

Supreme Court of India

C. Kasturi & Ors. Etc vs Secretary, Regional Transport ... on 31 January, 1996

Equivalent citations: 1996 AIR 1664, JT 1996 (3) 458

Author: K Ramaswamy

Bench: Ramaswamy, K.

PETITIONER:

C. KASTURI & ORS. ETC.

Vs.

RESPONDENT:

SECRETARY, REGIONAL TRANSPORT AUTHORITY & ANR. ETC.

DATE OF JUDGMENT: 31/01/1996

BENCH:

RAMASWAMY, K.

BENCH:

RAMASWAMY, K.

AHMAD SAGHIR S. (J)

G.B. PATTANAIK (J)

CITATION:

1996 AIR 1664 JT 1996 (3) 458

1996 SCALE (2)900

ACT:

HEADNOTE:

JUDGMENT:

WITH CIVIL APPEFL Nos.3923/86, 3922/85, 4049/87, 4383/90, 3776/88, & 4816/91 AND CIVIL APPEAL NO. 4463-65 OF 1996 (Arising out of SLP (C) Nos.16421/90, 2074/91 and 4741/90) O R D E R Leave granted.

These appeals raise a question: whether Rule 282(2)(ii) of the A.P. Motor Vehicles Rules, 1964 would be read into the notified route and given an interpretation extending 8 Kms. from the municipal limits of the town service or whether the conditions of the scheme and exceptions engrafted therein are strictly to be construed? The facts are not fairly in dispute. In the first case, the appellant had obtained a temporary permit under Section 62 of the Motor Vehicles Act, 1939 (Act No.4 of 1939) (for short, the 'repealed Act') which stands repealed by Motor Vehicles Act, 1988. But we are concerned on the facts of this case with the interpretation of the scheme and the Rules under the repealed Act. Admittedly, the appellant has been running the vehicle on the town service,

Tirupati, a Pilgrim Center of Lord Venkateswara Swamy known in north India as Balaji, in Andhra Pradesh obtaining renewals on temporary basis from time to time. We are informed that in other cases they are pakka stage carriage permit holders obtaining permits under Section 58 of the repealed Act. Chandigarh to Renigunta via Tirupati is the notified approved route under Chapter IVA of the repealed Act. The appellants had relied upon a memorandum issued by the Government dated November 9, 1981 in which it was stated that the town service stood extendible to a distance of 8 Kms. from municipal limits. When the appellants were prohibited to run their town service upto the extent of 8 Kms. on the basis of such memorandum, they filed writ petitions in the High Court In Writ Petitions No.1995 of 1983, the learned single Judge of the High Court held that by operation of the prohibitions contained in the scheme in Notes 2 and 3 thereof, the town service could not be extended upto a distance of 8 Kms. from the municipal limits the same being contrary to the scheme. Accordingly, the Court dismissed the writ petition. Similar cases met with the same fate. in W.A.Nos.434 & 431/84 and batch, the Division Bench of the High Court by order dated 30.10.85 and in other cases on different dates, confirmed the same.

Mr. A. Subba Rao, the learned counsel appearing for the appellants who led the batch, contended that Rule 282(2)(ii) expressly mentions that town service shall be construed to be extendible to the outer limits of the municipality and so town service would encompass 8 kms. from the municipal limits. Though it is notified route, the appellants are entitled to run their vehicles on the notified route upto a distance of 8 Kms. the same being a part of the town service. The interpretation given by the High Court therefore, is incorrect in law. Shri G. Ramaswamy, learned senior counsel appearing for the Corporation contended that there is a distinction between mufasil service and town service. The town service is intended to operate only within the town area Rule 282(2)(ii) requires to be interpreted only when there is inter-section between the notified area and the town service; the scheme is a complete code in itself The exceptions end rights given in the scheme which law, requires to be interpreted strictly. The appellant in the first case having obtained a temporary permit under Section 62 of the repealed Act, it outlived its life the moment the period of four months expires. He is not an existing operator on the route and, therefore, he cannot come within the exceptions engrafted in the scheme. It is also contended that if any permit is granted in the town service, in view of the language used in the scheme and the exceptions engrafted, it shall not overlap more than 8 Kms. on the notified route. If it so overlaps, there is a total prohibition for running the vehicle in the notified route in town. The interpretation put up by the High Court is, therefore, correct in law.

The question, therefore, as posed earlier, is: whether Rule 282(2)(ii) would be read into the notified scheme and given an interpretation extending the service upto the distance of 8 Kms. from the limits of the town. Rule 282(1) reads thus:

"Rule 202 Fixation to stages for stage carriages: (1) In the case of stage carriages the Regional Transport Authority, shall, after consultation with such other authority as it may deem desirable, fix stages on all bus routes except where town service are plying. The maximum distance of such stage shall not ordinarily exceed 6.4 Kms. When stages are so fixed, fares shall be collected according to stages."

Sub-Rule (2) of Rule 282 provides that the Regional Transport Authority shall, subject to the following restrictions determine which are town service routes. Rule 282(2)(ii) reads as under:

"No route of town service shall extend more than 8 Kilometers beyond the limits of the municipality or town from which it starts provided that this restriction shall not apply to any town service routes, Which were in existence on the date of coming of these rules into force or in respect of those routes for which specific permission of the Transport Commissioner is obtained."

A reading of it makes it clear that no route of town service shall extend more than 8 Kms. beyond the limits of the municipality or town from which it starts. The proviso provided that the restrictions shall not apply to any town service routes which were in existence on the date of coming of these rules into force or in respect of those routes for which specific permission of the Transport Commissioner was obtained.

The Scheme is as under:

THE SCHEME

1. Route (Starting point and Chandragiri-Ranigupta terminus with important Via Tirupathi (21Kms) intermediats stations and route length

2. Area (Names of route with -do-

starting points and term-

ini and intermediate stations and route length

3. Whether town service or State Carriage/Moffussil moffussil service or service.

both

4. Maximum and minimum The following number of number of vehicles buses and proposed to be proposed to be operated operated to the complete on each route by the exclusion of all other State Transport Under- persons holding stage taking to the exclusion, carriage permits on the complete or partial proposed route and such or otherwise of other other persons holding stage persons: carriage permits on the route overlapping completely or partially on the proposed route except to the extent specified in the note hereunder.

a. Maximum number 2.

b. Minimum number 1.

c. Type Saloon d. Capacity 40-60 Seating capacity

5. Maximum and minimum The following number of number of trips proposed round trips are proposed to be performed on each to be operated to the route by the State complete exclusion of all Transport Undertaking to other persons holding stage to the exclusion, complete carriage permits on the or partial or otherwise of route overlapping completely other persons or partially on the proposed route except to the extent hereunder.

a. Maximum Number 14 b. Minimum Number 7

6. No. of vehicle intended to 10% of the total fleet be kept in reserve to required for operation of maintain the service and scheduled service in the to provide for special region will be kept in occasions. service.

7. The arrangements proposed The existing and proposed for the housing, mainta- Depots of the APSRTC will inence and repair of the provide for housing, vehicles maintenance and repairs of the vehicles.

8. The arrangements proposed Bus stations at important for the comfort and traffic points and wayside convenience of the shelters are proposed to be passengers constructed. In addition drinking water facilities will be provided at important places during summer.

9. The arrangements proposed At important traffic points for the stands and halts where bus stations are on the route at which proposed to be constructed, copies of time tables of time table boards will be the service are proposed exhibited.

to be exhibited

10. Whether it is proposed to Newspaper parcels unaccompa- permits the carriage of nies luggage and postal mail goods in addition to the bags will be permitted in passengers. addition to the passengers and their personal luggage.

(BY ORDER AND IN THE NAME OF THE GOVERNOR Of ANDHRA PRADESH) Note: This scheme shall not affect;

1. The State transport undertakings of the other states.

2. The holders of the existing stage carriage permits in respect of town service routes;

3. The holders of the future stage carriage permits in respect of town service routes having an overlapping of not more than 8 Kms. on the notified route.

4. The holders of the existing stage carriage permits in respect of such route/routes which overlap not more than 8 Kms. on the notified route;

5. The permit holders of the existing stage carriage permits on the inter-state routes overlapping the notified route.

This is the scheme which was relied upon in the High Court and also before us as a sample case. It is a scheme notified under Section 68-D(2) of the repealed Act and it was approved under Section 68-D(3) after following the procedure prescribed in Chapter IVA. Sections 68C, 68D-(3) and 68-FF are applicable to the scheme. The schemes covered by Chapter IVA are now saved by 1988 Act in Chapter V unless it is modified according to the said Act and continues to be valid law under the 1988 Act. The distance of the scheme is 21 Kms. The route is Chandragiri-Renigunta via Tirupati. In Col.5, it is stated that the maximum and minimum number of trips proposed to be performed on each route by the State Transport Undertaking is to the exclusion, complete or partial or otherwise, of other persons. It is stated that the performance of the trips is to the complete exclusion of all other operators holding stage carriage permits on the route overlapping completely or partially on the route except to the extent indicated in the scheme.

This scheme shall not affect the exceptions mentioned in clauses (1) to (5) Clause (2) provides right to ply on town service routes to the holders of the existing stage carriage permits. Clause (3) provides the holders of future stage carriage permits in respect of town service routes having an overlapping of not more than 8 Kms. on the notified route; Clause (4) provides the holders of the stage carriage permits in respect of such routes or routes which overlap not more than 8 Kms., the notified route A reading of Clause (5) of the scheme and the exceptions which require to be read together clearly indicates that on the route on which State Transport Undertaking operates its service, the private holders of the stage carriage permits existing or future holders are completely excluded on the route overlapping, completely or partially, except to the extent indicated therein, i.e 8. K.M. The scheme itself has excluded certain area. As indicated earlier, either the holder of the existing stage carriage permit on the town service or future stage carriage service permit holders, though entitled to ply their vehicles in a town service inter-secting notified route, the overlapping "shall not be more than 8 Kms. on the notified routes as the case may be".

"Route" has been defined under Section 2(28A), to dispel any confusion consequent upon seeming acceptance by this Court in Nilkanth Prasad & Ors. vs. State of Bihar [1962 Supp (1) SCR 728] it means "a line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus and another". Permit is an authorization to use stage carriage vehicle etc. to use such vehicle. The permit having been granted on the notified route, the holder of the stage carriage permit on the notified route is to operate or perform the trips on the route only within the narrow exceptions engrafted in the scheme itself, It is settled law which was reiterated by this Court in Ram Krishna Verma & Ors. vs. State of U.P & Ors. [(1992) 2 SCC 620] that the draft or approved scheme is a law by itself and it has an over-riding effect on other Chapters of the Act. It operates against everyone unless it is modified. It excludes private operators from the area or the route or operation thereof covered under the scheme except to the extent excluded under the Scheme itself. The right of private operator to apply for and to obtain permits in Chapter IV of the repealed Act and the relevant corresponding Chapter of the new 1988 Act to the extent of the notified and approved scheme in Chapter IVA of repealed Act and corresponding provisions in 1988 Act, has been frozen and prohibited. No private operator is permitted thereafter, to operate his stage carriage or contract

carriage on the notified route except as provided in the scheme itself. The source of the right, if at all it is available to seek, is only under the scheme. Chapter IV to that extent stands excluded and S.T.U. gets exclusive right to ply its stage carriage vehicles on the notified route/routes covered by the scheme.

In *Adarsh Travels Bus Service & Anr. vs. State of U.P & Ors.* [1985 Supp (3) SCR 661] a Constitution Bench of this Court considered the effect of the scheme and the right of the private operators, and stated thus:

"A careful and diligent perusal of Sections 68-C, 68-D(3) and 68-FF in the light of the definition of the expression "route" in section 2(28A) appears to make it manifestly clear that once a scheme is published under section 68-D in relation to any area or route or portion thereof, whether to the exclusion, complete or partial of other persons or otherwise, no person other than the State Transport Undertaking may operate on the notified area or notified route except as provided in the scheme itself. A necessary consequence of these provisions is that no private operator can operate his vehicles on any part or portion of a notified area or notified route unless authorised so to do by the terms of the scheme itself. He may not operate on any part or portion of the notified route or area on the mere ground that the permit as originally granted to him covered the notified route or area."

After referring to the above decision, this Court *Smt. Afsar Jahan Begum etc. v. State of Madhya Pradesh & Ors. etc.* [JT 1996 (1) SC 604] held thus:

"In this view of the matter, the only relaxation from the frozen notified route or area from the scheme is as provided in the scheme itself. If any operator, or any route intersecting the notified route, has of necessity, to ply the vehicle strictly in conformity with the restrictive corridor shelter and no more. The relaxation is not meant to sabotage the approved scheme but to subserve public interest".

The decision relied on by Mr. G. Ramaswamy in *vs. State Transport Appellate Tribunal Pondicherry & Anr.* [(1982) 2 SCC 73] lays down the law and we approve of it to be the correct law; under Section 62(1) of the Act, if temporary permit is granted, it outlives its existence on expiry of four months and it cannot be intended to be a continuous one for a number of years except when permanent permit was given and application for renewal was pending as envisaged in Section 62(1). If any renewal is to be made to a temporary permit, it will be in violation of the statute. However, in this case, it is not necessary for us to go into that question since that question did not directly arise for our consideration.

It would, thus, be clear that once a notified draft scheme has been approved and published, the private operators operate their services on the notified route strictly in accordance with the scheme only and within the exceptions engrafted thereunder. By necessary implication, the "town service" as defined in Rule 282(2)(ii) has to be read subject to the scheme in Chapter IVA of the repealed Act. If so read, clauses 2, 3 and 4 are to operate as an exception and they provide only a right to overlap not

more than 8 Kms in the notified route. Otherwise, the town service will cease to be town service and would get transformed into a muffussal route and the private operator would run his stage carriage along the line of the notified route which is impermissible. When so read, though under Rule 282(2)(ii) town service extends upto 8 Kms. from the municipal limits, that does not give any right to a holder of a town service stage carriage permit to run his vehicle beyond 5 kms. on the notified route nor does it extend to 8 Kms. overlapping on the notified route from municipal limits. The memo is an administrative instruction issued by the Government which cannot have an over-riding effect on the scheme since scheme by itself is law unless the scheme is duly and legally modified under the provisions of the repealed Act or the 1988 Act according to law. The Stage carriage holders of permits stand excluded and thereby the private operators cannot operate on the notified area or route overlapping more than 8 Kms. on the notified route.

The appeals, therefore, merit no acceptance. They are accordingly dismissed but without costs.