
(1979) 03 KAR CK 0008

In the Karnataka High Court

Case No : Writ Petition No's. 1673, 1674, 1823 and 1824 of 1979

Kalappa

APPELLANT

Vs

State Transport Appellate Tribunal and Others

RESPONDENT

Date of Decision : 20-03-1979

Acts Referred:

Motor Vehicles Act, 1939 — Section 57 (3), 57 (8), 64 A

Citation : AIR 1980 Kar 34 : (1979) 2 KarLJ 324

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

Bench : Single Bench

Advocate : A.S. Viswanath and M. Ranga Swamy, for the Appellant; S.V. Krishnaswamy, for the Respondent

Judgement

1. Sri N. A Panchaksharappa the 3rd respondent in W. Ps. 1673 and 1674 of 1979, who is the brother of the 3rd respondent in W. Ps. 1823 and 1824 of 1979, held a stage carriage permit on the route Shimoga to Rattehalli via Avanur, Harnahalli, Sowlanga Nyamati, Shikaripur, Masur and Hallur in the return journey and via Kunchenahalli and Sowlanga in the forward journey. The aforesaid third respondent made an application before the Regional Transport Authority Shimoga, on 28-2-1973 for grant of variation of the route, by deviating the two trips operated between Shimoga and Sowlanga via Ayanur on the route via Kunchenahalli. While praying for variation of the route by way of addition and deletion, he also prayed for revision of timings. That application was notified under S. 57 (3) of the Motor Vehicles Act (hereinafter referred to as "the Act"). Except the petitioner in Writ Petition 1674/79, the Petitioners in the remaining three writ Petitions were the objectors.

2. The R. T. A. Shimoga, by the resolution dated 4-1-1974, rejected the application of the petitioner filed for grant of variation by addition to, and deletion of, the route and for revision of timings. Against the said resolution, the aforesaid 3rd respondent preferred an appeal before the Karnataka State Transport Appellate Tribunal (hereinafter referred to as the Tribunal) and the said

appeal was rejected on the ground that it was not maintainable. Against the said order, the 3rd respondent in writ Petitions 1823 and 1824 of 1979 Preferred writ petition No. 6982/76, as by that time, the stage carriage permit in question standing in the name of his brother Sri N. D. Panchaksharappa, came to be transferred to him.

3. In Writ Petition No. 6982/76, the order passed by the Tribunal was set aside and the case was remanded, it was held that the curtailment of the route was only consequential, to the main prayer namely, inclusion of the new route from Sowlanga to Shimoga via Kunchenahalli Regarding the revision of timings, it was held that it was for the Tribunal to consider while disposing of the appeal whether the said request should be granted or not and it was also further made clear that it was open for the respondents to urge before the Tribunal that the revision of timings is not consequential in nature. The application made by Sri N. D. Panchaksharappa contained the following three prayers namely:

- (i) Curtailment of the route from Sowlanga to Shimoga via Avanur,
- (ii) Extension of the route from Sowlanga to Shimoga via Kunchenahalli and
- (iii) Revision of timings,

4. As already pointed out, this Court in Writ Petition 6982/76 pertaining to the very application in question held that the prayer regarding the curtailment of the route was consequential in nature, therefore this Court did not accept the contention that the appeal preferred by Sri N. D. Panchaksharappa before the Tribunal was not maintainable. Accordingly, the writ petition was allowed and the order of the Tribunal was quashed and the case was remitted to the Tribunal for fresh consideration of the application, in accordance with law. While remitting the case this Court has observed as follows, at para 10:

"Therefore, assuming that the contention urged for contesting respondent that no appeal lies as regards the rejection by the RTA of the Petitioners Prayer for revision of timings, it has to be held that it is for the Appellate Tribunal to consider while disposing of the appeal whether the said request should be granted or not and it is open for the respondents to urge before the tribunal that the same being not consequential in nature, the Appellate Tribunal cannot grant such prayer."

As per the order of this Court, the question relating to revision of timings was kept open. After the remand, the Tribunal has heard the matter and has the impugned order. The appellant has held that there was a need for grant of permit and has accordingly allowed the appeal and has remitted the matter to the Secretary, regarding the revision of the timings. While remitting the matter regarding revision of timings Appellate Tribunal has held that the adjustment of timings is consequently in nature. In this regard, it has held as follows:

"Though adjustment of timings to be consequential to the change of timings, it cannot be done so as to affect others or to change the timings wholesale. Though

he has made some of the alterations in the proposal but the timings will have to be adjusted in such a way that nobody should be affected."

"In fact, all the respondents are objecting to the proposed timings on the ground that many are affected between Shimoga and Nyamati both in the forward journey and backward journey. It is a matter for examination by the RTA. However, there to a reasonable cause, to adjust the timings while assigning timings between Sowlanga and Shimoga via Kunchenahalli. However, the journey timings assigned to that portion of the route appears to be longer. So it is desirable to shorten the journey time but not changing in entirety. It is also necessary to adjust the timings so as to reach Shimoga earlier if it does not affect others seriously. This will help the passengers to take food and shelter well in time, if the service reaches Shimoga earlier.

11. In the result, I grant curtailment of the route from Shimoga to Sowlanga via Ayanur and grant deviation from Shimoga via Kunchenahalli.

12. It is now contended by the, various operators that many services introduced in this route are almost identical timings and therefore, they want that the timings have to be examined. It is also further made as nonstop and express between Sowlanga and Shimoga as prayed for so that the purpose of granting deviation to go to Rattihally in the direct route is met."

Thus, from the finding recorded by the Appellate Tribunal. It is clear that a contention was raised by the respondents herein that the revision of. Timings as proposed will affect the operators between Shimoga and Nyamati both in the forward and backward journey. In view of this contention, the Appellate Tribunal came to the conclusion that it was a matter for examination by the RTA and it also came to the conclusion that there is a reasonable cause to adjust the timings while assigning timings between Sowlanga and Shimoga, between Kunchenahalli and Shimoga. It accordingly directed the Secretary, RTA, to assign suitable timings keeping in view the changed circumstances.

5. In these writ petitions, Shri M.Rangaswamy, the learned counsel appearing for the petitioners, contended that the RTA has refused to grant the revision of timings prayed for by the applicant - Sri N. D. Panchaksharappa and as against that portion of the order, no appeal lay and as such, the appeal was not maintainable to that extent; therefore, it was not open for the Tribunal to remit the matter to the Secretary, RTA, for assigning of timings.

6. On the contrary, it was submitted on behalf of the third respondent that the revision, of timings being consequential to the variation of route granted by the Tribunal, it was well within the power of the Tribunal to remit the matter to the Secretary, R.T.A. for assigning timings; that the revision of timings was not an independent Prayer in the application and that this court in the aforesaid W. P. 6982/76 has already held that the appeal filed by the 3rd respondent before the Tribunal was maintainable and it was open for the appellate authority to consider the question of revision of timings and that the Tribunal has remitted the matter

for assigning of timings to the Secretary, RTA at the instance of the respondents therein including the Petitioners in writ petitions 1673, 1823 and 1824 of 1979. It was also contended that the petitioners in the aforesaid three writ petitions having "persuaded the Tribunal, to remit the matter to the Secretary, R. T. A. for assigning of timings; it is not open for them to contend in these writ petitions that the Tribunal had no jurisdiction to remit the matter for revision of timings, At any rate, it was further contended that in view of S. 64-A of the Act, the appellate authority has also been invested with the power of revision, therefore, the order of the Tribunal remitting the matter to the Secretary, R.T.A. for assigning timings cannot be said to be without jurisdiction.

7. Having regard to the respective contentions of the parties, the questions that emerge for consideration are:

(a) Whether the appeal preferred by the 3rd respondent against an order refusing to grant variation in the conditions of the permit by addition to and deletion of the route and also revision of timings was maintainable?

(b) Whether it is open for the operators now to contend before this Court having submitted before the Tribunal that revision of timings, be made and the said matter be considered afresh?

(c) Whether the Tribunal had no jurisdiction to remit the matter to the Secretary, RTA for assigning of timings as no appeal lies against the order of the RTA refusing to revise the timings ?

(d) whether, in the event of holding that the appeal was not maintainable in the instant case, it can be said that the appellate authority has exercised the revisional jurisdiction ?

8. The question as to whether an appeal would lie against an order refusing to revise the timings given in a permit, came up for consideration before a Division Bench of this Court in the case of D. Siddaramappa v. State of Mysore reported in 1958 36 Mys LJ 466, and on the construction of cls. (a) and (b) of S. 64 (1) of "the Act, this court held that even assuming that timings given in a permit are conditions of a permit, there is no right of appeal to Government in a case where the State or Regional Transport Authority refused to vary any condition of permit. It was also further held that grievance which accrued or which arose subsequent to the grant of a Permit, cannot be agitated in an appeal under clause (a) of S. 64 of the Act. That was a case in which, only the revision of timings given in a permit was sought for and the said request was refused by the S.T.A. As against the said refusal, an appeal was preferred before the State Government as the State Government was the appellate authority before coming into force of the Central Act 56/69. Under these circumstances it was held by this Court that the revision of timings given in a permit was a matter which arose subsequent to the grant of the permit and as such, the same cannot be agitated in an appeal under clause (a) of S. 64 of the Act and as far as clause (b) of S. 64 is Concerned, it was held that clause (b) Provides for an appeal against the order of revocation or

suspension of the Permit or by variation of the conditions there of and as such, it was held that no right of appeal is Provided against the order refusing to vary any of the conditions of a permit. But, in the instant case, the application made by the 3rd respondent - N. D. Panchaksharappa, was not only for revision of timings given in a permit, but it was also for variation in the route by way of "additions to, and deletion of the route coupled by the revision of timings. It was not disputed by the learned counsel appearing on both the sides that the schedule of timings is necessary for a permit. So, when once the variation in the route is granted, it becomes necessary to revise the timings as a consequence of variation In the route Therefore, when once a variation in the route takes Place, the natural consequence of such a variation would be a change in the timings also It may be an applicant may ask for particular timings but, it is open for the R. T. A. to grant suitable timings after taking into consideration the convenience of the travelling public and also the representation of the other operators on the route. Further, an application to vary the conditions of Permit by the inclusion of a new route or routes or a new area shall have to be treated as an application for the grant of a new permit as per S. 57 (8) of the Act. That being so, in the instant case the application was also for inclusion of a new route. As far as the deletion of the route sought for in the very application is concerned, this Court has already held in this very case on the earlier occasion in W.P. No.6982/76 that the route sought for was a necessary consequence of addition of the route .Thus, the rejection of the application filed by the 3rd respondent for grant of variation in the route amounted to rejection of the application filed for grant of a new permit. Therefore, the appeal preferred by the 3rd respondent as against the refusal to grant the variation in the route was maintainable. In fact, in the aforesaid writ petition 6982/76 the appeal was held to be maintainable, but the question as to whether the prayer for revision of timings was also open and this aspect has already been noticed in para. 4 supra. This is not a case in which the applicant sought for only the revision of timings. Along with the request for grant of variation in the route the revision of the timings was sought for. Thus, the revision of timings sought for was a consequence of variation of the route. As such, the appeal was, maintainable and the Tribunal was competent to go into the question of revision of timings and to decide the same either by itself or to remand the case to the R.T.A. for that purpose, if in its opinion it was just and necessary to do so.

9. In K. N. Shivalingiah v. K. S. T. A. T. (Writ Petn. No. 380 of 1974), this Court held that, an appeal would lie against the order of the R.T.A. refusing to grant the application for variation of a route. That was a case in which the petitioner therein sought for variation of conditions of his permit by inclusion of new routes so as to extend his existing route and also for increasing the seating capacity of his vehicle and consequently, revision of the timings. The R.T.A. Mandya, refused to extend the route and also refused to modify the time schedule. Against the said order, an appeal was preferred before the Tribunal which dismissed the appeal as not maintainable. This Court, by the order dated 3-4-1975, held that

the appeal was maintainable and remitted the case for consideration on merits. Therefore, the aforesaid decision in Shivalingaiah's case can be taken as an authority with regard to the maintainability of the appeal against the decision of the R.T.A. refusing to grant the variation in the route and the consequential change in the time schedule.

10. Sri Ranga Swamy, the learned counsel for the petitioners, placed reliance on a decision of this Court reported in (1969) 2 Mys LJ 135 (B. B. MaliPatti v. Sreedhar Rao Patil). That was a case in which an appeal was Preferred by an operator who had failed to file his written objection within the notified time. Hence, it was contended by the grantee that an appeal preferred by such an operator was not maintainable in law. In para 4 of the Judgment, the question that arose for determination has been stated and the same is as follows:

"The sole question that arises for our determination in this writ petition is whether an operator, who has failed to file his written objection within the notified time in response to the notice of application for variation of route published under S. 57 (3) of the Act, can file an appeal, to the S.T.A.T. under S. 64 (b) against the order varying the condition as regards the route and that as regards the timings."

This question has been answered in para 20 of the judgment as follows:

"After a careful consideration of the provisions of the Act and the decisions cited before us by the Advocates for the parties, we are, of the opinion that a person who has not filed his objections in time to an application for the variation of a route and has thus failed to oppose the grant of variation of the condition in a permit in respect of the route will not be entitled to prefer any appeal under clause (b) of S. 64; only a person who has opposed such a grant according to the provisions of S. 57 of the Act can prefer an appeal under clause (f) of S. 64. Clause (b) of that section applies to cases relating to variations of conditions other than the condition relating to the route for which special provisions are made in the Act."

Thus it is clear that the aforesaid decision has no bearing upon the question that is involved in these writ petitions. Further, the aforesaid decision was referred to in writ petition No. 380 of 1974 (referred in para 9 supra) and it was held that the facts of the aforesaid case were different from those in writ petition 380/74; accordingly, it was considered to be unnecessary to deal with the aforesaid case. Thus, the aforesaid decision reported in (1969) 2 Mys LJ 136 was distinguished in Writ Petition 360/174.

11. There is yet one more reason as to why the contention regarding the maintainability of the appeal as raised in this case should not be accepted. An application to vary the conditions of a permit by the inclusion of a new route or routes or a new area shall have to be treated as an application for grant of a new permit. In that event the assignment of timings being one of the acts to be done in the case of grant of a new permit, will also be required to be done in the case

of grant of variation of the route. Thus, the revision of timings in the case of grant of variation of route will go along with the grant of variation of the route. Consequently, it follows that on the grant of variation of the route, fresh timings will have to be assigned which necessarily results in the revision of timings. Thus, it is clear that the revision of timings sought for in an application for grant of variation of the route cannot be considered to be an independent prayer unconnected with the prayer for grant of variation of the route. Therefore, the Tribunal in an appeal preferred against the decision of the R.T.A. refusing to grant variation of the route can also go into the question of revision of timing on grant of variation of the route. In such a case, it is open for the Tribunal to revise the entire schedule of timings or a part thereof or to direct the R.T.A. to revise the entire time schedule or a part thereof having regard to the facts and circumstances of each case and also with due regard to the convenience of the travelling public and the interest of the operators on the route. In this view of the matter, the contention of Sri Rangaswamy that the prayer for revision of timings were independent of the application for grant of variation of the route cannot be accepted. Consequently, it is held that the impugned order of the Tribunal does not call for interference.

12. During the course of the judgment, In view of the conclusion reached by me, it was submitted by the learned counsel appearing for the petitioners and the respondents that it is not necessary to consider the questions raised at Serial Nos. (b) and (d) in paras, 7 of the order.

13. In view of the above submission made by the learned counsel for the petitioners and the respondents, I do not record any finding on the aforesaid questions. Accordingly, these writ petitioner fail and are dismissed.

14. Petitions dismissed.