PANDIYAN ROADWAYS CORPORATION LTD.

v.

THIRU M.A. EGAPPAN

FEBRUARY 24, 1987

[E.S. VENKATARAMIAH & K.N. SINGH, JJ.]

Motor Vehicles Act, 1939—Section 68—F(1-D)—Principle underlying provision is that number of services on such route to be frozen on publication of scheme under Section 68C—No justification to limit provision to applications for fresh permit or their renewal and to leave out applications for variation of a permit.

The appellant is one of the State Transport Undertakings. On June 30, 1976 an approved scheme was published under s.68-D of the Motor Vehicles Act, 1939 in respect of the route Madurai to Kumuli authorising the appellant to run its stage carriages and proposing to exclude completely all other persons from operating their stage carriage services under permits covering the entire route except those persons mentioned in Annexure II to the scheme, who were existing operators on the different sectors of the notified route on the date of the publication of the scheme.

The respondent's name was not mentioned in Annexure II as he was operating on a non-scheme route. On February 28, 1981 the respondent secured the variation of his permit from the Regional Transport Authority enabling him to operate on a sector of the notified routes. The appeal against the said order was dismissed and no revision petition was filed against that order.

On December 23, 1982 the respondent obtained from the Regional Transport Authority a second variation of his permit which authorised him to operate his stage carriage service on the route which was also a part of the notified route. An appeal filed against that order was dismissed by the State Transport Appellate Tribunal.

The High Court dismissed the revision petition taking the view that s.68-F(1-D) of the Act could not be considered as a bar for entertaining an application for the variation of a permit since such an application was neither an application for a permit nor for its renewal.

In the appeal to this Court on behalf of the appellant it was

A contended that a draft scheme published under s.68-C of the Act on June 4, 1976, which was still in force was a bar to the grant of variation of the permit authorising the respondent to operate his stage carriage on a sector of the route in respect of which the scheme had been published.

B On behalf of the respondent it was contended that on a true construction of the scheme only persons who were operating their stage carriages under permits issued in respect of the entire route from Madurai to Kumuli alone have been excluded under the approved scheme and not those who were operating between any two places on the notified route or between any place lying outside the notified route and a place on the notified route even though they might be operating on a C portion of the notified route.

Allowing the appeal,

HELD: 1. In the context in which s.68-F(1-D) of the Motor D Vehicles Act, 1939 appears it is difficult to hold that the application for variation of a permit by including the whole or any part of route in respect of which a scheme is published under s.68-C of the Act can be treated as falling outside the mischief of s.68-F(1-D) of the Act. There is no justification to limit the application of s.68-F(1-D) to only applications for fresh permits or their renewal and to leave out their applica- E tion for variation of a permit by the exclusion of the route or a portion of the route in respect of which a scheme is published. The fact that the applicant is the holder of a permit to operate a stage carriage on another route whose variation he is seeking by the inclusion of a route or a part whereof in respect of which a scheme is published under s.68-C ought not to make any difference. The principle underlying F s.68-F(1-D) is that the number of services on such a route should be frozen on the publication of a scheme under s.68-C. [395E-H]

2. The approved scheme excludes the operation by others of stage carriage service on the said route except those whose names are mentioned in Annexure II attached thereto. The respondent is not pro- G tected by any provision under the approved scheme itself. He cannot be permitted to operate on any sector of the notified route in question in view of the provisions contained in s.68-C, 68-D and 68-FF. [396B-C]

Karnataka State Road Transport Corporation, Bangalore v. *B.A. Jayaram and Others,* [1984] 2 S.C.R. 768 & *Adarsh Travels Bus Service* H *and Another* v. *State of U.P. and Others,* [1985] 4 S.C.C. 557, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1758 of 1986. A

From the Judgment and Order dated 22.11.1985 of the Madras High Court in C.R.P. No. 3117 of 1984.

Dr. Y.S. Chitale, A.V. Rangam, T.V. Ratnam and M. Palani for the Appellant. B

K.K. Venugopal, A.T.M. Sampath and S. Srinivasan for the Respondent.

The Judgment of the Court was delivered by C

VENKATARAMIAH, J. The appellant is one of the State Transport Undertakings established in the State of Tamil Nadu. It has questioned in this appeal by special leave the decision of the High Court of Madras in CRP No. 3117 of 1984 affirming an order granting variation of a permit issued under the provisions of the Motor Vehicles D Act, 1939 (hereinafter referred to as 'the Act') by virtue of which the respondent is permitted to run a stage carriage on the route between Checkanurani and Madurai which is a part of a notified route Madurai to Kumuli via Checkanurani, Valandur, Usilampatti, and Theni. Before the High Court the State Transport Appellate Tribunal and the Regional Transport Authority the appellant had pleaded the publica- E tion of a draft scheme under section 68-C of the Act on June 4, 1976 in respect of the route Madurai to Kumuli as a bar to the grant of a variation of the permit prayed for by the respondent. In this Court the appellant has relied upon the existence of an approved scheme published on June 30, 1976 in respect of the very same route Madurai to Kumuli also as a bar to the order of variation of permit granted in F favour of the respondent. The route is common to both the draft scheme dated June 4, 1976 and the approved scheme dated June 30, 1976. We shall, however, consider the effect of the approved scheme on the order granting variation of the permit first.

The facts of the case are these. On June 30, 1976, as stated G earlier, the approved scheme was published under section 68-D of the Act in the Tamil Nadu Government Gazette in respect of the route Madurai to Kumuli authorising the appellant to run its stage carriages on that route. By that approved scheme it was proposed to exclude completely all other persons from operating their stage carriage services under permits covering the entire route, referred to above H

except those persons mentioned in Annexure II to the said scheme without prejudice to any future modifications, variations etc. of their permits. The operators whose names had been mentioned in Annexure II to the scheme were persons who were existing operators on the different sectors of the notified route on the date of the publication of the scheme. The respondent was not one of the those persons who was running a stage carriage service on any part or sector of the route in question on the date of its publication. Hence, his name was not mentioned in Annexure II to the scheme. He was then operating a stage carriage service under a permit issued under the Act on the route Batlagundu to Usilampatti which was non-scheme route. On February 28, 1981 he was able to secure the variation of the said permit from the Regional Transport Authority which enabled him to operate on the route measuring 21.4 Kms. from Usilampatti to Checkanurani, which formed a sector of the notified route. The appeal filed against the said order was dismissed and no revision petition was filed against the order dismissing the said appeal. On 23.12.1982 he obtained from the Regional Transport Authority a second variation of his permit under which he was authorised to operate his stage carriage service over a distance of 16.6. Kms. from Checkanurani to Madurai which was also a part of the notified route. An appeal filed against that order was dismissed by the State Transport Appellate Tribunal. A revision petition was filed under section 64-B of the Act (as in force in the State of Tamil Nadu) before the High Court. The High Court dismissed the revision petition. This appeal by special leave is filed against the above order of the High Court.

As mentioned earlier the appellant pleaded before the High Court that a draft scheme published on June 4, 1976 which was still in force was a bar to the grant of variation of the permit authorising the respondent to operate his stage carriage on a sector of the route in respect of which the scheme had been published. The High Court was of the view that section 68-F(1-D) could not be considered as a bar for entertaining an application for the variation of a permit since such an application was neither an application for a permit nor for its renewal. In arriving at the said decision it relied upon section 68-F(1-D) of the Act which read as follows:-

> "68-F(1-D). save as otherwise provided in sub-section (1-A) or sub-section (1-C), no permit shall be granted or renewed during the period intervening between the date of publication, under section 68-C of any scheme and the date of publication of the approved or modified scheme, in

favour of any person for any class of road transport service in relation to an area or route or portion thereof covered by such scheme . . . . . ." A

It futher relied upon a decision of this Court in *Karnataka State Road Transport Corporation, Bangalore* v. *B.A. Jayaram and Others,* [1984] 2 S.C.R. 768. In that case this Court observed at page 789 thus: B

"Assuming, therefore, that an application for variation of the conditions of a permit referred to in sub-section (8) of section 57 is to be deemed by a fiction of law to be an application for the grant of a new permit the question to which we must address ourselves is for what purpose is such an application for variation deemed to be an application for grant of a new permit. Reading sub-sections (3) to (8) of section 57 as a whole, it is clear that the only purpose is to apply to such an application for variation the procedure prescribed by sub-sections (3) to (7) of section 57 and not for the purpose of providing that when the application for variation is granted, the permit so varied would be deemed to be a new permit. If a permit so varied were to be deemed to be a new permit, the result would be anomalous." C D

From the above observation the High Court deduced that an application for the variation of a permit held by the respondent was not in fact an application for a permit and did not fall within the mischief of section 68-F(1-D) of the Act. In the context in which section 68-F(1-D) appears we find it difficult to agree that the application for variation of a permit by including the whole or any part of route in respect of which a scheme is published under section 68-C of the Act can be treated as falling outside the mischief of section 68-F(1-D) of the Act. There is no justification to limit the application of section 68-F(1-D) of the Act to only applications for fresh permits or their renewal and to leave out applications for variation of a permit by the inclusion of the route or a portion of the route in respect of which a scheme is published. The fact that the applicant is the holder of a permit to operate a stage carriage on another route whose variation he is seeking by the inclusion of a route or a part thereof in respect of which a scheme is published under section 68-C of the Act ought not to make any difference. The principle underlying section 68-F(1-D) of the Act is that the number of services on such a route should be frozen on the publication of a scheme under section 68-C of the Act. It is not, however, necessary for us to pursue the applicability of section 68-F(1-D) E F G H

of the Act to the present case any further since it is brought to our notice that the very same route is the subject-matter of the approved scheme published under section 68-D of the Act on June 30, 1976 to which we have already adverted. The approved scheme, as mentioned earlier, excludes the operation by others of stage carriage services on the above mentioned route Madurai to Kumuli except those whose names are mentioned in Annexure II attached thereto. The respondent is not protected by any provision in the approved scheme itself. He cannot be permitted to operate on any sector of the notified route in question in view of the provisions contained in sections 68-C, 68-D and 68-FF of the Act. The effect of these provisions has been summarised by a Constitution Bench of this Court in *Adarsh Travels Bus Service and Another* v. *State of U.P. and Others,* [1985] 4 S.C.C. 557. Chinnappa Reddy, J. speaking for the Constitution Bench observed at page 566 thus:

> "7. A carefully and diligent perusal of Section 68-C, Section 68-D(3) and Section 68-FF in the light of the definition of the expression 'route' in Section 2(28-A) 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 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."

In view of the above observation we have to hold that in the instant case the respondent is not entitled to operate his stage carriage on the notified route or a portion thereof even though he may have been granted variation of his permit to operate on a sector of the notified route.

We do not agree with the contention urged on behalf of the respondent that on a true construction of the scheme only persons who are operating their stage carriages under permits issued in respect of the entire route from Madurai to Kumuli alone have been excluded

under the approved scheme and not those who are operating between any two places on the notified route or between any place lying outside the notified route and a place on the notified route even though they may be operating on a portion of the notified route. We are firmly of the view that on the entire notified route between Madurai and Kumuli or any part thereof apart from the State Transport Undertaking no person other than those mentioned in Annexure II to the approved scheme can operate a state carriage service. We, therefore, direct the respondent not to operate his stage carriage on the sector in respect of which he has obtained the variation of his permit.

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B

We are informed that the draft scheme published on June 4, 1976 is being considered by the authority concerned under section 68-D of the Act. It is open to the respondent to make any representation which he is advised to make before the said authority regarding the inconvenience caused to him by reason of the approved scheme referred to above.

C

The above appeal is, therefore, allowed accordingly. There is no order as to costs.

D

A.P.J. Appeal allowed.