

PETITIONER:
T. N. RAGHUNATHA REDDY

Vs.

RESPONDENT:
MYSORE STATE TRANSPORT AUTHORITY

DATE OF JUDGMENT:
24/02/1970

BENCH:
SIKRI, S.M.
BENCH:
SIKRI, S.M.
BHARGAVA, VISHISHTHA
VAIDYIALINGAM, C.A.

CITATION:
1971 AIR 1662 1970 SCR (3) 780
1970 SCC (1) 541

ACT:

Motor Vehicles Act 4 of 1939-'Kolar Scheme' approved and published by Mysore State Government under s. 68-D of Act-'Existing permit holder' within meaning of cl. (d) of scheme-Who is Agreement between Mysore and Andhra Governments for counter-signing each other permits for inter-state routes-Such agreement whether overrides Chapter IV-A of Act.

HEADNOTE:

In 1959 the States of Mysore and Andhra Pradesh entered into a reciprocal arrangement agreeing thereby that certain permits issued by the Transport Authorities of one State should be counter-signed by those of the other. Under s. 43(1) of the Motor Vehicles Act, 1939-the Government of Mysore issued directions to the State Transport Authority to give effect to the above arrangement. On April 25, 1968 the Regional Transport Authority Cuddapah, Andhra Pradesh issued a permit to the appellant for the Cuddapah-Bangalore inter-State route under s. 63 of the Act, which was to be valid up to May 13, 1971. The appellant then applied to the State Transport Authority in Mysore for counter-signature of his permit. By then the Government of Mysore had by its order dated 25-1-1968 approved under s. 68-D of the Motor Vehicles Act, a scheme called the 'Kolar scheme'. That scheme provided for exclusive operation by the Mysore State Transport Undertaking of stage-carriages on the notified routes. Under the scheme existing permit holders' could continue to operate inter-State routes except that their permits would be ineffective for the overlapping portions of the notified routes. On March 1, 1968 the Mysore State Transport Undertaking applied under s. 68F(1) to operate buses on the notified routes. In December 1968 the Regional Transport Authority resolved to give effect to the scheme from 1-1-1969. Meanwhile the appellant's application for counter-signature came up before the Mysore State Transport Authority on July 6, 1968. By that time, however, writ petitions had been filed in the High Court, challenging the 'Kolar scheme' and the Court had made interim orders staying the operation of the, scheme. In that situation the State

Transport Authority, Mysore granted to the appellant counter-signature on his permit, expressly subject to the decision of the High Court as to the validity of the scheme. On October 7, 1968 the High Court dismissed the said writ petitions and upheld the validity of the scheme. Thereupon the State Transport Authority issued a notice to the appellant to surrender the counter-signature slip and stop running the buses. The appellant challenged this order in a writ petition under Art. 226 of the Constitution. The petition being dismissed he appealed by special leave to this Court. The appellant contended inter alia that (i) the counter-signature on the appellant's permit could not be cancelled as he was an 'existing permit holder' under cl. (d) of the scheme and for this purpose the crucial date was 1-1-1969 when the order under 68F(2) came into effect; (ii) Inter-State agreement overrides the provisions of Chapter IV-A of the Act

HELD : (i) Assuming, without deciding, that the date of publication is not the appropriate date, the date on which the transport Undertaking

781 applies under s. 68F(1) for a permit must be the date with reference to which the expression "existing permit holder" must be interpreted. The application by the State Transport Undertaking in the present cases was made on March 1, 1968. If this was the crucial date, the appellant was not an "existing permit holder" because he did not obtain his countersignature till July 1968. [785 C-D]

Abdul Gafoor v. State Mysore, [1962] 1 S.C.R. 909, applied.

Sri Satyanarayana Transports (P) Ltd. Guntur v. Andhra Pradesh

State Road Transport Corporation, C.A. No. 347 of 1961 dt. 30-10-1961, distinguished.

(ii) Even if the crucial date be taken as January 1, 1969 as contended by the appellant, he must still fail on the ground that he was not a permit holder at all. His counter-signature must be deemed to have lapsed when the High Court on October 7, 1968 dismissed the writ petitions in which the 'Kolar scheme' had been stayed. The order of the Regional Transport Authority granting the counter-signature "subject to the decision of the High Court of Mysore about the validity of the Nationalisation Scheme of the Kilar Pocket" in the context of the case meant that if the writs failed the counter-signature would automatically lapse. [786 A-B]

The Smarth Transport Co. v. The Regional Transport Authority, [1961] 1, S.C.R. 631 at 639, referred to.

(iii) An inter-State agreement cannot over-ride the provisions of Chapter IV-A. The inter-State agreement is not law and to hold that an inter-State agreement over-rides Chapter IV-A would be to completely disregard the provisions of s. 68-B of the Act. Articles 162 and 298 of the Constitution had no relevance in this connection. Assuming that a State hits power to enter into agreement with another State in exercise of its executive powers under Art. 162 and under Art. 298 it can carry on trade or business, the facts did not throw any bight on the question for decision. [786 H-787 A]

JUDGMENT:

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 1564 of 1969.

Appeal by special leave from the judgment and order

dated April 15, 1969 of the Mysore High Court in Writ Petition No. 1112 of 1969.

P.Ram Reddy, P. Parameswara Rao and A. V. V. Nair, for the appellant.

Niren De, Attorney-General, R. Gopalakrishnan and S. P. Nayar, for respondent No. 1.

Shyamala Pappu and Vineet Kumar, for respondent No. 2.

The Judgment of the Court was delivered by

Sikri, J. This appeal by special leave is directed against the judgment of the High Court of Mysore dismissing Writ Petition No. 1112 of 1969 filed by T. N. Raghunatha Reddy, appellant before us, against the Mysore State Transport Authority. The

782 appellant had prayed to the Court to quash the order/endorsement of the respondent, dated March 5, 1969.

In order to appreciate the points raised before the High Court and before us it is necessary to give a few facts. In 1959 the States of Andhra Pradesh and Mysore appear to have entered into a reciprocal arrangement regarding inter-State road transport. In exercise of the powers conferred by sub-s.(1) of S. 43 of the Motor Vehicles Act, 1939 (Central Act IV of 1939) the Government of Mysore issued a direction to the State Transport Authority to take necessary action to give effect to the above arrangement. On October 8, 1964, the State of Mysore published under cl. (d) s. 68-C of the Motor Vehicles Act, 1939 hereinafter referred to as the Act what is called the "Kolar Scheme". Clause (d) of the scheme reads as follows :

"(d) Whether the services are to be operated by the State or by the State Transport to the exclusion, complete or partial of other persons or otherwise The state Transport Undertaking will operate service on all the routes to the complete exclusion of other persons except that:-

(a) that existing permit holders on the inter-State routes may continue to operate such inter-State routes, subject to the condition that their permit shall be rendered ineffective for the overlapping portions of the notified routes".

It is the case of the appellant that in March 1967 on a proposal made by the State of Mysore, the States of Andhra Pradesh, and Mysore entered into an agreement for countersigning a second inter-State permit on the route Cuddapa to Bangalore, and on April 4, 1967, the Transport Commissioner of Andhra Pradesh showed willingness to countersign a second permit. On April 13, 1967 the Transport Commissioner of Mysore State expressed willingness to countersign the second permit. It is further the case of the appellant that although the State of Andhra Pradesh carried out the agreement and countersigned the second permit on the Bangalore-Cuddapa route in favour of a Mysore operator the Mysore State refused to carry out this agreement. On January 25, 1968, the Kolar Scheme, as approved, was published in the Gazette under s.68-D(3) of the Act. On March 1, 1968, the Mysore undertaking applied under s.68F(1) to operate buses from January 1, 1968, or a later date. On April 25, 1968, the Regional Transport Authority, Cuddapah issued a permit to the appellant for Cuddapah-Bangalore route, an inter State route, under S. 63 of the Act. This permit is valid upto May 13, 1971. On May 16, 1968, the appellant applied to the State Transport Authority, Mysore, for counter-signature under s.63 of

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the Act, and on May 20, 1968, the Transport Commissioner,

Andhra Pradesh, requested the Transport Commissioner, Mysore, to countersign the appellant's permit under the agreement.

In the meantime the Kolar Scheme had been challenged in the High Court and the High Court stayed the Kolar Scheme pending the decision of the writs.

The application of the appellant, dated May 16, 1968, for the grant of counter-signature of the permit came up for consideration before the Mysore State Transport Authority on July 6, 1968.- The learned counsel for the appellant urged before it that "counter-signature may be given with any timings found suitable by the Authority for their service which is an express service and does not stop in all stations as the shuttle services of the (in the case of) objectors." He also urged that "counter-signature may be considered and granted as there is a stay order of the High Court of Mysore in W.P. No. 1390 of 1968 against the operation of the Kolar Nationalisation Scheme and that his permit was granted before the Scheme was approved and that the permit is issued under reciprocal agreement." The grant of counter-signature was opposed by a number of objectors. The Law Officer of the Mysore State Undertaking argued that though there was a stay order against the Kolar Scheme and its implementation it did not authorise any Transport Authority to grant any fresh permits for counter-signature. The Transport Authority observed:

"After considering the elaborate arguments of the counsels for the petitioner and objectors and taking all aspects of the matter and facts as disclosed from the records and the large number of existing services on the route or sectors of the route, the S.T.A. resolved to grant the counter-signature subject to the decision of the High Court of Mysore about the validity of the Nationalisation Scheme of Kolar Pocket and with the following modification to the timings already granted by the R.T.A. Cuddapah."

In pursuance of this resolution actual counter-signature was granted on July 6, 1968. On October 7, 1968, the High Court dismissed the writs relating to the Kolar Scheme and the Regional Transport Authority its meeting on December 30, 1968, passed a series of orders which it deemed fit consequent on the implementation of the Kolar Scheme. On March 10, 1969, the State Transport Authority, Mysore, issued a notice to the appellant to surrender the counter-signature slip and stop running the buses. On March 15, 1969, the appellant filed writ petition No. 1112 of 1969 challenging this order.

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Before the High Court two points were raised on behalf of the appellant; (1) That the State Transport Authority should have heard the appellant before calling upon him to surrender the counter-signature and the Secretary of the State Transport Authority had no power to issue the impugned endorsement; (2) As the permit had been granted to the petitioner in pursuance of an inter-State agreement, the State Transport Authority in Mysore had rightly granted the counter-signature and the counter-signature could not be revoked later.

The first point is not raised before us. Regarding the second point the High Court held that "a scheme under Chapter IV-A (of the Act) will override any agreement including an inter-State agreement. Unless such scheme itself exempts permits granted in pursuance of inter-State

agreements such permits will also be subject to the scheme." The High Court further held that "as the Kolar Scheme does not exempt permits granted in pursuance of inter-State agreements, the petitioner cannot claim countersignature of his permit when the operation, of his stage carriage in this State is inconsistent with the scheme."

Before us the learned counsel for the appellant, Mr. Ram Reddy, has raised four points : (1) As the appellant is an existing permit holder within clause (d) of the Scheme, the counter-signature cannot be revoked; (2) Assuming that the appellant does not come under clause (d); the counter-signature should not be revoked. it could only be modified with the condition that the appellant should not pick up or drop passengers on the overlapping portion of the route; (3) that inter-State agreements override the provisions of Chapter IV-A of the Act, and (4) that the scheme imposing total exclusion of private carriers offends the provisions of Art. 301 of the Constitution.

Regarding the first point, the learned counsel urges that the expression "existing permit holder" in clause (d) of the Scheme has to be interpreted as if the scheme is read on January 1, 1969 when orders under S. 68F(2) of the Act came into effect. He refers to the following passage in the order of the Regional Transport Authority, dated December 30, 1968 :

"Further we have resolved to give effect to the Approved Scheme of Kolar Scheme with effect from 1-1-1969 in accordance with Section 68F(2) and resolved to take the following action under Section 68F(2) of the M.V. Act 1939 (as appended hereto)."

It seems to us that this is not a correct way of interpreting the Scheme. The scheme as approved, was published in the Government Gazette under s. 68D(3) on January 25, 1968, and
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on March 1, 1968, the Mysore undertaking applied under s. 68 F(1) to operate buses from January 1968 or a later date. As held by this Court in *Abdul Gafoor v. State of Mysore* ('') "when a scheme prepared and published under s. 68-C has been approved and an application has been made in pursuance of the scheme and in the proper manner as specified in Ch. IV nothing more remains to be, decided by the Regional Transport Authority and it has no option to refuse the grant of the permit" and "when taking action under s. 68-F(1) the Regional Transport Authority does not exercise any quasi-judicial function and acts wholly in a ministerial capacity." It seems to us that even if the date of publication may not be the appropriate date-we do not decide that it is not an appropriate date-atleast the date on which the transport undertaking applies under s. 68F(1) for a permit must be the date with reference to which the expression "existing permit holder" must be interpreted. If this is the crucial date, then it is quite clear that the appellant was not an existing permit holder because he did not obtain his countersignature till July 1968.

The observations of Raghubar Dayal, J. in *Sri Satyanarayana Transports (P) Ltd. Guntur v. Andhra Pradesh State Road Transport Corporations* ('') do not assist the appellant. In that case the Court was dealing with the objection that it was the duty of the Road Transport Corporation to furnish the date of implementation of each scheme as a part of the proposal, the date being a material particular. In this connection the Court observed

"The question whether the State

Government can fix a date or not is not for determination in this appeal and we do not express any opinion on that point. Suffice it to say that the Regional Transport Authority has the power to fix a date after the scheme has been approved by the State Government, as it is that authority which has, under s. 68F, to issue a permit to the State Transport Undertaking for plying motor vehicles and to cancel existing permits. The date up to which the existing permits are to continue and the date for the State Transport Undertaking to commence plying motor vehicles should be such that there be a continuity of transport services on the notified route and that there be no dislocation of transport arrangements."

The Court was not considering the crucial date for the purpose of interpreting the expression "existing permit holder in a scheme."

(1) [1962] 1 S.C.R. 909.

(2) Civil Appeal No. 347 of 1961 judgment on October 3, 1961.

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Apart from that the appellant must fail on the ground that he was not a permit holder at all even if the crucial date be January 1, 1969. His counter-signature must be deemed to have lapsed when the High Court dismissed the writ petitions in which the Kolar scheme had been stayed on October 7, 1968. In our opinion the order of the Regional Transport Authority granting the counter-signature "subject to the decision of the High Court of Mysore about the validity of the Nationalisation Scheme of Kolar Pocket," in the context which we have reproduced -above, means that if the writs failed the, counter-signature would automatically lapse. It will be recalled that this Court held in *The Samrath Transport Co. v. The Regional Transport Authority(-)* that the Regional Transport Authority is within its rights not to entertain an application if the Scheme had been approved and published. This Court observed :

"The Regional Transport Authority is authorized for the purpose of giving effect to an approved scheme to refuse to entertain an application for renewal of any other permit. This power does not depend upon the presentation of an application by the State Transport Undertaking for a permit. This power is exercisable when it is brought to the notice of the Authority that there is an approved scheme and, to give effect to it, the application for renewal cannot be entertained."

The Regional Transport Authority must have been aware of this and it must be because of the stay order that the counter-signature was granted to the appellant by it.

In view of our decision that the appellant's counter-signature lapsed when the writ petitions were dismissed, the second point does not arise.

Regarding the third point, we were unable to appreciate how an inter-State agreement overrides the provisions of Chapter IV-A. The inter-State agreement is not law and to hold that an inter-State agreement overrides Chapter IV-A would be to completely disregard the provisions of s. 68 B of the Act which provides that "the provisions of this Chapter and the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith

contained in Chapter IV of this Act or in any other law for the time being in force or in any instrument having effect by virtue of any such law." In this connection reference was made to Art. 162 and Art. 298 of the Constitution. But we were unable to appreciate what relevance these articles (1) [1961] 1 S.C.R. 631 at 639.

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have to the point at issue. Assuming that a State has power to enter into agreement with another State in exercise of its executive powers under Art. 162, and under Art. 298 it can carry on trade or business, we are unable to see what light these facts throw on the question before us.

We stopped the learned counsel from developing the fourth point because this point was not taken up in the High Court.

In the result the appeal fails and is dismissed. In the circumstances there will be no order as to costs in this Court.

G.C.

Appeal dismissed..

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