

ANDHRA PRADESH HIGH COURT

A.P.S.R.T. Corpn

Vs.

R. Maheshwari

Writ Appeal Nos. 374 to 380, 510, 535,578 and 587 of 1974 and W. P. Nos. 3188 and 3305 of 1975

(A. Sambasiva Rao, Ag. C.J. and A.V. Krishna Rao, J.)

15.07.1975

JUDGMENT

A.V. Krishna Rao, J.

1. All the above writ appeals and the writ petitions raise a common question and may be disposed of by a common judgment.
2. The appeals are all directed against the orders of Obul Reddy J. (as he then was). The appellant in each of the appeals is the Andhra Pradesh State Road Transport Corporation, Hyderabad. The petitioners in the two writ petitions and the respondents in these writ appeals are inter-State Operators of Stage Carriage holding the requisite permits. Some of them also held intra-State permits. The policy of nationalizing Road Transport Services was extended to some of the Ceded Districts. In the instant cases, we are concerned with Chittoor and Anantapur Districts. In order to understand the questions involved in the writ appeals and the writ petitions, we will deal with the facts in Writ Petition No. 7327 of 1973, the order against which is the subject matter of Writ Appeal No. 374 of 1974. In the rest of the matters before us, the facts are very similar and the legal contentions raised by either party are the same.
3. Our learned brother had disposed of Writ Petitions Nos. 7327, 7461, 7493, 7459, 7539 and 7636 of 1973 by a common order dated 25-1-1974. In all the Writ petitions, the Writ Petitioners had prayed that a writ or order or direction particularly one in the nature of Mandamus directing the respondents to the Writ Petitions viz. The State of Andhra Pradesh, The Chairman of Andhra Pradesh State Road Transport Corporation and the Secretary Regional Transport Authority, Chittoor to forbear from enforcing a certain clause in the scheme approved by the Government and Published in the Gazette. A direction was sought preventing the chairman of the A. P. State Road Transport Corporation from implementing the approved scheme.
4. In Writ Petition No. 7327 of 1973, the petitioner is the proprietrix of the Chittoor Public Transport Company. She was operating two inter-State Stage Carriage permits. One stage carriage was on the route Tirupati to Bangalore in Karnataka Via. Chittoor and Palmaner. The

second inter-State Stage carriage permit was for operation between Tirupati and Vellore (Tamil Nadu) via. Chittoor. The Andhra Pradesh State Road Transport Corporation had published on 15-11-1972 a Scheme with regard to the route from Tirupati to Chittoor proposing to run Road Transport services to the complete exclusion of private operators. With regard to Tirupati to Chittoor via, Puthalapet and Chandragiri (inter-State), Objections were invited to the draft scheme and the same were heard and the Government had on 17-11-1973 approved the proposed scheme introducing a note which was not there in the proposed scheme which was published under Section 68-C of the Motor Vehicles Act (hereinafter referred to as 'the Act'). Clause 3 in the note (hereinafter referred to as 'the impugned clause') stated that "the scheme shall not affect the existing permit holders of the 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." The result of this note in the approved scheme by the Government is that it has affected the inter-State permits issued to the petitioner, inasmuch as the petitioner was forbidden to pick up passengers between Tirupati and Chittoor via Puthalapet and Chandragiri which are on the intra-State routes, but within the State of Andhra Pradesh. The petitioner felt aggrieved by the introduction of the said condition, contained in Clause (3) to the note. In the Writ Petition, it was *inter alia* contended that as the offending clause affects the inter-State routes, the respective other State authorities like Tamil Nadu State Transport Authority and the Karnataka Transport Authority should have been consulted and their consent taken. It was also contended that no opportunity was given to the petitioner to raise objections regarding the introduction of such a note, that therefore the introduction of the said clause in the note was violative of the principles of natural justice and that it also affected the petitioner's fundamental rights under Article 19 (1) and (g) of the Constitution of India, as also Article 14 of the Constitution. The 3rd respondent, Secretary, Regional Transport Authority, Chittoor, had no authority to call upon the petitioner to produce the permits regarding the inter-State routes granted to her with a view to incorporate clause (3) in the note.

5. In the counter filed by the 2nd respondent, the State of Andhra Pradesh represented by its Secretary Home (Transport) Department, it is *inter alia* contended that the impugned clause did not contravene any of the fundamental rights guaranteed to the petitioner under the Constitution and that the impugned clause was to the benefit of the petitioner and no question of prejudice arose and as such it was not necessary to give any opportunity to the petitioner before adding the said clause to the note appended to the approved scheme. The procedure adopted is in conformity with the provisions of Chapter IV-A of the Motor Vehicles Act.

6. As stated earlier, all the writ petitions against which writ appeals have been filed and the Writ Petitions posted before us raise the same question and our answer to the question would, of course, cover all the cases before us.

7. Substantially the question boils down to this. Can any restrictions be imposed on inter-State operators in the matter of plying their vehicles on a nationalized Inter-State route when the said restrictions were not originally in the draft scheme, but were only incorporated in the approved scheme. The answer depends on the contents of the draft scheme and the approved scheme and the relevant provisions in Chapter IV-A of the Act. The impugned clause reads thus:-

"The scheme shall not affect- (3) The existing permit holders of the 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."

8. Chapter IV-A of the Motor Vehicles Act was introduced by way of an Amendment to the Act in 1956. It enacted special provisions relating to State Transport Undertakings. This Chapter was given an overriding effect over Chapter IV of the Act and any other laws. Section 68-C of the Act provided for the preparation and publication of schemes of road Transport service of a State transport undertaking. It provides:

"Where any State Transport undertaking is of opinion that for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service, it is necessary in the public interest that road transport services in general or any particular class of such service in 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, the State Transport undertaking may prepare a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered and such other particulars respecting thereto as may be prescribed, and shall cause every such scheme to be published in the Official Gazette and also in such other manner as the State Government may direct."

9. Chapter VI of the Andhra Pradesh Motor Vehicles Rules contains Rules 315 to 322 to give effect to the provisions contained in Section 68-C of the Act.

10. Section 68-C of the Act provides that on the publication of any scheme in the Official Gazette in the manner provided, any person or any association or any authority as envisaged in sub-section (1) may within 30 days of the publication of the scheme in the Official Gazette file objections before the State Government. Under sub-section (2), the State Government was enjoined to consider the objections after giving an opportunity to the objector to be heard and if the State Government so desires approve or modify the scheme. Under sub-section (3) the scheme as approved or modified under sub-section (2) should be published in the Official Gazette. On such publication, the scheme shall be called the approved scheme; the area or route to which it relates, the notified area, or the notified route, and the scheme becomes final. There is a proviso to sub-section (3) which states that no such scheme which relates to any inter-State route shall be deemed to be approved scheme unless it has been published in the Official Gazette, with the previous approval of the Central Government.

11. Our learned brother Obul Reddi J. (as he then was) had partially quashed the impugned clause viz. "subject to the condition that they shall not pick up or set down intra-State passengers on the notified route." The reasons for the learned Judge quashing a portion of the impugned clause were (1). The draft notification as could be seen from Schedule I to the notification only related to intra-State routes, that there was no scheme proposed affecting any inter-State route and that having regard to the contents of the publications of the draft scheme and the contents of the approved scheme which contained the impugned clause, that the approved scheme went beyond what was notified under Section 68-C and that with regard to the impugned clause, the inter-State operators had no opportunity to make a representation. In that View, the learned Judge held that the impugned clause in the approved scheme was illegal to the extent of stating "subject to the condition that they shall not pick up or set down intra-State passengers on the notified

route." However, the learned Judge observed that the Government would be at liberty to issue a fresh notification under Section 68-C of the Act, if they propose to make inter-State permit of the petitioners ineffective in so far as the notified route is concerned.

12. The learned Advocate-General appearing for the appellants in the Writ Appeals contended that Section 68-C of the Act providing for the publication of a scheme by the State Transport undertaking conferred a very wide latitude in framing the scheme which could take in inter-State route operators also. The section envisaged that in public interest the scheme could affect all road transport services in general or any particular class of such services in relation to any area or route or portion thereof and the services could be run and operated by the State Road Transport undertaking and that could be done to the exclusion complete or partial, of other persons or otherwise. The Advocate-General urged that in respect of inter-State operators also, there could be an exclusion which is either complete or partial and in this case the impugned clause in the approved scheme could not be questioned, as in effect it amounts only to a partial exclusion which is within the competence of the State Transport undertaking to impose. Though the State Transport undertaking in the proposed scheme did not introduce the impugned clause, it is open to the Government in approving the scheme under Section 68-D (2) to do so. It was also urged that this partial exclusion contained in the impugned clause was really for the benefit of the inter-State operators and no prejudice was caused to them. Some of the inter-State operators were also intra-State operators and as their objections were heard by the Government, it cannot be said that there was no opportunity given to the inter-State operators and that therefore the principles of natural justice could not be said to have been violated.

13. We will now refer to the notification under Section 68-C of the Act in Writ Petition No. 7327 of 1973 (Writ Appeal No. 374 of 1974) which is typical of the other notifications with which we are concerned in the batch of writ appeals and the two writ petitions, in so far as it is relevant: -

" Whereas the State Transport Undertaking is of opinion that for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service, it is necessary in the public interest that the road transport service in relation to that area route specified in the Schedule-I hereunder should be run and operated by the Andhra Pradesh State Road Transport Corporation.

AND WHEREAS the State Transport undertaking has proposed a scheme for the purpose as set out in the Schedule II hereunder, the same is hereby published for the information of the Public as required under Section 68-C of the Motor Vehicles Act, 1939.

SCHEDULE-I	
1.	Area or route in relation to which scheme is proposed.
	(i) Tirupati- Palamaner.
	(ii) Chittoor-Palamaner.
SCHEDULE-II	
1.	Route (starting point and terminus with important intermediate stations and route length).
	(i) Tirupati-Palamaner (via) Devalampet and Chittoor (112.0 Kms.).

		(ii) Chittoor-Palamaner (via) Mogili (50-0 Kms.).
2.	Whether town service or mofussil service, if mofussil service specify whether ordinary or express service.	Mofussil service (Stage carriage) ordinary service.
3.	No. of stage carriages proposed to be operated in each route by the State Transport undertaking to the exclusion complete or partial or otherwise of other persons.	One bus is proposed to be operated to the complete exclusion of other persons except to the extent indicated in the note hereunder.
	(a) Type	Saloon.
	(b) Capacity Seating.	31-54 seating capacity.

xx xx xx xx x

Note: 1 This scheme shall not affect: 1 (1) The other State Transport undertakings. (2)

The holders of stage carriage permits in respect of portions of the route.

II. This scheme does not propose to permit opening of new routes connecting Tirupati and having an overlap of more than 50 Kms. with the proposed route from Tirupati."

14. It may thus be seen that the area or route in relation to which the scheme was proposed is Tirupati-Chittoor. The termini are within the State of Andhra Pradesh. The route, therefore, sought to be notified is intra-State. The note appended does not refer to any conditions which would affect any inter-State operators or their permits. What is mentioned in the note only relate to or concerns only Tirupati Chittoor route it is not disputed that the scheme proposed and published is in accordance with the requirements of Section 68-C of the Act.

15. Under Section 68-D (1) of the Act, on the publication of the scheme in the Official Gazette and in the newspapers in the regional language, having a circulation in the area or route which is proposed to be covered by such scheme, within 30 days of its publication, among others mentioned in the section, any person already providing transport facilities by any means along or near the area of the route proposed to be covered by the scheme can file objections to the scheme before the State Government. Under sub-section (2), the State Government may, after considering the objection and after giving an opportunity to the objector, as also the representatives of the State Transport undertaking to be heard in the matter, may approve or modified the scheme. Under Section 68-D (3) of the Act, the scheme as approved or modified by the State Government under sub-section (2) shall be published in the Official Gazette. On such publication, the scheme would become final and thereafter the area or route to which the approved or modified scheme relates shall be called the notified area or notified route. There is a proviso to sub-section (3) which states that no such scheme which relates to any inter- State route shall be deemed to be approved scheme, unless it has been published in the Official Gazette with the previous approval of the Central Government.

16. Having regard to the aforesaid provisions in Section 68-D of the Act, the objections that are to be filed are only objections in relation to the particular scheme which is published under Sections 68-C by the State Transport undertaking. Under sub-section (2) of Section 68-D it is those objections that have to be considered after hearing the objector and the State Transport undertaking. Thereafter the State Government may either approve the scheme or modify the same. The proviso to sub-section (3) makes it manifest that no inter-State route could be affected by the scheme to be published under Section 68-C of the Act and cannot be approved by the Government under Section 68-D after following the procedure prescribed therein, unless the approved scheme is published in the Official Gazette containing reference to the inter-State route in the scheme. This could be done only with the previous approval of the Central Govt. As per sub-section (2), the State Government may approve the scheme as published under Section 68-C or modify the scheme after considering the objections. The word 'modify' in the said sub-section means 'to change slightly or partially in character.' The State Government when it approves the scheme under Section 68-D of the Act presents no difficulty. But when it comes to a question of modification of the scheme, the modification quite obviously could only be made, having regard to the objections filed. The objections filed can only be in relation to the scheme published under Section 68-C. It is plain that no other objections can be entertained by the State Government. It is quite patent that the scheme published under Section 68-C does not make any reference to an inter-State route or inter-State operators. The impugned clause in the note was added in the scheme published by the Government under Section 68-D (3) of the Act. That impugned clause which is appended to the note at the end of the published scheme added a condition that the permit holders of stage carriages on the inter-State routes shall not pick up or set down intra-State passengers on the notified route. But for this condition introduced in the scheme published under Section 68-D, the inter-State operators plying along the notified route could pick up or set down passengers. With regard to the condition imposed in the impugned clause, no objections could have been filed by the inter-State operators, as the scheme published under Section 68-C made no reference to any inter-State route. Their objections, if any, in that respect could not have been made. Some of the inter-State route permit holders are also intra-State permit holders. Their objections would only have been in relation to the intra-state route which is the notified route and not of something which was never found in the scheme published under Section 68-C of the Act. Thus there can be no doubt that the introduction of a new condition in the note appended to the scheme published under section 68-D was made without hearing the writ petitioners, who are inter-State operators. Thus, principles of natural justice are violated and the conditions introduced behind the back of those who were not heard cannot be allowed to stand. Proviso to sub-section (3) of Section 68-D of the Act envisages that the approved scheme under Section 68-D 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. It is not the case of the appellants that any steps were taken by the State Government so as to satisfy the requirements of the proviso.

17. For the above reasons, we have no hesitation in upholding the judgment under appeals.

18. The learned Advocate-General cited certain authorities in support of his argument to which we shall presently refer. Reliance was placed upon the decision in *S.A. khader v. Mys. R.A. Tribunal*¹. In this case the relevant facts for our purpose are these. In August, 1964, the States of Mysore and Andhra Pradesh entered into a reciprocal agreement to introduce stage carriage

services on the inter-State route from Bellary in Mysore State to Manthralaya in Andhra Pradesh via Chintakunta. The said scheme was approved by the Government of Mysore under Section 68-D of the Act. This was popularly called as the 'Bellary Scheme'. Under the said scheme, on a portion of the road in question, viz. from Bellary to Chintakunta Border, operators other than those mentioned in the scheme were totally excluded and only State Transport undertaking could operate the services. The Mysore Road Transport Corporation, which was the State Transport undertaking, one B. Subba Rao the appellant and certain other persons filed appeals before the Mysore State Transport Appellate Tribunal which remitted the case to the Regional Transport Authority for a fresh disposal. Aggrieved by that decision, the State Transport Corporation and others filed appeals before the Mysore Revenue Appellate Tribunal. That Revenue Tribunal allowed the appeal of the appellant in its entirety granting him a permit for the inter-State route with the condition that no passenger was to be picked or set down on the portion of the road overlapping the notified route of the Bellary Scheme. The appeals preferred by the others were dismissed. Then writ petitions were filed before the High Court, one by the State Corporation and the other by B. Subba Rao and others challenging the order of the Revenue Appellate Tribunal. The High Court did not agree with the view of the Revenue Appellate Tribunal that even under a scheme of total exclusion from Bellary to Chintakunta border, a permit could be issued in respect of the overlapping of the inter-State route by making that permit ineffective. The High Court had remanded the matter to the State Transport Authority for a disposal according to law. An appeal was preferred by the appellant to the Supreme Court. It may be noted that the Bellary Scheme provided for the State Transport undertaking to operate services on all the routes to the complete exclusion of other persons except in regard to portions of inter-District routes lying outside the limits of Bellary District. Existing permit holders on inter-State routes would be allowed to operate such inter-State routes, subject to the condition that their permits shall be rendered ineffective by the competent authority for the overlapping portions in the District of Bellary. One of the arguments advanced on behalf of the appellant was that because the scheme merely provided for partial exclusion, it was open to the authorities concerned to issue a permit for the route overlapping the inter-State route. The court rejected that contention.

19. The next argument on behalf of the appellant before the Supreme Court was that any scheme of nationalization of a route by a State as approved under Section 68-D of the Act cannot override the inter-State agreements in respect of inter-State routes. This contention was negated by the Supreme Court in *T. N. R. Reddy v. M. S. T. Authority*⁸,

¹ AIR 1973 SC 534

² AIR 1971 SC 1662

Following that decision, it was held that a scheme of nationalisation approved under Section 68-D would prevail over an inter-State agreement in respect of an inter-State route. In paragraph 10 of the judgment, it was pointed out by their Lordships that where the termini were within the State of Mysore, the scheme could not be said to deal with an inter-State route at all and in such a case no question arose of the applicability of the proviso to sub-Section (3) of Section 68-D of the Act and that in the case before them there was no scheme of nationalisation relating to the inter-State route from Bellary to Manthralaya. The Bellary Scheme was confined to the intra-State route. It may be that a 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 Section 68-D of the Act. This decision, in substance, lays down that a scheme of nationalisation approved under Section 68-D would prevail over an inter-State agreement in respect of an inter-State route and that the Government can nationalise intra-State route even

though a portion of it overlaps the inter-State route. We fail to see what manner of assistance can be derived from the dicta in this case in relation to the facts before us.

20. In *T. N. R. Reddy v. M. S. T. Authority*³, the Supreme Court held that under Section 68-C of the Act it is open to the authority to permit a scheme in which there is a partial exclusion of private operators. That is to say, under Section 68-C an order making the permit of private operators along a notified route ineffective for the overlapping part could be justified under Section 68-C as it is a partial exclusion. The case does not deal with any inter-State route or operators on the inter-State route and it is of no help in the present case. The partial exclusion in the case related to an intra-State route which was notified.

21. *Nilkanth Prasad v. State of Bihar*⁴, also has nothing to do with any intra-State route and overlapping portions of the Inter-State route. It was held in this case that the intention of the provisions under Chapter IV-A of the Act is to exclude private operators completely from running over certain sectors or routes vested in the State Transport undertakings. Even in case where the notified route and the route applied for by a private operator ran over a common sector, the curtailment by virtue of the notified scheme would be by excluding that portion of the route or in other words the road coming to both. In the wording of Chapter IV-A, the distinction between route as the national line and the road as the physical track disappears for the reason that the route cannot be curtailed without curtailing a portion of the road. Private operators were therefore disentitled to run over these portions of their routes which were notified as part of the scheme. Thus, the decision also renders no help in the controversy before us.

22. In *T. N. R. Reddy v. M. S. T. Authority*⁵, the States of Andhra Pradesh and Mysore entered into a certain agreement what is called the 'Kolar Scheme.' One of the arguments advanced by the Counsel for the appellant in the case was that the Kolar Scheme could only be modified with the condition that the appellant should not pick up or drop passengers on the overlapping portion of the route which was an inter-State route. This point was not considered by their Lordships in the view they had taken on the other contentions. In the Kolar Scheme Clause (4) stated that 'the State Transport undertaking will operate services on all the routes to the complete exclusion of other persons except

³ AIR 1977 SC 1662

⁵ AIR 1971 SC 1662

⁴ AIR 1962 SC 1135

that (a) that existing permit holders on the inter- State routes may continue to operate such inter-State routes, subject to the condition that their permit shall be rendered ineffective for the overlapping portions of the notified routes.' This decision also is of no help to us, as the Court did not decide on this point urged by the counsel for the appellant.

23. In Writ Petitions Nos. 3188 and 3305 of 1975, the impugned clause is found as Clause (6) to the note appended. For the reasons given in the writ appeals above, in Clause (6) of the said note, the portion reading 'subject to the condition that they shall not pick up or set down passengers on the proposed route', in G. O. Ms. No. 778 Home (Transport-V) dated 3rd June, 1975 is quashed and the Writ petitions are allowed to that extent.

24. Our learned brother in the writ petitions had reserved to the State Transport undertaking the liberty to issue a fresh notification under Section 68-C of the Act, if they proposed to make inter-State permits of the writ petitioners ineffective in so far as the notified route is concerned. This observation has not been questioned before us. We need not disturb the said observation.

25. In the result, all the writ appeals are dismissed with costs. The two writ petitions are allowed to the extent indicated above with costs. Advocate's fee Rs. 100/- in each.
Appeals dismissed.