

(2010) 04 KAR CK 0121

In the Karnataka High Court

Case No : Writ Petition No's. 19566 and 19843 of 2007, 2670, 28123-124 of 2008 and 28024 and 29721 of 2009

Sri Gopalakrishna Moolya and Others

APPELLANT

Vs

The Secretary Karnataka State Transport Authority, Sri
Thimmappa Bhat, Sri B.K. Mohammed and Sri Dhanaraja
Poojary and Others

RESPONDENT

Date of Decision : 13-04-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 88, 88 (1)

Citation : (2010) ILR (Kar) 2496 : (2011) 1 KarLJ 702

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : A. Ananda Shetty, in W.P. Nos. 28024/2009 and 28123-124/2008, C.M. Subhanullashariff, in W.P. No. 29721/2009, R. Lokesh, in W.P. No. 2670/2008 and M.R.V. Achar and Srikantha A., in W.P. No. 19566 and 19843/2007, for the Appellant; M.C. Nagashree, HCGP for R1 for R2-4 in all W.P. Appeal, C.V. Kumar, for R2-4 in W.P. Nos. 28024/2009 and 28123-124/2008, L.T. Gopal, for R2 in W.P. No. 29721/2009, S.V. Krishnaswamy, for R2-4, S. Prakash Shetty, for R5, A.S. Parasarakumar and Madhusudan Gupta for R6, H.B. Nagaraj, for R7, R34 to 39, B.R.S. Gupta, for R8, P.R. Ramesh, R9 to 12, N. Shivananjappa, R13, 22, 23-33, B.R. Shailendra, for R-40 and A. Ananda Shetty, for R41 to 53 in W.P. No. 2670/2008, A.S. Parasara Kumar, for R2-4, B.G. Raghuram, for R5 and M.E. Nagesh, for R8 in W.P. No. 19566/2007 and A.S. Parasara Kumar, for R3, 4, 5 and 6, B. Njayadeva, for R2 and S.V. Krishnaswamy, R7 and R8 in W.P. No. 19843/2007, for the Respondent

Final Decision : Allowed

Judgement

H.N. Nagamohan Das, J.—In these writ petitions the petitioners have prayed for a writ in the nature of certiorari to quash the orders passed by the Karnataka State "Transport Appellate Tribunal, Bangalore (for short "Tribunal") and the details are as under:

----- W.P. No.

IMPUGNED ORDER	DATE OF ORDER	ANNEXURE	IN	REV.	PETN.	No.
1060,	1066	&	1067/2006	18.8.2009	A	& 28024, 282123
130/2008				24.9.2009		28124/2009
						29721/2009
						C
636/2007,	637/2007,	2.2.2008	C	638/2007,	9/2008	& 1473/2007
761,	762	and	5.11.2007	E	1000/2007,	764/2007,
757,	758,	759,	776,	5.11.2007	E	763/2007
						19566/2007 760,
						19843/2007 756,
						777/2007

2. Petitioners are the holders of stage carriage permits operating trips on inter-state routes and both the terminals of the routes are in the state of Karnataka and. the length, of routes in other states is less than 1.6 kins. The contesting respondents in these writ petitions questioned these permits in favour of the petitioners and assignment of timings before the Tribunal in different revision petitions as stated, above. The "Tribunal after hearing both the parties, passed the impugned orders holding that, the permits in question are inter-state permits and they are nor. included in the inter-state agreement between, the two states and as such the transport authority has no jurisdiction U; gram the permits. Accordingly, the Tribunal allowed the revision petitions and set-aside the permits granted in favour of the petitioners. Hence these writ petitions.

3. Heard arguments on both the side and perused the entire writ papers.

4. Section 88 in Chapter V of The Motor Vehicles Act, 1988 deals with the validation of permits for the use outside region in which it was granted, live second proviso to Sub-section 1 of Section 88 deals with nature of permits in these writ petitions. It is useful to extract the same.

88. Validation of permits for use outside region in which granted:

(1) Except as may be otherwise prescribed a permit granted by the Regional Transport Authority of any one region shall not be valid in any other region, unless the per/nit has been countersigned by the Regional Transport Authority of that other region, and a permit granted in any one State shall not be valid in any other Slate unless countersigned in the State Transport Authority of that other State or by the Regional Transport Authority concerned:

PROVIDED...

PROVIDED FURTHER that where both starting point and the terminal point of a route are situate within the same State, but part of such route lies in any other State and the length or such part does not exceed sixteen kilometres, the permit shall be valid in the other State in respect of that part of the route which is in that other State notwithstanding that such permit has not been countersigned by

the State Transport Authority or the Regional Transport Authority of that other State:

5. A reading of Sub-section (1) of Section 88 and the proviso contained therein specifies the following three categories of routes:

(i) A route which originates in one State and runs through one or more other states and the terminal point of such route situate in another State.

(ii) Both starting point and the terminal point of a route are situate within the same State but the length of the route lies in another State or States is more than 16 kms.

(iii) Both the starting point and the terminal point of a route are situate within the same State but the length of such route lie in any other State is less than 16 kms.

6. The Supreme Court in *K. Venkamma Vs. The Government of Andhra Pradesh and Others*, held that the routes specified above are inter-state permits. The route specified in category -3 stated above is an inter-state route and the same is popularly called, as Enclave route. The first two categories of inter-state permits as stated above requires counter signature of other State or States. In so far as it relates to enclave route, the counter signature of other State is not required. Thus the enclave route is distinct from the other two categories of inter-state routes.

7. The Supreme Court in *Ashwani Kumar and Another Vs. Regional Transport Authority Bikaner and Another*, held that "an inter state route can be created only by two or more states by entering into a reciprocal agreement. Opening a new inter-state route by one State alone and grant of permits consequent to such opening of routes is illegal." The Supreme Court in *A. Venkata Krishnan v. State Transport Authority, Kerala* (2004) 11 SCC 207 clarified the legal position in *Aswini Kumar's* case stating that "a State therefore would not have jurisdiction to consider any application" for grant of inter-state permit which would require the counter signature of other State". In view of this position of law, the first two categories of inter-state routes as stated above requires counter signature and they can be opened by entering into a reciprocal agreement. On the other hand, for an enclave route the counter signature of other State is not required and therefore, there is no need for a reciprocal agreement. The State Transport authorities are having jurisdiction to issue enclave permits since they do not require counter signature of other State. The Tribunal committed an error in passing the impugned orders holding that in the absence of reciprocal agreement, the state authorities have no jurisdiction to issue enclave permits.

8. Secondly, it is not in dispute that there are reciprocal agreements entered into between the State of Karnataka with State of Kerala, State of Andhra Pradesh and with State of Tamil Nadu. Further it is not in dispute that there is no specific reference in these reciprocal agreements with regard to the enclave permits. But

these States have issued notifications under the respective taxation Act regarding the method of collecting taxes in respect of enclave permits and the same reads as under:

Cases covered by the second proviso to Section 63(1) of Motor Vehicles Act, 1939 shall be exempted from payment of taxes

9. Section 63(1) of 1939 Act is in consonance with Section 88(1) of the 1988 Act. The above clause in the notifications issued by the relevant States manifestly makes it clear that there is an implied agreement, between the States totally exempting from the payment, of tax in respect of enclave permits. Thus there is an implied agreement for grant of enclave permits. Hence the State Transport Authorities are having jurisdiction to grant enclave permits.

10. The object of introducing second proviso to subsection; I of Section 88 of the Act is to avoid the elaborate procedure to be followed in the matter of obtaining counter signature of other State. By experience it was found that the procedure of obtaining counter signature of transit State had served no useful purpose. The dispensation with the counter signature procedure if the distance in the transit State does not exceed 16 kms will facilitate free flow of traffic of such routes. It is not in dispute that the State of Karnataka issued permits of enclave routes lying in the State of Kerala, Tamil Nadu and Andhra Pradesh. So also the other three States have granted inter-State permits of enclave routes lying in the State of Karnataka. This practice among the States implies that there is an agreement among the States to grant permits covering enclave routes which do not require counter signature. This arrangement among the States had facilitated the free flow of traffic and to the advantage of travelling public. Therefore, the very object, of second proviso 10 Sub-section (1) of Section 88 of the Act will be defeated by interfering with the power of State Authorities to grant inter-State permits of enclave routes.

For the reasons stated above, the following:

ORDER

(I) Writ petitions are hereby allowed.

(II) The impugned order dated 18.8.2009 in Revn. Petn. Nos. 1060, 1066 and 1067/2006 as per Annexure-A, impugned order dated 24.9.2009 in Revn. Petn. 130/2008 as per Annexure-C impugned order dated 2.2.2008 in Revn. Petn. Nos. 636/2007, 637/2007, 638/2007, 9/2008 and 1473/2007 as per Annexure-C, impugned order dated 5.11.2007 in Revn. Petn. No. 760, 761, 762, 1000/2007, 764/2007 and 763/2007 as per Annexure-E and impugned order dated 5.11.2007 in Revn. Petn. No. 756, 757, 758, 759, 776, 777/2007 as per Annexure-E passed by the Tribunal are hereby set-aside.

(III) Ordered accordingly.