

(1961) 01 KAR CK 0007
In the Karnataka High Court
Case No : Writ Petition No. 1317 of 1960

Abdul Azeez

APPELLANT

Vs

Mysore Revenue Appellate Tribunal, Bangalore and Others

RESPONDENT

Date of Decision : 17-01-1961

Acts Referred:

Constitution of India, 1950 — Article 226

Motor Vehicles Act, 1939 — Section 57 (2), 57 (3), 57 (7), 57 (7), 64 (2)

Citation : AIR 1962 Kar 31(1)

Hon'ble Judges : Mir Iqbal Husain, J; A. Narayana Pai, J

Bench : Division Bench

Advocate : K.G. Maheswarappa, for the Appellant; N.S. Narayana Rao, K.S. Puttaswamy, M.R. Venkatanarasimhachar and T.S. Ramachandra, for the Respondent

Judgement

Narayana Pai, J.

(1) This Writ Petition is directed against an order of the Mysore Revenue Appellate Tribunal dated the 16th of November 1960 passed in Appeals Nos. 450, 546, 553 and 573 of 1960 on its file presented to it u/s 64(2) of the Motor Vehicles Act. The first respondent is the said Tribunal. Respondents 2 to 5 are operators of stage carriage services who are interested in the subject matter in dispute.

(2) The petitioner is an operator of stage carriage services in the Districts of Bellary and Chitaldrug. One of the services operated by him was that covering a route between Raydurg and Bellary. In December 1956, the Petitioner applied for an extension of this route from Bellary up to Kampli via Kolur, Kurugodu and Yemmiganur. As the jurisdiction in respect of the matter became transferred from the Regional Transport Authority, Bellary, to the Regional Transport Authority, Bangalore, the petitioners application was considered by the Bangalore Authority. On 27.9.1957, the said Authority rejected the petitioners application for extension of the route. At the same time, it took the view that there was

necessity to start fresh stage carriage services in respect of the route between Bellary and Kampali via Kolur, Kurugodu and Yemmiganur, as a separate route, and resolved to call for applications from operators in respect of the same. Accordingly, the Secretary of the Regional Transport Authority, Bangalore, published a notification dated the 16th of October 1957 u/s 57 (2) of the Motor Vehicles Act, inviting applications for the grant of stage carriage permits on that route.

Sixteen persons including the petitioner and respondents 2 to 5 made applications pursuant to that notification. On 31.12.1957, consequent upon the redistribution of jurisdiction between several Regional Transport Authorities in the State, the Regional Transport Authority, Bellary, once again acquired jurisdiction in respect of the aforesaid route. On 5.8.1958, the Bellary Authority granted the permit to the petitioner by selecting him out of the sixteen applicants. Eight of the unsuccessful applicants including the present respondents 2 to 5 filed appeals before the State Transport Authority of this State. On 24.9.1958, that Authority allowed all these appeals on two principal grounds, viz., that the notification published u/s 57 (3) after receipt of applications was invalid for lack of certain particulars and that the Regional Transport Authority had violated the provisions of section 57 (7) by not stating the reasons for refusing the grant of permits to the unsuccessful applicants. It, therefore, remanded the matter to the Regional Transport Authority, Bellary. The petitioner, respondents 2 and 3 and another went in further appeal to the board of Revenue which, at that time, was exercising the second appellate powers. The Board dismissed all the appeals. There were certain Writ Petitions filed in this Court, but it is not necessary to make any reference to any of them for the purpose of the present case.

(3) After the remand aforesaid, the Regional Transport Authority, Bellary, published fresh notification u/s 57 (3) bearing the date 9.12.1959 in the Mysore Gazette dated 24.12.1959. On 18.2.1960, the Regional Transport Authority, Bellary, once again granted the permit to the petitioner. Seven appeals were presented to the State Transport Appellate Tribunal by respondents 2 to 5 and three others. All these appeals were dismissed on the 24th of May, 1960. Respondents 2 to 5 went up in further appeal before the Mysore Revenue Appellate Tribunal. On 16.11.1960, the Revenue Appellate Tribunal allowed these appeals and made the order of remand, which is challenged before us in this Writ Petition.

(4) There is no controversy before us about any of the several points considered by the Tribunals below, except one which is the basis for the remand now complained of. That ground, shortly stated, is that in the opinion of the Mysore Revenue Appellate Tribunal, the question whether there is a need for the grant of a permit on the route in question which, in the words of the Tribunal is "the most important and crucial issue in the case", has not received adequate consideration at the hands of the Regional Transport Authority, Bellary.

(5) At the commencement of his arguments, the learned counsel for the

petitioner formulated several points for consideration or discussion. On hearing the arguments on both sides fully, the only contentions on behalf of the petitioner which, in our opinion, are worthy of consideration in a Writ Petition are two, viz., (1) a notification by the Regional Transport Authority u/s 57 (3) inviting applications in respect of a particular route sought to be opened by it is conclusive on the question of existence of the need for the grant of permits in respect of that route and therefore there is no further jurisdiction in any of the authorities to examine once again the question of such need, and (2) even assuming that the said question might be open for re-examination, the Revenue Appellate Tribunal in this case has, in making the order of remand, failed to exercise its jurisdiction by not fully examining the material actually on record bearing on the question of need.

(6) The first contention is sought to be supported solely upon inferences said to be available from sub-section (2) of section 57 of the Act. That Sub-section makes mention of two classes of applications for permits, viz., those made by applicants on their own initiative and those invited by the Regional Transport Authority, and prescribes the respective periods within which the same have to be made. When an application is made by a party direct on his own initiative, it is not disputed that before deciding whether or not to grant that application, the Regional Transport Authority is entitled, if not bound by the Statute, to consider all relevant questions including the question whether there is a genuine need for the grant of such a permit. On the other hand, if the Regional Transport Authority itself invites applications, it is contended that it must be deemed to have come to the conclusion that there is a genuine need for opening stage carriage services on the route in respect of which it has invited applications.

While there is no difficulty in suggesting that when an authority like Regional Transport Authority invites applications, it could be normally taken to have entertained at least a tentative opinion that there is a need to call for such applications, because it is in the nature of a reasonable inference of fact; something more than the possibility of such inference is necessary before one could say as a matter of law that any such opinion entertained by the Regional Transport Authority is conclusive for all purposes. The contention as put before us is not merely as one of estoppel precluding the contending parties from raising the question but as one which takes away the jurisdiction of adjudicating Tribunals. The basis for such a contention must clearly be traced to a specific provision of the Statute governing those Tribunals or, at any rate, to a clear and irresistible inference flowing from the provisions of the Statute bearing on the jurisdiction of those Tribunals.

It is conceded that there is no specific bar contained in the Statute prohibiting the consideration of the question of need in applications filed pursuant to a notification of a Regional Transport Authority made u/s 57(2) of the Act. Anything like an inferential bar, it is difficult to postulate because indications available in the relevant provisions of the Statute are all against making any such inference.

Although sub- section (2) of section 57 makes mention of two classes of applications, no distinction is made between them in the later provisions of the same section relating to the consideration of applications. Under sub- section (3), all applications received, whether on the initiative of the applicants themselves or upon invitation by the Regional Transport Authority, have to be published in the prescribed manner inviting representations and, after receipt of representations, the applications have to be disposed of at a public hearing at which the applicants and persons who have made representations should be given an opportunity of being heard.

Section 47 enumerates certain matters to which a Regional Transport Authority should have regard in considering applications for stage carriage permits; besides the interests of the public generally, the matters so required to be considered include the advantages to the public of the service to be provided, including the saving of time likely to be effected thereby and any convenience arising from journeys not being broken, the adequacy of other passenger transport services operating or likely to operate in the near future between the places to be served, and the benefit to any particular locality or localities likely to be afforded by the proposed service, all of which may be said to be comprised within the general considerations of need or otherwise of granting the permit applied for. The point to note is that all these matters have to be considered by Regional Transport Authority "in considering an application for a stage carriage permit".

It is clear therefore that whether the application is one made by a party on his own initiative or at the invitation of the Regional Transport Authority, the stage at which the question of need should properly be examined is at the time of considering the applications, i.e., at the public hearing contemplated under sub-section (5) of section 57. That is a hearing at which both the applicants and persons who have already made representations are given an opportunity of being heard. There is nothing to prevent any interested person from making representations on the question of need; on the contrary, the same being one of the relevant considerations u/s 47, it would certainly be one of the matters on which representations could properly be made.

(7) The first contention, therefore, in support of the Writ Petition has to be rejected.

(8) Before considering the second contention, certain facts appearing on the record may be stated.

(9) The order of the Regional Transport Authority dated 18.2.1960 discloses that besides a preliminary objection regarding the alleged irregularity in the original notification u/s 57 (2) which the authority rejected, the arguments were all directed to a consideration of the relative merits of the several applicants. There is an observation in that order reading:-

"It has been already held that there is a necessity for a fresh service on this

route and hence it is only a question of selecting an applicant".

Although the learned counsel for the respondents have contended that this sentence indicates that the Regional Transport Authority never paid any attention to the question of need being of the opinion that the same had already been decided (apparently when the notification u/s 57 (2) was made), it is by no means clear whether any of the contending parties themselves paid any attention to this question in the course of their arguments.

(10) Before the State Transport Appellate Tribunal, however, every one of the appellants appears to have specifically raised the contention that the Regional Transport Authority had not considered the question of need while granting the permit on this route as one of the grounds in support of the appeal. It is clear from the judgment of the State Transport Appellate Tribunal -- and none of the parties before us disputes it -- that there was on record considerable material bearing on the question of need in the shape of several reports made by local officers and representations made by local bodies as well as individuals. On a detailed consideration of all these reports and representations on record, the State Transport Appellate Tribunal came to the conclusion that the material on record was sufficient to establish the need for services on the route in question.

(11) The Revenue Appellate Tribunal sitting in second appeal states in its judgment:-

"After hearing the arguments and perusing the records on this point we cannot bring ourselves to agree with the finding arrived at in the impugned order that such a need has been proved from the facts and reports that were before the R. T. A.. at the time".

This observation is found at the commencement of Paragraph 9 which is the only paragraph in which the Revenue Appellate Tribunal examined this question. After making the above observation, the Revenue Appellate Tribunal States that the Regional Transport Authority has not considered the question at all because it is found noted in its order that the same has already been decided. It further States that it would not be sufficient, as the State Transport Appellate Tribunal has done, to simply affirm the decision of the original Authority, and adds:-

"We need hardly reiterate here that what this Tribunal has been insisting upon in all such cases is that a quick appraisal of the situation may be made by the R. T. A.. concerned by conducting a survey on the route in to determine the traffic potential thereon and to arrive at a finding of the needs of the traveling public on the said route. (We have indicated in detail in several other such cases recently what basic statistics should be gathered for such a survey and quick appraisal, and need not go into that aspect again here). In the present instance, there is no doubt that some attempts have been made in this direction but these can only be described as irregular and haphazard and such as would certainly not help to clarify the position".

It then gives an extract from a report of the Secretary of the Regional Transport Authority, offers certain criticisms which, in our opinion, are directed more against the officer personally than to assess the value of merits of his report, refers to a single sentence in another report of the Motor Vehicles Inspector describing the same as mere surmise, and then refers equally briefly to two reports of the District Superintendent of Police, one dated the 25th November, 1957, where he did not consider it fit to recommend a new bus on the route for want of traffic and another dated the 24th of May, 1958, expressing his opinion as to the necessity of such a service because on the latter date he found that traffic had increased considerably on account of the Sugar Factory at Kampli and the National Extension Scheme at Kurugodu, describing both as cryptic and non-committal statements without examining the merits or the value of the opinions stated. This is exhaustive of the consideration of matters by the Revenue Appellate Tribunal.

The Revenue Appellate Tribunal makes no reference whatever to a report of the Tahsildar of Bellary made to the Deputy Commissioner of Bellary and the representations sent to the same Deputy Commissioner by Yemmiganur Village Panchayat Board, the president of the Kurugodu Panchayat Board and the residents of Kampli and several other villages on the route. The Deputy Commissioner of Bellary, it should be noted, is a member of the Regional Transport Authority, Bellary. Towards the end of its judgment, the Tribunal observes --

"This Tribunal is certainly not of the view that there was no need for such a grant ; all that we would like to stress is that such a need has certainly not been made out from the cryptic, casual and irrelevant nature of the reports on records."

(12) From the summary given above of the manner in which the three Authorities have dealt with this question, there can be no doubt that the original Authority thought it unnecessary to examine the question of need on the view that the same had already been decided, the first appellate Authority examined the material fairly fully and came to certain conclusion and the second appellate Authority addressed itself more to finding fault with the original authority than to correct its faults as it should have done as a second appellate Authority. While it is no doubt true that where the original Authority has not considered or fully considered a certain question or issue it is not proper for an appellate Authority simply to affirm it, that is not what the State Transport Appellate Tribunal did in this case as the Revenue Appellate Tribunal appears to think. The State Transport Appellate Tribunal did go into matter and examine the material on record fairly fully. The Revenue Appellate Tribunal is therefore wrong, in our opinion, in referring to the judgment of the State Transport Appellate Tribunal as one in which it simply affirmed the decision of the Regional Transport Authority. No doubt, the conclusions of the State Transport Appellate Tribunal are not final but are open to examination and scrutiny by the second Appellate Tribunal, viz., the

Revenue Appellate Tribunal.

All the three Authorities are ones which have jurisdiction to examine not merely questions of law but also those of fact. There is also no doubt that everyone of them is governed by the provisions of section 47 which enumerates considerations which are relevant to the topic. Everyone of them is bound to examine both questions of fact and questions of law before arriving at their conclusions. Therefore, if the original Authority fails or omits to consider any of the matters bearing on the merits of the case, the duty of the appellate Authority is not straightway to remand the matter back to the original authority but to examine the questions which the original Authority failed or omitted to examine, if there is material on record bearing on the said questions.

A remand, in our opinion, would be justified only if there is no material at all on the basis of which the question left undecided by the original authority can properly be decided by the appellate Authority or if the latter finds that the material is insufficient to enable it to come to a just decision on the question. We are equally clear in our opinion that where there is material on record and the original Authority has examined the same and come to a certain conclusion, the appellate Authority can re-assess the material and come to a different conclusion, but it should not do so without examining the material on record. That is what, in our opinion, the Revenue Appellate Tribunal has done in this case. It is true that the first Authority did not consider the question of need. But the first Appellate Authority, the State Transport Appellate Tribunal, has examined the material on record and recorded a finding. By merely stating that they could not bring themselves to agree with that finding, the Revenue Appellate Tribunal could not be said to have performed its duty as a second Appellate Authority.

(13) The learned counsel for the respondents, however, have tried to support the order of remand made by the Revenue Appellate Tribunal on two different grounds.

(14) The first of them is that the Regional Transport authority having failed to decide a material issue of fact, a remand would not only be proper but actually inevitable. It is enough to observe that the Appellate Authorities are not disciplinary authorities to compel the original authorities to perform their duties but are quasi-judicial authorities exercising appellate jurisdiction for the purpose of correcting the errors in the orders of the original authorities. They function in the interest of the litigants before them on whose rights they are adjudicating. The emphasis should therefore be on coming to a just conclusion in the interest of litigant public and not on enforcing discipline on the original authorities. A remand would be inevitable only when there is no material on record to decide a material question. If there is some material bearing on that question, a remand would be proper only when the Appellate Authority after examining that material comes to a conclusion that it is not possible to come to a just decision in the case on the basis of that material alone. It would, in our opinion, be clearly improper

if an order of remand is made without fully examining the material on record and without arriving at a conclusion that it is not possible to come to a just conclusion on the said material.

(15) The second argument in support of the order of the Revenue Appellate Tribunal is this. It is contended that it is not possible to say definitely that the Revenue Appellate Tribunal has failed to consider all material. For this contention there is no basis in the judgment of the Revenue Appellate Tribunal except a statement contained therein that the Tribunal has perused the records. We think, it need hardly be stated that what is required of a judicial or quasi-judicial body exercising appellate powers is not merely the perusing of records but a consideration of the material and such consideration must appear on the face of the judgment it pronounces, especially when its conclusions are open to further appeal or to judicial review or consideration by a High Court. We are not satisfied that there has been any such consideration of the material by the Revenue Appellate Tribunal.

(16) Another aspect of the same argument in support of the order of the Revenue Appellate Tribunal is that such material as has been omitted to be mentioned in its judgment is either irrelevant or inadmissible under the Motor Vehicles Act. In elaboration of this argument, the learned counsel for the respondents contend that although section 47 requires a Transport Authority to take into consideration any representations made by persons already providing passenger transport facilities along or near proposed route or area or by any association representing persons interested in the provision of Road Transport facilities recognised by the State Government or by any local authority or police authority within whose jurisdiction any part of the proposed route or area lies, those representations must satisfy the conditions mentioned in section 57.

According to the learned counsel, such representations must have been made in connection with applications for stage carriage permits published in terms of sub-section (3) of section 57 and must satisfy the conditions mentioned in sub-section (4) thereof, viz., the same should have been filed within the time limited by the notification under sub-section (3) and copies thereof should have been furnished simultaneously to the applicants. The learned counsel further states that unless this view is taken, it may lead to a breach or contravention of the principles of natural justice which quasi-judicial bodies like the Road Transport Authorities granting or refusing permits are required to observe.

In our opinion, this argument proceeds upon a misapprehension both as to the interpretation of the provisions of the said two sections relating to representations as well as on the applicability of the principles of natural justice. The representations referred to in section 47 clearly fall into two categories. One of them comprises representations made by operators who figure either as opponents to an application for permit or as competing applicants for the same permit. The second comprises representations by Associations and authorities containing statements of facts or expressions of opinion which are intended

merely for the use of the authority to enable it to come to a conclusion either to grant or refuse to grant the permit asked for in the light of the considerations declared relevant by section 47 of the Act.

Under section 57 (4), copies of representations mentioned therein are required to be given to the applicant which circumstance clearly indicates that those representations are in the nature of oppositions, the character and content of which the applicant is by rules of natural justice entitled to be put on notice of with a view to meet the same. Further, the question whether and in what manner the rules of natural justice have to be observed in a particular case, must itself be judged in the light of the constitution of the statutory body which is to function in accordance with the rules laid down by the Statute. These principles stated by us follow directly from a ruling of the Supreme Court reported in *New Prakash Transport Co. Ltd. Vs. New Suwarna Transport Co. Ltd.*, wherein their Lordships have discussed the principles elaborately while rejecting the complaint made therein that a police report perused by the Transport Authority was not made available to the party affected.

(17) Another point raised by the learned counsel for the respondents may be noticed briefly. It is contended that the Tahsildar cannot be one of the local authorities mentioned in section 47 of the Act because, according to the General Clauses Act, a local authority means a Municipal Committee, District Board or other authority legally entitled to or entrusted by the Government with the control or management of a Municipal or local fund. As is well known, the section of the General Clauses Act which gives certain definitions itself opens with the statement that the meanings assigned by it to several terms are to apply unless there is anything repugnant in the subject or context. Now, the context of section 47 in which the expression "local authority or police authority" occurs, clearly indicates that the representations referred to therein have some relation to the several matters set out in the earlier portions of the section, which the Transport Authority is required to have regard while considering applications for stage carriage permits.

While it is no doubt true that local authorities like the Panchayat Boards, Taluk Boards etc., may be in a position to give information or express opinions on matters such as benefit to any particular localities or the interests of the public of such localities, it is clear that they would not be the only persons competent to do so. Officers of the Government actually working in the localities are equally competent to advise or assist the Regional Transport Authorities on those questions. Regarding the conditions of the roads included in the proposed route or area, there could be hardly any doubt that officers of the Engineering Department actually in charge of the construction or maintenance of roads would be the most competent persons to express an opinion thereon. Having regard to these considerations, we are of the opinion that although the local bodies mentioned in the definition of the General Clauses Act would undoubtedly be included in the term "local Authority" used in section 47 of the Motor Vehicles

Act, to restrict the term only to such bodies and exclude therefrom officers of the Government working in the relevant localities would lead to the definition being repugnant both to the context and to the subject.

(18) We are therefore not persuaded to accept any of the arguments addressed on behalf of the respondents in support of the order of the Revenue Appellate Tribunal.

(19) For the reasons already discussed by us, we are of the opinion that the Revenue Appellate Tribunal, in making the order of remand in the manner it has done, has not properly discharge its functions as the second Appellate Authority and therefore exercised its jurisdiction with material irregularity. As this defect consists in their omission to examine questions of fact into

which we do not go in exercise of our jurisdiction under Article 226 of the Constitution, there is no alternative but to ask the Revenue Tribunal itself to do so.

(20) We, therefore, allow the Writ Petition, set aside the impugned order of the Mysore Revenue Appellate Tribunal and direct the Tribunal to hear the appeals presented to it on merits, examine all the material on record and dispose of the same in accordance with law. We make no order as to costs.

(21) Petition allowed.