

**(1981) 12 AP CK 0004**

**In the Andhra Pradesh High Court**

**Case No : Writ Appeal No's. 307, 308 and 324 of 1981**

Sayed Jeelam

APPELLANT

Vs

State Transport Appellate Tribunal, Andhra Pradesh,  
Hyderabad and Others

RESPONDENT

**Date of Decision : 31-12-1981**

**Acts Referred:**

Constitution of India, 1950 — Article 133(1)  
Motor Vehicles Act, 1939 — Section 68

**Citation : AIR 1982 AP 220 : (1982) 1 APLJ 186**

**Hon'ble Judges : Alladi Kuppaswami, C.J.;Seetharama Reddy, J**

**Bench : Division Bench**

**Advocate : Advocate General and Govt. pleader, R. Venugopal Reddy, C. Anand Rao, G. Suryanarayan and P. Babin Reddy, for the Appellant;**

## Judgement

Kuppasawmi, C.J.—The appellant in this writ appeal is the petitioner in writ Petition No.6676/80. He applied for the grant of two temporary permits on the route Nellore to Donakonda. By order dated 29.09.80, the application was rejected by the Secretary, Regional Transport Authority, Nellore and ground that the route partially overlaps a notified route and hence S.68-FF of the Motor Vehicles Act (referred to in the judgment as the Act) operates as bar. Aggrieved by the said order, the petitioner preferred an appeal to the State Transport Appellate Tribunal. Before the Tribunal it was contended that in view of the promulgation of a draft scheme on those routes, a temporary permit under Sec. 68F (1-C) of the Act could be granted though there may be a draft scheme in respect of the routes overlapping the route in question. In support of this contention, he relied upon a decision of this Court in W.R. No. 4475/79 to the effect that when a route is covered by a draft scheme as well as an approved scheme, temporary permit can be granted under S.68F (1-C). The Tribunal, however observed that the route in question was not covered by a single draft scheme, but two draft schemes one from Nellore to Kanigiri (Draft Scheme No. 407/77) and another from Mungamoor to donakonda (Draft Scheme No. 334/77)

and the route in question was covered by the two draft schemes and S.68F (1-C) will not apply and temporary permits cannot be granted under the section. In the result the Tribunal dismissed the revision petition. The Tribunal, however, held that as the application was made for the issue of the permit in the place of a permit which had been canceled, there was sufficient need for the issue of a temporary permit.

2. The petitioner filed W. P. 6676/80 praying for the issue of a writ of certiorari quashing the order of the Tribunal confirming the order of the Secretary, Regional Transport Authority, Nellore and for a consequential direction directing them to issue two temporary permits to the petitioner on the route - Nellore to Donakonda under S.68F(1-C) of the Motor Vehicles Act. Our learned brother Jeevan Reddy, J. dismissed the writ petition. He agreed with the view of the Tribunal that it would not be permissible to join or synthesise two different draft schemes are pending and grant a temporary permit in respect of such a route, on the ground that it is covered by the two schemes taken together. He held that a temporary permit can be granted only for a route or a portion of the route in respect of which there is a single draft scheme. The petitioner has judgment.

W. A No.308/81

3. This appeal is directed against the judgment of Jeevan Reddy, J. in W. P. No. 3959/81. The petitioner in the writ petition applied for a temporary permit on the route Nellore to Sitaramapuram via Atmakur when one of the permits held by the Andhra Pradesh State Road Transport Corporation on that route was canceled on surrender by them and a vacancy arose on the route in question. By his order dated 20-04-1981, the secretary, Regional Transport Authority rejected the application on the ground that there was an approved scheme covered by G.O.Ms.No1172 dated 11-8-1975. Aggrieved by the said order, the petitioner preferred an appeal, in A.P.No.316/81 before the State Transport Appellate Tribunal. Pending disposal of the appeal, the petitioner requested for directions directing the Secretary, Regional Transport Authority, Nellore to grant a temporary permit. The Tribunal by its order dated 23.04.1981, directed the latter to grant a temporary permit under S.68F(1-C) was granted to the petitioner on the route Nellore to Atmakur. Thereafter, the Andhra Pradesh Road Transport Corporation (referred to in the judgment as the Corporation) filed an application on 14.05.1981 for the grant of a temporary permit. The Secretary, regional Transport Authority, Nellore issued a temporary permit and as consequence, directed the petitioner to stop plying his bus and surrender the temporary permit issued to him. Challenging the said order, the petitioner filed W.P.No.3959/81 praying for the issue of a writ of certiorari to quash the order of the Secretary, Regional Transport Authority canceling the temporary permit granted to the petitioner on the route Nellore to Atmakur. The writ petition was allowed by Jeevan Reddy, J. who held that once a temporary permit is granted to a private operator u/s 68F (1-C) of the Act, it is effective until the grants of a pucca permit to the corporation. In the result, he allowed the writ petition. He however

observed that it was open to the Corporation if it so choose to object to the grant of temporary permit on the ground it was granted without forming the necessary to increase in the public interest the number of vehicles operating on the route of portion thereof covered by a draft scheme.

W.A.No.307/81

4. Is directed against the judgement of Jeevan Reddy, J. in W.P. No.3871/81. In this case, the petitioner applied for a temporary permit on the inter district route Nellore to Machavarm. The Joint Transport Commissioner-cum-Secretary, State Transport Authority rejected the application on the ground that with respect to the said route, there was already an approved scheme and that the Cooperation was also plying a bus on the route. The petitioner preferred a revision before the Transport Appellate Tribunal and it was contended before the Tribunal that there were two draft schemes and if the two draft scheme taken together, they would cover the route in question. The Tribunal was of the view that though a temporary permit could be given on the basis of the approved scheme, the two draft schemes cannot be combined to cull out another route for the grant of temporary permit. It was then contended before the Tribunal that a temporary permit. It was then contended before the Tribunal that a temporary permit could be granted in view of the approved scheme No.471/77 from Nellore to Singarayakonda as the route for which the petitioner was seeking a temporary permit was covered by that Scheme. The Tribunal however observed that this could be done only if a fresh application was made by the petitioner. In pursuance of the said observation, the petitioner filed a fresh application on 25-8-1981 for the grant of a temporary permit on the route, Nellore to Singaraayakonda u/s 68F (1-c) of the Act. The Secretary, Regional Transport Authority granted the said permit. It stated that it shall cease to be effective on the issue of a permit to the Corporation in respect of that area, portion or route thereof. Subsequently, the Corporation applied for a temporary permit on the route Nellore to Vijayawada via Kavali, in pursuance of the approved scheme No.471/77 and a temporary permit was granted to the Corporation. In view of this order, the Secretary, Regional Transport Authority issued a notice to the petitioner stating that as a temporary permit has been granted to the Cooperation on the route aforementioned, the petitioner should stop plying his bus immediately and surrender the temporary permit. The petitioner thereupon filed, the writ petition for quashing the said order. As the main question for consideration in this writ petition was the same as in W.P.No.3959/81", viz, whether a temporary permit issued to a private operator u/s 68 FF(1-c) would ensure until a pucca permit is granted to the Corporation or whether it would have to be surrendered even when a temporary permit is granted to the Corporation, the two writ petitions were heard together and disposed of by a common judgement. Having regard to the view taken by Jeevan Reddy, J. that the permit issued to the private operator will continue to be valid until a pucca permit is issued to the Corporation, he allowed this writ petition also. He however, held that the temporary permit granted to the Corporation pertained to

a larger route viz, Nellore to Vijayawada, the permit granted to the Corporation cannot be said to be invalid or incompetent. The writ appeal has been filed by the Corporation cannot be said to be invalid or incompetent. The writ appeal has been filed by the Corporation against the judgement of Jeevan Reddy, J. in W.P.No.3871/81. All these writ appeals have been heard together and are being disposed of by this common judgment.

5. Before dealing with the questions that arise for consideration in these writ appeals, it will be convenient to set out the relevant provisions of the Motor Vehicles Act.

6. Section 68-c deals with preparation and publication of scheme of road transport service of a State Transport Undertaking, in the following terms:

"Where any State Transport undertaking is of opinion that for the purposes of providing an efficient, adequate, economical and properly coordinated road transport service, it is necessary in the public interest that road transport services in general or any particular class of such service in relation to any area on route or portion thereof should be run and operated by the State transport Undertaking, whether to the exclusion , complete or partial, of other persons or otherwise, the State Transport Undertaking may prepare a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered and such other particulars respecting thereto as may be prescribed and shall cause every such scheme to be published in the Official Gazette and in such other manner as the State Government may direct."

Section 68-D provides for objections to the scheme and after hearing which, the State Government is authorised to approve or modify the scheme.

7. Section 68-D (3) is as follows:

"The scheme as approved or modified under sub-section (2) shall then be published in the Official Gazette by the State Government and the same shall thereupon become final and shall be called the approved scheme and the area or route to which it relates be called notified area or notified route."

Sections 68-F and 68-FF which are the main provisions with which we are concerned are in the following terms:

"68-F . Issue of permits to State Transport Undertaking:- (1) Where , in pursuance of an approved scheme, any State Transport Undertaking applies (in such manner as may be prescribed by the State Government in this behalf) for a stage carriage permit or a public carrier's permit or a contract carriage permit in respect of a notified area or notified route, the State Transport Authority in any case where the said area or route lies in more than one region and the Regional Transport Authority in any other case shall issue such permit to the State Transport Undertaking notwithstanding anything to the contrary contained in Chapter IV.

(1-A) Where any scheme has been published by a State Transport Undertaking u/s 68-C, that undertaking may apply for a temporary permit, in respect of any area or route or portion thereof specified in the said scheme, for the period intervening between the date of publication of the scheme and the date of publication of the approved or modified scheme, and where such application is made, the State transport Authority or the Regional Transport Authority, as the case may be, shall, if it is satisfied that it is necessary to increase, in the public interests, the number of vehicles operating in such area or route or operation thereof, issue the temporary permit prayed for by the State Transport Undertaking.

(1-B) A temporary permit issued in pursuance of the provisions of sub-section (1-A) shall be effective:-

(i) if the scheme is published under sub-section (3) of Section 68-D, until the grant of the permit to the State Transport Undertaking under sub-section (1), or

(ii) if the scheme is not published under sub-section (3) of Section 68-D, until the expiration of one week from the date on which the order under sub-section (2) of Section 68-D is made.

(1 - C) If no application for a temporary permit is made under sub-section(1-A), the State Transport Authority or the Regional Transport Authority, as the case may be, may grant, subject to such conditions as it may think fit, temporary permit to any person in respect of the area or route or portion thereof specified in the scheme and the permit so granted shall cease to be effective on the issue of a permit to the State Transport Undertaking respect of that area or route or portion thereof.

(1-D) Save as otherwise provided in sub-section (1-A) or sub-section (1-C) no permit shall be granted or renewed during the period intervening between the date of publication, u/s 68-C, of any scheme and the date of publication of the approved or modified scheme in favour of any person for any class of road transport service in relation to an area or route or portion thereof covered by such scheme:

Provided that where the period of operation of a permit in relation to any area, route or portion thereof, specified in a scheme published u/s 68-C expires after such publication, such permit may be renewed for a limited period, but the permit so renewed shall cease to be effective on the publication of the scheme under sub-section(3) of Section 68-D.

(1-E) Where a State Transport Undertaking applies for renewal of a permit within the period specified in sub-section (2-A) of Section 58, the State Transport Authority or, as the case may be, the Regional Transport Authority, shall renew such permit, notwithstanding anything to the contrary contained in Chapter IV.

(2) For the purpose of giving effect to the approval scheme in respect of a notified area or notified route, the State Transport Authority or as the case may

be, the Regional Transport Authority concerned, may, by order-

(a) refuse to entertain any application for the grant or renewal of any other permit or reject any such application as may be pending;

(b) cancel any existing permit;

(c) modify the terms of any existing permit so as to -

(i) render the permit ineffective beyond a specified date;

(ii) reduce the number of vehicles authorised to be used under the permit;

(iii) curtail the area or route covered by the permit in so far as such permit relates to the notified area or notified route.

(3) For the removal of doubts, it is hereby declared that no appeal shall lie against any action taken, or order passed, by the State Transport Authority or any Regional Transport Authority, under sub-section(1) or sub-section (2).

68-FF. Restriction on grant of permits in respect of a notified area or notified route-Where a scheme has been published under sub-section (3) of Section 68-D in respect of any notified area or notified route, the State Transport Authority, or the Regional Transport Authority as the case may be, shall not grant any permit except in accordance with the provisions of the scheme:

Provided that where no application for a permit has been made by the State Transport Undertaking in respect of any notified area or notified route in pursuance of an approved scheme, the State Transport Authority, or the Regional Transport Authority as the case may be, may grant temporary permits to any person in respect of such notified area or notified route subject to the condition that such permit shall cease to be effective on the issue of a permit to the State Transport Undertaking in respect of that area or route".

8. It is thus seen that S.68-F(1-A) enables the State Transport Undertaking to apply for a temporary permit in respect of any area or route or portion thereof specified in the draft scheme, for 1982 Andh, Pra/15 VI G-12 the period intervening between the date of publication of the draft scheme and the date of publication of the approved or modified scheme. If the authority is satisfied that it is necessary to increase, in the public interest, the number of vehicles operations in the route, it will issue the necessary permit to the State Transport Undertaking. If, however, no such application is made by the State Transport Undertaking, a temporary permit may be granted to any private permit may be granted to any private operator under S.68-F(1-C). The submission which was made on behalf of the State Transport Undertaking and which found favour with the Tribunal and Jeevan Reddy J was that a temporary permit can be granted under SEc.68-F (1-C) of the Act only if the area or route or portion thereof was comprised in one single draft scheme. If the route forming the subject matter of the application for temporary permit was comprised in more than one scheme, it is not possible to take the two schemes together and apply the provisions of

Sec.68-F(1-C). We are unable to share this view. If an operator desires to apply for a permit in respect of a route A to B out of which the portion A to C is comprised in one draft scheme and C to B in another draft scheme it is permissible for him to apply for a temporary permit in respect of A to C; and that has to be granted as it is comprised in the draft scheme. Similarly, he can apply for a permit for the route C to B and that has also to be granted as it is comprised in another draft scheme. If it is therefore possible for an operator to make two applications and obtain two temporary permits in respect of two contiguous portions of the route A to C and C to B we do not see any substantial reason why he should not make a single application for a temporary permit between A & B. The fact that two portions of this route are covered by two different draft schemes, will not, in our view, make any difference. It is significant to note in this connection that it is permissible for a person to have two buses under one permit.(Vide Maharashtra State Road Transport Corporation Vs. State Transport Authority and Another, paragraph 3). In Srinath Sharma Vs. State Transport Appellate Tribunal, Rajasthan, Jaipur and Others, the question for consideration was whether a temporary permit can be issued by invoking the power both u/s 68-F (1-C) and Sec.62 (1) (C) of the Act. It was held that it could be done. On the same analogy, we do not see any reason why it is not permissible to give a single permit in respect of a route, a portion of which is covered by one draft scheme and another portion is covered by another draft scheme. The important consideration which should weigh with the authorities is the interests of the public and the view which we have taken will be in consonance with public interest. In Smt. Praveen Ansari and Others Vs. State Transport Appellate Tribunal, Lucknow and Others, , The Supreme Court had to consider a case where in a route for which 7 permits were sanctioned, the State Transport Undertaking applied only for three permits under Sec. 68-F(1-C). The Supreme Court held that if the Corporation was unable to provide vehicles for the optimum strengths fixed by the State Transport Authority the remaining permits will have to be granted to any other person willing to obtain temporary permit. The Supreme Court observed that in interpreting the provisions of Chapter IV-A of the Act, the authority, under the Act must not lose sight of the fact that the primary consideration must be the service available to the traveling public. Undoubtedly the competing claims between the Corporation and the other private operators have to be considered. But the overall consideration viz., the service is for the benefit of the traveling public should never be overlooked for a moment. In the light of this test, we are of the view that the proper interpretation to be given to Sec. 68-F (1-C) is that an operator is entitled to a permit in respect of a route even though the route is not covered by a single draft scheme but two draft schemes provided that no application for a temporary permit has been made by the State Transport Undertaking under S.68-F(1-A) of the Act.

9. A further contention was raised by the respondents in W. A 324/81 that the route was covered also by approved schemes and therefore under Sec.68-FF,no

permit at all can be granted to a private operator. Sri Venugopal Reddy, submitted that this contention should not be allowed to be raised as this was being raised for the first time in Writ Appeal. It was however to be noted that the Tribunal held against the appellant who filed the Writ Petition and, the Writ Petition was also dismissed. Hence there was no occasion for the respondents to raise this question before the Tribunal or before Jeevan Reddy J. Further, we find that this contention seems to have been raised before the Tribunal though it had no necessity to deal with the same as it decided against the petitioner on the ground that Section 68-F (1-C) has no application where the route in question is covered by the two draft schemes. Now that we are taking a different view and holding that S.68-F(1-C) applies even though the route is covered by two draft schemes. It is open to the respondents to support the decision of the Tribunal and Jeevan Reddy J. on another ground viz., that as therefore approved schemes, the permit could not be granted to the petitioner u/s. 68-FF. The appellant may on the other hand contend that even if there is an approved scheme, still a temporary permit can be granted under Sec.68-FF provision if the State Undertaking has not applied for a permit. We are not inclined to go into these questions at this stage as they would depend also upon questions of fact regarding the existence of the approved schemes and the routes covered by approved schemes, whether the State Undertaking has applied for a permit or not in respect of the route covered by the approved schemes. We therefore consider that the proper course is to allow the Writ appeal and set aside the order of the Tribunal and direct is to hear the appeal and dispose of the same after dealing with the contention that the permit cannot be granted in view of the existence of approved schemes covering the route. The parties may urge all contentions of law and fact relating to this aspect before the Tribunal. The Writ Appeal 324/84 is allowed to the extent indicated above; but in the circumstances without costs.

10. W. A Nos. 307 and 308/1981:- In these cases, the question for consideration is whether a temporary permit granted to a private operator u/s 68-F (1-C) is valid until a pucca permit is granted to the State Transport Undertaking or whether it ceases to be effective even if a temporary permit is granted to the State Transport Undertaking. Under the last part of Sec. 68-F (1-c), it is provided that the permit shall cease to be effective on the issue of a permit to the State Transport Undertaking in respect of that area or route or portion thereof. Jeevan Reddy, J. took the view that the expression "permit" in this part of the section means a pucca permit and will not include a temporary permit. The contention of the State Transport Undertaking on the other hand is that even on the grant of a temporary permit granted to the private operator u/s 68-F (1-C) would cease to be effective. It is argued that the general expression "permit" is wide enough to include a temporary permit. Reliance is placed upon the decision in G. Mahava Rao and Others Vs. The Regional Transport Authority, Kurnool and Others, . It is true that the expression used in Sec. 68-F (1-C) is "permit" but having regard to the object and purpose of Sec.68-F(1-C) of the Act, we are of the view that the

expression should be understood in a restricted sense as meaning only a pucca permit. As Jeevan Reddy J. has pointed out that Sec.68-F(1-C) is intended to cover a case where there is delay between the publication of the approved or modified scheme; and in such a case if an application for a temporary permit to the Undertaking if it is satisfied that it is necessary to increase in the public interest the number of vehicles operating on such route. If the Undertaking does not make any such application, a temporary permit may be granted to a private operator. This provision is therefore made to meet and serve public interest. If the expiation permit is constructed as referring also to a temporary permit granted under sub-section (1-A), the State Transport Undertaking would be entitled to obtain a temporary permit and displace the private operator within a short time after the grant of the temporary permit to the private operator under sub-section(1-C). This would enable the State Transport Undertaking to lie low without applying for a permit under S.68-F(1-A) and come on the scene after a private operator is given a temporary permit granted to the private operator u/s 68-F(1-A). In such an event, if the temporary permit granted to the private operator u/s 68-F(1-A) is rendered ineffective, it would place the private operator who has incurred considerable expenses and put a bus on the route, as the State Transport Undertaking had not chosen to apply for a permit, in a very disadvantageous position and he will be left to the mercy of the State Transport Undertaking . We do not think that this could have been the intention of the framers of the Act. On the other hand, as pointed out by Sri G.Suryanarayana, the Act has used the expression `temporary permit" whenever it wanted to refer to a temporary permit. Jeevan Reddy J. has also referred to the observations of the Supreme Court in Smt. Praveen Ansari and Others Vs. State Transport Appellate Tribunal, Lucknow and Others, , which lends some support to this view. We are also in agreement with him in holding that the view expressed by the Kerala High Court in Sankaran Nair v . R.T.A., Kottayam, 1978 Ker LT 410, is not correct.

11. In the result, we agree with the view of Jeevan Reddy J. that the impugned notice given to the petitioners in the two writ petitions out of which writ Appeals 307 and 308/1981 arise directing the petitioners to surrender their permits as a consequence of the grant of temporary permits to the State Transport Undertaking, are bad. The Writ Appeals 307 and 308/1981 are therefore dismissed but in the circumstances, without costs.

12. An oral application for leave to appeal to the Supreme Court is made on behalf of the Andhra Pradesh State Road Transport Corporation. We consider that these cases are fit cases for granting leave to appeal to the Supreme Court as the following questions of law are involved. which in our view are of general importance which require consideration by the Supreme Court.

1. Whether a temporary permit u/s 68-F(1-C) of the Motor Vehicles Act can be granted when the route is covered by the two draft schemes?

2. Whether the expression "permit" occurring in S.68-F(1-C) means a temporary permit or a pucca permit.

13. Leave granted.

14. Order accordingly.