D. M. Thippeswamy

vs

The Mysore Appellate Tribunal, Bangalore and Others

Civil Appeal No. 1167 of 1971

(G. K. Mitter, K. S. Hegde, A. N. Grover JJ)

04.05.1972

JUDGMENT

HEDGE, J. -

1. The appellant is a transport operator. He applied for and obtained a permit from the R.T.A., Chitradurga for the inter-State route from Chitradurga in Mysore State to Srisaila in Andhra Pradesh, on January 18, 1964. Even before this permit was issued to him the Government of Mysore had notified a draft scheme under Section 68-C of the Motor Vehicles Act, 1939 (to be hereinafter referred to as the Act) providing for the operation of the trunk routes by the State Transport Undertaking in the Bellary District. M.S.R.T.C., a State Transport Undertaking and other rival claimants objected to the issue to the issue of the permit in question to the appellant but their objections were overruled by the R.T.A. Chitradurga. Aggrieved by that order M.S.R.T.C. and other rival claimants took up the matter in appeal to the Mysore State Transport Appellate Tribunal. Meanwhile on April 18, 1964, the Government issued a notification under Section 68-D(3) of the Act approving the draft scheme earlier issued by it. That scheme is known as "Bellary Scheme". One of the clause in the scheme Provides :

> "The State Transport Undertaking will operate services on all the routes to the complete exclusion of other persons except in regard to the portions of the inter-district routes lying outside the Bellary District. The existing permit-holders on inter-State routes, may continue to operate such inter-State routes subject to the condition that their permits shall be rendered ineffective by the competent authority for the over-lapping portion in the district of Bellary."

2. This scheme was published in the Official Gazette on May 7, 1964. Thereafter M.S.R.T.C. applied for permits under Section 68-F on July, 28, 1964 for the routes nationalised under the "Bellary Scheme". Till then the appellant had not obtained the counter-signature of the concerned R.T.A. in Andhra Pradesh as required by Section 63(1) of the Act of the inter-State permit issued to him. The appeal filed by M.S.R.T.C. was dismissed by the Mysore State Transport Appellate Tribunal on November 2, 1964. As against that order M.S.R.T.C. went up in appeal to the Mysore Revenue Appellate Tribunal on December 9, 1964. During the pendency of that appeal, the appellant obtained counter signatures of the concerned R.T.A. in Andhra Pradesh on June 23, 1965 for his inter-State permit. In June, 1967, the R.T.A. Chitradurga renewed the permit granted to the appellant on January 18, 1964. That renewed permit was duly counter-signed by the concerned R.T.A. in Andhra Pradesh. on July 30, 1970, the Mysore Revenue Appellate Tribunal allowed the appeal filed by the M.S.R.T.C. and set aside the grant in favour of the appellant on the ground that the appellant not being an "existing permit-holder" as contemplated by the scheme is not entitled to

operate in the route in question. The appellant challenged that decision before the Mysore High Court by means of a writ petition under Article 226 of the Constitution. The petition was dismissed by the Mysore High Court on August 10, 1971. Thereafter this appeal was brought after obtaining special leave from this Court.

3. Mr. A. K. Sen, appearing for the appellant challenged the correctness of decision of the High Court on various grounds. He contended that the "Bellary Scheme" was implemented only on July 1, 1965, when the permit asked for by the M.S.R.T.C. was granted. But before that permit had been granted, the appellant's permit has been counter-signed by the concerned R.T.A. in Andhra Pradesh. Hence he must be held to be an "existing permit-holder on inter-State route" as contemplated in the clause quoted above. According to him a scheme notified under Section 68-D(3) of the Act cannot be considered to have become effective until the R.T.A. passes appropriate orders under section 68-F(2). His next contention was that under the "Bellary Scheme", there was only a partial exclusion and not total exclusion. Therefore all that the R.T.A. could have done under Section 68-F(2) was to make his permit from Bellary Town to Bellary border ineffective and not to cancel his permit. His last contention was that in any event, the Mysore Revenue Appellate Tribunal could not have cancelled his permit. Let us now examine the correctness of these contentions.

4. Section 68-C provides :

> "Where any State Transport Undertaking is of opinion that for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service, it is necessary in the public interest that road transport services in general or any particular class of such service in relation to any area or route or portion thereof should be run and operated by the state Transport Undertaking whether to the exclusion, complete or partial, of other persons or otherwise, the State Transport Undertaking may prepare a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered and such other particulars respecting thereto as may be prescribed, and shall cause every such scheme to be published in the Official Gazette and also in such other manner as the State Government may direct."

5. The next relevant section for our present purpose is Section 68-D(2) which says :

> "The State Government may, after considering he objections and after giving an opportunity to the objector or his representatives and the representatives of the State Transport Undertaking to be heard in the matter, if they so desire, approve or modify the scheme."

6. Sub-section (3) of Section 68-D provides :

> "The scheme as approved or modified under sub-section (2) shall then be published in the Official Gazette by the State Government and the same shall thereupon become final and shall be called the approved scheme and the area or route to which it relates shall be called the notified area or notified route :

Provided that no such scheme which relates to any inter-State route shall be deemed to be an approved scheme unless it has been published in the Official Gazette with the previous approval of the Central Government."

7. Herein we are not concerned with a scheme which relates to any inter-State route. Section 68-F requires the concerned R.T.A. to issue stage carriage permits, to the State Transport Undertaking in pursuance of an approved scheme if that undertaking applies for the same, notwithstanding anything contrary contained in Chapter IV of the Act. Sub-section (2) of Section 68-F as it stood at the relevant time provided :

> "For the purpose of giving effect to the approved scheme in respect of a notified area or notified route the Regional Transport Authority may, by order -
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> (a) refuse to entertain any application for the renewal of any other permit;
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> (b) cancel any existing permit;
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> (c) modify the terms of any existing permit so as to -
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> (i) render the permit ineffective beyond a specified date;
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> (ii) reduce the number of vehicles authorised to be used under the permit;
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> (iii) curtail the area or route covered by the permit in so for as such permit relates to the noticed area or notified route."

8. The power of the R.T.A. under Section 68-F(2) is merely ministerial. He has only to carry out the directions contained in the scheme. As observed by this Court in Abdul Gafoor v. State of Mysore ((1962) 1 SCR 909 : AIR 1961 SC 1556 : (1963) 1 SCJ 440.), that 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 of the Act, nothing more remains to be decided by the R.T.A. It has no option to refuse the grant of the permit. In that decision this Court further laid down that when deciding what action to take under Section 68-F(2), the authority is tied down by the terms and conditions of the approved scheme and its duty is merely to do what is necessary to give effect to the provisions of the scheme.

9. In T. N. Raghunatha Reddy v. Mysore State Transport Authority ((1970) 3 SCR 780 : (1970) 1 SCC 541.), it was urged on behalf of the appellant-operator that the expression "existing permit-holder" in clause (d) of that scheme should be interpreted as if the scheme is ready on the date when orders made under Section 68-F came into effect. Rejecting that contention this Court observed :

> "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 (supra) '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 - at least 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 fill July, 1968."

10. Applying the ratio of that decision to the facts of the present case, it is clear that appellant was not an "existing permit-holder" at any the rate on July 28, 1964, when the M.S.R.T.C. applied for a permit for route in question. In this view it is not necessary for us to go into the question whether the scheme can be said to have been implemented on May 7, 1964 when the same was published in the Gazette after the approval of the Government under Section 68-D(3).

11. It was next contended that in view of the fact that the permit had been issued to the appellant on January 18, 1964, we must hold that when on July 28, 1964, M.S.R.T.C. applied for a permit on the route, the appellant was an "existing permit-holder". We see no merit in this contention. Under the scheme the only persons whose permits are saved are those "existing permit-holders on the inter-State routes" and not all "existing permit-holders". A contention similar to the one urged before us was considered and rejected by this Court in Civil Appeals Nos. 1415-1443 of 1969, decided on October 17, 1969 (SC) ((1969) 1 SCR 464 : AIR 1969 SC 273 : (1969) SCJ 757.). Rejecting the appellant's contention therein this Court observed :

> "Mr. Chagla's contention is that in view of Section 63(1) the appellants must be considered as existing permit-holders as the permits given to them continue to be valid. It is true that in view of Section 63(1) on the basis of the permits given to the appellants for inter-State routes, they were entitled to operate in the routes concerned from the starting terminus till the route reaches the borders of the Mysore State. In other words the inter-State permit given to them operated as intra-State permits for a portion of the route to which they were granted till those permits are countersigned by the concerned State or States. But that fact does not make the holders of those permits as 'existing permit-holders on the inter-State routes'. Before they can be considered as existing permit-holders of the concerned inter-State, they must not only have obtained a permit from the concerned R.T.O. in their home State, they must have also obtained the counter-signature of the concerned States. Until they obtained counter-signatures of these, they cannot be considered as existing permit-holders of the concerned inter-State routes."

12. The question whether the "Bellary Scheme" provides for the total exclusion of all operators on the nationalised routes or it merely provides for partial exclusion is, in our opinion, wholly irrelevant. All that we have to see is what the scheme says ? Whom does it exclude ? It is quite plain from the language of the clause referred to earlier that all operators excepting those mentioned therein are excluded from the nationalised routes. To the general exclusion made therein, there are two exceptions. The first one relates to inter-district operators and the second to existing permit-holders on inter-State routes. The appellant does not claim to come under the first exception. For the reasons already mentioned his case is not covered by the second exception. We are unable to agree with Mr. A. K. Sen, Counsel for the appellant that the decision of this Court in Standard Motor Union Pvt. Ltd. v. State of Kerala ((1969) 1 SCR 464 : AIR 1969 SC 273 : (1969) SCJ 757.), is of any assistance to the appellant. In that case this Court was called upon to consider a scheme framed under the Act, read with Rule 3 of the Kerala Motor Vehicles (State Transport) Rules, 1960. The rule in question divided the schemes broadly into two categories : (1) complete exclusion schemes and (2) partial exclusion schemes. The question for decision in that case was whether the scheme

before this Court was a complete exclusion scheme or a partial exclusion scheme. That question has no relevance for our present purpose. As mentioned earlier all that we have to see is whether the appellant can be considered as operator holding an existing permit on inter-State route at the relevant time. For the reasons already mentioned we do not think that he was one such.

13. Mr. Sen is right in his contention that the modification or cancellation of the permit granted, for the purpose of giving effect to an approved scheme must be effected by the concerned R.T.A. It is true that in this case the R.T.A. was not approached to cancel the permit granted to the appellant. But even after the M.S.R.T.C. applied for a permit for the route in question, R.T.A. renewed the permit granted to the appellant. It was impermissible for it to do so. The appellant is right in his contention that the validity of the renewal was not before the Mysore Revenue Appellate Tribunal. The appeal that was before that Tribunal was one challenging the original grant. Hence technically Mr. Sen is right in his contention that the Tribunal could not have done what the R.T.A. was required to do. But as mentioned earlier the functions of the R.T.A. under Section 68-F are merely ministerial. It was bound to carry out the directions given in the scheme. But the R.T.A. evidently did not take action under Section 68-F(2), initially because of the pendency of the appeals before the appellate authorities and thereafter he could not take action because of the stay order issued by the High Court during the pendency of the writ petition and by this Court after the appeal was filed. We see no purpose in allowing this appeal on a purely technical ground as that course cannot give any relief to the appellant. The R.T.A. is bound to cancel his permit in pursuance of the scheme.

14. For the reasons mentioned above this appeal fails and the same is dismissed. But in the circumstances of this case we make no order as to costs.

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