
(1964) 09 KAR CK 0006
In the Karnataka High Court
Case No : Writ Petition No. 836 of 1963

N.R. Revanna

APPELLANT

Vs

T.V. Mallappa and Others

RESPONDENT

Date of Decision : 01-09-1964

Acts Referred:

Motor Vehicles Act, 1939 — Section 57 (4), 64 (1), 64 (1) (a), 64 (1) (f)

Citation : AIR 1965 Kar 258 : (1964) 2 MysLJ 394

Hon'ble Judges : T.K. Tukol, J;K.S. Hegde, J

Bench : Division Bench

Judgement

Hegde, J.

(1) In this petition under Article 226 and 227 of the Constitution of India(it ought to be only under Article 227, the petitioner challenges the legality of the order passed by the Mysore Revenue Appellate Tribunal, Bangalore(to be hereinafter referred to as the "Tribunal") in Appeal No. 367 of 1963(M.V.) on its file on the ground that the same is vitiated by errors apparent on the face of the record. The tribunal in that case confirmed the order of the S. T. A. T. which in its turn had confirmed the order of the R. T. A., Tumkur.

(2) Sri Puttaswamy the learned counsel for the petitioner formulated before us three questions of law in support of the pleas put forward in this petition. They are(i) the decision of the tribunal that the petitioner had not made any written representation u/s 57(4) of the Motor Vehicles Act, 1939(to be hereinafter referred to as "Act") is patently erroneous,(ii) the first respondent the only contesting respondent,is estopped from contending that the petitioner had not made any written representation as required by section 57(4) of the Act and(iii) on a plain reading of Section 64(1)(f) of the Act, the petitioner is entitled to file an appeal against the order of the R. T. A. Even if it is held that he had not filed any written representation as contemplated by Section 57(4) of the Act.

(3) The brief facts of the case are as follows :

On 26-8-1960 the first respondent submitted an application to the R. T. A., Tumkur for the grant of a stage carriage permit for the route Tumkur to Sajjehosahalli via Chikkathotalikere cross. Ramagondanahalli, A. E. Colony, Malehalli, Brahmasandra Kesthur, Thovinakere, Muramkote, Solahalli, Moratagere, Madhugiri and Badavanahalli. This application was duly published under S. 57(3) of the Act, in the Official Gazette. The petitioner's case is that he filed a written representation objecting not only to the grant prayed for by the first respondent but also to the timings mentioned in his application. But according to the contesting respondent, the petitioner had not filed any written representation whatsoever.

(4) The case of the petitioner is that when the application of the first respondent was taken up for consideration by the R.T.A. on 10/11-4-1962. Though the written representation made by him was not available in the office of the R.T.A., the first respondent conceded that he had made the representation in question and therefore, the R.T.A. Proceeded on the basis that he was one of the persons who was entitled to object to the grant. This submission is disputed on behalf of the respondent. In this regard, the R.T.A. had observed as follows:

"Sri Mallikarjuniah filed power for Sri Revanna (the petitioner) and contended though he filed his objections in time his objection has not been considered. He also produced the postal certificate for having sent the objection to the applicant. The learned counsel for the applicant did not oppose the plea of Revanna. Hence Revanna's counsel Mallikarjuniah was also heard."

From these observations, the petitioner seeks to contend that admittedly the petitioner had sent his written representation. Both the S.T.A.T. and the Tribunal came to the conclusion after examining the material on record, that the petitioner has failed to submit any written representations as required by S. 57(4). Prima facie this is a finding of fact which is not open to review by this Court. But this finding is challenged by Sri Puttaswamy on two grounds. He firstly contended that the Tribunals below overlooked the admission made by the learned counsel for the first respondent and his second ground was that in reaching the conclusion the S.T.A.T. and the Tribunal did not bear in mind the presumption available under S. 114 of the Evidence Act. We do not think that from the observations made by the R.T.A.(Quoted above), it is possible to come to the conclusion that any positive admission was made by the counsel for the first respondent. It is possible that the learned counsel for the first respondent was merely willing to proceed on the basis, without conceding that the petitioner had filed his written representation. We are unable to read anything more into those observations than that. Therefore it is not possible to come to the conclusion that there was any admission on the part of the first respondent that the petitioner had filed his written representation. Assuming that there was any such admission, even then the same is not conclusive in character. An admission is just one piece of evidence and it is open to the fact finding Tribunals to rely on that piece of evidence or not to rely on the same. Therefore, if the Tribunals

below refused to rely on that admission, assuming there was one, this Court cannot say that they have committed any error of law, much less an error apparent on the face of the records.

(5) Now coming to the argument based on S. 114 of the Evidence Act, the Tribunal did bear in mind the provisions contained in S. 114 of the Evidence Act and after taking that aspect into consideration, it came to the conclusion that the petitioner has failed to establish that he had made any written representation. Therefore, it cannot be said that the Tribunal committed any error of law. Further before any presumption can be drawn under S. 114 of the Evidence Act that a communication posted by the petitioner must have reached the R. T. A. There must be clear and satisfactory proof that the petitioner had posted his written representation, having addressed the same to the R. T. A. There is no such proof in this case.

(6) Now coming to the contention that the first respondent is estopped from contending that the petitioner had not made any written representation, there is no strength in this contention. The first respondent had made no representation to the petitioner; the petitioner had not acted on the basis of any such representation nor has he proved that by acting on the representation made by the first respondent, he has placed himself in a position of disadvantage. A person who puts forward the plea of estoppel must prove every one of the legal requirements necessary to be established before he could avail of such a plea. In this case if there was any admission as contended for on behalf of the petitioner that was advantageous to him. It cannot be said that he suffered any deterrence because of the same.

(7) The only contention that deserves serious consideration is the contention that the petitioner having been permitted by the R. T. A. to oppose the grant, he is entitled to file an appeal in view of S. 64(1)(f) of the Act. That section reads:

"Any person--

(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."

Therefore, the question for decision is, whether the petitioner is a "person providing transport facilities, who having opposed the grant of a permit, is aggrieved by the grant thereof." Can it be said that the petitioner had "opposed the grant"? If the words "opposed the grant" mean both written opposition as well as oral opposition, quite clearly the petition is one such, because he had been permitted by the R. T. A. at the time of hearing to oppose the grant. Therefore, we have to find out the true import of the words "a person having opposed the grant"

(8) In order to find out the import of these words, it is necessary to take into consideration the scheme of the Act. Section 47 of the Act lays down the procedure to be adopted by the Regional Transport Authority in considering an application for a stage carriage permit. Sub-section(1) of that section says :

"A Regional Transport Authority shall, in considering an application for a stage carriage permit, have regard to the following matters, namely:

- (a) the interests of the public generally;
- (b) the advantages to the public of the service to be provided, including the saving of time likely to be effected thereby and any convenience arising from journeys not being broken;
- (c) the adequacy of other passenger transport services or likely to operate in the near future, whether by road or other means, between the places to be served;
- (d) the benefit of any particular locality or localities likely to be affected by the service;
- (e) the operation by the applicant of other transport services, including those in respect of which applications from him for permits are pending;
- (f) the condition of the roads included in the proposed route or area;

"and shall also take into consideration any representation made by persons already providing passenger transport facilities by any means along or near the proposed route or area", or by any association representing persons interested in the provision of road transport facilities recognised in this behalf by the State Government, or by any local authority or police authority within whose jurisdiction any part of the proposed route or area lies:

.....
....."

(Underlining (here in " ") is ours).

In view of this provision, the petitioner being a person who provides transport facilities in the proposed route or area, was entitled to make a representation and if he made any representation that had to be taken into consideration by the R. T. A. Now we come to sub-sections 4 and 5 of section 57 of the Act which are important for our present purpose. Section 57 of the Act lays down the procedure to be applied for granting of permits. Sub-sections(4) and(5) of that Section read:

"(4) No representation in connection with an application referred to in sub-section(3) shall be considered by the Regional Transport Authority unless it is made in writing before the appointed date and unless a copy by thereof is furnished simultaneously to the applicant by the person making such representation.

(5) When any representation such as is referred to in sub-section(3) is made, the Regional Transport Authority shall dispose of the application at a public hearing at which the applicant and the person making the representation shall have an opportunity of being heard either in person or by a duly authorised representative."

In view of these provisions, all representations will have to be made in writing and that before the time prescribed under the notification. If any representation is made after the date notified, such representation cannot be taken into consideration. Further only persons who have made representations strictly in accordance with sub-section(4) of section 57 of the Act are entitled to a hearing before the Regional Transport Authority (see sub-section 5 of section 57 of the Act). In view of the above provision, R.T.A. cannot hear any one who has not made written representation. Therefore, if any person who has not made a written representation as required by the sub-section(4) of section 57, is given a hearing by the R.T.A., but cannot be considered as one who has opposed the grant.

(9) The opposition to the grant, contemplated by section 64(1)(f) is an opposition in accordance with law and not all oppositions however made. We are firmly of the opinion that a person who has not made a written representation as contemplated by section 57(4) of the Act is not entitled to a hearing before the R.T.A. and if he is given a hearing by the R.T.A, either by mistake or by ignorance of law, he cannot be considered as a person who has opposed the grant.

(10) The argument of Sri. Puttaswamy, the learned counsel for the petitioner, was that we should read section 64(1)(f) independently of section 57(4) and(5); that section does not say that the opposition should be in writing and therefore any person who has opposed the grant whether orally or in writing is entitled to file an appeal u/s 64(1)(f) of the Act. If this contention is accepted and carried to its logical conclusion, it would mean that any person whether he had appeared before the R.T.A. or not, whether he had filed any written objection u/s 57 or not, if he had opposed the grant at any time before the grant was made and in any manner would be entitled to file an appeal. We do not think that such a position was contemplated by the legislature. For very good reasons, the legislature wanted that all those who oppose the grant should formulate their opposition in writing so that they may not shift the ground from stage to stage. Further the legislature required that written opposition should be submitted before the prescribed time and a copy thereof given to the person who had applied for the grant. All these conditions have been laid down, so that there can be some definiteness about the matter to be enquired into. Without such definiteness, the enquiry held is likely to be nebulous in character and it might well nigh be impossible to come to any precise or positive conclusion. An enquiry made where objections can be raised by any and everybody, at the enquiry or before, is bound to be a purposeless enquiry.

(11) For the reasons mentioned above, we are of opinion that though the plain

meaning of the words "person having opposed the grant" may bring within its reach all persons who have opposed the grant in one manner or the other, these words should be given a restricted meaning in view of the scheme of the Act and consequently it should be confined to those who have made representations in accordance with section 57(4) of the Act. At this stage, we would like to clear certain difficulty that may arise in some cases. There may be just one route open for consideration and two or more persons might have applied for the grant of a permit for that route. If their application is rejected and they file appeals, the question may arise whether their appeal should be considered as having been made u/s 64(1)(a) or both u/s 64(1)(a) as well as under 64(1)(f). Our decision in this case should not be understood as laying down that such an appeal should be understood as having been filed only u/s 64(1)(a).

(12) The view taken by us as regards the scope of section 64(1)(f) is supported by several decisions. See *Raghunath Patnaik Vs. State Transport Authority and Another*, ; *Ram Prashad v. Chief Commissioner, Ajmer* AIR 1956 RAJ 41 and *Jasram and Another Vs. State Transport Authority and Others*, .

(13) Mr. Puttuswamy relied on two decisions, a decision of the Madras High Court and one of this High Court in support of his contention that the expressions "a person having opposed the grant of a permit" should be given a wide meaning and a person who has orally opposed the grant also be held to be within the ambit of section 64(1)(f). In *Nadar Transports Tiruchirapalli Vs. The State of Madras and Others*, the point that arose for decision was whether the person who had applied for a grant of a permit but had not filed any written representation u/s 57(4) can file an appeal u/s 64(1)(f). The Court came to the conclusion that he was entitled to file an appeal. In the course of the judgment Satyanarayana Rao J. speaking for the Court observed:

"The restriction in S. 57(4) that no representations should be considered by the Regional Transport Authority is confined in our opinion to the hearing before the Regional Transport Authority and it does not extend to the appellate authority."

These observations were obiter. They were not necessary for the decision of the case. The ratio of that decision is that if there is only one route open for consideration, an applicant who applied for a permit must be deemed to have opposed the grant of permit to anybody else other than to himself and therefore he was entitled to file an appeal not only under clause(a) of section 64(1) but also under clause(f) of that section. For the reasons already mentioned, we dissent with respect, from the observations made by the learned Judges in that case. Next reliance was placed by Sri Puttaswamy on a stray observation made by the learned Chief Justice in *Krishna v. State of Mysore* 1959 37 Mys L J 154 : AIR 1960 Mys 11. Therein the controversy, was whether a person who had filed an application for the grant of a permit but had not filed a written representation u/s 57(4) was entitled to file an appeal under clause(f) of section 64(1). After considering the decisions of the various High Courts this Court came to the conclusion that he was entitled to file an appeal under that provision. Towards

the end of the judgment, the learned Chief Justice who spoke for the Court made the following observations :

"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 Section 64(1) (f) must mean "having filed representation u/s 57(3)" and cannot include oral opposition to the grant."

This is a mere casual observation. With respect, we are unable to accept that that observation correctly explains the legal position.

(14) For the reasons mentioned, above, this petition fails and the same is dismissed. No costs.

(15) Petition dismissed.