D. Papiah

Vs

Mysore State Transport

Tribunal and Others

Civil Appeal No. 1153 of 1975

(V. R. Krishna Iyer, A. C. Gupta, Syed M. Fazil Ali JJ)

18.12.1975

JUDGMENT

GUPTA, J. -

1. On the application of the appellant the Regional Transport Authority, Mandya, granted him a contract carriage permit on February 8, 1972, valid for the entire State of Karnataka. The grant was cancelled by the Karnataka State Transport Appellate Tribunal by its order dated August 19, 1972 on appeal preferred by the third respondent, Karnataka State Road Transport Corporation. The appellant filed a writ petition in the High Court of Karnataka at Bangalore challenging the order of the appellate tribunal. The High Court dismissed the petition by its order dated November 29, 1974 agreeing with the appellant tribunal that the Regional Transport Authority, Mandya, had no jurisdiction to grant permits valid throughout the State of Karnataka in view of the first proviso to sub-section (1) of Section 45 of the Motor Vehicles Act, 1939 (hereinafter referred to as the Act). The correctness of that decision is questioned by the appellant in this appeal by special leave.

2. Section 45(1) with its first proviso which is the only part of the section relevant for the present purpose is in these terms :

> 45. General provision as to applications for permits. - (1) Every application for a permit shall be made to the Regional Transport Authority of the region in which it is proposed to use the vehicle or vehicles :

Provided that if it is proposed to use the vehicle or vehicles in two or more regions lying within the same State, the application shall be made to the Regional Transport Authority of the region in which the major portion of the proposed route or area lies, and in case the portion of the proposed route or area in each of the regions is approximately equal, to the Regional Transport Authority of the region in which it is proposed to keep the vehicle or vehicles :.

> As its marginal note indicates, Section 45 contains a general provision regulating applications for permits. The proviso, quoted above, lays down that where the applicant for a permit proposes to use his vehicle in two or more regions in the same State, the application must be made to the Regional Transport Authority within whose jurisdiction the major portion of the proposed route or area lies. The appellant had asked for a contract carriage permit that would be valid throughout the State of Karnataka which meant that he proposed to use his vehicle in all the different regions

> lying in the State. The second proviso to Section 44(1) of the Act lays down that the area specified as the region of a Regional Transport Authority shall not be less than an entire district, or the whole area of a Presidency town. In the State of Karnataka there are 19 Regional Transport Authorities, one for each district in the State. In terms of the first proviso to Section 45(1), an application for an interregional permit that the appellant was asking for had to be made to the Regional Transport Authority of the region that included the major portion of the proposed area. The question debated before the appellate tribunal and the High Court was whether the area lying within the jurisdiction of the Regional Transport Authority, Mandya was larger than the area within the region of any other Regional Transport Authority in the State, and in that context themeaning of the term 'area' in the first proviso Section 45(1) arose for consideration. According to the applicant for the permit, 'area' in Section 45 meant the extent of motorable tract in the region, and the Regional Transport Authority, Mandya, agreeing with this interpretation of the word 'area' found that the "Mandya region has mere motorable roads than any other district in the State". The appellate tribunal and the High Court both refused to accept this meaning of 'area' which they held to mean plain geographical area, and as the Regional Transport Authority, Mandya, was admittedly not the largest district in that State, the High Court dismissed the writ petition and affirmed the decision of the appellate tribunal that the grant of permit was without jurisdiction.

3. Before proceeding to consider the merits of the rival contentions as to the meaning of the word 'area' in the first proviso to Section 45(1), it would be helpful to refer to certain other provisions of the Act which seem to be relevant in this context. The appellant had asked for a contract carriage permit. Section 2(3) defines a contract carriage as a 'motor vehicle' which carries passengers for hire or reward under a contract for the use of the vehicle as a whole either on a time basis or from one point to another, and in both cases without stopping to pick up or set down along the line of route passengers not included in the contract. A motor vehicle is defined in Section 2 (18) as a mechanically propelled vehicle 'adapted for use upon roads'. Section 49 lays down the particulars that an application for a contract carriage permit shall contain, and the 'area' for which the permit is required is one of the matters that the application must state. The word route which has been used in association with 'area' in Section 45(1) is defined by Section 2(28A) as "a line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus and another". Section 2(1) defines 'area' as follows :

> "area", in relation to any provision of this Act, means such area as the State Government may, having regard to the requirements of that provision, specify by notification in the Official Gazette;

4. The terms and expressions defined in Section 2 will apply only if there is nothing repugnant in the subject or context as the opening words of the section indicate. The first proviso to Section 45(1) speaks of the route or area proposed in an application for a permit and, as such, there can be no question here of the State Government specifying the area. Clearly, the definition of area in Section 2(1) has no relevance in this context. The question therefore remains to be answered, - whether 'area' in Section 45(1) has been used in the wider sense of geographical area, or it means only the area of motorable roads ? The section uses both the words, 'route' and 'area', whichever is applicable in a given case. A route as defined is a line of travel between two termini on a highway, but the idea of a route as a notional line that the definition suggests has not been consistently maintained in the Act. In Dosa Satyanarayanamurty v. Andhra Pradesh State Road Transport Corpn ((1961) 1 SCR

642, 644 : AIR 1961 SC 82). this Court observed :

> There is no inherent inconsistency between an "area" and a "route". The proposed route is also an area limited to the route proposed.

A similar observation was made in C. P. C. Motor Service, Mysore v. State of Mysore (1962 Supp 1 SCR 717, 725 : AIR 1966 SC 1661), that in the scheme of the Act, by the word "route" is meant "not only the notional line but also the actual road over which the omnibuses run". Of course, it would not be correct to say that the Act recognizes no distinction between 'route' and 'area'. A route may mean not only the notional line of travel between one terminus and another, but also the area of the road over which the motor vehicles ply, yet the two terms are not interchangeable; as pointed out in C. P. Sikh Regular Motor Service v. State of Maharashtra (AIR 1974 SC 1905, 1907 : (1974) 2 SCC 579, 583 (para 15)), "a route is an area plus something more". This "something" is the national line of travel between two termini which distinguishes a route from an area simpliciter. The first proviso to Section 45(1) speaks of "route or area" apparently making a distinction between them to cover applications relatable to either. A contract carriage does not ply along a fixed route or routes but over an area, which is why an application for a contract carriage permit has to contain a statement as to the proposed area.

5. All the decisions to which we have referred above have taken the view that by area is meant the road, the physical tract, over which the motor vehicles ply without reference to any notional line of travel. Of course, this meaning was given to the word 'area' in the context of the provisions of the Act considered in these cases, in none of which Section 45 came up for consideration. We do not however find any reason to think that 'area' in Section 45(1) has a different connotation. Except that the territorial jurisdiction of the regional transport authorities is fixed in terms of geographical area - districtwise in the State of Karnataka - 'area' in that wider sense is irrelevant to the purposes of the Act. Counsel for the respondent, Mysore State Road Transport Corporation, Bangalore, built an argument on the provisions of Section 42 of the Act that the meaning of 'area' is not restricted only to the area of motorable roads in a region. Section 42 prohibits the use of a transport vehicle in any public place except in accordance with the conditions of a valid permit. A transport vehicle includes a motor vehicle used for the carriage of passengers [Section 2(33) and Section 2(25)]. Public place has been defined by Section 2(24) of the Act as

a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes and place or stand at which passengers are picked up or set down by a stage carriage.

It was argued that a contract carriage which does not ply on a fixed route could be used in any place which need not necessarily be a road; this according to Counsel, indicated that the word area occurring in Section 45(1) meant geographical area and not motorable roads only. We do not find it possible to accept this contention. Assuming that a contract carriage could be used in places which are not really roads, the fact remains that a contract carriage being a motor vehicle is intended for use upon roads, and any casual use of it in places other than roads is not decisive on the interpretation of the word area. The prohibition against the use of transport vehicles in public places which are not roads serves to repel a possible claim that for using a motor vehicle in places which cannot be called roads no permit was necessary. We hold therefore that the word area in the first proviso to Section 45(1) of the Act means the area of motorable roads within the territorial jurisdiction of a regional transport authority. The Regional Transport Authority, Mandya, held that it had within its jurisdiction the largest area of motorable roads in the State of Karnataka, and this

finding has not been disturbed by the appellate tribunal. The appellate tribunal thought that the expression "motorable roads" was vague as the area comprising of motorable roads "would be changing from time to time", but the jurisdiction of a regional transport authority to grant an inter-regional permit depends on the existing area of motorable roads when an application for a permit is made.

6. In the course of arguments before us doubts were expressed on the reasonableness of a provision which requires an application for an inter-regional permit to be made to the regional transport authority of the region in which the major portion of the proposed route or area lies when Section 63 of the Act provides elaborate checks and lays down conditions for the validation of a permit for the use outside the region in which it has been granted. It was submitted that in view of the provisions of Section 63 there was no point in insisting on the application being made to the Regional Transport Authority of any particular region. We see the logic of this submission, but this is a matter of policy on which the court has no say. However, the policy itself does not appear to have been stated very clearly. On the provisions as they are it is difficult to say that the construction put forward on behalf of the third respondent is altogether implausible. It is also true that there can be practical difficulties, whichever interpretation were adopted. This being the position we should have thought that instead of leaving the law in such a slippery state, the State should clarify it by appropriate legislation so that the law may be clear and easily ascertainable by the concerned section of the public.

7. The appeal is allowed and the impugned order including the order of the Mysore State Transport Appellate Tribunal is set aside. We make it clear that all we have decided in this case is that the Regional Transport Authority, Mandya, had jurisdiction to issue the permit to the appellant, whether the permit satisfies the other conditions of a valid inter-regional permit did not arise for consideration in this appeal. In the circumstances of the case we make no order as to costs.

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