
(1998) 08 AP CK 0097

In the Andhra Pradesh High Court

Case No : Writ Petition No. 20136 of 1998

Regional Manager, APSRTC, Guntur

APPELLANT

Vs

State Transport Appellate Tribunal Hyderabad and others

RESPONDENT

Date of Decision : 26-08-1998

Acts Referred:

Andhra Pradesh Motor Vehicles Rules, 1989 — Rule 258, 258(2)

Andhra Pradesh Motor Vehicles Taxation Act, 1963 — Section 100, 104, 47, 47(3), 57

Citation : (1998) 6 ALD 162

Hon'ble Judges : Syed Saadatullah Hussaini, J

Bench : Single Bench

Advocate : Mr. K. Harinath, for the Appellant; Government Pleader, for Transport and Mr. K.N. Jwala, for the Respondent

Judgement

1. Heard Mr. K. Harinath, learned Counsel for petitioner, Mr. K.N. Jwala, the learned Counsel for 3rd respondent and the learned Government Pleader for Transport.

2. Mr. K. Harinath, the learned Counsel for the petitioner vehemently contends that the 1st respondent had no jurisdiction to grant permit to the 3rd respondent for the route Narasaraopet Palnad bus stand to Nallagarlapadu is not a town service; as such, it is outside the scope of Rule 258 of the A.P. Motor Vehicle Rules, 1989. Relying on the said Rule, he submits that as per sub-rule (2) of Rule 258, the Regional Transport Authority has to first determine whether the permit sought for, is a town service route or not and pass an order on its merits.

3. In the instant case, the Regional Transport Authority, the 2nd respondent has not determined on record whether the permit sought for, is a town service route or not; as such, the order passed by the 1st respondent suffers from the legal infirmity. He also relied on a recent unreported decision of the Apex Court in SLP (Civil) No.21474 of 1997 and batch, dated 11-8-1998 wherein their Lordships have interpreted sub-rule (2)(ii) of Rule 258 of the Motor Vehicle Rules, 1989 and held that any applicant for permit claiming the benefit thereof has to

necessarily satisfy the Regional Transport Authority that the route for which the permit is sought, is a town service route. It is only on the basis of the Transport Commissioner's permission, the Regional Transport Authority can determine the town service routes.

4. He also placed reliance on a decision reported in *Ram Krishna Verma and Others Vs. State of U.P. and Others*, wherein it is observed at para-13 as under:

"It is true as contended by Shri Salve that in *Mithilesh Garg, Vs. Union of India and others etc. etc.*, this Court held that the liberal policy of grant of permits u/s 80 of the Act is directed to eliminate corruption and favouritism in the process of granting permits, eliminate monopoly of few persons and making operation on a particular route economically viable and encourage healthy competition to bring about efficiency in the trade. But the free ply is confined to grant of permits under Chapter V of the Act. By operation of Section 98 of the Act, Chapter VI overrides Chapter V and other law and shall have effect notwithstanding anything inconsistent therewith contained in Chapter V or any other law for the time being in force or any instrument having effect by virtue of such law. The result is that even under the Act the existing scheme under the repealed Act or made under Chapter VI of the Act shall have overriding effect on Chapter V notwithstanding any right given to private operators in Chapter V of the Act. No corridor protection to private operators is permissible."

5. Basing reliance on the abovesaid judgment, he submits that the order passed by the 1st respondent, is not sustainable in law.

6. Mr. Jwala, the learned Counsel for the 3rd respondent submits that the impugned order of the 3rd respondent does not suffer from any legal infirmity. The 1st respondent has considered the application under sub-rule (2) of Rule 258 of the A.P. Motor Vehicle Rules and as the town service for which permit is sought for, is within 8.1 kilometres from the Municipal limits, there is no such illegality. He relies on a judgment of the Apex Court reported in *Mithilesh Garg, Vs. Union of India and others etc. etc.*, wherein it is held at para-6 as under;

"The Parliament in its wisdom has completely effaced the above features. The scheme envisaged under Sections 47 and 57 of the old Act has been completely done away with by the Act. The right of existing operators to file objections and the provision to impose limit on the number of permits have been taken away. There is no similar provision to that of Section 47 and Section 57 under the Act. The Statement of Objects and Reasons of the Act shows that the purpose of bringing in the Act was to liberalise the grant of permits. Section 71(1) of the Act provides that while considering an application for a stage carriage permit the Regional Transport Authority shall have regard to the objects of the Act. Section 80(2), which is the harbinger of Liberalisation, provides that a Regional Transport Authority shall not ordinarily refuse to grant an application for permit of any kind made at any time under the Act. There is no provision under the Act like that of Section 47(3) of the Old Act and as such no limit for the grant of permits can be

fixed under the Act. There is, however, a provision u/s 71(3)(a) of the Act under which a limit can be fixed for the grant of permits in respect of the routes which are within a town having population of more than five lakhs."

7. He submits that sub-rule 2(ii) of Rule 258 of the A.P. Motor Vehicle Rules, is not in consonance with Section 80 of the Act and the Rule cannot override the effect of the Section; as such, the said Rule should be declared as invalid - for Section 80 of the Act does not empower the authorities by way of framing the Rules curtail the effect of granting permits u/s 80 of the Act.

8. The question that arises for consideration is whether the Authorities have acted in conformity with Rule 258 of the A.P. Motor Vehicle Rules, 1989?

9. Rule 258 of the A.P. Motor Vehicles Rules, 1989 reads as under :

"Fixation of Stages for Carriages :--(1) In the case of stage carriages, the Regional Transport Authority shall, after consultation with such other authority as it may deem desirable, fix stages on all bus routes except town service. The maximum distance of each stage shall not ordinarily exceed 6.4 kilometres. When stages are so fixed, fares shall be collected according to stages.

Explanation "--When a passenger gets into or gets down from a stage carriage at a place lying in between two stages, he shall pay the fare from the stage preceding the place where he gets into the bus to the stage succeeding the place where he gets-down.

(2) The Regional Transport Authority shall, subject to the following restrictions, determine which are town service routes:

(i) atleast one terminus of every town service shall lie within the limits of a Municipality or any built up place notified in the A.P. Gazette as "town" for this purpose by the Regional Transport Authority concerned, with the, prior concurrence of the State Transport Authority;

(ii) No route of town service shall extend more than 8 kilometres beyond the limits of the Municipality or town from which it starts provided that this restriction shall not apply to any town service routes, which were in existence on the date of coming of these rules into force or in respect of those routes for which specific permission of the Transport Commissioner is obtained;

(iii) No route shall be determined as both town and maffasal service routes.

10. It is admitted that as per the A.P. Motor Vehicles Rules, the Regional Transport Authority is the competent authority to determine as to which are the town service routes. Insofar as this case is concerned, it is admitted before me by both the Counsel that the 2nd respondent-Regional Transport Authority has not determined the route as town service route, for which the 3rd respondent has applied for the permit.

11. Mr. Jwala, the learned Counsel for the 3rd respondent submits that ever since

the New Act 1988 came into force, the second respondent-Regional Transport Authority is not determining any routes, but passing orders without determining on the routes applied for.

12. Now, we have the benefit of latest unreported judgment of the Apex Court in SLP (Civil) No.21474 of 1997 and batch wherein their Lordships have considered and interpreted sub-rule 2(ii) of Rule 258 of the A.P. Motor Vehicles Rules, 1989 and held in para-10 of the Judgment as under:

"Bearing that in mind, we have to construe Rule 258(2) in the light of Sections 98 to 100 and 104 of the Act. Section 98 provides that the provisions of Chapter VI and the rules and orders made thereunder shall have overriding effect against anything inconsistent in Chapter V or any other law for the time being in force. Section 99 deals with preparation and publication of proposals regarding road transport service of a State Transport Undertaking. Section 100 deals with publication of proposal and a notification of the scheme after consideration of the objections to the proposal. Section 104 as stated earlier, prohibits the grant of any permit except in accordance with the provisions of the scheme. Hence for the purpose of Rule 258(2), if there is a scheme in force " with reference to the concerned route, the authority has to adhere to the terms of the scheme. If there is an absolute bar in the scheme against the grant of any permit for the notified route or any portion of the route nothing further could be done. On the other hand if there is any exception provided in the scheme the applicant for a permit has to satisfy the authority concerned that he would fall within the scope of the exception. When the scheme provides an exception for the holder of stage carriage permit in respect of town service any applicant for permit claiming the benefit thereof has to necessarily satisfy the Regional Transport Authority that the route for which the permit is sought is a town service route. In order to establish the same the applicant for permit has to approach the Transport Commissioner in the first instance if the route for which permit is sought extends more than 8 kilometres beyond the limits of the Municipality or town from which it starts. In such cases, it is only when the Transport Commissioner grants specific permission for extension of the route for more than 8 kilometres beyond the limits of the Municipality or town, the Regional Transport Authority can consider the application for grant of permit and proceed to pass orders. It is only on the basis of the Transport Commissioner's permission the Regional Transport Authority can determine the town service routes. Hence our answer to the first question is that the permission of the Transport Commissioner contemplated in Rule 258(2) of the rules has to be obtained before an application for permit is filed for a route covered by a scheme notified under the Act,""

13. From the interpretation of the Rule, it is clear that the approach of the Apex Court is that it is only on the basis of the Transport Commissioner's permission, the Regional Transport Authority can determine the town service rules.

14. Following the same, I am of the considered opinion that under sub-rule 2(ii) of Rule 258 of the Rules, the Regional Transport Authority-2nd respondent has to

first determine as to whether the permit sought for is the town service route and then proceed to dispose of the case on its merits.

15. In the view which I have taken above, I set aside the impugned orders and direct the second respondent to first determine the route, for which the permit has been applied for by the 3rd respondent as to whether it is town service route and then consider as to whether permit can be issued. This exercise shall be completed within a period of two months from the date of receipt of this order or in the ensuing meeting of the Regional Transport Authority whichever is earlier, after giving an opportunity of hearing to the petitioner as well as the 3rd respondent and the contentions raised by the parties be considered and pass appropriate orders.

16. With the above direction, the writ petition is disposed of.