

(1987) 04 KL CK 0001
In the High Court Of Kerala
Case No : O.P. No. 8761 of 1986-R

K. Shahul Hameed

APPELLANT

Vs

The Regional Transport Authority and Others

RESPONDENT

Date of Decision : 24-04-1987

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Kerala Motor Vehicles Rules, 1989 — Rule 161

Motor Vehicles Act, 1939 — Section 47, 57, 57(2), 57(3), 57(5)

Citation : (1987) 04 KL CK 0001

Hon'ble Judges : Viswanatha Iyer, J

Bench : Single Bench

Advocate : M. Krishnakumar, for the Appellant; M.P.R. Nair and M.K. Chandramohan Das, for the Respondent

Final Decision : Dismissed

Judgement

Viswanatha Iyer, J.—Third Respondent, who is a postgraduate degree holder with M.A. in English literature and a degree in Physical Education, with conductor's licence and badge to boot, applied for the grant of a regular stage carriage permit on the route Tholannur-Malampuzha in Palghat District. The Secretary, Regional Transport Authority, Palghat, namely, the 2nd Respondent had invited applications for the grant of a regular permit on the route by notification, dated 11th August 1986 published in the Kerala Gazette, dated September 2, 1986. The applications were required to be submitted within a period of 30 days from the date of publication of notification in the gazette. The 3rd Respondent submitted his application on October 1, 1986, but it was returned by the second Respondent as defective on October 15, 1986 for not enclosing Income Tax Clearance Certificate along with the application.

2. Earlier and pursuant to notification, dated July 3, 1986, inviting applications for grant of temporary permit on the route, the third Respondent had applied for a permit, which was accompanied by all the necessary details and documents.

This was a valid application and was therefore considered by the Regional Transport Authority, the first Respondent, at its meeting held on July 30, 1986. The temporary permit, was granted to the third Respondent in preference to others on account of his being an unemployed post-graduate requiring self employment.

3. This order was taken up in appeal before the State Transport Appellate Tribunal, the 4th Respondent herein as per M.V.A.A. No. 463 of 1986. The tribunal allowed the appeal by its order, dated 6th November, 1986 and granted the permit to the Petitioner herein for certain reasons, which it is not necessary to go into at this stage.

4. It was meanwhile that the Regional Transport Authority invited applications for grant of pucca permit on the route. The 3rd Respondent submitted his application on 1st October 1986 within the time prescribed by the notification. The application was not accompanied by the clearance certificate, aforesaid, the Petitioner's explanation for its non-production being that he had already produced it along with his application for temporary permit for the same route and that it was part of the file. The third Respondent subsequently produced clearance certificate afresh on 14th October 1986. The application was nevertheless "returned" as defective on 15th October 1986 by the proceedings Ext. P-1, dated 14th October 1986. It is to be noted that by this time, the period of thirty days fixed for presentation of applications had expired. It was a virtual rejection of his application for permit.

5. The third Respondent filed appeal against this order before the 4th Respondent-State Transport Appellate Tribunal as M.V.A.A. No. 575 of 1986. The tribunal allowed the appeal by its order, dated 17th November, 1986, a copy of which is Ext. P-3. The tribunal noted that the Appellant before it (namely the 3rd Respondent herein) had subsequently produced the clearance certificate, and that the Regional Transport Authority ought to have processed the application u/s 57(3) of the Motor Vehicles Act (the Act for brevity), and considered and disposed it of on merits. The appeal was therefore allowed with a direction to the Secretary, Regional Transport Authority to receive the 3rd Respondent's application, if represented within a week, and then to notify the same u/s 57(3).

6. At the hearing of the appeal, a contention was raised by the Petitioner herein that no appeal lies against the proceeding in question, u/s 64 of the Act, there being only a return of the application for permit. This contention was however overruled by the tribunal, stating that the return of the application without processing, was a refusal to grant the permit sought by the Appellant, and hence the appeal was maintainable u/s 64(1)(a).

7. The only contention raised before me by counsel for the Petitioner is that the tribunal ought to have dismissed the appeal as not maintainable. He invites attention to Section 57 of the Act and contends that an appeal lies only against an order which is passed u/s 57(7) after due publication of the application u/s

57(3) and consideration u/s 57(5). Counsel for the third Respondent however, contends that when the application is returned without processing, without any scope for representation within time, it becomes rejected and therefore, there is a refusal of the permit, liable to be appealed against. It is also pointed out that in any case, there is no manifest injustice so far as the Petitioner is concerned, and therefore, there is no scope for interference under Article 226. Counsel points out that the return of the application was improper and illegal as the necessary documents had all been produced along with the application for temporary permit and were before the Regional Transport Authority for consideration.

8. The only contention urged by the Petitioner is that the appeal filed by the 3rd Respondent was not maintainable. Assuming that this contention is correct, the position is that the proceeding Ext. P-1 becomes subject to revision u/s 64A. The revision also lies to the State Transport Appellate Tribunal. The revisional power of the Tribunal is of wide amplitude and could be exercised either on its own motion or an application made to it. The tribunal was competent to deal with the order Ext. P-1 in exercise of its powers u/s 64A, even if the appeal was not maintainable. The order Ext. P-3 passed by the tribunal is not therefore, one without jurisdiction and hence not liable to be challenged in these proceedings. (I am not oblivious of the fact that the institution fee for a revision petition u/s 64A is Rs. 250 While that for an appeal is Rs. 125. This does not however affect the jurisdiction of the tribunal, particularly its suo motu powers, and the maximum that should perhaps be done is to call upon the applicant to pay the additional fee of Rs. 125 for a revision petition). Since the same tribunal was to deal with the matter whether as an appeal or as a revision, the objection to maintainability of the appeal was purely technical, without substantially affecting jurisdiction. No manifest injustice has therefore, been caused to the Petitioner by reason of the tribunal holding that the appeal was maintainable.

9. It was held in Nilkanth Prasad and Others Vs. State of Bihar, , that when the decision in the appeal was correct in law, no interference under Article 226 or 227 was called for, when the appeal Board could exercise its revisional powers to set aside the impugned order, even if the appeal was incompetent. The head note summarises the decision thus:

Thus where the scheme had been notified and a route "AB" had already been granted to the State Transport undertaking, the Regional Transport Authority was incompetent to renew a permit in favour of private operators over a route embracing route "AB". But when it renewed such permits, it failed to do its duty under the law and the Appeal Board was entitled, when the record was before it, to revise the order of the Regional Transport Authority, even in cases where the appeal was incompetent, in view of the vast powers of revision u/s 64A.

Further, in such a case neither the High Court nor the Supreme Court would interfere in its discretionary powers under Articles 226 and 227, with the order of the Appeal Board setting aside the renewal of such permits because even if the appeal for some reason was incompetent, the appeal Board had the record

before it, and gave effect to the correct legal position arising from a notified scheme.

The order Ext. P-3 is not therefore liable to be interfered with in these proceedings.

10. Now coming to the question whether the appeal was maintainable, Section 64(I)(a) provides that any person aggrieved by the refusal of the Regional Transport Authority to grant a permit may appeal to the State Transport Appellate Tribunal. The cause of action for the appeal is thus the refusal to grant a permit. The scheme of the act may be examined in this connection. Section 45 prescribes that every application for a permit shall be made to the Regional Transport Authority of the region in which it is proposed to use the vehicle. Section 46 sets forth the particulars which shall be contained in an application for stage carriage permit. Section 47 details the factors to which the Regional Transport Authority should address itself in considering an application for a stage carriage permit. Section 48 states that the Regional Transport Authority may grant the permit in accordance with the application or with such modifications as it deems fit or it may refuse to grant the permit. The procedure to be followed in the matter of applications for stage carriage permit is set forth in Section 57. Such an application shall be made not less than six weeks before the date on which it is desired that the permit shall take effect or if the Regional Transport Authority appoints dates for the receipt of such applications on such dates. Sub-clause (3) of the section requires the Regional Transport Authority to make such applications available for inspection and also to publish the same in the prescribed manner, inviting representations if any, in connection therewith. Sub-clause (4) states that the representation referred to in Sub-section (3) shall not be considered unless it is made in writing, before the appointed date, and a copy thereof is also furnished to the applicant. The application has to be disposed of at a public hearing at which the applicant and the person making the representation shall be given an opportunity of being heard.

11. It is also necessary to refer to Rule 161 of the Kerala Motor Vehicles Rules, 1961 which authorises the Regional Transport Authority to delegate to its Secretary, the functions enumerated. One of these functions is the power to refuse to entertain applications for grant of permits when the application is not in accordance with the provisions of the Act or the Rules or otherwise [Vide Sub-rule (m)]. The proceeding Ext. P-1 is referable to this power delegated to the Secretary under Rule 161(m).

12. Section 57 details the procedure for consideration of those applications which are filed in accordance with the Act and the Rules, and accompanied by the necessary annexures. If any such application is refused, the Regional Transport Authority should give the applicant in writing the reasons for the refusal. There may however be applications which are refused to be entertained, and rejected at the threshold itself, by the Secretary for noncompliance with the Act or the Rules. The act of the Secretary in exercise of his delegated functions is an act of

the Regional Transport Authority itself. (See *Roop Chand Vs. State of Punjab*, The position in law is therefore that the refusal to entertain an application for permit is an act of the Regional Transport Authority, the effect of which is to refuse a permit to the applicant. Whether the application is refused after consideration u/s 57(7) or not entertained at all for non-compliance with the Act and the Rules, in either case, and so far as the applicant is concerned, there is a refusal of the permit, though for different reasons. When the application is not entertained, and returned as defective, in such circumstances that representation within time, after rectifying the defects is impossible, as in this case, it is nothing but refusal of the permit applied for. It may be a case where the refusal to entertain the application itself was improper or illegal. The Secretary might have proceeded on wrong premises or overlooked certain facts. The word "refusal" should in the context of Section 64(1)(a) take in such cases also which result in non-consideration of the application and consequent negation of permit. There is nothing in the language of Section 64(1)(a) which limits the appeal to orders passed u/s 57(7). The provision is wide enough to cover even those cases where the Secretary refuses to entertain the application under Rule 161(m).

13. In this connection, I may refer to the decision of the High Court of Orissa in *Inja Sanyasi Rao v. State Transport Authority* 1974 (40) Cuttack Law Times 80. In that case twelve applications were received for the grant of the permit. They were published in the prescribed manner and after receipt of representations, were taken up for consideration, when five of them were rejected as filed out of time. Appeals were filed u/s 64 by the defeated applicants, which were allowed and the matter remitted to the Regional Transport Authority with directions. The first point urged by the original grantees, before the High Court, was that the appeals were not maintainable, as the application of the Appellants had been rejected as not filed in time and there was no consideration of the case on merits. The Court observed that it was open to the State Transport Authority to condone the delay in the receipt of the applications, but, that authority did not choose to do so, and having taken up the applications for consideration they were rejected as not received in time. In the circumstances, it was a case of refusal to grant the permit within the meaning of Section 64(1)(a) of the Act and it was competent for the applicants in question to prefer the appeals.

14. I may also refer to a decision of the Supreme Court in *Jayaram Motor Services v. Rajarathinam* 1967 (II) S.C.W.R. 857. In that case, applications were invited for permit u/s 57(2), after the Regional Transport Authority resolved to introduce a new bus route. After the applications were received, the authority rejected all the applications on the ground that there was no need at all for the said route. Two of the applicants filed appeals before the State Transport Appellate Tribunal. The Appellant before the Supreme Court did not file any appeal but he got himself impleaded as a party to the appeals before the Tribunal. The Tribunal allowed one of the appeals namely that filed by Respondent No. 1 and granted him the permit. The Appellant challenged the said order under Article 226, and one of his contentions was that the appeal filed by

the first Respondent was not maintainable u/s 64(1)(a). His case was that when the authority had rejected the applications on the ground that there was no need for a new route, no appeal lies. The Supreme Court held that when once the Regional Transport Authority has fixed the number of vehicles to be operated and the number of permits to be granted the stage of enquiry u/s 47(3) was over. The subsequent proceedings were held referable to Section 48(1), and hence appealable u/s 64(1)(a).

15. The Rajasthan High Court had occasion to deal with the provision in the decision in *Smt. Shakuntala Devi Vs. Transport Appellate Tribunal, Jaipur and Others*, That was a case where Rule 86 of the Rajasthan Motor Vehicles Rules required the grantee to put the vehicle on the road within the time specified. The time granted was such that it imposed an onerous burden on the grantee. She filed an appeal before the Tribunal on the ground that the time granted was too short. The High Court upheld the maintainability of the appeal on the ground that if the time granted was such that it imposed an onerous burden on the grantee, it would amount to refusal to grant the permit for purposes of Section 64(1)(a).

16. It is thus clear that "refusal" of a permit for purposes of Section 64(1)(a) is not strictly confined to refusal after consideration of the application on merits. It is wider in ambit and takes in cases of rejection on other grounds as well. I am of the view that all such cases fall within the purview of Section 48(1) and hence appealable u/s 64(1)(a).

17. Counsel for the Petitioner referred to the decision of the High Court of Mysore in *Central Karnataka Motor Services Ltd. v. Mysore Board of Revenue* AIR 1960 My 72. The facts in that case were that pursuant to applications invited u/s 57(2), the Petitioner applied for grant of the permit. His application was however rejected at the time of scrutiny of all the applications on the ground that it was not in the prescribed form. Against this rejection, Petitioner filed an appeal before the Board of Revenue u/s 64, who rejected the appeal as not maintainable. A writ petition was filed challenging this order. It was stated by the Division Bench that Government having prescribed the form which required various particulars to be given, and in which an application for permit was to be made, the Petitioner's application could not be said to be an application within the meaning of the Act. In such a case, the order refusing to entertain the application as an application under the Act for grant of a permit could not amount to an order refusing to grant a permit within the meaning of Section 64. It was held that the question of grant or refusal will arise only if the application was held to be one under the Act. It was not a case of refusal to grant the permit, but a case where the State Transport Authority refused to entertain the application as a valid application under the Act.

18. In my view, the distinction made by the Mysore High Court is immaterial since in either case, there is a refusal of permit so far as the applicant is concerned and that is sufficient to attract Section 64(1)(a). It has to be stated that what is made appealable u/s 64(1)(a) is refusal to grant a permit, and not

rejection of a valid application for permit.

19. It is accepted law that provisions relating to appeal should be construed liberally upholding the right of appeal than defeating it. Where the words are not clear enough to be coercive, the canon of construction is that the ambiguity should be resolved in favour of the right to an appeal than against it (vide M.S. Menon C.J., in Vamanan Nambudiri v. Narayana Kurup 1964 KLT 516 (F.B.); See also Samidorai Thennavarayar v. Vaithilinga Thennavarayar AIR 1964 Mad 314.

20. I would therefore hold that the Tribunal had rightly entertained the appeal filed by the third Respondent.

21. In the light of the above discussion the order Ext. P-3 is not open to any challenge. The Original Petition is therefore, dismissed, without however, any order as to costs.

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