

(2013) 08 KAR CK 0129

In the Karnataka High Court

Case No : Writ Petition No's. 8586-8587 of 2013 (MV)

Peter D'Souza and Junifer C. Alvaris

APPELLANT

Vs

The Secretary, K. Praveen, P.H. Mohammed and The
Secretary, Regional Transport Authority

RESPONDENT

Date of Decision : 01-08-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 80(3), 90

Citation : (2013) 08 KAR CK 0129

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : M.E. Nagesh, for the Appellant; T.K. Vedamurthy, HCGP for R1 and Sri C.V. Kumar, for R2, for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopala Gowda, J.—1st petitioner is the holder of Stage Carriage Permit for the route State Bank to Ullal and back via Jyothi, Thokkottu for 8 RTS. 2nd petitioner is the holder of City Stage Carriage Permit for the route State Bank to Ullal. 2nd respondent is the holder of a Stage Carriage Permit No. 6/2004-05 for the route Moodshedde to Devipura and Back and Moodshedde to Kankanady and back, such as an enclave route passing for some distance in the Kerala State which was granted by the STA., during 2004 and was renewed on 28.5.2009.

2. The 2nd respondent had filed R.P. 497/2009 before the Karnataka State Transport Appellate Tribunal in the name of the 3rd respondent. It was contended therein that the route has to be restricted to the State Border because the permit renewed was an inter-state permit and a memo dated 5.9.2009 as at Annexure-A was filed in the matter of curtailing the route lying in the Kerala State to operate as an intra state route modifying the inter state route. Acting on the said memo, the revision petition was allowed and the impugned order insofar it relates to the permit on enclave portion in Kerala State was set aside and it was ordered that the 2nd respondent in the revision petition shall operate and

confined to the route excluding the enclave portion lying in the Kerala State. The Secretary, KSTA., Bangalore was directed to send the records relating to permit No. 6/04-05 valid up to 5.8.2014 to the Secretary, RTA, Dakshina Kannada, Mangalore for necessary action and the joint memo filed by the parties was ordered to be part and parcel of the order.

3. An endorsement having been issued by the Secretary, RTA, D.K. on 24.11.2009, Mr. K. Praveen, 2nd respondent herein, filed Appeal No. 618/2009 which was allowed and the Secretary, RTA, D.K. was directed to issue permit to Mr. K. Praveen, to operate the service on the route which lies in the State of Karnataka and pertaining to Permit No. 6/2004-05 valid up to 5.8.2014. There being refusal to issue the permit in place of the permit issued by the STA bearing No. 5/2004-05, an LA. having been filed in Appeal No. 618/2009, by an order dated 4.1.2010, Secretary was directed to comply with the order and issue permit in place of the permit issued by the STA bearing No. 5/2004-05.

4. These petitions have been filed to quash the order passed by the Tribunal in R.P. 497/2009 dated 5.9.2009 as at Annexure-B and to direct the 2nd respondent not to operate the service as a city service.

5. Sri M.E. Nagesh, learned Advocate contended that the 2nd respondent by colluding with the 3rd respondent got varied his rural permit converting as city service by circumvention of S. 80(3) of the Motor Vehicles Act, 1988 ("the Act" for short). He submitted that for any kind of variation change of trips, alteration of trips, increase of trips, an application under S. 80(3) of the Act shall be made to the authority which granted the permit and that application should be considered by the original authority keeping in view the restrictions which could be found in S. 80(3) of the Act and also the requirement of variation as per the proviso to S. 80(3), which has not been done in the instant case and the variation has been granted on account of collusion between the 2nd and 3rd respondents before the Tribunal. He submitted that the Tribunal has erred in accepting the memo for change of trips, when the impugned order before it was to decide whether the renewal made by the Secretary, STA is in accordance with law or not. He further submitted that in exercise of revisional jurisdiction, the Tribunal has no right to vary the trips and what the Tribunal could have been done was it could have restricted the route to Karnataka State and that the impugned order is arbitrary and illegal. Learned Advocate submitted that on account of the impugned order, the petitioners are seriously affected, in as much as the order has been passed without affording any kind of opportunity of hearing to the existing operators, but based on a joint memo filed by the parties in the revision petition who have colluded with each other and hence, interference is warranted.

6. Sri C.V. Kumar, learned advocate, by taking me through the statement of objections filed on 16.3.2013, on the other hand made submissions in support of the order passed by the Tribunal and contended that the writ petitions are not maintainable. However, he filed a memo dated 11.7.2013 which reads as follows:

The 2nd Respondent submits as follows:

1. The apprehension of the petitioners is that they would be affected by the Schedule of timings of the Service of the II Respondent.
2. The II Respondent has no objection for directing the Secretary, Regional Transport Authority, Dakshina Kannada, Mangalore to assign the Schedule of timings to the service of the second Respondent without affecting the services of the Petitioners.

Wherefore the II Respondent prays that this Hon''ble Court be pleased to dispose of the above Writ Petitions with the above direction to the Secretary, Regional Transport Authority, Dakshina Kannada, Mangalore, in the interest of justice.

On 30.7.2013 Sri C.V. Kumar filed another memo and produced schedule of timings to the services of the 2nd respondent-Mr. K. Praveen, to be considered by the Secretary, RTA, D.K. Mangalore.

7. Sri T.K. Vedamurthy, learned HCGP, submitted that the Tribunal is unjustified in passing the order as at Annexure-B since the same has been passed on the basis of a joint memo. Learned counsel submitted that the Tribunal, ought to have found out, whether the order made by the RTA, impugned before it, is improper or illegal and decided the revision petition on its merit. He submitted that the course of action which has been adopted by the Tribunal, to decide the revision petition,-on the basis of the joint memo filed by the revision petitioner and the private respondent in the revision petition is unsound and the order impugned herein is vitiated.

8. Perused the writ record. Having regard to the facts and circumstances of the case, noticed supra and looking to the grounds raised and urged by learned counsel for the respondents, there being no dispute that the impugned order has been passed not in consonance with the provision of S. 90 of the Motor Vehicles Act, 1988 and that the revision petition has been disposed of merely on the joint memo filed by the learned advocates for the respondents 2 & 3 herein, requesting the Tribunal to modify and assign the timings as suggested in the memo, in my opinion, the Tribunal has failed to exercise the jurisdiction vested in it as per S. 90 of the Act. The revision petition has not been considered and decided on its merit, but has been disposed of in terms of the mutual understanding between the two operators. Thus, the impugned order warrants interference.

In the result, writ petitions are allowed and the impugned order as at Annexure E is quashed.

R.P. No. 497/2009 is restored for consideration and decision afresh by the Tribunal, after impleading the petitioners herein as additional respondents No. 3 and 4. Petitioners herein are at liberty to file the counter/s within a period of two weeks.

Both the parties are directed to appear before the Tribunal on 21.08.2013 and receive further orders. The Tribunal shall decide the petitions before 31.12.2013.

No costs.

In view of disposal of the main matter, I.A. No. 1/2013 does not survive for consideration.