

(1965) 03 KAR CK 0009

In the Karnataka High Court

Case No : Writ. Petition No. 804 of 1964

G.T. Venkataswami Reddy

APPELLANT

Vs

Regional Transport Authority, Bangalore and Another

RESPONDENT

Date of Decision : 26-03-1965

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Motor Vehicles Act, 1939 — Section 44 (2), 64 (1) (a)

Citation : AIR 1966 Kar 55 : (1965) 1 MysLJ 488

Hon'ble Judges : M. Santhosh, J;K.S. Hegde, J

Bench : Division Bench

Judgement

K.S. Hegde, J.

(1) The petitioner is a stage carriage operator. In this writ petition under Art. 226 of the Constitution, initially he prayed for a writ of Prohibition or other suitable Writ or Order in the nature of a writ, prohibiting the Regional Transport Authority, Bangalore (first respondent) from implementing its decision announced on 16-4-1964, granting a stage carriage permit to the Mysore State Road Transport Corporation (second respondent) on the route from Bangalore to Tirupathi. Objection was taken to the relief prayed for on the ground that appropriate relief to be asked for is one for quashing the decisions of the first respondent by the issue of a writ of Certiorari. In view of this objection, the petitioner, by means of I.A.No.6, sought and obtained permission to amend his petition by including an alternative prayer namely,

"Or, in the alternative, if it is found for any reason that a Writ of Prohibition is not an appropriate and efficacious relief, this Hon'ble Court be pleased to grant a Writ of Certiorari or any other appropriate Writ, Order or direction calling for the proceedings in Subject No. 65/64-65 on the file of the Regional Transport Authority, Bangalore (respondent-1) and quash the order passed on or about 30-4-1964, despatched to the petitioner on 8-5-1964 and received by him on 11-5-1964, and pass such other and further orders as may be deemed

appropriate in the circumstances of the case."

(2) The material facts of this case are as follows: On 18-3-1963, the petitioner applied to the first respondent for the grant of a permit to operate a stage carriage service between Bangalore and Tirupathi via Krishnarajapuram Hoskote, Kolar, Palamaner and Chittoor (in opposite direction of the Andhra operator Sri Ramachandra Naidu). Two other stage carriage operators had also applied for permits for stage carriage service on that route. The petitioner's application was notified under S. 57(3) of the Motor Vehicle Act (to be hereinafter referred to as the "Act") in the Mysore Gazette dated 25-4-1963. In said notification, 10-6-1963 was fixed as the last date for receipt of representations and 5-7-1963 was fixed as the date of hearing.

In the same Gazette, yet another Notification was published calling for applications in Form No. 21 for the grant of a stage carriage permit on the inter-State route Bangalore-Tirupathi (single trip per day) via the same places as had been mentioned in the petitioner's application. The petitioner filed W.P. No. 730/63 asking this Court to quash the said notification. Therein he prayed for and obtained an interim Order staying further proceedings pursuant to that Notification. Meanwhile, the petitioner's application, referred to earlier, amendment up for consideration before the first respondent and the R.T.A. was pleased to grant him the permit prayed for. One of the persons who had applied for the permit in pursuance of the notification issued this Court in W.P. 2409/63 for quashing the permit granted to the petitioner. When that petition came up for hearing before this Court, by agreement of all the parties before the Court, the permit granted to the petitioner was cancelled and the R.T.A. was directed to consider all the applications received by it up till 20-5-1963 either submitted suo motu or submitted in response to the notification dated 24-5-1963.

It appears that there were as many as 46 applicants for the route in question, the second respondent being one of them. The applications in question came up for consideration before the R.T.A. at its meeting held on 16-4-1964. At that meeting 20 applicants withdrew their applications. After hearing the remaining applicants, the first respondent orally announced that the second respondent had been selected for the grant of the permit in question. It is that decision that is being challenged in this writ petition. This petition was filed on 27-4-1964. It is seen from the records that the written proceedings of the R.T.A.'s meeting held on 16-4-1964 was signed and issued by its chairman on 30-4-1964. On 30-4-1964, this Court granted the interim Order of stay prayed. According to the affidavit filed by the Chairman of the R.T.A. the said interim Order was received by the R.T.A. on the evening of 30-4-1964 by which time the Order signed by him had been communicated to the second respondent.

(3) The petition assails the impugned decision of the first respondent on three different grounds viz.,

(1) that as only 3 out of the 4 members of the R.T.A. were present at the

meeting held on 16-4-1964, the Tribunal was not properly constituted and hence it was not competent to deal with the subjects before it;

(2) the second respondent was not competent to apply for the permit in question as no steps under S. 20 of the Road Transport Corporation Act, 1950 (Central Act No. 64 of 1950) had been taken; and

(3) the decision impugned is an invalid decision as the concerned proceedings were signed only by the Chairman of the R.T.A. and not by all its members present.

(4) The contesting respondents raised a preliminary objection that this Court should refuse to entertain the petition as the petitioner had adequate alternative remedy which he failed to avail himself.

(5) The first question for decision is whether the preliminary objection should be sustained. It was urged by Sri M.K. Nambiar, the learned counsel for the petitioner, that the power conferred on this Court under Article 226 of the Constitution is a very wide power; it admits of no limitations and therefore the existence of an adequate alternative remedy, assuming such is the case here, does in no manner bar the jurisdiction of this Court in entertaining this petition. In support of this contention of his, he placed strong reliance on the decision of the Supreme Court in *State of U.P. v. Mohammad Nooh* AIR 1958 SC 86 wherein the learned Chief Justice, speaking for the Court, observed that there is no other equally effective remedy; provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute; the fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior Courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any; but this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law; the superior court will readily issue a certiorari in a case where there has been a denial of natural justice before a court of summary jurisdiction.

(6) It has been laid down in numerous cases that the existence of other adequate legal remedies is not per se a bar to the issue of a writ of certiorari and in a proper case it may be the duty of the superior court to issue a writ of certiorari and in a proper case it may be the duty of the superior court to issue a writ of certiorari to correct the errors of an inferior court or tribunal called upon to exercise judicial or quasi judicial functions and not to relegate the petitioner to other legal remedies available to him. It is not an inflexible rule of law that the superior court must deny the writ when an inferior court or tribunal by discarding all principles of natural justice and all accepted rules of procedure arrived at a conclusion which shocks the sense of justice and fair play.

(7) There is no doubt that the question of adequate alternate remedy is an aspect that has to be taken consideration in exercising the discretion if this Court. But then, the discretion of this Court being a judicial discretion its limits are well defined. That discretion is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained otherwise. Ordinarily this Court will not entertain a petition for a Writ under Article 226, where the petitioner has an alternative remedy, which without being unduly Article 256, where the petitioner has an alternative remedy, which without being unduly onerous provides an equally efficacious remedy--see *Thansingh Nathmal and Others Vs. A. Mazid, Superintendent of Taxes*, . Hence we have to see whether the petitioner had an equally efficacious remedy which he had failed to avail himself.

(8) As soon earlier, by its decision announced on 16-4-1964., the R.T.A. declined to grant to the petitioner the permit prayed for by him. Section 64(1)(a) of the "Act" provides that any person aggrieved by the refusal of the State or a Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to him, may within the prescribed time and in the prescribed authority who shall give such person an opportunity of being heard. Prima facie the remedy provided therein is an adequate remedy. It is for the petitioner to satisfy this Court why he did not avail himself of that remedy. At this stage, it may be mentioned, that for the route in question in addition to the petitioner and the second respondent, then were may other applicants. Some of them had filed appeals against the impugned decision and those appeals are pending consideration before the appellate authority.

If this Court grants the relief prayed for by the petitioner, then those appeals will become ineffective. Neither all applicants nor all the objectors are parties to this Writ Petition. Hence, if this Court accepts this Writ Petition and grants the relief prayed for by the petitioner, the persons who are not parties to this proceeding are likely to be affected. Therefore, unless there are compelling reasons this Court will not be justified in interrupting the proceedings before the Authorities constituted under the "Act". To decide the question whether there are any special grounds requiring the interference of this Court at this stage it is necessary to consider the contentions taken in support of the Writ Petition.

(9) It was urged on behalf of the petitioner that as only three out of the four members of the R.T.A. were present at its meeting held on 16-4-1964, the Tribunal was not properly constituted and therefore its proceedings of that date's meeting are without legal effect; those proceedings should be considered as non-est; hence it is a fit case for exercising our extraordinary jurisdiction. The objection to its competence was not taken before the R.T.A. If the objection in question had been taken before the R.T.A. and if the R.T.A. had found substance in it, then its meeting might have been adjourned to a future date. The petitioner

had evidently sat on the fence probably with the idea of accepting the decision of the R.T.A. if it should be favourable to him but resist the same on the ground of want of competence on the part of the R.T.A. if it should be unfavourable to him.

Now having failed to get the permit asked for, he has approached this Court with the objection that the R.T.A. was not properly constituted when it considered the applications in question. In *C.R. Gowda v. Mysore Revenue Appellate Tribunal* 1964 1 Mys LJ 318: AIR 1965 Mys 41 this Court laid down that when the petitioner who must have been aware of the defect in the constitution of the R.T.A. did not raise any objection on that score but took the chance of his succeeding in the proceedings before it, he is precluded by his own conduct from putting forward the contention that the Tribunal had not been properly constituted.

(10) In support of that conclusion this Court relied on certain passages from "Judicial Review of Administrative Action" by S.A. De Smith and also on the decision of the Supreme Court in *Pannalal Binjraj Vs. Union of India* (UOI), . We are bound by that decision.

(11) It is not the case of the petitioner that he did not know that the R.T.A consisted of 1 member. Admittedly only 3 of them were present at the meeting. Hence, in law it must be presumed, assuming the contention that the R.T.A was not properly constituted is correct that the petitioner was aware of the defect in the constitution of the R.T.A. Therefore, it was the duty of the petitioner to raise that objection before the R.T.A. and give it an opportunity to remedy the defect. He had not done so. He cannot be permitted to approbate and reprobate. Hence he is prima facie disentitled to any relief at the hands of this Court.

(12) But then, it was said on behalf of the petitioner, that there was no purpose in raising the objection in question before the R.T.A in view of Rule 91(3) is ultra vires of the powers of the Rule making Authority. In the instant case, as seen earlier, the R.T.A consisted of four members; three of them were present at the meeting therefore, the meeting held is in accordance with R. 91(3). It was said that the R.T.A. could not have entertained the objection that it was not properly constituted in view of the said Rule; hence the fact that the petitioner did not object to the proceedings before the R.T.A. is more technical than real as an authority constituted under a statute cannot, in the very nature of things; go into the validity of the statute of which it is a creature nor it could consider the validity of the Rules framed under that statute.

(13) Was the R.T.A. not properly constituted when it met on 16-4-64? Section 44(2) of the "Act" provides that 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. Subject to the requirement that the R.T.A should consist of a Chairman who had judicial experience and a minimum of two other members, official and non-official, the composition of the R.T.A is entirely left to the discretion of the

State Government. As seen earlier, the State Government has appointed a chairman and three other members. Further, the very State Government which was the Rule Making Authority had provided in Rule 91(3) framed under S. 91 of the "Act" that no business shall be transacted at the meeting of the R.T.A. unless at least one half of the number of members including the Chairman arbitration present.

For our present purpose, it is unnecessary to pronounce on the vires of that Rule because the meeting with which we are concerned in this case, was attended by the Chairman and two other members, therefore, the requirement of S. 44(2) of the "Act" must be held to have power to prescribe by Rules that for the proper functioning of the R.T.A all its members need not be present. In our opinion, it is entitled to prescribe a quorum. But, whether if the quorum prescribed by it conflicts with the requirements of section 44(2), to that extent the Rule is ultra vires is a question that does not arise for decision in this case. In that view, the ratio of the decision of the Madras High Court in Kama Umi Isa Ammal Vs. Rama Kudumban and Others, is inapplicable to the facts of the present case.

That apart, as mentioned by this Court in C.R. Gowda's case (1964) 1 Mys LJ 318 : AIR 1965 Mys 41 a person who sits on the fence and takes the chance of succeeding before the Tribunal knowing full well that it was not properly constituted should not later on be permitted to turn round and plead the defect in the constitution of the Tribunal. After all, the power of this Court under Article 226 of the Constitution is a discretionary power, that discretion should be exercised only in appropriate cases. As observed by S.A. De Smith in his "Judicial Review of Administrative Action":

"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 in 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."

The Learned Author again observed:

"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, or appealing to a higher tribunal, against the decision of the Tribunal of first instance without raising the question of jurisdiction."

(14) It was urged on behalf of the petitioner that the view taken by this Court in C.R. Gowda's case. (1964) 1 Mys LJ 318 : AIR 1965 Mys 41 cannot be accepted as the correct view, or view of the decision of the Supreme Court in The United Commercial Bank Ltd. Vs. Their Workmen, . Therein the learned Chief Justice speaking for the majority of the Judge constituting the Bench observed (Paragraph 15 of the judgment):

"The final contention that the sittings in the interval constituted only an irregularity in the proceedings cannot again be accepted because, in the first place, an objection was raised about the sitting of the two members as the Tribunal. That objection, whether it was raised by the appellants or the other party is immaterial. The objection having been overruled, no question of acquiescence or estopped arises. Nor can consent give a Court jurisdiction if a condition which goes to the root of the jurisdiction has not been performed or fulfilled. No appearance or consent can give a jurisdiction to a Court of limited jurisdiction which it does not possess. In our opinion the position here clearly is that the responsibility of all the three members, if proceedings are conducted and discussions on several general issues took place in the presence of only two, followed by an award made by three, the question goes to the root of the jurisdiction of the Tribunal and is not a matter of irregularity in the conduct of those proceedings. The absence of a condition necessary to found the jurisdiction to make the award or give a decision deprives the award or decision of any conclusive effect. The distinction clearly is between the jurisdiction to decide matters and the ambit of the matters to be heard by a Tribunal having jurisdiction to deal with the same. In the second case, the question of acquiescence or irregularity may be considered and overlooked. When however the question is of the jurisdiction of the Tribunal to make the award under the circumstances summarised above, no question of acquiescence or consent can affect the decision."

(15) In the case before the Supreme Court, the proceedings were conducted and discussion on several general issues took place in the presence of only 2 members whereas the award was made by 3 members. The third member who was a party to the award was absent at the time when a good part of the proceedings of the Tribunal took place. Further, objection to the jurisdiction of the Tribunal had been taken before the Tribunal. It is in these circumstances, the Supreme Court thought fit to exercise its discretionary jurisdiction. It is a well accepted principle of law that all judicial and quasi judicial proceedings, must take place before all the members of the Court or Tribunal who ultimately participate in the decision rendered. If a part of a proceeding is taken before some members and the decision is rendered by those members and others, such a course is opposed to our elementary conception of justice. The present case falls within the Rule laid down by the Supreme Court in Pannalal Binjraj Vs. Union of india (UOI), wherein the Court held 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 if 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 20th March 1965, that these petitioners woke up and asserted their alleged rights, the Amirtsar group on 20th April 1956, and the Raichur group on 5th November 1956. If they acquiesced in the jurisdiction of the Income Tax Officer to whom their cases were transferred, they were certainly not entitled to invoke the jurisdiction of this Court under Article 32. It is well settled that such conduct of the petitioner would disentitle them to any relief at the hands of this Court (vide Halsbury's Laws of England Vol II. 3rd Edn. Page 140, para 265; *Lakshmanan Chettiar v. Commr of Corporation of Madras* ILR Mad 130 : AIR 1927 Mad 130 (Full Bench)).

(16) The contention that the R.T.A. was not properly constituted when it held its meeting on 16-4-1964 is clearly an afterthought. The said contention was not taken in the petition as originally filed. It was taken up for the first time after the case was part-head and that in the affidavit filed in support of I.A. No. VI in which an alternative relief was prayed for with the permission of the Court.

(17) For the reasons mentioned above, firstly we are of the opinion that the R.T.A. was properly constituted when it held its meeting on 16-4-1964; secondly, even if the R.T.A. had not been properly constituted, the petitioner is disentitled to question the validity of the meeting in question in view of his conduct.

(18) The contention that no appeal could have been filed on the date of this Writ Petition was filed as the decision of the R.T.A. had not been reduced into writing on that day is without substance. The decision was reduced into writing and signed within reasonable time. The petitioner was not justified in rushing to this Court. He cannot be permitted to defeat the course of law by adopting an unreasonable attitude, assuming that that is a ground available under law.

(19) Nor is there any merit in the contention that the decision of the R.T.A. ultimately affects the petitioner's fundamental right to approach this Court under Article 226, ignoring the right of appeal provided under the "Act". If that be the true position in law, then every one who is refused a permit can as a matter of right approach this Court for relief. The fundamental right of the petitioner to run a stage carriage service is restricted by the provisions of the "Act", the validity of which was not questioned before us. Therefore, the right for which the petitioner is agitating is that provided in the "Act" and therefore, primarily he must have recourse to the provisions of the "Act".

(20) The next contention taken was that the decision rendered by the R.T.A. is invalid in law, as the same was signed only by its Chairman. The admitted facts are that the R.T.A. at its meeting on 16-4-1964 considered various subjects that were before it, thereafter the members adjourned for discussion; after some time, they returned and announced the decisions on each one of the subjects

that came up for consideration before them; but the decisions of the R.T.A. were not reduced into writing that day. According to the Chariman of the R.T.A. who has filed a counter-affidavit in this case, at that time of their discussion members of the R.T.A. considered the points in favour as well as against each one of the applicants and only thereafter it reached its decisions. He further stated, that in accordance with the usual practice, the order was dictated by him sometime later. According to him, the order in question was signed by him on the noon of 30-4-1964.

(21) The contention taken on behalf of the petitioner is that the Chairman was not competent to sign the Order on behalf of all the members; and the reasons given by the Chairman in the order cannot be considered as the reasons given by the R.T.A. as such. It is true that there is no provision either in the "Act" or in the Rules empowering the Chairman to sign the order on behalf of all the members of the R.T.A. At the same time no provision in the "Act" or in the Rules was brought to our notice requiring that the order of the R.T.A. should be signed by all its members. The question whether the Chairman alone can, in law, sign on behalf of all the members is certainly a question that could be canvassed before the appellate authority. The appellate authority is competent to go into that question. Hence, we fail to see why that question should be consider by this Court.

(22) The only contention that remains to be examined is that the second respondent was incompetent to apply for the permit in question without first taking action under S. 20 of the Road Transport Corporation Act, 1950. Under that Act, Road Corporation have to be established by the State Governments. Section 18 of that Act, which prescribes the duties of the Corporation lays down that it shall be the duty of a Corporation so to exercise its powers as progressively to provide or secure or promote the provision of, an efficient, adequate, economical and properly co ordinated system of road transport services in the State or part of the State for which it is established and in any extended area. Section 19(1) stipulates that subject to the provisions of that Act, a Corporation shall have power to operate road transport services in the State and in any extended area "Extended area" is defined in action 2(c) thus:

"Extended area means any area or route to which the operation of any road transport service of a Corporation has been extended in Section 20 says:

"(1) If a corporation considers it to be expedient in the public interest to extend the operation of any of its road transport services to any route or area situated within another State, it may with the permission of the State Government, negotiable with the Government of the other State regarding the proposed extension.

(2) If the Government of the other State approves the proposed extension the Corporation shall prepare a scheme for the purpose and forward the same to the other Government for its consent and after such consent has been received, the

Corporation may, with the previous approval of the State Government sanction the scheme.

(3) After the scheme has been so sanctioned it, shall be competent for the Corporation to extend the operation of its road transport service to such route or area and when the operation of such service is so extended, the Corporation shall operate the service on that route or in that area subject to the provisions of any law in force in the other State within which such route or area is situated.

(4) The Corporation may, from time to time, alter or extend the scheme sanctioned under sub-section (2) by a supplementary scheme provided in the foregoing provisions of this section."

(23) The route for which the second respondent has applied, namely, Bangalore to Tirupathi, admittedly does not lie within this State. The activities of the Corporation had not been extended to that route by following the procedure laid down in section 20. Therefore, it was urged that the application made by the second respondent was not maintainable. It was further urged on behalf of the petitioner did not know that no steps had been taken u/s 20, to include the said route within the extended area of the Corporation and therefore the petitioner could not take the objection as regards the maintainability of the second respondent's application. That omission, according to the petitioner, does not preclude him from raising the said objection in this proceeding. It was further urged on behalf of the petitioner that when a statutory body, like the Road Corporation is empowered to act by law in a particular manner it is precluded from acting in any other manner.

(24) On the other hand, it was urged on behalf of the second respondent, that the petitioner not having taken the objection to the maintainability of the application of the second respondent before the R.T.A. he cannot now be permitted to take that objection. It was further urged on its behalf, that the Corporation like any other Transport Operator can apply for a permit under provisions of the "Act"; the power conferred on it u/s 20 of the Road Transport Corporation Act, 1950, is an additional power, therefore, the present case does not fall within the Rule laid down by the Privy Council in AIR 1936 253 (Privy Council) on the other hand it falls within the Rule laid down by the Supreme Court in The Parbhani Transport Co-operative Society Ltd. Vs. The Regional Transport Authority, Aurangabad and Others, .

It was also urged on its behalf that the Mysore Government Road Transport Department even before the commencement of the Bangalore and Tirupathi; those services were made over to the Corporation after its formation; therefore, the Corporation was not a new entrant to the route in question; and hence S. 20 did not apply to the facts of the present case. It was lastly urged that in view of the direction issued by the State Government under S. 34 of the Road Transport Corporation Act, 1950, despite the non-observance of the procedure laid down in S. 20 of that Act, the second respondent had competence to apply for the route

in question.

(25) We decline to go into these controversies as in our opinion these contentions are contentions which can be appropriately taken before the appellate authority. We have no doubt in our mind that the appellate authority is competent to go into these questions and pronounce on the same. Moreover, the appellate authority will have the advantage of hearing on these questions the various other parties, who are not before us. Even, if ultimately this Court is called upon to decide these questions at that stage, this Court will have the benefit of the opinions of the authorities constituted under the "Act" on all these questions. Therefore, we do not think that we will be justified in exercising our extraordinary jurisdiction at this stage. We are clearly of the opinion that the petitioner had adequate and efficacious alternative remedy, which he should have pursued before seeking relief at the hands of this Court. If his remedy under the "Act" is barred, about which we do not express any opinion, he has to blame himself. His laches cannot be good grounds for invoking our extraordinary jurisdiction.

(26) For the reasons mentioned above, this petition fails and the same is dismissed.

(27) In the circumstances of the case, we make no order as to costs.

(28) Petition dismissed