

(1973) 09 KAR CK 0004

In the Karnataka High Court

Case No : Writ Petns. No's. 155, 1391 and 2337 of 1972

S. Sidde Gowda and Others

APPELLANT

Vs

Mysore State Transport Appellate Tribunal and Others

RESPONDENT

Date of Decision : 07-09-1973

Acts Referred:

Citation : AIR 1974 Kar 142

Hon'ble Judges : Venkataswami, J

Bench : Single Bench

Advocate : P. Shankarappa, M.R.V. Achar and C.S. Shanthamallappa, for the Appellant; V.C. Brahmarayappa, Govt. Pleader, for the Respondent

Judgement

Venkataswami, J.—All these petitions raise a common question of law and therefore they are disposed of together by a common order. W.P. 2337/72 has been posted for admission only. All these petitioners are stage carriage operators. They had permit; valid upto certain periods. In W.P. 1391/ 72 the permit was valid upto 13-3-1971. In W.P. 155/72 the permit was valid till 30-6-1971. In W.P. 2337/72, which is posted for admission, the permit was valid upto 31-3-1971. Pursuant to the provisions of Section 58 of the Motor Vehicles Act all of them have applied for renewal of their respective permits on 6-4-1971, 19-12-1970 and 30-12-1970 respectively. According to the provisions in force prior to 1-11-1970, they were entitled to apply for renewal at a point of time not less than 60 days before the date of expiry of their permits. The said provision regarding the limitation prescribed for application for renewal of a permit, was amended by the Motor Vehicles (Amendment) Act, 1969, (Act 56 of 1969). It is common ground that this Act was brought into force from 1-11-1970. By Section 25 of that Act Section 58(2) of the Motor Vehicles Act was amended providing for an application at a point of time which is not less than 120 days from the date of expiry. The applications concerned in W. Ps. 155 and 1391/1972 were rejected by the Regional Transport Authority. The application concerned in W.P. 2337/72 was rejected by the State Transport Authority. The petitioners appealed to the

appropriate Tribunals, namely, the State Transport Appellate Tribunal and the Mysore Revenue Appellate Tribunal, unsuccessfully. Hence, these petitions.

2. On behalf of the petitioners, it is contended that the aforesaid amendment which came into force from 1-11-1970 would not affect permits which were granted earlier to that date and the permit holders would be entitled to avail themselves of the period of limitation specified in Section 58(2) as in force prior to the aforesaid amendment. All the applicants herein, however, have preferred their applications for renewal well within the period specified in the unamended Section 58(2) of the Motor Vehicles Act. But it is seen from these applications that all of them could have applied for such renewal subsequent to the coming into force of the amended provision and in compliance with it. Their conduct in not applying within the time available would show that they had misunderstood the scope of the amended Section 58(2) or were totally ignorant of it. In either event, in law they would be disentitled to relief. In this state of affairs, it is not possible to postulate that any vested right of theirs was really affected in reality. Except for the petitioners in W.P. 1391/72, who had hardly three days time to apply for such renewal after 1-11-1970, the date of coming into force of the amended provision, the others had ample time to make the applications for renewal in accordance with the amended provision.

3. The true legal position in this behalf has been set out by a Full Bench of the Rajasthan High Court in *Jethmal and another Vs. Ambsingh*, It reads thus:

Although a law of limitation is primarily a law relating to procedure and as such comes into effect right from the moment it has been enacted and governs all proceedings instituted thereafter and thus has retrospective operation, there is overwhelming authority in favour of the principle that where a subsequent law curtails the period of limitation previously allowed, and such law comes into force at once, it should not be allowed to have retrospective effect, which it would otherwise have, so as to destroy pre-existing vested rights of suit, because the giving of such retrospective effect amounts to not merely a change in procedure but a forfeiture of the very right to which the procedure relates.

4. The above enunciation has to be understood in the context of the destruction of a right vested in a party who is governed by certain law of limitation, the period referred to therein having been curtailed by a later law.

5. A similar situation occurred while re-enacting the Limitation Act of 1908 by the Limitation Act of 1963. In order to cover situations such as those present in the instant case, a provision has been expressly enacted in Section 30(b) whereby a special period of limitation has been prescribed in regard to such cases. Such a provision has been absent in the instant case. But in view of the fact that the petitioners in these cases had time to comply with the amended provisions of the Act, I do not feel inclined to accept the submission that as a rule this provision should not be made applicable to all permit holders whose permits have been issued prior to 1-11-1970. To hold otherwise, it would mean that the effect of the

amended provision of Section 58(2) would remain in abeyance until all such permits are renewed by having recourse to the unamended provisions of Section 58(2) prior to amendment. Such could not be the intention of the Legislature. As observed in the aforesaid enunciation, this law is intended to take effect immediately and therefore must apply to all applications for renewal made subsequent to this amendment.

6. It is no doubt true, as pointed out by Sri Venkatanarasimhachar, the learned Counsel appearing on behalf of the petitioner in W.P. No. 2337/72, that in this view of the law, it would give rise to a certain anomalous situation that renewals of permits expiring in the month of February 1971 could not be effected at all, in that any application for renewal in regard to them would necessarily be barred by time even on 1-11-1970. I am however not confronted with such a situation in the present case and, therefore, do not propose to examine this anomaly in depth.

7. An additional contention was raised in W.P. No. 2337/72. It is that Section 5 of the Limitation Act would still be applicable and therefore his application under that provision filed along with the application for renewal of the permit ought to have been considered in the light of the provisions of that Section. I am unable to accede to this contention u/s 29(2) of the Limitation Act of 1963 the operation of Sections 4 to 23 of the Limitation Act must be deemed to be excluded, if a similar provision had been made in any special or local law. Section 58(3) of the Motor Vehicles Act is in the circumstances, a special provision made in a special law governing the matter of condonation of delays in making applications for renewal. That section provides that when the period of delay did not exceed 15 days it was open to the authority to condone the same on sufficient cause shown and on payment of the prescribed fee. I do not therefore agree with this contention. Hence, all the contentions fail. These petitions are therefore dismissed. There will be no order as to costs.