Mysore State Road Transport Corporation

Vs

The Mysore Revenue Appellant Tribunal and Others

Civil Appeals Nos. 1755-1756 of 1969, 362-375 and 1918-1920 of 1970 and 490-492 of 1973

(M. H. Beg, Y. V. Chandrachud JJ)

17.05.1974

JUDGMENT

BEG, J. –

1. There are twenty-two appeals by special leave together with thirteen connected special leave petitions involving a common question of law for decision before us. This question arises out of three approved schemes, which may be called the Anekal Scheme dated April 15, 1959, the Gulbarga Scheme dated February 18, 1960 and the Bangalore Scheme dated June 7, 1960, for the nationalisation under Chapter IVA of the Motor Vehicles Act, 1939 (hereinafter referred to as 'the Act'), of transport services on certain routes lying within the State of Mysore. But, parts of these intra-State routes overlap inter-State routes over which private transporters were granted permits and then their renewals by the State transport authorities to ply their vehicles. The Mysore State Road Transport Corporation objects to these permits in so far as they cover overlapping portions of intra-State routes. The common question of law which arises may be formulated as follows :

Can a permit be granted to an inter-State Transport Operator for the whole of his route despite the fact that a part of the route overlaps a part of a notified intra-State route ?

2. There can be no doubt that the Mysore State Transport Undertaking has the power to frame a scheme under Section 68C of Chapter IVA of the Act, providing

in the public interest that road transport services in general or any particular class of such services on 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.

This power includes the power to excluded even inter-State motor operators altogether from a part of any notified route. (See : Nilkanth Prasad v. State of Bihar ((1962) Supp 1 SCR 728 : AIR 1962 SC 1135.); Standard Motor Union Pvt. Ltd. v. State of Kerala ((1969) 1 SCR 464 : AIR 1969 SC 273.); S. Abdul Khader Saheb v. Mysore Revenue Appellant Tribunal ((1973) 1 SCC 357.)). The transport authorities have no power to deviate from or modify the terms of approved schemes which have the force of law. They can issue or otherwise deal with permits only in accordance with the provisions of the schemes which may be of either partial or total exclusion of private operators from notified routes. We have to determine whether the schemes before us are of partial or total exclusion.

3. Section 68C requires, as a condition precedent to any exclusion of private operators under a scheme should give "particulars of the nature of services proposed to be rendered, the area or route

proposed to be covered and such other particulars respecting thereto as may be prescribed". Each scheme has to be published in the official Gazette and also "in such manner as the State Government may direct". A scheme finally emerges, after opportunities given under Section 68D of the Act for objections by persons interested in providing transport facilities as well as by local and police authorities within the area or upon the routes proposed to be covered by a scheme, as an approved scheme in which the original proposals may or may not have been modified. Each scheme so approved can be either cancelled or modified by the State Transport Undertaking under Section 68E of the Act in accordance with the procedure laid down by Section 68C and 68D of the Act.

4. The power of the State Transport Undertaking to prohibit the use of any portion of a route by inter-State operators has not been questioned before us. Nevertheless, it may be pertinent to point out that this Court thus indicated, in Saghir Ahmad v. State of U. P. ((1955) 1 SCR 707,717 : AIR 1954 SC 728.), the nature of the right of the public to use public roads (at page 717) :

But the right of the public to use motor vehicles on the public road cannot, in any sense, be regarded as a right created by the Motor Vehicles Act. The right exists anterior to any legislation on this subject as an incident of public rights over a highway. The State only controls and regulates it for the purpose of ensuring safety, peace, health and good morals of the public. Once the position is accepted that a member of the public is entitled to ply motor vehicles on the public road as an incident of his right of passage over a highway, the question is really immaterial whether he plies a vehicle for pleasure or pastime or for the purpose of trade and business. The nature of the right in respect to the highway is not in any way affected thereby and we cannot agree with the learned Advocate-General that the user of a public road for purposes of trade is an extraordinary or special use of the highway which can be acquired only under special sanction from the State.

5. It is enough for the purpose of the case before us to note the distinction between the right to use a road which may be a part of a notified "route" and the right to ply motor vehicles on hire upon a "route" for which a permit has to be obtained under the Act. Notification of a route under a scheme prevents issue of permits contrary to the scheme for the route. Assuming for the purposes of the cases before us, that the State Transport Undertaking can totally exclude inter-State private operators from using any part of a notified route, a scheme which has that effect must, at least, make the intention to do that clear before it can prevent the exercise of an otherwise legal right to ply motor vehicles for hire on a public highway subject to regulation of this kind of user by permits issued under the Act. The question is, in our opinion, one of interpretation of the scheme formulated in each case. Before interpreting each of the three schemes mentioned above, we will refer to the relevant provisions which have a bearing on questions of interpretation of the schemes and of the particulars given therein.

6. As each scheme of nationalisation is to be prepared in public interest, Section 69C requires the State Transport Undertaking to give particulars "of the nature of services proposed to be rendered by it". A distinction is made between notification of an "area" and of a "route". An area, which has to be notified under Section 2(i) of the Act, may cover a number of routes. A route, as defined by the insertion of (28A) made by the Act 56 of 1969, in Section 2 of the Act, is "a line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus and another". Whatever may have been the meaning of the word "route" before this insertion, it appears to us that, after this clarification, a route is not merely the physical surface covered by the highway to be traversed, but the abstract concept of "a line of travel", which connects one terminus with another, has also been introduced into the legal definition of a "route". The two concepts are now so interlinked that a route would not be properly indicated by merely specifying the highway which

may be traversed without giving its two termini. And, a difference in the two termini will make two routes different even if there is an overlapping surface of the road common to two routes. In other words, the two termini are an essential part of the concept of a route. Notification of routes takes place for purposes of nationalisation of transport services on the routes. The routes are not nationalised as physical surfaces of notified areas reserved for use by State-owned vehicles only, but what is nationalised is the provision of certain transport services on those routes.

7. Unless a scheme clearly indicates that the user of every portion of a highway covered by an intra-State notified route is prohibited also to an inter-State motor vehicle operator, who really plies on a different "route" inasmuch as its termini are bound to be different from those of an intra-State route, the inter-State operator may not be completely debarred from the user of the overlapping part of an intra-State route. A mere physical overlapping of the two may not be enough to excluded the private inter-State operators by any necessary implication. If the intention is to exclude such user by an operator of another route a part of which overlaps a notified route, that intention must be made clear and unequivocal by the scheme in order to have that effect.

8. Section 68C also mentions other particulars of a scheme which may be prescribed. These particulars have been prescribed in the State of Mysore by means of rules notified in the Mysore Gazette dated February 27, 1958. The relevant portion of the first rule reads as follows :

> 1. Every scheme or modified scheme for passenger transport service shall contain the following particulars :
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> 1. The area in relation to which the scheme is proposed.
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> 2. Whether City/Town service or moffusil service.
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> 3. The route or routes (with their starting points, termini, intermediate stations and route length) in which the State Road Transport Undertaking proposes to introduce its services to the exclusion of private operators.
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> 4. The number of existing stage carriages on each route with their number of trips and the names of their operators.
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> 5. The maximum and minimum number of stage carriages proposed to be operated by the State Transport Undertaking to the exclusion of private operators in relation to each route and the type and seating capacity of each vehicle.
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> 6. The maximum number of trips proposed to be performed on each route.
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> 7. Number of vehicles intended to be kept in reserve to maintain the service and to provide for special occasions.

9. With regard to the above mentioned particulars, it was submitted, on behalf of the inter-State operators, that sub-rules 3 and 4 of Rule 1, set out above, require that existing operators on each route must be named and the numbers of their vehicles must be given before they could be deemed to be excluded from and part of a route. It was also urged that, unless the scheme indicates which persons are treated as providing a service or plying on the notified route, they could not be expected to come forward to object as persons affected. Hence, it is submitted, if the State Transport Undertaking itself treated them as persons unaffected by nationalisation of transport services on

certain intra-State routes, its intention would appear to be to leave untouched or preserve the rights of inter-State operators who were already there merely to use parts of notified routes. The argument was that the inter-State operators, were by a clear implication, permitted by each scheme to use overlapping parts of notified intra-State routes. They were, it was urged, thus meant to be excluded from the purview of the prohibition in each scheme.

10. In some of the cases before us the Regional Transport Officer had himself either granted or renewed the permits of the inter-State operators. In other cases, where the Regional Transport Officer had rejected the applications of the inter-State operators concerned, the operators had succeeded in obtaining permits from the final State Appellate Authority functioning under the Act. The High Court had, in every case, upheld the grants of permits to the inter-State operators. It had found the schemes to be ambiguous. But, overruled the contention that the schemes warranted total prohibition or exclusion of inter-State operators on overlapping parts of notified routes mainly on the ground that such a contention could not be advanced for the first time before it in the course of arguments.

11. It was also contended that, the Manager of the appellant Corporation had impliedly admitted before the transport authorities that inter-State operators were not totally prohibited by any scheme from using over-laying portions because he confined his objection to the sufficiency of the number of buses serving on the overlapping parts of routes and had not relied upon any parts of the schemes for any alleged total prohibition of the use of the overlapping parts of notified routes by the inter-State operators.

12. It may be mentioned here that a condition had been imposed by the final appellate transport authority upon each inter-State operator that he will neither pick up nor drop passengers on any part of the overlapping notified route. Therefore, one of the questions argued before us is whether the transport authorities had any power or jurisdiction to grant permits to inter-State operators even by annexing such conditions so that overlapping portions of notified routes could be merely used by the inter-State operators concerned for tasking their stage carriages and passengers through them but not to provide services for passengers to of from any place falling upon any portions of the notified routes. It was submitted, on behalf of the appellant Corporation, that all that the transport authorities could do was to give effect to the provisions of each scheme but not to do anything which may be a modification of the scheme.

13. Although the actions of the transport authorities and the conduct or a concession of the Manager of the Corporation may be relevant in considering whether a scheme was so framed as to clearly convey to the officials of the Corporation and to the transport authorities concerned that it was a scheme of total prohibition extending to even user of any portion of an overlapping notified route by an inter-State operator, yet, the real question to be considered is whether the scheme itself in each case, on the contents of it and the language employed by the farmers of it, warrants total exclusion of the kind contended for before us on behalf of the Corporation.

14. It is true that this Court does not ordinarily interfere with the discretion of the High Court to refuse to allow a question to be raised for the first time in arguments before it. But, it is pointed out that the question raised before the High Court and argued before us is one of jurisdiction or power of the transport authorities which goes to the root of the case so that the High Court should have permitted it to be raised and decided it. We find that the High Court did, albeit indirectly, consider the question by holding that the schemes were ambiguous and did not rule out the interpretation that they were not schemes of total prohibition as the schemes could and should have done if that was

intended. The High Court had also correctly made observations indicating that, where such an intention of total prohibition of even the use of a portion of the notified route is present, the intention must be communicated in clear enough language so as not to leave the transport authorities in any doubt as to what they are to enforce. And, as we have granted special leave on this very question and have heard arguments on it, we will consider the question briefly and not dispose of the cases before us simply on the ground that the question should have been raised at an earlier stage on behalf of the appellant Corporation. We will, therefore, examine the contents of each of the three approved schemes in which the permeable and Clauses 3 to 7 have a special bearing on the question under consideration.

15. In the Anekal Scheme, the preamble does not state that the scheme is of total exclusion. Clauses 3 to 7 of the approved scheme are stated as follows :

> #3. The route or routes (With theirstarting points, termini, intermediate As in Statement Istations and route length) in which appended.the State Transport Undertaking willintroduce its services to the exclusionof private operators.4. The number of existing stage carriageson each route with the number of trips and As in Statement IIthe names of their operators. appended.5. The maximum and minimum number of state (a) Maximum andcarriages to be operated by the State Road Minimum number ofTransport Undertaking to the exclusion of state carriages toprivate operators in relation to each route operated;and the type and seating capacity of eachvehicle As in Statement I appended. (b) Type and Seating capacity of each vehicl :- Semi-saloon, single-decker. The seating capacity of each vehicle is 36 to 45 seats.6. The maximum number of trips to be As in Statement Iperformed on each route. appended.7. The number of vehicles to be kept inreserve to maintain the services and to 25 per cent of theprovide for special occasions. operating fleet.##

16. In the Gulbarga Scheme, the preamble states the approval is given to the originally published proposals subject to certain modifications. One of the modifications is that the words "or any portion thereof" wherever they appear in column 2 of the statement appended to the scheme published by the General Manager shall be deleted. The relevant Clauses 3 to 7 read as follows :

> #3. The route or routes (with their As in statement appended.starting points, termini, intermediatestations and route length) in which theState Road Transport Undertaking shallintroduce its services, to the exclusionof private operators.4. The number of existing stage carriages At present, only theon each route with the number of trips and Mysore Government Roadthe names of their operators. Transport Department is operating service on these routes, and the number of existing stage carriages and the number of trips are as in statement appended.5. The maximum and minimum number of (a) Maximum and minimumstage carriages to be operated by the number of stage carriagesState Road Transport to be operate :Undertaking to the exclusionof private operators in relationto each route and the type and seating As in statement.capacity of each vehicle. appended. (b) Type and seating capacity of each vehicle Semi-saloon, single-deckers. The seating capacity of each vehicle is 26 to 55 seats.6. The maximum number of trips to be As in statementperformed on each route. appended.7. The number of vehicles to be kept in Twenty-five perreserve to maintain the services and to cent of theprovide for special occasions. operating fleet.##

17. The preamble to the Bangalore Scheme Mentions the following modifications of the original

proposals :

> (a) That the passenger transport services on the routes appearing at Sl. Nos. 1 to 22 and 24, 25, 26, 27 and 53 of the statement appended including services between any two places therein should be run and operated by the State Transport Undertaking to the complete exclusion of other operators.
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> (b) Subject to (a) above, the State Transport Undertaking should operate services on the raining routes appearing in the statement appended between the two specified terminals only, to the complete exclusion of all other operators, excluding the intermediate routes;

The relevant Clauses 3 to 7 are given here as follows :

> #3. The route or routes (with their (a) The passenger transportstarting points, termini, intermediate services on the routes appeari ng at S1. Nos. 1 to 22, and 24 ,25,26,stations and route length) in which the 27, 39 and 53 of the statementState Road Transport Undertaking shall appended including servicesintroduce its services to the exclusion between any two places thereinof private operators. should be run and operated by the State Transport Undertaking to the complete exclusion of of there operators; (b) Subject to (a) above, the State Transport Undertaking should operate services on the remaining routes appearing in the statement appended between the two specified terminals only to the complete exclusion of all other operators, excluding the intermediate routes;4. The number of existing stage carriages At present, only the Mysoreon each route with the number of trips Government Road Transportand the names of their operators. Department is operating services on these routes, and in the number of existing stage carriages and the number of trips are as in statement appended.5. (a) The maximum and minimum number (a) Maximum and minimum numbe rof stage carriages to be operated by the of stage carriages to beState Road Transport Undertaking to the operated;exclusion of private operators in relationto each route and As in the statement appended. (b) the type and seating capacity of (b) type and seating each vehicle. capacity of each vehicle. Semi-saloon, single-deckers, the seating capacity of each vehucle is 26 to 55 seats.6. The maximum number of trips to be As in statement appended.performed on each route.7. The number of vehicles to be kept in Twenty-five per cent ofreserve to maintain the services and to the operating fleet.provide for special occasions.##

18. It may be mentioned here that Clauses 3 and 4 of the three schemes are apparently intended to carry out the provisions of sub-rules 3 and 4 of the State Transport Undertaking Mysore State Rules, 1958, set out above. In the Anekal Scheme, the appended statement mentioned in Clause 3 (in purported compliance of sub-rule 3) gives the termini with intermediate points thereby indicating that the exclusive service on each route is intended to be one which takes place only between the termini given there and not as a mere incident of service between other termini. The second statement mentioned in Clause 4 (in purported compliance of Sub-rule 4) gives the number of the existing stage carriages and the names of their operators serving the prohibited routes indicated in terms of their termini. The strongest point of the inter-State operators is that their names are not mentioned in the second appended statement. Hence, they could not either object as persons whose rights were meant to be affected or who could be compensated under Section 69G after necessary modification or cancellation of their permits for the over-lapping portions. We, therefore, think that

the contention that inter-State operators were apparently not meant to be denied the mere use of the overlapping portions of routes covered by this scheme is well supported. In fact, this is the more reasonable inference. Similarly, the appended statements of the Gulbarga Scheme show that the term "route" is used in the scheme for services between two termini and that persons merely using portions of the route while travelling between other termini are not totally prohibited the user of the overlapping route. Lastly, as regards the Bangalore Scheme, the case of the appellant Corporation may seem better inasmuch as the words used there are : "the complete exclusion of all the other operators excluding the intermediate routes". But, even here, the exclusion appears to be only of operators providing services between he termini mentioned there and not merely using overlapping portions of the notified routes incidentally. If the exclusion of those using overlapping portions of the surface of the highway common to two different routes was also really intended, they should have been named in the appended statement and the numbers of their stage carriages should have been given. No explanation is forthcoming of this omission. Therefore, the interpretation of the three schemes advanced on behalf of the inter-State operators is more reasonable. In any case, if the intention was really to exclude even the user of the overlapping portions of notified routes by inter-State operators, we do not see why the State Transport Undertaking should have waited for so long and not modified the scheme, as provided by Section 58E of the Act, and made its intention clear instead of litigating over this issue for such a long time.

19. On behalf of the appellants, reliance was sought to be placed strongly upon the meaning assigned to the term "route" by a Division of Bench of this Court in Nilkanth Prasad's case (supra), where the view of the Privy Council in Kelani Valley Motor Transit Co. v. Colombo Ratnapura Omnibus Co. (1946 AC 338.), was distinguished on the ground that the context of the ordinances before the Privy Council for interpretation indicated that a "route"stood for "an abstract conception of a line of travel between one terminus and another, and to be something distinct form the highway traversed". Nilkanth Prasad's case was decided before us. In it reliance was placed upon Kondala Rao v. Andhra Pradesh State Road Transport Corporation (AIR 1961 SC 82 : (1961) 1 SCR 642.), where the real question considered by this Court was whether a route could also be an area. It was observed in Nilkanth Prasad's case (at p. 737-738) :

The distinction between "route"as the notional line and "road" as the physical track disappears in the working of Chapter IVA, because you cannot curtail the route without curtailing a portion of the road, and the ruling of the Court to which we have referred, would also show that even if the route was different, the area at least would be the same. The ruling of the Judicial Committee cannot be made applicable to the Motor Vehicles Act, particularly Chapter IVA, where the intention is to exclude private operators completely from running over certain sectors or routes vested in State Transport Undertakings. In our opinion, therefore, the appellants were rightly held to be disentitled to run over those portions of their routes which were notified as part of the scheme.

20. On the other hand, learned Counsel for the inter-State operators relied strongly on H. C. Narayanappa v. State of Mysore ((1960) 3 SCR 742 : AIR 1960 SC 1073.), where a Constitution Bench of five Judges of this Court interpreted the very scheme dated January 13, 1959 relating to the Anekal area which is one of the three schemes for interpretation before us. It was held there (at P. 746) :

Statement I sets out the description of fourteen routes with their intermediate points, route length, number of buses to be operated and the maximum number of trips to be performed on each route. By column 4 "the number of existing stage carriages on each route with the number of trips and the names of their operators" are described 'as in Statement 2 appended". Statement 2 sets out the names

and places of business of fifty-six operators together with the routes operated and the numbers of the stage carriages and trips made by those operators. In the Anekal area, there are thirty-one routes, which are served by stage carriages operated by private operators, and by the approval of the scheme, only fourteen of those routes are covered by the scheme.

Hence, it was urged that the term "route" was used in the schemes under consideration with reference to a service rendered to passengers between certain termini. Its notification did not, it is urged, ipso facto, signify a blanket-like interdict against the user of any and every portion of a route conceived of as a route conceived of as a prohibited area reserved for the use of State-owned carriages only which private operators could not encroach upon or invade. The Act itself gives power to nationalise motor transport services upon and not the surfaces of public highways.

21. Whatever may be said about the correctness of the decision of this Court in Nilkanth Prasad's case (supra) in the context of the scheme before this Court for consideration in that case and the provisions of the Act as they stood then, we do not think that the ratio decidendi of that case is applicable here. Upon the contents of the schemes before us for interpretation we find that only operators named therein or those who seek to provide "services" upon the routes mentioned in the schemes, in the sense that they carry passengers travelling from one place to another situated only upon the notified routes, could be totally excluded from using the highways which the notified routes cover. We think that conditions were rightly imposed by the final transport appellate authority on the permits of inter-State operators to bring out what it understood the scheme to mean in each case.

22. The result is that we do not see sufficient reason to interfere with the view taken by the High Court and dismiss these appeals and the special leave petitions. The parties will bear their own costs in this Court.

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