

T. N. Raghunatha Reddy

Vs

Mysore State Transport Authority

Civil Appeal No. 1564 of 1969

(C. A. Vaidialingam, S. M. Sikri, V. Bhargava JJ)

24.02.1970

JUDGMENT

SIKRI, J. -

1. This appeal by special leave is directed against the judgment of the High Court of Mysore dismissing Writ Petition No. 1112 of 1969 filed by T. N. Raghunatha Reddy, appellant before us, against the Mysore State Transport Authority. The appellant had prayed to the Court a quash the order/endorsement of the respondent, dated March 5/10, 1969.

2. In order to appreciate the points raised before the High Court and before us it is necessary to give a few facts. In 1959 the States of Andhra Pradesh and Mysore appear to have entered into a reciprocal arrangement regarding inter-State road transport. In exercise of the powers conferred by sub-section (1) of Section 43 of the Motor Vehicles Act, 1939 (Central Act IV of 1939), the government of Mysore issued a direction to the State Transport Authority to take necessary action to give effect to the above arrangement. On October 8, 1964, the State of Mysore published under clause (d), Section 68-C of the Motor Vehicles Act, 1939 - hereinafter referred to as the Act - what is called the "Kolar Scheme". Clause (d) of the scheme reads as follows :

#"(d) Whether the services are The State Transport Under-to be operated by the State taking will operate servicesTransport Undertaking to the on all the routes to theexclusion, complete or partial complete exclusion of otherof other persons or otherwise persons except that : (a) that existing permit holders on the inter-State routes, subject to the condition that their permit shall be rendered ineffective for the overlapping portions of the notified routes."##

3. It is the case of the appellant that in March, 1967 on a proposal made by the State of Mysore, the States of Andhra Pradesh and Mysore entered into an agreement for counter-signing a second inter-State permit on the route Cuddapah to Bangalore, and on April 4, 1967, the Transport Commissioner of Andhra Pradesh showed willingness to countersign a second permit. On April 13, 1967 the Transport Commissioner of Mysore State expressed willingness to countersign the second permit. It is further the case of the appellant that although the State of Andhra Pradesh carried out the agreement and countersigned the second permit on the Bangalore-Cuddapah route in favour of a Mysore operator the Mysore State refused to carry out this agreement. On January 25, 1968, the Kolar Scheme, a approved, was published in the Gazette under Section 68-D (3) of the Act. On March 1, 1968, the Mysore undertaking applied under Section 68-F (1) to operate buses from January 1, 1968, or a later date. On April 25, 1968, the Regional Transport Authority, Cuddapah issued a permit to the appellant for Cuddapah-Bangalore route on inter-State route, under Section 63

of the Act. This permit is valid up to May 13, 1971. On May 16, 1968, the appellant applied to the State Transport Authority, Mysore, for counter-signature under Section 63 of the Act, and on May 20, 1968, the Transport Commissioner, Andhra Pradesh, requested the Transport Commissioner, Mysore, to countersign the appellant's permit under the agreement.

4. In the meantime the Kolar Scheme had been challenged in the High Court and the High Court stayed the Kolar Scheme pending the decision of the writs.

5. The application of the appellant, dated May 16, 1968, for the grant of counter-signature of the permit came up for consideration before the Mysore State Transport Authority on July 6, 1968. The learned counsel for the appellant urged before it that "countersignature may be given with any timings found suitable by the Authority for their service which is an express service and does not stop in all stations as the shuttle services of the (in the case of) objectors". He also urged that "countersignature may be considered and granted as there is a stay order of the High Court of Mysore in W.P. No. 1390 of 1968 against the operation of the Kolar Nationalisation Scheme and that his permit was granted before the Scheme was approved and that the permit is issued under reciprocal agreement". The grant of countersignature was opposed by a number of objectors. The Law Officer of the Mysore State Undertaking argued that though there was a stay order against the Kolar Scheme and its implementation it did not authorise any Transport Authority to grant any fresh permits for countersignature. The Transport Authority observed :

"After considering the elaborate arguments of the counsels for the petitioner and objectors and taking all aspects of the matter and facts as disclosed from the records and the large number of existing services on the route or sectors of the route, the S.T.A. resolved to grant the countersignature subject to the decision of the High Court of Mysore about the validity of the Nationalisation Scheme of Kolar Pocket and with the following modification to the timings already granted by the R.T.A. Cuddapah."

In pursuance of this resolution actual countersignature was granted on July 6, 1968. On October 7, 1968, the High Court dismissed the writs relating to the Kolar Scheme and the Regional Transport Authority in its meeting on December 30, 1968, passed a series of orders which it deemed fit consequent on the implementation of the Kolar Scheme. On March 10, 1969, the State Transport Authority, Mysore, issued a notice to the appellant to surrender the countersignature slip and stop running the buses. On March 15, 1969, the appellant filed writ petition No. 1112 of 1969 challenging this order.

6. Before the High Court two points were raised on behalf of the appellant : (1) That the State Transport Authority should have heard the appellant before calling upon him to surrender the countersignature and the Secretary of the State Transport Authority had no power to issue the impugned endorsement; (2) As the permit had been granted to the petitioner in pursuance of an inter-State agreement, the State Transport Authority in Mysore had rightly granted the countersignature and the countersignature could not be revoked later.

7. The first point is not raised before us. Regarding the second point the High Court held that "a scheme under Chapter IV-A (of the Act) will override any agreement including an inter-State agreement. Unless such scheme itself exempts July 6, permits granted in pursuance of inter-State agreements such permits will also be subject to the scheme." The High Court further held that "as the Kolar Scheme does not exempt permits granted in pursuance of inter-State agreements, the petitioner cannot claim counter-signature of his permit when the operation of his stage carriage in

this State ins inconsistent with the scheme".

8. Before us the learned counsel for the appellant, Mr. Ram Reddy, has raised four points : (1) As the appellant is an existing permit holder within clause (d) of the Scheme, the countersignature cannot be revoked; (2) Assuming that the appellant does not come under clause (d), the countersignature should not be revoked; it could only be modified with the condition that the appellant should not pick up or drop passengers on the overlapping portion of the route; (3) that inter-State agreements override the provisions of Chapter IV-A of the Act, and (4) that the scheme imposing total exclusion of private carriers offends the provisions of Article 301 of the Constitution.

9. Regarding the first point, the learned counsel urges that the expression "existing permit holder" in clause (d) of the Scheme has to be interpreted as if the scheme is read on January 1, 1969 when orders under Section 68-F (2) of the Act came into effect. He refers to the following passage in the order of the Regional Transport Authority dated December 30, 1968 :

"Further we have resolved to give effect to the Approved Scheme of Kolar Scheme with effect from 1-1-1969 in accordance with Section 68-F (2) and resolved to take the following action under Section 68-F (2) of the M.V. Act, 1939 (as appended hereto)."

10. It seems to us that this is not a correct way of interpreting the scheme. The scheme, as approved, was published in the Government Gazette under Section 68-D (3) on January 25, 1968, and on March 1, 1968, the Mysore undertaking applied under Section 68-F (1) to operate buses from January, 1968 or a later date. As held by this Court in *Abdul Gafoor v. State of Mysore*, ((1962) 1 SCR 909) "when a scheme prepared and published under Section 68-C has been approved and an application has been made in pursuance of the scheme and in the proper manner as specified in Chapter IV nothing more remains to be decided by the Regional Transport Authority and it has no option to refuse the grant of the permit" and "when taking action under Section 68-F (1) the Regional Transport Authority does not exercise any quasi-judicial function and acts wholly in a ministerial capacity". It seems to us that even if the date of publication may not be the appropriate date - we do not decide that it is not an appropriate date - atleast the date on which the transport undertaking applies under Section 68-F (1) for a permit must be the date with reference to which the expression "existing permit holder" must be interpreted. If this is the crucial date, then it is quite clear that the appellant was not an existing permit holder because he did not obtain his counter-signature till July 1968.

11. The observations of Raghubar Dayal, J., in *Sri Satyanarayana Transports (P) Ltd., Guntur v. Andhra Pradesh State Road Transport Corporation*, (Civil Appeal No. 347 of 1961, judgment on 3, 1961) do not assist the appellant. In that case the Court was dealing with the objection that it was the duty of the Road Transport Corporation to furnish the date of implementation of each scheme as a part of the proposal, the date being a material particular. In this connection the Court observed :

"The question whether the State Government can fix a date or not is not for determination in this appeal and we do not express any opinion on that point. Suffice it to say that the Regional Transport Authority has the power to fix a date after the scheme has been approved by the State Government, as it is that authority which has, under Section 68-F, to issue a permit to the State Transport Undertaking for plying motor vehicles and to cancel existing permits. The date up to which the existing permits are to continue and the date for the State Transport Undertaking to

commence plying motor vehicles should be such that there be a continuity of transport services on the notified route and that there be no dislocation of transport arrangements."

12. The Court was not considering the crucial date for the purpose of interpreting the expression "existing permit holder" in a scheme.

13. Apart from that the appellant must fail on the ground that he was not a permit holder at all even if the crucial date be January 1, 1969. His counter-signature must be deemed to have lapsed when the High Court dismissed the writ petitions in which the Kolar Scheme has been stayed on October 7, 1968. In our opinion the order of the Regional Transport Authority granting the counter-signature "subject to the decision of the High Court of Mysore about the validity of the Nationalisation Scheme of Kolar Pocket," in the context, which we have reproduced above means that if the writs failed the counter-signature would automatically lapse. It will be recalled that this Court held in *The Samarth Transport Co. v. The Regional Transport Authority*, that the Regional Transport Authority ((1961) 1 SCR 631 at p. 639) is within its rights not to entertain an application if the scheme had been approved and published. This Court observed :

"The Regional Transport Authority is authorized for the purpose of giving effect to an approved scheme to refuse to entertain an application for renewal of any other permit. This power does not depend upon the presentation of an application by the State Transport Under taking for a permit. This power is exercisable when it is brought to the notice of the Authority that there is an approved scheme and, to give effect to it, the application for renewal cannot be entertained."

14. The Regional Transport Authority must have been aware of this and it must be because of the stay order that the counter-signature was granted to the appellant by it.

15. In view of our decision that the appellant's counter-signature lapsed when the writ petitions were dismissed, the second point does not arise.

16. Regarding the third point we were unable to appreciate how an inter-State agreement overrides the provisions of Chapter IV-A. The inter-State agreement is not law and to hold that an inter-State agreement overrides Chapter IV-A would be to completely disregard the provisions of Section 68-B of the Act which provides that "the provisions of this Chapter and the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in Chapter IV of this Act or in any other law for the time being in force or in any instrument having effect by virtue of any such law". In this connection reference was made to Article 162 and Article 298 of the Constitution. But we were unable to appreciate what relevance these articles have to the point at issue. Assuming that a State has power to enter into agreement with another State in exercise of its executive powers under Article 162, and under Article 298 it can carry on trade or business, we are unable to see what light these facts throw on the question before us.

17. We stopped the learned counsel from developing the fourth point because this point was not taken up in the High Court.

18. In the result the appeal fails and is dismissed. In the circumstances there will be no order as to costs in this Court.

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