

(2017) 03 KAR CK 0215

In the Karnataka High Court

Case No : 10940 - 10964 of 2017 c of w W P No 7540 of 2017 (MV)

K.SATISH NAYAK S/O DEVARAJAIAH NAYAK

APPELLANT

Vs

THE SECRETARY REGIONAL TRANSPORT AUTHORITY, & ANR.

RESPONDENT

Date of Decision : 15-03-2017

Acts Referred:

Motor Vehicles Act, 1988, Section 90, Section 90, Section 89(2), Section 89(2) - Revision - Appeals

Citation : (2017) 03 KAR CK 0215

Hon'ble Judges : S.Sujatha

Bench : SINGLE BENCH

Advocate : VIJAYASHANKAR, M.E.NAGESH, VIJAYAKUMAR.Y.H, HAREESH BHANDARY

Judgement

1. Since the common questions are involved in these petitions, they are heard together and disposed of by this common judgment.

2. The petitioners are the existing Stage Carriage Operators as per the permit conditions granted under the Motor Vehicles Act, 1939 and also Motor Vehicles Act, 1988. It is contended that, 2nd respondent had applied for grant of stage carriage permits for the Routes Kundapura to Karkala, Udupi to Kundapura via Karkala etc. The applications were placed in the meeting of the Regional Transport Authority, Udupi, on 25.07.2015. The petitioner and others were the objectors and opposed the grant of permit. However, the Regional Transport Authority has granted stage carriage permit to the 2nd respondent with the condition, the Secretary, R.T.A. shall assign timings after hearing the existing operators in an equitable manner and the 2nd respondent shall obtain permit within 30 days from the date of assignment of timings. The 2nd respondent referring the order of the Karnataka State Appellate Tribunal passed in R.P.453/2014, addressed a letter to the Secretary, R.T.A., Udupi, (Annexure-C) to the writ petition, to issue permit as per the directions issued by the Tribunal to the proposed timings. It transpires that, the Secretary held a meeting, wherein,

this matter was also discussed. The petitioners and other sector operators opposed the letter of the 2nd respondent. The 1st respondent passed the orders on 17.2.2017, sans hearing any of the operators, ignoring the directions of the R.T.A., issued permits observing that the permit is issued for the deemed assignment of timings as per the directions given by the Tribunal in R.P.No.453/2014. This order of the Tribunal in R.P.No.453/2014 is challenged in Writ Petition No.7540/2017, whereas, the order passed by the 1st respondent assigning the timings as deemed assignment in the light of the directions given by the Tribunal in R.P.No.453/2014 is assailed in Writ Petition Nos. 10940-964/2017.

3. Learned Senior counsel Sri.Vijayashankar, for Sri. M.E.Nagesh, appearing on behalf of the petitioner submits that the direction issued by the Appellate Tribunal exercising the power under Section 90 of the Karnataka Motor Vehicles Act, 1988, is without jurisdiction. The Tribunal is constituted as per Section 89(2) of the Act. The Tribunal has to exercise its power within the legal frame work as provided under the statute, no general directions would have been issued by the Tribunal.

4. The learned Senior Counsel further submits that the Tribunal has no power to legislate. Usurping the power not vested with it, is without jurisdiction and arbitrary. It was further submitted that in furtherance

of the directions issued by the Tribunal, the Principal Secretary, Transport Department of Government of Karnataka, has issued a Circular dated 31.10.2014, prescribing certain guidelines. The Statute do not empower the Government to issue Circular Instructions. It is based on these guidelines/directions issued by the Tribunal, the 1st respondent has acted upon, contrary to the provisions of the Act. Placing reliance on the judgment of the Hon"ble Apex Court in the case of "DIPAK BABARIA AND ANOTHER VS. STATE OF GUJARATH AND OTHERS" reported in (2014) 3 SCC 502, the learned senior counsel would contend that? it is a case of dictation by the 2nd respondent, writing a letter as regards the deemed assignment of timings is nothing but abuse of power.

5. Further, the learned Senior Counsel placed reliance on the judgment of the Hon"ble Apex Court in the case of "PANCHAM CHAND AND OTHERS VS. STATE OF H.P AND OTHERS reported in AIR 2008 SC 1888, to contend that, the authorities are bound by the provisions of the Act, which is a selfcontained Code. 2nd respondent is bound to act in terms of the Act. Any interference by the 2nd respondent in dictating the terms to the 1st respondent is against the Constitutional scheme.

6. The learned counsel Sri.Hareesh Bhandary, appearing for the 2nd respondent submits that, the petitioner is operating the stage carriage services for the route between Bailur to Udupi, via, Karkala. Any assignments of timings made by the 1st respondent do not affect the petitioner. In the guise of challenging the order passed by the 1st respondent assigning the timings, is stalling the entire

operations of the services in various routes. It is the intent of the petitioner to challenge the timings assigned to the 2nd respondent under different subjects, without there being any cause of action.

7. The Tribunal exercising the power under Section 90 of the Motor Vehicles Act, 1988, issued directions for the assignment of timings and the same has been religiously followed by the 1st respondent in assigning the timings. The Government has also issued the Circular in pursuance to the directions issued by the Tribunal which is binding on the 1st respondent. The guidelines/directions are issued by the Tribunal in order to stream line the system, so that, uniformity, accountability and transparency shall be maintained in assigning the timings.

8. Learned Government Advocate supports the impugned orders.

9. Heard the learned counsel for the parties and perused the material on record.

10. Section 90 of the Act reads thus:

"90. Revision. - The State Transport Appellate Tribunal may, on an application made to it, call for the record of any case in which an order has been made by a State Transport Authority or Regional Transport Authority against which no appeal lies, and if it appears to the State Transport Appellate Tribunal that the order made by the State Transport Authority or Regional Transport Authority is improper or illegal, the State Transport Appellate Tribunal may pass such order in relation to the case as it deems fit and every such order shall be final:

Provided that the State Transport Appellate Tribunal shall not entertain any application from a person aggrieved by an order of a State Transport Authority or Regional Transport Authority, unless the application is made within thirty days from the date of the order:

Provided further that the State Transport Appellate Tribunal may entertain the application after the expiry of the said period of thirty days, if it is satisfied that the applicant was prevented by good and sufficient cause from making the application in time:

Provided also that the State Transport Appellate Tribunal shall not pass an order under this Section prejudicial to any person without giving him a reasonable opportunity of being heard."

11. Section 90 of the Act, provides for preferring revision against the order made by a State Transport Authority or Regional Transport Authority against which no appeal lies and the order made by STA or RTA is improper or illegal. The III proviso to the said Section makes it clear that, "the Tribunal shall not pass an order under this Section prejudicial to any person without giving him a reasonable opportunity of being heard." The Tribunal is constituted under Section 89(2) of the Act. Sub-Section (i) of Section 89 contemplates for filing appeals. The power of the Tribunal under Section 90 is limited to pass such order in relation to the case as it deems fit and every such order shall be final. It is thus

clear that the order should be related to the case, in particular, and no general directions/orders can be passed. The Tribunal while exercising the Power under Section 90 of the Act proceeded to issue general directions in R.P.No.453/2014 (D.D. 17th October 2014). It is hard to accept the power of the Tribunal to issue

guidelines/directions while considering the matter under Section 90 of the Act. The directions/guidelines issued by the Tribunal exercising the power under Section 90 of the Act being without jurisdiction, the same is liable to be set aside.

12. Annexure-C, the letter of the 2nd respondent is in the nature of a direction issued to the Authority. In the case of DIPAK BABARIA Supra, the Hon''ble Apex Court while considering the directions issued by the State Government to the Collector who was supposed to take the decision under his own authority, referred to WADE AND FORSYTH in the 10th Edition of Administrative Law, which reads thus:

"If the Minister's intervention is in fact the effective cause, and if the power to act belongs to a body which ought to act independently, the action taken is invalid on the ground of external dictation as well as on the obvious grounds of bad faith or abuse of power."

13. It was also observed that the observations made by the learned Authors as aforesaid was relied upon by a Bench of Three Judges of the Apex Court in ANIRUDHSINHJI KARANSINHJI JADEJA VS. STATE OF GUJARAT reported in (1995)5 SCC 302. It was held by the Apex Court, the directions issued by the State Government to the Collector to be a clear case of dictation. Further, it was observed that,

"Dictating the Collector to act in a particular manner on the assumption by the Minister it is in the interest of the Industrial Development" would lead to a breach of the mandate of the statute framed by the Legislature."

14. In the light of this judgment, it can be held that the directions issued by the 2nd respondent as per Annexure-C to assign the timings is nothing but a dictation to the first respondent. The first respondent is a Statutory Authority constituted under the Act. As aforesaid, the Act is a selfcontained code. The first respondent is required to discharge his responsibilities as prescribed under the statute. Any external dictation is not only unwarranted in law, it interferes with the independent functioning of a quasi Judicial Authority as held by the Hon''ble Apex Court in PANCHAM CHAND case supra. Proceedings of the meeting of RTA, Udupi held on 25.07.2015 depicts that the first respondent shall assign timings in a fair and equitable manner after hearing the sector operators, if any one wishes or express their submissions, it requires to be considered giving preference to the already existing operators. It was incumbent upon the first respondent to follow the directions issued by the RTA rather than the direction of the second respondent. As aforesaid, the directions/guidelines issued by the Tribunal while exercising the power under Section 90 of the Act being not valid, placing reliance on those guidelines/directions would not arise. It is the authority vested with the

first respondent to apply his mind independently to fix the timings. It is well settled legal

position that when the statute describes a particular procedure, it has to be done in the particular manner and it cannot be deviated by the interference of any interested parties. The inbuilt wisdom in the statute has to be given full respect and its intent has to be translated into action without any external interference.

15. Hence, timings assigned by the first respondent at Annexures-D1 to D25 series acting upon the dictation of the second respondent is arbitrary and requires to be set aside. The orders of assigning timings at Annexures-D1 to D25 being wholly against the principles of natural justice and in disregard to the directions of the RTA, a Statutory Authority, the same are quashed.

16. The general directions/guidelines issued by the Tribunal in R.P.No.453/2014 (D.D.17.10.2014) are set aside. The matters are remanded to the first respondent to reconsider the matters afresh after hearing the rival/sector operators and keeping in mind the directions issued by the RTA dated 25.02.2015 as per Annexure-A giving preference to the already existing operators. Till the fresh timings are assigned by the respondent No.1, the exiting timings shall be in force. The respondent No.1 shall hear and pass the orders, assigning timings in accordance with law as expeditiously as possible. Writ petitions stand disposed of in terms of above.