

(1989) 02 KAR CK 0022
In the Karnataka High Court
Case No : W.P. No. 18009 of 1988

H.M. Shanthappa

APPELLANT

Vs

Karnataka State Transport Appellate Tribunal and Others

RESPONDENT

Date of Decision : 20-02-1989

Acts Referred:

Motor Vehicles Act, 1939 — Section 48

Citation : (1989) 2 KarLJ 33

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

Judgement

Swami, J.-As this petition can be disposed of on a short ground, it is heard for final disposal.

2. In this petition under Articles 226 and 227 of the Constitution, the petitioner has sought for quashing the order dated 5.12.1988 passed by the Karnataka State Transport Appellate Tribunal, Bangalore (hereinafter referred to as "KSTAT") in URA 465 of 1988(Annexure-E).

3. The 3rd respondent made an application for grant of a stage carriage permit on the route Theerthapura "to Guddadaneralakere and back. This application was published in the Karnataka Gazette dated 15.8.1985. Several operators filed their objections. The petitioner claims that he had also filed his objections. The petitioner is an operator on the route Hosadurga to Kanchipura and back and Settikere to Gunguramalla and back. Thus he is operating on a portion of the route sought for by the 3rd respondent.

4. The R.T.A. considered the subject on 5.3.88 and resolved to grant permit to the 3rd respondent.

5. Being aggrieved by the resolution of the RTA, the petitioner preferred an appeal in URA 465/1988 before the KSTAT. The KSTAT has dismissed the appeal on the grounds that the petitioner cannot be considered to be an objector; that he did not appear on the date the application was considered, that there was a delay in filing the appeal and no application as such was filed for condonation of

delay.

6. In the meanwhile pursuing to the grant, the Secretary, RTA has assigned the timings to the permit granted to the 3rd respondent. The petitioner has also preferred an appeal against the said order. In this petition, it is submitted on behalf of the petitioner that he is not interested in getting the resolution of the RTA granting permit to respondent No. 3, set aside; but he being an existing operator and having objected to the grant of permit, should be permitted to pursue the remedy of appeal against the order of the Secretary RTA assigning timings because he is seriously affected by the timings assigned by the Secretary, RTA inasmuch as his priority has been taken away.

7. In order to object to initial assigning of timings, one has also to be an objector to the grant of permit. Therefore, the question for consideration is, whether the petitioner is an objector to the application filed by the 3rd respondent for grant of stage carriage permit on the route Theerthapura to Guddadaneralakere.

8. Sri. Ramesh, learned High Court Government Pleader has produced the records of the RTA. From the records it is noticed that the petitioner had sent an objection which was received by the RTA on 11.9.1985 well within time. The objection is found at page 46 of the records of the RTA. However, the RTA could not notify the petitioners as the objection did not contain the address of the petitioner. It is also one of the contentions of the 3rd -respondent that a mere filing of an objection in time is not sufficient and a copy of the objection shall have to be served on the applicant simultaneously and as that has not been done by the petitioner, he cannot be treated as an objector. As far as filing of the objection before the RTA is concerned, as already pointed out, the records do reveal that the objection was filed by the petitioner well in time. Regarding simultaneous service of objection on the applicant, the petitioner has produced a photostat copy of "certificate of posting" at Annexure-C. which bears the seal of the post office dt. 10.9.1988. Annexure-C contains 6 addresses. Serial Nos. 1 and 2 relate to the Secretary, RTA. Tumkur Third and fourth relate to other persons. Fifth entry relates to the 3rd respondent. The address given therein is as follows: "T.M. Purudaiah, S/o. Muddarange Gowda, Prakash Motor Service, Thimmanahalli Post, C.N. Hally Taluk."

This is the address given by the applicant in his application. Thus it is established in this case that the objection was simultaneously sent to the Secretary, RTA as well as to the applicant's address as given by him in his application. In such a situation, presumption as to due service arises. This question is considered by this Court in N.S. Nandeesh Gowda Vs. State of Karnataka I.L.R. 1987 Karnataka, Page-2809 and it held as follows:

"8.3. It is not possible to accept this contention also. Further, this contention is no more res-integra as far as this Court is concerned. In Achamma Thomas Vs. E.R. Fairman 1969(2) Mys. L.R., 179, this Court while considering the notice sent under certificate of posting terminating the tenancy under section 106 of the

Transfer of Property Act has held as follows:

"Quite apart from what I have stated with regard to the service of registered notice or affixation of the notice on a conspicuous part of the premises, it is enough to hold that in this case, there has been due service of notice by virtue of the fact that the notice has been sent by post under "certificate of posting" and the presumption arises under Section 114(f) of the Indian Evidence Act that the letter has been duly delivered to the addressee as the letter has been addressed to the residential address of the Respondent-tenant."

Again in *Peera Saheb v. Balachandra Rao & Others* 1971(2) Mys. L.J. 143. following the aforesaid decision in *Achamma's* case, it has been held as follows:

"Both the Courts below have held that the notice sent by ordinary post with a certificate of posting, must be presumed to have reached the tenant within a day or two and that such notice was sufficient to determine the tenancy.

However, Mr, Chengappa contended that a notice sent by ordinary post could not be regarded as one contemplated in Section 106 of the Transfer of Property Act and that the notice sent by registered post did not reach the tenant 15 clear days before the end of the month of the tenancy and that hence there was no valid notice determining the tenancy.

The question whether a notice sent by ordinary post is a valid one is no longer *res integra* in view of the decision of this Court in *Achamma Thomas v. C.R. Fairman* wherein it was held that Section 106 of the Transfer of Property Act does not provide that a notice of termination of the tenancy, should be sent by registered post, that such notice can also be sent by ordinary post and that where such notice is sent under a certificate of posting a presumption arises under Section 114 of the Evidence Act that there has been due service of such notice."

In addition to this, under the Act itself, a Division Bench of this Court in *G.H. Sridevi Vs. State of Mysore*, 19 Law Reports 415 has held that communication of the fact of submission of the report to the Government need not be sent to the objectors by registered post and if it is sent under certificate of posting it is sufficient in as much as if it is proved that a letter addressed to the addressee had been handed over to the postal department, the presumption is that it has been handed over to the addressee. The relevant portion of the decision is as follows:

"It was next urged that there was disobedience to Section 5A(2) of the Act for the reason that no intimation was sent by the concerned Land Acquisition Officer to the petitioner that the report which had to be submitted by him to Government under the provisions of that sub section, had been forwarded. This contention in the affidavit of the petitioner's representative is repudiated in the counter affidavit produced on behalf of the respondents in which it is asserted that the intimation which is insisted upon by Section 5A(2) of the Act was indeed

despatched to the petitioner on September 1, 1965. Mr. Doddakalegowda, the Learned Government Pleader, has produced before us the concerned register which makes a record of the communications despatched by the concerned authority, and that register contains a record that on September, 1, 1965 a communication was sent to the petitioner.

It is seen from the record made available to us by Mr. Doddakalegowda that the report was submitted to Government on August 18, 1965, and if on September, 1, 1965 according to the register produced before us a communication was sent by the Land Acquisition Officer to the petitioner, that entry in that register more than substantially corroborates the truth of the allegation in the counter affidavit that that communication was one by which intimation was imparted to the petitioner about the submission of the report to Government.

We do not accede to the argument advanced before us by Mr. Hegde that there can be no presumption that that communication was delivered to the petitioner unless the communication was sent by registered post or under a certificate of posting. That, it is plain, is not an accurate statement of the law. If it is proved that a letter addressed to the addressee had been handed over to the postal department, the presumption is that it has been delivered to the addressee. It is not necessary that there should be a despatch by registered post or under a certificate of posting before there can be an appeal to that presumption.

In the instant case the records produced prove that the fact of submission of the report under Section 5A of the Act to the State Government has been intimated to each one of the petitioners by post under certificate of posting to the addresses given by them. Hence, there is no substance in contention No. IV. It is accordingly rejected.

9. In the instant case it is proved by the petitioner that he had filed the objection well in time and also simultaneously sent the same to the address of the applicant as furnished in his application, through post under certificate of posting. Thus actual posting of objection to the address of the 3rd respondent is proved. The cover has not been returned to the petitioner undelivered. If it has not been delivered to the 3rd respondent, in the normal course it would have been returned to the petitioner. Therefore in the normal course the cover should have been delivered to the 3rd respondent. As such it must be presumed to have reached its destination. In other words, it must be presumed to have been delivered to the 3rd respondent. The assertion of the third respondent that he had not received the objection, in the absence of any evidence, is not sufficient to rebut the presumption arising under Sec. 114(f) of the Evidence Act that the letter has been duly delivered to the applicant as it has been addressed to the address given by the applicant respondent-3 in his application and as it has not been returned to the petitioner. Thus the petitioner has proved that he has objected to the application filed by the 3rd respondent for grant of a stage carriage permit on the route in question.

10. However, it is not possible to find out from the records as to whether the petitioner herein attended the R.T.A. meeting on the date the application was taken up for consideration. This question is not material for our purpose since the petitioner is not challenging the validity of the grant made in favour of the 3rd respondent. He is only interested in accepting him as an objector to the application so that he can agitate the matter regarding assignment of timings as an objector.

11. For the reasons stated above, it is held that the petitioner has proved that he is an objector to the application filed by the 3rd respondent for grant of a stage carriage permit on the route Theerthapura to Guddadaneralakere. Accordingly, he is entitled to challenge the timings assigned to the permit in question as an objector and have his appeal considered in accordance with law.

With these directions, the writ petition is disposed of.

Sri. Ramesh, learned High Court Government Pleader is permitted to file his memo of appearance in six weeks from today.

Writ petition disposed of.