

(2014) 09 MAD CK 0221

In the Madras High Court

Case No : Writ Petition Nos. 22552 and 22553 of 2011

Villa Venkata Rao

APPELLANT

Vs

State Transport Appellate Tribunal Puducherry

RESPONDENT

Date of Decision : 17-09-2014

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g), 301
Motor Vehicles Act, 1988 — Section 100, 100(3), 104, 88(6)

Citation : (2014) WritLR 1030

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Judgement

T. Raja, J.—The petitioner Mr. Villa Venkata Rao has filed these two writ petitions challenging the orders passed in Motor Vehicle Appeal Nos. 2 and 3 of 2010 dated 12.8.2011 by the first respondent-State Transport Appellate Tribunal, Puducherry and to quash the same on the ground that since the relief sought for by the petitioner was accepted by the first respondent-Tribunal to grant the stage carriage permit on the inter-State route viz., Rajahmundry to Yanam (via) Samalkot and Rajanagaram, instead of granting pucca permit, the first respondent has ordered only the grant of temporary permit, subject to the conditions contained in the proviso to Section 104 of the Motor Vehicles Act on the ground that the petitioner is a private bus operator, hence, the notified route shall not be granted to private operators.

2. Mrs. Radha Gopalan, learned counsel for the petitioner in both the writ petitions, assailing the erroneous approach adopted by the first respondent in granting only the temporary stage carriage permit on the inter-State route "Rajahmundry to Yanam" (via) Samalkot and Rajanagaram, emphatically submitted that based on the inter-State agreement entered between the State of Andhra Pradesh and the Union Territory of Pondicherry, two permits had already been granted to the Union Territory of Pondicherry as far as the route "Rajahmundry to Yanam" is concerned. Inasmuch as after the notification of the scheme route in the year 1975 by the Government of Andhra Pradesh, the

present route "Rajahmundry to Yanam" (via) Samalkot and Rajanagaram has been increased for two routes, even as per the notification issued in the year 2007, in addition to the previous route. Moreover, Section 104 of the Motor Vehicles Act clearly says that where a scheme has been published under sub-section (3) of Section 100 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. The proviso to Section 104 clearly makes the issue clear that unless the State Transport Undertaking applies for the notified route, temporary permits can be granted to any person subject to certain conditions stated therein, when the State Transport Undertaking is not plying the buses in the Yanam region in the route in question till date. Besides, the State Transport Undertaking of Union Territory of Pondicherry, namely, the Pondicherry Road Transport Corporation has not even applied for the notified permit. In addition thereto, no other person has applied for the grant of permit. While so, there is no impediment to grant the permit in favour of the petitioner herein in the interest of alleviating the plight of the general public. When the Pondicherry Road Transport Corporation is not willing to operate the vehicles to the maximum strength, more particularly, when it is obligated and duty bound to ply sufficient number of buses with reasonable frequencies from "Rajahmundry to Yanam" (via) Samalkot and Rajanagaram, the second respondent cannot object for the grant of pucca permit to the petitioner.

3. Adding further, the learned counsel has contended that as far as the Union Territory of Pondicherry is concerned, there is no scheme, therefore, the private operators are also plying their vehicles. She has further pleaded that even as per the agreement, both the nominees of the State Transport Undertaking of Andhra Pradesh and the Pondicherry Road Transport Corporation are permitted to operate their vehicles and there is no notified scheme as far as Pondicherry is concerned and that the Union Territory of Pondicherry can nominate even private operators, hence, the impugned orders passed by the first respondent-Tribunal ordering only temporary permit on the inter-State route "Rajahmundry to Yanam" (via) Samalkot and Rajanagaram should be modified as permanent permit in the said route. Explaining further before this Court that as far as Pondicherry is concerned, since there is no scheme in existence, equally it goes to show that there is no prohibition for the private operators to run their vehicles, for yet another simple reason that unless and until there is a notified scheme, even if there is an application made by the Pondicherry Road Transport Corporation, the same will be treated on par with the application of the private operators. Although this position has been partially appreciated by the Tribunal while ordering temporary permit, which shall cease to be effective on the issuance of permit to the Pondicherry Road Transport Corporation, as per the proviso to Section 104 of the Motor Vehicles Act, is highly arbitrary and unjustified.

4. Again highlighting the error committed by the Tribunal and the further failure by the Tribunal to appreciate the second proviso to Section 104 of the Motor

Vehicles Act, Mrs. Radha Gopalan further argued that the Tribunal has miserably failed to consider that the application was made by the petitioner in terms of the inter-State agreement for grant of route permits on the route "Rajahmundry to Yanam" and moreover, unless there is a notified scheme on this route published by the Union Territory of Pondicherry, the Pondicherry Road Transport Corporation cannot get the permit automatically on this route. Again repeating the position of Pondicherry Road Transport Corporation, it was contended that as far as Pondicherry is concerned, there is no notified scheme, hence, there is no prohibition or restriction for private operators to get the pucca permit in lieu of temporary permit. Concluding her arguments, focusing on the needs and requirement of the public to have adequate transport facilities to move from one State to another State, she has highlighted that when the Pondicherry Road Transport Corporation, till date, has not applied for the aforesaid notified route and when no other persons have also applied for the grant of permit for the said route, the second respondent ought to have allowed the applications dated 13.9.2007 filed by the petitioner, as there is no impediment to grant the pucca permit. When the first respondent-Tribunal has set aside the order of the second respondent rejecting the request of the petitioner for grant of inter-State permit, having hesitation to grant pucca permit, while granting temporary permit, is neither proper nor justified. In view of the grant of temporary permit, the petitioner is constrained to approach every now and then and any delay on the part of the second respondent in renewing the temporary permit will seriously affect the general public interest, who are depending upon the private operators to travel from Yanam to Rajahmundry and also carrying on small trades. On this basis, she prayed for the grant of pucca permit to the petitioner instead of the temporary permit.

5. No counter affidavit has been filed by the second respondent, although the matter has been pending from 2011. Mr. R. Sreedhar, learned Government Advocate (Pondicherry) appearing for the second respondent, objecting to the prayer of the petitioner in both the writ petitions, submitted that the petitioner cannot have any grievance in the present writ petitions. Moreover, there is no cause of action for the petitioner to come to this Court, since the prayer sought by the petitioner for granting stage carriage permit on the inter-State route "Rajahmundry to Yanam" (via) Samalkot and Rajanagaram by the applications dated 13.9.2007 was allowed by the first respondent granting temporary permit. On the basis of the order passed by the first respondent, the petitioner has been granted the temporary permit and thereby is plying the vehicles. The learned Government Advocate further submitted that when the petitioner applied for the grant of stage carriage permit on the routes (i) Yanam to Ramachandrapuram, (ii) Yanam to Sekkinettipalli and (iii) Yanam to Rajahmundry, the second respondent authority had considered the same by granting two stage carriage permits only on the routes viz., Yanam to Sekkinettipalli and Yanam to Rajahmundry under the proceedings dated 31.10.94. Further a regular stage carriage permit was also granted in Permit No. 120/PY/1995 for the petitioner's

stage carriage No. PY-01-A-3393 on the route "Yanam to Rajahmundry" for the period from 3.2.95 to 2.2.2000. In the beginning the petitioner operated the vehicle with temporary counter-signature permit issued by the State Transport Authority, Hyderabad on payment of tax due to the Government of Andhra Pradesh, since this route was not covered in the inter-State agreement. However, this was challenged by the State Transport Undertaking of Government of Andhra Pradesh, Hyderabad in W.P. No. 2661 of 1995 before this Court on the ground that the route overlapped the scheme route of Andhra Pradesh; that the plying of the vehicle was stopped by virtue of the order of stay in the said writ petition; that the application for renewal of permit from 3.2.2000 to 2.2.2005 was kept pending and that he has applied for temporary permit on 27.1.2000. This Court, by order dated 10.7.2002, directed the authority, namely, the State Transport Authority, Puducherry to consider the claim of the petitioner, the authority, after considering the case of the petitioner, rejected the same on 5.8.2003. In view of that, the renewal of stage carriage permit could not be considered.

6. Subsequently, the Andhra Pradesh State Road Transport Corporation, Kakinada had also informed the second respondent authority that the Government of Andhra Pradesh has notified the scheme routes among which the route of Rajahmundry to Kakinada (via) Rajanagaram, Vedisil, Peddapuram and Samalkot was notified in G.O. Ms. No. 871, Transport, R & B (Transport-V) dated 4.6.75, hence, the route applied by the petitioner was overlapping the scheme route notified by the Government of Andhra Pradesh and that the petitioner is a private operator. Finally it was decided to publish the final agreement as required under Section 88(6) of the Motor Vehicles Act, 1988 and thereafter G.O. Ms. No. 17 dated 1.8.2007 was published in the extraordinary Gazette No. 76 of the Union Territory of Pondicherry and accordingly, as per Section 104 of the Motor Vehicles Act, a scheme has been published under Section 100(3) stating that the State Transport Authority shall not grant any permit except in accordance with the provisions of the scheme in any notified area or route, therefore, in strict compliance of the provisions of Section 104 of the Motor Vehicles Act, the petitioner could not be considered for the grant of pucca stage carriage permit.

7. This Court is not able to see any merit in the objections raised by the learned Government Advocate for the second respondent for more than one reason. Admittedly, the petitioner is an existing stage carriage operator holding three permits in permit No. 94/PY/1967 for the vehicle Registration No. PY-04-4689, permit No. 06/PY/1975 for the vehicle registration No. PY-04-9297 and the permit No. 04/PY/1984 for the spare bus bearing Registration No. PY-04/9729. One another undisputed fact shows that the petitioner, from the date of grant of permit, has not violated any of the conditions stipulated under the Act and the notification, inasmuch as the petitioner was not penalised for any illegal act. When there is no remark on the part of the petitioner that he has not complied with or failed to fulfill the requirements under the provisions of the Act or notification, the reason for rejecting the applications for the grant pucca stage carriage permit on the inter-State route in question is to be held unjustified.

8. Moreover, the petitioner is a private bus operator on the inter-State route Rajahmundry to Yanam" (via) Samalkot and Rajanagaram. When two applications dated 13.9.2007 were made by the petitioner for the grant of stage carriage permit on the inter-State route "Rajahmundry to Yanam" (via) Samalkot and Rajanagaram, the said applications were kept pending for a longer time. As there was no positive response from the second respondent, the petitioner was constrained to file W.P. Nos. 3069 and 3070 of 2010 seeking a direction to consider the long pending applications. This Court, by order dated 22.2.2010, considering the inaction on the part of the second respondent, issued a direction to consider the petitioner's applications on merits within a period of six weeks. Pursuant to the said order, the second respondent-State Transport Authority, Pudhucherry rejected the request of the petitioner by order dated 16.4.2010 by citing the sole reason that the petitioner is a private bus operator and the route overlapped the scheme route notified by the Government of Andhra Pradesh. Aggrieved by the order passed by the second respondent, the petitioner filed Motor Vehicle Appeal Nos. 2 and 3 of 2010 before the first respondent-State Transport Appellate Tribunal, Puducherry clearly indicating that there is no scheme as far as the Union Territory of Puducherry is concerned, hence, the private operators are also plying their vehicles; that in the inter-State agreement entered between the State of Andhra Pradesh and the Union Territory of Pondicherry, two permits have been allotted to Union Territory of Pondicherry as far as the route "Rajahmundry to Yanam" is concerned and that the agreement further stated that both the nominees of the State of Andhra Pradesh and the Union Territory of Pondicherry are permitted to operate their vehicles and there is no notified scheme as far as Puducherry is concerned, therefore, the Union Territory of Pondicherry can nominate even private operators. Although the second respondent-State Transport Authority, Puducherry rejected the request for the grant of stage carriage permit on inter-State route "Rajahmundry to Yanam", the first respondent has ordered for the grant of temporary permit instead of pucca permit. The petitioner, having been aggrieved by the grant of temporary permit instead of pucca permit, has come to this Court.

9. Therefore, the only short question that needs an answer is that when the first respondent had already ordered the grant of permit, instead of temporary permit, it ought to have issued a direction to the second respondent authority to issue pucca permit for the said route as per the conditions stipulated under the Motor Vehicles Act, 1988. At the outset, it must be remembered that when the first respondent, in the impugned orders, had ordered the grant of temporary permit for the inter-State route Rajahmundry to Yanam" (via) Samalkot and Rajanagaram in respect of the notified area as contained in Part-B of the Government Notification dated 1.8.2007, no appeal has been filed, therefore, it can be reasonably inferred that the grant of temporary permit has become final. While so, it is not known as to what is the impediment for grant of pucca permit to the petitioner on the inter-State route "Rajahmundry to Yanam". Therefore, this Court is inclined to delve into the reasons for refusing the grant of pucca

permit. For this, two things are required to be considered.

10. Firstly, the State Transport Authority or the Regional Transport Authority, as the case may be, is not forbidden to grant temporary permit in respect of the stage carriages even in the notified routes, if no application for permit was made by the State Transport Undertaking in respect of any notified area in pursuance of the approved scheme. Admittedly, in the present case, no application whatsoever has been made for the permit by the State Transport Undertaking in respect of the route in question viz., "Rajahmundry to Yanam". Secondly, it must be mentioned that if the Corporation is willing to operate vehicles to the maximum strength, undoubtedly, the State Transport Authority will have to grant permit to the Corporation under Section 68F(1-A) to the exclusion of others. On the other hand, if the Corporation is unable to provide vehicles for the optimum strength fixed by the State Transport Authority, the remaining permits will have to be granted to any other person willing to obtain temporary permit and ply vehicle, because in respect of the remaining strength, there would be no application by the Corporation, hence, Section 68A(1-C) would be squarely attracted. While interpreting the provisions of Chapter IV-A of the Motor Vehicles Act, 1939, the Allahabad High Court in the case of Sanjeev Kumar and others Vs. State Transport Authority, U.P. and another, , has held that it is undoubtedly true that the Corporation enjoys a preferential treatment in the matter of obtaining permits, therefore, the authority overlooked the fact that the primary consideration must be the service available to the travelling public. In that context, the Allahabad High Court, taking note of the plight of the general public, clearly delineating when the permit should be granted to the private stage carriage operators, holding that if the Corporation does not apply for all the permits, the temporary permits can be granted to the other persons against the remaining strength. As highlighted above, till date, it is an admitted case of both sides that no application whatsoever has been made for the permit by the State Transport Undertaking viz., the Pondicherry Road Transport Corporation in respect of any notified area. Therefore, the first respondent has granted temporary permit to the petitioner in respect of the route in question. As far as Union Territory of Pondicherry is concerned, there is no scheme. Even as per the inter-State agreement, both the nominees of the State of Andhra Pradesh and the Union Territory of Pondicherry are permitted to operate their vehicles and there is no notified scheme as far as Puducherry is concerned. While so, the Union Territory of Pondicherry can nominate even private operators. Hence, this Court finds no impediment for the authority to grant pucca permit to the petitioner.

11. Secondly, in the inter-State agreement entered between the State of Andhra Pradesh and the Union Territory of Pondicherry, as mentioned above, two permits have been allotted to the Union Territory of Pondicherry as far as the route "Rajahmundry to Yanam" is concerned. Moreover, trade and commerce being protected by Article 19(1)(g) of the Constitution of India, the same is extracted as under:-

"19. Protection of certain rights regarding freedom of speech, etc.--(1) All citizens shall have the right to-

(g) To practise any profession, or to carry on any occupation, trade or business."

12. It is now a well settled legal position that regulation includes total prohibition, if it is found necessary in the public interest. However, the pursuit of any lawful trade or business may be made subject to such conditions and restrictions as may be deemed essential by the legislature to be in the interests of the general public. In order to determine the reasonableness of a restriction imposed upon the right guaranteed under Article 19(1)(g), the Court must have regard to the nature and conditions prevailing in that trade. Useful reference can be had from the judgment of the Apex Court in *Sreenivasa General Traders and Others Vs. State of Andhra Pradesh and Others*, .

13. While considering a total prohibition imposed on the right to carry on an occupation, trade or business, the Hon''ble Apex Court has held in *Mohammed Faruk Vs. State of Madhya Pradesh and Others*, that prohibition imposed on the right to carry on an occupation, trade or business will not be as regarded as reasonable if it is imposed not in the interest of the general public but merely to respect the susceptibilities and sentiments of a section of the people. In this context, it was held that the right to practice any profession or to carry on any occupation, trade or business is no doubt a fundamental right guaranteed under Article 19(1)(g), but the right is subject to any law relating to the professional or technical qualifications reasonably enacted under Article 19(1)(g). In view of the above, when the petitioner's right to carry on his trade or business is legally considered in the gamut of Article 19(1)(g), as the right of other citizens to pursue any lawful trade or business is obviously essential to the safety, health, peace and order and morals of the community, the request for grant of stage carriage permit in respect of the inter-State route "Rajahmundry to Yanam" (via Samalkot and Rajanagaram, is perfectly reasonable, hence, Article 19(1)(g) being opposed to guarantee a monopoly to a particular individual or association to carry on any occupation, the respondents cannot refuse to grant pucca permit.

14. Further, Article 301 of the Constitution of India states that subject to the other provisions of Part XIII, trade, commerce and intercourse throughout the territory of India shall be free. Article 301, therefore, refers to freedom from laws which go beyond regulations which burden, restrict or prevent the trade movement between the States and also within the State. The Hon''ble Apex Court, while considering the width and amplitude of Article 301 in *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, has observed that the opening words of Article 301 are very significant. The doctrine of the freedom of trade, commerce and intercourse enunciated by Article 301 is not subject to the other provisions of the Constitution but is made subject only to the other provisions of Part XIII; that means that once the width and amplitude of the freedom enshrined in Article 301 are determined they cannot be controlled by any provision outside Part XIII. This position incidentally brings out in bold relief the

important part which the Constitution makers wanted the doctrine of freedom of trade to play in the future of the country. It is obvious that whatever may be the content of the said freedom it is not intended to be an absolute freedom; absolute freedom in matters of trade, commerce and intercourse would lead to economic confusion, if not chaos and anarchy; and so the freedom guaranteed by Article 301 is made subject to the exceptions provided by the other Articles in Part XIII. The freedom guaranteed is limited in the manner specified by the said articles but it is not limited by any other provisions of the Constitution outside Part XIII. That is why it seems to us that Article 301, read in its proper context and subject to the limitations prescribed by the other relevant articles in Part XIII, must be regarded as imposing a constitutional limitation on the legislative power of Parliament and the legislatures of the States.

15. In view of the above principle, *prima facie*, it seems that when there is some overlapping between Article 19(1)(g) and Article 301, because both aim at the freedom of trade or business, and if any of the provision is infringed, the concerned individual could seek his remedy from the Court against the offending executive action, applying the same in the present case, when there is no sufficient public transport facilities available between Pondicherry-Yanam to Rajahmundry and vice versa for the general public to travel to and fro in order to carry on a free trade as contemplated both in Article 19(1)(g) and Article 301, keeping in mind that while Article 19(1)(g) confers a fundamental right, Article 301 confers a justifiable right, while Article 19(1)(g) is confined to citizens, Article 301 extends to all individuals, the refusal on the part of the second respondent to grant pucca permit with reasonable conditions is absolutely arbitrary. As this significant aspect has been overlooked by the respondents, this Court, by allowing both the writ petitions, directs the second respondent-authority to issue pucca permit for the route "Rajahmundry to Yanam" to the petitioner subject to the conditions as mentioned under the Motor Vehicles Act, within a period of two months from the date of receipt of a copy of this order. With this direction, both the writ petitions stand allowed and only that part of the orders refusing to grant pucca permit by the first respondent are alone quashed. No costs.