Karnataka State Road Transport ... vs Ashrafulla Khan And Others on 14 January, 2002

Equivalent citations: AIR 2002 SUPREME COURT 629, 2002 (2) SCC 560, 2002 AIR SCW 231, 2002 AIR - KANT. H. C. R. 374, (2002) 1 JT 113 (SC), 2002 (2) SRJ 542, (2002) 1 JCR 497 (SC), 2002 (1) SLT 193, 2002 (1) ALL CJ 381, 2002 (1) SCALE 138, 2002 (1) JT 113, 2002 ALL CJ 1 381, (2001) 2 SIM LC 363, (2002) 1 ACC 246, (2002) 3 PAT LJR 91, (2002) 2 RAJ LW 210, (2002) 1 SCJ 272, (2002) 1 SUPREME 113, (2002) 1 RECCIVR 768, (2002) 1 ICC 1095, (2002) 1 SCALE 138, (2002) WLC(SC)CVL 107, (2002) 1 UC 275, (2002) 2 JLJR 220, (2002) 46 ALL LR 492, (2002) 2 BLJ 454, (2002) 2 CIVLJ 674, (2002) 1 CURCC 60

Author: V. N. Khare

Bench: V.N. Khare, Ashok Bhan

CASE NO.:
Appeal (civil) 1341 of 1990

PETITIONER:
KARNATAKA STATE ROAD TRANSPORT CORPORATION

Vs.

RESPONDENT:
ASHRAFULLA KHAN AND OTHERS

DATE OF JUDGMENT: 14/01/2002

BENCH:
V.N. Khare & Ashok Bhan

JUDGMENT:

(with Civil Appeal Nos. 5335/90, 2730-31/91, 4654/2000, 637/88, 4652-53/2000, 4519/90, 438/92 and C.A. No. 7804/2001) J U D G M E N T V. N. KHARE, J.

In this group of appeals, the question that falls for our consideration is "whether small portion or portions falling within the limits of towns or villages on a notified route under Chapter IVA of Motor

Vehicles Act, 1939, since repealed (hereinafter referred to as 'the Repealed Act'), are to be treated as a route overlapping or intersection" ?

Learned counsel for the parties have addressed arguments only in Civil Appeal No. 1341/90 which substantially arises out of the judgment of the Full Bench of Karnataka High Court rendered in Writ Appeal No. 403/1988. Learned counsel for the parties jointly prayed to examine the correctness of the aforesaid judgment of the Full Bench and the decision in Civil Appeal No. 1341/1990 would govern the fate of other cases. We accordingly notice the facts which have given rise to Civil Appeal No. 1341/1990.

As far back in the year 1966, the then Mysore State Transport Undertaking (hereinafter referred to as the Undertaking) framed a scheme under Section 68-C of the Repealed Act known as Kolar Pocket Scheme (in short 'the Scheme'), for exclusive plying of the vehicle by the Undertaking on the routes falling within the Scheme. The erstwhile Mysore government, after having considered the Scheme as proposed, and the representations filed against the said Scheme, approved the Scheme under Section 68D of the Repealed Act and the said approved Scheme was published in Government Gazette dated January 10, 1968. The Scheme provided that the State Transport Undertaking shall operate services on all the routes to the complete exclusion of other private operators except that the existing permit holders on the inter-State route may continue to operate on such inter-State route, subject to conditions that their permits shall be rendered ineffective for the overlapping portions of the notified routes and that the existing operators whose permits overlap the notified portions between Bagepalli to Chelur and Pathpatya Cross only may continue to operate on such routes subject to conditions that their permits would be rendered ineffective for the overlapping portions. However, in the years 1984-85, the Regional Transport Authority, Kolar invited applications under Section 57(2) of the Repealed Act for grant of stage carriage permit on route known as Kanumanahally to Bagarpet. Respondent No. 1 herein, in response to the said invitation submitted an application for grant of stage carriage permit on the said route. The appellant herein the Karnataka State Road Transport Corporation, filed an objection against the proposed grant of permits on the premise that the said route overlaps portions of the notified route falling within the Kolar Pocket Scheme, from Kolar Gold Field to Five Light Cross to an extent of 5 kilometer and Desihalli to Bagarpet to an extent of 1.5 kilometer. It was urged before the Regional Transport Authority that the Scheme being of complete exclusion of private operators, no permit could be granted on the said portion of the notified route. However, it was contended on behalf of the respondent that overlapping two portions of the notified route should be construed as intersection and not overlapping and, therefore, the permit can be granted. The Regional Transport Authority, by its resolution dated 4.3.85 overruled the objections of the appellant herein and granted stage carriage permit in favour of the respondent. Aggrieved against the order of the Regional Transport Authority, the appellant filed an appeal before the State Transport Appellate Tribunal, Bangalore. The Appellate Tribunal, after having found that the Scheme being for total exclusion of the private operators, no permit can be granted on the notified route or portion thereof, and in that view of the matter the appeal preferred by the appellant was allowed and the grant of permit in favour of the respondent was set aside. The respondent thereafter preferred a writ petition before the High Court of Karnataka challenging the order of the Appellate Tribunal. The Learned Single Judge of the High Court dismissed the writ petition. The respondent thereafter preferred a writ appeal before a

Division Bench of the High Court. The Division Bench, after hearing of the matter was of the view that the question involved in the appeal required to be decided by a Full Bench. Consequently, the question "whether small portion or portions falling within the limits of a town or village on a nationalised route, are to be treated as a route overlapping or intersection" was referred to a Full Bench of the High Court for its opinion. The Full Bench, by its opinion dated 21.7.88, answered the question as follows:

> A small portion/portions falling within the limits of a town or a village on a nationalised route (notified route) are to be treated as only an intersection of the nationalised route and not as overlapping and therefore, it is permissible to grant permit on the route.

The Full Bench accordingly remitted its opinion to the Division Bench of the High Court. The Division Bench, in view of the opinion given by the Full Bench allowed the writ appeal and set aside the judgment of the Learned Single Judge and remanded the matter to the Appellate Tribunal for considering the matter afresh in the light of the opinion given by the Full Bench. The Appellate Tribunal, following the Full Bench decision dismissed the appeal preferred by the appellant. Consequently, the appellant has filed the appeal by way of Special Leave Petition. It is in this way these matters have come up before us.

Before we advert to the question which we are required to answer, it is necessary to notice the relevant law as regard the consequences which follow when a Scheme for total exclusion is prepared and finalised under Chapter IVA of the Repealed Act as it stood when the Full Bench of the High Court decided the matter and still continues to be a good law till date.

Every citizen in this country is entitled to carry on a business in transport for hire or reward. However, it is subject to the law enacted in respect thereof. The Repealed Act regulated the business of plying of stage carriages for carrying passengers. Chapter IVA of the Repealed Act also provided for nationalisation of road transport services. Section 68-C falling in Chapter IVA provided that the State Transport Undertaking may prepare a scheme for purpose of providing an efficient, adequate, economical and properly coordinated road transport service to be run and operated by the Undertaking in relation to an area or route or portion thereof. The scheme so proposed may be to the complete exclusion or partial, for other person. The scheme so framed was required to be published in the official gazette as to invite objections to the proposed scheme from travelling public or the existing transport operators. Sub-section (1) of Section 68D provided that any person already providing transport facilities on the proposed route by any means, any association representing persons interested in providing road transport facilities, any local authority or police authority within whose jurisdiction any part of the area or route proposed to be covered by the scheme lies, may file objections to the proposed scheme before the State Government. Sub-section (2) of the Section 68D provided that the State

Government after considering the objections may approve or modify the scheme. Sub-section (3) of Section 68D further provided that the scheme as approved or modified, to be published in the official gazette and on publication in the gazette, the scheme shall become final and shall thereafter be called the approved scheme. Section 68F empowered the Regional Transport Authority or the State Transport Authority, as the case may be, to grant to the State Transport Undertaking the necessary permit on its applying for the same in pursuance of an approved scheme. Section 68FF further provided that where a scheme has been published under sub-section (3) of Section 68D in respect of any notified area or notified route, the State Transport Authority or the Regional Transport Authority, as the case may, shall not grant any permit except in accordance with the provisions of the scheme. The consequences of an approved scheme under Chapter IVA was that if the scheme was for total exclusion, no person other than the State Transport Undertaking can operate on the notified route or area except as provided in the scheme itself. In other words, after the approved scheme under Chapter IVA came into force, which is for total exclusion, no permit can be granted to a private operator to operate his vehicle on any part or portion on a notified area or route unless permitted by the terms of the scheme itself.

It is not disputed that the present Scheme is for total exclusion of private operators on the notified route or portion thereof. In H.C. Narayanappa vs. State of Mysore - 1960 (3) SCR 742, a Constitution Bench of this Court held that a scheme framed and approved under Chapter IVA of the Repealed Act is a law within the meaning of Article 13 and 19(6) of the Constitution. It excludes the private operators from notified routes or areas if it is for total exclusion of private operators. In Nehru Motor Transport Co-operative Society vs. State of Rajasthan and another 1964 (1) SCR 220, another Constitution Bench of this Court held that once a scheme was finally approved and published in the gazette, it is a law and final. In C.P. C. Motor Service vs. State of Mysore 1962 Suppl. (1) SCR 717, a scheme prepared by the State Transport Undertaking which was dully approved provided that the State Undertaking shall operate services to the complete exclusion of other private operators (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 route lying within the limits of Mysore District. The private operators who, on the basis of permits granted to them were plying their vehicles on inter-district and on inter-State routes which overlapped the Mysore District challenged the scheme and argued that their permits should not be affected merely because parts of the routes were within the Mysore District. It was also urged that since the termini of their routes on which they were plying their vehicles were outside Mysore District, it could not be held that any portion of their route had been taken over under the aforesaid Scheme merely because it lay within the Mysore District. The said contention was rejected by this Court and it was held that no private operator could be allowed to ply his vehicle on the notified portions which was within the Mysore District. In Nilkanth Prasad vs. State of Bihar 1962 Suppl. (1) SCR 728, this Court held thus:

> "This means that even in those cases where the notified route and the route applied for run over a common sector, the curtailment by virtue of the notified scheme would be by excluding that portion of the route or, in other words, the 'road' common to both. The distinction between 'route' as the notional line and 'road' as the physical track disappears in the working of Chapter IVA, because you cannot curtail the route without curtailing a portion of the road, and the ruling of the Court to which we have referred, would also show that even if the route was different, the area at least would be the same. The ruling of the Judicial Committee cannot be made applicable to the Motor Vehicles Act, particularly Chapter IVA, where the intention is to exclude private operators completely from running over certain sectors or routes vested in State Transport Undertakings. In our opinion, therefore, the appellants were rightly held to be disentitled to run over those portions of their routes which were notified as part of the scheme. Those portions cannot be said to be different routes, but must be regarded as portions of the routes of the private operators, from which the private operators stood excluded under Section 68F (2) © (iii) of the Act."

In S. Abdul Khader Saheb vs. Mysore Revenue Appellate Tribunal 1973 (1) SCC 357, it was held by this Court that once a scheme is for total exclusion of operation of stage carriage services by operators other than the State Transport Undertaking, the authorities cannot grant permit under Chapter IV of the Motor Vehicle Act on any portion of a notified route. In Mysore State Road Transport Corporation vs. Mysore State Transport Appellate Tribunal 1975 (1) SCR 615, it was held that it is not permissible to grant permit on a portion of a notified route which has an effect to ply a stage carriage on the same line of the notified route excepting an intersection.

However, in Ram Sanehi Singh vs. Bihar State Road Transport Corporation 1971 (3) SCC 797, there was a slight shift from the established view of law in regard to the consequence of an approved scheme under Chapter IVA. In the said case, a private operator had a permit on a route which has overlapping of 5 miles on a notified route. On examination of the Scheme this Court found that the scheme does not show that the private operators have been prohibited from plying their vehicles and, therefore, took a view that since the private operator has a corridor restriction of operation of 5 miles on notified route, his permit to that extent of overlapping portion could be said to be ineffective. In Mysore State Transport Corporation vs. Mysore Revenue Appellate Tribunal 1975 (1) SCR 493, it was held that a mere physical overlapping of two routes notified route and inter-State route, is not enough to exclude the private inter-State operators by any necessary implications. Such an exclusion must be made clear and unequivocal in the scheme.

Since there was a conflict between the two sets of decisions rendered by this Court in Ram Sanehi Singh vs. Bihar State Road Transport Corporation (supra), Mysore State Road Transport Corporation vs. Mysore State Transport Appellate Tribunal (supra) and Mysore State Transport Corporation vs. Mysore Revenue Appellate Tribunal (supra), the matter was referred to a Constitution Bench of this Court. A Constitution Bench of this Court in Adarsh Travels Bus Service and another vs. State of U.P. and others - 1985 (4) SCC 557 distinguished the decision in Ram Sanehi Singh vs. Bihar State Road Transport Corporation (supra) for having been decided on particular facts of its case but did not approve it. However, the decision in Mysore State Transport

Corporation vs. Mysore Revenue Appellate Tribunal (supra) was expressly not approved and whereas the decision in Mysore State Road Transport Corporation vs. Mysore State Road Transport Appellate Tribunal (supra) was approved. The Constitution Bench settled the law by laying down that once a scheme is for total exclusion prohibiting private operators from plying stage carriages on a whole or part of a notified route, no permit can be granted on the notified route or portion thereof.

After adverting to the settled law, we shall now proceed to consider the question that falls for our consideration. Learned counsel for the appellant, S/Shri G.L. Sanghi, Senior Advocate and K.R. Nagaraja, Advocate contended that in view of the terms of the Scheme, grant of the permit for purpose of plying on the same line of the portion of the notified route which falls within the limits of town or village is overlapping and not an intersection. Learned counsel for the respondent, Sh. N.D.B. Raju, Advocate supported the reasoning given in the judgment rendered by the Full Bench of Karnataka High Court.

Learned counsel for the parties heavily relied upon dictionary meaning of the expression 'intersection'.

In Webster's Dictionary Vol-I, the word 'intersection' means:- as the act of inter-secting the point at which lines cut across each other (or the line at which planes do so), a place where two roads cross each other in-ter-se- tion-al.

In Black's Dictionary of Law, Fifth Edn., the word 'intersection' means:- as applied to a street or highway means the space occupied by two streets at the point where they cross each other. Space common to both streets or highways, formed by continuing the curb lines.

In Chambers English Dictionary, ' intersection' means to cut across' to curt or cross mutually; to divide into parts, v.i. to cross each other ns. Intersect a point of intersection; intersection intersecting: the point or line in which lines or surfaces cut each other (geom); the set of elements which two or more sets have in common (math) : a cross-roads.

The Law Lexicon Reprint Edn. 1987 'intersect' means:- as to cross; literally, to cur into or between; a word which imports the intersection of one line with another.

The Shorter Oxford English Dictionary Vol-I defines 'intersection' as the action or fact of intersection; the place where two things intersect; chiefly geom, the point (or line) common to two lines or surfaces which interest 1559.

A reading of the aforesaid dictionary meanings of the word 'intersection' shows that dictionary gives more than one meaning of the word 'intersection'. The expression 'intersection' has not been defined in the Act.

In Commissioner of Income Tax, Bangalore v. Venkateswara Hatcheries (P) Ltd.- 1999 (3) SCC 632, it was held thus:

> "A reading of the aforesaid dictionary meanings of the word 'produce' does indicate that if a living creature is brought forth, it can be said that it is produced. However, the dictionary gives more than one meaning of the word 'produce'. Neither the word 'produce' nor the word 'article has been defined in the Act. When the word is not so defined in the Act, it may be permissible to refer to the dictionary to find out the meaning of that word as it is understood in the common parlance. But where the dictionary gives divergent or more than one meaning of a word, in that case it is not safe to construe the said word according to the suggested dictionary meaning of that word. In such a situation, the word has to be construed in the context of the provisions of the Act and regard must also be had to the legislative history of the provisions of the Act and the scheme of the Act."

Following the decision in Commissioner of Income Tax, Bangalore, (supra) we are, therefore, of the view that the expression 'intersection' has to be understood in the light of the object and the Scheme behind Chapter IVA of the Repealed Act.

The object and the scheme behind Chapter IVA of the repealed Act being that once a scheme for total exclusion of private operators for a route formulated by a State Transport Undertaking is approved by the government and is published in the official gazette, no permit can be granted to private operators other than the State Transport Undertaking on a notified route or portion thereof except in the terms of the scheme. This Court in Adarsh Travels Service and another vs. State of U.P.and others (supra) while dealing with Civil Appeal Nos.164-166 of 1982 even after finding that there was very insignificant portion of the route on which the appellants held stage carriage permits, was included in a notified route yet this Court rejected the contention of the appellant. Similarly in C.P.C. Motor Service vs. State of Mysore (supra), the contention of the private operators who held permits on an inter State route which overlapped the Mysore District, that their permits should not be cancelled merely because part of the route is within the Mysore District was rejected. The aforesaid view of this Court is in consonance with the object and scheme under Chapter IVA of the Repealed Act. We are, therefore, of the view that the expression 'intersection' has to be understood in the light of the pronouncement of law by this Court in number of its decisions.

The expression 'intersection' has neither been employed in the Repealed Act nor in the rules framed thereunder. But it is a product of the judgment of this Court in Mysore State Road Transport Corporation vs. Mysore State Transport Appellate Tribunal (supra) and the relevant extract of the decision runs as under:

> "This Court has consistently taken the view that if there is prohibition to operate on a notified route or routes no licences can be granted to any private operator whose route traversed or overlapped any part or whose of that notified route. The intersection of the notified route may not, in our view, amount to traversing or overlapping the route because the prohibition imposed applies to a whole or part of the route on the highway on the same line of the route. An intersection cannot be said to be traversing the same line, as it cuts across it."

The said decision was approved in Constitution Bench decision in Adarsh Travels Bus Service and another vs. State of U.P. and others (supra). This Court in the said decision held thus:

> "The learned Judges, expressly dissented from the decision of Beg and Chandrachud, JJ. In Mysore State Transport Corpn. Vs. Mysore Revenue Appellate Tribunal and approved the decisions of the court in Nilkanth Prasad case and Abdul Khader case. We agree with the view taken by this Court in Mysore State Road Transport Corpn. vs. Mysore State Transport Appellate Tribunal and dissent from the view taken in Mysore State Road Transport Corpn. vs. Mysore Revenue Appellate Tribunal."

(emphasis supplied) A perusal of aforesaid extracts of two decisions referred to above shows two aspects: 1) the expression 'intersection' was employed in the context of the settled law as regard the consequences of an approved scheme under Chapter IVA which provided for total exclusion of private operators on the notified route or portion thereof and 2) while employing the expression 'intersection' in the said decision this Court has explained what the expression 'intersection' meant. Further this Court in the said decision in very clear terms indicated that in view of consistent view of this Court no permit can be granted to operate on a notified route or portion thereof if a scheme prohibit such operation by a private operator and the only exception is where a private operator holding permit on non-notified route has to intersect a notified route. This decision explained that an intersection of a notified route does not amount to traversing or overlapping the notified route because of the prohibition contain in a scheme applies to a whole or part of the route on the highway on the same line of the route. It was further clarified that an intersection cuts across the notified route and does not permit traversing the same line of travel on a notified route. The last line of the passage extracted from decision in Mysore State Transport Corpn. (supra) is very relevant and explains what this Court meant by the expression 'intersection'. The meaning assigned to it is that an intersection is not traversing the same line of travel but it cuts across. In other words if the vehicle is to ply on the same line of travel on a notified route it is an overlapping and if a non-notified route cuts across a notified route for its onward journey it is an intersection.

The expression 'intersection' has been employed by this Court only to provide facility to a private operator operating on a non-notified route to continue an onward journey if it cuts across a notified route. It appears that this exception was carried out only to avoid hardships to the travelling public, otherwise a scheme which is for total exclusion of private operation was held to be untouchable.

In our opinion there is a clear and obvious distinction between an 'overlapping' and an 'intersection' for purposes of Chapter IVA of the repealed Act. In the case of an overlapping a stage carriage is to ply on the same line of travel on a portion of a notified route and it is immaterial whether it is a small distance of four or five kilometers falling within the limits of a village or town. Whereas in the case of an intersection a non- notified route only cuts across a notified route for onward journey. It is only to enable a private operator plying on a non-notified route to a non-notified route to cut across a notified route. The exceptions sought to be made by Full Bench in the form of municipal limit or village limit is totally erroneous and that the same defeats the very object behind the scheme which is for total exclusion of private operation. The consistent view of this Court has through out been that the scheme is a law and the same has to be preserved and protected in public interest. Any

other view taken contrary to the said view would amount to violating the integrity of an approved scheme under Section 68D of the Repealed Act. Any slight deviation in the scheme may frustrate the entire scheme.

An example posed by the Full Bench in its judgment as to what happens when an operator on a non-notified route has to cut across a notified route by taking 'U' turn on a notified route and then taking left turn to enter on a non-notified route was not appropriate. In such a case, it may not amount to overlapping. It would be only intersection. There may be a crossing where there is an island in the centre and a private operator in order to go from non-notified route to another non-notified route has to make a semi circle of a notified route. In that case also, it would be not overlapping, but it would be an intersection because it only cuts across the notified route because of size of crossing or traffic regulations.

Merely because a private operator has to traverse on the line of a notified route for 5 km or for 1.5 km only is no ground to dispense with the mandate of law. Such an overlapping also cannot be sustained on the ground it relates to a small town. If such a view of law as propounded by the Full Bench is to be accepted, it is difficult to be applied where a notified route passes through bigger towns where involvement is of 10 to 20 km within that town.

The view taken by the full bench that where traversing on a notified route is necessary to continue journey on a non-notified route could be regarded as an intersection is an erroneous view of law. The High Court under Article 226 of the Constitution is required to enforce rule of law and not pass order or direction which is contrary to what has been injuncted by law.

For the aforesaid reasons, we are of the view that the view taken by the High Court was contrary to the law which stood settled by this Court in Adarsh Travesls case (supra) and still holds the field and, therefore, it deserves to be set aside.

Before we part with the case, we would like to observe that the need and convenience of the travelling public is of paramount consideration under the Act. A situation may arise when the Transport Undertaking may be found not catering to the needs of the traveling public. In such a situation, on representation of travelling public, the State Undertaking or the Government, as the case may be, may consider the matter and provide adequate transport services if it is required. In case the Government finds that the Undertaking lacks vehicles or other infrastructure to provide an efficient and well coordinated transport services to the traveling public, it may modify the scheme as to permit private operator to ply vehicles on such route or routes. In any case it is always permissible to the legislature to amend law by providing private operators to run an efficient and well coordinated transport services on such route or routes on payment of adequate royalty to the State Government.

For the aforesaid reasons, the judgments and order including State Transport Appellate Tribunal under appeal are set aside. The matters are sent back to the Learned Single Judge of the High Court to decide the matters within three months of production of certified copy of this judgment in the light of what has been stated above. The appeals are allowed. There shall be no order as to costs.

..J. (V. N. Khare) ..J. (Ashok Bhan) January 14, 2002