

(1964) 02 KAR CK 0004
In the Karnataka High Court
Case No : Writ Petition No. 669 of 1961

C.R. Gowda

APPELLANT

Vs

The Mysore Revenue Appellate Tribunal, Bangalore and
Others

RESPONDENT

Date of Decision : 05-02-1964

Acts Referred:

Motor Vehicles Act, 1939 — Section 44 (2), 57 (3), 63 (1), 63 (3)

Citation : AIR 1965 Kar 41 : (1964) ILR (Kar) 321 : (1964) 1 MysLJ 317

Hon'ble Judges : M. Sadasivayya, J;K.R. Gopivallabha Iyengar, J

Bench : Division Bench

Judgement

(1) This Writ Petition pertains to certain proceedings relating to the grant of stage carriage permit under the provisions of the Motor Vehicles Act 1939 (hereinafter referred to as the M.V. Act).

The present 4th respondent applied for a stage carriage permit for plying his bus from Bangalore to via Kunigal via Tavarekere, Magadi and Kempanahalli, and back. As part of the route lay within Bangalore District and the remaining part in Tumkur District, it was an inter-regional route. It was on 14-6-1958 that the 4th respondent filed his application; the substance of that application was published in the Mysore Gazetted Dated 25-12-1958. On 13-2-1959, the application of the 4th respondent was considered by the Bangalore Regional Transport Authority and it was resolved that a permit be granted to the 4th respondent. The present petitioner was one of the objectors before the R.T.A. ; he was an operator on the route Bangalore to Kallur, a portion of which was common with the route for which the 4th respondent has sought the permission. He appealed to the State Transport Appellate Tribunal (hereinafter referred to as the S.T.A.T.) against the resolution of the R.T.A. granting the permit to the 4th respondent. The appeal filed by him was dismissed by the S.T.A.T. The further appeal against decision of the S.T.A.T to the Mysore Revenue Appellate Tribunal (hereinafter referred to as the M.R.A.T.) by the present petitioner was unsuccessful and was dismissed on

3-1-1961. (The present petitioner as well as another objector had both preferred appeals to the S.T.A.T, and then to the M.R.A.T.; it was by common judge those appeals). Thereafter, the present writ petition has been filed. Sri M.R. Venkatanarasimhachar has appeared for the petitioner and Sri P.K. Shamsundar for the 4th respondent and Government Pleader Sri T. Radha Krishna for the first respondent (The Mysore Revenue Appellant Tribunal).

(2) The petitioner, in seeking to obtain a writ of certiorari quashing the proceedings which took place before the Mysore Revenue Appellate Tribunal and the Authorities constituted under the Motor Vehicles Act, has urged three grounds: The first one is that the substance of the 4th respondent's application for the stage carriage permit had not been published u/s 57(3) of the M.V. Act and that the route for which the permit was granted to the 4th respondent was not in accordance with what had been published u/s 57(3). The second ground of attack is that the Regional Transport Authority, Tumkur, has not followed the relevant rules in counter-signing the permit and that, therefore, the permit granted to the 4th respondent was of no legal validity in so far as it related to that portion of the route which lay within the jurisdiction of the Tumkur Regional Transport Authority. The last point which has been urged on behalf of the petitioner is that as the R.T.A., Bangalore did not consist, at the relevant time of non-official member, the Constitution of this R.T.A.. was not in accordance with Section 44 (2) of the M.V. Act and that, therefore the permit issued in favour of the 4th respondent, is liable to be quashed.

As against these contentions, it has been argued by Sri Shamsunder for the 4th respondent that none of these grounds has been urged either before the S.T.A.T. or the M.R.A.T. and that the petitioner should not be permitted to urge them now for the first time, in these proceedings. Government Pleader (Sri Radhakrishna) has refuted the allegation of the petitioner that the Regional Transport Authority had not been constituted in accordance with the requirements of Section 44(2) of the M.V. Act. After hearing the arguments of the learned Counsel, we are satisfied, for the reasons stated below, that this writ petition cannot succeed.

(3) So far as the first contention is concerned, it is not disputed before us that the petitioner had not urged before by of the Authorities under the Act that the substance of the petitioner's application, had not been published in the manner required u/s 57(3) of the M.V. Act. The substance of the petitioner's application had been published in the Mysore Gazette dated 25-12-1958 and the same has also been produced before us. Sri Venkatanarasimhachar for the petition has urged that even though the petitioner had not stated in his objections before the Authorities under the M.V. Act, the petitioner had taken up the specific contention that a portion of the route for which the 4th respondent had applied for a permit, had not been specified in the Gazette publication. In the route between Bangalore to via Kunigal, that portion between Bangalore and Huliurdurga via Tavarekere and Magadi was common to the petitioner and the 4th respondent. At Huliurdurga, the petitioner's route deviated southwards and proceeded to

Yalagawadi cross and then took northwest direction and passing through Kempanahalli reached Anchepalya cross. From thereon, the route to via Kunigal was common to the petitioner and the 4th respondent.

The argument advanced on behalf of the petitioner is that the portion of the route which proceeded from Huliurdurga to Yalagawadi cross and from thereon to Anchepalya via Kempanahalli, had not been specified in the Gazette publication which merely referred to the 4th respondent's prayer for a permit to operate on the route between Bangalore to via Kunigal via Tavarakere and Magadi. It is no doubt true, that this portion of the 4th respondent's route which passed via Yalagawadi cross and Kempanahalli had not been specified in the Gazette notification. But, what is required u/s 57(3) is the publication of the application or the substance thereof, in the prescribed manner. The petitioner did not take stand before the Authorities under the M.V. Act, that the omission to specify in the notification, this portion of the petitioner's route, amounted to failure to publish the substance of the 4th respondent's application for the purpose of Section 57 (3) of the M.V. Act.

The fact that the 4th respondent had sought a permit to operate on the route between Bangalore and via Kunigal via Tavarakere and Magadi, had been mentioned in the Gazette publication. Merely because some of the intermediate stations or places on the route had been omitted to be mentioned, it does not necessarily mean that for the purposes of Section 57(3) of the M.V. Act the substance of the application had not been published. It would appear from the order of the S.T.A.T. that the 4th respondent had previously been an operator on this very same route and that he had to apply afresh for the grant of the permit for the very same route, only because he had failed to make an application in time for the renewal of his previous permit. There cannot be any doubt that the petitioner between the Bangalore and Kallur via Kunigal, must have been aware of the exact route on which the 4th respondent had been operating between Bangalore and Kunigal. Publication in the Gazette dated 25-12-1958 was sufficient to make the petitioner aware of the fact that the 4th respondent had applied for a permit to operate on the route between Bangalore and via Kunigal; there is a reference in that notification to the 4th respondent's failure to obtain a renewal of his previous permit. It was open to the petitioner to have inspected at the office of the R.T.A., Bangalore, the application of the 4th respondent. As a matter of fact, as pointed out on behalf of the 4th respondent, it was never the case of the petitioner that he was not aware of the fact that the route in respect of which the permit had been sought for by the 4th respondent, passed via Yalagawadi and Kempanahalli; his contention really was only that the said portion of the route had not been specified in the Gazette notification. In these circumstances, it cannot be said that the petitioner was in any way prejudiced by the omission to specify this portion of the 4th respondent's route, in the said Gazette publication. We are satisfied that there is no strength in the petitioner's contention that the substance of the 4th respondent's application had not been published in accordance with the requirements of Section 57 (3) of the M.V. Act.

(4) So far as the second contention is concerned, the stand which the petitioner had taken before the Authorities under the M.V. Act was that the permit (granted to the 4th respondent), in so far as it related to the route within Tumkur District, was not valid as there was no proper compliance with the rules u/s 63(1) of the M.V. Act. for dispensing with the counter-signature of the Tumkur R.T.A. It seems to us, that the petitioner's attack on this ground was misconceived; because, it is not a case in which there is any omission of the counter-signature of the Tumkur R.T.A. In view of this fact, Sri Venkatanarasimhachar has, very rightly, not advanced before us of any contention based on any omission of such counter-signature. What is now sought to be urged by him is, that there has been non-compliance with the requirements of sub-section (3) of Section 63 of the M.V. Act as there was no previous publication and the hearing of objections, if any, by the R.T.A., Tumkur, before the counter-signing the permit.

As pointed out by Sri Shamsunder on behalf of the 4th respondent any objection on the ground of non-compliance with the requirements of Section 63 (3) of the M.V. Act, was not at all urged by the petitioner before any of the Authorities under the M.V. Act. In urging that the petitioner ought not to be permitted to raise now, such an objection. Sri Shamsunder has relied on a decision of this Court reported in M.C. Krishna Murthy v. Mysore Revenue Appellate Tribunal AIR 1963 Mys 329, wherein it has been indicated (at para 16), that inter-regional permits which operate without the counter-signature by virtue of a rule u/s 63(1), are a class of permits which are in addition to inter-regional permits granted in the ordinary way and which acquire validity on counter-signature. When it is found that the permit in the present case does not be fair now, to allow the petitioner to attack the validity of the permit on the ground that before making the counter-signature, the Tumkur R.T.A. has not followed the procedure required under the Act.

(5) The last argument sought to be advanced on behalf of the petitioner is that at the relevant time, the R.T.A., Bangalore, had not been constituted in accordance with Section 44(2) of the M.V. Act. The relevant portion of Section 44(2) is as follows:-

"(2) A State Transport Authority or a Regional Transport Authority shall consist of a Chairman who has had judicial experience and such other officials and non-officials, not being less than two, as the State Government may think fit to appoint....."

It is contended that there was no non-official member, at the relevant time, and that, therefore the Bangalore, R.T.A., had not been legally constituted and that all proceedings taken in relation to the grant of the permit to the 4th respondent are invalid. It is urged on behalf of the petitioner that the language of Section 44(2) is mandatory and that when there was no non-official member as required in that sub-section, the Regional Transport Authority did not have any legal existence at all. (It is stated that the subsequently reconstituted R.T.A., has now a non-official member). It has been argued by Sri Venkatanarsimhachar on

behalf of the petitioner that as this is an objective which goes to the very root of the matter, he is entitled to raise the same any such objection before the R.T.A. and had availed himself of a chance of being successful before that Authority, ought not to be permitted at this late stage to raise an objection of this nature.

By way of an explanation for the petitioner's failure to have raised this contention either before the R.T.A. or before the two appellate Tribunals, Sri Venkatanarasimhachar stated that they might not have decided a question pertaining to the validity of the constitution of the R.T.A. even if such a question had been raised before them. It is further stated by him that in some other subsequent case, a Full Bench of the Revenue Appellate Tribunal had expressed a view that it was not within its competence to decide a question pertaining to the legality of the constitution of the R.T.A. and that the petitioner did not raise any objection in regard to the invalidity of the constitution of the R.T.A. Nor did he approach the High Court, at that stage, complaining about the R.T.A.'s lack of jurisdiction on the ground of its invalid constitution. The defect, if any, in the constitution of the R.T.A. was there, at the time when the petitioner had to put forward his contentions against the grant of the permit to the 4th respondent. The petitioner chose not to rely on any such defect, but took the chance of his contentions being upheld by the R.T.A. The question now, is whether in view of this conduct of the petitioner, he ought to be now permitted to raise the objection that the R.T.A. had not been constituted in accordance with the requirements of Section 44(2) of the M.V. Act.

(6) In support of his contention that, the constitution of the Regional Transport Authority not having been in accordance with Section 44 (2), there was initial lack of jurisdiction and that, therefore, its proceedings are all void, Sri Venkatanarasimhachar has relied on a Full Bench decision of the Andhra Pradesh High Court reported in Sheik Hussain and Sons Vs. State of Andhra Pradesh and Others, . In that case that Court had to consider the question as to whether the Chairman of the State Transport Authority sitting alone, could hear an appeal against the order of the Regional Transport Authority. The composition of the State Transport Authority having been statutorily fixed u/s 44(2) of the M.V. Act, it was held that the proceedings of the Chairman, sitting alone, were in contravention of the requirements of that Section and therefore the proceedings were void. Particular reliance was placed by Sri Venkatanarasimhachar on the following passage at para 41 at page 42 :-

"If the statute requires that the Tribunal should be composed of a certain number of members, obviously a lesser number cannot perform the functions of the Tribunal. A Tribunal, whose composition is not in accordance with the statutory requirements, has no jurisdiction to decide a question arising under the statute.

In such a case, the question goes to the root of the jurisdiction of the Tribunal and is not a matter of mere irregularity in the conduct of its proceedings. Want of jurisdiction in these cases arises from the absence of an essential preliminary with regard to the composition of a Tribunal. The constitution and composition of

a Tribunal being a condition precedent to the exercise of its jurisdiction, there is an initial lack of jurisdiction which renders its proceedings void."

The argument of Sri Venkatanarasimhachar is that, in the present case, the absence of the non-official member amounted to the want of an essential preliminary with regard to the composition of the R.T.A. and that, therefore, there was an initial lack of jurisdiction which rendered its proceedings void. The correctness of this stand of Sri Venkatanarasimhachar has not been conceded by the learned Advocate for the 4th respondent. Relying on an earlier decision of the Andhra Pradesh High Court reported in *Amaravathi Motor Transport Co. v. State of Andhra* AIR 1956 AP 232, it has been argued by Sri Shamsunder, that the language of Section 44(2) of the M.V. Act is capable of being understood as merely providing the Government with a field of selection consisting of both officials and non-officials, out of which not less than two may be selected. As against this, it has been pointed out by Sri Venkatanarasimhachar that this view of the Andhra Pradesh High Court has not been accepted by the Rajasthan High Court in the Full Bench decision reported in *Janta Transport Co-operative Society Ltd. and Another Vs. The Regional Transport Authority, Jaipur and Others*, .

After arguments were closed, Sri Shamsunder has filed a memo to the effect that in W.P. Nos 633 and 642 of 1962 in which orders were pronounced recently another Division Bench of this Court has expressed the view that the absence of non-official members in the constitution of the R.T.A. does not offend Section 44(2) of the M.V. Act. We do not think that it would be necessary for the purpose of the present case, to decide as to which of these two views with regard to the construction of the language of Section 44(2) of the M.V. Act, should be accepted. What is more material is, whether the petitioner has not, by his own conduct, precluded himself from urging this contention, now, to invoke the jurisdiction under Article 226 of the Constitution. If the petitioner is found to be so precluded, it will be unnecessary for this Court to give a finding on the legality or otherwise of the impugned proceedings before the R.T.A. The legal position has been well set out by S.A. De Smith in his "Judicial Review of Administrative Action". At page 314, it is stated as follows:

"A decision made without jurisdiction is void, and it cannot be validated by the express or implied consent of a party to the proceedings. It does not always follow, however, that a party adversely affected by a void decision will be able to have it set aside. As we have seen certiorari and prohibition are, in general, discretionary remedies, and the conduct of the applicant may have been such as to disentitle him to a remedy.....Whether the tribunal lacked jurisdiction is one question; whether the Court, having regard to the applicant's conduct, ought to its discretion to set aside the proceedings is another. The confused state of the present law is due largely to a failure to recognise that these are two separate questions."

A person who, though aware of a defect in or lack of jurisdiction, does not raise any objection on that ground that acquiesces and takes the chance of a decision

in his favour, will be disentitled to a writ of certiorari. At page 315 of his book, De Smith states as follows :--

"The right to certiorari or prohibition may be lost by acquiescence or implied waiver. Acquiescence means participation in proceedings without taking objection to the jurisdiction of the tribunal once the facts giving ground for raising the objection are fully known. It may take the form of failing to object to the statutory qualification of a member of the tribunal against the decision of the tribunal of first instance without raising the question of jurisdiction."

The Supreme Court, in the case of Pannalal Binjraj v. Union of India reported in AIR SC 397, has stated as follows in para 45 at p. 412 :--

"There is moreover another feature which is common to both these groups and it is that none of the petitioners raised any objection to their cases being transferred in the manner stated above and in fact submitted to the jurisdiction of the Income Tax Officers to whom their cases had been transferred. It was only after our decision in Bidi Supply Co. Vs. The Union of India (UOI) and Others, , was pronounced on the 20th March 1956, than these petitioners woke up and asserted their alleged rights, the Amritsar group on 20th April 1956, and the Raichur group on 5th November 1956. If they acquiesced in the jurisdiction of the Income Tax Officers to whom their cases were transferred, they were certainly not entitled to invoke the jurisdiction of this Court under Art. 32. It is well settled that such conduct of the petitioners would disentitle them to any relief at the hands of this Court (Vide Halsbury's Laws of England, Vol. II, 3rd Ed., p. 140, para 265; Rex v. Tabrum : Ex Parte Dash, ` O.A.O.K. Lakshamanan Chettiar v. Corporation of Madras ILR 50 Mad 130 : AIR 1927 Mad 130."

In Civil Petn. No. 400 of 1961 (Mys) which was decided recently (22-8-1963) by a Division Bench of this High Court, Kalagate, J. has stated as follows :-

"Can a party who seeks to challenge the jurisdiction of the Tribunal to which he has submitted himself be permitted to raise the question of jurisdiction when he invokes our power in a writ petition under Art. 226 or 227 of the Constitution? The power the High Court is asked to exercise is a discretionary one, and when the party who has not challenged the jurisdiction of a Tribunal but submitted to it and took the chance of a decision in his favour, later turns round when the decision goes against him and challenges the jurisdiction of the very Tribunal, the High Court will not exercise its discretionary power in favour of such a party. By refusing to exercise its discretionary power under Art. 226 or 227 of the Constitution, it is plain that the High Court is not holding that the petitioner by not challenging the jurisdiction of the Tribunal confers jurisdiction upon it if that Tribunal has, in fact, no jurisdiction, but simply tells him that he by his own conduct is precluded from invoking its discretionary powers under the writ jurisdiction, no matter whether the proceedings which he seeks to quash are without jurisdiction. If they are without jurisdiction, it is true that no conduct of the party will make them with jurisdiction. But such considerations do not affect

the principle on whom the Court acts in granting or refusing to grant the writ of certiorari."

(7) The petitioner must have been all along aware of the alleged defect in the constitution of the R.T.A. Yet, he did not raise any objection on that score, but took a chance of his succeeding in the proceedings before it. If the petitioner has succeeded before the R.T.A., we would not have heard any thing further from him about any defect in the constitution of that body. Having regard to the principles discussed above, it is clear that he is precluded by his own conduct, from now putting forward the contention that the R.T.A. had not been properly constituted. Therefore, the last ground of attack also cannot, in any way be helpful to the petitioner.

Sri Shamsunder has also brought to our notice the fact that two petitions (W. Ps. 311 and 313 of 1961) in which the validity of the constitution of the R.T.A. had been challenged on the same ground, were both dismissed for the sole reason that those petitions were filed as late as in March 1961, i.e., a period of more than three years after the constitution of the R.T.A. (which was on 31-12-1957) and that the petitioner was, therefore, disentitled to any relief. The present petition does not stand on a different footing from those two writ petitions.

(8) In the result, this petition is dismissed with costs of respondents 1 and 5 (respondents-5 being transferee from Respondent-4). Advocate's fee Rs.100).

(9) Petition dismissed.