

R. Raghuram

Vs

P. Jayarama Naidu and Others

Review Petition No. 324 of 1989 in Civil Appeal No. 4126 of 1988

(CJI E. S. Venkataramiah, Ranganath Misra JJ)

15.12.1989

ORDER

VENKATRAMIAH C. J.-

1. This is a petition for review of the decision dated January 24, 1989 rendered in Civil Appeal No. 4126 of 1988. The question involved in this case relates to the right of a private operator to ply a stage carriage on a notified route under Chapter IV-A of the Motor Vehicle Act 1939 (hereinafter referred to as the Act) or any part thereof. Although the case proceeded on the basis that there was only a draft scheme published under Section 68-C of the Act in now transpires that there was an approved scheme in respect of major portion of the route in question. It is not disputed that between Chittoor and Kannikapuram the portion of the route Chittoor-Iruvaram Cross Kannikapuram is a notified portion of the route. Under the Scheme the holders of stage carriage permits operating on portions of the proposed route were not to be affected. Even while the draft scheme was pending the appellant P. Jayarama Naidu who was an existing permit holder applied for a variation of his permit as he desired an increase in the number of trips operated by him on a portion of the notified route. The State Transport Authority allowed an increase in the number of trips but on appeal the State Transport Appellate Tribunal reversed the order and refused the increase. A writ petition was filed in the High Court and the same was dismissed on the ground that no variation in the conditions of existing permit could be allowed in view of the draft scheme but this Court by its judgment dated January 24, 1989 allowed the appeal on the ground that the draft scheme had not yet been finalized and that there could be no objection to the variation of the permit until there was an approved scheme.

2. A review petition was filed bringing to the notice of the court that there was an approved scheme already and the appellant could not be permitted to operate on the portion of the notified route between Chittoor-Kannikapuram.

3. In Adarsh Travels Bus Service v. State of U. P. a Constitution Bench of this Court has held that where a route is nationalised under Chapter IV-A of the Act a private operator with a permit to ply a stage permit over another route but which has a common overlapping sector with the nationalised route cannot ply his vehicle over that part of the overlapping common sector even with corridor restrictions such as that he would not be able to pick up or drop passengers on the overlapping part of the route unless such an exemption had been allowed in the scheme itself. Even when the scheme provides that an existing operator is exempted from the operation of the scheme it only means that he can continue to operate his services with the existing number of trip on the date on which the scheme is published and it does not authorise him to apply for a variation of his permit so that he can increase the number of trips overlapping portion of the notified route thus increasing the burden

of private operation of vehicles on the notified route in question. The variation authorising increasing the number of trips in fact amounts to granting of a fresh permit to run one more stage carriage service doing one round trip on the notified route and that would be in violation of the scheme itself because the scheme protects only the number of trip which were being operated at the time of its publication.

4. Our attention is, however, drawn to another decision of this Court in Karnataka State Road Transport Corporation v. B. A. Jayram in which it has been held by a bench consisting of two learned Judges that Section 57 (8) does not create a legal fiction and grant of an application for variation in the conditions of one existing permit in respect of matters set out in Section 57 (8) does not result in the grant of new permit in every case. With great respect to the learned Judges who decided the said case we feel that the said opinion is erroneous because the increase in the number of trips of vehicles which were being run under the existing permit does amount to grant of a new permit to operate one more stage carriage. Such a thing could not be permitted particularly in view of the decision in Adarsh Travels case. The construction on the statute placed by the decision of this Court in Karnataka State Road Transport Corporation case referred to above must be deemed to have been overruled in Adarsh Travels case. The prejudice to the finances that is caused to the State Transport Undertaking for whose benefit the scheme is made is not so much by the number of vehicles used but by the number of trips that are operated on the notified route in question. The economy and coordination two of the factors governing a scheme would also be affected. On the basis of the above view. another Division Bench has disposed of another petition at the stage of admission.

5. Even if there is an inter State agreement under Section 63 of the Act for increasing the number of trips such an agreement cannot over ride the provision of Chapter IV-A by virtue of Section 68-B of the Act Section 63 being in Chapter IV of the Act the scheme approved under Chapter IV - A prevails over it.

6. We therefore feel that the order dated January 24, 1989 in Civil Appeal No. 4126 of 1986 has got to be reviewed in view of the fact that there was an approved scheme in force which did not authorise the increase in the number of trips of the vehicles belonging to the existing operators on the date of the scheme.

7. In view of the above we feel that this review petition should be referred to a Constitution Bench to decide whether on the publication of approved scheme the number of trips of the vehicles of the existing operators can be increased by granting the variation of a permit even when the existing operators are allowed to carry on their business as on the date of the publication of the scheme. We therefore refer this case to a Constitution Bench since the matter is urgent and requires to be decided early it may be posted before the Constitution Bench for final hearing on the first Tuesday of February 1990 subject to overnight part heard case.

</html