

(1975) 07 KAR CK 0007

In the Karnataka High Court

Case No : Writ Petns. No's. 3055 and 3056 of 1975

M. Nanjappa

APPELLANT

Vs

The Karnataka State Transport Appellate Tribunal and others

RESPONDENT

Date of Decision : 21-07-1975

Acts Referred:

Citation : AIR 1975 Kar 238

Hon'ble Judges : E.S. Venkataramiah, J

Bench : Single Bench

Advocate : T.S. Nagesha Rao, for the Appellant; B.R.S. Gupta for No. 3 in W.P. No. 3055 of 1975 and S.V. Krishnaswamy for No. 3 in W.P. No. 3056 of 1975, for the Respondent

Judgement

E.S. Venkataramiah, J.—Because common questions of law and fact arise for consideration in these two petitions they are disposed of by this common order.

2. The petitioner in these two petitions made applications before the Regional Transport Authority, Mysore (hereinafter referred to as the "R.T.A.") for varying the conditions of two permits held by him to ply stage carriages u/s 46 read with Section 57 (8) of the Motor Vehicles Act, 1939 (hereinafter referred to as the "Act"), Respondent-3 in each of these petitions objected to the variations prayed for. After hearing the petitioner and the objectors the R.T.A. was of the opinion that the variations prayed for should be granted. Accordingly, it passed a resolution granting the variations prayed for. Aggrieved by the resolution of the R.T.A. respondent 3 in each of these petitions filed appeals before the Karnataka State Transport Appellate Tribunal (hereinafter referred to as the "Tribunal"). It would appear that respondent 3 in each of these petitions came to know when the appeals were pending before the Tribunal that the applications together with the notice which had been published as required by Section 57 (3) of the Act read with Rule 97 of the Motor Vehicles Rules, 1963 in the official Gazette had been signed by a person who had been asked to work as an incharge Secretary of the R.T.A. in the absence of the Secretary and not by the Secretary as

required by Rule 97 of the Motor Vehicles Rules. They, therefore, filed additional grounds of appeal before the Tribunal and argued that the entire proceedings before the R.T.A. were liable to be set aside as being without jurisdiction. Relying on the above submissions the Tribunal set aside the resolution of the R.T.A. and remanded the cases to the R.T.A. for fresh disposal in accordance with law. While doing so, the Tribunal did not consider the other grounds raised by the appellants before it. Aggrieved by the decision of the Tribunal the petitioner has filed these two petitions.

3. In support of the above petitions Sri Nagesh Rao, learned counsel for the petitioner relied upon Section 134 (2) of the Act which reads as follows:

No order made by a competent authority under this Act shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the proceedings, unless it appears to the prescribed appellate authority or revisional authority as the case may be, that such error, omission or irregularity has in fact, occasioned a failure of justice.

The learned counsel for the petitioner contended that the error said to have been committed at the stage of publication of the notice in the instant case was one which could be cured u/s 134 (2) of the Act.

4. The Tribunal does not say in the course of its order that on account of the error said to have been committed in these cases there has been failure of justice. It was, however, of the opinion that the error amounted to an illegality affecting the jurisdiction of the R.T.A. and was not one curable u/s 134 (2). The learned counsel appearing for the contesting respondents maintained that the view expressed by the Tribunal on the above question was the right view to be taken in the circumstances of the case.

5. In order to appreciate the contentions of the parties it is necessary to determine whether the error said to have been committed in these cases is one affecting the jurisdiction of the R.T.A. to dispose of the applications of the petitioner. A close scrutiny of the provisions of the Act and the Motor Vehicles Rules framed thereunder does not support the view urged on behalf of respondent 3 in these cases. Section 45 of the Act states that every application for a permit shall be made to the Regional Transport Authority of the region in which it is proposed to use the vehicle or vehicles. When the route in question is an inter-regional route, the Regional Transport Authority within whose jurisdiction the major portion of the route lies would have the jurisdiction to dispose of the application for the grant of a permit and when two or more regions in which the route lies are in different States, the application for permit under the Act should be made to the Regional Transport Authority of the region in which the applicant resides or has his principal place of business. Section 46 of the Act provides for making of an application for stage carriage permit. Sections 47 and 48 of the Act lay down the procedure which the Regional Transport Authority should follow in considering the applications and the conditions that may be imposed at the time

of granting the permit sub-section (3) of Section 57 of the Act also deals with the procedure governing the consideration of an application for a stage carriage permit under Chapter IV of the Act. It provides that on receipt of an application for a stage carriage permit the Regional Transport Authority shall make the application available for inspection at its office and shall publish the application or the substance thereof in the prescribed manner together with a notice of the date before which representations in connection therewith may be submitted and the date, not being less than thirty days from such application, on which, and the time and place at which, the application and any representations received will be considered. We are concerned in these cases with the manner of publication of the application or its substance. It is prescribed by Rule 97 (1) of the Motor Vehicles Rules. Rule 97 (1) states that upon receipt of an application for a stage carriage permit or a public carriers' permit the Secretary of a Regional Transport Authority shall publish the substance of the application together with a notice, not less than 15 days before the date appointed for the receipt of representations, of the date before which representations may be submitted and of the probable date appointed for consideration. In the case of applications for stage carriage permits there are two modes of publication prescribed under Rule 97. The first mode is the publication on the Notice Board of the Authority and the second mode is the publication in the official Gazette. It is not contended before me that there was no publication at all either on the Notice Board or in the Gazette. What, is, however, urged is that the original of notice published in the Gazette was not signed by the Secretary but by a person who was only doing the duties of the Secretary of the R.T.A. (in-charge Secretary) and hence it was illegal. It is significant that Rule 97 does not say that the R.T.A. shall publish the notice. It requires that the Secretary of the R.T.A. should publish it. From the provisions of the Act and the Rules it cannot be inferred that the jurisdiction of the Authority to consider the applications for the grant of stage carriage permits would depend upon the validity of the notice published in the Gazette and that any kind of error in the notice would affect the jurisdiction of the R.T.A. The purpose of publishing a notice in the Gazette is to give notice to all concerned that an application had been made to the Authority and to invite objections and representations to it. The publication of the notice is purely a ministerial act. It is not shown in this case that any person was in any way milled or prevented from filing his objections or representations. Respondent 3 in each of then cases admittedly filed objections before the R.T.A. and they were heard. The R.T.A. granted the variations sought for after overruling their objections. It is not also shown that the fact that the original of the notice published u/s 57 (3) of the Act in the Gazette had been signed by the in-charge Secretary affected the decision of the R.T.A. on merits in any way. On the facts and in the circumstances of these cases I am of the view that the error said to have been committed in the course of the proceedings before the R.T.A. was not one which deprived it of its jurisdiction to dispose of the applications. It does not also amount to an incurable illegality. As it had not been shown that the error had occasioned failure of justice, the Tribunal should not have set aside the resolution of the R.T.A on this

sole ground in clear violation of the express provisions contained in Section 134 (2) of the Act.

6. Whatever I have said in these petitions should not be understood as generally applicable to all errors that may be committed while publishing a notice u/s 57 (3) of the Act. There may be cases where the error in the publication of the notice u/s 57 (3) might invalidate the resolution of the Authority if it is shown that irreparable prejudice to any of the parties had been caused. The Regional Transport Authorities should therefore take care to see that no mistake is committed in the publication of the notice u/s 57 (3).

7. In view of what is stated above, I hold that the decision of the Tribunal is liable to be set aside. It is accordingly set aside. The cases are remitted to the Tribunal to consider the remaining grounds in accordance with law. All other contentions are left open. No order as to costs.