

S. Abdul Khader Saheb

Vs

The Mysore Revenue Appellate Tribunal, Bangalore and Others

Civil Appeals Nos. 1400 - 1401 (N) of 1972

(A. N. Grover, K. K. Mathew, A. K. Mukherje JJ)

09.11.1972

JUDGMENT

GROVER, J. -

1. These appeals have been brought by special leave from a judgment of the Mysore High Court.
2. The facts briefly are that in August 1964 the States of Mysore and Andhra Pradesh entered into a reciprocal agreement to introduce stage carriage services on the inter-State route from Bellary in Mysore State to Menthralaya in Andhra Pradesh via Chintakunta. In August 1965 the Regional Transport Authority, Bellary, called for applications for the grant of stage carriage permit for the aforesaid route. The appellant, Respondents 7 and 8 and several others filed a applications for the grant of a permit. After complying with the necessary formalities required under the relevant provisions of the Motor Vehicles Act, 1939, hereinafter called the 'Act', the Regional Transport Authority granted permits to the appellant and Respondent No. 7 for one trip each day at its meeting held in August 1966. By the time the Regional Transport Authority had issued the notification calling for the applications the scheme had been approved by the Government of Mysore under Section 68-D of the Act. Under this scheme which was popularly known as the 'Bellary Scheme' and which came into force with effect from May 7, 1964 a portion of the road in question, viz., from Bellary to the district border (Chintakunta border) operators other than those mentioned in the scheme were totally excluded and only State Transport Undertaking could operate the services. The Mysore State Road Transport Corporation which was the State Transport Undertaking in Mysore, hereinafter called the 'State Corporation', B. Subba Rao, the appellant and certain other persons filed appeals before the Mysore State Transport Appellate Tribunal. After hearing the appeals the Tribunal remitted the case to the Regional Transport Authority for a fresh disposal. Aggrieved by the remand order the appellant, the State Corporation and others filed appeals before the Mysore Revenue Appellate Tribunal. This Tribunal allowed the appeal of the appellant in its entirety and granted him a permit for the inter-State route with the condition that no passenger was to be picked up or set down on the portion of the road overlapping the notified route of the Bellary Scheme. The appeals of others were dismissed. Two writ petitions were filed before the High Court, one by the State Corporation and the other by B. Subba Rao challenging the order of the Revenue Appellate Tribunal.
3. The High Court disposed of the writ petition on the ground :

"When once on a route or a portion of the route there has been total exclusion of operation of stage carriage services by operators other than the State Transport Undertaking by virtue of a clause in an approved Scheme, the authorities granting

permit under Chapter IV of the Motor Vehicles Act, should refrain from granting a permit contrary to the Scheme."

The High Court did not agree with the view of the Revenue Appellate Tribunal that even under a Scheme of total exclusion from Bellary to Chintakunta border a permit could be issued in respect of the overlapping portion of the inter-State route by making that permit ineffective. The High Court consequently directed a remand to the State Transport Authority to reconsider the matter and dispose of the same in accordance with law.

4. Although in the special leave petition there was no mention of a connected appeal which was pending in this court, in the application for stay, it was stated by the appellant that special leave had been granted in the case of D. M. Thippeswamy v. The Mysore Appellate Tribunal, Bangalore & Others, (AIR 1972 SC 1674) against the judgment of Mysore High Court in which a similar view had been taken with regard to the scope and ambit of the Bellary Scheme. It is common ground that by the time the petition for special leave came up for hearing before this Court that appeal had been dismissed. This led to the State Corporation filing a petition for revocation of special leave (C.M.P. No. 7383/72) on the ground that the fact of the dismissal of Thippeswamy's appeal by this Court on May 4, 1972, had been suppressed at the time when the petition for special leave was argued. An affidavit has been filed by Mr. S. S. Javali advocate who had appeared at the special leave stage. He has stated that according to him Thippeswamy's case (supra) was not relevant as the facts there were different and no reference was called for or made to it in the arguments. It has also been pointed out that in that very case by a subsequent order, dated September 29, 1972, certain clarifications have been made. This, it has been contended, now shows that the decision in that case was not apposite for the purpose of the present appeals. We do not consider that any case for revocation of the special leave has been made out and the prayer in that behalf is hereby declined.

5. 'Bellary Scheme' was approved under Section 68-D of the Act subject to certain modifications by the Mysore Government by a notification, dated April 18, 1964. It was provided in the scheme that 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 inter-district routes lying outside the limits of Bellary district. The existing permit-holders on inter-State routes could be allowed to operate such inter-State routes subject to the condition that their permits shall be rendered ineffective by the competent authority for the overlapping portion in the district of Bellary. In Thippeswamy's case (supra), this very scheme came up for consideration. The question, however which arose was whether the appellant there was not an existing permit-holder when the State Government applied for a permit for the route in question. The following observations were made on this point :

"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 the 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."

The argument of Mr. M. C. Setalvad for the appellant is that no decision was given in

Thippeswamy's case (supra), that the Bellary Scheme provides for a total exclusion of all operators on the nationalised routes. He has also sought to distinguish that case by pointing out that the controversy there was confined to the question whether the appellant was an existing permit holder on the inter-state route. It has further been stated that in the present case no permit has so far been issued to the State Corporation because it has failed to comply with certain provisions and in particular with the requirement of Section 20 of the Road Transport Corporations Act, 1950. It may be that the facts are somewhat different here. The view which the High Court in the present case took was that after the Bellary Scheme had come into force the operators other than the State Transport Undertaking were totally excluded. In Thippeswamy's case (supra), also it is clear from the portion already extracted from the judgment of this Court that according to the scheme all operators excepting those mentioned in the scheme are excluded from the nationalised routes. The two exceptions which have been made are only with regard to the inter district operators and the existing permit-holders on inter-state routes. Mr. Setalvad does not claim that the appellant falls within either of these categories. It is, therefore, not possible to accede to his contention that because the scheme merely provides for partial exclusion it is open to the authorities concerned to issue a permit for the route overlapping the inter-state route.

6. The next point on which a great deal of emphasis has been laid on behalf of the appellant is that an inter-state route comes into existence by virtue of an agreement between the States through which the route passes. The main provisions in that respect are to be found in Section 63 of the Act. Any scheme of nationalisation of a route by a State, as approved under Section 68-D, cannot override the inter-state agreements in respect of the inter-state routes. This Court has in *T. N. Raghunatha Reddy v. Mysore State Transport Authority*, ((1970) 1 SCC 541 : (1970) 3 SCR 780) answered this question in the negative. It has been held that 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. In other words a scheme of nationalisation approved under Section 68-D would prevail over an inter-state agreement in respect of an inter-state route.

7. Sub-section (3) of Section 68-D of the Act has also been relied upon by Mr. Setalvad. According to that provision the scheme as approved or modified shall be published in the official Gazette and the same shall there upon become final. The proviso, however, says 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. No scheme in the present case has been approved under the proviso relating to the inter-State route in question. We are unable to see how the proviso to Section 68-D(3) can be of any avail to the appellant. The aforesaid provision becomes material only when a scheme covers an inter-State route. The Bellary Scheme provides for nationalisation of an inter-State route and not an inter-State route and the aforesaid provisions can have no applicability.

8. Although Respondent No. 7 has not appealed, counsel appearing for him has called attention to the observations of this Court in *B. H. Aswathanarayan Singh & Others v. State of Mysore & Others*, ((1966) 1 SCR 87 : AIR 1965 SC 1848 : (1965) 2 SCJ 824) that an inter-State route is one in which one of the termini is in one State and the other in another State. Where both the termini are in one State the question of an inter-State route does not arise. If part of the scheme covers routes which continue beyond the State and connect various points in the State of Mysore with those in the other State it does not make the scheme one connected with inter-State route. It is sought to be argued from this that even if Bellary-Chintakunta route which is shown as Item 34 in the Bellary Scheme has been nationalised it does not make the scheme one connected with inter-State route. Stress has been laid on the example given that the Grand Trunk Road runs from Calcutta to Amritsar

and passes through many States and any portion of it within a State can be a route for purposes of stage carriage but that would not make such a route a part of an inter-State route even though it lies on the road which runs through many States.

9. The above argument can possibly have no validity so far as the present case is concerned. The scheme which was under consideration in the decision relied upon was in respect of an intra-state route. It appears to have been argued that as the scheme was concerned with an inter-state route the approval of the Central Government was necessary as required under the proviso to Section 68-D(3) of the Act. This Court held that since the termini were within the State of Mysore the scheme did not deal with an inter-state route at all and no question arose of the applicability of the proviso to Section 68-D(3). In the present case there is no scheme of nationalisation relating to the inter-state route from Bellary to Manthralaya. The Bellary Scheme is confined to the intra-state routes, one of those being the Bellary-Chintakunta route. It may be that that portion overlaps the inter-state route from Bellary to Manthralaya but so long as it is an intra-state route it could be nationalised by State of Mysore under the provisions of Section 68-D. That having been done the decision in Thippeswamy's case (*supra*), will appositely apply.

10. In the result the appeals fail and they are dismissed with costs to respondent No. 8.

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