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Court : Andhra Pradesh

Decided On : Sep-27-1999

Reported in : 1999(6)ALD289; 1999(6)ALT558

Judge : Goda Raghuram, J.

Acts : Motor Vehicles Act, 1988 - Sections 66, 70, 71, 80, 87, 98, 100(3) and 104; Andhra Pradesh Motor Vehicles Rules, 1989 - Rule 258(2); Motor Vehicles Act, 1939

Appeal No. : WP No. 2865 of 1997

Appellant : Apsrtc

Respondent : Secretary to Govt. Transport Dept., and Others

Advocate for Def. : Government Pleader for Transport

Advocate for Pet/Ap. : Mr. C.V. Ramulu, SC for APSRTC

Judgement :
ORDER

1. A declaration, that the action of the respondents viz., Transport Department, Government of A.P., the Transport Commissioner, Andhra Pradesh, the Secretary, Regional Transport Authority, East Godavari, West Godavari and Cuddapah Districts, in indiscriminately granting temporary permits, contrary to the provisons

of the Motor Vehicles Act, 1988 (for short 'the Act') and the conditions of various notified schemes of the State Transport Undertaking in the Districts of East Godavari, West Godavari and Cuddapah, is arbitrary and illegal, is sought by the APSRTC. The facts and contentions urged are summarised as hereunder:

(a) About 95% of the routes in the State have been nationalised. Consequently as many as 16,500 buses are plying as stage carriages transporting more than 1.11 crore of people each day.

(b) The petitioner is plying its buses on the notified routes as also on the non-notified routes as per the schemes and on the basis of need, providing adequate transport facility to the public. Its buses cover about 50 lakh kilometers every day, Upwards of 15% of its gross revenues go to the State Exchequer by way of motor vehicle taxation.

(c) The petitioner operates about 650, 530 and 650 buses in East Godavari, West Godavari and Cuddapah Districts respectively.

(d) According to the provisions of the Act and the decisions of the Courts interpreting the said provisions only routes and operators exempted under the conditions of the approved scheme and expressly authorised are entitled to operate. The grant of permits and the conditions subject to which such permits could be granted ought to be in accordance with the provisions of the Act, the A.P. Motor Vehicles Rules, 1989 (for shot 'the Rules') and the conditions and restrictions contained in the relevant and applicable approved scheme.

(e) Contrary to the above requirement and obligation, temporary permits are being granted indiscriminately to private operators consecutively for years together resulting in massive losses to the petitioner and this has the effect of an ultimate burden on the commuter with the costs of operations going up.

(f) Among such illegal and unauthorised grant of permissions are (i) consecutive grant of temporary permits for years together: (ii) grant of stage carriage permits treated as town service routes on notified mofussil routes of the petitioner subverting the purposes of nationlisation and contrary to the conditions of the

approved scheme; (iii) grant of temporary permits treating the route as a town service route even though it is 8 km, beyond the municipal limits and without prior permission of the Transport Commissioner contrary to Rule 258(2)(ii) of the Rules; (iv) grant of permits without any regard to the conditions and restrictions contained in the approved scheme.

(g) While considering the grant of temporary permit no notice is given by the authorities to APSRTC and consequently no opportunity is available to represent and object to the permit applied for by a private operator. Such absence of opportunity also deprives the authorities of knowledge in regard to various approved schemes of the petitioner and the conditions and restrictions contained therein.

(h) Under the provisions of the Act (Section 87) a temporary permit issued would enure only for four months. Contrary to the above statutory provisions and even without any fresh application temporary permits are being renewed for years together without any provision enabling such renewal.

(i) Hundreds of permits are granted contrary to the approved schemes, theprovisions of the Act and the Rules in each District. It is well nigh impossible for the petitioner either to keep track of each and every such permit granted or to take remedial measures to have such permits invalidated, in the absence of the petitioner being heard before the consideration and grant of such permits. The private operators are also indiscriminately filing writ petitions before this Court seeking directions for grant of temporary permits without impleading the APSRTC which is a necessary and proper party having regard to the fact that the reliefs prayed, if granted, would have a potential effect on the approved schemes.

(j) Particulars of some of the temporary permits granted by the respondents contrary to the approved schemes of the petitioner are set out in the Annexures-A and B as material papers to the writ petition.

2. On the aforesaid contentions the relief is sought by the petitioner.

3. Sri K. Harinath, learned Standing Counsel for the petitioner, has cited a decision of the learned single Judge of Karnataka High Court in Karnataka Slate Road Transport Corporation v. Pauli Govis, : AIR1996 Kant247 , in support of the relief sought. During the course of the hearing of the writ petition other Counsel regularly appearing in transport cases have urged that they also be heard having regard to the larger implications of the relief sought as the issue involves questions, which may, if decided, effect the larger section of private operators who are not parties to this writ petition. The Court having permitted them, submissions were made by Sarvasri Noushad Ali, T. Venkata Ramana and K.N. Jwala. The other Standing Counsel for APSRTC Sri A.V. Shivaiah and Sri C.V. Ramulu have also been heard.

4. It is urged on behalf of the private operators that the open-ended reliefas sought in the writ petition should not be granted. Reliance for this contention is placed on the judgment of a learned single Judge of this Court in WP No.13804 of 1990 dated 21-9-1990. Tn the said decision a mandamus was sought by the APSRTC to direct the respondents therein - the RTA., R.R. District and the Secretary, RTA., R.R. District, to seek information from the Corporation about the exislance of any approved scheme and its effect on every application made under Section 70 of the Act, before it is disposed of either under Section 80 or under Section 87 of the Act. This Court declined to give any general directions holding that when statutory mandate is already there, the authorities are bound to follow the statutory mandate and if in any given case there is violation, it is open to the petitioner to seek such remedy as is available to it including an approach to this Court under Article 226 of the Constitution.

5. Having regard to the provisions of Section 98 (Chapter VI) of the Act and the settled interpretation of this provision and the earlier provision occuring in Chapter IV-A of the Motor Vehicles Act, 1939 it is established that the draft or an approved scheme constitutes law and has an overriding effect over Chapter V and other Chapters of the Act. It excludes private operators from the area of the route in operation covered under the said scheme except to the extent excluded under the scheme itself. The right of the private operators to apply for or to obtain permits is frozen and prohibited. No private operator is thereafter permitted to operate a

stage carriage or contract carriage on the notified route except as provided in the scheme itself. The right of any private operator to apply on a notified route, it at all, is to be traced only to the scheme, the prohibitions therein contained and the exceptions thereto specifically engrafted. Only an express authorisation traceable to the specific provisions of the schemeenables the grant or renewal of the permit under the Act vide H.C. Narayanappa v. Slate of Mysore, : [1960]3SCR742 ; Abdul Gafoor v. State of Mysore, : [1962]1SCR909 ; Milakanth Prasad v. State of Bihar, : AIR 1962 SC1135 ; Adarsh Travels Bus Service v. State of U.P., : AIR 1986 SC319 and Pandiyan Roadways Corporation Ltd. v. Thiru N.A. Egappan, : [1987]2SCR391 .

6. Section 71 of the Act prescribes a procedure for the RTA in considering the applications for stage carriage permits. Section 66 mandates that no owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods except in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority. Section 80 enables an application to be made for a permit of any kind at any time and sub-section (2) thereof provides that a Regional Transport Authority or State Transport Authority shall not ordinarily refuse to grant an application for permit of any kind made at any time under the Act. These and other similar provisions regulating grant of permits occur in Chapter V of the Act under heading 'Control of Transport Vehicles'. The Supreme Court in Mithilesh Garg v. Union of India, : AIR 1992 SC443 , considered the provisions of the Act in particular Section 80 and held that the provisions enunciate a liberal legislative policy with regard to grant of permits and that the legislative philosophy underlying Section 80 is, inter alia, to eliminate corruption and favouritism in the process of grant of permits as well as to avoid monopoly of a few persons in this area. It was held that the provisions of the Act are intended to make operation on a particular route economically viable and encourage healthy competition to bring about efficiency in the trade. Frequent reliance on thisprovision is resorted to on behalf of private operators to contend that permits ought to be granted and it is sometimes suggested that such liberal policy should outweigh the constraints on grant of permits injuncted by approved schemes of the State Transport Undertaking

governed by the provisions in Chapter Vf of the Act.

7. Having regard to the provisions of Sections 98 and 104 of the Act such contentions are, however, seen to be misconceived. This position is fortified by the decision of the Supreme Court in Rama Krishna Verma v. State of U.P., : [1992]1SCR830 , wherein, after considering the judgment in Mithilesh Garg case (supra), it is held as under:

'But the free ply is confined to grant of permits under Chapter V of the Act. By operation of Section 98 of the Act, Chapter VI overrides Chapter V and other law and shall have effect notwithstanding anything inconsistent therewith contained in Chapter V or any other law for the time being in force or any instrument having effect by virtue of such law. The result is that even under the Act the existing scheme under the repealed Act or made under Chapter VI of the Act shall have overriding effect on Chapter V notwithstanding any right given to private operators in Chapter V of the Act. No corridor protection to private operators is permissible.'

Since Chapter VI of the Act ordains overriding efficacy to a notified scheme ofthe State Transport Undertaking, which effect equally operates while considering an application of a private operator under Chapter V, it necessarily follows that an application made to the Regional Transport Authority or State Transport Authority by a seeker of a permit is bound to be considered by the authorities concerned by reference to the provisions of both Chapters V and VI.Consequently where in terms of Section 80 of the Act the authority concerned ought not ordinarily to refuse grant of a permit, having regard to the provisions of Section 104, however, such authority is bound by the conditions and restrictions ordained in the approved schemes and could grant a permit only if expressly authorised by the relevant approved scheme including any exemptions engrated therein. A grant of a permit under Section 80 of the Act, which would have the effect of permitting private operations on a route in a manner inconsistant with the conditions of an approved scheme, would be an invalid grant and the permit in nullity. If the relevant approved scheme disables the grant of a permit, the Regional Transport Authority or the State Transport Authority as the case may be, would have no jurisdiction to grant a permit and any permit actually granted by the authority would not be a

grant in the eye of taw, notwithstanding the formal order of grant.

8. In view of the above state of law, having regard to the numerous approved schemes of the State Transport Undertaking across the length and breadth of the State every application for grant of a permit whether a regular permit or a temporary permit, would potentially effect the approved schemes of the State Transport Undertaking. Since the condition precedent to consideration of any such application would be the scrutiny of the approved schemes to determine the extent of permissibility in the matter of grant of a permit, the APSRTC ought to and would be a proper and necessary party in respect of every application for grant of a permit whether regular or temporary. This would be the necessary consequence of a holistic analysis of the provisions of the Act in Chapters V and VI. The RTA and/or the STAT, as the case may be, are/is obligated to enquire whether there exists a scheme under Section 100(3) of the Act, and if so, whether such scheme entailspartial or total exclusion of private operators and further if any exemptions are engrafted, whether the exclusions coupled with the exemption(s) permit the operation on an approved route and consequent grant of permit if so, to what extent and subject to what conditions. This exercise can effectively be carried out only with the participation of the APSRTC. Consequently, notice and opportunity to the APSRTC must be held to be a condition precedent, (a) in compliance with the requirement of the audi alterm partem principle, which not having been expressly excluded in the legislative scheme underlying Chapter V should be deemed to be integral to the provisions therein vide Maneka Gandhi v. Union of India, : [1978]2SCR621 and Swadeshi Cotton Mills v. Union of India, : [1981]2SCR533 ; and (b) a pragmatic requirement of rational hearing and consideration necessary to sensitise the competent authority as to the relevant approved schemes and the restrictions and conditions contained therein, which the APSRTC alone would be in the fitest position to place before the competent authority to guide its statutory discretion in the matter of considering applications by private operators for permit Since the contents of an approved scheme determine the existence or otherwise of the jurisdiction of the RTA or the STAT in respect of considering the grant of permit under Chapter V consideration of the approved scheme is the inescapable norm as an aspect of determination of jurisdictional facts.

9. On an analysis of the provisions of the Act and various decisions interpreting the said provisions, the Karnataka High Court in KSRTC case (supra), deduced the following principles as conditioning the consideration white exercising the power under Chapter V of the Act:

'(1) That a scheme duly published under Section 100(3) of the Motor VehiclesAct, 1988, is the law and the violation of the same would be viewed in the same manner as the violation of any other provision of the Statute;

(2) That in terms of the Section 104 of the MV Act, the R.T.A. or the State T.A. as the case may be, is disabled from issuing a permit except in accordance with the provisions of the Scheme published under Section 100(3);

(3) That for a proper exercise of its power under Section 80 of the Act, the authority concerned shall have to keep in view the provisions of Section 104 of the Act and make sure that the grant of permit by it is not in violation of any scheme duly published under Section 100(3);

(4) That jurisdiction of the authority to grant a permit would depend upon the existence or non-existence of a scheme and the total or partial ban it may contain against any private operator, operating a service on a notified route. Determination of these facts would be essential as the same are jurisdictional facts without which the authority concerned, cannot take a proper decision in the matter;

(5) That the failure on the part of the authority concerned to address itself to the provisions of Section 104, and to make an order consistent therewith would amount to failure on its part to exercise its jurisdiction properly and an error of law which would vitiate the order passed by it.'

The Court in entirely in agreement with the said position of law declared.

10. One other aspect remains to be considered. Whether a general direction of this Court to hear the APSRTC whenever considering any application of a private operator for a regular or temporary permitunder Section 80 or 87 of the Act, should issue. A learned single Judge of this Court in WP No.13804 of 1990, dated 21-9-1990, opined that no such general direction is necessary and in a given case if the

APSRTC is aggrieved, it may pursue the remedies available under the Act or by way of recourse to this Court under Article 226 of the Constitution. Judicial notice can be taken of the fact that the APSRTC a public authority is constrained to file numerous revision petitions against the orders of the Regional Transport Authority, State Transport Authority and writ petitions against the appellate orders of the State Transport Appellate Tribunal. Much of this litigation could be minimised if all the facts were brought to the notice of the statutory authority by the APSRTC, which would be possible only if it is heard before the exercise of statutory powers under Sections 80 and 87 of the Act. This Court has come to the conclusion that the APSRTC is a necessary and proper party entitled to prior opportunity and hearing before exercise of power under Section 80 or 87 of the Act. As a logical corollary it would also be entitled to such prior notice and opportunity in any appeal preferred by a private operator to the STAT against an adverse order of the RTA. To effectuate this legal regime and to ensure that proliferation of litigation is minimised, this Court may legitimately issue a declaration coupled with a direction to the statutory authorities sensitising them as to the mandatory requirement of law.

11. A conceptually analogous principle came to be considered in a recent judgment of the House of Lords in R v. Secretary of State for the Home Department, ex parts, Salem, (1999) 2 All.E.R. 42. The House of Lords considered the question whether when the outcome of an appeal is rendered merely academic and the lis affecting the rights and obligations of a party no longer survive, whether the House of Lords may neverthlesshear and determine the appeal because it involved an issue of public law involving public authority. Distinguishing the earlier opinions of Viscount Simon L.C. and Lord Bridge of Harwich in Sun Life Assurance Company of Canada v. Jervis, (1944)1 Atler 469; and Ainsbury v. Millington, (1987)1 Aller 929, respectively, Lord Slynn of Hadley delivered the opinion of the House as under:

'My Lords, I accept, as both Counsel agree, that in a cause where there is an issue involving a public authority as to a question of public law, your Lordships have a discretion to hear the appeal, even if by the time the appeal reaches the House there is no longer a lis to be decided which will directly effect the rights and

obligations of the parties inter se. The decisions in the Sun Life case and Ainsbury v. Millington (and the reference to the latter in R42 of the Practice Directions Applicable to Civil Appeals (January, 1996) of Your Lordships' House) must be read accordingly as limited to disputes concerning private law rights between the parties to the case.

The discretion to hear disputes, even in the area of public law, must, however, be exercised with caution and appeals which are academic between the parties should not be heard unless there is a good reason in the public interest for doing so, as for example (but only by way of example) when a discrete point of statutory construction arises which does not involve detailed consideration of facts and where a large number of similar cases exist or are anticipated so that the issue will most likely need to be resolved in the near future.'

This Court is in respectful agreement with the said view of the House of Lords. Theprinciple enunciated is a salutary principle generically applicable even to situations involving declaration of a public law principle. Having regard to the numerous disputes between the State Transport undertaking and the private operators which are increasingly adding to the docket of this Court, this Court is of the considered view that a direction to the Regional Transport Authorities and the State Transport Appellate Tribunal in the State to give prior notice and opportunity to'the APSRTC in every lis involving an application of a private operator for grant of regular or temporary permit under Sections 80 and 87 of the Act, would be in the public interest. The ipse dixit statement of this Court in WP No.13804 of 1990 that 'This Court will not give general directions.....' does notconstitute the ratio decidendi of the Court so as to constitute a precedent.

12. Since this decision, though the necessary consequence of the legal environment, is declared at this point of time, it is declared that permits already granted as on the date of this judgment will not stand invalidated solely on the ground that the APSRTC was not afforded an opportunity before any such grant. The law declared herein shall, however, operate in respect of every permit considered and granted by the Regional Transport Authority or the State Transport Appellate Tribunal w.e.f, the date of the judgment.

13. Subject to the above and in the result, it is declared that (i) every RTA and/ or the STAT is obligated to hear the APSRTC whenever considering any application for grant of regular permit or a temporary permit under Sections 80 or 87 of the Act; (ii) any permit granted without an opportunity afforded to the APSRTC to submit its views or objections including with reference to approved schemes, would render any consequent grant of a permit regular or temporary, a nullity.

14. Other questions faintly urged by the petitioner including the one with respect to successive grants of temporary permits are not determined herein in view of inadequate material, factual and legal, in support and in opposition of the said contentions. These questions may fall for consideration in an appropriate case in future.

15. The writ petition is accordingly allowed with the above directions. No costs.

16. Copy of this judgment shall be communicated to the Transport Commissioner, State of A.P., for necessary instructions to the Regional Transport Authorities and the State Transport Appellate Tribunal.

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