A. P. State Road Transport Corporation, Hyderabad

Vs

G. T. Venkataswamy Reddy and Others

Civil Appeal No. 2859 of 1977

(V. Ramaswami II, Yogeshwar Dayal JJ)

24.08.1992

JUDGEMENT

YOGESHWAR DAYAL, J.:-

1.The present appeal is directed against the judgment of the Andhra Pradesh High Court dated 30-6-1976 whereby the Division Bench of the High Court dismissed the writ appeal, No. 684 of 1974 filed by the appellant herein against the judgment of the learned single Judge passed in Writ Petition No. 7581 of 1973 dated 15-3-1974. The appeal arises in the following circumstances:

2. The appellant herein published a draft scheme relating to the route Tirupati to Kalahasti via Renigunta, Yerped which is an intra-state route as per the Andhra Pradesh Gazette dated 15-11-1972. The said scheme envisaged the exclusion of all the other operators on the proposed route except to the extent saved by the Note appended to the scheme. The note appended to the draft scheme was as follows:-

> "Note:- The scheme shall not affect
>
> (1) the other State Transport Undertakings,
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> (2) holders of stage carriage permits in respect of portions of the route, and
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> (3) the holders of stage carriage permits in respect of the routes: Srisailam to Tirupati and Tirupati-Vijayawada."

3. Respondent No. 1, G. T. Venkataswamy Reddy, who is operating an inter-State stage carriage service from Bangalore to Kalahasti including the nationalised portion Tirupati to Kalashasti, being aggrieved by the draft scheme, filed objections thereto. After hearing the interested objectors including the respondent No. 1 the draft scheme was approved with some modifications and the relevant modification introduced by way of clause (4) was as follows:

> "The scheme shall not affect:
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> CLAUSE NO. 4: The existing permit holders of stage carriages on the inter-State routes overlapping the notified route, subject to the condition that they shall not pick up or set down intra-State passengers on the notified route."

4. As per the notified scheme the route permit of respondent No. 1 was liable to be curtailed in law between Tirupati to Kalahasti which is a part of the inter-State portion of the route of respondent No. 1 but in the approved scheme the aforesaid clause (4) permitted the permit holder of stage carriages on the inter-state routes overlapping the notified route to run the route subject to the aforesaid "corridor restrictions", namely subject to the condition that they shall not pick up or set down intra-State passengers on the notified route. The final Notification being No.. 1505 was issued on 17th November, 1973.

5. The respondent No. I thereupon filed a writ petition in the High Court of Andhra Pradesh being Writ Petition No. 7521 of 1973 inter alia contending amongst other's that the modification as per clause (4) to. the approved scheme is outside the draft scheme and is also outside the competence of the State Government under Section 68D (2) of the Motor Vehicles Act, 1939 (hereinafter referred to as 'the Act'). He also took the plea that it violates Article 14 of the Constitution of India in view of clauses 1 to 3 of the Note to the approved scheme in comparison to clause 4 of the Note appended to the approved scheme. Clauses 1 to 3 of the Note to the approved scheme were as follows:

> "Note:- The scheme shall not affect
>
> 1) The holders of State Carriage Permits in respect of portions of the route.
>
> 2) The other State Transport Undertakings and.
>
> 3) The holders of stage carriage permits in respect of routes Srisailam-Tirupathi and Tirupathi-Vijayawada."

6. The Writ petition was contested by the appellant. The learned single Judge, however, while following an earlier single Bench judgment passed in Writ Petitions Nos. 7327 of 1973 etc., etc. Mrs. R. Maheshwari etc., etc. v. The State of Andhra Pradesh, dated 25th January, 1974 quashed a portion of the condition as contained in clause (4) of the Note to the approved scheme viz. that respondent No. I shall not pick up or set down intra-State passengers on the notified route. It was further held by the High Court in the said judgment that the notified scheme was opposed to the principles of natural justice without affording an opportunity to the objectors before approving the scheme by introducing clause (4) to the Note.

7. The appellant being aggrieved with the judgment of the single Bench took up the matter in appeal being writ Appeal No. 684 of 1974 and the Division Bench by the impugned order dated 30th June, 1976, following an earlier decision of the Division Bench of the same High Court reported as Andhra Pradesh State Road Transport Corporation, Hyderabad v. R. Maheshwari, (1975) 2 Andh WR 362: AIR 1976 Andh Pra 232, dismissed the appeal of the appellant herein. This decision of the Division Bench in Writ Appeal No. 374 of 1974 dated 15th July, 1975 is none other than against the Single Bench decision rendered in Writ Petition No. 7327 of 1973 dated 25th January, 1974 mentioned earlier.

8. It appears that the learned Judges of the Division Bench who decided the case of R. Maheshwari (supra) were kept ignorant of an earlier Division Bench judgment of the same High Court in M. Gangappa v. Government of Andhra Pradesh, AIR 1975 Andh Pra 138, decided on 11 th October, 1973. The earlier Division Bench had taken the view that if the notified route is entirely within a single State, the scheme does not relate to an inter-State route. So, the proviso to sub-sec. (3) of Sec.

68D of the Act has no application. It was further held thus (para 82 of AIR):

> "It is thus plain that the prior approval of the Central Government was necessary only if a particular scheme covers the route which is partly in one State and partly in another State but not otherwise. There is no prohibition for the buses operating in the inter-State route taking passengers from one terminus to the other terminus, the only objection being for picking up and setting down of passengers on the intermediate stages on the notified route within this State."

9. It was also held that "that is the type of order passed in that case. Prior approval of the Central Goverment in such cases was not necessary".

10. It appears from the facts stated in paragraph 4 of the judgment in the case of R. Maheswari and two others (supra) that respondent No.1 therein was the proprietrix of a transport company and was operating two inter-State stage carriage permits. One stage carriage was on the route Tirupati to Bangalore in Karnataka via Chittoor and Palmaner and the other between Tirupati and Veloor (Tamilnadu) via Chittoor. The Andhra Pradesh State Road Transport Corporation had published a scheme on 15th November, 1972 with regard to the route from Tirupati to Chittoor proposing to run road transport services to the complete exclusion of private operators. In this way the draft scheme excluded the private operators on an inter-State route completely from the overlapping portion of the notified route but in the approved scheme there was a Note to the similar effect as we. find clause (4) of the Note in the present case. The learned Judges while passing the present impugned order followed this later decision of the Division Bench in the aforesaid case of R. Maheshwari and two others.

11. It will be noticed that in the case of R. Maheshwari and two others (supra) the question of vires of the draft scheme or approved scheme vis-a-vis Article 14 of the Constitution of India was neither raised nor decided.

12. The later Division Bench of the High Court in the case of R. Maheshwari and two others (supra) took the view that the "corridor restrictions" contained in clause (4) of the Note is violative of proviso to sub-section (3) of Section 68D of the Act as the said proviso envisaged that the approved scheme under Section 68D may relate to an inter-State route, but before it could become an approved scheme, it must be published in the Official Gazette with the previous approval of the Central Government, though both the terminii of the notified route are in Andhra Pradesh. The Division Bench was also of the view that principles of natural justice have been violated inasmuch as that the Note appeared only in the approved scheme but did not appear in the draft scheme forgetting that the draft scheme provided a complete exclusion of the private operators on the notified route subject to the Note appended thereto.

13. In S. Abdul Khader Saheb v. The Mysore Revenue Appellate Tribunal, Bangalore, (1973) 2 SCR 925 : (AIR 1973 SC 534), the Supreme Court held that in that case there was no scheme of nationalisation relating to the inter-State route from Bellary to Manthralaya and the Bellary scheme was confined only to the intra-State routes, one of which is the Bellary-Chintakunta route, whose terminii were within the State. That could be nationalised by the State of Mysore under the provisions of Section 68D even though that portion overlaps the inter-State route-from Bellary to Manthralaya. The Supreme Court also took the view that since the scheme also did not deal with an Inter-state route at all no question of the applicability of the proviso to sub-section (3) of Section 68D of the Act, which requires the previous approval of the Central Government arises. The same

view was followed by this Court in K. Venkamma v. Govt. of Andhra Pradesh, (1977) 3 SCR 562: (AIR 1977 SC 1170). Krishna Iyer, J. noticed the case of Abdul Khader Saheb (AIR 1973 SC 534) (supra) in the following words (at p. 1173 of AIR):

> "In Abdul Khader Saheb a totally untenable submission was put forward and unhesitatingly turned down that if the nationalised route fell within a single State it should nevertheless be regarded as inter-State route for some mystical reason, viz., that it overlaps a longer route which is admittedly an inter-State route. It is elementary that there can be inter-State routes which run into or through more than one State. A part of that long route may itself be a separate route and may fall wholly within a single State in which case the former may be inter-State while the latter will be an intra-State route. In Abdul Khader's case the Court observed:-
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> " .....The Bellary scheme provides for nationalisation of an intra-State route and not an inter-State route and the aforesaid provision can have no applicability.
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> .....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 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 part of an inter-State route even though it lies on the road which runs through many States.
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> 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 68D (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 68D(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. 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 the State of Mysore under the provisions of S. 68D."
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> No further comment is necessary."

14. The learned Judges did not think it necessary to make even a comment as to the applicability of the proviso to sub-section (3) of Section 68D of the Act to a notified route which was purely an intra-State route. The matter again came before a Constitutional Bench of this Court in Adarsh Travels Bus Service v. State of U.P., 1985 Supp (1) SCR 661 : (AIR 1986 SC 319). The appellants in that matter were holders of stage carriage permits over certain intra-State routes as well as inter-State routes. Parts of the routes on which they were plying their stage carriages were notified under

Chapter IVA of the Motor Vehicles Act, 1939. They in fact contended that they be permitted to ply their stage carriages over the entire route by imposing "corridor restrictions" i.e. not picking up or setting down any passengers at any point on the nationalised part of the routes. In the appeals before the Supreme Court the question was: where a route is nationalised under Chapter IVA of the Motor Vehicles Act, 1939 whether a private operator with a permit to ply a stage carriage over another route but which has a common over lapping sector with the nationalised route can ply his vehicle over that part of the over lapping common sector if he does not pick up or set down passengers on the over lapping part of the route. Before the Supreme Court on behalf of the operator's it was contended that a "route" according to the definition in Section 2(28A) of the Motor Vehicles Act, 1939 meant a line drawn between two terminal and if the portion of it had been nationalised, it would have no effect whatsoever on the permits to ply stage carriages on the route, and that the complete exclusion of private operators from the common sector would be violative of Article 14 of the Constitution and also ultra vires Section 68D of the Act. It was further contended that the provisions of Chapter IV and Chapter IVA of the Act must be construed in such a manner as to allow permit holders to ply their stage carriages notwithstanding that parts of their route are also parts of notified routes. It was held thus:

> "None of the schemes contains any saving clause in favour of operators plying or wanting to ply stage carriages on common sectors. However, there is invariably a clause in the scheme to the effect that no person other than the State Government Undertaking will be permitted to provide road transport services on the routes specified in the scheme. In view of this provision in the scheme there is a total prohibition of private operators from plying stage carriages on the whole or part of the notified routes. The appellants cannot therefore contend that they can ply their vehicles on the notified routes or part of the notified routes.
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> A careful and diligent perusal of sections 68C, 68D(3) and 68-FF in the light of the definition of the expression "route" in Section 2(28A) appears to make it manifestly clear that once scheme is published under Section 68-D in relation to any area or route or portion thereof, whether to the exclusion, complete or partial of other persons or otherwise, no person other than the State Transport Undertaking may operate on the notified area or notified route except as provided in the scheme itself. A necessary consequence of these provisions is that no private operator can operate his vehicles on any part or portion of a notified area or notified route unless authorised so to do by the terms of the scheme itself. He may not operate on any part or portion of the notified route or area on the mere ground that the permit as originally granted to him covered the notified route."

15. It will be noticed that in the present draft scheme there was a total exclusion of all operators except to the extent saved by the Note appended to the scheme. That Note did not give any chance to private operators of inter-State route to ply on the overlapping part of the route. After hearing the objections filed by respondent No. I clause (4) of the Note, which partially lifted the total embargo, proposed to be imposed in the draft scheme, was introduced which permitted plying subject to the "corridor restrictions". Sub-section (3) of Section 68D of the Act along with its proviso reads as follows:

> "68D. Objection to the scheme

(1) to (2) .....

(3) The scheme as approved or modified under sub-section (2) shall then be published in the Official Gazette by the State Government and the same shall thereupon become final and shall be called the approved scheme and the area or route to which it relates shall be called the notified area or notified route:

Provided 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."

16. It is clear from the language of subsection (3) of Section 68D of the Act that the approved scheme is a scheme as published under Section 68D(3) of the Act and its route is called the "notified route" and unless such scheme itself i.e. draft scheme itself relates to any inter-State route, the condition of the proviso of taking prior Central Government's approval will not arise and the same view was taken by this Court in the aforesaid cases.

17. On behalf of the respondent plea was again urged that the condition contained in clause (4) of the Note regarding the "corridor restrictions" did not find place in the draft scheme and even though they had -filed objections and they had been heard, yet the principles of natural justice were violated. It is suffice to say that the draft scheme totally excluded the private operators on the notified route and only after hearing the respondent No. 1 in support of his objections that the prohibition was relaxed which was envisaged in the draft scheme. In the circumstances it cannot be said that instead of total prohibition the embargo is lifted partially under the approved scheme still the principles of natural have been violated.

18. Another argument urged was discrimination under Article 14 of the Constitution of India inasmuch as the scheme permits certain private operators in certain overlapping routes being given free permission to operate whereas the respondent No. I who operates inter-State stage carriage service is being subjected to "corridor restrictions". This point does not appear to have been urged either before the Single Bench or before the Division Bench. However, it is not pointed out how the various routes are similar to each other. A reasonable classification is always permissible. It is the interest of the passengers which has to be looked into in nationalisation of the routes and not necessarily the interest of the private operators. It is clear from the counter-affidavit filed on behalf of the appellants before the High Court that no case of Article 14 of the Constitution was made out.

19. The result is that the appeal is allowed and the impugned judgments of the High Court are set aside and the writ petition filed by respondent No.1 before the High Court is dismissed. Parties are, however, left to bear their own costs. Appeal allowed.

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