

(1998) 09 KAR CK 0038

In the Karnataka High Court

Case No : Writ Petition No's. 2546, 2666, 2667, 2694, 2695, 2668, 2691, 2692 and 2693 of 1998

D.L. Sadashiva Reddy

APPELLANT

Vs

P. Lala Sheriff and Others

RESPONDENT

Date of Decision : 01-09-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 19 (1) (g)
Motor Vehicles Act, 1988 — Section 47, 57, 72, 80, 90

Citation : AIR 1999 Kar 5 : (1999) ILR (Kar) 666 : (1998) 6 KarLJ 42

Hon'ble Judges : S.R. Venkatesha Murthy, J; Ashok Bhan, J

Bench : Division Bench

Advocate : Sri S.V. Krishnaswamy, Sri M.R. Venkatanarasimhachar and Sri A.S. Parasara Kumar, for the Appellant; Sri A. Ananda Shetty, for the Respondent

Judgement

1. These writ appeals are directed against the judgment dated 27th May, 1998 in Writ Petition Nos. 5726 of 1998 and 5772 to 5774 of 1998, by which the learned Single Judge dismissed the writ petitions holding that rival operators are not entitled to question the assigning of timings for the service of the other respondents.

2. The appellant in Writ Appeal No. 2546 of 1998 who holds a stage carriage permit on transfer from the 5th respondent in the writ petition sought to implead himself as a party to the Writ Petition No. 5773 of 1988, but without disposing of the application, the order impugned was made.

3. Writ Appeal No. 2666 and 2667 and 2694 and 2695 of 1998 are filed by Gajanana Motor Transport Company challenging the assignment of timings etc., on the ground that their services are affected by the timings.

4. Writ Appeal Nos. 2668 of 1998 is by the applicant who sought to implead himself in Writ Petition No. 5726 of 1998 but the writ petition was dismissed on the ground that rival operator has no right to challenge the assignment of

timings.

5. The only question that requires to be examined in these writ appeals is, whether the rival operator has no right to challenge the assignment of timings by resorting to Section 90 of the Motor Vehicles Act of 1988 (hereinafter called "the Act").

6. The writ petitions referred to above have been disposed of on a preliminary point namely that the rival operators, who could not assail the grant, cannot assail the timings also having regard to the observation of the Supreme Court in *Mithilesh Garg, Vs. Union of India and others etc. etc.*, ,

7. The contention on behalf of the appellants has been that the question as to whether a grant of a permit could be assailed by a rival operator was not the point at issue in *Mithilesh Garg's* case and that the Honourable Supreme Court was called upon to adjudicate whether the liberalisation of the policy of grant of a stage carriage permit under the Act of 1988 violated Articles 14 and 19(1)(g) of the Constitution of India. A reading of the judgment in *Mithilesh Garg's* case would show that the Supreme Court sought to compare and contrast the Act of 1988 with the Motor Vehicles Act, 1939 insofar as it related to the provisions regarding grant of stage carriage permits. In paras 7 and 8 of the *Mithilesh Garg's* case, the apprehension of *Mithilesh Garg* and his ilk, that their interest would be affected by the policy of the liberalisation of grant of permits under the Act of 1988, has been negated and it is observed that there was no justification for the petitioner to complain against the grant of permits under the Act of 1988, under the liberalisation policy, on the ground that it affected their rights under Articles 14 and 19 of the Constitution. The question as to whether an existing operator could challenge grant made under the Act of 1988 by resorting to appeal provisional jurisdiction did not come up for consideration at all. The only observation of the Supreme Court in *Mithilesh Garg's* case pertaining to appeal or revisional jurisdiction under the Act reads as follows:

"15. The petitioners have further contended that the conditions of roads, social status of the applicants, possibility of small operators being eliminated by big operators, conditions of hilly routes, fuel availability and pollution control are some of the important factors which the Regional Transport Authority is bound to take into consideration while taking a decision on an application for grant of permit. These are the matters which are supposed to be within the comprehension of the transport authorities. The legislative policy under the Act cannot be challenged on these grounds. It is not disputed that the Regional Transport Authority has the power under the Act to refuse an application for grant of permit by giving reasons. It is for the authority to take into consideration all the relevant factors at the time of quasi-judicial consideration of the applications for grant of permits. The statutory authorities under the Act are bound to keep a watch on the erroneous and illegal exercise of power in granting permits under the liberalised policy".

(emphasis supplied)

8. The observations emphasised above only reiterates the position that grant of permits or refusal of permits are subject to the appeal/provisional jurisdiction of the State Transport Appellate Tribunal under the Act of 1988

9. Before the decision in Mithilesh Garg's case, the question as to whether grant of stage carriage permits could be questioned by existing stage carriage operators came up for consideration in Writ Petition Nos. 1765 to 1768 of 1990 and this Court by its order dated 30th of March, 1990, after examining the scope and ambit of Section 90 of the Act of 1988 came to the conclusion that a rival stage carriage operator was entitled to question the grant of a permit u/s 90 of the Act. In para 8 of the judgment, His Lordship Mr. Justice S. Rajendra Babu (as he then was) examined in detail the rival contentions as to who could be regarded as an aggrieved person u/s 90 of the Act of 1988 and has made the following observation:

"7. The crux of the problem is that what formula should be adopted in understanding the expression "any person aggrieved" to apply to the Court or a Tribunal. There are some views expressed by Court that any question of standing must be resolved by interpreting these words in a restrictive in sense. Standing depends upon some indefinable factors which vary from one case to another, and the interpretations have also become inconsistent. Most of the confusion arises on account of the fact of mixing up of answers to two different questions: (i) whether a person is at liberty to apply to the Court and (ii) whether having done so he has shown sufficient grounds to be entitled to the relief. It is obvious that merely because he passes the first test, he necessarily passes the second. The current tendency is to relax the requirement as to standing and this is in accordance with the enlightened system of public law. There are several cases where the Courts have favoured liberal interpretation of the expression "person aggrieved" and it is now less likely that these words will be made not to apply to any person who reasonably considers himself aggrieved. Judicial dicta suggests that they are likely to cover any person who has a genuine grievance of whatever kind and that is equivalent of saying to any person who reasonably wishes to bring a proceedings.

"8. But in the present context the operation of service is to cater to the needs of the travelling public and is a service oriented activity and in such cases when Supreme Court itself has noticed that the increase or decrease in the number of vehicles on the route would affect the operation of the route itself, it cannot be said that persons such as the petitioners have no locus standi to prefer the revision petitions. Even the learned Counsel who appeared for the respondents who sought to support the order of the Tribunal did not contend that even in cases where some timings as that of an existing operator are granted to a new permit holder, the existing operator does not become an aggrieved person. His contention was that it is only when timings were assigned such question would arise. But if the petitioner can knock out the permit itself on some

substantial ground available in law can it be said that he does not become aggrieved person or should he wait till the timings are assigned. Therefore, in my view, the approach of the Tribunal, on the basis of certain decisions of the Supreme Court and of the High Courts where focus standi has been considered altogether in a different context, does not stand to reason".

The decision rendered in Hanuman Transport Company (Private) Limited v The Karnataka State Transport Appellate Tribunal , referred to above was challenged by the affected operator and the Division Bench dismissed the Writ Appeal Nos. 1162 and 1163 of 1990 by its order dated 12th June, 1990. It is thus clear that u/s 90 of the Act a revision can be maintained by a rival operator challenging a grant of the stage carriage permit or the timings assigned to a service.

10. In Surendra Rao Vs. Regional Trasport Authority, Gorakhpur Region, Gorakhpur and others, , the Division Bench of the Allahabad High Court had occasion to examine the scope and ambit of Section 90 of the Act and has observed as follows:

"6. As the order granting permits may affect the working of the route, the existing operator has locus standi, being aggrieved person, to file a revision u/s 90 before the Appellate Tribunal. Whether in view of the facts of a particular case of Appellate Tribunal should or should not interfere is a matter for the Tribunal itself to decide but the revision cannot be thrown out on the ground that it is not maintainable. As the Act gives the power of superintendence to the Tribunal so as to keep the transport authorities within check, it is the bounden duty of the Appellate Tribunal to interfere if it finds that the transport authorities have exercised the powers of granting permits erroneously or illegally. In this connection the Appellate Tribunal should keep in mind the observations of the Supreme Court in the case of Mithilesh Garg, supra, to the effect that the statutory authorities under the Act are bound to keep a watch on the erroneous and illegal exercise of power in granting permits under the liberalised policy".

11. The view of the Allahabad High Court concurs with the view expressed by this Court in Hanuman Transport Company"s case, referred to above.

12. On behalf of the respondents, a decision in The Secretary, Changanacherry Taluk Road Bus Thozhlali Co-operative Society Ltd. Vs. Mathew Job and Others, , was relied upon to the effect that an existing operator has no right to object to grant of a permit of any other operator though he could question the timings. The Kerala High Court in para 7 of its judgment sought to rely upon certain observations made in Mithilesh Garg"s case in support of its finding that an existing operator has no right to object to grant of a permit to another operator.

13. Even the observations of the judgment in Mithilesh Garg"s case relied upon by the High Court of Kerala does not support the view that the grant of a permit cannot be questioned by a rival operator. Basically, in the Motor Vehicles Act of 1939, grant of a permit depended on the establishment of a need for the introduction of a stage carriage service and for that purpose, Sections 47 and 57

had been enacted. Subject to Chapter VI, Sections 72 and 80 of the Act of 1988 have changed the whole basis and grant of a permit is the rule and the rejection is the exception.

From this circumstance an inference that there is no right given to an existing operator to challenge the grant, on the ground that it is illegal or improper cannot be inferred. The decision in Mathew Job's case, *supra*, in our opinion, cannot be regarded as an authority for the proposition that a rival operator cannot challenge the grant of a stage carriage permit on the grounds specified in Section 90 of the Act.

14. A reading of Section 90 of the Act of 1988 makes it clear that any order of the Regional Transport Authority or the State Transport Authority, whether it be grant of a permit or assignment of timings, can be called in question by an aggrieved operator and the order can be demonstrated to be either illegal or improper. It follows that a rival operator on making" allegations which *prima facie* demonstrates a grievance which calls for examination, is entitled to have his revision examined on merits in accordance with law and he cannot be thrown out at the threshold on the ground that he has no grievance. When once the Tribunal exercises the power to examine the order impugned, it is needless to state that it has to examine the order as to whether it is improper or illegal and has to decide the matter on merits. In the circumstances, the order of the learned Single Judge, rejecting the writ petitions cannot be sustained.

15. Accordingly, the writ petitions are allowed and the order impugned is set aside the writ petitions are to be decided on merits by the learned Single Judge.