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High Court Of Kerala

Case No: W.A. No''s. 2526 of 2000 and 2527 of 2000 etc.

Rahul Tom		APPELLANT
	Vs	
K.S.R.T.C.		RESPONDENT

Date of Decision: Aug. 20, 2001

Acts Referred:

- Kerala Motor Vehicles (State Transport Undertakings) Rules, 1960 - Rule 3
- Motor Vehicles Act, 1939 - Section 2(28A), 68A, 68C, 68D(3), 68FF
- Motor Vehicles Act, 1988 - Section 100(3), 104, 107, 66, 67

Citation: (2001) 3 ILR (Ker) 340

Hon'ble Judges: P.K. Balasubramanyan, Acting C.J.; T.M. Hassan Pillai, J

Bench: Division Bench

Advocate: K.V. Gopinathan Nair and P. Ravindran, for the Appellant; M.N. Sukumaran Nayar M.R. Sabu, Government Pleader, N. James Koshy, T.M. Raman Kartha, P. Gopalakrishna Menon, N.P. Premachandran, G. Rajesh, A. Inees and Thomas Kunnathoor, for the Respondent

Final Decision: Partly Allowed

Judgement

P.K. Balasubramanyan, Ag. C.J.

1. The Kerala State Transport Employees Association and the Kerala State Road Transport Corporation hereinafter referred to as the "K.S.R.T.C.", approached this Court with O.P. Nos. 22415 of 2000 and 23915 of 2000 respectively, praying for the issue of a Writ of certiorari to quash the grant of permits by the Regional Transport Authority, Idukki to one Rahul Tom, hereinafter referred to as an "operator" on the route Kumily to Kottayam. According to the K.S.R.T.C. and the Employees Association, no permit could be granted by the Regional Transport Authorities since the routes were part of notified schemes under Chapter VI of the Motor Vehicles Act, 1988. The learned Single Judge having upheld the challenge to the grants and having quashed the permits, the operator has filed W.A. Nos. 2526 of 2000 and 2527

of 2000 challenging the decision of the learned Single Judge. Three other operators similarly situated along with the Kerala Private Bus Operators Association, Changanacherry Unit, represented by its President have filed W.A. Nos. 3203 of 2000 and 3204 of 2000 challenging the decision of the learned single Judge after obtaining permission from this Court. The Kerala State Transport Employees Association, the Petitioner in O.P. 22415 of 2000, giving rise to W.A. 2526 of 2000, has filed W.A. 3105 of 2000 complaining that the learned Single Judge was not justified in not granting specific reliefs or the reliefs claimed by the petitioner in the Original Petition and was not justified in couching the relief only on general terms. A number of other operators have come forward to get themselves impleaded in the main Writ Appeal and those impleading petitions have also been allowed and all counsel were heard.

2. The genesis of the dispute may now be referred to. The operator applied for two regular permits on the route Kumily to Kottayam before the Regional Transport Authority, Idukki, who is the primary authority. By the order Annexure-A produced with the memorandum of Writ Appeal in W.A. 2526 of 2000, the Regional Transport Authority, Idukki granted the route permit subject to counter signature by the Regional Transport Authority, Kottayam and subject to settlement of timings. According to the operator, these grants were not challenged then and there, either by filing a revision or by filing an Original Petition before this Court. The timings were settled by the Secretary to the Regional Transport Authority, Idukki by orders dated 13.6.2000 and 7.7.2000 respectively. We may note here that even before the Regional Transport Authority, Idukki, the District Transport Officer, Kottayam, for and on behalf of K.S.R.T.C., had raised objection to the granting of permit in view of the fact that the proposed route violates Thekkady-Ernakulam scheme and Kottayam-Thekkady scheme. The actual permits were issued to the operator on 13.6.2000 and 7.7.2000 respectively and it was at that stage that the Original Petitions were filed before this Court invoking Art. 226 of the Constitution of Indian challenging the said orders fixing the timings and generally challenging the permits issued. The essential plea raised was that the grant of permit was in violation of Ext. P.1 modified scheme published on 1.11.1966. There was also a prayer to cancel all regular permits granted after the coming into force of the scheme on 12.10.1966. The contention of the K.S.R.T.C. and the Employees Association was that once a scheme was approved and adopted, no permit could be granted on the route or in any segment of that route unless it was so permitted by the scheme itself. Since there was no such permission in the scheme adopted, the Regional Transport Authority had no jurisdiction or power to grant a permit to an operator subsequent to the coming into force of the scheme. The Original Petitions were resisted essentially on the pleas that since there was no challenge to the original grant, no effective relief can be granted to the petitioners. The petitioners in the Original Petitions had an alternate remedy available under S. 90 of the Motor Vehicles Act, 1988. There was no violation of the scheme as contended. The scheme relied on was

only a supplementation scheme in Form III of the Kerala Motor Vehicles (State Transport Undertakings) Rules, 1960 and the scheme does not exclude private services. The learned single Judge, in the judgment under appeal, came to the conclusion that even if the scheme relied on by the K.S.R.T.C. was only a supplementary scheme (the Rules call it as "supplementation scheme"), what is protected under the scheme are only the existing operators in private sector and new permits cannot be granted except for K.S.R.T.C. Incidentally the learned Judge also noticed that the operator in question was a new entrant. The learned Judge held that a scheme in terms of Chapter VI of the Motor Vehicles Act, as laid down by the Supreme Court, was a self contained and self operative scheme and was a law by itself. Therefore, the right to apply for and obtain a stage carriage permit stood frozen to all private operators except as save under the scheme itself. The only exemption under the original scheme was with regard to the existing operators. Since the operator in question did not come within the exempted category, the grant of permit to the operator could not be sustained. On this basis the leaned single Judge quashed the orders Exts. P4 and P5 and allowed the Original Petitions. As we have noticed, the petitioners in O.P. 22415 of 2000 have come forward with their appeal submitting that further and precise relief should have been granted to the petitioners in the Original Petitions and the operator has come up joined by other private operators, questioning the decision of the learned Judge on the scope and operation of the scheme.

3. Chapter VI of the Motor Vehicles Act, 1988 contains special provisions relating to State Transport Undertakings. S. 98 of the Act very clearly says that the provisions of Chapter VI and the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in Chapter V or in any other law for the time being in force or in any instrument having effect by virtue of any such law. Chapter V deals with control of transport vehicle. Whereas S. 66 of the Act deals with the necessity for permits, S. 67 confers power on the State Government to control road transport. S. 70 of the Act contemplates the making of an application for stage carriage permit. S. 71 of the Act deals with the procedure in dealing with such an application. It is by applying S. 70 of the Act that an operator, like the operator here, initiate steps for the grant of a permit. In other words, his right to have a permit on fulfilling the required formalities stems from or springs from the relevant provisions, which are in Chapter V of the Act. Once the formalities regarding the preparation and publication of proposal regarding road transport service of a State Transport Undertaking are complied with, objections considered and the scheme is notified, the consequences are laid down in S. 104 of the Act. It may be proper to read S. 104 of the Act at this stage.

"104. Restriction on grant of permits in respect of a notified area or notified route. Where a scheme has been published under sub-s.(3) of S. 100 in respect of any notified area or notified route, the State Transport Authority or the Regional Transport Authority, as the case may be shall not grant any permit except in

accordance with the provisions of the scheme:

Provided that where no application for a permit has been made by the State Transport Undertaking in respect of any notified area or notified route in pursuance of an approved scheme, the State Transport Authority or the Regional Transport Authority, as the case may be, may grant temporary permit to any person in respect of such notified area or notified route subject to the condition that such permit shall cease to be effective on the issue of a permit to the State Transport Undertaking in respect of that area or route."

There is no dispute here that the scheme in question has been published under S. 100(3) of the Act as contemplated by S. 104 of the Act.

4. Before proceeding further, it may be appropriate also to refer to S. 99 of the Act. It provides that where any State Government undertaking is of opinion that it is necessary in public interest that road transport services in general or any particular necessary in public interest that road transport services in general or any particular class of such service in relation to any area or route or portion thereof should be run and operated by the State transport undertaking, whether to the exclusion complete or partial, of other persons or otherwise, the State Government may formulate a proposal regarding a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered and other relevant particulars respecting thereto. Thus, S. 99 contemplates that a scheme can be one where there is complete exclusion of private operators or partial exclusion of private operators described as "other persons" in the provision or otherwise. S. 68A of the Motor Vehicles Act of 1939, corresponding to S. 107 of the Motor Vehicles Act of 1988, contains the rule making power for carrying into effect the provisions of Chapter VI. It is in exercise of that power under S. 68-I of the Motor Vehicles Act of 1939 that the Kerala Motor Vehicles (State Transport Undertakings) Rules, 1960 were brought into force. At the relevant time there is no dispute that those rules governed the scheme that was promulgated with effect from 12.10.1966. R.3 of the said rules provided that every scheme proposed by the State Transport undertaking for road transport service shall be in Form I when it is in complete exclusion of existing road transport service, in Form II when the scheme is partial exclusion of existing road transport services and in Form III when the scheme is in supplementation of existing road transport service. According to the operators, the scheme had come into existence in the year 1961 and the scheme in question was only a supplementation scheme, issued in Form No. III, and hence going by R.3 of the Rules, there was no complete exclusion or partial exclusion of existing road transport services. For, in that event, the scheme should have been either in Form I or in Form II and not in Form III. Form III only states that since the State Transport Undertaking is of opinion that for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service, it is necessary in public interest that the passenger transport service in relation to the

area/route/routes specified in Schedule I hereunder should be run and operated by the Kerala State Transport Department in supplementation of the existing passenger transport services on the route, or routes or area concerned. The argument, therefore, is that this is only in supplementation of the existing passenger services on the route and it does not envisage the exclusion of the private operators, either completely or partially, as contemplated by R.3 and Forms I and II issued thereunder. Before answering this argument, it is necessary to note what is the effect of the introduction of a scheme. To consider that aspect, it is not necessary to refer to the various authorities cited before us since the whole question is seen covered by the decision of the Supreme Court in Adarsh Travels Bus Service and Another Vs. State of U.P. and Others, . Therein the Supreme Court, speaking with reference to the Motor Vehicles Act, 1939, held:-

"A perusal of S. 68C, S. 68D(3) and S. 68FF in the light of the definition of the expression ''route'' in S. 2(28A) appears to make it manifestly clear that once a scheme is published under S. 68D 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 vehicle 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. The private operator cannot take the plea of inconvenience of the public. If indeed there is any need for protecting the travelling public from inconvenience the State Transport Undertaking and the Government will make a sufficient provision in the scheme itself to avoid inconvenience being casual to the travelling public.

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In such a case the question really turns on the terms of the Scheme rather than on the provisions of the Statute. In the scheme in question there is a clause to the following effect "No person other than the State Government Undertaking will be permitted to provide road transport services on the routes specified in paragraph 2 or any part thereof". In the face of a provision of this nature in the scheme totally prohibiting private operators from plying stage carriages on a whole or part of the notified routes, it is futile to contend that any of the operators can claim to ply their vehicles on the notified routes or part of the notified routes."

As we understand it, the ratio of the decision of the Supreme Court is that once a scheme is published, by the effect of S. 104 of the Act 1988, the scheme replaces the provisions of the Motor Vehicles Act as it were and any question of grant of a fresh permit to a private operator would depend on the relevant provision in the scheme itself. Dealing with a situation relating to the scheme in question, a Division Bench of

this court in K.S.R.T.C. v. R.T.O., Ernakulam (1997 (2) KLT 330) after referring to the decision in M/s. Adarsh Travel Bus Service and also the decision in Ram Krishna Verma and Others Vs. State of U.P. and Others, , held that no permit to a private operator can be issued to ply the stage carriage on a nationalised route. But, Their Lordships clarified that temporary permits to private operators to ply their vehicles on routes, for which no permit has been applied for or granted to K.S.R.T.C., can be continued to be granted. How the scheme should be understood has been laid down by a Division Bench of this Court in O.P. Nos. 3790, 3795 and 3819 of 1994. In that decision, speaking for the Division Bench consisting of himself and V. Balakrishna Eradi, J. (as he then was), Govindan Nair, C.J. held that a supplementation scheme does not supersede the original scheme unless there is a specific modification or cancellation of any part of the original scheme and the scheme must be looked into for the purpose of deciding whether permits could be granted for operating on portions of the route. Their Lordships referred to Schedule II and the items referred to therein to understand the nature of the scheme. In the case on hand, it is provided against item No. 5 of Schedule II that the number of stage carriages scheduled to operate in the route by private operators was ''nil'' except the existing buses on portions of the route. It may be noted that what is saved is only the existing buses on portions of the route and not even portions of the route, thereby suggesting that on expiry of the permits of the concerned buses even that right would come to an end.

5. The main argument advanced on behalf of the operators is that neither Form I nor Form II under R.30 of the Kerala Motor Vehicles (State Transport Undertakings) Rules was used and since only Form III was used, it had to be understood only as supplementation scheme in terms of R.3 of the Rules. It is emphasised that there is no specific exclusion in Schedule I of the scheme and in that situation, the private operators cannot be kept away from the route on from segments of that route. We find it difficult to accept this submission. In the light of the decision of the Supreme Court in M/s. Adarsh Travels Bus Service, it is now clear that we that we have to look to the scheme for deciding the question whether private operators are permitted or not permitted. The scheme has specified that it is not intended that any private operator is scheduled to operate in the route except the existing buses on portions of the route. It means that on and from the date of the coming into force of the scheme, no private operator would be entitled to ply on the route in question. since by virtue of S. 98 of the Act Chapter V of the Act is overridden, it is obvious that the Regional Transport Authority cannot grant a permit in exercise of its power under S. 72 of the Act after following the procedure laid down in Ss. 70 and 71 of the Act. In our view, the learned single Judge is right in observing that even if the scheme is treated as a supplementation scheme, what is protected under the scheme is the scheme is the existing operators under the private sector and no new permit can be granted to any operator other than K.S.R.T.C. Since the scheme, whether original or supplementation, does not permit the private operator to operate on the route in

question or any portion of the route in question, it is clear that the grant of permits by the Regional Transport Authority, Idukki, must be held to be without jurisdiction. In other words, the Regional Transport Authority has no right to grant any permit to any private operator after the coming into force of the scheme.

6. It is argued that the expression "or otherwise" that occurred in S. 68C of the Motor Vehicles Act of 1939, corresponding to S. 99 of the Act of 1988, cannot be read ejusdem generis with exclusion, complete or partial, it must be held that in terms of S. 99 of the Act, there could also be a scheme otherwise than by way of partial or complete exclusion of private operators. The decision of this Court in Sachidananda Panicker & Ors. v. Director of State and Ors. (1959 KLJ 761) was relied on. Even if that decision is accepted, as pointed out by the Supreme Court in M/s. Adarsh Travels Bus Service Case, we have to look to the scheme to see whether private operators are permitted to operate on the route or any portion of the route. As observed by the Division Bench in the judgment in O.P. 3790 of 1974 and the connected cases, the scheme has to be read as a whole and eventhough Schedule I of the scheme in Form No. III may not make mention of an exclusion, complete or partial, since it shows that no private operator is scheduled to operate on the route other than the existing buses on portion of the route, it has to be held that no fresh permit could be granted to a private operator on the coming into force of the scheme. In our view, nothing turns on the argument that eventhough S. 99 of the Act does not speak of asupplementation scheme, R.3 of the Kerala Motor Vehicles (State Transport Undertakings) Rules 1960 contemplates a supplementation scheme and without complete or partial exclusion. As held by the Supreme Court the scheme once notified occupies the field and we have to look to the scheme to understand whether private operators are scheduled to operate on the route or in portions of the route. Since an understanding of the scheme as now notified it is clear that the operation on the route by private operators is not scheduled or contemplated, it has to be held that the grant of permit to the operator by the Regional Transport Authority is without jurisdiction. As held by the Division Bench in K.S.R.T.C. v. R.T.O., Ernakulam (1997 (2) KLT 330), temporary permits could be granted to the private operators to ply their vehicles on such routes for which no permit had been applied for or granted to K.S.R.T.C.

7. We find once in the argument of leaned Senior Counsel for K.S.R.T.C. that a supplementation scheme means only a scheme to fill a deficiency or to render a thing complete and nothing turns on the description "supplementation scheme" relied on by counsel for the operators. Whether the scheme is the original scheme or a supplementation scheme, what is relevant to be looked into is whether the scheme excludes private operators or provides for operation on the route or in portions of the route by private operators, since as observed by the Supreme Court in M/s. Adarsh Travels Bus Service case, the scheme replaces the provisions of the statute to that extent.

8. We, thus, find that the leaned Single Judge was justified in granting reliefs to K.S.R.T.C. and its employees. The consequence of the decision thus rendered is that the Regional Transport Authorities lost their jurisdiction or right to grant regular permits on the routes or segments of the routes covered by the scheme. In that situation, the petitioners in O.P. 22415 of 2000 are entitled to the declaration sought for by them to the effect that the notification Ext. P1 does not permit the grant of stage carriage permits to private operators and the permits issued to private operators of the finding rendered by the learned Single Judge in the judgment under appeal, which we have affirmed by this judgment. We hold that the petitioners in the two Original Petitions are not only entitled to he relief of the quashing of Exts. P4 and P5, but are also entitled to a declaration that subsequent to the implementation of the scheme on 12.10.1966, no private operator could be granted a permit on the routes in question. To that extent, W.A. 3105 of 2000 is liable to be allowed.

In the result, we confirm the decision of the learned single Judge and dismiss W.A. Nos. 2526, 2527, 3203 and 3204 of 2000. We partly allow W.A. 3105 of 2000 and in addition to the relief granted by the learned single Judge, we also grant a declaration that subsequent to 12.10.1966, the Regional Transport Authorities have no jurisdiction or power to grant regular permits to any operator on the routes covered by Ext. P1 scheme. In the circumstances, we make no order as to costs.