerned, the Tribunal answered in favour of the respondent. In conclusion the revision petition cannot be allowed and the petitioner was held to be not entitled for counter-signature. Aggrieved by the findings on the second issue, petitioner is before this Court.

5. W.P. No. 1331 of 2000 is the petition filed by the KSRTC challenging the very order of the Tribunal in R.P. Nos. 965 to 967 and 1420 of 1999. This petition is filed challenging the findings on the first issue answered in favour of the petitioner-Smt. R. Maheshwari in the other petitions.

6. Notices have been issued and objections have been filed by the respective parties in the case on hand.

7. W.P. Nos. 43826 to 43828 of 1999 are filed by Sri G.V. Chandrasekhar and two others (respondents in the first petition) challenging the very same order of the Tribunal insofar as the finding which has been held against them by the Tribunal, Petitioner in W.P. Nos. 1331 of 2000 and 43826 to 43828 of 1999 say in the petitions that the finding of the Tribunal relying on the judgment of the Supreme Court is incorrect, in view of the subsequent judgments of the Supreme Court. They only want that portion of the order is to be set aside by me in the light of the various averments made in the writ petition herein.

8. An objection statement has been filed in W.P. Nos. 43544 and 43601 to 43603 of 1999 by the respondents 4 to 6. They say in the objection that the Tribunal has framed two issues. The first legal issue has been answered in favour of the petitioner-Maheshwari and that finding of the Tribunal is contrary to law. They further say that the Tribunal was right in allowing the revision. According to their even though variations have been granted in the year 1984 the variations were incomplete till it is countersigned by the Karnataka Authorities. The grant of counter-signature of Temporary Permit which is a Variation of 1983 is not permissible on the facts of this case. In conclusion they support the order of the Tribunal insofar as the finding Issue No. 2.

9. I have heard the learned Counsels Sri B.R.S, Gupta, Sri Prakash Shetty and Sri Krishnaswamy appearing for the parties at great length.

10. The learned Counsel Sri B.R.S. Gupta, appearing for Smt. Ma-heshwari, petitioner argued that his client is a saved operator of Kolar Pocket Scheme. She had valid permit from Thirupathi to Bangalore and she wanted to add one more vehicle with two more trips. Andhra Pradesh granted the same in the year 1984 subject to the counter-signature by the Karnataka Authorities. He has applied to the Karnataka Authorities, who after considering the material facts have granted the same. According to the Counsel, no fault can be found with the counter-signature. According to him the Tribunal, having held in favour of the petitioner on the first issue ought to have over-ruled the second objection of "temporary permit plea". The same has not been done. He questions the finding on Issue No. 2.

11. Per contra, Mr. Krishnaswamy and Mr. Prakash Shetty, learned Counsels argue that the saved permit is only a temporary permit. Section 80(3) comes in the way of the grant of an additional trip with an additional bus to the petitioner. According to them the counter-signature runs counter to the various provisions of the Motor Vehicles Act. Further, they rely on various judgments in support of their contentions.

12. After hearing the Counsel at great length, the following undisputed facts emerge:--

(1) The petitioner is a saved operator of the Kolar Pocket Scheme having a valid permit with two trips with one vehicle that is from Thirupathi to Bangalore on an inter-State agreement. He has made an application for grant of variation of

conditions with two more trips with one more vehicle. The same is granted by the AP Authorities in 1984 subject to counter-signature of Karnataka Authorities u/s 88 of the New Act.

(2) Petitioner-Maheshwari made an application on 5-3-1999 which has been granted by the Karnataka Authorities on 16-4-1999. The same was challenged before this Court and in the light of the observations of this Court, revisions were filed. Two legal issues were framed by the Tribunal and the first issue was answered in favour of petitioner-Maheshwari and second issue has been answered in favour of the respondents.

13. The order of STA dated 5-3-1999/16-4-1999 gives various reasons with regard to allowing of an additional bus with an additional trip. The STA, in a detailed order has viewed that the petitioner is already operating her service for the past 35 years by enjoying the benefit available under the inter-State agreement and exemption also provided under the Kolar Pocket Scheme. Allowing one more vehicle on the route would yield a revenue to the State Government exchequer about Rs. 90,000/-per year. Taking into consideration of these aspects, the KSTA has passed the order, reading as under:--

"The tax shall be paid in respect of the vehicle covered by the permit regularly at Regional Transport Officer (East), Bangalore.

The grantee shall obtain endorsement or counter-signature within 30 days from the date of receipt of the copy of the proceedings by producing all the relevant records including tax paid proof of the vehicle".

The said order as mentioned earlier was the subject-matter of revision petitions before the Tribunal. The parties in all these cases are common before the Tribunal. The Tribunal has framed the two issues in para 15, reading as under:--

"Whether the first respondent has power to grant counter-signatures by way of an additional trip with additional vehicle in respect of the said permit in the notified area which falls under Kolar Pocket Scheme?

Whether the first respondent has power to grant counter-signatures in respect of the said permit in the light of the law laid down by the Hon"ble Supreme Court in Gajraj Singh's case, supra and the Hon"ble High Court in Karnataka State Transport Authority's case, supra?"

The Tribunal in para 23 has held as under insofar as first issue is concerned:--

"From the ratio laid down in the decision rendered by the Full Bench of the Hon"ble Supreme Court, in the said case it is clear that the first respondent had considered the matter in the proper perspective in this regard and as such, the order of the first respondent falls within the four folds of law and the same does not call for interference".

Insofar as the second issue is concerned, the Tribunal holds in para 25 that the counter-signature granted in respect of renewal permit which partakes the

nature of temporary permit. The Tribunal holds that in the light of the Gajraj Singh's case, supra and in Karnataka State Road Transport Corporation's case, supra, the variations are not legal. In this view of the matter, the Tribunal has allowed the revision petitions. There is an interim stay granted by this Court in these petitions.

14. As mentioned earlier, the answer to the first issue is a subject-matter of challenge in the writ petitions filed by the contesting respondent in W.P. Nos. 43826 to 43828 of 1999 connected with W.P. No. 1331 of 2000 and the answer to the second issue is the subject-matter in W.P. Nos. 43544 and 43601 to 43603 of 1999. Let me consider in the light of the submissions of the Counsel as to whether these findings of the Tribunal are in accordance with law.

15. I heard the Counsels in detail and pass the following order:--

First issue:

"Whether the first respondent (KSTA, Bangalore) has power to grant counter-signature by way of an additional trip with additional vehicle in respect of the said permit in the notified area which falls under the Kolar Pocket Scheme (as framed by the Tribunal)". This issue has been answered in para 23 of the impugned order. The Tribunal has ruled that the order of the RTA falls within the four corners of the law and the same does not call for interference. Before coming to this conclusion the Tribunal has referred to the judgments in Karnataka State Road Transport Corporation, Bangalore Vs. B.A. Jayaram and Others, ; Adarsh Travels Bus Service and Another Vs. State of U.P. and Others, , R. Raghuram Vs. P. Jayarama Naidu and Others, ; W.P. No. 7719 of 1991; Karnataka State Road Transport Corporation, Bangalore Vs. Karnataka State Transport Authority, Bangalore and Others, ; N. Meera Rani Vs. Government of Tamil Nadu and Another, ; Govindanaik G. Kalaghatigi Vs. West Patent Press Co. Ltd. and Another, .

16. The admitted facts as mentioned are that the petitioner-Maheshwari is a saved operator she had an inter-State permit in her favour. An application is filed before STA, Hyderabad for grant of variation of conditions of the permit by way of grant of one more round trip with the inclusion of one more vehicle to ply on double point tax. On 24-3-1984 the STA, Andhra Pradesh had granted variation subject to the counter-signature. From 1984 till 1999 the petitioner is an operator on the very route upto the State Border and on 24-10-1998 petitioner made an application for counter-signature which has been granted by STA, Bangalore which was challenged before the Tribunal.

17. The arguments before the Tribunal was that the route falls within the Kolar Pocket Scheme and no variation of condition of stage carriage permit on an inter-State route either by way of increased number of vehicles or number of trips was permissible according to the contesting respondent. The further contention of the contesting respondent was that an additional trip would amount to a grant of fresh permit which cannot be granted in a nationalised route. The contesting

respondent relied on the judgments of the Supreme-Court in B.A. Jayaram's case, supra; M/s. Adarsh Travels Bus Service's case, supra; R. Raghuram's case, supra; order in W.A. No. 2285 of 1985.

18. Per contra, the petitioner relied upon a judgment in second Karnataka State Transport Authority's case, supra, and the judgment in W.P. No. 27594 of 1982.

19. I have heard the Counsel as mentioned at great length. They reiterated the same contentions advanced before the Tribunal. To find out the correctness of the finding of the Tribunal I have to look at three important judgments, namely, B.A. Jayaram's case, supra; M/s. Adarsh Travels Bus Service's case, supra; R. Raghuram's case, supra; B.A. Jayaram's case, supra, is a case that arose out of a judgment of this Court. In the said case the Supreme Court considered the following two questions of law, namely, (1) Whether the conditions of a permit can vary so as to increase a number of trips and number of vehicles allowed to be operated on other permits. (2) When the condition of a permit held by an existing operator or an inter-State route exempted under the Kolar Pocket Scheme can be varied so as to allow to an increased number of vehicles varying under that permit. The Division Bench referred the following question to the Full Bench:--

"If the condition of a permit for operating a stage carriage over a route is altered by increasing the maximum number of trips over that route, specified earlier in that permit, does such variation of the condition of the permit amount to grant of a new permit?"

and the Full Bench answered in W.A. No. 949 of 1979 to the following effect:--

"If the condition of a permit for operating the stage carriage over a route is altered by increasing the maximum number of trips over the route specified in the permit, such variation of the condition of the permit does not amount to grant of a new permit".

20. Following the Full Bench judgment, the Division Bench framed the aforesaid two questions and answered that such variation does not become a new permit in the hands of the applicant. The Division Bench also answers that the increase in the number of vehicles is permissible under that permit on an inter-State route exempted under the Kolar Pocket Scheme. The order of the Division Bench was taken by way of an appeal by KSRTC (State Undertaking) before the Supreme Court. The matter was heard and the Supreme Court in the judgment in B.A. Jayaram's case, supra, dismissed the appeal. The Supreme Court ruled in para 18 as under:--

"Even though when the condition of a permit is allowed to be varied on an application made under sub-section (8) of Section 57, the permit so varied is not a new permit, the question still remains whether in the case of an existing inter-State pennit exempted under the said scheme an increase in the number of trips or the number of vehicles allowed to be operated under such a permit would be

inconsistent with the provisions of the said scheme. We fail to see any inconsistency between an increase in the number of vehicles or trips allowed under such a permit and the provisions of the said scheme. So far as the portions of the inter-State route covered by the said scheme are concerned, the permits of the existing permit-holders have been rendered ineffective. Further, by the said scheme as modified, the existing permit-holders are not allowed to pick up or set down passengers on these portions of the notified routes. Whether one vehicle or more traverse these portions or whether the same vehicle traverses such portion more than once cannot in any manner affect the services operated by the appellant on such portions since no passengers are allowed to be picked up or set down on such portions. All that would happen is that these vehicles, in the course of their inter- State operation, would traverse these portions of the notified routes without in any way operating as stage carriages for such portions".

21. This judgment in particular permitted increase in number of trips or number of vehicles in an existing permit and it ruled that it does not amount to a new permit. Thereafter, the Supreme Court in the case of M/s. Adarsh Travels Bus Service's case, *supra*, ruled that where a route is nationalised under Chapter IV-A of the Act, a private operator with a permit to ply a stage carriage permit over another route but which has a common overlapping sector with the nationalised route cannot ply his vehicle over that part of the overlapping common sector, even if with corridor restrictions, that is, he does not pick up or drop passengers on the overlapping part of the route. The Supreme Court also noticed in para 6 that the necessary consequences of these provisions is that no private operator can operate his vehicle on any part or portion of the notified area or notified route unless authorised so to do by the terms of the scheme itself. He may not operate on any part or portion of the notified route or area on the mere ground that the permit as originally granted to him covered the notified route or area. Private operator cannot take the plea of inconvenience caused to the travelling public. If indeed there is any need for protecting the travelling public from inconvenience as suggested by the learned Counsel we have no doubt that the State Transport Undertaking and the Government will make a sufficient provision in the scheme itself to avoid inconvenience being caused to the travelling public. Subsequently, in the case of second Karnataka State Transport Authority, *supra* (3 Judges Bench) noticed orders in M/s. Adarsh Travels Bus Service's case, *supra* and after noticing that, the Supreme Court ruled as under :--

"In the writ petitions before the High Court two questions were formulated for consideration:

(1) Whether the Transport Authority has the power to grant variation of the condition of the inter-State stage carriage permits by increasing the number of trips operated (with or without the increase of the number of vehicles covered by the stage carriage permit) overlapping the notified routes of Kolar Pocket Scheme after its modification on January 10, 1980; and

(2) Whether the Transport Authority has power to grant variation of the conditions of the inter-State stage carriage permits by increasing the number of trips operated (with or without the increase of number of vehicles covered by the stage carriage permit) overlapping the notified routes of the Kolar Pocket Scheme beyond the maximum provided in any inter-State agreement.

Division Bench examined these two aspects at length and negated both. Thus both the writ petitions were dismissed.

We have heard learned Counsels for the parties at length. Appellant's Counsel relied upon the Constitution Bench judgment of this Court in *M/s. Adarsh Travels Bus Service's* case, *supra*, in support of his contention. Once a scheme under the Motor Vehicles Act came into operation no person other than the State Transport Undertaking could operate in the notified area or the notified routes except as provided in the route (sic scheme) itself. He also sought support from the said decision for his contention that after the scheme, private operators were totally prohibited from plying even on a part of the notified route or routes.

As notified earlier, the scheme authorises the continued operation of the services by the existing permit-holders subject to corridor restrictions. Having heard learned Counsel, we are of the view that the condition imposed in the scheme has not been violated. There is nothing said in the case of *M/s. Adarsh Travels Bus Service, supra*, which would support the appellant in the facts of the present case. Learned Counsel also made grievance by alleging non-compliance with the provisions of the Motor Vehicles Act in the matter of granting extension of trips. The order of the State Transport Authority indicates that parties were heard and *prima facie* there was compliance of the requirements of the provisions of Section 57(8) of the Act. Defects, if any, in the matter of extension of trips could be agitated before the appellate forum under the Act. Before the High Court the main contention was confined to the argument relating to plying in contravention of the law based upon the scheme. We do not find any merit in the appeals and they are dismissed with costs".

(emphasis supplied)

The Supreme Court specifically ruled in para 4 that there is nothing said in *M/s. Adarsh Travels Bus Service's* case, *supra*, which would support the appellant with regard to addition of vehicles. Thereafter, the Supreme Court in the case of *R. Raghuram, supra*, noticed the judgment of the Supreme Court in *M/s. Adarsh Travels Bus Service's* case, *supra*. The Supreme Court ruled that the construction on the statute placed by the decision of the *B.A. Jayaram's* case, referred to above must be deemed to have been overruled in *M/s. Adarsh Travels Bus Service's* case, *supra*. However, the Supreme Court felt that a review is to be done and hence the matter was referred to the Constitution Bench to decide. However, in the judgment of *R. Raghuram's* case, *supra*, parties did not bring to the notice of the Supreme Court in second Karnataka State Transport Authority's case, *supra* -- the judgment by three Judges. The Tribunal in the light of these

four judgments held in favour of the petitioner on the first issue holding that an additional vehicle or an additional trip is not in the nature of a new permit. In R. Raghuram's case, supra, the Supreme Court has ruled as under:--

"Whether on the publication of an approved scheme the number of trips of the vehicles of the existing operators can be increased by granting the variation of a permit even when the existing operators are allowed to carry on their business as on the date of the publication of the scheme. We, therefore, refer this case to a Constitution Bench (R. Raghuram's case, supra). The judgment is by two learned Judges".

M/s. Adarsh Travels Bus Service's case, supra, is a Constitution Bench judgment. A three member Bench in second Karnataka State Transport Authority's case, supra, after noticing the Mis. Adarsh Travels Bus Service's case, supra, has ruled that an increase by way of number of trips with the vehicle can be granted in the notified area. But another Division Bench judgment in R. Raghuram's case, supra, overrules B.A. Jayaram's case, supra, permitting additional trip or additional vehicle following M/s. Adarsh Travels Bus Service's case, supra. The petitioner's Counsel contends that the three Judges' judgment in second Karnataka State Transport Authority's case, supra, has to be followed since according to him even after noticing M/s. Adarsh Travels Bus Service's case, supra, the Court did not rule that in B.A. Jayaram's case, supra, is bad in law.

22. Per contra, the contesting respondent contends that the Supreme Court itself has said in R. Raghuram's case, supra, that in the light of M/s. Adarsh Travels Bus Service's case, supra, permitting additional trip for additional vehicle in the Kolar Pocket Scheme is not correct legal position. The Tribunal after noticing the case-laws has ruled that since second Karnataka State Transport Authority's case, supra, by a larger Bench, the same has to be followed.

23. This finding of the Tribunal is assailed before me on the very same grounds. I am of the view that the Tribunal is right in placing the reliance on second Karnataka State Transport Authority's case, supra, in coming to its conclusion. Admittedly, Karnataka State Transport Authority's case, supra, is a judgment of three Judges and the Judge after noticing other cases has ruled that an additional trip with additional vehicle can be granted for an existing permit-holder in the Kolar Pocket Scheme. B.A. Jayaram's case, supra and R. Raghuram's case, supra, are the judgments of significant strength. In R. Raghuram's case, supra, unfortunately, second Karnataka State Transport Authority's case, supra, has not brought to the notice of their Lordships. The Hon'ble Supreme Court has overruled B.A. Jayaram's case, supra, in R. Raghuram's case, supra, and referred it to a larger Bench, Second Karnataka State Transport Authority's case, supra, is a Judge of a larger Bench judgment and this judgment, the Supreme Court after noticing B.A. Jayaram's case, supra, did not consider that B.A. Jayaram's case, supra, is bad in law. I am of the view that the Tribunal is right in following the said second Karnataka State Transport Authority's case, supra, judgment in the light of the principles governing the law

of precedents.

24. It is well-settled principle that when there are conflicts of two equal strength judgments, later one has to prevail if there is a larger Bench judgment, the same has to be followed. In this connection, I may usefully refer to the judgment in Govinda Naik's case, supra, a Full Bench judgment of this Court consisting of five Judges. The Full Bench of this Court has ruled that if two questions of the Supreme Court on a question of law cannot be reconciled and one of them is by larger Bench, while the other is a small Bench earlier or later in point of time, should be followed by High Court and other Courts. In the case of Mattulal Vs. Radhe Lal, , in para 11 at page 1601, the Supreme Court has ruled that a former decision of a larger Bench has to be followed than in the latter. In the light of these judgments, I am of the view that the Tribunal has not committed any error in following larger Bench of a Supreme Court in coming to its conclusion that it does not amount to a new permit as contended by the respondent. I confirm the view of the Tribunal on this issue.

Second Issue:

25. The Tribunal has framed a second issue and the said issue is answered against the petitioner. It is against this finding, this petition is filed by Maheshwari. For convenience sake, the second issue is again reproduced:--

"Whether the first respondent has power to grant counter-signatures in respect of the said permit in the light of the law laid down by the Hon"ble Supreme Court in Gajraj Singh's case, supra and the Hon"ble High Court in first Karnataka State Road Transport Corporation's case, supra?"

As mentioned earlier, the present petitioner-Maheshwari is a saved operator. She had a permit granted under the old Act and the Andhra Pradesh Authority have permitted one more trip with one more vehicle subject to counter-signature by Karnataka Government. The Karnataka Government has now countersigned in the year 1990. It is this counter-signature that was a subject-matter of the revision before the Tribunal. The Tribunal after hearing the parties as mentioned earlier ruled that a counter-signature can be granted in respect of an additional trip with additional vehicle in the notified area coming under Kolar Pocket Scheme, The Tribunal noticing the judgment of the Supreme Court again in the cases of Gajraj Singh's case, supra and Karnataka State Road Transport Corporation's case, supra, ruled against the petitioner.

26. In the case of Gajraj Singh, supra, the facts as I see are as under:--

"In 1988, Gajraj Singh was granted a stage carriage permit on the Meerut-Baraut route u/s 47(3) of the Motor Vehicles Act, 1939 (4 of 1939) (for short, the "Repealed Act"), for a period of 3 years. The Motor Vehicles Act, 1988 (59 of 1988) (for short, "the "Act"), came into force w.e.f. July 1, 1989. The said permit was renewed u/s 81 of the Act in 1991 for a further period of 5 years and the second renewal was granted in 1995. Respondents 3 to 17 had applied u/s 70 for

grant of stage carriage permits u/s 72 on the Meerut-Gangoh route which intersects part of the route on which the appellant was operating his stage carriage. Despite objections raised by the appellant, the State Transport Authority (for short, "STA") granted permits to them on November 23, 1992 which came to be challenged by the appellants in revision filed u/s 90 before the State Transport Appellate Tribunal (for short, "STAT"). The respondents questioned the appellant's locus standi under the preliminary objection that the renewal granted u/s 81 to the appellant was void. By order dated August 9, 1995, the STAT upheld the preliminary objection that the renewal granted u/s 81 to the appellant was void. By order dated August 9, 1995, the STAT upheld the preliminary objection and held that the appellant has no locus standi to object the grant of permits to the respondents, since the renewal of the permit granted to the appellant was not valid in law as he had not got any new permit under the Act. The High Court in the impugned judgment dated October 13, 1996 made in Writ Petition No. 26132 of 1995 has upheld the order of the STAT. Thus, this appeal by special leave".

The Supreme Court noticed the effect of the repealed Act. The Supreme Court also noticed Sections 81 and 217 of the 1988 Act and ruled under new Motor Vehicles Act the grant of renewal of stage carriage permit is to be preceded by grant of permit u/s 72 of the Act. However, the Supreme Court ruled that named operator whose permits granted under the old Act are saved under the nationalised scheme. They have right to obtain permit under Sections 72 to 75 and 81 and that right is preserved.

27. In paragraphs 58 and 59, the Supreme Court notices as under:--

"Thus considered, we are of the view that the rights of the existing named operators saved in the appropriate approved schemes in respect of specified permits were not destroyed. By necessary implication of Section 104, they were saved. They became entitled to avail of their right to apply for grant of permit in accordance with the procedure prescribed under Sections 70 and 71 and to obtain permit u/s 72, before the expiry of the permit or renewed permit saved under the approved scheme and should obtain permit afresh to ply their stage carriages before expiry of the period mentioned therein; periodical renewals from time to time should be obtained u/s 81 of the Act in accordance with the operation of the law. The RTA or STA, as the case may be, should consider and may grant permits or renewal of permits as per law or rejection thereof for reasons to be recorded in that behalf.

It is true that some renewals of stage carriage permits to the holders of permits or renewed permits under the repealed Act were granted u/s 81. Some of them are still in operation. With a view to prevent hiatus in operational efficacy we would declare that though renewals of stage carriage permits were granted u/s 81, they must be deemed to be temporary permits granted u/s 87, till regular permits are granted or refused. The ratio of *M/s. Gurcharan Singh Baldev Singh Vs. Yashwant Singh and others*, , does not help the appellants. Therein the

application for renewal of stage carriage permit u/s 58(2) of the repealed Act was pending consideration as on 1st July, 1989. Consequently, Section 6 of the GC Act saved its operation. This Court had, therefore, held that applications for renewal filed u/s 58 of the repealed Act must be disposed of u/s 80 read with Section 81 of the Act. However, it is stated that disposal must be taken to be, not of a permit granted under the Act, but one under deemed fiction. There would be no further fiction of law created under the Act to be a deemed renewal of permit under the Act".

Again in paras 62 and 63 this is what the Supreme Court says in Gajraj Singh's case, *supra*.--Such grant of renewal of permit should be treated as temporary permit u/s 87 of the Act. Supreme Court again says that such permits alone would be a permit as defined u/s 2(31) of the Motor Vehicles Act. The Supreme Court gives the reasons for such interpretation in para 64 reading as under:--

"This interpretation of the law would relieve undue hardship to all the operators and at the same time it would also be consistent with the scheme of the Act to sub serve the rights and protection provided under the Act so as to avoid rigour in the operation of the law".

28. From the reading of the judgment of the Supreme Court, it is clear that the permits granted or renewed under 1939 Act is considered to be a temporary permit requiring for an application for renewal u/s 81 of the Act for the limited purpose of relieving undue hardship.

29. The material facts of this case would show that the petitioner had the permit in the year 1964 on the route Tirupati to Bangalore and back, performing one round trip per day countersigned by the State Transport Authority, Bangalore on single point tax and petitioner was a saved operator under the Kolar Pocket Scheme. The variation of one more round trip with one more vehicle was granted by STA, AP on 24-3-1984 and subject to counter-signature. The counter-signature was done on 16-4-1999. The question that arises for consideration is as to whether a signed inter-State permit subject to counter-signature can be considered a "temporary permit" as understood in law. The Tribunal in the judgment under challenge has ruled that the permit granted earlier to the commencing of the amended Act is in the nature of a temporary permit and no variation of condition of permit by way of counter-signature could have been granted u/s 80(3) of the Act. The Tribunal relies on the Gajraj Singh's case, *supra*, and holds that the renewed permit partakes the nature of the temporary permit since it is a temporary permit and the counter-signature is permissible u/s 83 of the Act. The argument of respondent was found favour with the Tribunal. The same point is reiterated before me as mentioned earlier. The Supreme Court in respect of those permits which were saved considered to be "temporary permit to relieve undue hardship as mentioned in para 64 of the Act". A Division Bench of this Court in Karnataka State Road Transport Corporation's case, *supra*, while considering the scope of Section 80(3) ruled that no temporary permit granted is liable for being varied inasmuch as Section 80(3) excludes temporary permit

from its parties. This Court noticed the scope of Sections 72 and 83 of the Act. The Tribunal placing reliance on the Gajraj Singh's case, supra, and the judgment of this Court in Karnataka State Road Transport Corporation's case, supra, ruled that the permit is in the nature of a temporary permit and therefore Section 80(3) of the Act is a bar for Smt. Mahesh-wari. This finding as mentioned earlier is challenged by the petitioner contending that the said judgment has to be distinguished in the case on hand according to the petitioner. The whole thing including the order in the year 1984 is a temporary permit and that cannot be a reason for inclusion u/s 80(3) of the Act. To understand this legal plea in the light of the admitted facts let me have a look with regard to a temporary permit under the Act.

29-A. Section 80 deals with the procedure in applying for and granting permits. The sub-section (3) reads as under:--

"An applicant 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 by altering the route or routes or area covered by it, or in the case of a stage carriage permit by increasing the number of trips above the specified maximum or by the variation, extension or curtailment of the route or routes or the area specified in the permit shall be treated as an application for the grant of a new permit:

Provided that it shall not be necessary so to treat an application made by the holder of stage carriage permit who provides the only service on any route to increase the frequency of the service so provided without any increase in the number of vehicles:

Provided further that.-

(i) in the case of variation, the termini shall not be altered and the distance covered by the variation shall not exceed twenty-four kilometres;

(ii) in the case of extension, the distance covered by extension shall not exceed twenty-four kilometres from the termini,

and any such variation or extension within such limits shall be made only after the transport authority is satisfied that such variation will serve the convenience of the public and that it is not expedient to grant a separate permit in respect of the original route as so varied or extended or any part thereof."

It categorically no doubt states that an application to vary the condition of any permit other than a temporary permit by the inclusion of new route/routes, or by increasing the number of trips can be granted. The entire chapter deals with only permits. A permit is defined u/s 2(31) meaning of a permit issued by the State or RTA or an Authority prescribed in this behalf under those Act authorising the use of the Motor Vehicles Act. Chapter V deals with control of transport vehicles. Section 68 provides for Transport Authorities and Section 69 deals with general provision as to application for permits. The grant of a stage carriage permit is provided u/s 72. Section 80 deals with procedure in applying for and granting

permits. Section 81 deals with duration and renewal of permits and Section 82 deals with transfer of permit etc., Section 87 is the Section deals with the temporary permits. It categorically states that the RTA and the STA may without following the procedure laid down in Section 80, grant permits, to be effecting for a limited period which shall not in any case exceed four months to authorise use of a transport vehicle temporarily. Section 80(3) mentions of an application to vary the condition of any permit other than the temporary permit by inclusion or etc., what is prescribed u/s 80(3) is a grant of a temporary permit in terms of Section 87 of the Act. In the case on hand it is nobody's case that the permit granted in favour of Smt. Maheshwari is a temporary permit in terms of Section 87 or for a period of four months. A deemed fiction of temporary character of a permit is attached to the permit in the light of Gajraj Singh's case, supra. In Gajraj Singh's case, supra, in my opinion, the Supreme Court was considering the permits granted or renewed under the old Act and the Supreme Court, to quote the words of Supreme Court again to relieve undue hardships to all the operators and at the same time to be considering of the scheme of the Act to sub serve the rights and protection provided under the Act so as to provide rigour in the operation of law interpreted those permits granted u/s 1939 Act to be a temporary permit only for that purpose. The said interpretation in my opinion cannot be extended to this case and introduced for Section 80(3) of the Act to the case on hand. It also stands to reasons. Section 80(3) excludes temporary permit for inclusion of a new route or by increasing the number of trips by way of variation of the permit. Temporary permit by very nature is temporary. The life of the permit itself is limited in character. The object of excluding of temporary permit is to be read in the light of object of Section 80(3). The present set of facts cannot be dragged into sub-section (3) of Section 80 for the purpose of temporary permit as mentioned earlier. The Supreme Court in para 63 has categorically ruled that for the purpose of renewal of the permits granted or renewed under old Act, such permit is to be treated temporary permit u/s 87. The same logic cannot be extended to the facts of the case. On the other hand, in the light of the very interpretation of relieving "undue hardship", "consistency with the scheme of the Act", "sub serve the rights and protection", the said principle is extended to this case also and that would be the right thing to do under the Act. A permit with the approval for an additional vehicle with an additional trip by Andhra Pradesh subject to counter-signature by Karnataka cannot be equated to a temporary permit u/s 87 for the purpose of Section 80(3) as argued by the Counsels. The Tribunal did not go in detail with the reasoning of the Supreme Court in the light of the various sections while arriving at the conclusions. Therefore, I am of the view that the Tribunal has committed an error in holding that the present counter-signature is unsustainable, because the petitioner was holding temporary permits and no counter-signature could be granted as held by the Judge. These findings require my interference. Tribunal has relied on a Division Bench judgment of this Court to hold that the permit granted cannot be varied u/s 80(3) of the Act. The said judgment is clearly distinguishable on facts. That was not a case of a permit with a counter-

signature by a saved operator. In fact, the Division Bench rules that only a permit granted u/s 72 of the Motor Vehicles Act, 1988 would be capable of being varied inasmuch as Section 80(3) excludes temporary permit from its purview. The permit being held by the petitioner is to be treated only for a limited purpose as temporary permit and not for all purposes. Therefore, I am of the view that this finding requires my interference. The same to be set aside on the very principle of interpretation as mentioned by the Supreme Court.

30. Mr. Krishnaswamy, further also rely on the recent judgment in Ashwani Kumar and Another v Regional Transport Authority, Bikaner and Another, that the renewal itself is contrary to law and contrary to facts. I do not permit the Counsels to assail the present order on this ground since such a point was neither raised nor considered by the Tribunal. There is no factual foundation placed by the petitioners. In the circumstances, the second issue is also answered in favour of Smt. Maheshwari.

31. The petitioner has succeeded before the Tribunal in respect of the first issue which is considered by me in this order. The second issue held against the petitioner is set aside by me in this order. Therefore, the petitioner succeeds in the petition. In conclusion, the writ petitions filed by Maheshwari in W.P. No. 43544 of 1999 connected with 43601 to 43603 of 1999 are allowed. The finding on the second issue by the Tribunal in its order in R.P. Nos. 965, 966, 967 and 1420 of 1999 is set aside. The order at Annexure-A is held to be in accordance with law. The writ petitions filed by KSRTC and other respondents in W.P. Nos. 43826 to 43828 of 1999 and 1331 of 2000 challenging the first part of the finding is dismissed and the revisions filed by them are dismissed.

32. Parties are to bear their own respective costs.