

(2000) 11 KAR CK 0093

In the Karnataka High Court

Case No : Writ Petition No's. 36515 - 36518, 36670 - 36673 and 36792 of 2000

Sri. K. Jagadish Shetty and Others

APPELLANT

Vs

The Karnataka State Transport Authority and Others

RESPONDENT

Date of Decision : 27-11-2000

Acts Referred:

Motor Vehicles Act, 1939 — Section 47, 57

Motor Vehicles Act, 1988 — Section 217, 68 (3) (ca), 70, 72, 80

Citation : (2001) 2 KCCR 717

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Puttige R. Ramesh, in Writ Petition Nos. 36515 to 36518 and 36792 of 2000 and A.S. Parasara Kumar, in Writ Petition Nos. 36670 to 36673 of 2000, for the Appellant; B.H. Satish, Government Advocate in Writ Petition Nos. 36515 to 36518, 36670 to 36673 and 36792 of 2000, for the Respondent

Final Decision : Allowed

Judgement

Hari Nath Tilhari, J.—All these writ petitions involve common question of law as to construction of Sections 68(3)(ca), 70, 72 and 80 of Motor Vehicles Act, 1988 and Section 217 thereof and its effect as such are being disposed of by one common judgment. These petitions were placed for hearing regarding admission and interim orders were sought for to direct the Respondents not to issue and not to grant permits unless the State Government u/s 68(3)(ca) of the Motor Vehicles Act, formulates the routes as only, it has the authority to formulate the routes and unless the routes are formulated by the government, the Regional Transport Authority or State Transport Authority have no jurisdiction to grant permits even if the policy of liberalised grant of permit is there.

2. The learned Counsel contended that the writ petitions may be admitted and the interim order may be granted as it has been done in very many cases. From the perusal of the petition it appears that the interim relief in the nature of main and principle relief claimed in the petition has been sought. Looking to the good

number of such cases, I called upon the learned Government Counsel if the interim relief in such nature can be granted where main relief is claimed at this stage. The learned Counsel for the Petitioners submitted that it would be better for the Court at this stage to hear the petition and pass final order if interim relief cannot be granted. That in view of above, I heard the Counsels for Petitioners on merits. The learned Government Counsel was also called upon to reply the Petitioners contentions.

3. In these petitions, it has been submitted that Petitioners before this Court are all operators in various regions and Petitioners case is that after the coming into force of the Motor Vehicles Act, 1988, the old Motor Vehicles Act of 1939, stood repealed and it has been contended on behalf of the Petitioners that their lordships of the Supreme Court have also laid it down that the provisions of Sections 47(3) and 57 have also ceased to operate.

4. The lordships of the Supreme Court in the case of *Mithilesh Garg v. Union of India* and Ors. AIR 1992 SC 447 observed as under:

6. 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.

5. The learned Counsels invited my attention to Sections 68, 70, 71 and 72 of the Motor Vehicles Act as well as to Section 74(i) of the Motor Vehicles Act. The learned Counsels contended that from the perusal of provisions it can well be said that formulation of routes by the State Government is essential, before the making of an application, for grant of permit by the Regional Transport Authority or State Transport Authority. The learned Counsel contended that one of the requisites is that in the application, the applicant has to specify the routes for and in relation to which permit is sought. The learned Counsel contended that without specification of routes in the application, the permit cannot be granted as per mandate of law. On the basis of the above provisions, the learned Counsel contended that the route is to be specified in the application, and unless the route has been formulated by the State Government which has been specified as authority competent in that behalf no other authority is competent to formulate the route so it cannot be specified in the application for grant of permit as well. He further urged that neither Regional Transport Authority nor State Transport Authority has got any jurisdiction or authority to grant or issue permits, in view of principles of law and mandate of law contained in Sections 72, 74, etc., until routes are formulated by the government and are specified and specifically mentioned in the application.

6. The learned Counsel for the Petitioners further prays that these writ petitions may be allowed and direction may be issued to the State Government to formulate the route or routes for plying of the stage carriages. The learned

Counsel further prays that writ of mandamus be issued to the Regional Transport Authority not to grant or issue permits unless the State Government specifies the route or routes. The learned Counsel for the Petitioners contended that atleast the State Government could have notified the existing route or routes formulated earlier. But before and unless the State Government formulates and notifies the routes, neither the applications could be entertained nor permits could be granted and therefore mandamus be issued to the Respondent-Regional Transport Authority or State Transport Authority concerned not to issue permits till the State Government formulates and notifies the routes.

7. The learned Government Counsel contended that the Regional Transport Authority can specify the routes after getting the application under the Act in view of Section 68(3) and also in view of provisions of Sections 71, 72 and 80. Therefore, there is no illegality if the Regional Transport Authority have granted permits after formulating the routes themselves. The learned Counsel contended that there is liberalised policy of grant of permit, therefore, the Regional Transport Authority can grant permits as the grant of permit is the rule, refusal to grant permit is an exception and refusal has to be based on some reason. The learned Government Counsel further contended that if the Court declares that all the permits so far granted to persons operating on the routes are illegal and void, then in that case there will be inconvenience problems to travelling public and public interest will also suffer. So, this Court may atleast grant breathing time atleast to the government if it directs that it should formulate and notify the routes u/s 68(3)(ca) of the Act and may provide in the order that existing operators will not be effected till the government notifies the routes. The service operating at present should not be effected atleast for the period the government formulates and notifies the route and fresh applications for permits are required or made.

8. I have applied my mind to the contentions raised by the learned Counsel for the Petitioners as well as the learned Government Counsel Sri B.H. Satish who has taken notice in all these petitions on behalf of Respondents and who is no doubt permitted to file his memo of appearance later on. It will be appropriate at this juncture to peruse the provision of Section 68(3)(ca) of the Motor Vehicles Act as introduced by Motor Vehicles Amendment Act of 1994 herein after referred as Act No. 1954 to 1994, vide Section 22 of Amending Act. Section 22 of the Amending Act reads as under:

Amendment of Section 68.-In Section 68 of the Principal Act in Sub-section (3) after Clause (c), the following clause shall be inserted, namely:

(ca) Government to formulate routes for plying stage carriages.

This insertion is prospective as the language of Section 22 per se reveals. This Act of 1954 of 1994 came into operation and was enforced with effect from 14.11.1994. It is mentioned there this Act received the assent of the President on 31.8.1994 and was published in the official Gazette on 12.7.1994. The Act

came into force with effect from 14.11.1994. So, the amendments in Section 68 came into force with effect from 14.11.1994.

9. Section 70 of the Motor Vehicles Act provides for an application being made for stage carriage permit or a reserve carriage permit and it provides that the application shall contain the specific particulars as indicated therein and one of the particulars mentioned is the route or routes or the area or areas to which application relates are to be specified. Section 71 deals with the procedure of Regional Transport Authority in considering the application for stage carriage permit. Section 72 of the Motor Vehicles Act, 1988 provides that "subject to provision of Section 71, Regional Transport Authority may on an application being made to it u/s 70 grant of stage carriage permit, in accordance with the application as it deems fit or it may refuse to grant that. Proviso of Section 72 very specifically provides and mandates as under:

No such permit shall be granted in respect of any route or area not specified in the application.

That Sub-section (2) of Section 72 further reveals that permit granted may attach one or more of the conditions as are referred to in Sub-section (2) of Section 72 and very first condition is that the vehicle shall be used only in a specified area, or on a specified route or routes.

10. A reading of this section per se reveals that a permit holder to whom permit is granted for stage carriages, if he fails to specify the route in his application, his application shall be rejected and in view of this proviso no discretion is left with the authority in the matter in case the applicant fails to specify the route in relation to which he seeks permit. Then it further reveals that if permit is granted in respect of specified route or routes, one of the conditions attached to the permit under law is that the vehicle shall be used only on the specified route or routes and shall be plied on that or on those routes to which the permit relates. Nodoubt, Section 80 Sub-section (1) of the Motor Vehicles Act, 1988 provides that an application for a permit of any kind may be made at any time and the Regional Transport Authority or State Transport Authority or the authority referred u/s 66(i) of the Act shall not ordinarily refuse to grant the permit on an application for permit (of any kind) being made at any time under this Act and if it refuses the grant of permit, it has been required to give the applicant for permit, reasons in writing for such refusal and the refusal can be made after the applicant has been heard in the matter. Nodoubt, Section 80 Sub-sections (1) and (2) innovate the scheme of liberalised scheme and grant of permits but the section cannot be taken to provide that if there are any conditions required to be fulfilled is are not fulfilled or even if the mandate of law flouted in any case, the application shall not be rejected and those applications cannot be rejected in view of the scheme of liberalisation. Application for grant of permit can be made under the Scheme of Liberalisation at any time but this scheme has to be read subject to other provisions of Motor Vehicles Act and power to refuse the grant of permit u/s 80 as is there, though refusal is exception, but refusal nodoubt can be

made as per proviso to the Section 80. Authority can refuse to grant permit but reasons for refusal to be indicated in writing and are to be given or supplied in writing to the applicant for permit Section 80 does not to say good bye to the provisions of Section 70 or proviso to Section 72 which mandates that no stage carriage shall be granted in respect of any area not specified in the application.

11. Under the earlier scheme, I mean to say under the Motor Vehicles Act, 1939, nodoubt, the Regional Transport Authority was said to have certain implied powers of fixing the number of permits to be granted and also specifying the routes. But old Section 47(3) has been given a good bye and old Section 57 has also given a good bye in view of the repeal of Act of 1939 u/s 217 of the Act of 1988. The present provisions of Section 68(3)(ca) as inserted by the Amending Act of 1994, specifies the specific instrumentality in regard to formulation of routes. The power has been conferred on the government to formulate the route or routes for plying of the stage carriages. No provision under Motor Vehicles Act had been brought to my notice either by the Counsel for the Petitioners or by the learned Government Counsel which may be said to empower the State Government to delegate its power or functions to any authority subordinate to it nor any such delegation has been pointed to us. Section 70 makes a pre-condition, for application being made, firstly that application shall contain and specify the route or routes to which application relates and Section 72 directs that if route has not been specified in the application, the permit shall not be granted. Specification of the routes in application is very essential for claiming and for grant of permit. This specification cannot be done unless route has been formulated particularly after the insertion of Clause (ca) in Section 68(3) of Act of 1988. The State Government has so far not formulated the routes for plying of the stage carriages and the formulation of the routes for plying stage carriage permits can be done by the government only as per Section 68(3)(ca).

12. It is well settled principle of law that when a power has been given and instrumentality for the exercise of that power, as to which authority will exercise that power, has been specified in the Act, then it necessarily implies that no other person than the one specified shall exercise that power. Reference in this regard may be made to the decisions, in the case of AIR 1936 253 (Privy Council) and in the case of State of Uttar Pradesh Vs. Singhara Singh and Others, . In paragraph 15, their lordships of the Supreme Court in the above case, laid down that "when statute confers a power on certain judicial officer that power can be exercised only by those officers, no other officer can exercise that power for it has not been given to him".

13. In the case of Krishan Gopal Vs. Sri Prakashchandra and Others, , their lordships of Supreme Court dealing with Sections 80 and 80A of Representation of People's Act laid down the same principle when their lordships laid law thereunder and observed at page No. 213 of the report as under:

Sub-section (2) of Section 80A of the Act provides that the jurisdiction which the High Court has to try an election petition shall be exercised ordinarily by a Single

Judge of the High Court and the Chief Justice shall from time to time assign one or more judges for the purpose. It is plain that Sub-section (2) does not confer jurisdiction to try an election petition. Such jurisdiction is conferred by Sub-section (1) of Section 80A upon the High Court. Sub-section (2) merely specifies the instrumentality through which the jurisdiction which is vested in the High Court shall be exercised. The Sub-section thus relates to the procedure for the exercise of the jurisdiction and provides that the jurisdiction shall be exercised ordinarily by a single Judge of the High Court who has been assigned for the purpose by the Chief Justice. Perusal of Sub-section (2) of Section 80A makes it manifest that it is only a judge of the High Court assigned for the purpose by the Chief Justice who can exercise the jurisdiction which is vested in the High Court to try an election petition by Sub-section (1) of that section. The provisions of Sub-section (2) are mandatory and a person who is not a judge of the High Court concerned and who has not been assigned for the purpose by the Chief Justice cannot exercise the jurisdiction which is vested in the High Court by Sub-section (1) of Section 80A of the Act.

14. Keeping these principles in view, I am of the opinion that now in view of provisions of Section 68(3)(ca) of the Motor Vehicles Act, 1988 as inserted by Act 1954 of 1994 "It is only the State Government which is only authorised to formulate the route for plying of stage carriage permits and no other as the Act, intends and specifies its instrumentality as to who will formulate the route, then no other authority can exercise that power, and that the State Government has not done upto this date and the authorities also did not keep these provisions in view when they had granted the permits without formulation, by State Government, of the routes for plying of stage carriage permits". There has been a mistake on the part of authorities as well. The ordinary public is also not to be made to suffer because of the mistake of the State or its officers.

15. In view of the above circumstances as far exercise of powers under Sections 70, 72 of the Act read with Section 80, the formulation of the routes by State Government is necessary, may it adopt the routes already existing as formulated earlier by authorities after considering the other aspects or specify new routes. Until the route is not formulated and specified by the State Government u/s 68(3) (ca), the Regional Transport Authority and the State Transport Authority has no jurisdiction to entertain applications and applicant moving applications for permit of stage carriages without specification of the routes will really not be entitled as permit cannot be granted as per mandate of the Section 72 proviso.

Thus considering the above, I allow these petitions and issue following directions:

- a) That the State Transport Authority and the Regional Transport Authority henceforth shall not grant any stage carriage permit, nor allot timings under the permits already granted until and unless the State Government formulates and specifies the route or routes for plying of stage carriage permits.
- b) The State Government is directed to expeditiously formulate and specify the

route or routes in accordance with law and in every case within a period of six months from the communication of this order of the Court to it.

c) It is further provided that during this period i.e., till the State Government formulates and notifies the route or routes for stage carriage permits for the plying of stage carriages, the existing operators who are operating today, the stage carriage under the permits already granted shall be allowed to operate their carriages during this above period or upto the expiry of their permits whichever is earlier.

The last clause has been made keeping in view, the convenience and inconvenience that may be caused to the travelling parties.

These writ petitions are thus disposed of as allowed. Let above direction in the nature of writ of mandamus be issued to the Respondents for compliance. Let a copy of this judgment be placed in other connected writ petitions.