

(1979) 03 KAR CK 0030
In the Karnataka High Court
Case No : Writ Petition No. 10517 of 1978

B. Srinivasa Reddy

APPELLANT

Vs

The Regional Transport Authority, Chitradurga and Others

RESPONDENT

Date of Decision : 20-03-1979

Acts Referred:

Karnataka Motor Vehicles Rules, 1963 — Rule 92 (2)
Motor Vehicles Act, 1939 — Section 134 (2), 57 (3)

Citation : AIR 1980 Kar 209 : (1979) 2 KarLJ 412

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : P.R. Srirangaiah, T.R. Rangaraj, for the Appellant; A. Ananda Shetty, for C.S. Shanthamallappa, M.R.V. Achar, Tilak Hegde and S.V. Krishnaswamy, for the Respondent

Judgement

1. On 31st July, 1976, the petitioner made an application before the Regional Transport Authority, Chitradurga (Respondent No. 1), for grant of a stage carriage permit on the route Chikkabadihalli to Kadur and back viz., Thippareddihally, Oblapura, Jajur, C. R. Jajur, Nagondanahally, Karikere, Meerasabihaalli, Dodderi Challakere, Ganjugunte, Madhure, Sondekere, J. N Kote, D.S. Hally, Kurubarahatty, Chitradurga Chitrahally, C. R. Eachagatta, H. D. Pura. Nakikere, Kittadahally, Madadkere, Hosadurga, Antharagatte, Tamatadahally Gate, Sollapura, Hirenallur and Giriyaपुरा for one return trip or two single trips per day. This application was duly published as required by Section 57 (3) of the Indian Motor Vehicles Act, 1939, (hereinafter referred to as "the Act"). Sixteen operators including the General Manager, Karnataka State Road Transport Corporation, filed objection & The first respondent considered the application in subject Number 88177 and came to the conclusion that there was a need for grant of a permit for running a stage carriage service on the route in question and accordingly granted the stage carriage permit by the Resolution dated 27-1-1978. As against the said order, the respondents 3 to 11 filed appeals before the K. S. T. A. T. (respondent No. 2), in Appeal Nos. 100, 101, 102, 114

and 116 of 1978. The second respondent, by the order dated 23rd August, 1978, has allowed the appeal and has set aside the resolution of the first respondent granting the permit to the petitioner and it has further remitted the application to the R. T. A. with a direction to reformatify the application immediately and to call for objections and also to get the route survey conducted in accordance with the guidelines issued by the Tribunal and to get a report about the conditions of the road from the Public Works Department and to dispose of the matter after hearing the parties concerned. It is the correctness of this order of remand that has been challenged in this writ petition. The 2nd respondent K. S. T. A. T. will hereinafter be referred to as the "Tribunal"

2. Shri P. R. Srirangaiah, the learned Advocate appearing for the petitioner, contended that the findings recorded by the Tribunal that there was no correct schedule of timings mentioned in the notification and that the correct route was not mentioned in the notification and that the R. T. A. has not ascertained the condition of the route and that the procedure followed by the R. T. A. was opposed to Rule 92 (2) of the Karnataka Motor Vehicles Rules, 1963 (hereinafter referred to as "the Rules") are not tenable in law. The learned Counsel also further contended that in view of the findings recorded by the R. T. A. that there is a need for introducing the service and that the route is motor able throughout the year, the order of the 2nd respondent is not sustainable and as such, the same be quashed and the order of the R. T. A. granting the stage carriage permit be restored.

3. On the contrary, the learned Counsel appearing for the respondents sub- that though the application was published but the same was not in accordance with the provisions contained in Section 57 (3) of the Act, inasmuch as the time schedule as well as the route was not correctly notified as per the application filed by the petitioner and thereby, the objectors were misguided. It was also further contended that when the matter was reserved for judgment, it was not at all open for the R. T. A to collect the additional material and to pass the final order on the basis of that additional material. Further, it was submitted that the Executive Engineer who was a member of the R. T. A. has not made any report to the effect that the road was motor-worthy; that the publication of the application not being in accordance with the provisions of Section 57 (3) of the Act, and the failure to comply with the mandatory provisions of Section 57 (3) of the Act, has resulted in the failure of justice as such, it is not saved by Section 134 (2) of the Act. It was also contended on behalf of the respondents that a portion of the route Kadur to Giriyapura cross overlaps the notified route and as such, the petitioner is not entitled for the grant of permit prayed for.

4. With regard to the contention that the Tribunal was not correct in holding that in the publication of the application, correct schedule of timings and the substance of the application were not mentioned; it was submitted by the learned Counsel for the petitioner that there was a very minor printing mistake in as, while mentioning "A" for arrival and "D" for departure, instead of "A", letter

"D" has wrongly been printed and instead of "D", letter "A" has wrongly been printed. If, in the notification, the letter "A" is read as "D" and the letter "D" as "A", the timings given in the notification are in accordance with the timings given in the application, therefore the Tribunal ought not have attached much importance to this mistake in printing. The learned counsel for the petitioner further submitted that while publishing the substance of the, application, there was a minor printing mistake inasmuch as instead of mentioning "Donihalli", "Oblapura" was mentioned and this mistake came to be corrected by the R. T. A. by issuing a corrigendum to the effect that in place of "Oblapura", "Donihalli" should be read. Hence, it was contended that the aforesaid mistakes which occurred in the publication of the application were not of substantial character and have not, in fact, occasioned a failure of justice and as such, the said errors could not be made as grounds for interfering with the order of the R. T. A. by the Tribunal in view of the provisions contained in Section 134 (2) of the Act. This contention of the learned counsel for the petitioner cannot be accepted. The aforesaid infirmity regarding the route in the publication of the application cannot be said to be an error or irregularity in the proceedings falling under sub-section (2) of Section 134 of the Act. This infirmity in the publication of the application is of a substantial character amounting to non-compliance with the mandatory requirements of Section 57 (3) of the Act. The contention of the respondents that u/s 57 (3) of the Act, the R. T. A. was required to publish the substance of the application and this mandatory requirement has not been complied with by the R.T. A. as it has not published the correct route as mentioned in the application of the petitioner and on the contrary, it has included some other village not mentioned in the application and has not included the village on the route as mentioned in the, application of the petitioner; therefore it was submitted that there was no publication, of the substance, of the application as required by Section 57 (3) of the Act. The, provisions, of Section 57 (3) of the Act, are mandatory and it was incumbent upon the R. T. A. to notify the substance of the application. The mentioning of the route in the notification is an important factor and the mention of the village Oblapura instead of Donihalli, cannot be said to be a mere irregularity because, it would amount to breach of Section 57 (3) of the Act; thereby rendering the notification itself as illegal. What is provided by Section 134 (2) of the Act is that on account of an error, omission or irregularity, which has, in fact, not occasioned a failure of justice, the order passed by the competent authority shall not be reversed or altered on appeal or revision. Section 134 (2) of the Act, does not cover the illegalities committed in the proceedings much less, the non-compliance with the mandatory provisions of Section 57 (3) of the Act. Therefore, failure to publish the correct substance of the application resulting in non-compliance with the mandatory requirements of Section 517 (3) of the Act, cannot be characterised as an error, omission or an irregularity in the proceedings falling under S. "A (2) of the Act. It is nothing but violation of Section 57 (3) of the Act, The route is one of the important factors, nay the main factor, for grant of a permit and as such a correct route should be mentioned in the notification as otherwise, the persons who would have become

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Objectors, had there been a correct publication of the substance of the application, would be deprived of an opportunity to file their objections; further those who file the objections will also be misled.

5. The mistake committed in the publication of the schedule of timings, it can, in the instant case having regard to the nature of the mistake, very well be termed as an irregularity, but, this will not in any way help the petitioner in view of the illegality committed in the publication of the substance of the application, as held above, by not mentioning the correct route.

6. The contention of the learned counsel for the petitioner that a permit had been issued to respondent 8 on the route in question and he is running the service on the route, as such, it was submitted that "the Tribunal was in error in holding that the permit has been granted to the petitioner by the R. T. A. without ascertaining the condition of the route, deserves to be accepted. It was not disputed before me that the R. T. A. has granted the permit to the 8th respondent to run the vehicle on the very route for which the petitioner has made the application. If there is already a permit granted to respondent 8 in respect of the very same route, it follows that the route is motor-worthy. This fact the petitioner did bring to the notice of the Tribunal, even then, the Tribunal has held that the R. T. A. has not ascertained the condition of the route. In fact, the Executive Engineer of the area, who is also a member of the R. T. A., as seen from the order of the R. T. A., has stated that he has no objection for" granting the permit on the route in question. Hence, it is clear that the Tribunal was not correct in holding that the R. T. A. has proceeded to grant the permit without ascertaining the fact that the route was not motor-worthy.

7. One other contention of the petitioner was that after completing the hearing of the case, the R. T. A. reserved the case for judgment, therefore, under R. 92 (2) of the Rules, it was open for the R.T.A. to deliver the judgment by circulation. Rule 92 (2) of the Rules, reads as follows:

"Nothing contained in sub-rule (1), shall prevent the Transport Authority, from deciding by the procedure of circulation any matter which has been considered at the meeting or has been the subject of hearing and upon which a decision has been reserved"

8. In the instant case, the R. T. A. though heard the case reserved it for judgment, but it did not deliver the judgment on the basis of the material on record as on the date the case was reserved for judgment. On the contrary, the R.T.A. collected the further material and decided the case on the basis of the material collected by it subsequent to the date on which the case came to be reserved for Judgment. When once the R.T.A. reserved the case for judgment, it was not open for the R. T. A. to collect the additional material without notice to the parties and decide the case by circulation, on the basis of the additional material. Rule 92 (2) of the Rules only provides for deciding by the procedure of

circulation any matter, which has been considered at the meeting or has been the subject of hearing and upon which a decision has been reserved. The said Rule does not enable the R. T. A. to collect fresh material after the case has been reserved for decision. The collection of material is permissible only during the course of hearing in accordance with the provisions of the Act and the Rules, so that all the parties may have an opportunity to meet the same. That being so, if the R. T. A. was of the view that fresh material was required for deciding the case, it ought to have posted the case for further bearing and ought to have afforded an opportunity to the parties to the proceeding and ought not to have proceeded to decide the case on the basis of the additional material, by circulation. Thus, the procedure adopted by the R.T.A. in passing an order by circulation after collecting a fresh material without notice to the parties to the proceeding apart from being violative of the principles of natural justice is also not warranted by Rule 92 (2) of the Rules. As such the contention of the petitioner based on Rule 92 (2) of the Rules is not tenable and cannot be accepted.

9. The Tribunal, during the course of its order, has also pointed out that what was circulated among the members of the R.T.A. for their opinion was not the order as per Exhibit-B but, it was only the papers of the case that were circulated among the members. The relevant portion of the order of the Tribunal in this regard is as follows:

"The final order, according to the R. T. A. was passed by circulation of papers, exercising powers under Rule 92 (2) of the K. M. V. Rules. The proceedings of the R. T. A. pronouncing this order is found at page No. 163 of the R.T.A.'s file. The Secretary, R.T.A. has submitted these papers for circulation as per his note-dated 26-11-1977. On 28-11- the Executive Engineer has written as follows:

"I have no objection for granting this permit."

The non-official member has written that:

"I have no objection for grant of this permit."

Then, on 21-12-1977, the Chairman at the bottom has written: -

"The S. P., the official Member of the R. T. A. has not given his opinion in spite of the fact that this file was referred to him several times after the hearing was over. The other two members have given their opinion in favour of granting the proposed route to the applicant. I also concur with their opinion and direct the Secretary to take further necessary action. The duration or currency of the permit will "be for three years.)

From this, I do not find that the Executive Engineer had any opportunity to express his opinion. Therefore, I notice from this document that the order by circulation was finally concluded on 21-12-1977. But another order has come into being according to the R. T. A. on 27-1-1978. Therefore, there are two orders. Hence, I am of the view that there was no occasion for the Executive

Engineer to express his opinion in the order-dated 27-1-78. Even otherwise, it is only a subjective opinion and not based on any material facts."

But, what we see by way of an order, is Exhibit-B dated 27-1-1978 containing several other matters. Thus, it is clear that Exhibit-B was not circulated among the members of the R. T. A. The papers of the case appear to have been circulated among the members and each one has expressed his opinion except the Superintendent of Police. The decision as such, as per Exhibit-B, was not circulated among the members for their approval. The decision of the R. T. A. means, the decision as such as expressed by the members of the R. T. A. The decision of the R. T. A. granting a stage carriage permit is appeal able as per Section 64 (1) (f) of the Act, therefore, the R.T.A. is required to consider the contentions put forth by the objectors and other authorities mentioned in Sec. 64 of the Act and it is required to give reasons for accepting or rejecting the contentions raised in the proceeding thereof. The reasons must be those as are given by the members of the R. T.A. Thus, when the R. T. A, after hearing the case, reserves for decision and decides it by circulation, the decision of the R. T. A. must contain the opinion in verbatim as expressed by each member of the Tribunal. In such a case, it is also open for the Chairman of the R. T. A. to prepare a decision and circulate the same among the members of the R. T. A. If the members agree with the decision so circulated, then the decision as proposed by the Chairman would become the decision of the R.T.A. In the instant case, the order Exhibit-B is not the one, which was, circulated among the members of the R.T.A. As such, it cannot be said to be the decision of the R. T. A.

10. From what has been stated above, it is clear that the decision of the R.T.A. is not sustainable in law and as such, the Tribunal was justified in setting aside the order of the R. T. A. and remitting the case to the R. T. A. to renotify the application immediately, and call for objections and to dispose of the application after hearing the parties concerned. But, the direction of the Tribunal that the R. T. A. must get the route survey conducted in accordance with the guidelines issued by it and to get a report about the condition of the road from the Public Works Department is not tenable for the reasons already stated above. Accordingly, the directions given by the Tribunal to the R. T. A. that it should get the route surveyed in accordance with the guidelines issued by it and also to get a report about the condition of the road from the Public Works Department are hereby quashed. Consequently, the order of remand passed by the Tribunal is maintained except to the extent it is quashed. With the aforesaid modification, this writ petition fails and is dismissed.

In view of the fact that the order of remand is maintained except quashing the directions regarding route survey and obtaining of the report from the P. W. D., as indicated above, the contention of the 10th respondent that the part of the route overlaps the notified route of the Shimoga Scheme need not be considered as it is open for the R. T. A. to consider the same.

11. Petition dismissed.