

(1963) 02 KAR CK 0003
In the Karnataka High Court
Case No : Writ Petition No. 1774 of 1962

M.C. Krishna Murthy

APPELLANT

Vs

Mysore Revenue Appellate Tribunal and Others

RESPONDENT

Date of Decision : 05-02-1963

Acts Referred:

Motor Vehicles Act, 1939 — Section 48, 57 (3), 63, 63 (1)
Mysore Grant of Permits without Countersignature Rules, 1958 — Rule 1, 3, 4

Citation : AIR 1963 Kar 329

Hon'ble Judges : G.K. Govinda Bhat, J;A.R. Somnath Iyer, J

Bench : Division Bench

Advocate : M.R. Venkatanarasimhachar, for the Appellant; C.S. Shanthamallappa and L.B. Gangadhariah, for the Respondent

Judgement

Somnath Iyer, J.—The petitioner is operating his stage carriage on the route between Yedavani and Bangalore, the major part of which lies within the region of the Regional Transport Authority, Bangalore. On November 6, 1961 he made an application to that Regional Transport Authority for the extension of his route. What he wanted to do was to proceed from Yedavani to a point called Bheemanahalli via Devalapura in continuation of the existing route. That application was considered by the Regional Transport Authority and allowed. From that decision of the Regional Transport Authority respondent 4 who is an operator between Nagamangala and Bangalore and who opposed the petitioner's application for the extension of the route, appealed to the State Transport Appellate Tribunal and that appeal was allowed. The petitioner's further appeal to the Revenue Appellate Tribunal was dismissed and so it is that he is before us now.

2. The route which was common to the petitioner and respondent 4 before the extension was granted by the Regional Transport Authority was the route between Bangalore and Yedavani. Respondent 4 was proceeding on his return journey from Yedavani to Devalapura and further to Nagamangala. The extended

route which was allowed by the Regional Transport Authority and which lies between Yedavani and Bheemanahalli touches Devalapura which is also touched by respondent 4 on his journey between Yedavani and Nagamangala. The contention of respondent 4 before the State Transport Appellate Tribunal was that he would be affected by the extension granted by the Regional Transport Authority. The view expressed by the State Transport Appellate Tribunal was that there was no need for the extension prayed for by the petitioner since Bheemanahalli was a small village situate about a couple of miles away from Devalapura and that there was really no need for the establishment of a stage carriage service for that short distance. It appears also to have been of the view that, since the stage carriage service of respondent 4 was proceeding from Yedavani to Devalapura that route was sufficiently served.

3. The State Transport Tribunal was also of the view that the extension of the petitioner's route was granted by the Regional Transport Authority in transgression of certain rules which had been made by the Government under the provisions of Sub-section (1) of Section 63 of the Motor Vehicle Act. Those rules conferred power on the Regional Transport Authority to grant a permit to be effective even outside its own region even without the counter-signature of the Regional Transport Authority of that region, provided the procedure prescribed by those rules was observed. That procedure consisted of publication of the application for extension u/s 57 (3) and consultation with the Regional Transport Authority of that other region. Although it was not disputed that the first part of the procedure had been followed by the Regional Transport Authority, Bangalore, what was undisputed was that the consultation with the Regional Transport Authority of the other region had not been made.

It should be mentioned here that, while according to the petitioner the distance between Yedavani and Bheemanahalli is only about eight miles, that distance according to respondent 4 is eleven miles. There is also a controversy as to the exact distance between Bheemanahalli and Devalapura. While the petitioner says it is three miles, respondent 4 has given varying versions about it. But what is, however, not disputed is that the route between Yedavani and Bheemanahalli is not within the region of the Bangalore Regional Transport Authority but lies partly within the region of the Tumkur Regional Transport Authority and partly within the region of the Mandya Regional Transport Authority. Since it was not disputed before the State Transport Appellate Tribunal that neither the Mandya Regional Transport Authority nor the Tumkur Regional Transport Authority had been consulted before the Regional Transport Authority, Bangalore, granted the extension prayed for by the petitioner that State Transport Appellate Tribunal was of the view that there was disobedience to the rules made by the Government u/s 53(1) which vitiated the extension granted by the Regional Transport Authority. That tribunal accordingly allowed the appeal preferred by respondent 4.

4. In the appeal which was preferred from that decision of the State Transport Appellate Tribunal to the Revenue Appellate Tribunal, the only question which

was considered by the Revenue Appellate Tribunal was whether there had been disobedience to the rules made by the Government u/s 63(1). On that question the finding recorded by it was against the petitioner. It was for that reason that the Revenue Appellate Tribunal did not proceed to consider the further question whether the State Transport Appellate Tribunal was right in recording a finding that there was no need for the extension prayed for by the petitioner. What the Revenue Appellate Tribunal however did was to remit the matter to the Regional Transport Authority so that the Regional Transport Authority may, after observance of the procedure prescribed by the rules made u/s 63(1), deal with the application presented by the petitioner afresh and according to law.

5. It is against this decision that the petitioner complains in this writ petition and what is urged by Mr. Venkatanarasimhachar, the learned advocate for the petitioner, is that the view taken by the Revenue Appellate Tribunal that the disobedience to the provisions of the rules made by the Government u/s 63(1) was disobedience of a mandatory statutory provision resulting in nullification of the extension granted by the Regional Transport Authority, is not the correct view. The view which has been pressed upon us by Mr. Venkatanarasimhachar is that that part of the rules made u/s 63(1) enjoining consultation with the Regional Transport Authorities, of the other region is no more than a mere directory provision, substantial compliance with which was all that was necessary, exact obedience being not indispensable. The investigation of the validity of this contention requires reference in the first instance to the provisions of Section 63 of the Act and the rules made u/s 63(1).

6. Section 63 reads :

"(1) Except as may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region shall not be valid in any other region, unless the permit has been countersigned by the Regional Transport Authority of that other region, and a permit granted in any one State shall not be valid in any other State unless counter-signed by the State Transport Authority of that other State or by the Regional Transport Authority concerned:

* ** ** ** (2) A Regional Transport Authority when countersigning the permit may attach to the permit any condition which It might have imposed if it had granted the permit, and may likewise vary any condition attached to the permit by the Authority by which the permit was granted.

(3) The provisions of this Chapter relating to the grant, revocation and suspension of permits shall apply to the grant, revocation and suspension of countersignatures of permit.

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7. Section 48 of Motor Vehicles Act which confers power on a Regional Transport Authority to grant a stage carriage permit does not forbid the grant of an inter regional permit. But it is clear from Section 63(1) of the Act that the permit so

granted shall not have any potency in the other region unless the Regional Transport Authority of that other region countersigns the permit granted by such Regional Transport Authority. But the opening words of Sub-section (1) of Section 63 make it clear that the provision to that effect contained in Sub-section (1) may be altered or varied by a rule made for that purpose under Sub-section (1). That rule, It is clear, is a rule to be made by the Government, since the word "prescribed" occurring in Sub-section (1), according to the definition contained of that word in Section 2(21) of the Act means prescribed by rules made under this Act. Section 68 of the Act confers power on the Government to prescribe such rules. It is not disputed that in the exercise of the power conferred by Section 63 (1) read with Section 68, Government did make rule on October 14, 1958. But those rules contained provisions at variance with those contained in Sub-section (1) of Section 63 in regard to the necessity for counter-signature referred to therein. These rules read:

"Rule 1: These rules may be called the Rules for the grant of permits without counter-signature.

Rule 2 : They shall extend to whole of the State of Mysore.

Rule 3 : The Regional Transport Authority of any region may, subject to the provisions of Section 45 of the Motor Vehicles Act 1939, issue a permit to be valid in any other region or regions without the counter-signature of the other Regional Transport Authority or the other Regional Transport Authorities concerned and shall as soon as possible send copies of such permit to the other Regional Transport Authority or Regional Transport Authorities concerned.

Rule 4: The Regional Transport Authority granting a permit under Rule 3, shall before issuing a permit --

(a) notify u/s 57 (3) of the M. V. Act, 1939, the whole of the route or area which lies within the State and in respect of which an application for permit has been received, by publishing the same in the Mysore Gazette and by affixing the copies, of such, notification on the notice boards of the other Regional Transport Authorities concerned and shall hear the applicant and any other person making representations;

(b) consult the Regional Transport Authority or the Regional Transport Authorities concerned."

8. It is seen from the provisions of Rule 3 of those rules that one Regional Transport Authority may issue a permit in respect of a route lying within the region of another Regional Transport Authority, provided, the steps enjoined by Rule 4 are taken before such permit is issued. One of the steps to be taken is the notification of the application filed by the petitioner by the observance of the procedure prescribe u/s 57(3) of the Motor Vehicles Act. The second is the consultation with the other Regional Transport Authority. If it could be said that the Regional Transport Authority, Bangalore, granted the extension prayed for by

the petitioner under the provisions of these rules, what becomes incontrovertible is that that extension was not properly granted by that Regional Transport Authority since the second step enjoined by Rule 4 was not taken by it, the Bangalore Regional Transport Authority not having consulted the Mandya and Tumkur Regional Transport Authorities which it should have done under Clause (b) of Rule 4. The consultation which was obligatory under that clause not having been made, the extension granted by the Regional Transport Authority, Bangalore, was not one made according to law, transgressing as it does one of what I consider to be the mandatory provisions of Rule 4.

9. I am not impressed by the argument advanced by Mr. Venkatanarasimhachar, that Clause (b) of Rule 4 is a merely directory provision, exact obedience to which is unnecessary. If the normal way of issuing a permit which is intended to have efficacy in the region of another Regional Transport Authority is to issue that permit subject to the counter-signature of that Regional Transport Authority, and an exception to that normal rule is what is created by the rules made by the Government u/s 63(1) read with Section 68, and those rules say that a special procedure has to be followed before a permit could be issued under their provisions, that procedure must be exactly obeyed and followed before the Regional Transport Authority can exercise power under them. If one of the requirements of those rules is that that Regional Transport Authority should consult the other Regional Transport Authority, such consultation is both imperative and indispensable.

If the grant of the permit by the Regional Transport Authority is not preceded by such consultation, there being disobedience to a clearly mandatory provision, the permit granted by it can have no efficacy or effect. I am not prepared to say that the consultation which is enjoined by Clause (b) of Rule 4 is a mere formality which may or may not be observed by the Regional Transport Authority required to observe it. It is, I think, of the essence of the matter that the consultation enjoined by that clause must needs be made by the Regional Transport Authority before it exercises power under Rule 3.

10. If that was all that could be said the conclusion reached by the State Transport Appellate Tribunal and the Revenue Appellate Tribunal that the non-observance of the provisions of Clause (b) of Rule 4 vitiated the extension of the route granted by the Regional Transport Authority, Bangalore, could be regarded as being quite above reproach.

11. But the question is whether both those tribunals were right in assuming that the Regional Transport Authority exercised power under Rule 3 of the rules made by the Government. There is no indication in the impugned resolution of the Regional Transport Authority that the power exercised by it was what was conferred on it by those rules. The supposition that the power exercised by the Regional Transport Authority was the power conferred on it by Section 48 of the Act cannot altogether be excluded from consideration. If, therefore, it can be said that the Regional Transport Authority, Bangalore, granted the extension prayed

for by the petitioner not under Rule 3 of the rules but u/s 48, then what follows is that that extension would be valid extension, subject however to the condition that the counter-signature of the Regional Transport Authorities of Mandya and Tumkur are obtained to the extension granted by that Regional Transport Authority.

12. But Mr. Shantamallappa appearing on behalf of respondent 4 contends that once the Government made rules under Sub-section (1) of Section 63 read with Section 68 prescribing a particular procedure for the grant of permits which are Intended to be effective outside the region of a Regional Transport Authority, the general power exercisable by that Regional Transport Authority u/s 48 was no longer available to it. In support of that proposition he relied upon a Full Bench decision of the Revenue Appellate Tribunal, Bangalore, in *Amrutheswara Motor Service v. Mysore State Transport Appellate Tribunal* 1961 Kant LJ 313. That decision, it is true, does support the argument advanced by Mr. Shantamallappa that the provisions of Section 48 were superseded by the rules made by the Government under that sub-section in the exercise of the power conferred by Section 68. The question is whether that postulate for which Mr. Shanatamallappa contends is correct. It seems to me that it is not, and, I shall briefly set out the reasons why I think so.

13. Section 63(1) incorporates a rule to the following effect. What it says is that if a Regional Transport Authority grants a permit in respect of even a route situate outside its own region, it shall not have any efficacy unless it is countersigned by the Regional Transport Authority of that other region. In other words what that sub-section does is to recognize the power of a Regional Transport Authority to issue a permit even in respect of a route which might lie outside its own region. But what is clear from the provisions of this sub-section is that that permit will have no efficacy or potency in the region outside the region of the Regional Transport Authority issuing the permit unless the permit in that regard is countersigned by the Regional Transport Authority of the other Region. But sub-section (1) however empowers rules to be made by the Government providing for the contrary. The words with which that sub-section opens read:

"Except as may be otherwise prescribed a permit granted by the Regional Transport Authority of any one region shall not be valid in any other region, unless the permit has been countersigned by the Regional Transport Authority of that other Region."

14. Now, what do the words "except as otherwise prescribed" in this part of the sub-section mean? What those words indicate is that, although a permit issued by a Regional Transport Authority in respect of a route lying outside its own region shall not have any validity unless the Regional Transport Authority of that region countersigns it, a rule may nevertheless be made by the Government declaring that it shall have validity in the other region even without such countersignature. If what is empowered by Sub-section (1) is that something contrary to what is said in that sub-section may be said by a rule made by the

Government, what the Government could say can only be that the countersignature required by that sub-section is unnecessary. But what is clear is that even if the Government say so and dispense with such counter-signature by a rule made under Sub-section (1), the normal power of one Regional Transport Authority to issue a permit which can be effective in another region on counter-signature by the Regional Transport Authority of that other region cannot and does not disappear.

15. The source of the power of a Regional Transport Authority to issue a stage carriage permit is Section 48 of the Motor Vehicles Act and all that Section 63(1) says in effect is that an interregional permit granted u/s 48 shall be countersigned by the other authority. But while a rule made u/s 63(1) can dispense with such countersignature, it cannot divest the Regional Transport Authority of any part of its power conferred to it by Section 48 of the Motor Vehicles Act, which, while creating that power places no territorial limitations on it. That an interregional permit should be countersigned is the requirement of Section 63(1), and, what a rule by Government may do is merely to dispense with the requirement. It cannot abridge the otherwise plenary power conferred on the Regional Transport Authority.

16. In my opinion, a rule u/s 63(1) can only bring into existence an additional class of inter regional permits which operate without countersignature. It cannot forbid grant of permits in the ordinary way and which acquire validity on countersignature.

17. So, even if it could be said that a rule u/s 63(1) creating a special procedure for the grant of Interregional permits not requiring countersignature is permissible and I abstain from expressing any opinion on that question -- what is clear is that that power created in that way can only supplement but cannot supersede existing power.

18. I must therefore say that the construction placed on Sub-section (1) of Section 63 by the Full Bench of the Revenue Appellate Tribunal cannot be regarded as good law.

19. If, therefore, it cannot be said that the Regional Transport Authority, Bangalore, granted an extension to the petitioner under the rules, and, if the possibility of that grant having been made in the exercise of the normal power conferred by Section 48 cannot be excluded, what follows is that the two tribunals below could not set aside the extension granted by the Regional Transport Authority merely on the ground that the procedure prescribed by Clause (b) of Rule 4 was not observed, since the extension granted by the Regional Transport Authority was well within its competence. Since that grant was perfectly within the power created by Section 48, the only condition subject to which the extension could have vitality is that the variation of the permit by the Regional Transport Authorities of Tumkur and Mandya.

20. If the matter had rested only here, it would have been clear that neither of

the two tribunals below could have disturbed the decision of the Regional Transport Authority. But Mr. Shantamallappa has urged that the State Transport Appellate Tribunal came to the further conclusion that the need for the extension prayed for by the petitioner had not been established and that that finding being a finding on a question of fact is not open to discussion in this Court. But the difficulty in the way of the acceptance of this submission is that the Revenue Appellate Tribunal did not record any finding on that question. We are therefore constrained to remit the matter to the Revenue Appellate Tribunal so that it might now record that finding.

But before we do so we must, in our opinion, say that it is very regrettable that, when the Revenue Appellate Tribunal was dealing with the appeal preferred by the petitioner, it did not record its findings on all the questions arising in the appeal. It is both inconvenient and unbusinesslike for an appellate Tribunal to record its finding on only one of the questions arising in the appeal and to leave the other issues undecided. The fact that the Revenue Appellate Tribunal said that in this case is what necessitates the remand of the appeal to it and the prolongation of the litigation.

21. This writ petition is therefore allowed and the order of the Revenue Appellate Tribunal remanding the matter to the Regional Tribunal Authority is quashed. The Revenue Appellate Tribunal must now dispose of the outstanding questions arising in the appeal afresh and according to law. The Revenue Appellate Tribunal will now proceed to do so with the greatest expedition.

22. During the pendency of this litigation there has been an order of stay after the State Transport Appellate Tribunal set aside the extension, with the result that the petitioner was operating his stage carriage along the extended route when the appeal was pending before the Revenue Appellate Tribunal. This Court having made an order of stay in this writ petition, he has been continuing to so operate till now. Now that this writ petition has been disposed of and the matter has to be heard by the Revenue Appellate Tribunal, the stay order made by this Court can no longer have any efficacy. But, since the Revenue Appellate Tribunal did make an order of stay when the appeal was presented to it, if the order of remand made by that tribunal has been set aside by this order, what follows is that the stay order made by the Revenue Appellate Tribunal stands revived, and that is all that we need say on this matter;

23. Mr. Shantamallappa asks for a direction that the Revenue Appellate Tribunal shall dispose of the matter within a month. We issue the direction prayed for by him.

24. In the circumstances there will be no order as to costs.

G.K. Govinda Bhat, J.

25. I agree.