

(1966) 04 AP CK 0014
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 78 of 1965

C. Venkatappa Naidu

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 18-04-1966

Acts Referred:

Andhra Pradesh Motor Vehicles Rules, 1964 — Rule 134(A), 212(3), 3(2)
Mineral Concession Rules, 1960 — Rule 55
Motor Vehicles Act, 1939 — Section 48, 48(20), 48(3), 48(4), 64

Citation : AIR 1968 AP 100

Hon'ble Judges : Manohar Pershad, C.J; Sharfuddin Ahmed, J

Bench : Division Bench

Advocate : R. Venu Gopal Reddy and V. Narasimha Reddy, for the Appellant; 4th Govt. Pleader, P. Babulureddy and S. Sardar, for the Respondent

Final Decision : Dismissed

Judgement

Manohar Pershad, C.J.—This writ appeal is directed against the judgment of our learned brother Gopalakrishnan Nair dismissing the writ petition filed by the appellant for the issue of a writ of certiorari to quash G. O. Rt. No. 412, Home (Transport III) Department dated 6th February, 1965 passed by the Government in Home Department, confirming the order dated 9-10-1884 of the Transport Appellate Authority. The facts leading to this appeal are:

2. The 4th respondent was plying two stage carriage on the Markapur-Nandyal road. One Venkatasubbarao obtained another stage carriage permit to ply on the same route which was granted with tentative fixed timings. Thereafter he applied for rotation of timings on the route to cover all the buses plied on it. The Regional Transport Authority, Kurnool granted rotation of timings as prayed for by Venkatasubbarao. The 4th respondent thereupon preferred an appeal to the State Transport Authority. That appeal was rejected as time-barred. Aggrieved by the order he filed a revision to the Government which also was dismissed. He thereupon came to this court in Writ Petn. No. 894 of 1959. This petition was

dismissed subject to the directions that the Government might consider whether it could condone the delay on the part of the 4th respondent in filing the appeal before the State Transport Authority.

3. In pursuance of this observation the Government condoned the delay and remitted the appeal for consideration on merits to the State Transport Authority. That Authority allowed the appeal and sent the matter to the Regional Transport Authority for fresh consideration. The Regional Transport Authority dismissed the petition for rotation of timings. Prior to this, i.e., on 17-9-1961 the stage carriage of Venkata Subba Rao was purchased by the appellant who consequently upon a valid transfer of the permit in his favour for plying stage carriage on the Markapur-Nandyal route filed Writ Petition No. 323 of 1962 against the R. T. A's order rejecting Venkatasubba Rao's application for rotation of timings. That writ petition was allowed. The matter then went back to the R. T. A. for being considered on the merits. The Regional Transport Authority, Kurnool on 21-6-1963 granted an application of the appellant for rotation of timings,

4. Aggrieved by this order of the Regional Transport Authority, the 4th respondent filed an appeal to the State Transport Authority. The State Transport Authority allowed the appeal and set aside the order of the Regional Transport Authority. Aggrieved by the order of the appellate authority, the appellant filed a revision to the Government u/s 64 of the Motor Vehicles Act. This revision was dismissed. The appellant, therefore, came to this court again in writ petition No. 280 of 1965 which came up before our learned brother Gopalakrishnan Nair, J. Sri Venugopala Reddy, learned counsel for the petitioner urged three points before our learned brother. The first contention was that the fixation of timings was not a condition of the permit and that therefore a change of the timing did not involve any change of the condition of the permit. Following up this argument, it was further urged by the learned counsel that the 4th respondent, therefore, was not entitled u/s 64 of the Motor Vehicles Act to prefer an appeal to the S. T. A. and that the S.T.A. in passing the orders allowing the 4th respondent's appeal acted wholly without jurisdiction. The 2nd contention urged was that the order passed by the Government in the revision did not show that the Government had applied its mind to the case and that it was not a speaking order and has therefore to be set aside. The third contention raised was that the impugned order of the Government did not pay any regard to Rule 212 (3) of the Motor Vehicles Rules. Our learned brother repelled the three contentions and dismissed the writ petition. In this writ appeal the same three points are urged by Sri Venugopala Reddy, learned counsel for the appellant.

5. So far as the first point is concerned, we may point out that an identical question had come up for consideration in the case of P. Satyanarayana Vs. The State of Andhra Pradesh by the Secretary, Home (Transport Department), Hyderabad and Others, before a Bench of this Court and it was held therein that:

"Under section 48(3) as amended in 1957, the time table for stage carriages has assumed importance and now forms part of the permit. The delegation

authorised by Rule 134 (A) (ii) cannot be of much assistance as Section 48(3) is not mentioned in the Rule. It is doubtful whether the authority to delegate what was not then a condition of permit would still be available when the new section 48(20) prohibits departure from conditions of the permit save with the approval of the Road Transport Authority, and the old Rule contains no authority to delegate this power. Hence, the Secretary R.T.A. had no power to change the timings u/s 48(3)."

Our learned brother has followed this decision and held against the appellant. Sri Venugopal Reddy draws our attention to the earlier Madras Bench decision in *M. Kali Mudaliar Vs. A. Vedachala Mudaliar and Others*, *Sukhdeo Kumar Vs. State of Bihar and Others*, *P.C. Oommen (Molly Motors) Vs. Road Traffic Board, Kottayam and Another*, and *K.M. Thomas Vs. State Transport Authority, Kerala and Others*, and contended that the Bench Decision of this Court in AIR 1959 AP 420 required further consideration. We do not agree with the contention of the learned counsel. The earlier Bench Decision in *M. Kali Mudaliar Vs. A. Vedachala Mudaliar and Others*, was before the amendment of section 48 of the Motor Vehicles Act. Under the old section fixation of time was not one of the conditions of the permit whereas now u/s 48(3) and (4) this has been made a condition of the permit. *Rajamannar C. J. and Venkatarama Iyar* while considering the scope of section 48 of the Motor Vehicles Act rightly held that fixation of time was not a condition of the permit. This ruling, therefore, does not help the contention of the learned counsel for the appellant.

6. The Patna High Court no doubt in, the case of *Sukhdeo Kumar Vs. State of Bihar and Others*, following the decision of the Madras High Court in AIR 1952 Mad 345 has held that even after the Amendment of Sections 48(3) and (4), the position still remains the same i.e., the fixation of time is not a condition of the permit. With due respect to the learned Judges when this court has very clearly held that after the amendment fixation of time or change of time is a condition of the permit, we cannot follow the view taken by the Patna High Court.

7. The case of *P.C. Oommen (Molly Motors) Vs. Road Traffic Board, Kottayam and Another*, was a case which does not relate to the amendment, and in this case also the learned Judge has relied on the Madras Bench decision in *M. Kali Mudaliar Vs. A. Vedachala Mudaliar and Others*, .

8. *Vaidialingam, J.* in the case of *K.M. Thomas Vs. State Transport Authority, Kerala and Others*, relying on the bench decision of this court in *P. Satyanarayana Vs. The State of Andhra Pradesh by the Secretary, Home (Transport Department), Hyderabad and Others*, has held that after the amendment fixation of time is one of the conditions of the permit. This view of the learned Judge appears to be different from his earlier decision in AIR 1959 Ker 339. While dealing with section 48(3) he has taken the view that the change of timings is not a condition of the permit, but as stated earlier in view of the Bench Decision of this court we cannot accept this decision of the Kerala High court.

9. From the above discussion it is evident that the fixing of time is a condition of the permit. The first argument of the learned counsel, therefore, falls.

10. The next contention that the Government in passing the order in revision did not apply its mind to the case also, to our mind, does not appear to be well founded. A reading of the order shows that the Government did apply its mind to the contentions raised and dealt with them fairly. What is urged by Sri Venugopala Reddy is that the order does not give any reasons and that is enough to show that the Government "did not apply its mind In the case of Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI), their Lordships of the Supreme Court while considering the revisional powers of the Central Government by majority observed thus:

"Where the Central Government rejected the revision application holding that the application did not disclose any valid ground for interference it was sufficient The Central Government acting under rule 55 of the Mineral Concession Rules. 1960 was not bound to give its order fuller reasons for rejecting the application.

An order of Court dismissing a revision application often gives no reasons but this is not a sufficient ground for quashing it Likewise an order of an administrative tribunal rejecting a revision application cannot be pronounced to be invalid on the sole ground that it does not give reasons for the rejection "

11. It may be observed here that Subba Rao J. dissenting with the view observed that:

"What is essential is that reasons shall be given by an appellate or revisional tribunal, expressly by reference to those given by the original tribunal. The nature and elaboration of the reasons necessarily depend upon the fact of each case. In the present case neither the State nor the Central Government's order discloses the reasons for rejecting the application of the appellant. In the circumstances the Central Government's order is vitiated, as it does not disclose any reasons for rejecting the revision application of the appellant."

12. In view of the recent pronouncement of the Supreme Court we need not discuss the case of A. Vedachala Mudaliar Vs. The State of Madras and Another, ,

13. In the last contention urged by the appellant also we see no substance. What is urged by the learned counsel Sri Venugopal Reddy is that the impugned order did not at all take note of Rule 212 (3) of the Andhra Pradesh Motor Vehicles Rules, 1964. In order to appreciate the contention we have to refer to Rule 212 (3). It runs as under:

"(3) The Transport authorities shall, in deciding whether to grant or refuse additional trips or change of timings, have regard to the following:--

(i) need for provision of additional facilities or for revision of existing timings in the interests of public;

(ii) special circumstances such as change in the railway timings, changes in the

number of the permits either on the route or on the sectors of the route, or variations of routes.

Provided that whenever rotation of timings is to be enforced, stage carriages carrying mails should be excluded in the Public interests and the rotation should be enforced only in respect of all the other stage carriages on the particular route."

14. Interpreting this rule our learned brother has held that interest of public is the main consideration whereas the contention of Sri Venugopala Reddy is that if that was so Rule 212 (3) would not have been as it is According to him interests of public would be only in cases where there is need for provision of additional facilities or for revision of existing timings and not for Clause (ii) which relates to special circumstances such as change in the railway timings, changes in the number of permits etc To our minds the interpretation put by the learned counsel cannot be accepted. The above rule, in our opinion, does not enable the Transport Authority to ignore from taking into consideration public interest in granting change of timings. On the other hand, what the rule requires is that the Transport Authority should take into consideration the interests of the public and also special relevant circumstances enjoined in Sub-rule (8) (ii)

15. There is, therefore, no merit in this appeal It is dismissed. No costs.