

(1974) 10 KAR CK 0009

In the Karnataka High Court

Case No : Writ Petition No's. 3488, 3489, 3579, 3589, 3592, 3595, 3596, 3607 and 3645 of 1974

S.R.M.S. Tourist Service Co. and Others

APPELLANT

Vs

The Secretary, Regional Transport Authority

RESPONDENT

Date of Decision : 30-10-1974

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Motor Vehicles Act, 1939 — Section 2 (20), 2 (3), 63 (6), 68 C

Citation : AIR 1975 Kar 166 : (1975) ILR (Kar) 621

Hon'ble Judges : K. Jagannatha Shetty, J

Bench : Single Bench

Advocate : T. Krishna Rao, for M.R. Venkatanarasimhachar and T.R. Subbanna, for C.S. Shanthamallappa, for the Appellant; K.S. Puttaswamy, 1st Addl. High Court Govt. Advocate, for the Respondent

Judgement

1. These petitions raise a short but not, to my mind, an easy point The question is, whether a special permit in relation to a public service vehicle granted u/s 63 (6) of the Motor Vehicles Act, 1939, hereinafter called the Act, falls within the meaning of a contract carriage permit.

2. All that I need state the facts are: The petitioners are operators of stage carriage or contract carriage services in the State of Karnataka. Often they undertake to carry tourist passengers or marriage parties to various places both inside and outside the State. They applied to the Secretary. Regional Transport Authority of their respective jurisdiction u/s 63 (6), to grant special permits for a couple of days to (Contd. on Col. 2) convey tourists from place to place. But the Regional Transport Officer rejected their applications on the sole ground that he has no jurisdiction to grant special permit since there is a Scheme published u/s 68-C of the Act proposing to nationalise the contract carriages throughout the limits of the Karnataka State to the complete exclusion of the other operators with an exception stated in the said Scheme itself. Challenging the validity of his decision, the petitioners have moved this Court with petitions under Articles 226

and 227 of the Constitution and that is how the matters are before me.

3. Before I proceed to consider the provisions of the Act bearing on the question, it is necessary to set out here-under the relevant portions of the Scheme above referred to. The Scheme was published by notification dated 9th May, 1974 in the Karnataka Gazette of 16th May, 1974, and reads as follows:--"OFFICE OF THE GENERAL MANAGER, STATE TRANSPORT UNDERTAKING, KARNATAKA STATE ROAD TRANSPORT CORPORATION. KENGAL HANUMANTHIAH ROAD. BANGALORE-27.

Notification dated 9th May, 1974. FORM "A".

(See Rule 4 of the State Transport Undertaking Karnataka Rules, 1963). No. KST/CO/TR/PLN/1551/74-75

Whereas, the Karnataka State Transport Undertaking, is of the opinion that for the purpose of providing an efficient, adequate, economical and properly coordinated Passenger Road Transport Services, it is necessary in the public interest that the Passenger Road Transport Services as per the particulars in the Schedule given below should be run and operated by the State Transport Undertaking and the same is hereby published for general information.

Any person affected by the Scheme, may file his objections addressed to the Commissioner for Home Affairs and Secretary to the Government. Home Department Vidhana Soudha, Bangalore, within 30 days from the date of publication of the Scheme in the Official Gazette in the prescribed manner u/s 68-D of the Motor Vehicles Act, 1939.

SCHEDULE.

(a) Route or routes (With their important intermediate points) or the area, in relation to which the Scheme is proposed.

The area in relation to which the Scheme is proposed is for the entire State of Karnataka.

(b) Route length (in the case of Scheme, in relation to a route or routes only).

Does not apply,

(c) Class of Service : State Carriage/ Contract Carriage/Public Carriage: Mofussil or City or Town Services in the case of State Carriage.

Contract Carriage.

(d) Whether the services are to be operated by the State Transport Undertaking to the exclusion complete or partial of other persons or otherwise ;

The State Transport Undertakings pro-posed to operate the contract carriages in the State of Karnataka to the complete exclusion of other persons excepting-

(i) the other State Transport Under-taking as defined u/s 68-A .(b) of the M. V.

Act. 1935.

(ii) Holders of Contract Carriage permits for operation of vehicles owned by them exclusively for transportation of persons employed by them or students or members of their institutions from and to their residences and respective places of work or study and for occasional tours and excursions.

(iii) Existing holders of contract carriage permits granted to them exclusively for the daily transportation at appointed hours and between specified terminals and pick up points of only the persons employed by or studying in establishments and institutions with which the said permit holders have specific contractors for the purpose.

(iv) Holders of the permits granted to them to operate motor cabs as de-fined u/s 2 (15) of the M. V. Act.

(v) Persons holding pennies issued u/s 63 (7) of the M. V. Act. 1939."

4. The above Scheme provides for the operation of contract carriages in the State of Karnataka by the State Transport Undertakings to the complete exclusion of all other persons except those five categories of holders of permits set out in Clause (d) thereunder. It is seen therefrom, that the holder of a special permit in relation to a public service vehicle has not been specifically prevented from operating in the State. It is this omission that has been taken advantage of by the petitioners and formed the basis for their contention that the Scheme did not prohibit the grant of special permit. It was, however, urged for the respondents that a special permit is nothing but a contract carriage permit to which the Scheme is proposed for the entire State of Karnataka and, therefore none but the State Transport undertaking could operate any public service vehicle on such permit If special permit is both factually and legally identical with contract carriage permit, then the petitioners have no case in these petitions; but if one is different from the other, the Regional Transport Officer must be held to have acted illegally in rejecting the applications of the petitioners for the grant of special permits.

5. Learned counsel on both sides, in their usual style of addressing clear arguments, relied upon various provisions of the Act in support of their respective contentions, to which I now make a brief reference. Section 2 (20) defines "permit" to mean "the document issued by the Commission or a State or Regional Transport Authority authorising the use of a transport vehicle as a contract carriage or stage carriage, or authorising the owner as a private carrier or public carrier to use such vehicle." No transport vehicle can be used save in accordance with a permit issued under Chapter IV of the Act. Four types of permits may be issued under Chapter IV, viz., stage carriage permit (Sections 46 to 48); contract carriage permit (Sections 49 to 51); private carriers permit (Sections 52 and 53); and public carrier permit (Sections 54 to 56). The Act also provides for the grant of three other kinds of permits; viz.. Temporary permit (Section 62); Special permit [(Section 63 (6))]; and Tourist permit [Section 63

(7)].

6. The Act provides different procedures for granting different permits. I shall now proceed to outline at some length, the procedure prescribed for the grant of special permit and contract carriage permit. Section 45 provides general provisions as to applications for permits. Every application for a permit shall be made to the Regional Transport Authority of the region in which it is proposed to use the vehicle or vehicles. If the applicant proposes to use his vehicle in two or more regions lying within the same State, the application shall be made to the Regional Transport Authority of the region in which the major portion of the proposed route or area lies. If it is proposed to use the vehicle in two or more regions lying in different States, the application shall be made to the Regional Transport Authority of the region in which the applicant resides or has his principal place of business, subject to any notification issued by the State Government in that behalf. Section 57 (1) states that an application for a contract carriage permit may be made at any time. Section 49 makes it obligatory for an applicant to state the particulars set out therein in his application for a contract carriage permit. When such an application is made, the Regional Transport Authority has to consider the need for an additional contract carriage in the public interest; and shall also take into consideration any representation made in that behalf, by persons holding similar permits or by any local authority or police authority. Section 51 confers power on the Regional Transport Authority to grant a contract carriage permit in accordance with the application or with such modifications as it deems fit. The duration of such permit shall be at least for a period of three years as provided by Section 58. Section 63 provides for validation of permits for use outside the region or State in which it is granted. It provides:

"63. (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 permit 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 State unless countersigned by the State Transport Authority of that other State or by the Regional Transport Authority concerned:

....."

These are some of the mandatory provisions governing the grant of a permit to use a motor vehicle as contract carriage. These provisions, however, are not required to be observed while granting a special permit. Section 63 (6) of the Act provides a complete procedure for the grant of special permits. It reads:

"63 (6). Notwithstanding anything contained in Sub-section (1), but subject to any rules that may be made under this Act, the Regional Transport Authority of any one region, may, for the convenience of the public, grant a special permit in relation to a public service vehicle for carrying & passenger or passengers for hire or reward under a contract, express or implied, for the use of the vehicle as

a whole without stopping to pick up or set down along the line of route passengers not included in the contract, and in every case where such special permit is granted, the Regional Transport Authority shall assign to the vehicle, for display thereon, a special distinguishing mark in the form and manner specified by the Central Government and such special permit shall be valid in any other region or State without the counter-signature of the Regional Transport Authority of the other region or of the State Transport Authority of the other State, as the case may be." The Karnataka Motor Vehicles Rules, 1963 prescribe further procedure for obtaining special permit. Rule 127 of the Rules states that an application for a special permit shall be sent to the Regional Transport Authority of the region in which the vehicle is ordinarily kept. The Regional Transport Authority or its Secretary if empowered, may grant a special permit, if the application is found to be for bona fide purposes, without following the procedure laid down in Section 57 of the Act. A special permit so granted shall be valid and effective for such period as is specified in such permit and in any case, it shall not exceed three months, with liberty if necessary to extend it by one more month. Rule 127 (8) provides further facilities to the holder of a special permit. It reads as follows:

"127 (8). If before the expiry of the period of the special permit granted under Sub-rule (5), it is intended to visit places, in addition to, or other than those indicated in such permit, the person in charge of the vehicle or any of the persons engaging the vehicle and acting on behalf of all of them present an application in form "Special Permit Application" along with the permit granted under Sub-rule (5), to the Regional Transport Authority, having jurisdiction over the place or places intended to be visited, whichever is nearer, setting forth the reasons for such alteration or addition."

7. From the above provisions, it is seen that there is a fundamental difference between the procedure for granting a contract carriage permit, and a special permit. To summarise, the main and central points of differences are these: A contract carriage permit could be granted only to contract carriage, whereas a special permit could be granted in relation to any public service vehicle, which by its definition includes also a contract carriage. The jurisdiction to grant a contract carriage by the Regional Transport Authority or State Transport Authority depends on the regions in which the vehicle is proposed to be used. If the vehicle is proposed to be used in two or more regions lying in the same State, the Regional Transport Authority of the region in which the major portion of the route or area lies, only has got the jurisdiction to grant contract carriage permit. But a special permit may be granted by any Regional Transport Authority of the region in which the vehicle is ordinarily kept. No other person or authority has got a right to make any representation for or against the grant of special permit. The special permit shall be valid in any other region or State without the counter-signature of the corresponding authority; whereas in the case of contract carriage permit, it must be countersigned for its validity by the corresponding authorities of the other region or State. With these vital differences, it is

impossible to reach the conclusion that the Legislature intended to equate the contract carriage permit with the special permit. In my view, one is totally different from the other.

8. The argument of Mr. Puttaswami, learned counsel for the respondents was, however, based on the similarity in the use to which contract carriage permit and special permit are put to, and the conditions under which they are required to be operated. He said that both the permits could be used for the sole purpose; that is, for carrying passengers for hire or reward under a contract express or implied for the use of a vehicle as a whole without stopping to pick up or set down along with the line of route passengers not included in the contract. This kind of operation of any vehicle, according to him, could be only by a contract carriage. In support of the contention, he then referred me to the definition of "contract carriage" u/s 2 (3) of the Act. The definition runs thus:

"Contract carriage means a motor vehicle which carries a passenger or passengers for hire or reward under a contract expressed or implied for the use of the vehicle as a whole at or for a fixed or agreed rate or sum-

(i) on a time basis whether or not with reference to any route or distance, or

(ii) from one point to another, and in either case without stopping to pick up or set down along the line of route passengers not included in the contract; and includes a motor cab notwithstanding that the passengers may pay separate fares."

It is true that both the permits are given for carrying a passenger or passengers for hire or reward under a contract, express or implied, for the use of the vehicle as a whole without stopping to pick up or set down along the line of route passengers not included in the contract. But that by itself is no ground to hold that contract carriage permit and special permit are one and the same. To hold so, one will have to ignore the difference between the two, and the material provisions of the Act, to which I have earlier referred to. The definition of the "contract carriage" u/s 2 (3) of the Act cannot be a guiding factor to determine the nature of the permit granted u/s 63 (6) of the Act. The said sub-section does not refer to contract carriage, and therefore it is impermissible to rely upon the definition of the word "contract carriage" while construing the provisions of Section 63 (6).

9. There is one other reason why I should reject the contention of Mr. Puttaswami. The State of Karnataka or the said Scheme cannot prevent the operation of public service vehicles under special permits granted by authorities outside the State of Karnataka. Such permits need not be countersigned by the corresponding authorities in the State of Karnataka for their validity. When the State cannot prevent such operators from plying their vehicles, I see no other purpose in the contention except that of self defeating by denying the special permits to the operators of this State.

10. The enunciation on the question of law as made above is sufficient to dispose of these petitions, since the special permits prayed for by the petitioners have already been directed to be granted by the interim orders issued by this Court at the time of preliminary hearing of these petitions.

11. The petitions are accordingly disposed of without any order as to costs.

12. Petitions allowed.