

(1959) 09 KAR CK 0006
In the Karnataka High Court
Case No : Writ Petition No. 327 of 1959

M. Gangappa

APPELLANT

Vs

B.H. Aswathanarayana Singh and Others

RESPONDENT

Date of Decision : 09-09-1959

Acts Referred:

Citation : AIR 1960 Kar 281

Hon'ble Judges : S.R. Das Gupta, C.J;H. Hombe Gowda, J

Bench : Division Bench

Judgement

S.R. Das Gupta, C.J.

(1) The Petitioner before us was one of the applicants for a permit in respect of the route from Bellary to Talur. Before the authorities decided to open the said route, the 1st Respondent had made an application for a permit to ply buses in that route. Thereafter the authorities having decided to open the said route, issued a notification calling for applications in respect thereof. The Petitioner was one of the persons who made an application pursuant to the said notification. There were six other applicants besides the 1st Respondent. It should be mentioned that the 1st Respondent did not make a fresh application after the issue of the notification dated 13th August 1955. He relied on the previous application which had already been made before the authorities had decided to open the said route. When the matter came up for consideration by the Regional Transport Authority, the said authority held that the application of the 1st Respondent cannot be considered, as the said application was not made after the notification issued on 13-8-1955.

The Regional Transport Authority thereafter proceeded to consider the other applications and on such consideration, came to the conclusion that the petitioner should get the permit. Against that order, there was an appeal to the State Transport Authority. The said authority rejected that appeal. A further appeal was taken to the Government. Before the Government could give its decision, the Mysore Board of Revenue Act came into force, as a result whereof

the proceedings before the Government were transferred to the Mysore Board of Revenue. The Mysore Board of Revenue by its order in the said appeal made on 5-3-1957 directed the Regional Transport Authority to notify the applications which had been made before it and to hear those applications after such notifications. The 1st respondent then filed an application before the Board of Revenue for review of the said order contending that the Board should cancel the permit which had been granted in favour of the Petitioner. The application for review was rejected and thereupon the 1st respondent filed a writ petition, being W. P. No. 174/1957, against the said order rejecting the application for review.

In the meantime the Petitioner had applied for renewal of his permit which had expired and the said application was refused. Against that application he filed an appeal to the State Transport Authority. While the said appeal before the State Transport Authority and W. P. No. 174/57 before this Court were pending, the parties entered into a razinama and filed the same in this Court in the said writ petition and thereafter an order was passed by this Court on the said razinama. The net result of that order was that the appeal against the renewal filed by the petitioner was withdrawn. In the meantime pursuant to the order made by the Board of Revenue dated 5-3-1957, the Regional Transport Authority issued three notifications, one dated 1-5-1957, another dated 1-7-1957 and the third dated 8-8-1957. On 8-4-1958 the Regional Transport Authority, after hearing the parties, made an order selecting the Petitioner as the permit holder. Against that order, the 1st Respondent filed an appeal to the State Transport Authority.

By its order dated 22-9-1958 the State Transport Authority allowed the appeal. That decision was confirmed by the Revenue Appellate Tribunal on 28-11-1958. The petitioner did not take any steps thereafter against the said order until the time hereinafter mentioned. The Regional Transport Authority, pursuant to the order of the State Transport Authority, once again notified the applications of the petitioner and of the 1st respondent separately. Those applications came to be heard by the Regional Transport Authority rejected the application of the 1st Respondent and also dropped the application of the petitioner. The view taken by the Regional Transport Authority was that fresh applications should be called for by issuing fresh notification. Thereafter the Regional Transport Authority did call for fresh applications.

It should be mentioned that the petitioner took part in the proceedings before the Regional Transport Authority and did not contend that the said authority could not proceed with the hearing of the matter pursuant to the order made by the State Transport Authority. After the Regional Transport Authority had given its decision both the parties filed their respective appeals to the State Transport Authority and the said appeals are now pending before the said authority. It was after all these that the petitioner on 11-5-1959 filed the present writ petition against the order of the State Transport Authority dated 22-9-1958 and that of the Revenue Appellate Tribunal dated 28-11-1958. The petitioner has also in the alternative asked for an order setting aside the order of the Regional Transport

Authority whereby the said authority directed that the application of the petitioner be dropped.

(2) Before dealing with the merits of the application, it will have to be considered as to whether or not the petitioner, under the circumstances mentioned, is entitled to maintain this petition. The principle on which the discretion of the Court to issue or not to issue a writ of certiorari is to be exercised, has been considered in a number of English decisions. Lord Halsbury in his Laws of England has concisely put the principle on which the said decisions are based. The learned author states as follows: (Vol XI, page 140, paragraph 265)

"Although the order is not of course it will though discretionary nevertheless be granted *ex debito justitiae*, to quash proceedings which the Court has power to quash, where it is shown that the court below has acted without jurisdiction or in excess of jurisdiction, if the application is made by an aggrieved party and not merely by one of the public and if the conduct of the party applying has not been such as to disentitle him to relief; and this is the case even though certiorari is taken away by statute and although there is an alternative remedy."

In this case it cannot be disputed that the Petitioner before us is an aggrieved party. The question which arises is whether or not his conduct has been such as to disentitle him to relief.

(3) whether the conduct of the party making the application does disentitle him to the relief would depend upon the facts and circumstances of each case. In this case, I am of the opinion, the conduct of the petitioner has been such as would disentitle him from getting the relief asked for in this Court. I have already mentioned that the petitioner did not move against the order of the Revenue Appellate Tribunal passed on 28-11-1958. On the other hand, he took part in the proceedings which went on before the Regional Transport Authority on the basis of that order confirmed by the order of the Revenue appellate Tribunal. No objection was taken by him that the Regional Transport Authority could not proceed on the basis of the order passed by the State Transport Authority. The matter does not rest there.

After the Regional Transport Authority had decided that the petitioner's application should be dropped, the petitioner went in appeal against that order to the state Transport Authority. It should also be mentioned that the Regional Transport Authority pursuant to its decision dated 16-3-1959 called for fresh applications and in response thereto the petitioner filed his application for a permit.

(4) The above mentioned conduct of the petitioner also shows that he was trying to take a chance before the Regional Transport Authority and if the decision of the said authority happened to be in his favour, there would have been no necessity for him to come before this Court for a writ. It was only when the order of the Regional Transport Authority turned out to be unfavourable to him that he thought of making the present application and such a conduct, as observed by

their Lordships of the Bombay High Court in Gandhinagar Motor Transport Society Vs. State of Bombay, , should not be encouraged. Their Lordships in that case made the following observations:

"The Court must tell the petitioner: "It was open to you to raise that point before the tribunal whose order you are challenging. You have sat on the fence, you have been a chance of the tribunal deciding in your favour, and it is not open to you now to come to us and ask for a writ".

The principle underlying these observations, in my opinion, apply with equal force to the present case. The facts narrated by me show clearly that the petitioner was taking a chance before the Regional Transport Authority and he was sitting on the fence and it is not open to him now to come and ask for a writ. His conduct, in my opinion disentitles him to the relief which he has asked for in the present petition. I should, however, mention that this decision will not in any way affect the appeals which are now pending before the State Transport Authority.

(5) In the result this petition is dismissed with costs of the 1st Respondent (Advocate's fee Rs. 100/-).

Hombe Gowda, J.

(6)I agree.

(7)Petition dismissed.