

N. Manjayya Shetty Vs. Additional District Magistrate

N. Manjayya Shetty Vs. Additional District Magistrate

SooperKanoon Citation : sooperkanoon.com/379202

Court : Karnataka

Decided On : Mar-21-1988

Reported in : ILR1989KAR1582; 1988(2)KarLJ285

Judge : K.A. Swami, J.

Acts : Karnataka Motor Vehicles Rules, 1963 - Rules 68(2), 142, 142(2) and 321

Appeal No. : W.P. Nos. 9817 and 8596 of 1986

Appellant : N. Manjayya Shetty

Respondent : Additional District Magistrate

Advocate for Def. : V. Abdul Khadar, HCGP for R-1, ;N. Santosh Hegde and ;B.V. Acharya, Advs. for R-2

Advocate for Pet/Ap. : H.B. Datar, Adv. for ; M.R.V. Achar, Adv.

Disposition : Petitions dismissed

Judgement :

ORDER

K.A. Swami, J.

1. In these two petitions under Articles 226 and 227 of the Constitution, the petitioners have sought for quashing the order dated 7-5-1986 bearing No.

C.Disc.RTA. CR.293/85-86 (C5) and C.DS.RTA.CR.293/85-86 dated 7-5-1986 issued by the District Magistrate, Dakshina Kannada District, Mangalore and also the resolution dated 19-4-1986 passed by the Town Municipal Council, Coondapur, produced as Annexure-B. The petitioners have also sought for a direction in the nature of Mandamus restraining respondents 1 and 2 from giving effect to the impugned order Annexure-C.

2. The petitioners contend that the District Magistrate has no jurisdiction to pass an order for shifting the existing bus stand to another place; that as per the decision of the Supreme Court to which a reference will be made in the course of this order, it is only the Regional Transport Authority, which grants the permit, alone is competent to change the bus stand; that the Municipality with a view to favour some of the Councillors who are having properties surrounding the place where the new bus stand is proposed, has decided to change the bus stand.

3. On the contrary, it is contended on behalf of the respondents that the place where the bus stand is situated at present is not at all suitable and is very small and it is causing great inconvenience and hardship to the travelling public; that there has been a demand since 1981 for change of the bus stand; that the bus stand is maintained by the Municipality and therefore, under the provisions of the Motor Vehicles Act, 1939 (hereinafter referred to as the 'Act') and the Karnataka Motor Vehicles Rules, 1963 (hereinafter referred to as the 'Rules'), it is the District Magistrate who is empowered to change the bus stand; that the decision as to shifting the bus stand has been taken objectively and without reference to the interest of any of the Councillors.

4. In the light of the contentions raised by both parties, the points that arise for consideration are:

- 1) Whether the Additional District Magistrate is competent to pass an order for shifting the bus stand to another place within the Municipal limits?
- 2) Whether the proposed bus stand has all the facilities; and
- 3) Whether the decision for shifting the bus stand is vitiated by ulterior motives?

POINT NO. 1:

5. Section 68(2)(r) of the Act enables the State Government to frame Rules for prohibiting the picking up or setting down of passengers by State or Contract carriages at specified places or in specified areas or at places other than duly notified stands or halting places and requiring the driver of a stage carriage to stop and remain stationary for a reasonable time when so required by a passenger desiring to board or alight from the vehicle at a notified halting place. Section 76 of the Act provides for parking places and halting stations. As per this Section, the State Government or any Authority authorised in this behalf by the State Government may, in consultation with the local authority having jurisdiction in the area concerned, determine places at which motor vehicles may stand either indefinitely or for a specified period of time and may determine the places at which public service vehicle may stop for a longer time than is necessary for the taking up and setting down of passengers. The petitioners have also placed reliance on Section 48(3)(xix) of the Act which reads thus:

'48(3) : The Regional Transport Authority, if it decides to grant a stage carriage permit, may grant the permit for a service of stage carriages of a specified description or for one or more particular stage carriages, and may, subject to the Rules that may be made under this Act attach to the permit any one or more of the following conditions, namely :-

(xix) that any specified bus station or shelter maintained by Government or a local authority shall be used and that any specified rent or fee shall be paid for such use.'

6. In exercise of the Rule-making power under Section 68(2)(r) of the Act, the State Government has framed Rule 142. For our purpose Sub-rule (2) of Rule 142 is relevant which reads thus;

'142: Stopping place for stage carriages:-

1) xxx xxx

2) Where a local authority has provided and maintains a public stand for motor vehicles with facilities for drinking water, lighting, latrine and waiting sheds for passengers, convenient parking places and a notice board exhibited at a prominent place showing the timings of departure of stage carriages starting from that particular place and also arrival timings for the information of the public the Additional District Magistrate may approve of the use of that stand for the purpose of picking up or setting down passengers of public service vehicles (other than motor cabs) and thereafter every vehicle shall make use of that stand.

The approval granted by the Additional District Magistrate may be revoked by him if the facilities provided at the stand cease to be maintained to his satisfaction.'

7. Section 68 falls in Chapter IV of the Act relating to control of transport vehicles. Section 76 falls under Chapter VI of the Act relating to control of traffic. Thus both the Sections deal with and are connected with different aspects. The State Government has also framed the Rules relating to matters coming under Section 76 of the Act. Rule 321 in this regard provides thus:

'The Commissioner of Police in the City of Bangalore and elsewhere the District Magistrate, shall have the power in consultation with the local authority having jurisdiction in the area concerned, to determine parking and halting stations under Section 76 of the Act.'

8. Thus under the Rules, the Additional District Magistrate and the District Magistrate are empowered to exercise the power under Rules 142(2) and 321 of the Rules respectively. Rule 321 relates to providing for parking and halting stations under Section 76 of the Act and Rule 142 relates to stopping place for stage carriages. The contention of the petitioners is that Section 68(2)(r) and Section 76 are interpreted by the Supreme Court in more than one decision and as per those decisions, it is the concerned Regional Transport Authority alone which is competent and not the Additional District Magistrate. Reliance is placed' on a decision of the Supreme Court in T.B. IBRAHIM v. REGIONAL TRANSPORT AUTHORITY, TANJORE : [1953]4SCR290 . In that case, Rule 268 of the Madras Motor Vehicles Rules framed under Section 68(2)(r) of the Act was considered. The said Rule empowered the R.T.A. to fix the bus stand. Therefore, the Supreme

Court interpreted that as the expression 'duly notified stand' was not defined in the Act but it was reasonable to presume that a 'duly notified stand' must be one which was notified by the Transport Authority and by none other; that there was no warrant for the presumption that it must be notified by the Municipality. In that case reliance was placed on the provisions of the Madras District Municipalities Act, 1920, in support of the contention that the Municipality was entitled to change the bus stand. Over-ruling the contention and relying upon Rule 268 of the Madras Motor Vehicles Rules, it was held that it was the Transport Authority which was competent and none others. The contention relating to invalidity of the Rules based as being violative of Article 19(1)(g) of the Constitution was also overruled. The proviso to Rule 268 of the Madras Motor Vehicles Rules was held to be valid.

9. This decision was again considered in *MUNICIPAL BOARD, PUSHKAR v. S.T.A. RAJASTHAN* : AIR 1965 SC458 . In that case also the Rule framed under Section 68(2)(r) which empowered the Regional Transport Authority to fix the bus stands was considered. The decision in T.B. Ibrahim's case was applied and it was held that it was not the Municipality that was competent to fix the bus stand but it was the Transport Authority which was competent to fix the bus stands.

10. Again in *BHOPAL MUNICIPALITY v. S.S.M.T. CO.OP, SOCIETY* : [1974]1SCR274 both the earlier decisions in Ibrahim's case and Municipal Board, Pushkar were considered. In that case, there was no Rule framed under Section 68(2)(r) of the Act. The power was exercised by Bhopal Municipality under the provisions of the Madhya Pradesh Municipalities Act. Therefore, pointing out the two earlier decisions, it was held that such a power should be exercised only under Section 68(2)(r) of the Act and the Rules framed there under and not under the M.P. Municipalities Act.

11. Lastly the matter was considered by the Supreme Court in *HARI HOM GAUTAM v. DISTRICT MAGISTRATE, MATHURA* : [1987]2SCR714 . In this case, bus stand was fixed in the purported exercise of the power under Section 76 of the Act. After referring to the earlier decisions, it was pointed out that the expression 'duly notified bus stand' must be one which was notified by the Transport Authority and not by others. Thus in this case also, there was no Rule

framed under Section 68(2)(r) of the Act empowering the Authority other than the Transport Authority to fix the bus stand and the power was exercised by the District Magistrate to fix the bus stand. It was further held that Section 76 of the Act did not empower or enable fixing of the bus stand.

12. Thus it is clear from all the four decisions of the Supreme Court that fixing of bus stand has to be made as per the Rules framed under Section 68(2)(r) of the Act and unlike in other enactments, in the Act at the end of each chapter, the State Government has been authorised to frame the Rules for the purpose of carrying out the objects of each chapter.

13. In the instant case, under Section 68(2)(r) of the Act, the State Government has framed Rule 142 to carry out one of the objects of Chapter IV of the Act, It enables the Additional District Magistrate to fix the bus stands. As long as the validity of the Rule is not under challenge and it empowers the Additional District Magistrate to fix the bus stands within the Municipal limits which are maintained by the Municipality, it is not possible to hold that the impugned order or the Rule 142 of the Rules is in any way opposed to the decisions of the Supreme Court referred to above. Those decisions were rendered on the basis of the Rules framed under Section 68(2)(r) of the Act, and in the latter two cases, there were no Rules framed under Section 68(2)(r) of the Act but the power was exercised under Section 76 of the Act. It was held that Section 76 of the Act did not enable the authorities to fix the bus stands as it only related to parking places and halting stations and not the bus stands.

14. Reliance is also placed on a decision of this Court in G.R. NANJUNDASWAMY v. STATE OF MYSORE AND ANR 1975(1) KLJ 238. In that case, a Notification was issued by the District Magistrate under Section 76 of the Act by which the bus stand at Mysore was shifted to a new place. Following the earlier decisions of the Supreme Court to which a reference has already been made, it was held that the action was illegal. The principles enunciated in Ibrahim's case and the Bhopal Municipality's case were applied to the case. Therefore, it is clear that the decision in G.R. Nanjundaswamy's case, turns upon the facts of that case.

15. Hence point No. 1 is answered in the affirmative and it is held that as per Rule 142(2) of the Rules, the Additional District Magistrate was competent to pass the impugned order.

POINT NO. 2:

16. The contention of the petitioners is that in order to exercise the power under Sub-rule (2) of Rule 142 of the Rules, a public stand for motor vehicles with facilities for drinking water, lighting, latrine and waiting sheds for passengers, convenient parking places and a notice board exhibited at a prominent place showing the timings of departure and arrival of stage carriages for the information of the public must be provided and maintained by the local authority whereas in the bus stand in question all those facilities are not provided and even the order also does not state anything about those facilities having been provided in the bus stand, as such the impugned order is not in conformity with Rule 142(2) of the Rules.

17. Learned Government Pleader appearing for the District Magistrate has made available the records of the case. On going through the records, it is noticed that there is a report made by Municipal Council, Coondapur on 22-2-86. The said report states regarding the facilities provided in the bus stand, as to the waiting sheds, light, drinking water and latrine for male and female. There is also another report made by the Assistant Commissioner in February 1986. This report endorses the report made by the Municipal Council on 22-2-86 and also further states that for the year 1985-86 a sum of Rs. 2,41,440/- is set apart for public works and out of them the other facilities, if any, to the new bus stand will be provided.

18. On the basis of these reports, the Additional District Magistrate has passed the impugned order endorsing the reasons given by the Assistant Commissioner. Therefore, it is not possible to hold that there are no facilities provided in the bus stand as required under Sub-rule (2) of Rule 142 of the Rules. Accordingly, point No. 2 is answered against the petitioners.

POINT NO. 3:

19. The records also reveal that there was a report made by the Assistant Commissioner on 28-9-85 which is as follows:

'2. Bus stand: The existing bus stand is very congested and very little space is available for free movement of houses in the area. In fact there was a proposal to acquire the northern portion containing a coffee hotel and a shop. But the TMC subsequently dropped the proposal. The present move to shift the bus stand to the premises of old weekly market is in order. Some of the public have represented to shift the bus stand to the existing park in Gandhi Maidan, near Assistant Executive Engineer's (PWD) office and to form the old weekly market as a park. The petition was signed by persons who are residing in voderhobli village and around Gandhi Maidan area. The majority of the population reside to the north of Sri Kundeswar temple. The distance from the old weekly market to the Municipal park is almost 11/2 K.M. Almost all the public of Kundapura have a walk the distance or engage vehicles to reach the park area. On the other hand if the bus stand is located in the weekly market area, everybody can conveniently board the bus or reach the bus stand.

The proposal of the TMC is very suitable and in the public interest except that the proposed new bus stand will be in the close proximity of public offices such as Courts, Taluk Office, Sub-Registrar's Office, Range Forest Office etc. But the problem can be solved if the following conditions are fulfilled:

- 1) The existing shops in the western side along the road to I.B. should be demolished and new shop buildings may be constructed facing the bus stand (and not the public road) and a high wall of about 10-13 feet should separate the road and the new bus stand premises.
- 2) One way traffic should be introduced in the entire area.
- 3) There shall not be any shop buildings in the southern side of the market for free movement of buses.'

The file relating to the case also further reveals that representations were received from the members of the public for changing the bus stand. Along with the

statement of objections, the resolution dated 7-11-1981 passed by the Administrator, Municipal Council, Coondapur is produced as Annexure-2. In that resolution, it is stated that the existing bus stand is quite insufficient, therefore, it is necessary to change the same and shift the bus stand to some other place. Again there is another resolution dated 4-10-1983 passed by the Administrator of the Municipality for changing the existing bus stand. Annexure-R.4 is another resolution dated 22-3-1984 passed by the Municipal Council, Coondapur for shifting the bus stand to old weekly vegetable market. Annexure-R.5 is another resolution dated 29-8-1985 passed by the Municipal Council, Coondapur for changing the bus stand to weekly market place. The file also contains several representations made by the public. The advantages on shifting the bus stand to the place in question has also been stated in one of the representation found at page 161 of the records. Thus in the light of the representations and the resolutions passed by the Municipal Council, it is not possible to hold that the decision of the Municipal Council to request the Additional District Magistrate to shift the existing bus stand to weekly market is actuated by any ulterior motive. It is not a decision taken all of a sudden. There has been a continuous demand for shifting the bus stand since 1981. The existing bus stand is having an area of less than 35 cents. The records further reveal that everyday more than 400 buses are arriving in the bus stand. It is very difficult to visualise how the existing bus stand could accommodate 400 buses. It may be that all the 400 buses may not arrive at a time. Nevertheless quite a number of buses will be arriving in and leaving the bus stand at or about the same time. Having regard to the fact that the area is less than 35 cents, it is not possible to hold that the grievance made by the public is not justified. The area where the bus stand is directed to be shifted by the impugned order is about one acre in extent. In addition to this, it is conveniently located. Further certain other directions are also contained in the order of the Additional District Magistrate to ensure safety and convenience of the travelling public. Therefore, it is not possible to hold that the decision is in any way actuated by ulterior motives. Accordingly point No. 3 is held in the negative.

20. For the reasons stated above, these petitions fail and the same are dismissed.

21. After the order was pronounced, a request is made on behalf of the petitioners that the operation of the order be stayed. Normally such a request is acceded to, because the aggrieved party has got a right of appeal. But, here is a case in which there has been a demand for changing the bus stand since 1981 and the present bus stand is causing great hardship and inconvenience to the travelling public. In spite of the order passed by the Additional District Magistrate for changing the bus stand, the same could not be given effect to because of the stay order granted by this Court on 19-6-1986. Under these circumstances, granting of interim order as requested by the petitioner would only contribute to the misery of the travelling public of Coondapur to which this Court should not be a party. Accordingly, the interim prayer is refused.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com