

(2003) 12 KAR CK 0051
In the Karnataka High Court
Case No : Writ Petition No. 49938 of 2003

Karnataka State Road Transport Corporation

APPELLANT

Vs

Abdul Rahiman and Others

RESPONDENT

Date of Decision : 17-12-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 104, 90

Citation : (2004) ILR (Kar) 372 : (2004) 2 KCCR 1031

Hon'ble Judges : K. Bhakthavatsala, J

Bench : Single Bench

Advocate : S. Prakash Shetty, for the Appellant; B. Phalakshaiah, HCGP for R2 and R3, for the Respondent

Final Decision : Dismissed

Judgement

K. Bhakthavatsala, J.—The petitioner/KSRTC is before this court under Articles 226 and 227 of the Constitution of India praying for the following reliefs:

1. to call for the records;
2. to issue a Writ, Order or direction of writ certiorari to quash the order at Annexure-A made in No. KA/CC/APL 62/STA dated 15-7-2003 passed by Respondent No. 3; and
3. to grant such order reliefs as this court deems fit in the circumstances of the case.
2. The Respondent Nos. 2 and 3 are represented by the learned Government Pleader Sri. Phalakshaiah. Notice to Respondent No. 1 is dispensed with.
3. At the very outset, it is contended by the learned Government Pleader that there is an alternative, efficacious remedy available to the petitioner, but the petitioner has not yet exhausted the same.
4. The brief facts of the case of the petitioner may be stated as under:

The first respondent filed an application seeking grant of contract carriage permit on the route Chikkamagalur. It is the case of the petitioner that the route overlap the notified route of Mangalore Scheme and Hassan Scheme from Chikkamagalur to Mangalore, and therefore, grant of contract carriage permit in favour of Respondent No. 1 is contrary to Section 104 of the Motor Vehicles Act 1988 (in short "the Act") and therefore, prayed for quashing of Annexure-A dated 15-7-2003 on the file of the Respondent No. 3 granting contract carriage permit in favour of Respondent No. 1.

5. Section 90 of the Act provides for filing the revision petition by an aggrieved party. Annexure-A, impugned order was passed on 15-7-2003. The petitioner applied for certified copy of Form No. KMV 42 on 18-07-2003 and obtained certified copy of the same on 21-7-2003 and the present Writ Petition came to be filed on 18-11-2003. According to Section 90 of the Act, the Tribunal may on an application made to it, call for the records of any case in which such an order has been passed by the STA or RTA. Proviso to Section 90 of the Act provides that the order has been passed by STA or RTA against which no appeal lies, and if it appears to the State Transport Appellate Tribunal (Tribunal) that order made by STA or RTA is improper or illegal, the Tribunal may pass such order in relation to the case as it deems fit and every such order shall be final. According to the proviso to Section 90, the Tribunal shall not entertain any application from a person aggrieved by an order of the STA or RTA, unless the application is made within 30 days from the date of the order. According to the second proviso to Section 90 of the Act, the Tribunal may entertain the application after the expiry of the said period of thirty days, if it is satisfied that the application was prevented by good and sufficient cause from making the application in time.

6. There is no dispute that the petitioner has got right to file revision u/s 90 of the Act. In my opinion the present Writ Petition is filed only to overcome the limitation u/s 90 of the Act.

7. The learned Government Pleader cited a decision rendered by Division Bench of this Court in (SHEIK DAWOOD SAHEB v. R.T.A. AND ANR., W.A.No. 425/1990) In paragraph 4 of the above said decision while confirming the order of the learned Single Judge has observed as under:

"The Tribunal has got wide powers and it can set aside any order of the RTA if it considers that the order was improper or illegal. Therefore, it is clear that it has got power to interfere with the order both on question of fact and law "

From the above observation, it is crystal clear that the order of the learned Single Judge dismissing the Writ Petition on the ground that there was alternative efficacious remedy was upheld by the Division Bench of this Court.

8. Therefore, I pass the following order:

The Writ Petition is rejected on the ground that the petitioner has got alternative, efficacious remedy u/s 90 of the Act. It is made clear that the petitioner may

approach the Tribunal by filing an application u/s 90 of the Act, along with an application for condonation of delay if any. If such an application is made, the Tribunal shall dispose of the same in accordance with law. No costs.

The learned Government Pleader, Sri Phalakshaiah is permitted to file his memo of appearance within three weeks from today.