

# Abdai, Gafoor vs State Of Mysore on 12 April, 1961

Equivalent citations: 1961 AIR 1556, 1962 SCR (1) 909

Author: K.C. Das Gupta

Bench: K.C. Das Gupta, P.B. Gajendragadkar, A.K. Sarkar, K.N. Wanchoo, N. Rajagopala Ayyangar

PETITIONER:

ABDUI, GAF00R

Vs.

RESPONDENT:

STATE OF MYSORE

DATE OF JUDGMENT:

12/04/1961

BENCH:

GUPTA, K.C. DAS

BENCH:

GUPTA, K.C. DAS

GAJENDRAGADKAR, P.B.

SARKAR, A.K.

WANCHOO, K.N.

AYYANGAR, N. RAJAGOPALA

CITATION:

1961 AIR 1556

1962 SCR (1) 909

CITATOR INFO :

R 1962 SC1135 (6)

R 1962 SC1183 (16)

RF 1963 SC 640 (11)

RF 1971 SC1662 (11)

F 1971 SC1986 (10)

R 1972 SC1674 (8,9)

R 1974 SC1940 (6)

ACT:

Motor Transport--Scheme Published and approved--Permits--  
Application for by State Transport Undertaking--Publication  
of application and notice of date for making representation  
by other Transport Services, if necessary--Motor Vehicles  
Act, 1939 (IV of 1939), ss. 68-C, 68-F (1), Ch. IV-A.

HEADNOTE:

After a scheme 'Was published by the Mysore Transport Undertaking under s. 68-C of the Motor Vehicles Act, 1939, and approved by the State Government the State Transport Undertaking made applications for permits under s. 68-F(1) of the Act to the Regional Transport Authority but before the permits were granted the second respondent made an application for a Writ of Certiorari prohibiting the Regional Transport Authority from dealing with the second respondent's application for permit unless and until they were duly published and notice was given to him for making representations. The contention on his behalf was that the publication of the applications with notice of the (late for submitting the representations was necessary under s. 57(3) Ch. IV of the Act and that he was entitled to notice as the Regional Transport Authority acted in a quasijudicial capacity while dealing with applications for permits. Held, that when a scheme. prepared and published under s. 68-C has been approved and in application has been made in pursuance of the scheme and in the proper manner as specified in Ch. IV nothing more remains to be decided by the Regional

910

Transport Authority and it has no option to refuse the grant of the permit. The nature of the matter dealt under s. 68-F(1) is such as does not attract the provisions of S. 57(3) which lays down certain duties on the Regional Transport Authority when it considers an application for a permit. The provisions of S. 57(3) have nothing to do with the matters dealt with by s. 68-F(1).

Srinivasa Reddy v. State of Mysore, [1960] 2 S.C.R. 130, referred to.

When taking action under, s. 68-F(1) the Regional Transport Authority does not exercise any quasi-judicial function and acts wholly in a ministerial capacity.

JUDGMENT:

ORIGINAL JURISDICTION: Petition No. 109 of 1961. Writ Petition under Art. 32 of the Constitution of India for enforcement of the Fundamental Rights.

M. O. Setalvad, Attorney-General of India, B. R. L. Iyengar and K. P. Bhat, for the petitioner.

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

1961. April 12. The Judgment of the Court was delivered by DAS GUPTA, J.--The petitioner, who is the proprietor of the Shaheen Motor Service, used to ply a motor bus for hire on the route Archalli to Saravanabelgola in Hassan District in the State of Mysore. A scheme under s. 68-C of the Motor Vehicles Act of 1939 having been published by the Mysore Transport Undertaking, the petitioner as

one of the persons affected thereby filed objections to the scheme before the State Government under s. 68-D(1) of the Act. The State Government however after considering the objections a, -id hearing the petitioner approved the scheme, subject to a slight modification with which we are not concerned. This approval was given on December 22, 1959. In pursuance of this approved scheme the State Transport Undertaking-the 2nd respondent before us--made applications for permits but before the Regional Transport Authority could issue such permits the present petition was filed praying, in the first place, for a writ of certiorari to quash the scheme and some consequential directions, and secondly for a writ of "prohibition" to the Regional Transport Authority, Hassan District, who is the third respondent before us "to refrain from dealing with the applications for permit made by the 2nd respondent unless and until they are duly published and notice thereof is given to the petitioner and he is allowed to make his representation thereon regarding their compliance or otherwise with the conditions of s. 68-F(1) of Chapter IV-A. After learned counsel for the petitioner had been heard, this Court by its order dated March 21, 1961, granted leave to the petitioner to amend the writ petition so as to confine it to the second prayer only and directed a rule to issue only in respect of this second prayer. The only question with which we are therefore now concerned is whether a writ should issue prohibiting, the Regional Transport Authority, Hassan District, from dealing with the applications for permits made by the State Transport Undertaking "unless and until they are duly published and notice thereof is given to the petitioner and he is allowed to make his representations thereon".

The petitioners case as regards this prayer is that under the law no permit can be granted to the State Transport Undertaking until the applications for permit have been duly published and notice has been given to the petitioner of those applications. In support of this proposition learned counsel advanced two arguments-firstly, that s. 57(3) in Chapter IV of the Act, requires such prior publication with notice of the date before which representations in connection with the application may be submitted and that in consequence of s. 68-B of Chapter IV-A the above provisions of s. 57(3) of Chapter IV have to be followed. The second argument is that the Regional Transport Authority acts in a quasi-judicial capacity when dealing with applications for permits made under s. 68-F and so the petitioner who will be affected by the issue of the permits is entitled to notice. Section 68-B on which reliance has been placed provides inter alia that the provisions of Chapter IV-A shall have effect "notwithstanding anything inconsistent therewith contained in Chapter IV". It says nothing positive as regards any of the provisions of Chapter IV being applicable to matters under Chapter IV-A but provides negatively that if any question arises as regards any provisions of the Act in Chapter IV-A and there is difficulty in applying it on the ground that there is conflict between it and some provisions of Chapter IV, the provisions of Chapter IV-A will prevail. Mr. Iyengar has argued that it is implicit in this provision that if there is no such difficulty all the provisions of Chapter IV will apply to matters dealt with under Chapter IV-A. This argument, in our opinion, is fallacious. All that s. 68-B pre-supposes is that there are some provisions in Chapter IV which may apply to matters under Chapter IV-A; on that assumption it proceeds to say that if on a matter to which provisions of Chapter IV would prima facie apply there is a provision in Chapter IV-A also which appears applicable the provision in Chapter IV-A will prevail to the extent of its inconsistency with the corresponding provision in Chapter IV. As to what provisions in Chapter IV will apply or not s. 68-B says nothing and provides no guidance either expressly or by implication. To find out whether a particular provision in Chapter IV (not being inconsistent with any provisions

in Chap. IV-A) will apply or not to a matter under Chapter IV-A, we have to examine the matter in question and then decide whether it is of such a nature that it attracts that particular provision of Chapter IV. What then is the matter dealt with under s. 68-F(1) with which we are concerned in the present case? Section 68-F(1) comes into operation when a scheme has already been approved by the State Government under s. 68-D(2). In order that the approved scheme may be implemented the State Transport Undertaking which is to run and operate. the Transport Service under the scheme must have a permit from the Regional Transport Authority. Section 68-F(1) provides that the State Transport Undertaking will have to apply for a permit

(i) in pursuance of the approved scheme and (ii) in the manner specified in Chapter IV. Once that is done, the sub-section proceeds to say "'A Regional Transport Authority shall issue such permit to the State Transport Undertaking", and this "notwithstanding anything to the contrary contained in Chapter IV." It appears clear to us that the provisions of s. 57(3) have nothing to do with these matters dealt with by s. 68-F(1). Section 57(3) lays on the Regional Transport Authority certain duties when it considers an application for a permit. These conditions are (1) to make the application available for inspection at the office of the Authority, (2) to publish the application or the substance thereof in the prescribed manner together with a notice of the date before which representations in connection therewith may be submitted and the date and the time and place at which the application and any representations, received will be considered. Under s. 68-F(1) as already mentioned the Regional Transport Authority has no option to refuse the grant of the permit provided it has been made in pursuance of the approved scheme and in the manner mentioned in Chap. IV. The duty of the Regional Transport Authority on receipt of the application from the State Transport Undertaking for a permit is therefore to examine the application for itself to see whether it is in pursuance of an approved scheme and secondly whether it has been made in the manner laid down in Chapter IV. This is a duty which the Regional Transport Authority has to perform for itself and there is no question of its asking for assistance from the public or existing permit holders for Transport Services on the route. Neither the public in general nor the permit holder has any part to play in this matter.

The provisions of s. 57(3) for making the application made under Chapter IV, available for inspection, for publishing the application or a substance thereof with a notice of the date by which the representations may be submitted and the date, time and place when the representations will be considered are required to enable the Regional Transport Authority to come to a correct conclusion as to whether the application should be granted or not. An application not made in the manner laid down in Chapter IV will not be considered by the Regional Transport Authority at all. But the mere fact that it has been made in the proper manner will not entitle the applicant to a permit. it is the duty of the Regional Transport Authority to decide on a consideration of all relevant matters whether the application should be allowed. Other operators and even the public have a legal right to make representations to persuade the Authority not to grant the permit on the merits of the case. It is for this reason that there was necessity to make the provisions in sub-section 3 of s. 57 so that the Regional Transport Authority may receive every assistance in coming to a proper conclusion. When however a scheme prepared and published under s. 68-C has been approved and an application has been made in pursuance of the scheme and in the proper manner as specified in Chapter IV nothing more remains to be decided by the Regional Transport Authority. The nature of the matter dealt

with under s. 68-F(1) is thus such as does not and cannot attract any of the provisions of s. 57(3). It may be mentioned here that in *Srinivasa Reddy. & Ors. v. The State of Mysore & Ors.* (1) a question was raised whether s. 57(3) applied or not to an application made under s. 68-F(1). The Court considered it unnecessary then to go into the matter as on the facts of that case it was found that the application had not been made in the manner provided in Chapter IV and was actually in breach of s. 57(2) of the Act and so no permit could be issued on such an application. The provision in s. 57(2) which was applicable to applications under s. 68-F is that an application for a permit shall be made not less than six weeks before the date on which it is desired that the permit shall take effect or if the Regional Transport Authority appoints dates for the receipt of such application on such dates. In that case the Court held that this provision in s. 57(2) is in reality a manner of making the (1) [1960] 2 S. C.R. 130.

application and consequently it applied to applications made under s. 68-F(1). The provisions of s. 57(3) cannot however be said to have anything to do with the manner of making the application and the nature of the matter dealt with under s. 68-F(1) is such that provisions of s. 57(3) are not attracted. The next argument is that the Regional Transport Authority functions as a quasi-judicial authority when dealing with an application made by the State Transport Undertaking under s. 68-F(1). It is said that as under s. 68-F(2) the Regional Transport Authority may refuse to entertain an application for renewal of any other permit or cancel an existing permit or modify in certain matters the terms of an existing permit, for the purpose of giving effect to the approved scheme there is a lis between the existing permit holders and the State Transport Undertaking when an application under s. 68-F(1) is dealt with.

It appears to us that when deciding what action to take under s. 68-F(2) the authority is tied down by the terms and conditions of the approved scheme and his duty is merely to do what is necessary to give effect to the provisions of the scheme. , The refusal to entertain applications for renewal of permits or cancellation of permits or modification of terms of existing permits really flow from the scheme. The duty is therefore merely mechanical; and it will be incorrect to say that there is in these matters any lis between the existing operators and the State Transport Undertaking which is to be decided by the Regional Transport Authority. There is no justification therefore for saying that when taking action under- s. 68-F(2) the regional Transport Authority is exercising a quasi-judicial function. Apart from this it has to be pointed out that action under s. 68-F(2) is really independent of the issue of the permits under s. 68-F(1). Once the scheme has been approved, action under s. 68-F(1) flows from it and at the same time action under s. 68-F(2) flows from the same scheme. The argument that the Regional Transport Authority should be held to be exercising quasi-judicial function in dealing with applications for permits under s. 68-F(1) because of the action it may take under s. 68-F(2) therefore fails.

It was next said that when the Regional Transport Authority issues the permit it can attach to the permit conditions under s. 48(3) of the Act. Section 48(3) authorises the Regional, Transport Authority if it decides to grant a stage carriage permit, to attach to the permit any of the conditions specified in the subsection. It has to be noticed that s. 68-F(1) does not speak of the "grant" of a permit but provides that the Regional Transport Authority shall "issue" a permit. In any case, if the Regional Transport Authority has to decide what conditions to attach to such a permit, it is not

possible to say that it is then exercising a quasi-judicial function. For, in deciding that matter the Regional Transport Authority is to have regard to the interests of the public but there is no question because of that, of any lis between the State Transport Undertaking on the one hand and the public on the other.

In our opinion, the Regional Transport Authority acts wholly in a ministerial capacity while dealing with an application of the State Transport Undertaking under s. 68-F(1). The fact that on other occasions and in other matters the Regional Transport Authority has quasi-judicial functions to perform cannot make its function under, s. 68-F(1) a quasi-judicial function.

Our conclusion therefore is that the petitioner's contention that no permit can be granted to the State Transport Undertaking until the applications for permit have been duly published and notices have been given to the petitioner of these applications is unsound. Consequently, the petitioner is not entitled to any relief.

The petition is dismissed with costs.

Petition dismissed.