

T.V. NATARAJ AND ORS. ETC.

A

v.

STATE OF KARNATAKA AND ORS. ETC.

DECEMBER 14, 1993

[A.M. AHMADI AND R.M. SAHAI, JJ.]

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Motor Vehicles Act, 1939—S.68-C—Notification of route—Excluding completely or partially private operators from plying on notified route—Whether excludes operators of inter-State route also—Suggestion for framing proper legislation—Or taking appropriate steps so as to avoid inconvenience to public—Reiterated.

C

The appellants were permit-holders of stage carriages operating on inter-State route having starting point at one or the other place in Karnataka and termini in Tamil Nadu. Some of them were operating on the intra-State route before the route was notified by Anekal Pocket Scheme of 1959 under s. 68-C of the Motor Vehicles Act, 1939. But their plying was not affected as the Scheme was treated as of partial exclusion or not applicable to inter-State route. Latter, their permits were cancelled by the Transport Authority on the ground that the same overlapped the route notified by publication of the Scheme. Aggrieved, the appellants approached the High Court, but could not succeed. Hence the appeals by special leave.

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It was contended by the appellants that since operators of inter-State route were not excluded from the notified Scheme, their permits could not have been cancelled.

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Dismissing the appeals, this Court

HELD : 1.1. Once a scheme is published in relation to any area or route or portion thereof, whether to the exclusion, complete or partial or 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. Consequently, no private operator could operate his vehicle on any part or portion of a notified area or notified route unless unauthorised so to do by the terms of the Scheme itself.

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[1962-B-D] H

- A *Adarsh Travels Bus Service & Anr. v. State of U.P. & Ors.*, [1985] 4 SCC 557, followed.

1.2. In the absence of express authorisation in the Scheme, the controversy as to whether Notification of a route under s.68-C of the Motor Vehicles Act, 1939 excluding completely or partially private operators from plying on the notified route results in excluding the operators of inter-State route as well, is no more res-integra. [963-C]

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Adarsh Travels Bus Service & Anr. v. State of U.P. & Ors., [1985] 4 SCC 557, followed.

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H.C. Narayanappa & Ors. v. The State of Mysore & Ors., [1960] 3 SCR 742; *Mysore State Road Transport Corporation v. The Mysore Revenue Appellate Tribunal & Ors.*, [1975] 1 SCR 493; *Mysore State Road Transport Corporation v. Mysore State Transport Appellate Tribunal*, AIR (1974) SC 1940 and *Abdul Khader Saheb v. Mysore Revenue Appellate Tribunal, Bangalore*, [1973] 2 SCR 925 = AIR 1973 SC 534, referred to.

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1.3. Though the scheme does not mention private operators of inter-State route it is not the implied but express authorisation in the Scheme which could permit a private inter-State Operator to ply on a notified intra-State route. [962-G]

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Adarsh Travels Bus Service & Anr. v. State of U.P. & Ors., [1985] 4 SCC 557, followed.

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Mysore State Road Transport Corporation v. Mysore State Transport Appellate Tribunal, AIR (1974) SC 1940, relied on.

2. It is reiterated that it is for the State to take steps so as to avoid any inconvenience to public either by framing a proper legislation or by taking steps as suggested by this Court earlier. [963-D]

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Adarsh Travels Bus Service & Anr. v. State of U.P. & Ors., [1985] 4 SCC 557, followed.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7435-7447 of 1993.

H

From the Judgment and Order dated 28.7.93 of the Karnataka High

Court in W.A. Nos. 1642, 2018, 1612 & 1641/89 and W.P. Nos. 18992, 18993, 14902 to 14908 of 1993. A

WITH

Civil Appeal No. 7450 of 1993.

From the Judgment and Order dated 28.7.93 of the Karnataka High Court in W.P. No. 18948 of 1993. B

WITH

Special Leave Petition (C) Nos. 18152-53 of 1993 (Computer Code No. 22313 of 1993). C

A.K. Sen, M.R.V. Achar, C.S. Shanthamallappa, G. Prabhakar and N.D.B. Raju for the Appellants.

R. Santhana Krishnan, Ms. Sutheela, Ms. Rajani and K.R. Nagaraja for the Respondents. D

The Judgment of the Court was delivered by

R.M. SAHAI, J. Whether notification of a route under Section 68-C of the Motor Vehicles Act, 1939 (for short 'the Act') excluding completely or partially private operators from plying on the notified route results in excluding the operators of inter-State route as well is the question of law that arises for consideration in these appeals. E

Although the controversy appears to have been settled long ago yet the circumstances in which the dispute has been continuing till now and has reached this Court may be narrated. The appellants are permit holders of stage carriage operating on inter-State route having starting point at one or the other place in State of Karnataka and termini in the State of Tamil Nadu. Some of them are operating on the inter-State route since before the route was notified by what has come to be known as 'Anekal Pocket Scheme' of 1959. But their plying was not affected as the Scheme was treated as of partial exclusion or not applicable to inter-State route by this Court. Now they are aggrieved by cancellation of their permits as it overlaps the route notified by publication of Scheme in 1959 under Section 68-C of the Act. The validity of this Scheme was upheld by this Court in F
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- A *H.C. Narayanappa & Ors. v. The State of Mysore & Ors.*, [1960] 3 SCR 742.
But in view of the observations made to the following effect :

- B "But a scheme under Section 68-C must be one in relation to an area or any route or portion thereof wherein the transport service is to be undertaken by the State Transport Undertaking to the exclusion, either complete or partial, of other operators. Col. 1 of the approved scheme undoubtedly describes the area in relation to which the scheme is approved, but by the designation of the area in the scheme, an intention to exclude either wholly or partially the operators of stage carriages from that area is not evinced either expressly or by implication".
- C

the Regional Transport Authority modified the inter-State permits and imposed a condition to the following effect:

- D "As the route for which the permit is held overlaps the route notified by the Government of Mysore in its Notification No. HD 39-EMB-59 dated 15.4.1959 no passenger from any point situated in the notified route other than those desirous of alighting or boarding at any point beyond Hoskote shall be carried in the vehicle or vehicles covered by such permits".

- E In 1963, it is claimed that the State Transport Authorities of Karnataka and Madras, having regard to the interest of the travelling public, after investigating the necessity for grant of permits, granted stage carriages through the Anekal Pocket Scheme with the same restrictions as were imposed earlier and are known as corridor restrictions'. The grant of
- F permit was objected to by the Mysore State Road Transport Corporation in so far as it overlapped notified routes. The dispute ultimately reached this Court and question arose whether a term, it could be granted to an inter-State transport operator for the whole of the route despite the fact that a part of the route overlapped a part of notified intra-State route. In
- G *Mysore State Road Transport Corporation v. The Mysore Revenue Appellate Tribunal & Ors.*, [1975] 1 SCR 493, this Court did not enter into the question whether the State Transport Undertaking was empowered to prohibit the use of any portion of a route by inter-State operators as it was of opinion that even if it was shown that State Transport Undertaking could totally exclude inter-State operators from using any part of a notified route,
- H it was a question of interpretation of the Scheme framed under Section 68-

C of the Act whether it intended to exclude private operators from operating on the route totally or partially. The Bench thereafter, on an examination of the Scheme, came to the conclusion that it excluded only the operators named therein. The Bench held that the inter-State operators were not meant to be denied the use of the overlapping portions of routes covered by the Scheme as their names were not mentioned as required by the rules. The Bench further observed that the Scheme mentioned complete exclusion, but this exclusion was in respect of operators providing services between the termini mentioned therein and not merely using overlapping portions of the notified routes incidentally. Soon after this judgment was rendered another appeal filed by the Mysore State Road Transport Corporation in respect of inter-State route of a different scheme came up for consideration before a 3-Judge bench in *Mysore State Road Transport Corporation v. Mysore State Transport Appellate Tribunal*, AIR (1974) SC 1940. Even though the nature of permits was different the Bench observed that there was, 'no difference in the principle applicable to both the cases. The principle governing intra-State routes has been extended to inter-state routes vide *Abdul Khader Saheb v. Mysore Revenue Appellate Tribunal, Bangalore*, [1973] 2 SCR 925 = AIR (1973) SC 534. As the recent decision to which reference has been made seems to take a contrary view to that taken by even larger Benches of this Court, we find it necessary to re-examine the question posed before us'. The majority in the Bench after examining the matter in detail held :

"With respect we do not doubt the correctness of the decision in *Nilkanth Prasad's* case 1962 Supp. (1) SCR 728 = AIR 1962 SC 1135 which followed the decisions of different Constitution Benches of this Court".

The effect of this decision was that the decision rendered in *Mysore State Road Transport Corporation v. The Mysore Revenue Appellate Tribunal & Ors.*, [1975] 1 SCR 493, was held not to be good law. Yet it appears the inter-State permit holders have been plying with corridor restriction and the objection raised by the Corporation was not accepted presumably because the latter case related to intra-State route. However, the dispute about inter-State route reached this Court again in Civil Appeal No. 1198-1282 of 1986. By that time the decision in Constitution Bench case in *Adarsh Travels Bus Service & Anr. v. State of U.P. & Ors.*, [1985] 4 SCC 557, had been rendered. The Bench, therefore, did not enter into merits and directed the State Transport Authority to decide it again in the light of

- A *Adarsh Travels'* case (supra). This time the objection was upheld by the State Transport Authority and the appeal and writ petition filed against the order cancelling permits of the appellants also failed.

In *Adarsh Travels'* case (supra), this Court held :

- B "A careful 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
C 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
D scheme itself".

- The decision in *Mysore State Road Transport Corporation v. The Mysore Revenue Appellate Tribunal & Ors.*, [1975] 1 SCR 493, which was not approved in *Mysore State Road Transport Corporation v. Mysore State Transport Appellate Tribunal*, AIR (1974) SC 1940, was specifically over-
E ruled. The distinction, therefore, of partial or complete exclusion from notified route became immaterial. Clause (3) of the approved Scheme published in January 1959 reads as under :

- F "The route or routes (with their starting points, termini, intermediate stations and route length) in which the State Transport Undertaking will introduce its services to the exclusion of private operators".

- It is true that it does not mention private operators of inter-State route, but in view of the decisions in *Adarsh Travels'* case (supra) and *Mysore State Road Transport Appellate Tribunal*, AIR (1974) SC 1940, it is not the
G implied but express authorisation in the Scheme which could permit a private inter-State operator to ply on a notified intra-State route.

- H Mr. Ashok Sen, the learned senior counsel for the appellant, relied on observations in *Adarsh Travels'* case (supra) and urged that whether a

scheme was for total or partial exclusion depended on interpretation of the scheme itself. According to him, a reading of the Scheme indicated that since operators of inter-State route are not excluded from the Scheme, the view taken by the High Court or the Transport Authority cannot be upheld. The submission cannot be accepted in view of overruling of the earlier decision of this Court in *Mysore State Road Transport Corporation v. The Mysore Revenue Appellate Tribunal & Ors.*, [1975] 1 SCR 493, by the Constitution Bench. Even though the Bench in *Mysore State Road Transport Corporation v. The Mysore Revenue Appellate Tribunal & Ors.*, [1975] 1 SCR 493, did not consider it necessary to decide if publication of scheme precludes an inter-State operator from playing on notified portion of intra-State route as the Bench was satisfied that the scheme did not exclude an inter-State operator from plying but in view of the decision in *Adarsh Travels'* case (supra) and in absence of express authorisation in the Scheme, the Controversy is no more res-integra.

In the result, these appeals fail and are dismissed. We may, however, while dismissing these appeals, reiterate what was said in *Adarsh Travels'* case (supra) that it is for the State to take steps so as to avoid any inconvenience to the public either by framing a proper legislation or by taking steps, as were pointed out in that decision.

R.P.

Appeals dismissed.