
(1958) 12 KAR CK 0008
In the Karnataka High Court
Case No : Writ Petition No. 447 of 1958

S. Sridhar Rai

APPELLANT

Vs

The Secretary, Regional Transport Authority, Kolar and Others

RESPONDENT

Date of Decision : 12-12-1958

Acts Referred:

Motor Vehicles Act, 1939 — Section 57, 62

Citation : AIR 1959 Kar 120

Hon'ble Judges : M. Sadasivayya, J;A. Narayana Pai, J

Bench : Division Bench

Advocate : P.K. Shyamsundar, for the Appellant; M. Santosh, High Court Govt. Pleader and A.N. Anantharamaiah, for the Respondent

Judgement

M. Sadasivayya, J.—The petitioner operates a transport service under the name and style of "Muragan Transport, K.G. F." In the year 1950, he has been given a permit to operate a bus service between Kempapuram and Ramasanmdram bonier via. Mulbagal, Gukunte and Mulbagal and Mallanaikanahalli. The 2nd respondent who is the proprietor of a bus service known as "M.B.S. Express Service" made an application on 12-8-1958 to the Regional Transport Authority, Kolar, who is the third respondent, praying for a temporary permit between Mulbagal and Gukunte, Mulbagal and Byapanahalli, and Mulbagal and Mallanaikanahalli; he was granted on 6-9-1958, by the third respondent a permit for a period of one month only.

Instead of availing himself of the permit so granted, the 2nd respondent made another application on 22-9-1958 to the third respondent praying that he should ho granted a temporary permit for a period of four months at a stretch as the prior grant made for one month only would prove uneconomical. Thereupon, the 3rd respondent granted as per the resolution passed on 8-10-1958, a temporary permit for three months in continuation of the previous grant.

The temporary permits granted to the 2nd respondent covered a considerable portion of the route over which the petitioner operates, though the exact extent

of that portion appears to be in dispute between the parties. The petitioner has filed the present writ petition alleging that in granting these two temporary permits without being properly satisfied as to whether the conditions laid down in Section 62 of the Motor Vehicles Act 1930 had been satisfied, the 3rd respondent had acted without jurisdiction.

The petitioner prays that the orders of the 3rd respondent granting the said temporary permits, be quashed by the issue of a writ of certiorari or any other appropriate writ, direction or order. The second respondent has filed a counter-affidavit and has opposed the petition.

2. Enclosure "A" is the certified copy of the second respondent's application dated 12-8-1958, for a temporary permit. It is seen from enclosure "A" that the purpose for which the permit was required, had been stated by the second respondent to be "public convenience". Enclosure "B" is the copy of the resolution passed by the third respondent on 6-9-1958 in respect of the second respondent's prayer for the temporary permit; that resolution was as follows : "Granted for one month". Enclosure "C" is the copy of the second respondent's application dated 22-9-1958. In that application, the second respondent had alleged that the running of a bus under the temporary permit for one month only would involve the expenditure of more than a thousand rupees by way of tax for the quarter and that it would result in a loss to him; he had, therefore, prayed for the grant of a temporary permit for four months. Enclosure "D" is the copy of the resolution passed by the third respondent on 8-10-1958 in respect of the second respondent's application of 22-9-1958. The resolution is as follows : "Temporary permit granted for three months In continuation of the previous grant."

3. In support of his contention that by its failure to satisfy itself as to whether the conditions set out in Section 62 of the Motor Vehicles Act, had been satisfied before granting these temporary permits, the third respondent had acted without jurisdiction the learned Advocate for the petitioner has relied on a decision of the Division Bench of this Court in *Sharanappa Basappa v. Secretary, R. T. A., W. P. No. 330/1958*. (That Division Bench consisted of myself and my learned brother Narayana Pai J.). In that case, the Court had stated as follows :

"Under Section 62 of the Act, temporary permits can be granted only if the circumstances mentioned therein exist. In respect of such applications all the elaborate procedure prescribed for the grant of permanent or pucca permits is waived. It is, therefore, clear to us that when the statutory safeguards of advertisement and consideration of all representations and relevant factors are waived in the special circumstances stated in Section 62, the power to grant temporary permits under that Section cannot be exercised unless the specific and particular circumstances stated therein do exist." It had also been further held therein, as follows :

"As already stated, the very foundation for exercising jurisdiction u/s 62 is the

existence of special circumstances stated therein. In our opinion it is not sufficient merely to endorse an order on an application. The authority passing the order must apply its mind to the application, find positively that one or the other of the circumstances mentioned in Section 62 do exist and thereupon pass an order."

In *Mallasattappattappa v. Chairman, R. T. A., Bangalore*, Writ Petn. No. 382 of 1958, their Lordships the Chief Justice and Narayana Pat, J. have held that if the reason given by the Regional Transport Authority for granting a temporary permit does not fall within any of the clauses of Section 62, then, the Regional Transport Authority must be held to have acted without jurisdiction. In the present case, the third respondent in passing the orders granting the temporary permits, has failed to apply its mind to find out whether one or other of the circumstances mentioned in Section 62 did exist.

Even the ground mentioned by the second respondent in his application as per enclosure "A", is not one of those mentioned in Section 62 for the grant of a temporary permit. In view of the decision in *W. P. 330/1958*, it is clear that in granting these temporary permits to the second respondent, the third respondent has acted without jurisdiction and that the grant of the said temporary permits is liable to be quashed.

4. But. the learned Advocate for the second respondent argued that in view of the fact that provision has been made in the Motor Vehicles Act for appeal and revision, the aggrieved party should exhaust the remedies available under the Act, before seeking to invoke the jurisdiction of the High Court under Article 226 of the Constitution.

He also contended that in respect of the rights and liabilities created by such a statute, the manner of enforcement must be sought within the statute itself. In support of this contention, he relied on certain observations of the Supreme Court in the decision reported in *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*, . In particular, he has relied on the following observations :

"Thus, we have before us a complete and precise scheme for regulating the issue of permits, providing what matters are to be taken into consideration, as relevant, and prescribing appeals and revisions from subordinate bodies to higher authorities. The remedies for the redress of grievances or the correction of errors are found in the statute itself and it is to these remedies that resort must generally be had. As observed already, the issue or refusal of permits is solely within the discretion of the transport authorities and it is not a matter of right."

It is urged by the learned Advocate for the second respondent that if these observations of the Supreme Court had been specifically brought to the notice of the High Court in Writ petitions Nos. 330 and 382 of 1958, it is possible that this High Court might have taken a different view in those two writ petitions. We are not satisfied that there is any strength in this contention of the learned Advocate.

The above mentioned observations of their Lordships of the Supreme Court must be considered with reference to the context in which they were made. In that case, the High Court, by its writ had not only quashed certain proceedings of the Regional Transport Authority, but had also directed the issue of permits for five buses, to Raman and Raman Limited who were the petitioners before the High Court; the Supreme Court held that such a direction was clearly in excess of the High Court's powers and jurisdiction.

Further, the view of the Supreme Court on the facts of that case, was that the discretion that had been exercised by the Transport Authorities was after considering all the facts and surrounding circumstances and that, therefore, it should not have been interfered with; this is clear from the following observation of the Supreme Court :

"We are accordingly of the opinion that this was not a case for interference with the discretion that was exercised by Transport Authorities paying regard to all the facts and the surrounding circumstances."

"It was under these circumstances that the Supreme Court found it necessary to observe that however extensive the jurisdiction of the High Court may be under Article 226, it was not so wide or large as to enable the High Court to convert It self into a Court of appeal and examine for itself the correctness of the decisions impugned and decide what is the proper view to be taken or the order to be made.

The learned Advocate for the second respondent has not been able to convince us that there is anything in this decision of the Supreme Court to support the proposition that even when the Regional Transport Authority acts clearly without jurisdiction, the High Court should not interfere in the exercise of its powers under Article 225. On the other hand, in the very same case, the Supreme Court has observed as follows :

"Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error or excess has resulted in manifest injustice."

When the Regional Transport Authority takes into consideration the matters which according to the Act are relevant and comes to a decision, then the redress of grievances or the correction of errors should generally be sought in the remedies found in the statute itself. But, when the authority ignores the matters which under the Act are relevant and should be taken into consideration, and thereby acts wholly without jurisdiction, the powers of the High Court under Article 226 can be properly invoked.

Therefore, we do not consider the decisions in W. P. Nos. 330 and 382 of 1958

are in any way inconsistent with the decision of the Supreme Court above referred to. The existence of an alternative remedy is, no doubt, an important circumstance to be taken into consideration in the matter of the exercise of the jurisdiction under Article 226.

As pointed out by Chief Justice Chagla in a decision reported in *S.C. Prashar and Another Vs. Vasantsen Dwarkadas and Others*, , when there is a patent want of jurisdiction, the petitioner would be entitled to obtain immediate relief from the High Court, even though he could raise the plea of want of jurisdiction in a higher tribunal.

5. It was contended on behalf of the second respondent that under Illustration (e) of Section 114 of the Indian Evidence Act, the Court may presume that the Regional Transport Authority had regularly performed its acts. We do not find any substance in this contention. No such presumption can arise when the very resolutions passed by it, show that the authority has not acted in accordance with the requirements of law.

Nor can we accept the further argument of the learned Advocate for the second respondent that the Regional Transport Authority may have been satisfied about the existence of one or more conditions mentioned in Section 62, even though the same has not been expressly stated in the resolutions. As stated in *W. P. 330/1958*, the authority must apply its mind to the application and find positively that one or other of the circumstance mentioned in Section 62 does exist, before it can proceed to grant the temporary permit; if it grants a permit without such a positive finding, then it will be acting without jurisdiction.

Lastly, the learned Advocate for the second respondent sought to rely on Sub-section (2) of Section 134 of the Motor Vehicles Act, in trying to persuade us that we should not interfere with the above-mentioned resolutions passed by the third respondent; but, Sub-section (2) of Section 134 cannot be of any assistance to him, for two reasons.

Firstly, there is nothing in that Sub-section which can be construed as being applicable to a case in which a competent authority under the Act, acts wholly without jurisdiction. Secondly, the powers of the High Court under Article 226, cannot be affected in any way, by such a provision.

6. It is "submitted on behalf of the petitioner that the existence of an alternative remedy to the petitioner by way of appeal, is not free from doubt. It is pointed out that as the procedure laid down in Section 57 had not been followed while granting these temporary permits he had no opportunity to oppose the grant of the permits and that consequently it is doubtful whether the petitioner would be entitled to prefer an appeal u/s 64(f) of the Motor Vehicles Act. It is also urged on behalf of the petitioner that having regard to the short duration of the permit, he could not have any effective remedy otherwise than by invoking the jurisdiction of this Court under Article 226.

7. For the reasons above stated, we are satisfied that the third respondent -- Regional Transport Authority -- has acted wholly without jurisdiction and that the resolutions granting the temporary permits to the second respondent should be quashed; we order accordingly. No order as to costs.

8. Petition allowed.