S. Abdul Khader Saheb vs The Mysore Revenue Appellate ... on 9 November, 1972

Equivalent citations: 1973 AIR 534, 1973 SCR (2) 925, AIR 1973 SUPREME COURT 534, 1973 (1) SCC 357, 1972 2 SCWR 886, 1973 2 SCR 925

Author: A.N. Grover

Bench: A.N. Grover, Kuttyil Kurien Mathew

PETITIONER:
S. ABDUL KHADER SAHEB

Vs.

RESPONDENT:
THE MYSORE REVENUE APPELLATE TRIBUNAL,BANGALORE & ORS.

DATE OF JUDGMENT09/11/1972

BENCH:
GROVER, A.N.
BENCH:
GROVER, A.N.
MATHEW, KUTTYIL KURIEN
MUKHERJEA, B.K.

CITATION:
1973 AIR 534 1973 SCR (2) 925
1973 SCC (1) 357
CITATOR INFO :
RF 1974 SC1940 (3,31,35)
D 1977 SC1170 (7)
RF 1986 SC 319 (11,12,13)
R 1992 SC1888 (9)

ACT:
Motor Vehicles Act (4 of 1939). s.68-D-Intra-State route, what is Nationalisation of intra state route-If proviso to s. 68-D(3) applicable Scheme of nationalisation, if prevails over inter-state agreement-Scheme excluding all operators except two categories-Appellant not within exceptions-If entitled to permit on inter-state route,, when permit made ineffective on over-lapping portion.
Practice and Procedure-Revocation of special leave.

HEADNOTE:

In August 1964, the States of Mysore and Andra Pradesh entered. into a reciprocal agreement to introduce stage carriage services on the inter-State route from Bellary, in Mysore, to Manthralaya in Andhra Pradesh, via Chintakunta, the border in Mysore State. By the Bellary scheme which was approved by the Mysore Government under s. 68-D of the Motor Vehicles Act, 1939 and which came into force in May,. 1964, it was provided that only the State Transport Undertakings will operate services on the route Bellary to Chintakunta to the complete: exclusion of other persons, except in regard to the portions of the interdistrict routes lying outside the limits of Bellary district. The existing, permit-holders of inter-state routes were allowed to operate such interState routes subject to the condition that their permit shall be rendered ineffective by the competent authority on the overlapping portion in.the Bellary district.

In the present case, the Regional Transport Authority called for applications for the grant of a permit on the inter-State route in 1965 and the appellant was one of the applicants. The Mysore Revenue Appellant Tribunal, in appeal, granted the permit to the appellant with the condition that no passenger was to be picked up portion of the road overlapping the notified route, of is Bellary to Chintakunta). The High Court, in a not agree with the view of the Tribunal that even total exclusion from Bellary to Chintakunta border, issued in respect of the overlapping portion of the or set down on the the scheme (that writ petition, did under a scheme of a permit could be inter-State route by making that permit ineffective on that portion, and remanded the matter to the State Transport Authority for reconsideration in accordance with law.

Dismissing the appeal to this Court,

HELD :(I) There is no scheme of nationalisation relating to the inter-State route from Bellary to Manthralaya and the Bellary scheme is confined only to the inter-State routes, one of which is the Bellary--Chintakunta route whose terminii were within the State. It could be

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nationalised by the State of Mysore under the provisions of s.68-D even though that portion overlaps the inter-State route from Bellary to Manthralaya. [930 E-F; 931 C]

B. H. Aswathanarayan Singh & Ors. v. State of Mysore & Ors., [1966] 1 S.C.R., 87, referred to.

(2) Since the scheme did not deal with an inter-State route at all no question of the applicability of the proviso to S.68-D(3), which requires the previous approval of the Central Government arises. [930 D]

(3) A scheme of nationalisation approved under s. 68-D would prevail over an inter-State agreement in respect of an inter-State route. [929 G-H; 930 A-B]

T. N. Raghunatha Reddy v. Mysore State Transport Authority, [1970] 3 S. C. R. 780, followed.

(4) In Thippeswamy's case (A I.R. 1972 S.C. 1674) it was held that according to the scheme all operators excepting those mentioned in the scheme are excluded from the nationalised routes. The only two exceptions were with regard to inter-district operators and the existing permit-holders on inter-State routes. Since the appellant did not fall within either of these two categories it was not possible to accede to the appellant's contention that because the scheme merely provides for partial ,exclusion it was open to the authorities concerned to issue a permit for the route overlapping the inter-state route. [929 E-G] Thippeswamy v. The Mysore Appellate Tribunal, A.I.R. 1972 S.C. 1674 followed.

(5) In the application for stay filed along with the application for special leave it was stated that special leave had been granted in Thippeswamys case, but, by the time the petition for special leave came up for hearing the appeal in Thippeswamy's case had been dismissed. .But this fact was not mentioned to the Court. However, it was not a ,case for revocation of special leave, because, there was nothing to show that a reference was made to Thippeswamy's case, in arguments, when special leave was granted, [928 B-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1400 and 1401 of 1972.

Appeals by special leave from the judgment and order dated February 29, 1972 of the Mysore High Court at Bangalore in Writ Petitions Nos. 2561 of 1968 and 272 of 1969. M. C. Setalvad, S. S. Javali and G. N Rao for the appellants.

K. N. Bhatt for respondent No. 7.

L. N. Sinha Solicitor-General of India, Shyamala Pappu and J. Ramamurthi for respondent No, 8.

The Judgment of the Court was delivered by GROVER, J. These appeals have been brought by special leave from a judgment of the Mysore High Court.

The facts briefly are that 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 Chinta- kunta. In August 1965 the Regional Transport Authority, Bellary, called for applications for the grant of stage carriage permit for the aforesaid route. The appellant, respondents 7 and 8 and several others filed applications for the grant of a permit. After complying with the necessary formalities required under the relevant. provisions of the Motor Vehicles Act, 1939, hereinafter called the 'Act', the Regional Transport Authority granted permits to the appellant and respondent No. 7 for one trip each day at its meeting

held in August 1966. By the time the Regional Transport Authority had issued the notification calling for the applications. the scheme had been approved by the Government of Mysore under s. 68-D of the Act. Under this scheme which was popularly known as the 'Bellary Scheme' and which came into force with effect from May 7, 1964 a portion of the road in question, via, from Bellary to the district border (Chintakunta border) operators other than those mentioned in the scheme were, totally excluded and only State Transport Undertaking could operate the services. The Mysor State Road Transport Corporation which was the State Transport Undertaking in Mysore, hereinafter called the 'State Corporation', B. Subba Rao, the appellant and certain other persons filed appeals before the Mysore State Transport Appellate Tribunal. After hearing the appeals the Tribunal remitted the case to the Regional Transport Authority for a fresh disposal. Aggrieved by the remand order the appellant, the State. Corporation and others filed appeals before the Mysore Revenue Appellate Tribunal. This Tribunal allowed the appeal of the appellant in its entirety and granted him a permit for the interState route with the condition that no passenger was to be picked up or set down on the portion of the road overlapping the notified route of the Bellary scheme. The appeals of others were dismissed. Two writ petitions were filed before the High Court, one by the State Corporation and the other by B. Subba Rao challenging the, order of the Revenue Appellate Tribunal.

The High Court disposed of the writ petition on the ground:

> "When once on a route or a portion of the route there has been total exclusion of operation of stage carriage services by operators other than the State Transport Undertaking by virtue of a clause in an approved Scheme, the authorities granting permit under Chapter IV of the Motor Vehicles Act, should refrain from granting a permit contrary to the Scheme".

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 portion of the inter-State route by making that permit ineffective. The High Court consequently directed a remand to the State Transport Authority to reconsider the matter and dispose of the same in accordance with law. Although in the special leave petition there was no mention of a connected appeal which was pending in this Court, in the application for stay,- it was stated by the appellant that special leave had been granted in the case D. M. Thippeswamy v. The Mysore Appellate Tribunal Bangalore & Others(1) against the judgment of the Mysore High Court in which a similar view had been taken with regard to the scope and ambit of the Bellary scheme. It is .common ground that by the time the petition for special leave came up for hearing before this Court that appeal had been dismissed. This led to the State Corporation filing a petition for revocation of special leave (C.M.P. No. 7383/72) on the ground that the fact ,of the dismissal of Thippeswamy's appeal by this Court on May 4, 1972 had been suppressed at the time when the petition for special leave was argued. An affidavit has been filed by Mr. S. S. Javali advocate who had appeared at the special leave stage. He has stated that according to him Thippeswamy's case was not relevant as the facts there were different and no reference was called for or made to it in the arguments. It has also been pointed out that in that very case by a subsequent order dated September 29, 1970 certain clarifications have been made. This, it has been contended. now shows that the decision in that case

was not apposite for the purpose. of the present appeals. We do not consider that any case for revocation of the special leave has been made out and the prayer in that behalf is hereby declined.

'Bellary Scheme' was approved under S. 68-D of the Act sub- ject to certain modifications by the Mysore Government by a notification date d April 18, 1964. It was provided in the scheme that the State Transport Undertaking will operate services on all the routes to the complete exclusion of other persons except in regard to the portions of inter- district routes lying outside the limits of Bellary district. The existing permit-holders on inter-State routes could 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 portion in the district of Bellary. In Thippeswamy's case (supra) this very scheme came up for consideration. The question, however, which arose was whether the appellant there was not an existing permit-holder when the State Corporation applied for a permit for the route in question. The following observations were made on this point :

> "The question whether the 'Bellary Scheme' provides for the total exclusion of all operators on the nationalised (1) A.I.R. 1972 S.C. 1674.

routes or it merely provides for partial exclusion is, in our opinion, wholly irrelevant. All that we have to see is what the scheme says ? Whom does it exclude ? It is quite plain from the language of the clause referred to earlier that all operators excepting those mentioned therein are excluded from the nationalised routes. To the general exclusion made therein, there are two exceptions. The first one relates to inter- district operators and the second to existing permit holders on the inter-state routes. The appellant does not claim to come under the first exception. For the reasons already mentioned his case is not covered by the second exception".

The argument of- Mr. M. C. Setalvad for the appellant is that no decision was given in Trippeswamy's case (supra) that the Bellary scheme provides for a total exclusion of all operators on the nationalised routes. He has also sought to distinguish that case by pointing out that the controversy there was confined to the question whether the appellant was an existing permit holder on the inter-state route. It has further been stated that in the present case no permit has sofar been issued to the State Corporation because it has failed to comply with certain provisions and in particular with the requirement of s. 20 of the Road Transport Corporations Act 1950. It may be that the facts are somewhat different here. The view which, the High Court in the present case took was that after the Bellary Scheme had come into force the operators other than the State Transport Undertaking were totally excluded. In Thippeswamy's case (supra) also it is clear from the portion already extracted from the judgment of this Court that according to the scheme all operators excepting those mentioned in the scheme are excluded from the nationalised routes. The two exceptions which have been made are only with regard to the inter-district operators and the existing permit holders on interstate routes. Mr. Setalvad does not claim that the appellant falls within either of these categories. It is, therefore, not possible to accede to his contention that because the scheme merely provides for partial exclusion it is open to the authorities concerned to issue a permit for the route overlapping the inter-state route.

The next point on which a great deal of emphasis has been laid on behalf of the appellant is that an inter-state route comes into existence by virtue of an agreement between the States through which the route passes. The main provisions in that respect are to be found in s. 63 of the Act. Any scheme of nationalisation of a route by a State, as approved under s. 68-D, cannot override the inter-state agreements in respect of the inter-state routes. This Court has in T. N. Raghunatha Reddy v. Mysore State Transport Authority(1) answered this question in the negative. It has been held that the inter-state agreement is not law and to hold that an inter-state agreement overrides Chapter IV-A would be to completely disregard the provisions of S. 68-B of the Act. In other words a scheme of nationalisation approved under s. 68-D would prevail over an inter-state agreement in respect of an interstate route. Sub-section (3) of s. 68-D of the Act has also been relied upon by Mr. Setalvad. According to that provision the scheme as approved or modified shall be published in the official gazette and the same shall thereupon become final. The proviso, however, says that no such scheme which relates to any inter-State route shall be deemed to be an approved scheme unless it has been published in the official gazette with the previous approval of the Central Government. No scheme in the present case has been approved under the proviso relating to the inter-State route in question. We are unable to see how the proviso to s. 68-D(3) can be of any avail to the appellant. The aforesaid provision be- /comes material only when a scheme covers an inter-State route. The Bellary scheme provides for nationalisation of an intra-State route and not an inter-State route and the aforesaid provision can have no applicability. Although respondent No. 7 has not appealed, counsel appearing for him has called attention to the observations of this Court in B. H. Aswathanarayan Singh & Others v. State of Mysore & Others (2) that an inter-State route is one in which one of the terminii is in one State and the other in another State. Where both the terminii are in one State the question of an inter-State route does not arise. If part of the scheme covers routes which continue beyond the State and connect various points in the State of Mysore with those in the other State it does not make the scheme one connected with inter-State route. It is sought to be argued from this that even if Bellary-Chintakunta route which is shown as item 34 in the Bellary Scheme has been nationalised it does not make the scheme one connected with inter-State route. Stress has been laid on the example given that the Grand Trunk Road runs from Calcutta to Amritsar and passes through many States and any portion of it within a State can be a route for purposes of stage carriage but that would not make such a route a part of an inter-State route even though it lies on the road which runs through many States. The above argument can possibly have no validity so far as the present case is concerned. The scheme which was under

consideration in the decision relied upon was in respect of an intra-

(1) [1970] 3 S.C.R. 780.

(2) [1966] 1 S.C.R. 87.

rate route. It appears to have been argued that as the scheme was concerned with an inter-state route the approval of the Central Government was necessary as required under the proviso to s. 68D(3) of the Act. This Court held that since the terminii were within the State of Mysore the scheme did not deal with an interstate route at all and no question arose of the applicability of the proviso to s. 68D(3). In the present case there is no scheme of nationalisation relating to the

inter-state route from Bellary to Manthralaya. The Bellary Scheme is confined to the intrastate routes, one of those being the Bellary- Chintakunta route. It may be that portion overlaps the inter-state route from Bellary to Manthralaya but so long as it is an intrastate route it could be nationalised by the State of Mysore under the provisions of s. 68D. That having been done the decision in Thippeswamy's case(1) (supra) will appositely apply.

In the result the appeals fail and they are dismissed with costs, to respondent No. 8.

V.P.S. Appeals. dismissed.