

ANDHRA PRADESH HIGH COURT

K. Pamanna

Vs

The State Transport

(S Pratap C.J, M.N. Rao and P.N Sarma, JJ.)

10.03.1992

ORDER

M.N. Rao, J.

1. All these writ petitions relate to the power of the State Transport Authority (for short STA) to alter the conditions of a permit granted by it under the Motor Vehicles Act, 1939 (since repealed by the Motor Vehicles Act, 1988). The permits involved are all inter-State stage carriage permits; some were granted by the Andhra Pradesh STA and some by the STAs of other States -- Tamil Nadu, Orissa and Karnataka -- in respect of which counter-signatures of the Andhra Pradesh STA are required.

2. A Division Bench of this Court in *A.P.S.R.T.C. v. S.T.A. Tribunal*,¹ expressed the view that the STA has no power to vary the conditions of a stage carriage permit granted by it. The reasoning of the Division Bench was that :

"The power to vary the conditions of the permit is located in Section 48 only and having authorised Regional Transport Authority to vary permit the omission to refer to State Transport Authority is deliberate and furnishes a clue to the exclusion of State Transport Authority from exercising the power of variation."

3. Another Division Bench of this Court in W.A. No. 901 of 1984, dated 15-3-89 doubted the correctness of the above view observing:

"The authority which granted a permit has always the inherent power to vary the conditions of the permit, and, in our view, the powers conferred on the Regional Transport Authority under Sections 47 and 48 would equally apply in the case of a permit which is granted by the State Transport Authority."

4. Yet another Division Bench of this Court in *Mohd. Yousuf Basha v. A.P.S. R.T.C.*² has taken the view that under sub-section (1-D) of S. 68-F of the Motor Vehicles Act, 1939, the STA has no power to grant variation of the conditions of a stage carriage permit granted by it after the publication of a draft scheme covering a portion of the route in respect of which the variation was sought. The Supreme Court in *P. Jayarama Naidu v. The S.T.A.T.*, Civil Appeal No. 4126/88, Dt.

24-1-89, expressed the view that :

".....It is only after the stage of Section 68-D(3) of the Motor Vehicles Act had been reached the draft scheme approved with or without notifications that the scheme could become operative Nothing has been shown to us to indicate that until the draft scheme becomes operative as an approved scheme, a variation of the conditions of an existing permit on a portion of the route cannot be made."

The earlier decision of the Supreme Court in Pandiya Roadways Corporation Ltd. v. Thiru M. A. Egappan, was distinguished observing that the same would apply only in a case where the approved scheme came into force.

5. Because of the uncertainty as to the correct legal position and the divergence, of opinion expressed by the two Division Benches, all these matters have been referred to this Full Bench. The questions that arise for consideration are :

(1) Whether the STA has jurisdiction to vary the conditions of a stage carriage permit granted by it?

(2) Whether variation of conditions of a stage carriage permit under Sec. 57(8) can be granted during the pendency of a draft scheme published under Sec. 68-C of the Act?

(3) Whether the conditions of a stage carriage permit can be varied under Sec. 57(8) of the Act when there is an approved scheme published under Sec. 68-D of the Act?

Re : (1):-- The Motor Vehicles Act, 1939 contemplates two transport authorities: (1) for the entire State; and (2) at the regional level. The former is called the State Transport Authority and the latter, the Regional Transport Authority. The powers and functions of the transport authorities are regulated by the Act. The constitution of the authorities is by an official notification issued by the State Government under S. 44(1) of the Act. In respect of the State transport, authority, sub-sec.(3) of S. 44 lays down the following powers and functions :

"(a) to co-ordinate and regulate the activities and policies of the Regional Transport Authorities, if any, of the State;

(b) to perform the duties of a Regional Transport Authority where there is no such Authority and, if it thinks fit or if so required by a Regional Transport Authority,, to perform those duties in respect of any route common to two or more regions;

(c) to settle all disputes and decide all matters on which differences of opinion arise between Regional Transport Authorities; and

(d) to discharge such other functions as may be prescribed."

Section 42 mandates that no owner of a transport vehicle shall use or permit the use of the vehicle in any public place except in accordance with the conditions of the permit granted or countersigned by a Regional or State Transport Authority authorizing the use of the vehicle. Sub-sec. (1) of S. 45 says that 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. The second proviso to sub-sec. (1) says that if it is proposed to use the vehicle or Vehicles in two or more regions lying in different States the application shall be made to the RTA of the region in which the applicant resides or has his principal place of business. Sub-sec. (2) says that notwithstanding anything

contained in sub-sec. (1), the State Government may, by notification in the official Gazette, direct that in the case of any vehicle or vehicles proposed to be used in two or more regions lying in different States, the application under that sub-section shall be made to the State Transport Authority of the region in which the applicant resides or has his principal place of business. In exercise of the power under sub-sec. (2), the State Government issued a notification in G.O.Rt. No. 2623 dated 8-10-74 to the effect that in respect of inter-State routes the State Transport Authority has alone the jurisdiction to issue permits. Section 46 lays down the particulars to be contained in the application for permit in respect of a stage carriage. Section 47 deals with the procedure of Regional Transport Authority in considering applications for stage carriage permits. Sec. 48 deals with the power of RTA to grant stage carriage permits on applications made under S.46. Sub-sec. (3) of S.48 lays down that while granting a stage carriage permit the RTA may subject to any rules made under the Act, attach to the permit any one or more of the conditions specified in the sub-section. Condition (xxi) is to the effect that the RTA may after giving notice of not less than one month (a) vary the conditions of the permit; (b) attach to the permit further conditions. The procedure in applying for and granting of permits is to be found in S. 57. It refers to only RTA. Sub-sec. (8) says that an application to vary the conditions of any permit shall be treated as an application for the grant of a new permit. Section 59 incorporates general conditions attaching to all permits. Section 60 confers power of cancellation or suspension of permits "on the Transport Authority" which granted the permit. It does not specifically refer either to STA or RTA.

6. In *A.P.S.R.T.C. v. STAT* (1 supra), the holder of an inter-State stage carriage permit filed an application for variation of conditions of a permit by way of increase of 12 more singles and inclusion of one more vehicle and the same was granted by the State Transport Authority. The power of the STA to grant variation was questioned by the APSRTC. A learned single judge of this Court dismissed the writ petition taking the view that the STA has power to grant variation. Before the Division Bench it was contended that the State Transport Authority has no jurisdiction to vary the conditions of a permit. The Division Bench after referring to Ss. 45, 46, 47, 57 and 60 of the Motor Vehicles Act, considered the question whether the power to grant includes the power to cancel, suspend and vary. The Division Bench noticed that only S.48 authorises the Regional Transport Authority to vary the conditions of a permit and as no analogous provision is found in the Act conferring such power on the STA to vary the conditions of a permit granted by it, the omission was held to be deliberate. On that view the Division Bench concluded that :
"Section 45 considered in conjunction with S. 48 necessarily yields to the conclusion that the State Transport Authority is not empowered to exercise the power of varying the permit and S. 60 musters this conclusion."Section 60 according to the Division Bench embraces both RTA and STA and the power it confers relates to infraction of the provisions of the Act or breach of the conditions of the permit. The power under S. 60 could not be equated with variation of the permit as provided in clause (xxi) of sub-sec. (3) of S. 48 under which the RTA alone is competent to vary the conditions of a permit was the considered view of the Division Bench.

7. Shri G. Suryanarayana, who advanced leading arguments has contended that the right to grant variation is incidental, ancillary and consequential to the power to grant permit unless that power is curtailed by the statute. In regard to the permits granted by the STA there is no such provision in the Act curtailing the power of the STA in this regard.

8. Controverting these contentions, Shri Harinath learned counsel for the A.P.S.R.T.C. submits

that there is no specific provision in the Act conferring power on the STA to vary the conditions of a permit granted by it. Section 60 is a penal provision which comes into play only when the conditions of a permit are violated by the permit holder and the power conferred under S. 60 is exercisable by the STA and the RTA depending upon the situation as to who granted the permit. The general power to vary the conditions of a permit is conferred only on the RTA under S.48(3) (xxi) and even this power the RTA can exercise only in the event of the permit granted by it incorporating that condition but not otherwise. The STA and RTA are two different and distinct bodies, the powers and functions of each are unrelated to one another and, therefore, a specific power conferred on one cannot by inference be attributed to the other. Finally a feeble attempt is made by the learned counsel to contend that the STA has no jurisdiction at all to grant permits in respect of inter-State routes; it only implements the conditions contained in inter-State agreements and in that regard discharges only inconsequential formal functions.

9. Before considering the other aspects, we feel it necessary to set at rest all doubts as to the hierarchical nature of the two Tribunals. There is absolutely no legal basis for the contention advanced by the learned counsel for the A.P.S.R.T.C. that STA and RTA are two independent bodies exercising separate powers and functions unrelated to each other. In the hierarchical set up under I the Act, the RTA is a subordinate authority with limited territorial jurisdiction, whereas the STA is a higher authority exercising jurisdiction over the whole of the State. Interpreting sub-secs. (3) and (4) of S. 44 of the Act, the Supreme Court in *State of Rajasthan v. Noor Mohemmed*, set at rest all lingering doubts in this regard :

"It is clear from the above provisions that the State Transport Authority is a superior authority with jurisdiction over the whole of the State while the Regional Transport Authority is subordinate to it with its jurisdiction generally confined to the region for which it is appointed. It is also clear from sub-sec. (3) clause (b) that the State Transport Authority can perform the duties and functions of the Regional Transport Authority under certain circumstances."

Section 43 which deals with the power of the State Government to control road transport empowers the State Government to issue directions to the STA in respect of the four matters specified therein viz.,

- i) fixing of fares and freights for stage carriages, contract carriages and public carriers;
- ii) restrictions regarding long distance goods traffic generally or of specified classes of goods by private or public carriers;
- (iii) grant of permits for alternative routes or areas to persons affected because of the operation of provisions of S. 68-F; and
- (iv) any other matter which appears to be necessary and expedient to the Government for giving effect to any agreement entered into with the Central Government or any other State Government or the Government of any other country relating to the regulation of motor transport.

From the aforesaid provisions the inference follows that in regard to the matters specified clauses (i), (ii), (iii) and (iv) of the second limb of sub-sec. (1) of S. 43, the STA has implied powers. When a statute confers power on Government to issue directions to a body in certain matters, it is plain that in regard to those matters the body is competent to exercise jurisdiction and the power is curtailed only to the extent comprehended by the directions issued by the Government.

10. The procedure contained in sub-sec. (8) of S. 57 for granting variation of the conditions of a permit need not be followed for grant of counter-signature of permits if the permits granted in any one State are required to be countersigned by the STA of another State or the RTA concerned as a result of any inter-State agreement. This is specifically made clear by the proviso to sub-sec. (3) of S.63. The procedure regarding inter-State agreements is contained in sub-sec. (3-A) of S. 63. The number of permits to be granted and the number of permits in respect of which counter-signatures are required in respect of each route or area should be specified in the proposal relating to an inter-State agreement and the same shall be published in the Official gazette giving due notice to enable the affected parties to make representations. When the proposal is finalised and the agreement is reached between the States concerned, it shall be published in the Official Gazette by each of the States and the STA and the RTA as the case may be shall give effect to the inter-State agreement : vide sub-sec. (3-B). The statutory obligation imposed on the transport authorities both STA and RTA -- to give effect to inter-State agreements by virtue of the provisions of sub-sec. (3-B) of S. 63 does not render the two transport authorities ineffective confining their activities only to complying with procedural formalities. Except matters concerning inter-State agreements, which obligate a particular course of action in relation to the two transport authorities, in all other respects, their powers and functions are as specified in the Act. The learned counsel for the Andhra Pradesh State Road Transport Corporation has not produced any inter-State agreement before us in support of his assertion that the role of the STA in all these writ petitions is of a secondary nature limited to carrying out the directions of the State Government. This point, for the first time, was raised by Shri Harinath without furnishing any material to substantiate it. He did not raise this point either before the learned single Judge or the Division Benches when the matters were argued earlier.

11. The statute specifically mentions RTA as the authority to grant permits in respect of stage carriages, contract carriages, private carriers and public carriers : Sections 46, 47 and 48 relate to stage carriage permits; Ss. 50 and 51 relate to contract carriages; Ss. 52 and 53 concern themselves with private carriers and public carriers are covered by Ss. 56 and 57. We have already referred to G.O. Rt. No. 2623 dated 8-7-1974, the notification issued by the Government under S. 45(2) of the Act, laying down that in respect of inter-State routes the STA alone has jurisdiction to issue permits. Section 45 speaks of general provisions as to applications for permits. Sub-sec. (1) mentions the RTA of the region as the competent body to which applications seeking permits have to be made. Sub-sec. (2), which incorporates a non obstante clause, has overriding effect vis-a-vis the provisions of sub-sec. (1). Power is conferred on the State Government by sub-sec. (2) to direct, by notification in the Official Gazette, that "in the case of any vehicle or vehicles proposed to be used in two or more regions lying in different States the application under that sub-sec. (1) shall be made to the State Transport Authority of the region in which the applicant resides or has his principal place of business."

11A. What all powers and functions an RTA has, if it were to act under sub-sec. (1) of S.45, the STA shall have by virtue of the notification issued under sub-sec. (1) of S. 45. Even otherwise, if the STA thinks fit, it can perform the duties of the RTA under clause (b) of sub-sec. (3) of S. 44 in respect of any route common to two or more regions. An inter-State route is a route common to two or more regions in respect of which STA can exercise power. This proposition is not destitute of authority. In Noor Mohemmed's Case (5 supra), the route in question was from Jaipur to Rohtak (Jaipur in Rajasthan and Rohtak in Haryana). The exercise of power in relation to such a route by the STA was sustained by the Supreme Court with reference to S. 44(3)(b). Rule 182

of the Andhra Pradesh Motor Vehicles Rules, 1964, lays down that the STA shall be the sole transport authority in regard to through traffic along truck roads and along other roads as may be notified by the Government for the purpose. The note appended to the rule clarifies the position; it says that "through traffic shall be deemed to be traffic for a distance of more than 160 kms." All the inter-State routes in question are more than 160 kms. in distance. We, therefore, reject the contention advanced by the learned counsel for the Andhra Pradesh State Road Transport Corporation that the STA has no power to grant permits in respect of inter-State routes.

12. The permits in question, it is admitted by all the learned counsel, were issued by the State Transport Authority. As per sub-s. (8) of S. 57, variation means inclusion of a new route or a new area or increase in the number of trips or alteration of the route and in the case of contract carriage permits variation includes increase in the number of vehicles covered by the permit. Section 57, as already noticed, mentions only the RTA as the competent body to receive applications. As we have already held that the STA becomes the competent authority to issue permits in respect of inter-State routes by virtue of the notification issued by the Government under S.45(2), in every case where a permit was granted by the STA the application for variation must be made only to that body under sub-sec. (8) of S. 57. Rule 260 strengthens this view. It is in the following terms:

"Variation of permit on application.-- (1) Upon application made in writing by the holder of any permit, the transport authority may, at any time, vary the permit or any of the conditions thereof subject to the provisions of Section 57(8) and of sub-rule (2) :

Provided that it shall be open to transport authority to reject summarily an application for the variation of a permit, if within the period of six months immediately preceding the application, a request for the same variation of permit on the same grounds had been refused.

(2) If the grant of variation would authorise transport facilities materially different from those authorised by the original permit, the transport authority shall deal with the application as if it were an application for a permit.

Explanation.-- For the purposes of this rule, any variation involving an increase of over forty per cent or any reduction in the seating capacity, other than the variation due to the alterations effected in conformity with the Rules made under Chapter V of the Act in respect of the original permit of a stage carriage, shall be treated as variation in transport facilities materially different from those authorised by such permit."

The expression "the transport authority" occurring in sub-rule (1) is referable only to the transport authority which has granted the original permit. The use of the definite article 'the' preceding the words 'transport authority' unmistakably leads to the conclusion that variation has to be granted by the same authority which has granted the main permit. The definite article 'the' cannot be construed, as the indefinite article 'a'. Such a construction is totally impermissible; it would amount to rewriting the rule contrary to the statutory intent. If it is to be held that "a" transport authority (RTA) can vary the conditions of any permit granted by another transport authority (STA), it will lead to absurd results. The rule would travel beyond the statute and, on that account, would be ultra vires.

13. The specific power conferred on an RTA under S. 48(3), namely, to attach to the permit any one or more of the conditions specified therein can also be exercised by the STA in cases where it acts as the permit-granting authority. Clause (xxi) of sub-sec. (3) conferring power on the RTA

to vary conditions of the permit after giving notice of not less than one month can also be exercised by the STA in respect of permits granted by it. The specific conferral of power on the RTA under S. 48(3) is no indication at all as to the exclusion of such power by the STA if the permit is granted by it. S.60 operates in a different sphere. It concerns itself with cancellation and suspension of permits for breach of any conditions of the permit or any of the provisions of the Act. The power under S.60 is exercisable by "the transport authority which granted the permit"; it necessarily means that if the permit was granted by an RTA it can exercise power under S. 60 and if the permit was granted by STA the power can be exercised by it under S. 60. With reference to S.60, it is not permissible to seek any guidance or draw inference as to the power to vary the conditions of a permit under S. 57(8). S.57(8) and S.60 operate in two different spheres. Power under S. 57(8) cannot be exercised with reference to the provisions of S. 60. To this limited extent, we agree with the view taken by the Division Bench in APSRTC v. STAT (1 supra). But the opinion expressed by the Division Bench that "the State Transport Authority is not empowered to exercise the power of varying the permit" is erroneous; it has no statutory basis and is contrary to the scheme of the statute and its intendment. It is not permissible to hold that the authority is divested of all incidental or consequential powers nor can it be said that the power exercised once gets exhausted thereafter. After stating the principle that a statutory body can legally do only what is permitted by the statute. Professor Wade expressed the view :

"A statutory power will, however, be considered as impliedly authorising every thing which can fairly be regarded as incidental or consequential to the power itself; and this doctrine is not to be applied narrowly." (Administrative Law, Fifth edition, page 216)".

We also draw support for our view from S. 21 of the General Clauses Act, 1897. That section makes it clear that when power is conferred by a Central Act or Regulation, such power includes the power to "add to, amend, vary or rescind" any action taken. When once the STA had granted a permit, it being a superior authority in the hierarchical set up, it would lead to an absurd situation if a conclusion were to be drawn that the RTA, an inferior body, could vary the conditions of a permit granted by the STA. Such a view would be contrary to the basic principle of statutory interpretation. The power to vary the conditions of a permit is incidental to the main power of granting the permit. When the main power was exercised by the STA, the incidental power cannot be exercised by the RTA a lower authority in the hierarchical set up. The view of the Division Bench that "the power to vary the conditions of the permit is located in S.48 and having authorised the regional transport authority to vary permit the omission to refer to State Transport Authority is deliberate and furnishes a clue to the exclusion of the State Transport Authority from exercising the power of variation" cannot, therefore, be sustained. We, therefore, overrule the decision of the Division Bench in APSRTC v. STAT (1 supra) to the extent it lays down the proposition that STA has no power to vary the conditions of a permit granted by it. We also overrule the decision to the extent it indicates suggestively that an RTA has power to vary the conditions of a permit granted by the STA. For these reasons, we answer the first question in the affirmative : The STA has undoubted jurisdiction to vary the conditions of a stage carriage permit granted by it.

14. Re : (2) :--

Whether variation of conditions of a stage carriage permit under S. 57(8) can be granted during the pendency of a draft scheme published under S. 68-C of the Act?.

15. Chapter IV-A of the Act comprising Ss. 68-A to 68-J was inserted by Act 100 of 1956. The provisions of Chapter IV-A, by S.68-B, have overriding effect, vis-a-vis Chapter VI (which deals with Control of Traffic) or any other law for the time being in force. "State Transport Undertaking" is defined by Clause (b) of S. 68-A of the Act and it is empowered to prepare schemes by S. 68-C of the Act for the purpose of providing efficient, adequate, economical and coordinated service in the public interest and such schemes shall contain the nature of the service proposed to be rendered, the area or route proposed to be covered and other particulars. Every scheme prepared by the State Transport Undertaking shall be published in the official gazette in the prescribed manner. The schemes may provide total or partial exclusion of private operators.

16. Section 68-D incorporates the procedural formalities to be observed when any scheme prepared by the State Transport Undertaking is published in the official gazette. The right to file objections is confined to only the three categories specified therein. By sub-section (2) thereof, the State Government is empowered, after hearing the objections, to approve or modify the scheme. Sub-sec. (3) obligates that the approved scheme shall be published in the official gazette 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 "notified area or notified route". The power to cancel or modify the approved scheme is conferred on the State Transport Undertaking by S. 68-E of the Act. If, in pursuance of an approved scheme, the State Transport Undertaking applies in the prescribed manner for a stage carriage permit or a public carriage permit or a contract carriage permit in respect of a notified area or notified route, the State Transport Authority, if the area or route lies in more than one region and the Regional Transport Authority in other cases, shall issue such permit to the State Transport Undertaking notwithstanding anything to the contrary contained in Chapter IV (which deals with Control of Transport Vehicles). Sub-sec. (1-A) of S. 68-F of the Act says that, after the publication of a draft scheme under Sec. 68-C, a State Transport Undertaking may apply for a temporary permit in respect of any area or route or portion thereof specified in the scheme during the interregnum between the date of publication of the draft scheme and the date of publication of the approved or modified scheme. When such an application is made, the transport authority, if satisfied that it is necessary to increase, in the public interests, the number of vehicles operating in such area or route or portion thereof, shall issue the temporary permit applied for. Such a temporary permit shall be effective in case the draft scheme is approved until the grant of the permit to the State Transport Undertaking under sub-sec. (I), or if the draft scheme is not approved, until the expiration of one week from the date of the passing of orders by the State Government under sub-sec. (2). If no application is made for such a temporary permit by the State Transport Undertaking, the State Transport Authority may grant temporary permit to any person in respect of the area or route or portion thereof specified in the scheme and the permit so granted shall cease to have effect on the issue of a permit to the State Transport Undertaking in respect of that area or route or portion thereof. (Sub-sec. 1-C).

17. Sub-section (1-D) imposes a ban on granting or renewal of permits during the interregnum between the date of publication of a draft scheme and the date of publication of the approved or modified scheme, in favor of any person for any class of road transport service. The said sub-section is in the following terms :

"(1-D) Save as otherwise provided in sub-sec. (1-A) or sub-sec. (1-C), no permit shall be granted or renewed during the period intervening between the date of publication, under S. 68-C, of any scheme and the date of publication of the approved or modified scheme in

favour of any person for any class of road transport service in relation to an area or route or portion thereof covered by such scheme :Provided that where the period of operation of a permit in relation to any area, route or portion thereof specified in a scheme published under S.68-C expires after such publication, such permit may be renewed for a limited period, but the permit so renewed shall cease to be effective on the publication of the scheme under sub-sec. (3) of S. 68-D."

18. We have already noticed that" sub-sec. (8) of S. 57 of the Act deals with submission of applications for varying the conditions of a permit other than a temporary permit. Although the sub-section says that such an application is treated as an application for the grant of a new permit, it has been held in several decisions :

"Section 57(8) only enacts fiction for the purpose of applying the same procedure in disposing of an application for a new permit and an application to vary the conditions of a permit. The fiction has no larger part to play and no other purpose to serve."

(Janardhana Rao v. Dy. Transport Commissioner), .

19. The above view was reiterated by a Division Bench of this Court in Mohd. Yousuf Basha v. A.P.S.R.T.C., 1979 (2) An WR 403.

20. In Mohd. Yousuf Basha's case (supra) the question directly arose whether during the interregnum between the publication of a draft scheme and the publication of an approved or modified scheme the transport authority could grant variation of a permit. P.A. Choudary, J. speaking for the Division Bench held :

"The language of S. 68-F 1-D read textually and contextually in the light of this statutory purpose would clearly show that the word 'permit' used in S. 68-F(1-D) is not used in the sense of an authorization by way of issuance of a fresh document. It follows that whenever an authorization is given by addition or alteration of anything in relation to a route or a portion thereof during the interregnum of Sections 68-C and 68-D the mandate of S. 68-F (1-D) would be violated."

On the above reasoning, the learned Judge concluded :

"It follows that the State Transport Authority had acted without legal competence in granting the variation during the interregnum. The order granting variation therefore must be construed as one having been made by the State Transport Authority without jurisdiction and the order is therefore null and void."

21. Sri G. Suryanarayana, learned counsel for the operators, has contended that variation does not amount to grant or renewal of a permit and sub-sec. (1-D) of S. 68-F of the Act only forbids granting or renewal of permits during the interregnum between the date of publication of the draft scheme and the date of publication of an approved or modified scheme. Reliance was placed upon the decisions in *M/s. Shiv Chand Amolak Chand v. R.T. Authority and Karnataka State Road Transport Corporation, Bangalore* v. B.A. Jayaram, .

22. In Shiv Chand Amolak Chand's case, (supra) S. 68-F (1-D) of the Act did not fall for consideration. Interpreting Sections 57(8) and 47(3) of the Act, the Supreme Court held (at pages 13 & 14):

".....we do not think that the prescription in sub-sec. (8) of S. 57 that an application for varying the condition of a permit by extension of the route shall be treated as an application for grant of a new permit has effect of equating such an application with an application for grant of a new permit for all purposes so as to attract the applicability of sub-sec. (3) of S. 47."

.....where an application merely seeks a short extension of the route specified in the permit as in the present case, it would not be appropriate to say that it is an application for grant of a new permit, though technically the extended route may not be regarded as the same as the original route and where such is the case, it would not be necessary to comply with the procedure set out in sub-sec. (3) of S.47."

23. Shiv Chand Amolak Chand's case (supra) was followed in Karnataka State Road Transport Corporation's case (supra).

24. In *Pandiyam Roadways Corporation Limited v. Thiru M.A. Egappan* S. 68-F(1-D) of the Act came to be considered in the context of a situation obtaining after an approved scheme was published. Before the Madras High Court the plea taken was that, after the draft scheme was published, the Transport Authority had no jurisdiction to grant variation of a permit. By the time the matter reached the Supreme Court, the approved scheme had come into being and, therefore, the Supreme Court had to "consider the effect of the approved scheme on the order granting variation of the permit.....".

25. Observing that there was no justification to limit the application of S. 68-F (1-D) to only applications for fresh permits or their renewal, leaving out applications for variation by the inclusion of the route or a portion of the route in respect of which a scheme is published, the Supreme Court held :

"The principle underlying S. 68-F (1-D) of the Act is that the number of services on such a route should be frozen on the publication of a scheme under S. 68-C of the Act."
After expressing the above view, the Supreme Court felt that it was not necessary to pursue the matter any further : "since it is brought to our notice that the very same route is the subject-matter of the approved scheme published under S. 68-D of the Act.....".

Although Section 6S-F(1-D) was considered by the Supreme Court directly, the fact situation related to the period covering post-approved scheme stage.

26. The question directly arose once again before the Supreme Court in Civil Appeal No, 4126 of 1988 dated 25-1-1989 (P. Jayaram Naidu v. The S.T.A.T.). The appellant before the Supreme Court in the above said matter was plying a stage carriage on the route "Chittor to Paradarami", a distance of 20 kilometres. During the validity of the permit, the Andhra Pradesh State Road Transport Corporation published a draft scheme under S. 68-C of the Act in respect of the route "Chittor to Nellore (via) Katpadi". During the pendency of the draft scheme, the appellant

applied for variation of his permit seeking increase in the number of services rendered by him. That application was allowed by the State Transport Authority. But, on appeal, the Transport Appellate Tribunal reversed the order. The High Court dismissed the writ petition filed by the appellant taking the view that the route plied by the appellant formed part of the route which was the subject matter of the draft scheme and that during the pendency of the draft scheme, no variation in the conditions of the existing permit would be allowed. Allowing the appeal and setting aside the order of the High Court, the Supreme Court held :

"The draft scheme had not yet been finalised. Objections were to be considered, and it is only after the stage of S. 68-D(3) of the Motor Vehicles Act had been reached the draft scheme approved with or without notifications that the scheme could become operative..... Nothing has been shown to us to indicate that until the draft scheme becomes operative as an approved scheme, a variation of the conditions of an existing permit on a portion of the route cannot be made."

The earlier decision in Pandiyan Roadways Corporation Limited (supra 10) was distinguished on the ground that in that case the Supreme Court was dealing with an approved scheme.

27. Jayarama Naidu's case holds the field, the proposition of law being that, during the pendency of a draft scheme, it is permissible for a Transport Authority to grant variation of the conditions of a permit covering an area or route overlapping partially or completely a route or area specified in the draft scheme.

28. A review petition filed seeking review of the judgment in Civil Appeal No. 4126 of 1988 was referred to a Constitution Bench by a two Judge Bench in R. Raghuram v. P. Jayaram Naidu, . In the reference order, it was mentioned :

"the order dated 24th January, 1989 in Civil Appeal No. 4126 of 1988 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."

Sri Suryanarayana, learned counsel for the operators, has invited our attention to the order in Civil Appeal No. 4126 of 1988 and submitted that the said appeal does not relate to an approved scheme, but it pertains to the grant of variation during the currency of a draft scheme published under S. 68-C of the Act. The learned counsel also invited our attention to the following relevant portion in para 7 of the judgment referred to above (supra 11) :

".....we feel that this review petition should be referred to a Constitution Bench to decide whether on the publication of an 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."and contended that the reference order has not doubted the legality of the proposition laid down in Civil Appeal No. 4126 of 1988, viz., variation could be granted during the pendency of a draft scheme.

29. We express our firm disinclination to go into the factual aspects of the reference order. The fact remains (hat the order made in Civil Appeal No. 4126 of 1988 has been referred to a

Constitution Bench. Until the Constitution Bench goes into the question and authoritatively lays down the law, we are of the view that the decision in Civil Appeal No. 4126 of 1988 holds the field. Under Art. 141 of the Constitution of India the decision in Civil Appeal No. 4126 of 1988 binds us. Any views expressed in the order of reference, in our considered opinion, do not account to a decision rendered so as to operate as "the law declared by the Supreme Court" within the meaning of Art. 141 of the Constitution of India. We, therefore, hold on the authority of the decision in Civil Appeal No. 4126 of 1988 dated 25-1-1989, that, during the pendency of a draft scheme published under S. 68-C of the Act, the conditions of a stage carriage permit can be varied under S. 57(8) of the Act. Question No. 2 is answered accordingly in the affirmative.

30. Re (3) :--

Whether the conditions of a stage carriage permit can be varied under S. 57(8) of the Act when there is an approved scheme published under S.68-D of the Act?.

31. The question is no longer res intergra. The decision of the Supreme Court in M/s Adarsh Travels Bus Service v. Stage of U.P., squarely applies. After considering the provisions of Chapter IV-A of the Act, the Constitution Bench ruled in the above case (at page 324) :

"A perusal of S.68C, S.68D(3) and S. 68FF in the light of the definition of the expression 'route' in S.2(28-A) appears to make it manifestly clear that once a scheme is published under S. 68D 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 vehicle 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 or area."

32. Once a scheme is published u/S. 68-D of the Act, the area to which it relates is called "notified area" and the route to which it relates is called "notified route". Sri G. Suryanarayana, learned counsel, who led the arguments on behalf of the private operators, contended that what is prohibited by Section 68-FF of the Act is only 'granting of any permit' but not 'variations of the conditions of permit'.

In view of the aforesaid decision of the Supreme Court, it is not possible to accept the contention of the learned Counsel for the private operators. It is clear from the above that after the approved scheme is published the embargo under S. 68-FF of the Act operates even to the grant of variations of a permit in respect of any notified area or notified route, except in accordance with the provisions of the scheme.

33. We, therefore, answer question No. 3 in the negative.

34. We now proceed to hear and decide each matter on the respective facts and circumstances and in the light of this Full Bench ruling.

S. C. Pratap, C.J.

35. In these three writ petitions, the State Transport Appellate Tribunal at Hyderabad dismissed the petitioner's respective revision petitions on the ground that variation of permit cannot be granted during the pendency of a draft scheme. In view of the Full Bench judgment pronounced today, the decision of the State Transport Appellate Tribunal on the above question is not correct. It is open to the authorities to consider application for variation of permit during the pendency of the draft scheme. Such a draft scheme does not debar such consideration. The proceedings in each of these petitions, therefore, require to be sent back to the State Transport Appellate Tribunal for hearing the revisions afresh and deciding the same on merits and in accordance with law and obviously also in the light of the Full Bench judgment pronounced today.

36. Hence order: These petitions are allowed. The impugned orders of the State Transport Appellate Tribunal are set aside. Respective revision petitions are restored. The Tribunal is directed to hear and decide the said revisions afresh on merits and in accordance with law and inter alia in the light of the Full Bench judgment pronounced today. It will be open to the parties to raise before the Tribunal all such other contentions, as advised, and if so raised, the Tribunal will decide the contentions on merits and in accordance with law.

37. As the proceedings have been pending for several years, the Tribunal is now directed to hear and decide the remanded proceedings expeditiously but, in any event, within four months of the intimation hereof to it. No order as to costs. Government Pleader's fee Rs. 300/- in each case.

38. Order accordingly.

Cases Referred.

11987 (2) ALT 900 at 903

21979 (2) Andh WR 403