C. P. C. Motor Service, Mysore vs The State Of Mysore And Another on 1 December, 1961

Equivalent citations: 1966 AIR 1661, 1962 SCR SUPL. (1) 717, AIR 1966 SUPREME COURT 1661

Author: M. Hidayatullah

Bench: M. Hidayatullah, P.B. Gajendragadkar

PETITIONER:
C. P. C. MOTOR SERVICE, MYSORE

Vs.

RESPONDENT:
THE STATE OF MYSORE AND ANOTHER

DATE OF JUDGMENT:
01/12/1961

BENCH:
HIDAYATULLAH, M.
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HIDAYATULLAH, M.
GAJENDRAGADKAR, P.B.

CITATION:
1966 AIR 1661 1962 SCR Supl. (1) 717
CITATOR INFO :
R 1969 SC 273 (5)
RF 1976 SC1731 (4)
RF 1986 SC 319 (8,10,12)

ACT:
Stage Carriage-State Transport Undertaking-Scheme-Validity-Routes notified under scheme-Overlap between notified route and route left to private operators-Effect-"Route", meaning of-Motor Vehicles Act, 1939 (4 of 1939), ss. 680, 68F(2)(c) (iii).

HEADNOTE:
Under a scheme for taking over certain stage carriage services to the complete exclusion of private operators, which was approved and notified

by the State of Mysore under the provisions of Ch. IV-A of the Motor Vehicles Act, 1939, it was provided, inter alia: "The State Transport Undertaking will operate services to the complete exclusion of other persons (i) on all the notified inter-district routes except in regard to the portions of inter-district routes Lying outside the limits of Mysore District, and also (ii) over the entire length of each of the inter-district routes Lying within the limits of Mysore District." The appellants who were running stage carriage omnibuses of certain routes, some of which were inter-district and inter-State, challenged the validity of the scheme on the ground, inter alia, that between the routes which were taken over and some of the inter-district and inter-State routes which were left to the private operators, there was an overlap in the Mysore District, and that those routes which were not taken over including the portion of the route Lying within the Mysore District should not be affected by the scheme, because "route" meant a notional line running between two termini and following a distinct course.

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Held, that the scheme of the Motor Vehicles Act, 1939, is that the word "route" meant not only the notional line but also the actual road over which the omnibuses run. Under the Act the route or area stand for the road on which the omnibuses run or portions thereof.

Kondala Rao v. Andhra Pradesh State Road Transport Corporation, A. I. R. 1961 S. C. 82, relied on.

Kelani Valley Motor Transit Co., Ltd. v. Colombo Ratnapura Omnibus Co., Ltd. [1946] A. C. 338, explained and distinguished.

In the present case, in view of the fact that the scheme reserved all the routes within the Mysore District to the State Transport Undertaking, the private operators would not be able to ply their omnibuses on that sector and even those

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routes which were inter-district open to them would stand pro tanto cut down to only that portion which lay outside the Mysore District.

Nilkanth Prasad v. The State of Bihar, [1962] Supp. 1 S. C. R. 717, followed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals No. 180 of 1961.

Appeal by special leave from the judgment and order dated January 30, 1961, of the Mysore High Court, in Writ Petition No. 1326 of 1960.

S. T. Desai, B. R. L. Iyengar and K. P. Bhat, for the Appellant.

A. V. Viswanatha Sastri, R. Gopalakrishnan and T. M. Sen, for the respondents.

1961. December 1. The Judgment of the Court was delivered by HIDAYATULLAH, J.-The appellants, C. P. C. Motor Service, Mysore, question a scheme approved and applied by the State of Mysore by its Notification No. HD. 200/TMP/60 in Gazette (Extraordinary) on November 10, 1960. They had unsuccessfully moved the High Court under Art. 226 of Constitution, and the present appeal is filed with the special leave of this Court.

The appellants were running stage carriage omnibuses on 18 routes, and 14 such routes are inter District. On September 21, 1960, the second respondent, who is the General Manager of the State Transport Undertaking, published a tentative scheme for taking over stage carriage services over 64 routes, which were shown in a schedule to the Notification, to the complete exclusion of private operators. The action was taken under Chap. IV-A of the Motor Vehicles Act, inserted by s. 62 of Act 100 of 1956. Objections were duly filed by the appellants, which were heard by the Chief Minister, who was the authority to hear the objections under the Rules, and they were disposed of by his order dated November 7, 1960. The scheme was approved with some modifications, and it was published along with the order in the Notification, to which we have already referred. The appellants, in their petition under Art. 226 of the Constitution, raised many points before the High Court. The High Court, by its judgment under appeal dated January 30, 1961, dismissed the petition. Some of the grounds were considered in that judgment; but others had already been disposed of in other petitions, in which a common judgment was delivered by the High Court also on the same day in Writ Petition No. 75 of 1960. That order concerned another scheme for the Hassan District of Mysore State.

In the appeal before us, the scheme is challenged on four grounds. Shortly stated, they are, that the modified scheme is vague, indefinite and contradictory and does not carry out the orders of the Chief Minister; that there has been non compliance with the mandatory requirements of ss. 68C and 68E of the Motor Vehicles Act; that the scheme is destructive of co-ordination, which is the gist of efficient motor transport services; and finally, that the routes on which the appellants operated, were, in any event, not affected by the monopoly on certain routes created in favour of the State Transport Undertaking. These contentions will be dealt with in detail by us in this judgment, and need not be stated at greater length at this stage.

Private operators in the Mysore State including the appellants, plied their omnibuses on three different kinds of routes. They were inter- District, inter-District and inter-State. By the scheme, the State Transport Undertaking had taken over 64 routes, but the exclusion of the private operators was only in the Mysore District. In the approved scheme, this is stated in the following words:

"(d) Whether the services are 1. The State Transport to be operated by the Undertaking will ope-

State Transport Under- rate services to the taking to the exclusion, complete exclusion complete or partial, of of other persons(i) other persons or other- on all the notified wise. inter-district routes except in regard to the portions of inter-

district routes lying outside the limits of Mysore District, and also (ii) over the en-

tire length of each of the inter-district route lying within the limits of Mysore District.

2. In so far as the noti-

fied routes are con-

cerned the State Transport Undertak-

ing will operate with-

out prejudice to rights of the existing valid permit-holders for operation of Stage Carriage Services on the Inter-State routes only".

In describing the routes in the appendix to the scheme, these routes were shown with all the stops between the termini, together with the length of the routes in miles, the maximum number of vehicles to be operated by the State Transport Undertaking and by private operators, and the maximum number of daily services (return trips) to be provided in relation to each route by the State Transport Undertaking and by the private operators. The columns dealing with private operators in respect of the maximum number of vehicles as well as the maximum number of the daily services were invariably shown as "Nil". Section 68C of the Motor Vehicles Act permits the taking over of any route or area either wholly or partly by the State Undertaking, and the action of the State Government has not been challenged as either ultra vires or invalid. This is due perhaps to the fact that in a number of cases recently decided by this Court, schemes of this type have been held to be valid, and the provisions of Chap. IV-A, in view of the amendments effected by the Constitution (First Amendment) Act, 1951, in Art. 19(6), have been held intra vires the State Legislatures. Those cases are also referred to by the High Court in the judgment dealing with the Hassan District scheme.

The first question that has been raised is that the scheme is vague, indefinite and contradictory. The vagueness, it is said, arises from the fact that though under s. 68C certain particulars have to be mentioned, they have not been so mentioned in the scheme. This point is illustrated by referring to the columns in which the routes of private operators have not been shown; but it is stated by the respondents that on the routes mentioned in the scheme, the private operators have no omnibuses, nor any daily services at all. This, in our opinion, is the direct result of taking over of certain routes, because if those routes are taken away, then the private operators would not be running their

omnibuses on those routes, and the appropriate entry would be as shown there, "Nil". The rest of the particulars have been given in the scheme itself, including the kind of vehicles which would be run, and their seating capacity, equipment, etc. No doubt, the fares and the timings have been left out, and the State Transport Authority has been given the power to fix them. But that is a matter for the determination of the transport authorities under the Motor Vehicles Act. It is too much to expect fares and timings to be indicated in the scheme, because each route requires elaborate enquiry for fixing the fares as well as the timings of service. The scheme is not required, under the law, to deal with these matters, and we are satisfied that the omission of these details from the scheme does not militate against it.

Similarly, the argument that the scheme is destructive of co-ordination is not valid. No doubt, the private operators cannot run in the Mysore District, but can ply their omnibuses from the border of the Mysore District on routes, which were saved to them, and there is likelihood of transhipment from State-owned buses to private omnibuses at the border, where the routes operated by the State Transport Undertaking and the private operators bifurcate. The transhipment, by itself, would not connote a lack of co-ordination. Under s. 68C, the State Transport Undertaking may take over whole routes or whole areas or part of the routes or part of the areas and if the scheme operates partially, some transhipment would obviously be necessary, but co-ordination would still exist, because where the State omnibuses come to a halt, the private omnibuses would take the passengers set down. In our opinion, these grounds have no validity, in view of the partial nationalisation of the routes involved in the State.

Really, the main attack against the scheme is that though the Chief Minister had upheld the objection of the appellants in an earlier portion of his order, the direction which he contemplated giving was not effectuated, leading to a contradiction between the order and the approved scheme. The Chief Minister, in dealing with the objection of the private operators, had observed in his order as follows:

> "The Private Operators contended that exclusive operation by the Mysore Government Road Transport Department on the proposed notified routes might seriously affect them on certain Inter-District routes as well as Inter State routes. The State Transport Undertaking it was argued, had not proposed nationalisation of certain Inter-District and Inter-State routes lying outside the limits of Mysore District, though a few of the notified routes traverse portions of Inter- State and Inter District routes. It was contended by the Objectors that if the Mysore Government Road Transport Department was to operate certain notified routes to the complete exclusion of other operators, it would adversely affect the passenger transport system on certain portions of Inter-State and Inter-District routes which are notified. There is much force in this contention and accordingly, the Scheme is directed to be suitably modified."

It was argued that the point which was made before the Chief Minister was that between the routes which were taken over and some of the inter- District and inter-State routes which were left to the private operators, there was an overlap in the Mysore District, and that those routes which were not

taken over including the portion of the route lying within the Mysore District should not be held to be affected by the scheme. It was argued that the Chief Minister in his order quoted above, accepted the contention, and gave directions for the suitable modification of the scheme, but in carrying out the modifications, the directions, quoted above, were not included, and they excluded the private operators from that portion of the route lying within the District of Mysore, even though that route was different from the route, which had been taken over.

In our opinion, the error lies in not properly reading the order of the Chief Minister. In the sentence, "It was contended by the Objectors that if the Mysore Government Road Transport Department was to operate certain notified routes to the complete exclusion of other operators, it would adversely affect the passenger transport system on certain portions of inter-State and inter-District routes which are not notified," the words "which are not notified" qualify not the word "route" but the word "portions". The direction which was given, effectuates the later reading, which was really meant and not the former, which is urged; because the qualifying phrase "which are not notified" has been unhappily put later. It is no doubt true that the other reading is also open, and is more in accord with a grammatical construction. Where two constructions are open, it is proper to read the order harmoniously with the directions, because it could not have been intended that the Chief Minister would express his opinion in one way, and include a contradictory direction in another way. Indeed, the intention was to take over routes or parts of the routes lying in Mysore District and to notify them as within the exclusive operation of the State Transport Undertaking. The exclusive operation of routes within the District meant that no other omnibus belonging to a private operator could run on that sector. The direction, therefore, clearly said that the route left to the private operators would be open to them beyond the borders of the District, but there were excluded from that portion of the route which lay within the District. In Nilkanth Prasad v. State of Bihar, in which we have delivered judgment today, we have explained what is meant by a "route" and 'a portion of a route', and we need not cover the same ground. In our opinion, there is no contradiction between the order of the Chief Minister and the directions included by him in the concluding part of his order. Indeed, the directions carry out the order, if the order is to be read in the manner indicated by us.

It was next contended that the inter-District routes, which the appellants were operating, could not be said to be affected by the scheme at all, because "route" means a notional line running between two termini and following a distinct course. This meaning was given to the word "route" by the Privy Council in a case from Ceylon reported in Kelani Valley Motor Transit Co., Ltd. v. Colombo Ratnapura Omnibus Co., Ltd. It is said that the ruling applies in the present case where what is notified as for exclusive running by the State Transport Undertaking is not a definite portion of a route of a private operator but is a different route altogether. This may be illustrated by algebraic notations. If the route of the private operator was ABPQR, AB lying within the District of Mysore and PQR outside it, it is submitted that a route ABCDE may overlap the other route up to the point B but is not the same route, and, therefore, cannot be said to be notified. What is meant by a route in the Act has been elaborately discussed by us in the other judgment delivered to-day. The only difference between this case and the other cases is that, whereas in the latter, the notified route was only AB, here the notified route is ABCDE.

The notification of the Government must be read in two parts. The first is that part of the notification referring to the whole of the route which is taken over, and the second part is with respect to the portion of the route lying within the District of Mysore. The portion lying within the District of Mysore has been notified separately as within the exclusive operation of the State Transport Undertaking. The natural result of it is that private operators would not be able to ply their omnibuses on that sector, and by "route" is meant, as already stated, not only the notional line but also the actual road over which the omnibuses run. We have shown in the other appeals that the scheme of the Ceylon ordinance was different. There, the word "route" was contracted with the word "highway". In the Motor Vehicles Act, the words used are "route or area", and it has been held by this Court that these words mean the same thing:

> Kondala Rao v. Andhra Pradesh State Road Transport Corporation.

> The scheme of the Act in s. 68F(2)(c)(iii) also shows that the Regional Transport Authority, in giving effect to the approved scheme, may "curtail the area or route covered by the permit in so far as such permit relates to the notified area or notified route". This makes the route or area stand for the road on which the omnibuses run or portions thereof, and in view of the fact that the scheme reserved all the routes within the Mysore District to the State Transport Undertaking even those routes which were inter-District open to the private operators would stand pro tanto out down to only that portion, which lies outside the Mysore District. The result, therefore, is that no distinction can be made between the notification of a portion of the route of the private operators lying within the Mysore District and the notification of a different route, in which the portion within the Mysore District is also included. What we have said in the other case applied equally here.

> It was suggested during the argument that there were certain routes which did not cover any portion of the notified route but met that route at certain point or points. Reverting to the algebraic notations given above, it was said that route APBQR would not cover any portion of the notified route ABCDE, and must at least, therefore, be outside the scheme. No such route, however, was pointed out to us, and we need not express any opinion on this part of the case or as to what would happen, if such a route existed.

> Lastly, it was contended that the minimum number of trips and the minimum number of vehicles to be put on the road with respect to any route has not been indicated, and that this is not a proper scheme, because a scheme must show how comparatively more efficient service is to be provided by the State Transport Undertaking. The earlier Rules required a statement as to the minimum and maximum number of vehicles to be put on a route, as also the minimum and maximum trips. It was, however, held by this court that a departure from the minimum number would mean the alteration of the scheme, necessitating the observance of all the formalities for framing a scheme. In view of this, the Rules were amended, obviating the necessity of indicating the minimum number. The Rule, as it

now stands, has been complied with, and there being no challenge to the Rule as such, one cannot say that the scheme is defective on this account.

The result is that this appeal must fail, and is dismissed; but in the circumstances of the case, we make no order about costs.

Appeal dismissed.