
(1965) 07 KAR CK 0015

In the Karnataka High Court

Case No : Writ Petition No's. 458 and 630 of 1965

M. Abdul Khader and Another

APPELLANT

Vs

Mysore Revenue Appellate-Tribunal, Bangalore and Others

RESPONDENT

Date of Decision : 22-07-1965

Acts Referred:

Constitution of India, 1950 — Article 226

Motor Vehicles Act, 1939 — Section 57 (3), 64 (1), 64 (2)

Citation : AIR 1967 Kar 6

Hon'ble Judges : K.S. Hegde, J;C. Honniah, J

Bench : Division Bench

Advocate : E.S. Venkataramiah and M.R. Venkatanarasimhachar, for the Appellant; T. Krishna Rao, General and V.S. Malimath, for the Respondent

Judgement

Hegde, J.—A common question of law, namely, whether the Mysore Revenue Appellate Tribunal. Bangalore to be hereinafter referred to as the Tribunal, (Respondent 1 in both the Writ Petitions) had jurisdiction to entertain the appeals in these cases, arises in these Writ Petitions under Article 226 of the Constitution. In both these petitions, the only relief proved for is that this Court may be pleased to issue a writ of Prohibition, prohibiting the Tribunal from hearing the appeal mentioned therein.

2. Before proceeding to consider the question of law arising for decision in these cases, it is necessary to state briefly the material facts of these cases.

3. The petitioner in W. P. No. 458/65. made an application on 19-6-1950 requesting the Regional Transport Authority, Kolar, to alter the permit held by him, which authorised him to operate a service from Punganur to Hebbani border via Srinivasapur, Yeldur, and Mulbagal to one permitting him to operate his service from Punganur to Bangalore via Chintamani, Kaiwara, Nandagudi. Hoskote, and H. A. L. The said application was duly published u/s 57 (3) of the Motor Vehicles Act 1939 (to be hereinafter referred to as the "Act"). Amongst others, the fourth respondent objected to the variation prayed for. The R. T. A.

Kolar, after hearing the parties, rejected the petitioner's application as per its Resolution dated 30-9-1964

As against that Resolution, the petitioner went up in appeal to the Mysore State Transport Appellate Tribunal, Bangalore, in appeal No. 671/64 on its file. The M. S. T. A.T. allowed the appeal of the petitioner by its Order dated 10-3-1965 and granted the variation sought. Thereafter on 12-3-1965, the petitioner's permit was duly altered by the R. T. A. Kolar. In accordance with the order of the M. S. T. A. T. As against the order of the M.S.T. A. T. the fourth respondent preferred a second appeal to the Tribunal in Case No 865/ 1965 (M- V.) on its file. The said appeal is pending disposal before the Tribunal. The contention of the petitioner is that the Tribunal had no jurisdiction to entertain that appeal.

4. The second respondent in W. P. No. 680 of 1965 applied to the R. T. A., Bangalore, on 14-5-1962 for a stage carriage permit from Bangalore to Chalamakote via Hudi. Hoskote. H. Cross and Chintamani. When the substance of that application was notified u/s 67 (8) of the "Act", the petitioner and others objected to the same. That application was heard by the RTA Bangalore, on 8-2-1968 in its Subject No 261/62-63 on its file. The R.T.A. rejected the same. Against the said Order, the second respondent went up in appeal to the M.S.T.A.T. Bangalore, in Appeal No. 403/63 on its file. The M.S.T.A.T. dismissed that appeal by its Order dated 14-2-1961. Against that order, the second respondent has filed a second appeal to the Tribunal, i.e., Appeal No. 930/64 on its file. The same is pending before the Tribunal. The contention of the petitioner in W.P No 630/65 is that the Tribunal was not competent to entertain that appeal.

5. For pronouncing on the contention raised in these petitions, it is necessary to refer to the development of the law on the subject.

6. The Central Legislature passed the "Act" in the year 1939, Section 64 of that "Act" provided for an appeal against the order of the original authority in respect of mailers enumerated thereunder. The said Act did not provide for a second appeal. The Act in question was not operative in the former State of Mysore. The Mysore Legislature passed the Mysore Motor Vehicles and Road Traffic Act, 1944 (Act No. XXVII of 1944), which received the assent of His Highness the Maharaja on the 5th day of August 1944. That enactment consolidated and amended the law relating to Motor Vehicles and Road Traffic in the then State of Mysore. In pursuance of the power granted by that enactment, Rules were framed in 1945. But, after the Republic of India, came into existence, the "Act" was extended to the former State of Mysore in the year 1951 as per the part "B" States Act.

The Rules framed under the Mysore Act No XXVII of 1944 continued to be in operation even after the "Act" was extended to the then Mysore State. On 27-6-52, the State Government published Rule 276-A which provided for a second appeal against certain original orders of the R.T.A. The validity of that Rule was challenged before the former Mysore High Court. The High Court allowed that petition and struck down that Rule, holding that the Rule in question

is ultra vires of the "Act". The said decision of the High Court is reported in AIR 1957 Mys 7, Central Karnataka Motor Services Ltd. v. State of Mysore.

Even when that Writ Petition was pending the Mysore Legislature enacted the Mysore Act No 16 of 1955 (The Motor Vehicles (Mysore Amendment) Act. 1966 which received the assent of the President on the fifteenth day of July 1955. Section 3 of that Act amended Section 64 of the "Act" Section 64 therein was renumbered as Section 64 (1) and a new Sub-section, namely 64 (2) was added That sub-section reads:

"Any person aggrieved by an appellate order passed under Sub-section (1) by any authority, other than the State Government, may within the prescribed time and in the prescribed manner appeal to the prescribed authority which shall give such portion and the authority which passed the said order an opportunity of being heard and pass such orders in reference there to as it thinks fit."

In view of Section 2 (2) of the "Act", "prescribed authority" means the authority prescribed by rules made under the "Act". The "prescribed authority" was the State Government. The State Government amended Rule 276-A as per its Notification dated 17-10-1956. designating itself as the "prescribed authority" to hear appeals against the appellate orders of the S. T. A. This position continued till the Reorganisation of the States on 1-11-1956. On that date, in pursuance of the powers conferred by Section 122 of the States Reorganisation Act, by means of a Notification issued on that date, the State Government named the Mysore. Board of Revenue as the authority which shall perform the appellate functions of the prescribed authority in respect of the orders passed by the S.T.A.

Section 122 of the States Reorganisation Act. provides that the State Government as respects any new State or any transferred territory, may by notification in the official Gazette, specify the authority, officer or person who. as from the appointed day. shall be competent to exercise such functions exercisable under any law in force on that day as may be mentioned in that notification and such law shall have effect accordingly. Section 127 of that Act provides that the provisions of that Act shall have effect notwithstanding anything inconsistent therewith contained in any other law.

The scope of Section 122 read with Section 127 of the States Reorganisation Act, has been considered by a Full Bench of the Bombay High Court in Yadaora Hanumantrao v. Bombay Revenue Tribunal at Nagpur AIR 1969 Bom 109 and by the Supreme Court in M. Ramappa Vs. Government of Andhra Pradesh and Another, . These decisions have laid down that the provisions in the States Reorganisation Act applied even if they were inconsistent with any provision in any Act. By reason of Section 127 and the power granted by Section 122 of that Act, it was competent for the governments mentioned in Section 122 to name an authority even though that authority might not have been qualified under the provisions of that Act. But, on the Notification issued u/s 122. the existing law itself was to have effect in a different manner The Acts concerned, after the

Notification applied in accordance with the Notification and they were pro tanto adopted thereby in view of the Notification issued on MI-1966 under S. 122. the State Government ceased to be the appellate authority u/s 64 (2) of the "Act" and its place was taken by the Mysore Board of Revenue.

7. On 1-12-1967. the Mysore Revenue Appellate Tribunal Act, (Act 24) of 1957, came into force. Section 4 (8) of that Act provides that the appellate or revisional functions of the prescribed authority in respect of orders of the State Transport Authority under the "Act", shall, notwithstanding anything contained in any law, be vested in and be exercisable. by the Tribunal. The result of that provision was that in the place of the Mysore Board of Revenue, the Appellate Tribunal was substitute as the authority which was to exercise the appellate or revisional powers in respect of the Orders of the State Transport Authority in other words, the jurisdiction to hear appeals against the orders of the State Transport Authority came to be vested in the Tribunal.

8. On 1-2-1960, the State Government amended Rule 276-A. The amended Rule reads:

"For Rule 276-A, the following rule shall be substituted, namely, 276-A. Appeal to the Mysore State Transport Appellate¹ Tribunal: An appeal u/s 64 of the Act against the order of the Regional Transport Authority or against an order of the Chairman or Secretary of that Authority, or against an order of a Tahsildar acting under rule 117-A shall lie to the Mysore State Transport Appellate Tribunal within 30 days from the date of receipt by the person aggrieved of the order appealed against.

Provided further-

(i) that the appeals pending before the State Transport Authority on the date from which these rules come into effect shall stand transferred to the Mysore State Transport Appellate Tribunal which shall then proceed with the further proceedings according to rules: and

(ii) that the appeals from the orders of the State Transport Authority pending before the Mysore Revenue Appellate Tribunal on the date from which these rules come into effect shall be proceeded with and disposed of by the Mysore Revenue Appellate Tribunal as if these amendments had not been made."

By means of the amendment in question. the M. S. T. A. T. took the place of the State Transport Authority. In view of this amendment, in Mis. Case No. 35/1960, on its file, the Tribunal took the view that it had lost jurisdiction to entertain any appeal against the appellate order of the M. S. T. A. T. That view of the Tribunal was found to be erroneous by this Court in W. P. No. 218/1960 N. Shama Rao v. Mysore Revenue Appellate Tribunal, Bangalore.

9. There is no doubt that there was a lacuna in Rule 276-A as amended on 30-1-1960. That lacuna was filled up by a further amendment of that Rule on 7-4-1960. which provided for an appeal u/s 64 of the "Act" against an appellate

order of the M. S. T. A. T. to the Tribunal, within thirty days from date of the receipt of the Order, by the person aggrieved. Then came the Notification No. HD 37 RVF 58, dated Bangalore, 15th January 1963. which promulgated "The Mysore Motor Vehicles Rules, 1963". Those Rules came into force on the 1st day of July 1963. Rule 178 of the said Rules deals with "appeals". That Rule, so far as it relevant for our present purpose reads:

"178 (1) (a) An appeal u/s 64 of the Act. against an order of the Regional Transport Authority or its Secretary, shall lie to the State Transport Appellate Tribunal within 30 days from the state of receipt of the order appealed against.

(b) An appeal u/s 64 of the Act against an original order of the State Transport Authority shall lie to the Mysore Revenue Appellate Tribunal within 30 days from the date of receipt of the order."

Rule 178 (1) (b) provides for an appeal to the Tribunal from the original orders of the S.T.A. That Rule does not provide for an appeal to the Tribunal from the appellate order of the M.S.T.A.

10. 1963 Rules repealed the 1946 Rules. Rule 369 of the 1963 Rules provides:

"The Mysore Motor Vehicles and Road Traffic Rules. 1945 and all other rules corresponding thereto in force in any Area of the State immediately before the commencement of these rules, except the rules issued u/s 68-1 of the Act are hereby repealed:

Provided that anything done or any action taken under any of the rules so repealed shall, unless such thing or action is Inconsistent with any of the provisions of these rules, be deemed to have been done or taken under the corresponding provisions of these rules;

Provided further that the provisions of Sections 8 and 24 of the General Clauses Act, 1897 (Central Act 10 of 1897). shall be applicable in respect of repeal of the said rules as if the rules had been repealed and re-issued."

11. The question that arises for decision is: Whether on and after 1963 Rules came into force. the Tribunal is competent to entertain appeals against the appellate orders of the M.S.T.A.T

It may be noted that the proceedings with which we are concerned in these cases had commenced before the 1963 Rules came into force.

12. The right of appeal against the appellate order of the M.S.T.A.T. is provided by Section 3 (2) of the Mysore Act 16 of 195B. As seen earlier, the Tribunal had been designated as the authority to hear appeals against the original as well as appellate orders of the M.S.T.A.T. The right of appeal given under Mysore Act 16 of 1955 remains undisturbed. The Tribunal continues to exist. Under these circumstances, we have to see whether in view of Rule 178 of the 1963 Rules, the right in question has become ineffective.

13. While examining the question whether aggrieved parties have a right of second appeal to the Tribunal, we have to bear in mind the fact that law has provided a right at second appeal and that right remains unaltered. What is said is that right in question is made ineffective as the rule-making authority had failed to prescribe the appellate authority. Therefore, the question is not whether the aggrieved parties have a right of second appeal but whether there is any authority to which the appeal can be made.

14. It is now well settled that the right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal. This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise. The legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding. See the decision of the Supreme Court in *Garikapatti Veeraya Vs. N. Subbiah Choudhury*, .

15. At the time the proceedings commenced in the cases before us the parties thereto had a right of second appeal to the Tribunal. In other words, as the law stood at the commencement of these proceedings*, there was a right of second appeal and that appeal lay to the Tribunal. The question for our consideration is not whether that right is continued by the 1963 Rules but whether it was taken away by those Rules, either specifically or by necessary implication. No Rule in the 1963 Rules was brought to our notice which can be said to have taken away the right of the parties in these cases to go to the Tribunal in second appeal. As mentioned earlier the Tribunal continues to exist. None of the Rules says that on and after the coming into force of the 1963 Rules, no appeal shall be entertained by the Tribunal. As mentioned earlier, the parties to these proceedings are primarily governed by the law prevailing on the day the cases commenced and not by the law as it stands now unless it is shown that the subsequent change in the law expressly or by necessary implication takes away the right to go up in appeal to the Tribunal. That is not the case here.

16. We must have a close look at the 1963 Rules for determining whether the Rule Making Authority has expressed any intention different from that expressed in the 1946 Rules as regards the authority to whom the second appeal should lie. The line of enquiry would be, not whether the new Rules expressly keep alive old rights and liabilities, but whether they manifest an intention to destroy them. Though Section 6 of the Central General Clauses Act, 1897, or the corresponding provision in the Mysore General Clauses Act, does not strictly apply to the facts of the present cases, the principle underlying those provisions which undoubtedly lays down a statutory Rule of construction, applies to cases like those that we

are concerned now-- See: Benoari Lal Sarma and Others Vs. Emperor,

17. We think, for deciding the point in controversy, we can take assistance from the decisions of the Supreme Court in *State of Punjab v. Mohar Singh* AIR 1955 SC 84 and *The Brihan Maharashtra Sugar Syndicate Ltd. Vs. Janardan Ramchandra Kulkarni and Others*, .

18. As observed in *Ramani Ranjan Bose Vs. Corporation of Calcutta*, that it is fundamental that no statute is to be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act or arises by necessary Implication. Where an enactment alters both the substantive rights and obligations of the parties, as well as the procedure to enforce them, the intention of the legislature would seem fairly clear, namely, that the old rights and obligations are still to be determined by the old procedure and that only the new rights or obligations are to be dealt with by the new procedure.

19. The same rule of interpretation, in our opinion, applies also where changes are effected in the Rules, which directly or indirectly bear on substantive rights.

20. It was observed by Chakravartti, CJ speaking for the Court in *Prabirendra Mohan Vs. Berhampore Bank Ltd. and Others*, that as soon as a suit is brought, the right to prefer an appeal or appeals provided by law. current at the time, becomes vested in the parties and such right cannot be taken away except by a new law and except by the express words or the necessary intendment of such law; but in order that the right of appeal may subsist, it is necessary that the conditions under which the right can be exercised should also subsist; it may be that when the judicial system and the hierarchy of the Courts remain the same, the right of an eventual appeal or appeals, accrued at the date of a suit, remains unaffected by subsequent changes in the law. unless modified expressly or by necessary implication. The rest of the observations in that judgment are not necessary for our pre sent purpose.

Suffice it to say that in the cases before us, the judicial system and the hierarchy of the Tribunals, continue to exist as they were at the time of the commencement of these proceedings. Therefore, under any circumstance, so far as the cases that have been instituted prior to the coming into force of the 1963 Rules, there can be no doubt that a right of second appeal lies to the Tribunal This conclusion of ours receives further support from the decision of this Court in *Vishwanath Venkatesh v. Basappa Appayya*. 1959 37 Mys LJ 883.

21. The conclusion reached by us receives full support from the decision of the Full Bench of the Calcutta High Court in *Jatindra Nath De v. Jetu Mahato* AIR 1946 Cal 339 This is what Chakravartti, J. (as he then was) speaking for the court observed at paragraph 26 of the judgment:

"The position in the present case is simple There is no conflict here as in (1020) 2 Ch. 377 where there was one forum under the old law another under the new Here, there is simply nothing in the new enactment, for nothing in the new

Section 26F, which deals with other rights, can possibly apply. Nor has the procedure of an application been abrogated in the sense of it being declared that it will not apply. And there is no difficulty about the Court being competent to deal with an application, if an application lies. In the circumstances, there can be no reason to hold that even if the accrued rights have been saved, the old procedure of an application is no longer available. Indeed, if the rights have been saved, they have been saved through the old Section 26F remaining operative in respect of those rights. In that section, on the argument of the purchasers themselves, the rights and the procedure are blended together in the provision that the landlord "may apply", so that if that provision has been saved, the right of application has been necessarily saved. The above are all the contentions urged to establish that the landlord in the present case was not entitled to maintain an application in our opinion, he was and the contentions to the contrary are not valid. A right of preemption accrued to him under the Old Act as soon as the transfer was made and there being nothing in amending Act to take that right away, it survived by virtue of Section 8 (c). Bengal General Clauses Act, together with the remedy of an application which survived both by virtue of Section 8 (e) of that Act and the general principles of construction. The answer to the question referred must, there fore, be in the affirmative, it being understood, however, that registration must have been completed before the amending Act."

22. For the reasons mentioned above, we hold that in the cases before us there was a right of second appeal to the Tribunal.

23. in this view, it is unnecessary to consider, whether the Tribunal is still competent to entertain appeals in respect of the appellate orders made by the M.S.T.A.T in proceedings which have commenced after the 1963 Rules came into force.

24. in the result, these petitions fail and they are dismissed.

25. But in the circumstances of these cases we make no order as to costs.

26. Petitions dismissed.