

(1958) 07 KAR CK 0005
In the Karnataka High Court
Case No : Writ Petition No. 143 of 1956

M. Krishna Muniswamy Pillai		APPELLANT
	Vs	
State of Mysore and Others		RESPONDENT

Date of Decision : 21-07-1958

Acts Referred:

Motor Vehicles Act, 1988 — Section 57 (3), 64 (1) (a), 64 (1) (f)

Citation : AIR 1960 Kar 11

Hon'ble Judges : S.R. Das Gupta, C.J;A.R. Somnath Iyer, J

Bench : Division Bench

Judgement

S.R. Das Gupta, C.J.

(1) The facts necessary to be stated for the purpose of understanding the contentions raised by Mr. V. Krishnamurthy appearing on behalf of the petitioner are as follows: The petitioner was one of the several applicants for a permit in a new route from Hassan to Charmadi. Besides the petitioner there were three other applicants, Respondent No. 3 was one of them. The petitioner not only filed his application for grant of the said permit to him but also filed representations against the other applicants for permits.

The other applicants merely filed their applications for permits but did not file any representations either against the application of the Petitioner or against any of the other applications. The matter came up for decision before the State Transport Authority and it was argued before the said authority by the learned Advocate for the petitioner that inasmuch as no representations had been preferred or objections filed against the application of the petitioner by any one of the other applicants, the other applicants will be taken as having no objection to the grant of the permit in his favour.

This view was accepted by the State Transport Authority and the said authority granted a permit in favour of the petitioner. Against the said decision of the State Transport Authority an appeal was filed to the Government by Respondent No. 3.

The Government on hearing the appeal took the view that the State Transport Authority was not justified in holding that inasmuch as other applicants had not made any representation under the provisions of sub-section (3) of S. 57 of the Motor Vehicles Act, they were not entitled to be heard by the Authority.

The Government held that this can be the position only if the others had withdrawn their applications and so long as their applications were there a duty was cast on the State Transport Authority to consider their applications on merits. The Government further took the view that the appellant before it had a right of appeal under S. 64 of the Act. On this view the Government set aside the order of the State Transport Authority and sent the case back for fresh disposal according to law. The Government directed that the relative claims of all the applicants will have to be considered after giving due notice to all the concerned parties. Against this decision of the Government the present petition has been filed.

(2) Mr. V. Krishnamurthi appearing on behalf of the Petitioner raised several contentions in support of his client's case. The first contention urged was that by reason of his failure to file representations in accordance with sub-section (3) of S. 57. Respondent No. 3 could not contest the grant of the permit which was made to the petitioner. In other words, it was contended by Mr. Krishnamurthi, that the only right which Respondent 3 had in the circumstances was the right to prefer an appeal against the refusal of the State Transport Authority to grant a permit to him but he had no right to prefer Petitioner. Mr. Krishnamurthi referred us to the provisions of clauses (a) and (f) of S. 64(1) of the said Act in support of this contention and he also relied on a number of decisions, most of which are decisions of the Rajasthan High Court, for that purpose.

(3) Clause (a) and (f) of S. 64(1) of the Motor Vehicles Act on which the learned Advocate for the Petitioner depended in support of his present contention read as follows:

"64(1) Any person--

(a) aggrieved by the refusal of the State or a Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to him, or.....

(f) being a local authority or police authority or an association which, or a person providing transport facilities who, having opposed the grant of a permit is aggrieved by the grant thereof or by any condition attached thereto.....

may, within the prescribed time and in the prescribed manner, appeal to the prescribed authority who shall give such person and the original authority an opportunity of being heard."

The argument of Mr. Krishnamurthi was that in order to be entitled to prefer an appeal against the grant of a permit one must fulfil the conditions laid down in Clause (f) of S. 64(1). In other words, he must have opposed the grant of a permit and must be aggrieved by the grant thereof. In this case, it was

contended, having regard to the fact that Respondent No. 3 did not file any representation under S. 57(3) of the Motor Vehicle Act the said respondent cannot be said to have opposed the grant of a permit and is therefore not entitled to prefer an appeal under Clause (f) of S. 64(1).

It was further urged that the only remedy of Respondent No. 3 was to prefer an appeal against the order of the State Transport Authority refusing to grant a permit in his favour and whatever decision the appellate authority may arrive at on this point, it has no jurisdiction to cancel the permit which was granted in favour of the petitioner, the appeal not falling under Clause (f) of S. 64(1).

(4) In support of this contention Mr. Krishnamurthi relied on a decision of the Rajasthan High Court reported in Dholpur Co-operative Transport and M. Union v. Appellate Authority, Rajasthan AIR 1955 Raj 19. In that case Chief Justice Wanchoo sitting with Mr. Justice Ranawat took the same view which is now urged by Mr. Krishnamurthi. Their Lordships came to the conclusion that the power of the appellate authority to give relief is circumscribed by the clause under which the appeal is filed, and this appears to be evident; and on the question as to whether, on an appeal under Clause (a), the permit of some other person can be cancelled, their Lordships came to the conclusion that a person who was not entitled to appeal under Clause (f) merely because he has appealed under Clause (a) for refusal of the permit to him, cannot question the grant of the permit to the other person.

Their Lordships held that unless a foundation has been laid before the Regional Transport Authority for an appeal provided by Clause (f) by an objection by somebody entitled to appeal under that clause, the appellate authority has no jurisdiction to cancel a permit granted in favour of one of the parties. This view has been followed in a subsequent decision of the same High Court in J.G. Singh Transport, Shahpura Vs. State Transport Authority and Others, and has been accepted by the High Court of Patna in Ramnihora Thakur Vs. The State of Bihar and Others, . Mr. Krishnamurthi on these authorities contended before us that the grant of the permit in favour of his client could not be challenged by Respondent No. 3 in appeal.

(5) I shall deal with these decisions on which Mr. Krishnamurthi has relied hereafter. For the moment I shall consider the implications of the arguments advanced before us by Mr. Krishnamurthi and examine the position to which the said arguments would lead to. The result of Mr. Krishnamurthi's arguments would be that an applicant for a permit who has not filed any representations against the other application for the same permit would be debarred from making any effective appeal against the order refusing to grant a permit to him although Clause (a) of S. 64(1), may allow him to make such an appeal.

He may prefer an appeal against the said order under Clause (a) of S. 64(1) but if he is debarred from challenging the validity of the order granting the said permit in favour of some other applicant, then his appeal for all intents and

purposes would be valueless. I am for the moment not considering the possibility of the State Transport Authority granting another permit in favour of the appellant before it. If supposing there is only one permit aggrieved by the refusal to grant permit in his favour by reason of the fact that he did not file any such representations, would be debarred from making effective appeal even against the order refusing to grant permit to him.

In other words, if the permit granted in favour of the other is to stand and if no two permits are to be granted in that route, then no relief can be given to the party who has filed an appeal against the order refusing to grant permit to him. The consequence of this position would be that although in name he would have a right of appeal under Clause (a) of S. 64(1), against the order refusing to grant a permit, he would in reality have no such right of appeal. Clause (a) of S. 64(1), in such a case would be utterly valueless.

(6) The learned Advocate for the Petitioner tried to meet this difficulty by contending that the appellate authority would have jurisdiction in such a case to issue a new permit in favour of the appellant and in support of that contention relied on the decision of the Rajasthan High Court in J.G. Singh Transport, Shahpura Vs. State Transport Authority and Others, . That decision no doubt supports the contention of Mr. Krishnamurthi on this point. But in my opinion, with highest respects to their Lordships, it would be difficult to hold that the appellate authority has any jurisdiction in deciding an appeal against the order refusing to grant a permit, to grant an extra permit to the appellant.

It seems to me that in coming to the aforesaid conclusion the position of the State Transport Authority as an appellant authority and its position as an executive authority have been mixed up. As an appellate authority I am unable to hold that the State Transport Authority has any jurisdiction to grant a new permit although as an executive body it may have such power. Therefore, in my opinion it would not be correct to say that an appellant in an appeal against the order refusing to grant a permit would still have a remedy, viz., that an extra permit would be granted to him. I am unable to accept the view taken by their Lordships on this question and I am also unable to accept the contention of Mr. Krishnamurthi on this point.

(7) Coming to the decision on which Mr. Krishnamurthi relied, it appears that most of the said decisions have relied on a prior decision of the Madras High Court in Nadar Transports Tiruchirapalli Vs. The State of Madras and Others, and have proceeded on the view that the said Madras decision supports their decision. With all respects to their Lordships I do not think the said decision of the Madras High Court supports the view taken by their Lordships. In the said case of Nadar Transports Tiruchirapalli Vs. The State of Madras and Others, , their Lordships of the Madras High Court definitely held that the respondent who was an aggrieved person as the Regional Transport Authority had refused to grant him a permit for the route would, therefore, be entitled to prefer an appeal against the order granting a permit in favour of the appellant.

Chief Justice Wanchoo in AIR 1955 Raj 19 proceeded to hold that their Lordships are supported in the view which they took in that case to a certain extent by the decision of the Madras High Court in *Nadar Transports Tiruchirapalli Vs. The State of Madras and Others*, . In my opinion, that decision far from supporting the view which their Lordships of the Rajasthan High Court took on this point was against it. In any event I am unable to agree with the view taken by their Lordships of the Rajasthan High Court in the said case of AIR 1955 Raj 19 on this point. In the Patna decision also on which Mr. Krishnamurthi relied. *Ramnihora Thakur Vs. The State of Bihar and Others*, , their Lordships held that the view their Lordships were taking is supported by the decision of the Madras High Court in *Nadar Transports Tiruchirapalli Vs. The State of Madras and Others*, .

I am also unable to hold that the said decision supports the view taken by their Lordships of the Patna High Court in the said case. It should be mentioned that the view taken by the Patna High Court on this point was the same which was taken by the Rajasthan High Court in the case to which I have just now referred. It should also be mentioned that their Lordships of the Patna High Court in the said case *Ramnihora Thakur Vs. The State of Bihar and Others*, , relied on a decision of the same High Court in *Gobardhan Joshi and Another Vs. The State of Bihar and Others*, , as supporting their view. We have been taken through the said decision reported in the said case *Gobardhan Joshi and Another Vs. The State of Bihar and Others*, , but we are unable to find anything in the said case which goes to support the view taken by their Lordships of the Patna High Court in the said case of *Ramnihora Thakur Vs. The State of Bihar and Others*, . Mr. Krishnamurthi also could not point out to us anything from the said case supporting his view on this point.

(8) In my opinion the correct view to take in the matter would be to hold, as has been held by His Lordship Rajagopalan J., of the Madras High Court in *Jebamany Sundararaj v. State Transport Authority* (1957) 2 MLJ 14, that in an appeal preferred under S. 64(1)(a) of the Motor Vehicles Act by an aggrieved person, the Appellate Tribunal has jurisdiction to set aside the order of the Regional Transport authority granting permits to others, as incidental to the relief granted to the appellant whose application was, in the opinion of the appellate Tribunal, improperly rejected. His Lordship took the view, and with respect I would say rightly, that where in such a case an appeal is allowed and if the appellant has to be granted a permit, it could only be on the basis of the cancellation of a permit already granted.

The two matters are, in my opinion, inextricably mixed up and it would follow from the decision of the appellate authority if it comes to the conclusion that the refusal to grant a permit to the aggrieved person was unjustified and that the permit should have been granted to him, that the order of the Regional Transport Authority granting permit to another was equally unjustified and the permit should not have been granted to him. It would follow, therefore, as a consequence of allowing the appeal preferred by a person aggrieved by the

refusal to grant a permit to him, that the order granting the said permit to another should be set aside.

The appellate authority must therefore have jurisdiction to set aside the order granting permit to another as incidental to the relief granted to the appellant whose application, in the opinion of the appellate authority, was improperly rejected. In my opinion the appellate authority will have such jurisdiction irrespective of the fact that the appellant not having filed any representation under S. 57(3) did not come within the purview of Clause (f) of S. 64(1). This view which I am taking in this case is also supported by the decision of the Madras High Court in *S. Gopala Reddi Vs. Regional Transport Authority, North Arcot and Others*, , Chief Justice Rajamannar in considering a similar situation in that case observed as follows:

"The applications were in effect applications for the grant of a permit, and on the route, only one permit could be granted. The grant of a permit to one would automatically mean the refusal of a permit to the other. The appeal was, in our opinion perfectly competent as an appeal against the order of the Regional Transport Authority, refusing to grant a permit. The fact that such an appeal involved an attack on the order granting a renewal of a permit to the 4th respondent would not prevent the appeal being what it was, viz., an appeal against the refusal to grant a permit to the appellant. The Central Road Traffic Board erred in presuming that it was not to them in the appeal to consider the merits of the order granting renewal of the 4th respondent's permit. Indeed, the first question the appellant would be the propriety of the action of the Regional Transport Authority in granting a renewal to the 4th respondent. The filing of the appeal by the appellant set at large the order of the Regional Transport Authority granting the renewal."

(9) I am also of the opinion that the power of the appellate authority is not fettered by the provisions of sub-sec.(1) of S. 64 of the Motor Vehicles Act. The said sub-section only enumerates the persons who have a right of appeal. The said sub-section has nothing to do with and does not in any way circumscribe the limit of the power of the appellate authority. I am also not able to agree, although I need not express any final opinion on this point, that the words "having opposed the grant of a permit" in S. 64(1)(f) must mean "having filed representation under S. 57(3)" and cannot include oral opposition to the grant. The result, therefore, is that this contention of Mr. Krishnamurthi must fail.

(10) The other contentions of Mr. Krishnamurthi are, in my opinion, of minor importance. He contended that the State Transport Authority has also decided the applications which were before it on the merits, and this is evident from the second paragraph of its order wherein it says that the claims of the Petitioner even on merits stand on a better footing than others. Mr. Krishnamurthi further contended on the authority of the decision reported in *M. Ramayya, v. State of Andhra* AIR 1956 AP 217 that where in granting permit even if one of the reasons is bad, it does not necessarily follow in all cases that the order is vitiated

and that it does not necessarily follow that because the order contains some bad reasons, the entire order must be set aside.

In this case it is not a question of there being two reasons one of which is bad. What happened, as I have already mentioned, is that the State Transport Authority accepted the contention of the learned Advocate for the Petitioner that having regard to the fact that no representations were filed by the respondents it will have to be taken as if there is no objection on their part to the grant of the permit. On this view of the matter the respondent was not permitted to make his submissions by way of objection to the grant of the permit to the petitioner. This view taken by the State Transport Authority, in my opinion, was erroneous and has vitiated the proceedings.

(11) In the result, therefore, this contention of Mr. Krishnamurthi must fail.

(12) Lastly Mr. Krishnamurthi contended before us that pending hearing of this matter his client should be permitted to ply his bus along this route. It seems to me that this question should be decided by the State Transport Authority. It would be for the State Transport Authority to decide as to who will ply his bus till the matter is finally disposed of. If any one of the parties is now actually plying his bus in this route that fact may be taken into consideration by the State Transport Authority in deciding this question. The matter, however, is left to the decision of the State Transport Authority.

(13) The petition, therefore, fails and is dismissed with costs in favour of Respondent 3(Advocate's fee Rs. 100/-)

A.R. Somnath Iyer, J.

(14) I agree.

(15) Petition dismissed.