

(2000) 02 KAR CK 0054
In the Karnataka High Court
Case No : Writ Petition No. 43728 of 1999

R. Ranjith

APPELLANT

Vs

Karnataka State Transport Appellate Tribunal, Bangalore and
Others

RESPONDENT

Date of Decision : 10-02-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 47(1)(A)

Citation : (2000) 7 KarLJ 149

Hon'ble Judges : R. Gururajan, J

Judgement

R. Gururajan, J.-Petitioner is challenging the order dated 8-11-1999 passed in Appeal No. 615 of 1999, Annexure-E and also the order at Annexure-C passed by respondent 3, dated 1-10-1999, insofar as it relates to the direction to tough the Kulashekar Chowki instead of Kulashekar.

2. The brief facts of the case are that the petitioner is the holder of stage carriage permit operating on route State Bank to Kulashekar and back via Falnir, Kankanady, Kadri Bikarnakatte (Route No. 4) bearing Permit No. 69/DK/98-99 valid upto 19-6-2003. He filed an application for variation of condition of permit by way of extension of route from Kulashekar to Kannagudde and back a distance of 2 kms. in all the trips and the copy of the order granting variation by the respondent 2 is at Annexure-A.

3. Respondent 4-Sri Felix Lobo, filed a revision challenging the said grant in Revision No. 615 of 1999. The Tribunal dismissed the revision vide its order dated 8-11-1999, which is at Annexure-B.

4. Respondent 3 assigned timings vide its order dated 1-10-1999, Annexure-C. Aggrieved by this assignment an appeal was filed in Appeal No. 615 of 1999 which came to be dismissed by an order dated 8-11-1999 at Annexure-E. Annexures-C and E are challenged before me in this petition.

5. Notice was issued by this Court and an interim order was granted. Sri C.V.

Kumar, appears for the contesting respondent and the Government Advocate appears for other respondents. Mr. Raghuram, learned Counsel assails Annexure-C essentially contending that the proposed timings suggested by his clients would show the absence of a timing to Kulashekar Chowki. His further argument is that on an imaginary agreement by the petitioner, timings were assigned providing for timings to Kulashekar Chowki which is against the grant of permit granted to him as per Annexure-A. While attacking Annexure-E he contends that the Tribunal having dismissed the revision filed against the grant ought to have allowed this appeal. He finds fault with the Tribunal with regard to the finding of an alleged agreement by his client as held by the Judge and also questions the dismissal of the appeal on the ground that the petitioner is not an aggrieved person.

6. Petitioner's Counsel also argues that the Secretary, RTA, is bound by the grant and while revising timings he cannot exceed his jurisdiction in varying timings to a place which is not granted to him in terms of the permit. The petitioner relies on a judgment of this Court in *Jagadeeswara Express v The Mysore Revenue Appellate Tribunal and Others*, 1964(2) Mys. L.J. 373 (DB), in support of his case.

7. Per contra Sri C.V. Kumar, learned Counsel argues that the petitioner was a party to the proceedings and having agreed for a route of Kulashekar Chowki he cannot assail timings. He further argues that the petitioner is not an aggrieved person in view of the agreement as could be seen from Annexure-C and therefore, the learned Judge was justified in dismissing the appeal. Sri C.V. Kumar, learned Counsel relies on the judgment of the Supreme Court in *State of Maharashtra v Ramdas Shrinivas Nayak and Another*, AIR 1982 SC 1249, with regard to concession made by the petitioner.

8. I have heard the learned Counsels on either side.

9. The admitted facts reveal that the petitioner was granted a variation in the permit by way of extension of route from Kulashekar to Kannagudde and back in all the trips with slight variation of timings. The revision filed against this order is dismissed as per Annexure-B. Hence, the same has become final and conclusive. It is an admitted fact that the Secretary, RTA is bound to carry out the permit condition Annexure-A. He cannot grant timings contrary to the grant at Annexure-A. Annexure-C is the proceedings of the Secretary, RTA, Dakshina Kannada. Petitioner has proposed timings at page 23. It is in consonance with the permit condition. He has not given any timings with regard to Kulashekar Chowki. But in the order at Annexure-C, the Secretary has assigned timings to Kulashekar Chowki as well. He has made a note that the permit holder and the sector operators after mutual discussions have agreed for the following timings. The inclusion of Kulashekar Chowki and grant of timings to the Kulashekar Chowki was questioned by way of an appeal dated 7-10-1999. The Tribunal dismissed the appeal essentially on the ground that the grantee had agreed to perform the trips accordingly and petitioner cannot be permitted to contend to the contrary treating himself to be an aggrieved person.

10. These two findings of the Tribunal requires an interference on the facts of this case. When the permit is only upto Kulashekar and the proposal is only to Kulashekar and not Kulashekar Chowki the Secretary, RTA, cannot deviate from the permit itself. The Secretary, RTA, is only to implement the permit and cannot vary the same in the guise of assignment of timings. His findings of agreement also requires an interference for the reason that the petitioner having not proposed timings for Kulashekar Chowki could not have accepted or agreed for assignment of timings to Kulashekar Chowki which contrary to Annexure-A. The circumstances in which the appeal is filed at Annexure-D and the contentions raised in the appeal memo and also the contention urged before the Tribunal show that there was no such agreement agreeing for timings to Kulashekar Chowki as held by the Tribunal. Therefore, the rejection of the appeal on the ground of an agreement requires my interference. Similarly, the findings with regard to petitioner being not an aggrieved person also requires my interference. When timings were assigned to a place contrary to permit an aggrieved party can certainly question such timing and it cannot be said that he is not an aggrieved person as held by the Tribunal. The finding with regard to aggrieved person is relatable with regard to the petitioner having agreed to the timings. Since, I have already rejected the theory of agreement the relatable findings of not an aggrieved person also requires to be set aside.

11. Assuming that the petitioner has given his consent, even then the Secretary, RTA being a subordinate to RTA cannot do contrary to the grant of a permit. In the judgment cited before me in Jagadeeswara Express" case This Court more or less in identical circumstances ruled as under:

"..... We agree with the petitioners that the STAT and the Tribunal should not have rejected the applications of the petitioners for the failure of the RTA to carry out directions given by the Tribunal. Those authorities did not come to a positive conclusion that there was no need for the service in question. Their finding, as we understand it, is because of the failure of the RTA to hold a "traffic survey" as directed by the Tribunal, the material on record is insufficient to positively hold, that the need in question has been made out. It must be remembered that permits for services are primarily granted in public interest - vide clause (a) to Section 47(1) of the "Act". It is the duty of the authorities to go into that question, collect the necessary data and sift the same, irrespective of the fact whether the parties before them have placed before them the necessary material or not. Unlike most of the other judicial and quasi-judicial Tribunals, their duty is not merely to pronounce on the material placed before them. They are charged with the duty of not merely receiving the material placed before them but also of collecting the required material. The Tribunal should not have been piqued by the intransigence of the RTA and thus allowed its judgment to be blurred by irrelevant circumstances. Its duty was to compel the RTA to carry out its directions. In not doing so, it has clearly failed to exercise its jurisdiction. Same was the case with the STAT".

12. In the case on hand it is duty of the Secretary to carry-out the permit and he cannot grant timings contrary to the permit. Therefore, the Tribunal fell into an error in failing to notice this judgment and also have failed to notice the power and jurisdiction of the Secretary in the matter.

13. The argument of Sri C.V. Kumar, with regard to concession also requires to be rejected for the reasons that factually prima facie I have found that there is no concession at all. The judgment relied upon also shows that in Ramdas Shrinivas Nayak's case, supra:

"... Of course a party may resile and Appellate Court may permit him in the rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment".

14. The Supreme Court in the latest judgments in B.S. Bajwa and Another v State of Punjab and Others, AIR 1999 SC 1510 and in The Daily Partap v The Regional Provident Fund Commissioner, Punjab, AIR 1999 SC 2015, has noticed that the concession made on a point of law is not a concession at all.

15. In B.S. Bajwa's case, supra, in para 6, the Supreme Court states:

"We have no doubt that the concession on this point, being one of law, it cannot bind the State and, therefore, it was open to the State to withdraw as it has been done by filing a review petition in the High Court itself".

16. In The Daily Partap's case, supra, the Supreme Court stated:

".... The Advocate General's concession was on a question of law as to whether the Scheme which was put forward by the Companies as Production Bonus Scheme was covered by Section 6 read with Section 2(b) or not. Such a concession on the question of law cannot bind the authorities for all time to come but even apart from this aspect of the matter the said concession has to be considered as a whole".

17. In the light of these 2 judgments, I am of the view that a concession if at all has been made by the petitioner is a concession on a point of law without understanding the implication of the same. Such concession against law is not a concession at all. Therefore, the Tribunal on the ground of concession cannot hold against the petitioner on the facts of this case and in the light of these 2 judgments of the Supreme Court.

18. In conclusion this writ petition is allowed. Impugned order in the writ petition is set aside. The matter is remitted back to the Tribunal to consider the case on merits and pass appropriate orders within one month from the date of receipt of this order. No costs.