

**(2017) 04 KAR CK 0109**  
**In the Karnataka High Court**  
**Case No : 10078 of 2016 [MV]**

B.G. Venkatesh

APPELLANT

Vs

The Additional Commissioner For Transport

RESPONDENT

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**Date of Decision :** 26-04-2017

**Acts Referred:**

[Motor Vehicles Act, 1988](#), [Section 80\(3\)](#),  
[Section 80\(3\)](#) - Procedure in applying for and granting permits

**Citation :** (2017) 04 KAR CK 0109

**Hon'ble Judges :** S. Sujatha

**Bench :** SINGLE BENCH

**Advocate :** S.V. Krishnaswamy, Sriyuths P.J. Rajagopal, A.S. Parasara Kumar, Vijaya Kumar A. Patil, Subash Reddy

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## Judgement

1. Petitioner is the holder of stage carriage permit for the route from Bengaluru to Dharmavaram and back. It is contended that the petitioner had prayed for change of Timings only in the return journey, departing Dharmavaram and reaching Bangalore. The KSTA, Bengaluru by order dated 5-1-2013 granted revision of timings only in the return journey and directed the 1st respondent to harmonise the timings after hearing the petitioner and the sector operators. 2. The 1st respondent by order dated 21-5-2013 revised the schedule of timings in the return journey only as per the order of the KSTA. Against which the 2nd respondent filed an appeal. In the said proceedings, the 2nd respondent and the petitioner filed a joint memo. Pursuant to which an order was passed by the Tribunal on 24-11-2014 remanding the matter to the Secretary, KSTA, Bengaluru. Subsequent to which the Secretary passed an order on 28-3-2015 refixing the timings after hearing the rival sector operators including the petitioner and the 2nd respondent. One Sri Snivashankar, Sector operator filed an Appeal No. 431 of 2015 challenging the said order dated 28-3-2015 before the Tribunal which came to be dismissed as not pressed. Thereafter, petitioner filed a Revision Petition No. 424 of 2015 challenging the order dated 28-3-2015,

which is dismissed. Hence, this writ petition. 3. Sri S.V. Krishnaswamy, learned Counsel appearing for petitioner would contend that the application filed by petitioner in Form 36(A) for permit in respect of variation of condition of permit, as specified in sub-section (3) of Section 80 of the Motor Vehicles Act, 1988, pertaining to revision of timings was restricted to return journey only for the route Bengaluru to Dharmavaram and back. In such circumstances, the Secretary refixing the timings both for the forward journey and the return journey is wholly untenable and contrary to the provisions of the Act. 4. Secondly, it was contended that the petitioner has proposed the timings as under :

D 5.15 a.m.      Bangalore      A 07.35 p.m.

A 06.25 a.m. D 06.30.      Doddaballapura      D 06.25 A 06.20 p.m.

A 07.30 a.m. D 07.35      Gowribidanur      D 05.20 D 05.15 p.m.

A 08.20 a.m. D 08.30      Hindupur      D 04.30 A 04.20

A 09.30 a.m. D 09.35      Penukonda      D 03.20 A 03.15 p.m.

A 10.35 a.m.      Dharmavaram      D 02.15 p.m.

5. Ignoring the same, without assigning any reasons, the Secretary refixed the timings which is not only causing inconvenience to the petitioner but to the general travelling public at large. The Tribunal failed to appreciate this vital aspect and dismissed the revision petition only on the ground that the petitioner had not challenged the order passed earlier in Appeal No. 1400 of 2013, indeed the petitioner was not aggrieved by the said order. It is only on remand the Secretary has refixed the timings contrary to the directions issued by the KSTA on 8-2-2013 (Annexure-A) coupled with the order of the Tribunal in Appeal No. 1400 of 2013. The order of remand was not an open remand. Any order passed by the Tribunal which is inconsistent with the application riled by the operator/petitioner has to be interpreted keeping in mind the provisions of the Act. Even assuming, the petitioner has filed a joint memo along with 2nd respondent before the Tribunal, it was incumbent upon the Tribunal, a quasi-judicial authority exercising statutory powers under the Statute to consider the same in accordance with the provisions of the Act. In other words, a joint memo, if filed, by the petitioner contrary to the application filed by him under Form 36(A) for a permit in respect of variation or condition of permit, has to be considered by the Tribunal strictly adhering to the provisions of the Act and the contents of the application. It was specifically sought in the application for variation of timings only relating to the return journey and not to the forward journey. The Tribunal exceeded its jurisdiction in accepting the joint memo and remanding the matter to the Secretary, KSTA to reassign the timings in terms of the joint memo after hearing the sector operators. Any mistake committed by the petitioner has to be taken into consideration and the orders are required to be passed in accordance with the Act and Rules. These material aspects being not considered in a right

perspective by the Tribunal, the order of the Tribunal calls for an interference by this Court. 6. The learned Senior Counsel Sri P.S. Rajagopal for Sri A.S. Parasara Kumar, learned Counsel appearing for respondent 2 inviting the attention of this Court to the joint memo filed by the petitioner, as well as 2nd respondent, would submit that the action of the petitioner in filing the joint memo proposing the timings both for the return journey as well as forward journey indicates that the petitioner has given up his restricted plea of variation of timings to the return journey and has accepted the proposed timings as per the joint memo, both for the return journey as well as forward journey. In such circumstances, the application filed by the petitioner cannot strictly adhered to, when the petitioner himself has relaxed his conditions in terms of the joint memo. Learned Counsel further submits that the said order passed in Appeal No. 1400 of 2013 has reached finality and the petitioner has not objected to the said order. Further, the petitioner was represented by a Counsel before the Secretary, KSTA in the proceeding dated 28-3-2015 and the Secretary, after hearing all the rival operators including the petitioner has assigned the timings. The said order dated 28-3-2015 was challenged by a sector operator Sri N.S. Shivashankar and the petitioner sitting on a fence was watching the proceedings. It is only after the appeal filed by Sri N.S. Shivashankar came to be dismissed as not pressed, the petitioner approached the Tribunal by filing the revision petition which was considered by the Tribunal, profusely analysing the material on record rejected the same. It is further contended that there is no much variation between the proposed variation of timings and the timings now assigned by the KSTA. The proposed timings cannot be adopted by the KSTA unless the rival sector operators are heard in the matter. It is only after hearing the sector operators in the route concerned, the timings was refixed. The change in the proposed timings and the timings now refixed is the matter of 5-10 minutes, which is minimal and not uncommon in the route in question. Considering the overall view of the route in question, the timings are refixed by the Secretary and the same being confirmed by the Tribunal is justifiable and no interference is called for by this Court. 7. Learned Counsel Sri Subash Reddy, learned Counsel appearing for the respondent 3 supports the learned Senior Counsel appearing for respondent 2. Adopting the very same arguments, learned Counsel submits that the timings now fixed by the Secretary is convenient to all the rival sector operators, as well as the general travelling public, hence the same do not require any modification. If such modification is required, the rival sector operators are to be notified and heard in the matter. 8. Heard the learned Counsel appearing for the parties and perused the material on record. The arguments of the learned Counsel for the petitioner is two-fold. Firstly, the revision of timings has to be refixed as per the request/claim made by the operator in the application Form 36(A). Any deviation from the application would render the fixation of timings void ab initio. There is no cavil with this proposition of law but for the joint memo filed by the petitioner before the Tribunal agreeing for the proposed timings, both for the return journey as well as forward journey. It is well-established principle that a consent order passed by the Tribunal on the joint memo filed by the parties cannot be

questioned on the ground of mistake, muchless on the ground that the Tribunal committed a wrong in accepting the joint memo contrary to the application. If any mistake had occurred by the petitioner in filing the joint memo, it was for the petitioner to seek redressal of the grievance before the Tribunal. Further, it is pertinent to note that filing of joint memo is not disputed by the petitioner. What is contended is, the Tribunal ought not to have considered the joint memo. This argument is wholly inconceivable. It is well-within the knowledge and power of the petitioner in filing the joint memo knowing well the consequences thereof. The action of the petitioner suggests that the petitioner has relaxed the prayer sought in Form 36(A) and accepted the proposed timings as per the joint memo. In such view of the matter, the first contention of the petitioner deserves to be rejected. 9. In this context it is apt to refer to the judgment of the Hon'ble Apex Court in the case of *State of Maharashtra v. Ramdas Shrinivas Nayak and Another*, (1982)2 SCC 463, wherein it is held thus: "4 If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well-settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the Court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in Court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error " "10 We may add, there is nothing before us to think that any such mistake occurred, nor is there any ground taken in the petition for grant of special leave that the learned Judges proceeded on a mistaken view that the learned Counsel had made a concession that there might arise circumstances, under which the Governor in granting sanction to prosecute a minister must act in his own discretion and not on the advice of the Council of Ministers " In the light of the said judgment, the arguments of the learned Counsel appearing for the parties has no force and is negated. 10. As regards the second contention, inasmuch as the variation in the proposed timings and the timings assigned by the Secretary without assigning the reasons, it is imperative that the Secretary while assigning the timings has to consider the objections of the sector operators in the route in question and to suit the convenience of all the sector operators as well as the travelling public, timings to be fixed. While doing such exercise, it cannot be held to be unrealistic if there is minor difference in the timings proposed and now fixed. There is equal time interval in the timings now fixed by the Secretary and the same cannot be modified only for the reason that it varies from the proposed timings. The Secretary has assigned the reasons for fixing the timings and it cannot be held that the order of assigning timings is Vitiated for not following the principles of natural justice/assigning the reasons. Even on this ground also, the petition fails. 11. Yet another reason for approving the impugned order is the attitude of the petitioner as a fence sitter watching the proceedings of the rival operator challenging the order of fixing the timings and it is after the dismissal of

the appeal as not pressed filing the revision petition challenging the order of revision of timings. The revision of timing fixed by the Authority and the confirmation of the same by the Tribunal is justifiable. For the foregoing reasons, the writ petition stands dismissed.