

(1997) 06 KAR CK 0013

In the Karnataka High Court

Case No : Writ Petition No's. 21011 and 21012 of 1992

Karnataka State Road Transport Corporation, Bangalore

APPELLANT

Vs

Karnataka State Transport Authority, Bangalore and Another

RESPONDENT

Date of Decision : 26-06-1997

Acts Referred:

Motor Vehicles Act, 1988 — Section 47, 48, 58, 71, 72

Citation : (1998) ILR (Kar) 1117 : (1998) 6 KarLJ 152

Hon'ble Judges : S.R. Venkatesha Murthy, J;P. Krishna Moorthy, J

Bench : Division Bench

Advocate : Sri K. Balakrishna, for the Appellant; Smt. Shantha Kumari, High Court Government Pleader, Sri R.N. Narasimha Murthy, Senior Advocate and Sri M.R.V. Achar, for the Respondent

Judgement

S.R. Venkatesha Murthy, J.—In these two writ petitions the K.S.R.T.C., has sought a writ of certiorari or any other appropriate writ or order or direction quashing the resolutions (i) Sl. No. 231/Sub.No. 349 of 1992 and (ii) SI, No. 232/Sub.No. 350 of 1992, dated 19/20-6-1992, Annexure-D and E.

2. The second respondent herein, being aggrieved by the stay orders granted in these cases, moved for vacation of the interim orders of the learned Single Judge and moved in vain the Division Bench by way of writ appeal for getting the interim order set aside. Thereafter, the second respondent filed Civil Appeal Nos. 16138 and 16139 of 1996 before the Supreme Court of India and on account of the order of the Supreme Court of India dated 6th December, 1996, the matter came before this Bench for final disposal.

3. The second respondent who holds a stage carriage permit No. 18/65-66 valid upto 31-8-1996 on the route Kolar to Palamaner sought variation of the condition of the permit by revision of timings in respect of the fourth and fifth single trips and to operate on the entire route Palamaner to Kolar.

4. In respect of another permit KBP 150/62-63 valid upto 30-3-1995 on the

route Hindupur to Kolar and back operating four single trips per day with two vehicles, sought variation of the conditions of the permit by increase of four single trips to six single trips to be operated by each vehicle three trips per day, on rotation in opposite directions with proposed timings. The Karnataka State Transport Authority at its meeting held on 19/20-6-1992 granted the variations as prayed for. The petitioner herein challenged these grants on merits and also on the ground that it had not been notified of the claim of the second respondent for variation of the conditions of the permit and is therefore vitiated.

5. In para 6 of the writ petition, the petitioner alleged that the first respondent took up both the applications of the second respondent for consideration without prior notice to the petitioner, being a State Transport Undertaking with monopoly over the said routes in question. It also pleaded that the representative of the petitioner who was accidentally present at the said meeting, brought to the notice of the first respondent that the request of the second respondent for variation of the conditions of permits were impermissible. Nevertheless, the first respondent ignored the presence as well as submission of the petitioner's representative and has made the impugned grants which are clearly in violation of the principles of natural justice.

6. The second respondent, in his reply admits that the petitioner's representative did make a submission but has asserted that the petitioner had no right to be heard before the variation sought was granted.

7. The learned Counsel for the petitioner relied upon a decision of the Supreme Court in *Smt. Afsar Jahan Begum and Others v State of Madhya Pradesh and Others*, where it is observed as follows:

"But if they have any right under the modified scheme, then that would be a matter appropriately to be gone into by the RTA or STA as the case may be, after due notice to the State Transport Undertaking and all other interested persons."

It is clear from the above that the State Transport Undertaking is entitled to be heard before any permit or variation of a permit is sought to be granted overlapping a notified route. The contention on behalf of the second respondent that the petitioner's representative was heard in the matter and therefore the permit is in accordance with law is apparently unsustainable. What is significant to note is that the assertion of the petitioner that there was no prior notice of the hearing of an application for variations of permits sought by the second respondent is not denied by the second respondent. Indeed Annexure-D and E do not make any reference to any objection raised by the petitioner's representative, who was accidentally present, at the time the subjects were considered by the first respondent.

8. Notice that is contemplated to the State Transport Undertaking is not apparently the sort of notice the second respondent seeks to justify. It is prior notice of not only the subject that is sought to be taken up for consideration, but also the time and place of the meeting, so that, the petitioner may have an

opportunity to come equipped with objections to the grant of the permit or variation, as the case may be. The petitioner State Transport Undertaking must have had time and opportunity to study the variation sought, and then formulate its objections to be raised at the hearing of the application. A fortuitous presence of the representative of the petitioner who sought to raise objection at the spur of the moment in an effort to protect the interest of the petitioner cannot in law be regarded as proper and sufficient notice. An impersonal institution like the K.S.R.T.C., cannot be expected to operate as a private individual would do. The State Transport Undertaking should have clear notice of the subject sought to be dealt with by the first respondent, to enable the hierarchy of the State Transport Undertaking to formulate and present its objection, if any, to the grant or variation of the permit. In a situation of the kind referred to above, it can never be said that the petitioner had sufficient notice of the variation sought by the second respondent to effectively raise any objection. In the circumstances, Annexure-D and E are liable to be set aside.

9. Arguments on merits as to the admissibility of the variation sought are also addressed by both the parties. In the view we have taken, we do not wish to express any opinion on the merits of the case.

10. The attention of the Counsel for the decision in *Gajraj Singh v State Transport Appellate Tribunal and Others*, was drawn to enable them to make their submissions on the law enunciated therein. The second respondent filed additional objections wherein it was asserted that the permits of the second respondent have been granted under the Motor Vehicles Act, 1988 and that therefore the variation sought could be considered. The petitioner in its reply has sought to contend that the permits granted under the Motor Vehicles Act of 1939 were renewed after the Motor Vehicles Act of 1988. The petitioner has sought to contend that the renewals of the permits granted under the Motor Vehicles Act of 1939 would not assume the character of permits granted under the Act of 1988 and the observations in *Gajraj Singh's* case, *supra*, that the permits should be regarded as temporary permits apply to the permits of the second respondent and therefore, till the second respondent seeks fresh permits in accordance with the decision in *Gajraj Singh's* case, *supra*, no variation could be granted. In *Gajraj Singh's* case, *supra*, the validity of renewal of permits originally granted under the Motor Vehicles Act of 1939, after coming into force of the Motor Vehicles Act of 1988, under the Motor Vehicles Act of 1988 came up for consideration. The Supreme Court in para 47 of the judgment held thus:

"47. We, therefore, hold that grant of renewal of the stage carriage permit should necessarily be preceded by a grant of a permit to stage carriage u/s 72, in accordance with the procedure laid down in Sections 70 and 71. This should be made before the expiry of the period prescribed in the permit granted under the repealed Act. Therefore, for stage carriage permits granted under Chapter IV of the repealed Act, if they stand to expire or expired after 1st July, 1989, without any pending application for renewal having been made u/s 58 as on 1st July,

1989, fresh applications u/s 70 should be filed and after consideration u/s 71, permits be obtained as per law u/s 72."

So far as private operators to hold permits under the Motor Vehicles Act of 1939 which were granted under the notified schemes, it is observed in para 62 as follows:

"62. Accordingly, we hold that the named transport operators whose permits were saved in the relevant scheme shall apply for permits under Sections 70 and 71 and obtain permits afresh u/s 72 of the Act before the expiry of the period mentioned in the permit issued either u/s 47 or Section 48 or renewal u/s 58 or Section 68-F(1-D) of the repealed Act. No third party/private operators are entitled to apply for permits on the same notified route or part thereof, nor are they entitled to compete with them for grant of permit, since the right of all other private operators to apply for and operate in the approved notified area, route or a part thereof, has been frozen. The right is reserved only in relation to the named operators and that too for specified permit, and none else. Along with the application u/s 70 filed for grant of permit u/s 72 renewal u/s 81 made by the named holder of a specified permit in an approved scheme, he should enclose an authenticated copy of the approved scheme, the details of the route on which he was plying his stage carriage with corridor restrictions on overlapping routes. The RTA or STA, as the case may be, should verify the original scheme under which the named operator, whose specified permit was saved, whether he is entitled to ply the stage carriage in the approved scheme with the condition of the corridor restrictions on the notified scheme and if so, to what extent. What is the duration of his right saved in the approved scheme? Whether he had plied his stage carriage on complying with the law in force? His right to permit u/s 72 or renewal u/s 81 cannot be higher than the original right saved in the approved scheme. The STU also should be heard in that behalf. On consideration of these and all other relevant facts in relation to grant of stage carriage permit or renewal thereof, the Appropriate Authority may grant or reject in the later event, for reasons to be recorded in support of the rejection. The authorities should consider their applications in accordance with the law and the prescribed procedure and may grant new permits u/s 72 and later on before the expiry thereof, to renew it in accordance with the procedure prescribed in Sections 80 and 81, that too on compliance with law, until the scheme is duly modified or cancelled in accordance with law. We reiterate that this right is available exclusively to the named private operators and that too in respect of the specified permits and with same restrictions continued in the scheme and none else and no more."

So any grant of permit or a renewal of a permit under the Motor Vehicles Act of 1988 would have to follow the procedure stipulated in para 62 of the judgment referred to above. Indeed this would be the minimum requirement of procedure which the State Transport Authority and the Regional Transport Authority are bound to follow for grant of any permit or for renewal of a permit, so that

needless litigation, as has happened in this case, could be avoided.

11. In para 63 of the judgment, the Supreme Court has observed thus:

"63. Since the appellants had obtained permits by mistake of the law and misconception of law on the part of the Competent Authorities applied u/s 81 and had been granted renewal of their respective permits u/s 81 after July 1, 1989, such grant of renewal of the permits should be treated to be temporary permits u/s 87 of the Act. Therefore, the private operators, be they covered by Chapter V or VI, should apply for and obtain afresh permits before the expiry of the period mentioned in their respective permits or renewed for consideration u/s 71 and grant u/s 72 of the permits afresh consistently with Section 2(31) of the Act. Such permit alone would be a permit defined in Section 2(31) of the Act. Thereafter, before expiry thereof, they shall apply for and the concerned STA/RTA person authority may grant or refuse renewals of permit for reasons to be recorded u/s 81 of the Act."

It is clear from the above observations that none of the grant of permits could have followed the procedure referred to above. To obviate the difficulty faced by the operators, the Supreme Court held that those permits which were granted on a mistake of law and misconception of law by the parties and the Competent Authorities would have to be treated as temporary permits, so that, the parties may be enabled to apply for fresh permits under the provisions of the Motor Vehicles Act of 1988.

12. In the instant case, there is a factual dispute raised about the nature of the permits variation of which are sought by the second respondent. The second respondent has sought to make out that the permits are granted under Sections 72 and 80 of the Motor Vehicles Act of 1988 and in support of his case, the second respondent has also produced a certificate from the first respondent to the effect that the permits were granted under the Motor Vehicles Act of 1988. Whether in fact the grants made by the first respondent-State Transport Authority is preceded by the procedure for grant as stated in Para 62 of the judgment in Gajraj Singh's case, referred to above, is a matter which has got to be examined by the first respondent. If the grant of the permits under the Motor Vehicles Act of 1988 conformed to the procedural requirements stated in para 62 of the judgment in Gajraj Singh's case, supra, then the first respondent would have the power to examine the variation sought by the second respondent in respect of his two permits. If the first respondent were to find that the procedural requirement as stated in para 62 of the judgment in Gajraj Singh's case, supra, has not been complied with, while the permits were renewed under the Act of 1988, then inevitably they would have to be regarded as temporary permits obtained by mistake of law and granted by misconception of law on the part of the Competent Authorities. It is undisputed that only a permit granted u/s 72 of the Motor Vehicles Act of 1988 would be capable of being varied and no temporary permit granted is liable for being varied inasmuch as Section 80(3) excludes temporary permits from its purview. In these circumstances, it becomes

necessary for the State Transport Authority to first determine whether permits granted to the second respondent, the variations of which are now sought, as asserted by the second respondent, could be regarded as permits granted u/s 72 of the Motor Vehicles Act of 1988. If it comes to the conclusion that the permits of the second respondent are validly granted in terms of the decision in Gajraj Singh's case, referred to above, then it shall examine the variations sought in respect of the permits in accordance with law, after hearing the objections of the petitioner herein and such other persons as seek to oppose the second respondent.

13. In the circumstances stated above, the writ petitions are allowed quashing Annexure-D and E. The matter is remitted to the first respondent for fresh consideration in accordance with the observations made in this order.