

(1988) 06 KAR CK 0060
In the Karnataka High Court
Case No : W.P. No. 9898/1985

A.M. Mallegowda

APPELLANT

Vs

Karnataka State Transport Authority and Others

RESPONDENT

Date of Decision : 25-06-1988

Acts Referred:

Karnataka Motor Vehicles Rules, 1963 — Rule 100

Citation : (1988) 3 KarLJ 249

Hon'ble Judges : H. G. Balakrishna, J

Judgement

Balakrishna, J.-The facts of the case in brief are as follows:

The petitioner is a holder of a Stage Carriage permit bearing P.St.P.No.43/54, in respect of route Mysore to Tellicherry and back to operate two round trips with two vehicles, one vehicle from Tellicherry and another from Mysore. Originally the petitioner was holding a permit in respect of the same route (Mysore-Tellicherry) under the terms of the Interstate agreement dated 30-6-1975 entered into between the States of Karnataka and Kerala.

2. The petitioner filed an application for curtailment of the portion of the route between Tellicherry and Mahe so as to bring the permit in accordance with interstate agreement. The said application was filed on 19-11-1981 and it was considered by the S.T.A. (first respondent), at its meeting on 19/20-9-1984 in Subject No. 152/1984. The S.T.A. refused to counter-sign the permit on the ground that the authorities in Kerala refused to counter-sign the permit and therefore, the permit would serve no useful purpose, by retaining the permit upto Mahe and therefore decided to curtail the route between Tellicherry and Mahe allowing the application filed by the petitioner (vide annexure "A"). The variation of condition of permit is at annexure "B". The petitioner filed an application for grant of variation of the conditions of the permit for inclusion of one more single trip in regard to each of the two vehicles with the proposed timings and the application was published in the Karnataka Gazette on 29-5-1980. The said application was considered by the S.T.A. at its meeting on

27-11-1984 in Subject No.197/1981. However, S.T.A. rejected the application on the ground that the route is not the route saved under the Mysore Scheme of nationalisation and therefore the increase of trip sought for by the petitioner cannot be granted. The resolution so passed is produced at annexure "C".

3. The petitioner preferred an appeal before the second respondent in appeal No.144/1982. The second respondent framed five issues out of which fifth issue is relevant for the purpose of this petition.

Issue No.5 runs as follows:

"Whether there is any incongruity or vagueness in the timings proposed by the appellant in the application?"

While holding all the four issues in favour of the petitioner, the Tribunal held that variation sought for by the appellant cannot be granted by it and the matter has to be remitted back to the S.T.A. for fresh consideration and disposal, after returning the application to the petitioner under R.100 of the Karnataka Motor Vehicles Rules, 1963, for the purpose of representing the application for rectifying the defect mentioned therein and for disposal of the application afresh in consonance with the procedural issue of fresh notification of the application that may be amended and re-presented by the petitioner.

4. The petitioner is aggrieved by the findings of the Tribunal. The relevant portion of which is reproduced below:

"But, the said argument of Sri C.S. Shantha Mallappa overlooks the important point that, as per the timings proposed by the appellant, his vehicle operating the third trip from Mysore to Tellicherry will be stretching the third trip to the next day by 4 hours beyond mid-night as it reaches Tellicherry at 4 a.m. and the other vehicle operating from Tellicherry side towards Mysore will also be extending its journey in the third trip to the next day as it reaches Mysore 2 1/2 hours after midnight. Therefore, it cannot be said that each of the two vehicles of the appellant will be operating the existing one round trip and the proposed single trip within 1 day which is which in legal parlance, is 24 hours from midnight to midnight. Therefore, I am of the opinion that the variation of the nature sought for by the appellant cannot be granted as per the timings proposed by him. Consequently, I am of the view that the grantee should have sought variation of conditions of his permit to operate one additional single trip by each of his two vehicles per day in such a way that all the 3 trips would be completed from midnight to midnight and not by extending the third single trip to any portion of the following day."

5. The petitioner has sought the relief of issue of Certiorari and to quash the order passed by the second respondent in appeal No.144/82, dated 5-2-1985 (Vide annexure "D") in so far as the issue of direction to the S.T.A. to return the application of the petitioner under R.100 of the K.M.V. Rules, for representing the application for effecting modification in timings as well as for representation and

for purpose of fresh notification and issue direction to the Appellate Tribunal to grant variation as prayed for by the petitioner.

6. I have heard learned counsel for the petitioner Sri C.S. Shantha Mallappa at length and also the submissions made by the learned High Court Government Pleader Sri Ramesh, appearing for respondents 1 and 2. Sri I. Govindaraj has appeared for respondent-5. Respondents 3 and 4 have been served but have remained un-represented.

7. The short point for consideration in this case is:

Whether the finding of the Tribunal on issue No.5 is justifiable and whether the matter should not be remitted to the Karnataka State Transport Authority as directed by the Tribunal?

8. While submitting his arguments Sri C.S. Shantha Mallappa stated that he would restrict his arguments only to the question relating to the finding of the Tribunal on issue No.5.

9. For the sake of convenience, issue No.5 is reproduced below:

"Whether there is any incongruity or vagueness in the timings proposed by the appellant in the application."

A careful reading of the issue framed divulges the fact that the Tribunal was required to give a finding as to whether there is any incongruity or vagueness in the timings which were proposed by the petitioner in his application. A reading of the finding of the Tribunal in para-23, which has been extracted and mentioned earlier, gives a clear indication that the Tribunal came to the conclusion that by granting an additional single trip incongruity will result, inasmuch as that all the three trips cannot be completed within 24 hours. This is the only incongruity according to the Tribunal. But there is no finding as regards vagueness. Be that as it may, the only point for consideration is whether the assumption of the Tribunal that incongruity would result as a sequel to incapability of the petitioner to operate three trips within 24 hours would stand legal scrutiny. There is no material on which the Tribunal has relied in order to lay down the rule of law that three trips should be capable of being completed within 24 hours. The provisions of the Motor Vehicles Act also do not envisage such a legal proposition. On the other hand, there is a decision of this Court which is reported in *Lakshminarasimha Iyengar v Kstat* in W.P.No. 11770/1977 dated 22-9-1980-1981(1) Kar.L.J. Short-notes 106 at page 40 which has a bearing on this question. The relevant portion is extracted below:

"It cannot be said that one round trip a day cannot be performed by one vehicle, where the total length for one round trip does not exceed 600 kilometres. Wherever it is necessary, it is open to the authority to prescribe an additional driver as a condition of grant."

In the instant case each single trip involves a distance of 115 miles and therefore

arithmetically three trips work out to a total distance of 345 miles which is equivalent to 552 Kilometres. The distance of each trip is from Mysore to Tellicherry or from Tellicherry to Mysore. In the absence of any statutory compulsion, I do not think the Tribunal was justified in holding that all the three trips should be completed within 24 hours, counting the time from midnight to midnight. It may not be inappropriate to observe that the Tribunal cannot legislate in any area which is the exclusive realm of the Parliament and the Tribunal has over stepped its power-sphere. There is no rational basis for the proposition that all the trips should be capable of being completed within 24 hours from mid-night to midnight for the purpose of grant of variation of conditions of permit by increase in the number of trips.

10. I am of the view that the Tribunal was not justified in holding that there is incongruity or vagueness in the timings proposed by the petitioner in his application.

11. It is not necessary for me to go into the remaining contentions on record in this writ petition since the learned counsel for the petitioner has restricted his arguments only to the question disposed of on issue No.5.

12. In view of my findings, the S.T.A. shall consider the application of the petitioner on merits after taking due notice of subsequent developments, if any.

Accordingly, this writ petition is disposed of.

Sri Ramesh, HCGP, is permitted to file his memo of appearance in two weeks.