
(1980) 03 KAR CK 0013
In the Karnataka High Court
Case No : WP 2808/79

Chandramohan Rao D.R.

APPELLANT

Vs

Stat and Others

RESPONDENT

Date of Decision : 12-03-1980

Acts Referred:

Karnataka Motor Vehicles Rules, 1963 — Rule 178(1)

Citation : (1981) 1 KarLJ 35

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

Judgement

1. The order dated 23-12-1978 passed by the Karnataka State Transport Appellate Tribunal, Bangalore, rejecting the Appeal No. 730/78 preferred by the petitioner as barred by time, is challenged in this petition under Art. 226 of the Constitution.

2. The contention of Sri M.R.V. Achar, the learned Counsel for the petitioner, is that as per Rule 178(1) of the Karnataka Motor Vehicles Rules, 1963 (hereinafter referred to as "the Rules") the appeal was required to be filed within 30 days from the date of receipt of the order and in the instant case, the order passed by the R.T.A. Bangalore was not served upon the petitioner; therefore, the petitioner has preferred the appeal within 30 days from the date of receipt of a certified copy of the order and as such, the appeal filed by the petitioner was in time; therefore, it was contended that the KSTAT was not right in dismissing the appeal as barred by time on the ground that the limitation for preferring the appeal commenced from the date of the order.

3. The R.T.A. has passed the order on 2-5-1978 and the petitioner was not served with a copy of that order. He applied for a copy of the order on 26th September 1978 and on the same day it was supplied to him and thereafter, within thirty days, he has filed the appeal on 16-10-1978.

4. On the contrary, it was contended on behalf of the third respondeat that as per Rule 178(4) of the Rules, the memorandum of appeal was required to be accompanied by a certified copy of the order, as such, it was incumbent upon the

petitioner to make an application for issue of a certified copy of the order within a period of 30 days from the date of the order and then to present the appeal with all the accompaniments in accordance with Rule 178(4) of the Rules. It was also submitted that when the order was pronounced by the R.T.A. with notice to the respondent-petitioner, he came to know of the order, therefore, he ought to have filed an application for issue of a, certified copy of the order within 30 days from the date of the order. It was also submitted that the period of limitation commences from the date of the order and not from the date of receipt of a certified copy of the order.

5. While considering the provisions of Rule 178(1)(d) of the Rules, this Court in *Syed Jalaluddin Akbar v. KSTAT*, WP 3512/79 dt. 23-7-79, has held thus:

".....An appeal has to be lodged within 30 days from the date of receipt of the order, which obviously means receipt of a certified copy of the order or a free copy of the order if any supplied to a party."

It has also been further held by this Court that the period of limitation for filing an appeal commences from the date of receipt of an order and not from the date of pronouncement of the order. This decision has been followed in WP 618/79, decided on 15th November 1979.

6. A Division Bench of this Court in *Sri Venkatesha Motor Service v. STA*, WP 170/57 dt. 2-6-58, while interpreting similar Rule, being Rule 276A of the Mysore Motor Vehicles and Road Traffic Rules, 1945, has held that for the purpose of commencement of limitation, it is the date of the receipt of the entire order and not merely an endorsement issued by the authority intimating that an order has been passed.

7. In WP 2836 of 1978 connected with WP 2977 and 2983 of 1978, WP 2836/78 etc, the question for consideration was as to what was the starting point for reckoning the time granted under the main part of sub-rule (2) of Rule 119 of the Rules; whether it was on the date of sanction of the permit or on the date on which such sanction was intimated to the grantee of a permit. It was held by the Division Bench that the starting point for computing the period allowed for producing the certificate of registration of the vehicle is the date of knowledge of the grant of permit including the terms and conditions thereof.

8. S. 64 of the Motor Vehicles Act (hereinafter referred to as the "Act"), provides that any person may within the prescribed time and in the prescribed manner appeal to the State Transport Appellate Tribunal constituted under sub-section (2) thereof. Accordingly, Rule 178 of the Rules prescribes the time and the manner for preferring an appeal to the STAT. Rule 178(1)(a) and (d) and Rule 178(4) of the Rules are as follows:

"178. Appeal (1)(a) An appeal under section 64 of the Act, against an order of the Regional Transport Authority or its Secretary, shall lie to the State Transport Appellate Tribunal within thirty days from the date of receipt of the order

appealed against.

(b) & (c) xx xx (d) An appeal, under Sec. 64 of the Act, to the State Transport Appellate Tribunal constituted under sub-sec. (2) of the said section shall be preferred within thirty days from the date of receipt of the order appealed against:

Provided that the said Tribunal may admit an appeal preferred after the period of 30 days aforesaid if it is satisfied that the appellant had sufficient cause for not preferring the appeal within that period.

(2) & (3) xx xx xx (4) (i) An appeal under Sec. 64 of the Act or a revision petition under Section 64A of the Act, shall be in the form of a memorandum setting forth concisely the grounds of objection to the decision or order which is the subject of appeal or revision and shall be accompanied by a certified copy of the decision or order.

(ii) An appeal or a revision shall be accompanied by six copies of the Memorandum in addition to the original with the prescribed process fee, and in cases where the, question involved is one of grant or refusal of a permit or of fixing timings over a route or routes, a route map in triplicate showing the distance between several places on the route or routes, the names of places enroute, the portions of routes lying along the National Highway, the State Highway or district road or village road, portions of the routes having cement, concrete, asphalted or kutcha roads, shall also be furnished along with such appeal or revision petition."

9. There is no dispute in this case that the order appealed against was not communicated to the petitioner. As per the provisions contained in Rule 178 of the Rules, the limitation for preferring an appeal begins to run from the date of receipt of the order appealed against. It was contended on behalf of the petitioner that there is no provision made either in the Act or in the Rules for serving a copy of the order upon a party; therefore, the expression "from the date of receipt of the order appealed against" found in Rule 178 of the Rules, should be interpreted as "from the date of receipt of a certified copy of the order". As already pointed out in WP 3512/79, (1) it has been held that the limitation commences from the date of receipt of either a certified copy of the order or a free copy of the order if any supplied to a party. When there is a right of appeal provided under S. 64 of the Act, and the period for exercising that right as per Rule 178 of the Rules, is 30 days from the date of receipt of the order appealed against, it necessarily follows that a copy of such order shall have to be sent to the party. Rule 178(4) of the Rules further provides that a memorandum of appeal should set forth concisely the grounds of objection to the decision or order which is the subject of appeal or revision and shall be accompanied by a certified copy of the decision or order. If this Rule is to be complied with by a party preferring an appeal, it is all the more necessary that the party must know the full text of the order and that is possible only when a copy of the order is

served upon the party. Therefore, for enabling the party to exercise the right of appeal, it shall have to be held that a copy of the order against which an appeal lies under Sec. 64 of the Act read with Rule 178 of the Rules must be served upon the party; whether or not a copy of such an order is asked for by the party. Of course, it is open for the party, on receipt of a copy of such an order either to prefer or not to prefer an appeal. In the absence of service of a copy of the order, the period of limitation as prescribed by Rule 178(1)(a) and (d) of the Rules, cannot be held to commence and the party also cannot be held to have come to know the contents of the order for the purpose of preferring an appeal except it be on obtaining a certified copy of such order.

10. Having regard to the wordings contained in Rule 178(1) and (4) of the Rules, the contention that there is no rule or provision in the Act entitling a party for supply of a free copy of the order, therefore, an application for issue of a certified copy of the order should be made within a period of 30 days from the date of the order and the appeal should be, filed within 30 days from the date of the order after excluding the time occupied for obtaining a certified copy of the order appealed against, cannot be accepted. The acceptance of such a contention will be only at the cost of doing violence to the provisions contained in Rule 178(1) (a) and (d) of the Rules. The starting point of limitation under Rule 178(1)(a) and (d) of the Rules is not made dependent upon the date of receipt of a certified copy of the order appealed against; but is made dependent upon the date of receipt of the order appealed against. If it is held that the starting point of limitation for preferring an appeal is 30 days from the date of receipt of a certified copy of the order appealed against, it will not only lead to uncertainty, but it will also cause injury and harassment to the respondents. It does not admit of an argument that an interpretation which leads to ambiguity must always be avoided. A party with impunity may apply for a certified copy of the order after a long time and may prefer an appeal within 30 days from the date of receipt of a certified copy of the order appealed against. Whereas, if it is held that a party to the proceeding is entitled to be served with a copy of the order appealed against, whether or not a copy of such an order is asked for by a party, there will be certainty about the starting point of limitation and at the same time it will not cause any injury or harassment to the other side. But, at the same time, in a case where a copy of the order appealed against is not served upon a party and such a party obtains a certified copy of the order appealed against and prefers an appeal within 80 days from the date of receipt of a certified copy of the order, it cannot also be held that such an appeal is barred by time; because the starting point for limitation under Rule 178(1)(a) and (d) of the Rules, is the date of receipt of a copy of the order appealed against. Therefore, even though there is no specific provision contained either in the Act or in the Rules for serving a free copy of the order liable to be appealed against under Sec. 64 of the Act read with Rule 178(1)(a) and (d) of the Rules, having regard to the fact that a party has got a right of appeal and such an appeal is to be preferred within 30 days from the date of receipt of the order appealed against, it will have to be held that the

party is, as of right, entitled to be served with a copy of the order, whether or not a copy of such an order is asked for by a party.

11. In the instant case, as already pointed out, the petitioner has not been served with a copy of the order appealed against. After he came to know of the order, he has obtained a certified copy of the order and has filed the appeal within 30 days from the date of receipt of a certified copy of the order. Under these circumstances, it will have to be held that the appeal presented by the petitioner before the first respondent was in time. Therefore, the first respondent was not justified in dismissing the appeal as barred by time on the ground that the limitation for preferring the appeal commenced from the date of the order appealed against.

12. For the reasons stated above this writ petition is allowed. The order passed by the first respondent dated 23rd December, 1978 in Appeal No. 730 of 1978, is hereby quashed. The first respondent is hereby directed to take the Appeal 730 of 1978 on its file and dispose of the same on merits, in accordance with law.