

(1961) 07 KAR CK 0004
In the Karnataka High Court
Case No : Writ Petition No. 831 of 1960

K.N. Srinivasiah

APPELLANT

Vs

The Mysore State Transport Appellate Tribunal and Another

RESPONDENT

Date of Decision : 10-07-1961

Acts Referred:

Motor Vehicles Act, 1939 — Section 48 (3) (c), 48 (3) (xxi)

Citation : AIR 1962 Kar 87

Hon'ble Judges : B.M. Kalagate, J;A.R. Somnath Iyer, J

Bench : Division Bench

Advocate : K.S. Puttuswamy and C. Narasimhachari, for the Appellant; E.S. Venkataramiah, for the Respondent

Judgement

Somnath Iyer, J.

(1) The petitioner is a stage carriage operator on the road between Madanapalli and Chintamani, Madanapalli which was formerly in the State of Madras is now in the State of Andhra Pradesh. The route on which the petitioner was operating was therefore inter-State route. The permit had been granted to him by the Mysore Transport Authorities and was counter signed by the madras Authorities.

(2) According to the petitioner, that primate entitled him on leave Madanapalli at 6 a.m. But, this fact is controverted by Mr. Venkataramiah, appearing on behalf of respondent it who urges that that permit entitled him to leave Madanapalli only at 8 a.m. and not at 6 a.m.

(3) Anyhow, what is admitted on behalf of the petitioner is that in the year 1954, the petitioner was required to leave Madanapalli only at 8 a.m. The petitioner made representation against this direction and this representations culminated finally in an order made by the state of Mysore on August 24, 1954, according to which the petitioner had to leave Madnanapalli only at 8 a.m.

(4) Although the matter ended in that way, it appears on a communication addressed by the Regional transport Authority in Nellore, which forms part of the

State of Andra Pradesh, the question again arose as to whether the petitioner's timings should be revised. Various notifications were issued from time to time in regard to that matter, after the State Transport Authority decided on January 10, 1955, to publish a notification in that regard. The petitioner himself made two applications to the concerned authority, one in February 24, 1955, and another on July 6, 1956, in which he requested for the revision of time-table so as to enable him to leave Madanapalli at 6 a.m.

(5) The matter ultimately came up before the Regional Transport Authority, Kolar, which by then had acquired competence to deal with this matter.

(6) On October 19, 1957 the Regional Transport Authority Bangalore which by then had the competence to decide the matter referred the applications presented by the petitioner, and the revision petition pretended by the petitioner to the State Transport Authority was dismissed on June 9, 1958.

(7) This order of dismissal made by the State Transport Authority was quashed by this Court in Writ Petition No. 258 of 1958 and by the order made by this Court in that Writ Petition, the Regional Transport Authority, Kolar, was directed to dispose of the matter afresh.

(8) It is after the order of remand was made in that way that on March 9, 1960, the Regional Transport Authority, Kolar made an order assigning to the petitioner the timings which he enacted. He was permitted by that order to leave Madanapalli, at 6 a.m. instead of at 8 a.m.

(9) Although this order does not state in so many words that these timings were assigned to the petitioner only provisionally, it is clear from a later order made by that Regional Transport Authority on April 27, 1960, that the assignment of the timings to the petitioner in that way was only provisional pending disposal of the applications permitted to the petitioner on their merits.

(10) Mr. Puttuswamy appearing on behalf of the petitioner himself asks us to read the order made by the Regional Transport Authority on March 9, 1960. As only assigning to him the timings referred to therein provisionally and not finally.

(11) Against this order made by the Regional Transport authority on March 9, 1960, respondent ... permitted a revision petition in the State Transport Appellate Tribunal. That revision petition was allowed by that Tribunal on July 21, 1960, and by the order again to the Regional Transport Authority to be disposed of on its merits.

(12) But meanwhile, on April 27, 1960 during the pendency of the revision petition before the State Transport appellate Tribunal it has to be mentioned that this revision petition was presented on April 12, 1960 - the applications presented by the petitioner on February 24, 1955, and on July 6, 1960, were again taken up, by the Regional Transport Authority, Kolar, as if they were still pending and those applications were disposed of by an order made on that day.

(13) Mr. Puttuswamy's contention is that these applications were still pending on April 27, 1960 although Mr. Venkataramiah strenuously urged that those applications having been already disposed of by the order made on March 9, 1960, they were no longer pending before the Regional Transport Authority, Kolar, and it was therefore, not competing for the Regional Transport Authority Kolar, to again take up those applications for fresh disposal.

(14) However that may be, the Regional Transport Authority and purport to dispose of those applications as if they were pending applications, on their merits, and the order which is made on these applications on April 27, 1960, was to confirm the timings which had been assigned by it on March 9, 1960. This, the Regional Transport Authority did, on the resumption that the timings assigned on March 9, 1960, had been only tentatively were did pending on its file to be disposed of on their merits.

(15) It should be pointed out that the order made by the Regional Transport Authority, Kolar, on March 9, 1960, does not say in so many words, as I have already pointed out, that that order was only a provisional or a tentative order. We should not, in my opinion, in this case, express any opinion as to the scope and effect of the order made by the Regional Transport Authority on that date. That question will be decided by the appropriate authority as and when it arises. We should not also, in any opinion, express any opinion on the question as to whether after the Regional Transport authority, Kolar, made its order on March 9, 1960, the applications presented by the petitioner for the revision of timings, were still pending on the file of the Regional Transport Authority, so as to enable the Regional Transport Authority to take up those applications once again and dispose of them even after it made its that order on March 9, 1960.

(16) I shall, for the purpose of this case, assume, as Mr. Puttuswamy has asked us to assume, that the order made on March 9, 1960 was only a provisional order. I do not say that it is one; but, since Mr. Puttuswamy has asked me to treat that order as an order only tentatively assigning timings to the petitioner. I shall for the purpose of the disposal of this case, assume that Mr. Puttuswamy is right, although I do not wish to say that I am convinced that it is so.

(17) If the petitioner's own case from and that is how the case has been presented to us by Mr. Puttaswamy - that the Regional Transport Authority only tentatively assigned, the timings on March 9, 1960, it seems to me that even on that basis this Writ Petition has to fail.

(18) Although the State Transport Appellate Tribunal did not dispose of the revision petition before it on that ground, it is clear to my mind that if as Mr. Puttaswamy contends the Regional Transport Authority, Kolar, assigned the timings to the petitioner only temporarily, it had clearly no competence to do so.

(19) By an order made by the Government of the State of Mysore on August 24, 1954, the petitioner was permitted to leave Madanapalli only at 8 a.m. The timings so fixed were fixed obviously in the exercise of the power conferred on

the concerned authority by the provisions of S. 48 (3) (c) of the unamended Motor Vehicles Act which correspond to section 48 (3) (c) (ii) and (iii) of the Amended Act.

(20) The applications presented by the petitioner for the variation of his timings are applications presented u/s 48 (3) (c) of the Act as it stood before its amendment. The source of the power to make that variation under the provisions of the Act as it stands amended, is S. 48 (3) (xxi) of the Act.

(21) Whatever may be the source of the power, in the exercise of which the Regional Transport Authority, Kolar, could have revised the timings, which had been assigned to the petitioner, it is clear that that power could not be tentatively exercised so as to assign to the petitioner tentative timings even before the applications presented for that purpose were finally disposed of by it.

(22) If an application is presented for revised timings, it is, in my opinion, clearly incompetent for the Regional Transport Authority to alter the timings originally fixed, before hearing the application presented for that purpose on its merits. Such alteration as a tentative measure, is what the Regional Transport Authority is incompetent to do. When it may do is to vary the condition of the permit by the alteration of the assignment of the timings by the adoption of the procedure prescribed by the Act and after hearing all those persons who have a right to object to this variation of the conditions of the permit in that way.

(23) It is true that on March 9, 1960, when the Regional Transport Authority made the impugned order, respondent 2 was also heard. But so long as it is not Mr. Puttaswamy's case that after respondent it had been heard in that way, the Regional Transport Authority finally dis power of the applications presented by the petitioner, and so long as his definite submission is that the re provisional timings, the fact that Respondent 2 was heard before the Regional Transport Authority made the impugned order can hardly have any materiality. If the Regional Transport Authority had no power to make that order, the fact that the Regional Transport Authority made an order an order within the competence of the Regional Transport Authority.

(24) In my opinion, this Writ Petition must fail on the short ground that the order made by the Regional Transport Authority on March 9, 1960, assigning provisional timings to the petitioner Which is all that the Regional Transport Authority also even according to the petitioner, being clearly beyond the power of the Regional Transport Authority, was liable to be quashed by the State Transport Appellate Tribunal on that ground. Although that Tribunal did not quash that order on that ground, it is clear that since it is now obvious from the way in which the case has been personal before us in behalf of the petitioner, the order made by the Regional Transport Authority was one which it had no power to make we should not be justified in disturbing the order made by the State Transport Appellate Tribunal, on the ground that although it made a correct order, it rested it on a ground other than that on which it should have been founded.

(25) But, Mr. Puttaswamy urged that a consent order was made by the Regional Transport Authority on April 27, 1960, by which the petitioner was permitted to leave Madanapalli at 6 a.m., and that the offending order made on March 9, 1960, having merged in the later order made on April 27, 1960, we should not exercise our jurisdiction under Art, 226 of the Constitution.

(26) Mr. Venkataramiah, appearing on behalf of respondent 2 does not admit that any consent order was made on April 27, 1960, to that effect.

(27) Mr. Puttaswamy has pointed out that although Mr. Venkataramiah does not admit that such consent order was made, the fact that such consent order was made on April 27, 1960, is not denied in the counter-affidavit produced on behalf of respondent 2.

(28) But I am not satisfied that there is such omission in the counter-affidavit to traverse the petitioner's allegation as to lead to the inference that the fact that there was a consent order made by the Regional Transport Authority on April 27, 1960, is admitted.

(29) However that may be, I abstain from expressing any opinion on the question as to whether any consent order was made on April 27, 1960. I also abstain from expressing any opinion on the contention urged by Mr. Venkataramiah on behalf of respondent 2, to the effect that once the Regional Transport Authority made its order on March 9, 1960. It became functus officio in the matter, and could not again take up the petitioner's applications on April 27, 1960 for consideration. These are all matters to be decided by the appropriate authority at the appropriate stage.

(30) No that as it may, this Writ Petition has to fail on the ground that if as contended by the petitioner. The order made by the Regional Transport Authority on March 9, 1960, was one by which provisional timings were assigned to the petitioner, in variation of the timings which had been originally assigned to him by the Government order made on August 24, 1954, that order was clearly one which the Regional Transport Authority had no power to make.

(31) In any opinion, this Writ Petition should be dismissed and it is ordered accordingly. There will, however, be no order as to costs.

Kalagate, J.

(32) I agree.

(33) Petition dismissed.