

**(1976) 01 KAR CK 0001**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 4402 of 1975**

H.K. Krishnamurthy

APPELLANT

Vs

The Regional Transport Authority, Mysore and Others

RESPONDENT

**Date of Decision :** 02-01-1976

**Acts Referred:**

Motor Vehicles Act, 1939 — Section 57 (2), 64 (1) (a)  
Motor Vehicles Rules, 1939 — Rule 100

**Citation :** AIR 1976 Kar 190 : (1976) ILR (Kar) 758 : (1976) 1 KarLJ 198

**Hon'ble Judges :** K. Jagannatha Shetty, J

**Bench :** Single Bench

**Advocate :** A.S. Viswanath, for the Appellant; C. Shanthamallappa, M.R. Venkatanarasimhachar, S.V. Krishnaswamy, T.R. Rangaraj and M. Rangaswamy, for the Respondent

## Judgement

1. On 24th June 1974, the Regional Transport Authority (R. T. A.) issued a notification u/s 57 (2) of the Motor Vehicles Act, (shortly called "the Act") inviting applications for the grant of stage carriage permits on the route "Mysore to Koudelhalli and back". The Gazette notification shows that it was signed by the in-charge Secretary of the R. T. A. In response to the said notification, respondents 2 to 18 submitted their applications. The petitioner was one among the objectors opposing the grant of the proposed permits. On 11th June 1975, the applications came up for consideration before the R. T. A. The petitioner raised a preliminary objection that the notification issued u/s 57 (2) was invalid since it was issued by the in-charge Secretary who was incompetent to perform the statutory functions under the Act. That objection was based on the well known principle that a person in-charge of a statutory office can only perform the day to day routine works and not the statutory functions. The R. T. A. accepted that objection and directed the return of the applications to the concerned applicants under Rule 100 of the Motor Vehicles Rules. The applicants, however, did not take back the applications, which, therefore, remained on the file of the R. T. A.

2. After 11th June, 1975, on which day the R. T. A. made the above order, a

similar question relating to the validity of the notification issued by the incharge Secretary of the R. T. A. came up for consideration before this Court in Nanjappa M. v. Karnataka State Transport Appellate Tribunal (1975) 2 Kar LJ 258 : AIR 1975 Kar 238, in which it was observed that such notification would not be invalid since the R. T. A. only Performs a ministerial act by issuing any such notification. The above decision was brought to the notice of the members of the R. T. A. by some of the applicants too show that the view taken by the R. T. A. in its order dated 11th June 1975 was incorrect. The R. T. A. then thought that the matter required reconsideration and so it issued notices to all the applicants and also to the objectors stating starting the applications of respondents 2 to 18 would be considered on the merits on 1st September 1975. The petitioner along with some others objected to the R. T. A. from reconsidering its earlier decision stating that it has no jurisdiction to review its own order. It is said that on 1st September 1975, the R. T. A. heard the parties, considered the merits of the applications, and orally informed the parties that it would grant permits to some of the applicants. Before the written order was made, the petitioner approached this Court with an application under article 226 of the Constitution, praying for a writ of prohibition to restrain the R T. A. from pronouncing its order, primarily on the contention that the R. T. A. has no power to review its own order.

3. The decision on the question, therefore, turns on the scope of the order dated 11th June 1975 which is set out hereunder:

"Since it was contended on behalf of some of the objectors that the Notification published under sub-section (2) of Section 57 of the Motor Vehicles Act inviting applications for selection of permit holder for the route Mysore to Gowdalli and Gowdalli to Mysore is not maintainable under the law as the same has been notified by the Secretary , who was in charge during the absence of the Regular secretary and that under the law the Power to invite the applications is a statutory Power vested with the Regional Transport Authority and that Power exercisable under Rule 95 of the Rule, 1963 is the Secretary, Regional Transport Authority to whom such power is delegated and not the other who might be placed in charge during his absence.

In the above circumstances, the Regional Transport Authority decided that a fresh notification under the signature of the Regular Secretary is necessary and accordingly resolved that a fresh notification inviting applications under sub-section (2) of Section 57 of the M. V. Act may be issued by the Secretary, Regional Transport Authority.

The applications received in response to the notification Published by the Secretary who was in charge may be returned to the applicants concerned along with the challans and other enclosures under Rule 100 of the M. V. Rules."

It was urged for the petitioner that the above order directing the return of the applications in the context, was an order disposing or rejecting the said applications and the aggrieved parties should have preferred appeals against the

said order, and the R. T. A has no Jurisdiction to review its own order. Before I consider the above contention, it is necessary to bear in mind that the Act does not specifically confer on the R. T. A. the power to review its own order made under the provisions of the Act. The R.T. A. being the statutory authority, has to perform its functions in accordance with the provisions of the Act, it has to dispose of the application for a stage carriage permit at the public hearing as provided by Section 57 "(5) of the Act which states that when any representation is made against the application, the R. T. A. shall dispose of the application at a public hearing at which the applicant and the person making the representation shall have an opportunity of being heard either in person or by a duly authorized representative. The order made thereunder either by granting or by refusing to grant a permit, is made appeal able u/s 64 (1) (a) of the Act. If the order dated 11th June, 1975 was an order disposing of the applications in the above manner, then the R. T. A. must be held to have no right to re consider the said applications received in response to the said notification. It is not disputed that the order determining the parties must have preferred the appeals against the said order. If it was not, The R. T. A. would be under a legal obligation to consider and dispose of the said application. In accordance with provisions of Section 57 (5).

4. I will now turn to the order dated 11th June 1975. It shows that the means that the R. T. A. must consider the applications and the objections, if any, on the merits, and make an R. T. A. was primarily concerned with the validity of notification issue by the in charge Secretary and it did not advert to the merits of the applications or the in-charge or the objections raised by the petitioner against the incharge Secretary was not competent to issue the notification u/s 57(2) of the ACT and consequently it directed the return of the applications received in response to the said notification. It is not disputed that the order determining the validity of such notification is not appeasable under the Act. So also, the order directing the return of the applications under Rule100 of the Motor Vehicle Rules is not appeasable. The said rule itself gives an indication that the return of the application is not the same thing as rejection or disposing of the application. The rule provides that the application should not be rejected on technical grounds but it shall be returned to the applicant for rectification of any defects or for presentation to dispose of.

It is difficult to state that the R.T.A. while returning the applications, has in fact disposed them of, as provided by section (57) 5 . The disposal of the application as provided by section 57 (5) of the Act, means that the R.T.A must consider the applications and the objections, if any, on the merits, and make an order either granting or refusing to grant the permit. That was also the view taken by this Court in D.T Lakshminarsimha Iyengar v. The Regional Transport Authority, Bangalore (1963 2 Mys LJ 65) where it was observed: by Lakshminarasimha Iyengar v. The Regional Transport Authority, Bangalore (1963 2 Mys LJ 65) where it was observed:

"Although sub-section (5) only directs the Regional Transport Authority to dispose of" the application, the clear meaning of the expression is that it must either grant the permit or" refuse it. That, that is the meaning to be given to that expression is clear from sub-section(7) which directs the Regional Transport Authority to state the reasons in case of refusal of the application.

5. It was, however, submitted that the fact that the R. T. A. did not grant the permit on 11th June 1975 to consequently it directed the return of the any one of the applicants itself shows that it rejected their applications or refused to grant the permits, and therefore that that order was appealable u/s 64 (1) (a) of the Act. In support of that contention, reliance was placed on the decision of this Court in G. N. Ramachandra Setty v. Mysore Revenue Appellate Tribunal (1966) 2 Mys LJ 49. That was a case where the R. T. A. after considering the application and without making a specific order of granting or refusing it, recommended the same to the State Transport Authority for further action. This Court in the context held that the recommendation must be held to be a refusal to "ant the permit and therefore appealable u/s 64 (1) (a) of the Act. It may be relevant to state that the R. T. A. in that case considered the application on the merits and without granting the permit, it recommended the said application to the State Transport Authority. The facts of the present case are quite different. The R. T. A. did not consider the merits of the applications in this case on 11th June 1975.

6. Having regard to the facts of the case and the context in which the order dated 11th June 1975 was made, it must be held that the said order was not appealable as it was not an order disposing of the applications for permit, and therefore the R. T. A. would be well within its jurisdiction nay, under a legal obligation to dispose of the same applications in accordance with law.

7. In the result, the rule is discharged without an order as to costs.

8. Rule discharged.