

(2007) 04 KAR CK 0017
In the Karnataka High Court
Case No : Writ Petition No. 5195 of 2007

Sri Syed Ameerjan

APPELLANT

Vs

The Secretary, Karnataka State Transport Authority and Sri
S.R. Vasudeva Murthy Rao

RESPONDENT

Date of Decision : 04-04-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 81, 88, 88 (5)

Citation : (2008) 1 KarLJ 128 : (2007) 3 KCCR 1715

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : B.R. Sundararaja Gupta, for the Appellant; S.V. Krishnaswamy, for R2 and Akkamahadevi, HCGP for R1, for the Respondent

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J.—The petitioner, a transferee of a stage carriage permit bearing No. 15/65-66 authorised to operate on an Inter-State route from Chikkaballapura to Hindupura and back performing four single trips per day, aggrieved by the order dated 17-03-2007 in R.P. No. 644/2006 Annexure-"D" of the Karnataka State Transport Appellate Tribunal, has preferred this Writ petition.

2. Sri. B.R. Sundararaja Gupta, learned Counsel for the petitioner advances the following contentions:

The grant of additional trips and additional vehicles in respect of the permit of a saved operator under the Kolar Pocket scheme was held to be permissible by two decisions of a Full Bench of this Court and three decisions of the Hon'ble Supreme Court, and the controversy brought about by the opinions rendered by the Andhra Pradesh High Court and Chennai High Court in that regard, is a matter pending before a constitutional bench of the Apex Court According to the learned Counsel, the constitutional bench, having taken note of the controversy in respect of grant of additional trips on double point tax basis in the case of

SMT. VIJAYAMMAL, by order dated 27-11-2006 permitted the operator to operate services by maintaining status quo and a Division Bench of this Court in identical circumstances in Writ Appeal No. 3231/2005, granted an order of stay permitting the operator to operate the services. The learned Counsel hastens to add that the KSTAT, without awaiting the decision of the Constitution Bench of the Hon''ble Supreme Court, and in the light of the decision reported in 1995 Supreme Court Gases Supplement Page 434, fell in error in setting aside the grant of additional trips by the State Transport. Authority.

3. Per contra, Sri. S.V. Krishnaswamy, learned Counsel for the contesting 2nd respondent reiterates the contention advanced in the statement of objections dated 2-4-2007. In addition, learned Counsel points out to the law laid down by the Apex Court in the case of Ashwani Kumar and Another Vs. Regional Transport Authority Bikaner and Another, which view was affirmed by a larger bench of three Judges of the Supreme Court in the case of A. Venkatakrishnan v. State Transport Authority, Kerala in W.P. (C) No. 287/2002 D.D. 24-02-2004. According to the learned Counsel, the Apex Court, declared the law that additional trips cannot be granted on nationalized routes, more so in the face of existing inter-State Agreement prescribing the number of trips to be operated on the notified route. Learned Counsel places reliance upon the Full Bench decision of this Court in the case of Karnataka State Road Transport Corporation and Others Vs. Smt. R. Maheshwari and Others, in support of the contention that grant of variation of the conditions of stage carriage permit held by a saved operator under the Kolar Pocket Scheme / Bellary Pocket scheme, by increasing the number of trips or number of vehicles without a reciprocal agreement between the States, is not permissible. Learned Counsel hastens to add that in the facts and circumstances of this case, there being an interstate agreement between the states of Karnataka and Andhra Pradesh, in respect of the route in question, limiting the operation of services to two trips for the saved operators, the KSTAT was fully justified in setting aside the variation of condition of permit by increasing two more additional trips while renewing the permit.

4. Facts are not in dispute. The transferor of the petitioner's permit was permitted to operate on the inter-State route in question by performing one round trip per day. At the instance of the petitioner's transferor, the KSTA in its proceeding dated 28/29/30th May, 1981 in Subject No. 17/81, granted variation of conditions or permit by including two more single trips, which when endorsed in the year 1981 was counter signed by the STA of Andhra Pradesh. The permit valid upto 10th of August 2006, stood transferred to the name of the petitioner with the permission of the KSTA with effect from 22-01-2002 and countersigned by the State Transport Authority of Andhra Pradesh with effect from 6-2-2002. The petitioner made an application on 23-05-2006 u/s 81 of the Motor Vehicles Act, 1988 (for short "Act") read with Rule 76 of the Karnataka Motor Vehicles Rules, 1989 (for short "Rules") to the 1st respondent, delegatee in exercise of jurisdiction under Rule 56 of the Rules, by order dated 23-05-2006 renewed the permit with conditions, for five years upto 10-08-2011. In other words, the

permit was renewed together with four single trips per day. The renewal was countersigned by the STA of Andhra Pradesh for a temporary period upto 11-04-2007, pending consideration of the permanent counter-signature on the premise, that two single trips are to be countersigned either on single point tax basis or on double point tax basis in terms of the inter-State agreement between the States of Karnataka and Andhra Pradesh. The 2nd respondent filed Revision Petition No. 644/2006, before the Karnataka State Transport Appellate Tribunal for short KSTAT, along with an application to condone the delay in filing the petition, challenging the grant of renewal of permit on the ground that the petitioner was entitled to renewal of permit to perform only two single trips per day on single point tax basis.

5. The KSTAT, by the order impugned, having noticed the settled position of law that application for renewal is to be treated on par with that of grant of a new permit, entertained the Revision Petition by condoning the delay. In the admitted facts of existing interstate agreement between the two states of Karnataka and Andhra Pradesh, the KSTAT recorded a finding that the renewal of permit with four round trips by the STA, beyond the scope of the inter-State agreement, was impermissible. The KSTAT also considered the letter dated 27-07-2004 addressed by the Secretary, STA A.P to the 1st respondent which directed the STA, Bangalore to disclose the number of trips granted to the petitioner either on single point tax or on double point tax, while the endorsement dated 29-04-2005 granted countersignature to the petitioner's permit for two single trips. In addition, the KSTAT noticed the letter dated 13-01-2005 of the JCT -Secretary, KSTA, Bangalore addressed to the Secretary STA, Andhra Pradesh stating that inclusion of two more single trips to the permit of the petitioner is outside the scope of the interstate agreement and that the permit holder is entitled to operate only two single trips on single point tax basis. The Tribunal, in the light of the aforesaid admitted facts, allowed the Revision Petition and set-aside the renewal of the permit in so far as it relates to two additional trips.

6. With regard to the legal position, the contention advanced by the learned Counsel for the petitioner is that the Apex Court referred the question as regards grant of variation of condition of permit by adding additional trips u/s 57(8) of the Motor Vehicles Act, 1939 to a constitution Bench, in the light of the opinions of the High Court of Andhra Pradesh in the case of L. Raghuraman v. State Transport Authority, Andhra Pradesh and Anr. Annexure-"G" and the High Court of Tamil Nadu, in the case of Vijayammal v. Tamil Nadu State Transport Corporation and Ors. Annexure-"J". Additionally, reliance is sought to be placed on the order dated 26-07-2005, Annexure-"L" in W.A.No. 3231/2005, staying the decision of a learned Single Judge of this Court in W.P. No. 2690/1991 in the case of T.N. Jayanarayana Reddy v. Karnataka State Transport Appellate Tribunal, Annexure-"K", declining to interfere with the order rejecting the increase in the number of trips or number of vehicles following the decision of the Full Bench in the case of KSRTC v. R. Maheshwari.

7. In order to appreciate the contentions of the learned Counsel, it is necessary to extract the law laid down by the Apex Court in the case of Ashwani Kumar v. RTA, Bikaner wherein their lordships, while interpreting Section 88 of the Act, observed thus:

7. x x x

In the absence of existence of inter-State route, the authorities under the Act were not justified in granting the permits to the appellants. The existence of permit depends upon the reciprocal agreements between the States covered by the route which, admittedly, did not exist in the instant case. The orders of the Authority granting permit in favour of the appellants were thus without jurisdiction.

6. x x x

The grant of inter-State permits with which we are concerned in these appeals are permissible u/s 88(5) of the Act. The existence of a route is a condition precedent for exercise of the power under Sub-section (1) of Section 88 of the Act. Intra (inter) State route under the scheme of the Act has to be reciprocal and cannot be unilaterally created by one State or an Authority in the State. The concerned State Governments are supposed to de-liberate and decide the routes to be opened as inter-State routes by determining the number of trips each route to have and prescribe other conditions for the smooth functioning of the Act to achieve its objective which is claimed to be a social welfare legislation.

(Emphasis supplied)

8. In *A. Venkatakrishnan v. State Transport Authority, Kerala*, a three judge bench of the Apex Court opined that there was no need to review the decision in Ashwani Kumar's case. Their lordships, making reference to Sub-sections (5) and (6) of Section 88 held that the Act provides,

for the machinery as regards entering into an agreement between the States interlaid, to fix the number of permits which is proposed to be granted or countersigned in respect of each route or area in respect whereof, publication of the proposal is required to be made in the official gazette by each of the State Governments concerned in any one or more of the newspapers.

In addition, their lordships held:

A purposive and meaningful construction, it is trite, must be given to a statute, so that it is made workable. The statute should not be construed in such a manner, which would create a vacuum. In the absence of any route being fixed in terms of the agreement, in the event it be held that an application for grant of permit for inter-State route can be entertained, the same would lead to a futile exercise. A mutual approval of the States concerned, in the matter, therefore, must be held to be mandatory.

9. The full bench of this Court in Kart's case, having considered all important

earlier pronouncements of the Apex Court which have a bearing on its decision making, recorded its summary of findings by opining that it is not permissible to grant variation of condition of permit held by a saved operator under the Kolar Pocket scheme by increasing the number of trips or number of vehicles unless the reciprocal agreement between the States so permits.

10. Having regard to the law laid down by the Apex Court in Venkatesham Chetty's case, which admittedly, is not subject matter of review before the Constitution Bench and the law declared by the full bench of this Court, following Venkatesham Chetty's case, the contentions advanced by the learned Counsel for the petitioner pales into insignificance. The contention that a Division Bench of this Court admitted Writ Appeal No. 3231/2005 and by order Annexure-"L" stayed the order of a learned Single Judge declining to interfere with the order of the KSTAT, setting aside the variation of permit by increasing the number of trips or number of vehicles, in my opinion, has no application to the facts and circumstances of the present case. I say so because, the order dated 26-07-2005 in W.P. No. 2690/1991 Annexure-"K" does not disclose that the controversy arose out of an inter-State agreement, limiting the number of trips on the notified route. In view of the authoritative pronouncements of the Supreme Court in Ashwani Kumar's case and Venkatesham Chetty's case followed by the opinion of the full bench of this Court, that if an interstate agreement provides for the number of trips to be operated by the saved operator, there can be no scope for further grant of additional trip, by seeking variation of condition of the permit, it is needless to state that the KSTAT was fully justified in interfering with the renewal of the petitioner's permit in so far as it relates to two additional trips not envisaged under the inter-State agreement.

11. In the circumstances, the order impugned is not shown to suffer from any legal infirmity occasioning grave injustice to the petitioner calling for interference in exercise of the extra-ordinary jurisdiction under Article 226 of the Constitution. Writ petition is without merit and is accordingly, rejected.

Smt. Akkamahadevi, learned HCGP is permitted to file memo of appearance for R-1 within four weeks.