

(1965) 08 KL CK 0022

In the High Court Of Kerala

Case No : O.P. No"s. 1061 and 1062 of 1964

K. Hariraya Kamath

APPELLANT

Vs

Regional Transport Authority and Another

RESPONDENT

Date of Decision : 16-08-1965

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1967 Ker 129

Hon'ble Judges : Mathew P. Muricken, J

Bench : Single Bench

Advocate : K.V.R. Shenoj, P.K. Kurien, V. Desikan and K. Sukumaran, for the Appellant; Government Pleader (for No. 1), V. Sivaraman Nair and A. Inees, (for No. 2), for the Respondent

Final Decision : Dismissed

Judgement

K.K. Mathew, J.—It was submitted on behalf of the respondents that the petitioners have filed appeals against the orders challenged in these petitions, before the S.T.A.T. and that these appeals are pending consideration before that Tribunal. In view of this circumstance I do not think that I should deal with these petitions. If the decision of the S.T.A.T. is against the petitioners, it will be open to them to approach this Court with writ petitions, if so advised.

2. Petitioners" counsel argued that it is open to this Court to interfere in a case where the order impugned is one passed without jurisdiction and that in such a case the pendency of an appeal against the order is no bar to this Court dealing with the matter. In support of that, he referred me to the following passage in "Jurisdiction and Illegality", page 50. by Annon Rubinstein.

"However the general rule is that where the decision is a nullity, an appeal is somewhat useless as despite any decision on appeal, such a decision can be successfully attacked in collateral proceedings. Some dicta go even further in maintaining that where the decision appealed from is a nullity, an appeal cannot

lis at all. Indeed, if the nullity theory to carried to its logical conclusions, some difficulties must arise with regard to appellate jurisdictions."

in these cases the petitioners are not only impeaching in appeal before the S.T.A.T. the validity of the grant of the permits in favour of the 2nd respondent in each of the cases, hut are also asking the S.T.A.T. to grant the permits in their favour. It is not open to me to consider the question whether the petitioners are entitled to the grant of the permits in their favour That is a matter for the S.T. A.T. alone to consider at this stage. In view of this circumstances. 1 do not think that I should deal with these petitions.

3. Although I see great force in the contention of counsel that if an order is a nullity, the fact that an appeal is pending against that order is no bar to this Court entertaining a petition under Article 226. I do not think it necessary to decide that question In these petitions.

4. I dismiss the petitions. No costs.