

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. _____ OF 2009
(Arising out of S.L.P. (C) Nos.17119-21 of 2005)

A.P.S.R.T.C.

.....Appellant

Vs.

Reg. Transport Authority,
Ananthapur & Anr.

.....Respondents

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Leave granted.
2. Challenge in this appeal is to the judgment of a Division bench of

the Andhra Pradesh High Court allowing the Writ Appeals filed by the respondent No.2. Three Writ Appeals were disposed of by a common order. All the three Writ Appeals were filed by the respondent No.2.

3. Background facts in a nutshell are as follows:

Challenge in these Writ Appeals was to the order passed by learned Single Judge on 1st December, 2004 in W.P.No.3836 of 2004 and batch. Learned single Judge allowed the writ petitions and set aside the order of the State Transport Appellate Tribunal (hereinafter referred to as the 'STAT') passed in A.P.No.424 of 2003 dated 10-2-2004 granting one pucca stage permit on the town service route Hindupur Municipal bus Stand to Kothapalli via Mothukapalli, Seva Mandir, Kodigapalli, Parigi, Dharmapur, Seerepalli and Mudireddipalli in favour of the respondent no.2 herein. After setting aside the said order, learned single Judge remitted back the appeal to the appellate Tribunal for fresh consideration and disposal. Facts in brief, as have been stated, are that respondent no.2 applied for two pucca stage carriage permits on town service route Hindupur Municipal bus Stand to Kothapalli via Mothukapalli, Seva Mandir, Kodigapalli, Parigi, Dharmapur,

Seeripalli and Mudireddipalli to perform 12 single trips each per day with night halts at Hindupur Municipal Bus Stand and Kothapalli. The application was opposed and by proceedings of the Regional Transport Authority(hereinafter referred to as the 'RTA'), Anantapur, dated June, 2003, the application was rejected on the ground that the proposed town service route is a new route and Government alone has to formulate the route for applying stage carriage permits under the provisions of Section 68(3)(ca) of the Motor Vehicles Act, 1988 (for short the Act") and permission of the Transport Commissioner had not been obtained by the respondent no.2 under Rule 258 (2)(ii) of the A.P. Motor Vehicle Rules, 1989 (for short "the Rules") for the proposed route. After rejection of the application, respondent no.2 preferred an appeal before the STAT which on 10th February, 2004 allowed the appeal. The appellate Tribunal took notice of the fact that one N. Yunus Khan had applied for commissioner in individual cases since permission had already been granted for the route in question. Not only that, respondent no.2 had in fact on 29 May, 2002 approached the State Transport Authority, Andhra Pradesh for requisite permission under rule 258(2)(ii) of the Rules for operating on the town service route-Hindupur

Municipal Bus Stand to Kothapalli via Mothukupally, Seva Mandir, Kodigipalli, Parigi, Dharmapura, Seerapalli, Mudireddipalli. With reference to the said application, by proceedings dated 30 May, 2002, the Transport Commissioner informed the appellant that since the said route is an existing route, the respondent no.2 has to approach the Regional Transport Officer, Anantapur for further relief. Accordingly, the respondent no.2 had moved the Regional Transport Authority, Anantapur, which, by its proceedings dated 7 June, 2003, rejected the application on the ground that the proposed town service route was a new route and not an old route and permission of the Transport Commissioner was required. Only Government can formulate the said route and reference was made by the Regional Transport Authority to the provisions of Section 68(3)(ca) of the Act. Sub-clause (ca) was inserted in sub-Section (3) of Section 68 only with effect from 14 November, 1994 by Act No.54 of 1994 and this cannot have any retrospective effect. Only Rule 258(2) (ii) of the Rules was applicable since N. Yunus Khan had applied for the route in question in 1990 and was granted the permit to operate on the said route in 1992.

Writ appeal was allowed primarily on the ground that the route was an existing route as on the date when sub Section (ca) of sub section 3 of Section 68 of the Act was brought on the statute book.

4. Learned counsel for the appellant-Corporation submitted that the High Court in the Writ Appeals primarily came to the conclusion that the route in question was an existing one. The High Court's conclusion was that Rule 258 (2) (ii) of the Rules was applicable since N. Yunus Khan had applied for the route in question in 1990 and was granted the permit to operate in the said route in 1992. It is submitted that the High Court lost sight of the fact that the RTA inter alia observed as follows:

“On verification of record of this office it is revealed that the Transport Commissioner, A.P. in proceedings R. No. 25368/E4/92 dated 24.7.1992 granted permission under Rule 258(2)(ii) of APMV Rules 1989 for variation of existing town service route Nimkampalli to Boreddypalli as Nimkampalli to Kothapalli belonging to Sri N. Yunus Khan of Hindupur.”

5. The STAT observed that the report of the MVI was not correct. The basis indicated is apparently not correct. STAT had merely assumed

that the present respondent no.2 had sought permit on the route operated by Shri Siraj, it being an existing route he was likely to get the permit. Similarly N. Yunus Khan was granted permit on the route Hindupur Municipal Bus stand to Kodigepalli having route length of 17.2. k.m. Therefore the present respondent No.2 can be granted permit.

6. Learned Single judge found that the factual position was not kept in view and had not been properly analysed and, therefore, the matter was remanded to STAT. It was submitted that the learned Single Judge noted that there was no dispute of the fact that the route applied for in the cases is not the one covered under Section 68(3) (ca) of the Act.

7. Learned counsel for the respondent No.2 submitted that in view of the factual scenario and the analysis made, no interference is called for.

8. We find that the conclusions of the Division Bench are quite abrupt. As a matter of fact, keeping in view the factual position, learned Single Judge has remanded the matter for a fresh consideration to the STAT.

That being so the Division Bench ought not to have interfered in the matter.

That being the position, we set aside the impugned judgment of the high Court and restore that of learned Single Judge. The order of remand as passed by learned Single Judge stands affirmed.

9. The appeals are allowed to the aforesaid extend.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(ASOK KUMAR GANGULY)

New Delhi:
February 09, 2009