

State of Mysore and Another

Vs

K. G. Jagannath

Civil Appeal No. 141 of 1972

(C.A. Vaidialingam, A. Alagiriswami JJ)

27.03.1973

JUDGMENT

ALAGIRISWAMI, J. -

1. This is an appeal against the judgment of the High Court of Mysore striking down Rule 216(2) of the Mysore Motor vehicles Rules, 1963, introduced on October 7, 1969, on the ground that it violates Article 19(1)(g) of the Constitution.

2. The respondent, who is a transport operator plying buses between Boddabellapur and Tumkur, wanted to replace one of his buses running on that route with a new one. Under the permit granted to him, which was valid up to October 30, 1975, his bus had a seating capacity of 30. On November 2, 1970, he applied to the Regional Transport Officer, Bangalore Region, for permission to alter the seating capacity of the new bus, which he had acquired, from 40 to 30. This application having been rejected he filed a petition for issue of a writ of mandamus directing the Regional Transport Officer to grant the necessary permission, and that petition having been allowed the State of Mysore has come on appeal to this Court by special leave.

3. The contention of the operator was that the impugned rule which fixed the minimum seating capacity of buses is really intended indirectly to compel the operators to pay more taxes, that he is already operating on a narrow margin of profit and if he is compelled to increase the number of seats in his bus he would incur losses because of the additional tax which he will have to pay and this is an interference with his right to carry on his business. According to the State the impugned rule was intended to eliminate the evil of stage-carriage operators carrying passengers in excess of the seating capacity specified in the registration certificate and the permit, to the serious inconvenience and discomfort of the travelling public, in addition to causing loss of revenue to the State. There is no dispute that the bus in question can have a seating capacity of 40.

4. The impugned Rule, insofar as it is relevant, reads as follows :

"216(1)

(2) The minimum seating capacity of a public service vehicle shall be directly proportionate to the wheel base of the vehicle. In all public service vehicles other than motor cabs the minimum number of seats to be provided shall be as specified in column (2) of the Table below :

Provided that the operator may increase the capacity consistent with the other rules

the transport operator to overload his buses in contravention of the conditions of his permit and that that cannot be a reason for fixing a minimum number of seats in a bus. It is also argued that while there is a specific section which enables the maximum number of passengers that can be carried on a bus to be prescribed, there is no such power to prescribe the minimum number of passengers that can be carried in a bus.

6. It must be made that all that is insisted upon under the impugned rule is the minimum number of seats to be provided in the bus. It has been urged on behalf of the State that the intention behind providing buses with bigger bodies with lesser number of seats than they can be provided which is really intended to carry a larger number of passengers and pay a lesser tax. Though it is true that the State has the necessary machinery to check such contravention it cannot always succeed in doing so. However, we do not consider that the mere possibility of such overloading can justify the making of the impugned rule. It has been urged on behalf of the State that the demand for transport has been rising by leaps and bounds every year, whereas on behalf of the respondent it has been contended that the average number of passengers carried in his bus on this route is about 25. The great demand for transport and the rush for seats in buses is too well-known to need emphasis. It appears to us that when a certain chassis is capable of having a body constructed on it so that it can carry a certain number of passengers, to construct on that body a lesser number of seats is a waste of valuable transportation facility. Even on this route there are 14 buses plying between the two points in addition to longer distance buses, of which the stage between Doddaballapur and Tumkur forms a section. So it cannot be said that the demand here is as little as is urged on behalf of the respondent. There is no reason to disbelieve the averment made on behalf of the State on this point.

7. The difference in taxation between a bus which carries 30 passengers and a bus carrying 40 passengers is about Rs. 400/- per quarter or Rs. 1600/- per year whereas the difference is Rs. 225/- per quarter between a bus carrying 30 and one carrying 35 passengers. That is because only five standing passengers are allowed in a bus with a carrying capacity of 30 and 10 standing passengers are allowed in a bus with a carrying of 40 and above. The tax payable in respect of standing passengers is Rs. 10 per quarter. The tax payable under the Mysore Motor Vehicles (Taxation on Passengers and Goods) Act, 1961 need not detain us for long because under that Act the operator is enabled to pass on the tax to the passengers.

8. The difficulty mentioned on behalf of the respondent about the need to get the permit amended in order to allow for the increased capacity imposed by Rule 137 and provision of Section 48(3)(xxi) regarding the variation of the conditions of the permit need not detain us for long because under the new Section 59(2) as amended by Act 56 of 1969, the holder of a permit may, with the permission of the authority by which the permit was granted replace any vehicle covered by the permit by any other vehicle of the same nature, Under Rule 131 the procedure for replacing any vehicle covered by a permit by a vehicle of a different type or of a different capacity is also made clearly very simple and where it is of the same type or capacity the variation has to be granted within a week. We are also of opinion that the power conferred by Section 70 of the Act is wide enough to enable the making of the impugned Rule.

9. The validity of the Rule at present has to be considered not merely from the point of view of the effect it has on a particular individual like the respondent. It has to be looked at from the point of view of the generality of the motor vehicles operators as well as the public. We have shown above that the vehicles with the minimum capacity available in this country can carry 35 passengers and if, as is alleged by the respondent, the average number of passengers in buses over this route is only 25, the proper thing to do in due course is to reduce the number of vehicles plying on this route.

Otherwise, it would mean unnecessary waste of valuable transport space and facility. Buses so released could be used elsewhere to much greater advantage to the travelling public. There are many areas and many routes crying for transport facilities and they would be better served. We are unable to place any weight on the basis of an argument which affects one or two individuals, where by insisting upon this provision of a minimum seating capacity the larger public interest will be served. If it causes some inconvenience to a few individuals like the respondent they have got to face the situation. It appears from the additional affidavit filed by the petitioner (respondent herein) that he has got four buses running between Boddaballapur and Tumkur. If it is found that the average number of passengers is only 25, the proper thing to do would be for him to cut down his buses on this route from four to three. In that case there can be no question if his suffering any losses or his being affected in any way in the matter of his carrying on his business.

10. Though it is not in evidence it may be presumed that the cost of operation of a bus whether it is provided with 30 or 40 seats may not be very much different and there will be the additional facility available to the public if the bus has more seats. Moreover, as traffic grows, as it has a tendency to grow everywhere, the public will be better served. We are unable to accept the contention that the Rule providing for minimum number of seats is intended to secure more revenue indirectly. The State can do it directly by increasing the rate of tax. It is really a rule intended for the benefit of the travelling public. We see no reason not to accept the statement made on behalf of the State that the passenger traffic on every route in the State has increased by leaps and bounds, that generally it was found that the stage carriage operators were carrying passengers in excess of the seating capacity specified in the Registration Certificate and the permit to the serious inconvenience and discomfort of the travelling public in addition to causing loss of revenue to the state, and it was with a view to eliminate the above evils that the impugned Rule has been framed.

11. We are unable to agree with the High Court that as usually there are only regulations regarding the maximum number of seats, any regulation regarding the minimum number of seats being very uncommon has to be specially defeated. We have shown above that the regulation is really in the interest of the general travelling public. Nor are we able to agree with the High Court that the State has not taken into account the prevailing conditions in the country with regard to the manufacturers and availability of bus chassis. The minimum number of seats insisted upon depends upon the chassis. In this very case itself as we have seen the respondent really wants to provide 30 seats in the chassis which can provide 40 seats. It is not necessary to say anything regarding the luxury buses which were considered by the High Court because that matter was not argued before that matter was not argued before us. Apparently the State has decided to make the necessary provision in this regard. Stage carriage operators exclusively in cities and towns form a class by themselves and the exemption in their case has a direct relation to the objective sought to be achieved. There is no question here of any arbitrary or excessive invasion of the respondent's rights. The rule is one of general application which can be justified as being in the interest of the general travelling public.

12. The appeal is, therefore, allowed and the order of the Mysore High Court is set aside. The respondent will pay the appellants' costs.

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