

(1985) 07 KAR CK 0014

In the Karnataka High Court

Case No : Writ Petition No's. 6132 and 6133 of 1984

Hanuman Transport Co. (P) Ltd.

APPELLANT

Vs

S.T.A.T.

RESPONDENT

Date of Decision : 10-07-1985

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1985) ILR (Kar) 4132

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

Bench : Single Bench

Advocate : M. Rangaswamy, for the Appellant; Abdul Khader, HCGP, M.R.V. Achar, K.B. Yuvaraj Ballal, Ananda Shetty and R.B. Brahmavar, for the Respondent

Final Decision : Allowed

Judgement

K.A. Swami, J.—The petitioner is the same in both the Petitions. In these Petitions under Articles 226 and 227 of the Constitution, the petitioner has sought for quashing the order dated 29th March, 1984, passed by the Karnataka State Transport Appellate Tribunal (hereinafter referred to as KSTAT) in Appeal Nos. 151/82, 153/82. 1140/81, 25/82 and 227/82, produced as Annexure-K.

2. The facts necessary to consider the contentions urged on both the sides are not in dispute and the same are as follows.

3. On 11-5-1981 the petitioner filed an application for grant of a stage carriage permit on the route Chakranagar to Mangalore via Masthikatte, Balebele, Siddapur, Amavasebai, Coondapur and Udupi and back (one round trip). This application was registered at subject matter No. 161/81-82. On 16-6-1981 the fourth respondent also filed an application for grant of a stage carriage permit on the route Chakranagar to Mangalore via Mundally, Masthikatte, Huhkal, Balabele, Siddapur, Varahi (IP), Siddapur, Kandlur, Coondapur, Kota, Brahmavara, Udupi and Muiky (one round trip). This application was also registered at subject No. 162/81-82. After following the required procedure, both the applications came up

for consideration before the second respondent on 17-10-1981. This is clear from the extracts of the proceedings of the second respondent produced as Annexure-B. On that day, the fourth respondent, as stated in the resolution dated 17-10-1981 passed in subject No. 161/81-82 produced as Annexure-D, was absent. He was also unrepresented. The application of the petitioner alone was considered and it was granted. It also appears that the fourth respondent appeared subsequently after the application of the petitioner was heard and sought for adjournment of his application only and accordingly the application was adjourned. Subsequently, the application of respondent No. 4 was taken up for consideration on 21-11-1981 and it was rejected by the second respondent as per the resolution produced as Annexure-F. The reasons given for rejecting were that one permit had already been granted to the petitioner and there was no labour move in cut from Mangalore towards Chakranagar daily; that the permit granted to the petitioner was sufficient to meet the needs of the labour ; that there was no need for introducing additional service between Siddapur to Mangalore and it would also lead to unhealthy competition.

4. Respondent No. 4 being aggrieved by the aforesaid two resolutions of the second respondent preferred Appeal Nos. 151/82 and 153/82. Some of the objectors had also preferred appeals against the order granting permit to the petitioner being Appeal Nos. 1140/81 and 25 and 227 of 1982. All these appeals were heard and decided together by the KSTAT on 29th March, 1984. The KSTAT framed the following points for determination :

(1) Whether the RTA was justified in considering the application of the grantee on 17-10-1981 and granting permit to the grantee on that very day without considering the application of the rejected applicant also on that date itself ?

(2) Whether the RTA was justified in granting the permit to the grantee on the materials available in the records relating to the grantee application ?

(3) Whether the RTA was justified in rejecting the application of the rejected applicant on a subsequent date on the ground that it had already granted permit to the grantee on 17-10-1981 on practically the same route ?

(4) Whether the appellants in Appeal Nos 1140/(sic), 25 and 227 of 1982 are affected by the grant and the impugned timings ? and

(5) Whether the joint memo dated 22-3-1984 filed in Appeal Nos. 151 and 153 of 1982 can be given effect to V

5. On the first point, it came to the conclusion that the second respondent was not justified in considering the application of the petitioner and adjourning that of the fourth respondent. On points 2 and 3 it was of the view that the material on record was not sufficient and as it was remitting the matter it was not necessary to record a finding on points 2 and 3. But, nevertheless it recorded its findings on points 2 and 3 in the negative. On point No. 4, it came to the conclusion that the appellants in Appeal Nos. 1140/81 and 25 and 227 of 1982 were not affected by

the grant of permit whereas the services of the appellants in Appeal Nos. 1140 of 1981 and 227 of 1982 were affected by the timings assigned to the permit granted to the petitioner. However, it took a view that as the matter was being remitted, it was open to the second respondent to consider the matter afresh. On point No.5, the KSTAT did not accept the memo. Consequently, it has remitted the matter to the second respondent to consider together the application filed by the petitioner and respondent No.4 and decide afresh after obtaining fresh report from the I.M.V. in respect of the routes relating to both the applications and after affording an opportunity of hearing to the applicants and the objectors.

6. Sri.M. Rangaswamy, Learned Counsel appearing for the petitioner submits that it is not a case in which the second respondent can be said to have chosen to consider the application of the petitioner alone; that it is a case in which respondent No. 4 remained absent even though both subjects were taken up together for consideration and he appeared only after the application of the petitioner was fully heard. Therefore, the subject relating to the fourth respondent was adjourned on his request. There was no question of adjourning the application of the petitioner because it had already been heard by the time respondent No.4 appeared, it is also contended that in view of the finding recorded by the KSTAT on the question of need that it is not in a position to arrive at a conclusion, it ought to have called for the report of the I. M. V. afresh and considered both the applications together irrespective of the resolutions of the R.T.A. and for that purpose alone it need not have remitted the matter. On the contrary, it is contended by Snyuths M. R. V. Achar and Ananda Shetty and Brahmavar Learned Counsel appearing for the contesting respondents that it was incumbent upon the second respondent to hear and decide both the applications together when they were posted together and related to substantially the same route; therefore, the KSTAT was justified in remitting the matter as the applications had not been considered together.

7. In view of the aforesaid contentions, the question that arises for consideration in these Petitions is as to whether the KSTAT is justified in remitting the matter to the second respondent.

8. From the resolution of the second respondent produced as Annexure-B it is clear that the fourth respondent remained absent and was unrepresented. No doubt, the application of the fourth respondent was also posted on 17-10-1981. The legal position cannot also be disputed that when the applications relate to the same or substantially the same route, all such applications, if ripe for consideration, are required to be considered together as otherwise the application which is not considered is likely to be affected, having regard to the fact that the question of need will be common to both the applications. Accordingly, in the instant case also both the applications were posted together. But it is not the law that if one of such applicants remains absent and is unrepresented, the consideration of the application/s of the other applicant or applicants shall also be postponed without any reason. In fact if on the date! the

application is posted for consideration, the applicant remains absent and is unrepresented, the application is liable to be rejected on that ground alone. Therefore, it is not possible to hold that in the facts and circumstances of this case, the second respondent chose to consider the application of the petitioner alone after adjourning the application of the fourth respondent. As contended by the petitioner, the fourth respondent appeared subsequent to completion of hearing of the application of the petitioner and sought for adjournment of his application only. Under these circumstances, it is not possible to hold that the second respondent has acted in contravention of the decisions of this Court in B.M. Puttu Rao - v. - MRAT and Others, W.P. No. 322 of 1971 DD 22-6-1971 and Pandyaraja Ballal & others -vs State, W.P. No. 1200 of 1960 DD 10-11-1961, . Therefore, the first respondent is not justified in recording the finding on point No. 1 that the second respondent is not right in considering the application of the petitioner.

9. But this conclusion of mine is not of any materiality in the instant case in as much as on the question of need the KSTAT having come to the conclusion that in view of the report of the I.M.V. it was not possible to record a finding one way or the other ; it should have called for the fresh report from the I.M.V. or from the Secretary, RTA itself and decided the question of need in respect of both the applications. This Court in P. Abdul Azeez, Bellary - v. -Mysore Revenue Appellate Tribunal, Bangalore, AIR 1962 Mysore 31, has held that the appellate authority enjoys the same power as that of the original authority. The power of remand can be exercised only if there is no material at all on record on the basis of which the question left undecided by the original authority can properly be decided by the appellate authority or if the latter finds that the material is insufficient to enable it to come to just decision on the question. In the instant case, apart from the report of the I.M.V., there is other material on record which is not considered by the KSTAT. That being so, the KSTAT was not justified in remitting the matter. Accordingly, it is held that having regard to the facts and circumstances of the case and the material on record, the KSTAT was not justified in remitting the matter. It ought to have called for the reports from the I.M.V. and any other fresh material it wanted and decided both the applications afresh on merits.

10. It is now brought to my notice that pursuant to the order of remand, the RTA has already called for the report and such report has been submitted by the I.M.V. If that be so, it is also open to the KSTAT to call for that report or a fresh report in respect of both the routes and decide the matter afresh.

11. For the reasons stated above, these Writ Petitions are allowed in the following terms :

(1) The order dated 29th March, 1984 passed by the KSTAT in Appeal Nos. 151/82, 153/82, 1140/81, 25/82 and 227/82 produced as Annexure-K is hereby quashed ;

(2) The Appeals now stand remitted to the KSTAT with a direction to decide the

same afresh and in accordance with law and in the light of the observations made in this order.

(3) It is open to the KSTAT to call for the fresh report/s from the I.M.V, in respect of both the routes or if there is already a report received by the RTA pursuant to the impugned order of remand, which is quashed by this order, in respect of both the routes in question, it may call for that report from the RTA and such of the material as it may deem it necessary and decide the appeals afresh and in accordance with law and in the light of the observations made in this order within three months from the date of receipt of this order.