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Khathiza Vs. District Magistrate

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Court : Karnataka

Decided On : Sep-29-1995

Reported in : ILR1996KAR1197

Judge : Tirath S.Thakur, J.

Acts : Motor Vehicles Act, 1988 - Sections 115; Motor Vehicles (Amendment) Rules, 1990 - Rule 221(A); Constitution of India - Article 14

Appeal No. : W.P. Nos. 17727 to 17730 of 1993

Appellant : Khathiza

Respondent : District Magistrate

Advocate for Def. : N.P. Singri, HCGP

Advocate for Pet/Ap. : B.N. Jayadeva, ;C.V. Kumar and ;B.V. Pinto, Advs.

Disposition : Petition dismissed

Judgement :
ORDER

Tirath S.Thakur, J

1. Common questions of law have brought these Petitions together for a common hearing and disposal by this common Judgment.

2. The petitioners applied for grant of stage carriage permits for different routes to the Regional Transport Authority, D.K. Mangalore. These applications were upon consideration rejected either in toto or in part by different Resolution passed by the authority and impugned in these Petitions. The Authority held that the permits in question could not be granted in view of two Notifications dated 6th December, 1990 and 6th April, 1993 issued by the District Magistrate, D.K. whereby the entry of City and Mofussil Services into the Hampana Katta area of the City of Mangalore had been prohibited.

3. Aggrieved the petitioners have called in question the Notifications mentioned above, as also the decisions taken by the Regional Transport Authority rejecting the applications made by the petitioners.

4. I may at this stage refer to the two Notifications issued by the District Magistrate, the validity whereof was the burden of the debate between the learned Counsel for the parties.

5. By Notification dated 6th of December, 1990, the District Magistrate, D.K. District Mangalore has directed that the City buses coming into the City of Mangalore from different directions shall terminate their services outside the State Bank - Hampana Katta area, subject to the condition that the above restriction shall not apply or affect the existing services under the permits already granted. The Notification records that the existing arrangements and the number of City buses plying in Hampana Katta and State Bank areas were sufficient to meet the needs of the public and that allowing any more City buses to move into Hampana Katta - State Bank area will cause further traffic congestion in the said area. Reference is made in the Notification to the proceedings of the Regional Transport Authority, Mangalore and the letter received from it, by the District Magistrate suggesting measures to control and restrict the traffic at Hampana Katta and State Bank area of Mangalore City, to avoid traffic congestion resulting in Traffic blockades besides air and noise pollution. The Notification takes note of the lack of halting places around the Hampana Katta area, as also the petitions received from Dakshina Kannada Bus Operators Association and the Motor Transport and Engineering Workers Union, Mangalore on the subject, and in exercise of the

powers conferred upon the District Magistrate under Section 115 of the Motor Vehicles Act, 1988, read with Rule 221(A)(t) of the Motor Vehicles II Amendment Rules, 1990, fixes the stops for the City buses at the places mentioned in the Notification while at the same time restricting the entry of City bus services into Hampana-Katta - State Bank areas arriving from all routes, as already in directed earlier.

6. By the second Notification dated 6th April, 1993, the District Magistrate has gone a step further and directed that even the mofussil services entering Mangalore City from different directions shall terminate outside Hampana-Katta State Bank areas as indicated in the said Notification but exempts the existing mofussil services from the said restriction. The Notification records that the measure has become necessary on account of the fresh permits being issued by the R.T.A. resulting in heavy congestion and blockade of vehicles for considerable time besides air and noise pollution. Lack of halting places around State Bank and Hampana-Katta areas has also been noticed and made a basis for the issue of the Notification. Reference has been made to the representation received from the Canara Bus Operators Association, Udupi, requesting for restricting the entry of buses into Hampana-Katta area which was examined by the District Level Safety Committee and a Resolution passed on the same suggesting that the Hampana-Katta Bus Stand be shifted out of the City. Hampana-Katta area, it is stated in the Notification, has become the nucleus for all commercial and other activities besides being a Bus Stand for the City and Moufussil Bus services. The Notification mentions that a survey had been conducted regarding the vehicular traffic at Hampana-Katta and nearby area and a report submitted by the Secretary R.T.A. regarding the traffic movement in the said area. The report stated that during the peak hours about 156 vehicles/minute (Between 9.00 A.M. to 10.00 A.M.) 147 vehicles minutes (Between 10.00 A.M. to 11.00 A.M.) and 141 vehicles/minute (Between 10.00 to 12.00 Noon) pass the Hampana-Katta Traffic area; out of this about 13 are buses, In the traffic signal point at Hampana-Katta which is manually operated it takes at least 4 minutes to change Traffic signal normally, resulting in heavy traffic congestion at any point of lime while the roads nearby the signal point are not enough to hold this kind of heavy traffic. The Secretary R.T.A. is also said to have reported that there are 1506 bus trips on the

basis of 374 permits operating to Hampanakatta Bus stand from mofussil centres and that under 206 City Bus permits 2002 Bus trips are touching Hampanakatta every day.

7. The District Magistrate appears to have noticed that the high vehicle population had resulted in serious problems of traffic congestion and pollution posing health hazard for the people at large and that even though a decision to shift Hampanakatta Bus Stand was taken as early as in the year 1990, yet it had taken considerable time to implement the same. Realising that the situation could not be allowed to deteriorate any further, the District Magistrate in exercise of his powers under Section 115 of the Act and the Rule mentioned earlier, imposed a restriction upon the entry of mofussil services into the Hampanakatta-State Bank area but exempted the existing services from the said restriction.

8. Based on the aforesaid Notification issued by the District Magistrate, the Respondent - R.T.A. has either rejected the applications made by the petitioners for the grant of permits in toto or has granted permits to some of the petitioners by curtailing the route and terminating the same outside the restricted area. Aggrieved, the petitioners have assailed the Notifications and the decisions recorded by the R.T.A., as already indicated earlier.

9. Learned Counsel appearing for the petitioners submitted that the impugned Notifications were ultravires of Section 115 of the M.V. Act in as much as the same exempted the existing City and moufussil service from the restriction imposed by them. Alternatively it was urged that the power to restrict the entry of vehicles in any given area available to the District Magistrate under Section 115 of the Act, was exercisable only by reference to the class or description of the vehicles, meaning thereby that if the District Magistrate felt that the entry of any particular class or description of vehicle into any area should be restricted in the interest of public convenience he can issue any such order which would then apply uniformly to all such vehicles as answer the description or belong to the class which is subjected to any such restriction. Inasmuch as the District Magistrate had in the instant case restricted the entry of vehicles into Hampanakatta-State Bank area not on the basis of the description or the class of the vehicles but by reference to

the date of issue of their permits, contended the learned Counsel, he committed an illegality which vitiated the impugned Notifications as also the decisions taken by the Road Transport Authority on the basis thereof.

10. It was also submitted that the decision in question had not been taken by the District Magistrate on the basis of an objective, independent and fair appreciation of the relevant considerations touching upon the exercise of power under Section 115 of the Act, but on the basis of the representations and motivation provided by persons belonging to the trade and interested in somehow keeping out competition in so far as providing transport service to Hampanakatta-State Bank area was concerned. Reference in this connection was made to the impugned Notifications to show that the same did mention about the representations received from the operators who are according to the petitioners interested in somehow depriving the petitioners of their right to secure a permit for the area for which the existing operators wanted to create a monopoly in their favour.

11. I find no substance in either one of the submissions made on behalf of the petitioners. The reasons are not far to seek. Section 115 of the Act empowers the State Government or an authority authorised in that behalf to prohibit or restrict subject to such exceptions and conditions, as may be specified, the driving of motor vehicles of any specified class or description either generally in a specified area or on a specified road. The provision may be extracted for the sake of convenience.

Section 115: The State Government or any authority authorised in this behalf by the State Government, if satisfied that it is necessary in the interest of public safety or convenience, or because of the nature of any road or bridge, may be notification in the Official Gazette, prohibit or restrict, subject to such exceptions and conditions as may be specified in the notification, the driving of motor vehicles or of any specified class or description of motor vehicles or of the use of trailers either generally in a specified area or on a specified road and when any such prohibition or restriction is imposed, shall cause appropriate traffic signs to be placed or erected under Section 116 at suitable places;

Provided that where any prohibition or restriction under this section is to remain in force for not more than one month, notification thereof in the official Gazette shall not be necessary, but such local publicity as the circumstances may permit, shall be given of such prohibition or restriction.'

12. A plain reading of the above manifests two distinct features namely (a) the provision empowers the Government or the authority concerned to either restrict or prohibit driving of motor vehicles in a specified area or road and (b) the restriction or prohibition as the case may be, can be subject to such conditions or exceptions as may be specified in the Notification. In other words the provision itself permits making of exceptions or imposition of conditions, in regard to restrictions that the authority may choose to impose in respect of any specified area of road. Stated conversely the making of an exception in favour of any category of vehicles, or the imposition of a conditional restriction is not forbidden by the provisions of Section 115 of the Act. That being so the impugned Notifications while prohibiting entry of the City and mofussil services in to the restricted area, cannot be said to be offending Section 115 (supra). Grant of exemption from restrictions or impositions of a conditional restriction being within the comprehension of Section 115, the impugned Notifications cannot be held to be ultravires of the said provision or otherwise incompetent.

13. Equally untenable appears to me the alternative submission of the petitioners that an exemption within the meaning of Section 115 of the Act could not be granted by reference to the date of issue of the permits of the vehicles but only by reference to the class or description of the vehicles exempted. It was urged that the authority could not exempt certain stage carriages from the restrictions while subjecting others to the rigors of the same. The restrictions contended the learned Counsel had to be founded on the class or description of the vehicles, and ought to apply uniformly to all such vehicles as answered the said description regardless whether they were covered by a new or old permit. Seen thus the Notifications it was argued were discriminatory and therefore liable to be quashed.

14. A careful reading of Section 115 however shows that while the authority can restrict or prohibit the driving of any class or description of vehicles in a specified

area, it has the power to exempt vehicles falling in the prohibited category from the operation of such restriction. In other words the power to exempt available under Section 115 is exercisable in regard to such class or description of the vehicles as may otherwise be generally covered by such restriction. This means that the authority while prohibiting the entry of City or Moufussil services in the specified area, could legitimately exempt from the said prohibition such of the vehicles as may deserve such an exemption. What is significant is that the power to impose conditions or grant is available even in respect of such vehicles as may otherwise be generally falling in the category of prohibited or restricted vehicles. Any other interpretation upon the provisions of Section 115 would in my opinion, render the power of exemption meaningless for if the vehicles are not covered by a particular description or class, the same may even otherwise be immune from the prohibition or restriction imposed on any such vehicles and may not therefore require an exemption in their favour. The exemption of a vehicle within the comprehension of the provisions of Section 115 would be meaningful only if the vehicle belongs to the class or description which is prescribed and would but for a prohibition be governed by any such prohibition or. restriction. Viewed thus there is no illegality in the Notifications granting exemption to the existing City and Moufussil services from the rigors of the prohibition contained in the same.

15. That brings me to an incidental question as to whether the power to grant exemption has been exercised by the District Magistrate in an arbitrary or discriminatory fashion. My answer even to that is in the negative. It is not a case where the District Magistrate has at his whims or fancy chosen any particular individual or operator for the benefit of an exemption; nor is it a case where the decision taken by him is irrational or shrouded in mystery. The decision in my opinion is fairly transparent as well as understandable. It proceeds on the opinion formed by the District Magistrate on the basis of the available material, that the prevailing traffic scenario in Mangalore is far from being conducive to any addition to the existing vehicle population, in that City. The District Magistrate was therefore entitled to say - 'thus far and no further'; and this is precisely what the two Notifications amount to saying. The classification of vehicles based on the date of issue of the permits attached to them, cannot in these circumstances be said to be unfair nor can it be contended that since the District Magistrate was not

prohibiting the entry of all City and mofussil services into the prohibited SBI-Hampana Katta area, the exemption granted in favour of the existing services was in any manner discriminatory. Looking to the object sought to be achieved by Section 115 of the Act, the classification made in terms of the date of issue of the permits cannot be said to be either irrational or offensive to the equality clause contained in Article 14 of the Constitution.

16. That takes me to the other limb of the case set up by the petitioners namely that the impugned Notifications have been issued by the District Magistrate at the instance of operators of City and Mofussil services who intended to create a monopoly in their favour by keeping out competition from new entrants into the trade. The argument proceeds on the basis that the impugned Notifications themselves makes a reference to the representations received from the operators and therefore should be treated to be the only motivation behind the issue of the same. There is no merit in this submission either. It is true that the Notifications in question do make a reference to the representation received but the same does not necessarily mean that the District Magistrate has entirely gone by the contents of the said representations. It is not a case of abdication by the District Magistrate in favour of any extra Constitutional authority nor is it a case of surrender of judgment in favour of any such authority without due and proper application of mind on his own part. The Notifications refer to the representations but do not make the same a basis for taking the decisions by which the SBI-Hampana katta has been made a prohibited area for vehicles plying on new permits. On the contrary, a closer look at the two Notifications shows that the District Magistrate has been influenced mainly by the number of vehicles plying the said area, the density of the Traffic, the congestion that is caused by the heavy rush of vehicles, the lack of parking space, in the area the insufficiency of the Roads to contain such heavy vehicular movement, the consequent problems by way of blockades and pollution as also the fact that the area is as at present sufficiently serviced by the existing City and mofussil services being operated. Such being the position, the very fact that the District Magistrate has noticed the representations received from certain quarters does not ipso facto mean that the decision taken even when otherwise objective is vitiated only because some rivals in. the trade which the petitioners intended to enter have opposed the entry of the new vehicles in the

restricted area. The ever increasing number of vehicles' on the Indian roads, the limited capacities of these roads to cater to such heavy vehicular traffic, the bursting population in the Cities, are certain stark features that cannot be denied, While it is difficult to widen roads, particularly in the older areas of the Cities, the only remedy to relieve congestion in such area lies in prudent traffic control measures including those by way of statutory prohibition in terms of Section 115 of the Act. The Notifications in question give a graphic description of the state of affairs in the City of Mangalore in so far as the chaotic traffic conditions on the roads are concerned, particularly those around the Hampanakatta area. The District Magistrate was therefore perfectly justified in intervening to remedy in a small measure if not wholly the prevailing confusion. His failure to have done so may have amounted to a failure to discharge a statutory duty in terms of Section 115 of the Act and so long as he has acted in the matter no matter at the instance of the existing Bus service operators, it makes little difference to the validity of his action. What is important is whether the Notifications were eventually issued on the basis of a proper appreciation of the relevant considerations and factors and not whether the authority concerned had been moved by the proper quarters to do so. Even assuming therefore that the operators had any axe of their own to grind in getting a prohibitory order issued by the District Magistrate so long as it is shown that the said orders have been issued on a proper and objective consideration of the relevant material, the action taken cannot be held to be legally bad. The challenge to the two Notifications based on the ground mentioned above must also fail.

17. It was then contended on behalf of the petitioners that the impugned Notifications were bad because the same fixed Bus-Stands for the Moufussil and City Bus Services even when the District Magistrate was not competent to do so. Mr. Singri, on the other hand contended that the Notifications simply fixed parking places and halting stations as permitted under Section 117 of the Motor Vehicles Act, 1988. He relied upon the provisions of Rule 221A of the Karnatakd Motor Vehicles Rules 1989 to show that the power under Section 117 was exercisable by the Commissioner of Police in the City of Bangalore and by the District Magistrate elsewhere. The Notifications it was argued were legally valid having been issued by an authority competent to do so. I find substance in the submission made by

Mr. Singri. The Notifications in question identify the places for parking and halting Stations for different services converging on the City of Mangalore from different directions. The power to identify such parking and halting stations as has been made exercisable by the District Magistrates in respect of areas other than the City of Bangalore, in terms of Rule 221A(6) of the Rules aforementioned as amended by the Karnataka Motor Vehicles (Second Amendment) Rules, 1990, There is therefore no illegality in the Notifications in question to warrant any interference with the same even on this ground.

18. Mr. Kumar, learned Counsel appearing for some of the petitioners then argued that the impugned Notifications curtailed the jurisdiction power and discretion of the Regional Transport Authority concerned to grant permits-in respect of the prohibited area referred to in the Notifications. He urged that the District Magistrate could not have in exercise of his power under Section 115 of the Act, clutched at the jurisdiction of the Authority to grant permits for such areas and in as much as the Notifications do so the same are illegal. There is no substance even in this argument. The power to grant a permit and the power to restrict the use of vehicles in the interest of public safety, convenience, or the nature of any road or bridge have to be harmoniously construed. While the two operate in independent fields, it is apparent that the power to restrict the movement of vehicles in an area as conferred by Section 115 of the Act, cannot be undermined. Once the said power is exercised the Authority granting the permit shall be bound to respect the restriction if any imposed by the District Magistrate. It is difficult to accept the argument that the power of the authority granting the permit can be exercised even in derogation of a restriction imposed by Competent Authority under Section 115 of the Act. So long as there is a valid restriction imposed upon any class or description of vehicles entering a prohibited area, the Authority considering the request for grant of the permits cannot ignore such a restriction or act in derogation of the same. This is precisely what would be meant by harmonious construction of the two sources of power available under the Act. Any other interpretation would in my opinion result in not only creating a serious anomaly but would frustrate the very purpose underlying the provisions of Section 115 of the Act. There is therefore no justification for interfering with the impugned Notifications on the ground that the restriction placed by the same interferes with

or curtails the power of the authority competent to grant permits.

19. In the result these Petitions fail and are hereby dismissed but in the circumstances without any orders as to costs.

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