

Achyut Shivram Gokhale vs Regional Transport Officer & Ors on 16 August, 1988

Equivalent citations: 1988 AIR 2047, 1988 SCR SUPL. (2) 448, AIR 1988 SUPREME COURT 2047, (1988) 3 JT 375 (SC), (1989) 1 MAD LW 508, 1988 SCC (SUPP) 696, 1988 BOM LR 90 306

Author: E.S. Venkataramiah

Bench: E.S. Venkataramiah, M.M. Dutt

PETITIONER:
ACHYUT SHIVRAM GOKHALE

Vs.

RESPONDENT:
REGIONAL TRANSPORT OFFICER & ORS.

DATE OF JUDGMENT 16/08/1988

BENCH:
VENKATARAMIAH, E.S. (J)
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VENKATARAMIAH, E.S. (J)
DUTT, M.M. (J)

CITATION:
1988 AIR 2047 1988 SCR Supl. (2) 448
1988 SCC Supl. 696 JT 1988 (3) 375
1988 SCALE (2) 342

ACT:
Motor Vehicles Act, 1939-Section 63(6)-Special permit-
Right of person to obtain-Difference between contract
carriage permit and special permit.

HEADNOTE:

On November 29, 1973 the Government of Maharashtra Notified a scheme approved under section 68-D of the Motor Vehicles Act, 1939 authorising the Maharashtra State Road Transport Corporation to operate contract carriage services in the entire area of the State of Maharashtra to the complete exclusion of all other persons except those falling under the seven categories mentioned therein. The appellant who did not belong to any one of the seven categories

applied to the Regional Transport Authority for a special permit under section 63(6) of the Act on the route Bombay to Shirdi for five days. This application was rejected because the appellant had not produced a 'No objection Certificate' from the State Road Transport Corporation. It was held by the Regional Transport Authority that in the absence of a 'No Objection Certificate' no special permit could be issued under section 63(6) of the Act.

The Maharashtra State Transport Appellate Tribunal allowed the appellant's appeal holding that a special permit issued under section 63(6) of the Act was not a contract carriage permit issued under the Act and that the scheme did not have the effect of preventing any person from applying for a special permit under section 63(6) to operate a public service vehicle on any of the routes in the State. The Corporation filed a writ petition in the High Court against the Tribunal's order. The High Court allowed the Writ Petition.

Disposing of the appeal and setting aside the judgment of the High Court, it was,

HELD: (1) A contract carriage permit and a special permit are not one and the same, though the special permit has some of the features of a contract carriage permit. [454E-F]

(2) A Special permit is ordinarily taken to meet a need

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that exists for a few days like carrying a marriage party or persons going to a pilgrimage, etc. [454F]

(3) The distinguishing features of the two types of permits are: (1) A permit for which an application is made under section 49 of the Act and which is granted under section 51 of the Act is called a contract carriage permit. A permit issued under section 63(6) of the Act is called a special permit; (2) while a contract carriage permit issued by a Regional Transport Authority of any one region is not valid in any other region unless the permit has been countersigned by the Regional Transport Authority of the other region as provided under section 63(1) of the Act, a special permit issued by one Regional Transport Authority under section 63(6) of the Act is valid in any other region or State without the countersignature of the Regional Transport Authority of the other region or the other State as the case may be; (3) While the duration of a contract carriage permit is as prescribed under section 58(1) of the Act, a Special permit can be issued only for a specific period which may be for a few days only in accordance with the rules prescribed for that purpose; and (4) A contract carriage permit is renewable under section 58(2) of the Act, but there is no corresponding provision providing for renewal of a special permit. [454B-E]

(4) The provision in the scheme which excludes operation of contract carriage services by persons other than those

who are permitted to do so under the scheme refers to only those persons who wish to operate contract carriage services under permits issued under section 51 of the Act. The scheme does not in any way prevent the issuing of special permits under section 63(6) of the Act by the Regional Transport Authorities in accordance with law as it does any that holders of special permits under section 63(6) would also be excluded from running the public service vehicles. [457B-C]

(5) The scheme does not provide that the clause regarding exclusion of other persons from operating contract carriages would cease to operate if the Corporation issued a 'No Objection Certificate'. The insistence on the production of a 'No objection Certificate' from the Corporation by a person applying for a special permit under section 63(6) of the Act was wholly unwarranted. [456H; 457A-B]

Mohd. Basha and others v. The Secretary, Regional Transport Authority and Anr., A.I.R. 1975 A.P. 242; G. Shaikh Shavalli, Uravakonda & Ors. v. The Secretary, Regional Transport Authority, Anantapur and Anr., A.I.R. 1982 A.P. 296; S.R.M.S. Tourist Service Co. Bangalore & Ors.

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v. The Secretary, Regional Transport Authority, A.I.R. 1975 Karnataka 166; K.N. Sreekantaiah v. Deputy Transport Commissioner, Bangalore & Anr., [1979] 2 Karnataka Law Journal 292; Adarsh Travels Bus Service & Anr. v. State of Uttar Pradesh & Ors., [1985] Supp. 3 S.C.R. 661, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1622 of 1987.

From the Judgment and Order dated 23.6.1986 of the Bombay High Court in W.P. No. 562 of 1986.

S.N. Kacker, Mrs. J. Wad and Mrs. Aruna Mathur for the Appellant.

G. Ramaswamy, Additional Solicitor General, A.S. Bhasme, K.R. Nagaraja and R.S. Hegde for the Respondents. A. Mariarputham for the Intervener.

The Judgment of the Court was delivered by VENKATARAMIAH, J. The question involved in this case relates to the right of a person to obtain a special permit under sub-section (6) of section 63 of the Motor Vehicles Act, 1939 (hereinafter referred to as 'the Act') to ply a public service vehicle on routes or portions thereof in respect of which a scheme approved under section 68-D of the Act providing for exclusive operation of contract carriages on the said routes by a State transport undertaking to the complete exclusion of all other persons has been brought into force.

By a notification dated 29th November, 1973 published under section 68-D(3) of the Act by the

Government of Maharashtra, the Maharashtra State Road Transport Corporation (hereinafter referred to as 'the Corporation') was authorised to operate contract carriage services in the entire area of the State of Maharashtra and on all routes and portions thereof falling within the said area to the complete exclusion of all other persons except those falling under the seven categories of persons mentioned therein, namely, (1) a State Transport Undertaking, as defined under section 68-A(b) of the Act; (2) holders of duly countersigned permits on inter-State routes save those falling under the second proviso to section 63(1) of the Act, (3) holders of contract carriage permits for operation of motor cars; (4) holders of contract carriage permits granted for operation of air-conditioned vehicles only, (5) PG NO 451 holders of contract carriage permits for operation of vehicles owned by them exclusively for transportation of person, employed by them or students or members of their institutions from and to their residences and respective places of work or study and for occasional tours and excursions; (6) holders of contract carriage permits for operation wholly within the municipal limits of Greater Bombay, and cities of Poona, Sholapur and Kolhapur where the municipal authorities are operating road transport service; and (7) holders of contract carriage permits granted to them exclusively for the daily transportation at appointed hours and between specified terminals and pick up points of only the persons employed by or studying in establishments and institutions with which the said permit holders have specified contract for the purpose. The said scheme came into force on January, 1974. The appellant, who did not belong to any one of the above seven categories applied to the Regional Transport Authority, Bombay (C) for a special permit under sub-section (6) of section 63 of the Act in relation to the motor vehicle bearing No. MRL-8088 for plying it on the route Bombay to Ashtu Vinayak via Panvel, Mahad, Poona, Shirdi etc. for a period of five days, namely from 18.9.1985 to 22.9.1985 in Form P. Co. Sp. A in accordance with rule 80 of the Bombay Motor Vehicles Rules, 1959. The application made by the appellant for the special permit was rejected by the Secretary, Regional Transport Authority on the ground that the appellant had not produced a 'No Objection Certificate' issued by the Corporation for the grant of a special permit by his Order dated 17.9.1985. It was also stated that the Corporation being the operator having the exclusive privilege in the entire area of Maharashtra State to operate contract carriages under the scheme it was the primary duty of the Corporation to provide transport facilities to the intending passengers and if it failed to do so, the Corporation could issue a 'No Objection Certificate' to enable other intending operators to enter into contract. Hence it was held that in the absence of the 'No Objection Certificate' issued by the Corporation no special permit could be issued under section 63(6) of the Act. Aggrieved by the order passed by the Regional Transport Authority, the appellant filed an appeal under section 64 of the Act before the Maharashtra State Transport Appellate Tribunal, Bombay. The Tribunal allowed the appeal holding that a special permit issued under section 63(6) of the Act was not a contract carriage permit issued under the Act and that the scheme relied upon by the Corporation under which it had exclusive monopoly to operate contract carriages in the State of Maharashtra to the complete exclusion of all persons other than these who were specifically saved from the operation of the scheme did not have the effect of preventing any person from applying for a special permit PG NO 452 under section 63(6) of the Act to operate a public service vehicle on any of the routes in the State of Maharashtra. The judgment of the Tribunal was delivered on December 19, 1983. Aggrieved by the judgment of the Tribunal, the corporation filed a writ petition in Writ Petition No. 562 of 1986 on the file of the High Court of Bombay questioning the correctness of the order of the Tribunal. The said Writ Petition was heard along with another Writ Petition which had been filed by the Corporation against

M/s. Auto Hirers, Tardeo, Bombay and others in Writ Petition No. 561 of 1986. By a common judgment the High Court allowed the Writ Petition and set aside the order of the Tribunal. This appeal by special leave is filed against the judgment of the High Court.

It is necessary to refer to some of the provisions of the Act at this stage. A 'contract carriage' is defined in section 2(3) of the Act as a motor vehicle which carries a passenger or passengers for hire or reward under a contract expressed or implied for the use of the vehicle as a whole at or for a fixed or agreed rate or sum (i) on a time basis whether or not with reference to any route or distance, or

(ii) from one point to another, and in either case without stopping to pick up or set down along the line of route passengers not included in the contract, and includes a motor cab notwithstanding that the passengers may pay separate fares. An application for a contract carriage permit is required to be made in accordance with section 49 of the Act which provides that an application for a permit to use one or more motor vehicles as a contract carriage or carriages shall contain the following particulars, namely,

(a) the type and seating capacity of the vehicle or each of the vehicles, (b) the area for which the permit is required;

(c) in the case of a motor vehicle other than a motor cab, the manner in which it is claimed that the public convenience will be served by the vehicle; and (d) any other particulars which may be prescribed. Section 50 of the Act specifies the procedure to be followed by the Regional Transport Authority in considering the application for contract carriage permit. It says that a Regional Transport Authority shall in considering an application for a contract carriage permit, have regard to the extent to which additional contract carriages may be necessary or desirable in the public interest; and shall also take into consideration any representations which may then be made or which may previously have been made by persons already holding contract carriage permits in the region or by any local authority or police authority in the region or by any local authority or police authority in the region to the effect that the number of contract carriages for which permits have already been granted is sufficient for or in excess of the needs of the region or any area within the PG NO 453 region. Section 51 of the Act provides for grant of contract carriage permits. That section provides that subject to the provisions of section 50, a Regional Transport Authority, may, on an application made to it under section 49, grant a contract carriage permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit. In the event of the Regional Transport Authority deciding to grant a contract carriage permit it can attach to the permit any one or more of the conditions specified in sub-section (2) of section 51 of the Act. Section 58 of the Act deals with the duration of a contract carriage permit. It provides that a stage carriage permit or a contract carriage permit other than a temporary permit issued under section 62 of the Act shall be effective without renewal for such period, not less than three years and not more than five years, as the Regional Transport Authority may specify in the permit. Such a permit may be renewed on an application made and disposed of as if it was an application for a permit under sub-section (2) of section 58 of the Act. Section 62 of the Act lays down the provisions for grant of a temporary permit to be effective for a limited period not exceeding four months. Then follows section 63 of the Act which deals with the validation of permits for use outside the region in which

granted. Sub- section (1) of Section 63 provides that except as may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region shall not be valid in any other region, unless the permit has been counter-signed by the Regional Authority of that other region, and a permit granted in any one State shall not be valid in any other State unless counter-signed by the State Transport Authority or that other State or by the Regional Transport Authority concerned. Sub-section (6) of section 63 of the Act with which we are concerned in this case reads thus:

"(6) Notwithstanding anything contained in sub-section (1), but subject to any rules that may be made under this Act, the Regional Transport Authority or any one region may, for the convenience of the public, grant a special permit in relation to a public service vehicle for carrying a passenger or passengers for hire or reward under a contract, express or implied, for the use of the vehicle as a whole without stopping to pick up or set down along the line of route passengers not included in the contract, and in every case where such special permit is granted, the Regional Transport Authority shall assign to the vehicle, for display thereon, a special distinguishing mark in the form and PG NO 454 manner specified by the Central Government and such special permit shall be valid in any other region or State without the countersignature of the Regional Transport Authority of the other region or of the State Transport Authority of the other region or of the State Transport Authority of the other State, as the case may be."

It is no doubt true that the special permit issued under sub-section (6) of section 63 of the Act has same of the features of a contract carriage permit but it is not the same as a contract carriage permit. The distinguishing features of these two types of permits are these: (1) A permit for which an application is made under section 49 of the Act and which is granted under section 51 of the Act is called a contract carriage permit. A permit issued under section 63(6) of the Act is called a special permit. (2) While a contract carriage permit issued by a Regional Transport Authority of any one region is not valid in any other region unless the permit has been countersigned by the Regional Transport Authority of the other region as provided under section 63(1) of the Act a special permit issued by one Regional Transport Authority under section 63(6) of the Act is valid in any other region or State without the countersignature of the Regional Transport Authority of the other region or the other State as the case may be. (3) While the duration of a contract carriage permit is as prescribed under section 58(1) of the Act, a special permit can be issued only for a specific period which may be for a few days only as in the present case in accordance with the rules prescribed for that purpose. (4) A contract carriage permit is renewable under section 58(2) of the Act, but there is no corresponding provision providing for renewal of a special permit. Thus it is seen that a contract carriage permit and a special permit are not one and the same. A special permit is ordinarily taken to meet a need that exists for a few days like carrying a marriage party or persons going on a pilgrimage etc. The learned counsel for the Corporation relied upon two decisions of the Andhra Pradesh High Court, i.e., Mohd. Basha and Others v. The Secretary, Regional Transport Authority and Another, A.I.R. 1975 A.P. 242 and G. Shaikh Shavalli, Uravakonda and Others v. The Secretary, Regional Transport Authority, Anantapur and Another A.I.R. 1982 A.P. 296 in support of his contention that a special permit is not in any way different from a contract carriage permit. In the first case the question involved was whether it was open to a Regional Transport Authority to insist

upon the furnishing of the names of passengers who were included in the contract. The High Court in that case held that the Regional Transport Authority was entitled to call upon the PG NO 455 applicant for a special permit to furnish the names of the passengers in order to satisfy itself that the application was a genuine application for the purposes mentioned in section 63(6) of the Act and was not intended to be a camouflage for using the vehicle unauthorisedly and in deciding the said case the learned Judge, who decided the case, no doubt referred to the common feature, that existed between a contract carriage permit and a special permit, namely, that the passengers could be carried in them only under a single contract without stopping to pick up or to set down along the line of the route passengers not including in the contract. In the second case the question was whether it was open to the holder of a special permit issued under section 63(6) of the Act to take his bus empty from his State into another State and to pick up passengers there and transport them to the end of their voyage, set them down at their starting point in the other State and drive the bus back to the home State empty. The High Court said that the holder of a special permit could not be permitted to do so since such a permit can be issued for carrying passenger or passengers for hire or reward in a contract express or implied for the use of the vehicle as a whole without stopping to pick up along the line of the route passengers not included in the contract. In these decisions it was enough to deal with one of the common features that existed in a contract carriage permit and in a special permit and the ratio of each of the said decisions depended on that common feature. There was no necessity to examine all the features of the two kinds of permits referred to above in order to determine whether they were the same for all intents and purposes. In neither of these two decisions the features that distinguished a contract carriage permit from a special permit have been considered. There was also no consideration of the question whether on the publication of an approved scheme under section 68-D(3) of the Act excluding the operation of contract carriages by persons other than the State Transport Undertaking concerned special permit under section 63(6) of the Act could or could not be issued.

On the other hand there are two decisions of the Karnataka High Court where a special permit issued under section 63(6) of the Act has been held to be different from a contract carriage permit issued under section 51 of the Act. In *S.R.M.S. Tourist Service Co., Bangalore and Others v. The Secretary, Regional Transport Authority, A.I.R. 1975 Karnataka 166* the State Government had published a scheme under section 68-C of the Act proposing to nationalise contract carriage services. The question for consideration before the Court was whether after the publication of the said scheme it was open to the Regional Transport Authority PG NO 456 to grant a special permit under section 63(6) of the Act. K. Jagannatha Shetty, J. (as he then was) taking into consideration the peculiar features of a special permit took the view that it was impossible to reach the conclusion that the Legislature intended to equate a contract carriage permit with a special permit and held that one was totally different from the other. He accordingly held that the publication of a scheme under section 68-C of the Act proposing to nationalise contract carriage service was not an impediment for the grant of permits under section 63(6) of the Act in respect of the routes covered by the scheme. In *K.N. Sreekantaiah v. Deputy Transport Commissioner, Bangalore & Another*, [1979] 2 Karnataka Law Journal 292 a Division Bench of the Karnataka High Court, has taken the view that a special permit issued under section 63(6) of the Act was different from a contract carriage permit issued under section 51 of Act. While doing so it approved the decision of Jagannatha Shetty, J referred to above. We are in agreement with the decisions of the Karnataka High Court. We hasten to add that

the conclusions reached in the two Andhra Pradesh High Court decisions are also correct. It is open to the Regional Transport Authority if it wishes to do so to insist upon the furnishing of the names of passengers, who are proposed to be carried in a bus under the special permit for which an application is made and also that a holder of a special permit cannot run his bus empty to another State to pick up passengers, who are not covered by the contract, there, to drop them in that State at the end of the journey and to return to his own State where he had obtained the special permit in an empty bus, because these two conclusions are based on the condition to be found in section 63(6) itself which provides that a holder of a special permit cannot pick up or set down on the route passengers nor covered by the contract. In the present case the High Court of Bombay erred in not taking note of the distinguishing features that existed between a contract carriage permit and a special permit. it is significant that in the State of Maharashtra the Regional Transport Authorities had not taken the view until the High Court pronounced this judgment that in no event a special permit could be issued to a person other than the Corporation and the seven classes of persons who were excluded from the operation of the scheme. They were issuing special permits to such persons on the production of a 'No Objection Certificate' issued by the Corporation. A special permit could not be issued after the publication of the approved scheme even when the Corporation had issued a 'No Objection Certificate' because the scheme did not provide that the clause regarding exclusion of other persons from operating contract carriages would cease to operate if the Corporation PG NO 457 issued a 'No Objection Certificate'. The insistence on the production of a 'No Objection Certificate' by the Corporation by a person applying for a special permit under section 63(6) of the Act was therefore wholly unwarranted. We are of the view that the provision in the scheme which excludes operation of contract carriage services by persons other than those who are permitted to do so under the Scheme refers to only those persons who wish to operate contract carriage services under permits issued under section 51 of the Act. The scheme does not in any way prevent the issuing of special permits under section 63(6) of the Act by the Regional Transport Authorities in accordance with law as it does not say that holders of special permits under section 63(6) would also be excluded from running the public service vehicles on the rates in question. It now becomes obvious that the decision in Adarsh Travels Bus Service and another v. State of Uttar Pradesh & Others, [1985] Supp. (3) S.C.R. 661 on which the High Court has relied has no application at all to the case on hand. That decision would have been relevant if a contract carriage permit and a special permit were of the same type.

We, therefore, set aside the judgment of the High Court of Bombay against which this appeal is filed. Since the period in respect of which the special permit was sought has expired, there is no necessity to issue a writ directing the Regional Transport Authority to consider the application of the appellant for a special permit again. Hence, we do not issue any such direction. The true legal position has, however, been set out above.

The appeal is accordingly disposed of. No costs.

R.S.S.

Appeals disposed of.