(2008) 07 KAR CK 0060

In the Karnataka High Court

Case No : Writ Petition No. 14570 of 2006

Saleem Khan and Another — APPELLANT

Vs

N. Srinivasa Naidu and Others — RESPONDENT

Date of Decision : 14-07-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 80 (3), 89

Citation : (2008) ILR (Kar) 3674 : (2009) 2 KarLJ 459 : (2008) 5 KCCR 628 SN

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : P.S. Rajagopal, for the Appellant; B.R. Sundararaja Gupta, for R1, B.R. Sundaraja Gupta, for C/R2, J.V. Nagaprakash, for R3, T. Hareesh Bhandary, for R4 and Nagashri M.C., HCGP for R5, for the Respondent

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J.—The petitioners are stage carriage permit holders on route Chitradurga to Kolthure, whose applications for variation by extension of the route from Kolthure to Malur, when allowed by resolution dated 27.12.1991 of the Regional Transport Authority, Tumkur (RTA), was followed by issue of variation endorsements dated 9.1.1992 Annexures C and D. Thereafter, the RTA by resolution dated 22.7.2004 granted variation of the permits, by way of curtailment from Bangalore to Malur, one round trip, and extension from Hoskote Santhe Gate to Mothakhalli, and accordingly, issued, variation endorsements dated 4.9.2004 Annexure-F and G. The RTA by another resolution granted extension from Mothakhalli to Kaylnoor and issued endorsements dated 10.9.2004 Annexure-J and J1. Yet another extension was granted to the petitioners'' permits, for the route from Kaylnoor to Marugamalla via Chintamani, followed by endorsements dated 2.11.2004 Annexure-K and K1. Respondents 1 to 3, aggrieved by the grant of variations by extension of routes to the petitioner''s at Annexures-''F'' & ''G''; filed Appeal Nos. 161-162/2006; 176-178/06 and 177-179/06, respectively, while respondent No. 4 Karnataka

State Road Transport Corporation filed Appeal Nos. 153/06,154/06& 156/06, challenging the grant of variation of permit Annexures - J, K & F respectively of the 1st petitioner, and Appeal Nos. 155/06, 157/06 & 158/06; in respect of variations of permit Annexures K1; J1 & G respectively of the 2nd petitioner before the Karnataka State Transport Appellate Tribunal (KSTAT), which were clubbed together and by common order dated 8.3.2006 Annexure-V disposed off IA-I for condonation of delay in filing the appeals, filed by respondent No. 4 in Appeal Nos. 153-158/06 holding that the appeals are filed within time. The KSTAT by order dt. 26.8.2006 Annexure-W allowed the Appeal Nos. 153, 154, 156, 161, 178 and 79/06 and set-aside the orders dated 22.7.2004, 10.9.2004 and 2.11.2004 of the RTA granting variation of the permit of the 1st petitioner. By order dated 26.8.2006 Annexure-X, the KSTAT allowed the Appeal Nos. 155, 157, 158, 162 and 176 and 177/06 and set-aside the orders dated 22.7.2004, 10.9.2004 and 2.11.2004 of the RTA grating variation of permit of the 2nd petitioner. Hence, this writ petition calling in question the orders Annexures-V, W and X.

2. The petition is opposed by filing statement of objections dated 18.10.2006 of respondents 1 to 3 and the statement of objections dated 29.11.2006 of the 4th respondent-KSRTC. It is the common case of the respondents that the 1st extension Annexure C & D was from Kolthure to Malur, a distance of 28 kms, while the 2nd extension dated 4.9.2004 Annexure-F and G was for a distance of 30 kms from Hoskote Santhegate to Mothakhalli, the 3rd extension by endorsements dated 10.9.2004 Annexure-J and J1 was for a distance of 32 kms from Mothakhalli, to Kaylnoor and the last of the variation by endorsement dt. 2.11.2004 Annexure-K and K1 was for a distance of 40 kms. from Kaylnoor to Murugamalla. According to the respondents, the appeals preferred by them were within the period of limitation, however by way of abundant caution the applications to condone the delay when filed were allowed by order Annexure-''V''. It is further contended that the first variation for a distance of 28 kms, in accordance with Sub-section (3) of Section 80 of the Motor Vehicles Act, 1988, for short Act, not in question, the three other variations by extension of the route for a distance of 24 kms are illegal and subject matter of the appeals.

3. The dates of (a) filing of application for copies (b) receipt of the copies, (c) orders of the (RTA), (d) filing of appeals by the respondents, are set out in the following tabular form:

Sl. A. No. Date of Date of Date of Nature of Permit No. passing filing of filing of Resolution/ No. of impugned application Appeal Endorse resolution/ for ment and route direction of issuance Secretary of certified of RTA copy of under impugned Section resolution/ 72(2)(xxii) of endorsement MV Act with and date Sub. No. of receipt of impugned resolution etc., -- 1 A158/06 22.07.04 21.1.06 10.2.06 Grant of 44-91-92 KSRTC 178/04-05

27.1.06 Variation of permit 2 A162/06 22.07.04 27.1.06 14.2.06 Conditions of of R-1 178/04-05 08.2.06 Permit by khayam 3 A176/06 22.07.04 15.2.06 16.2.06 way of khan R-2 178/04-05 15.2.06 extension of 2nd 4 A177/06 22.07.04 28.1.06 16.2.06 route from petitioner R-3 178/04-05 08.2.06 Hoskote Santhe Gate to Mothakhalli Kms. Anx. G 5 A156/06 22.07.04 20.1.06 10.2.06 Annexure ''F'' 31/91-92 KSRTC 176/04-05 27.1.06 Hoskote permit 6 A161/06 22.07.04 27.1.06 14.2.06 Santhe Gate of R-1 176/04-05 08.2.06 to Mothakhalli 1st petitioner 7 A178/06 22.07.04 15.2.06 16.2.06 R-2 176/04-05 15.2.06 8 A179/06 22.07.04 27.1.06 16.2.06 R-3 176/04-05 15.2.06 9 A153/06 10.09.04 20.1.06 10.2.06 Directions 31/91 KSRTC 27.1.06 of Secretary permit u/s of 72(2)(xxii) of 1st the MV Act petitioner to touch 10 A157/06 10.09.04 20.1.06 10.2.06 Kaylnoor 44/91-92 KSRTC 27.1.06 from permit Mothakhalli of 2nd petitioner Annexure J & J1 11 A154/06 02.11.04 20.1.06 10.2.06 Directions 31/91-92 KSRTC 27.1.06 of Secretary permit u/s of 72(2)(xxii) of 1 petitioner the MV Act to touch 12 A155/06 02.11.04 20.1.06 10.2.06 Muruga 44/91-92 27.1.06 malla from permit Kaylnoor of Distance - 2nd 23 Kms. petitioner Anx. K & K1
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4. The learned Sr.counsel for the petitioners contends that the appeals u/s 89 of the Act filed beyond the period of limitation were not maintainable, by placing reliance upon the following two decision of the Apex Court in the case of The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur, and in L.S. Synthetics Ltd. Vs. Fairgrowth Financial Services Ltd. and Another, .

5. Per contra, learned Counsel for the respondents seeks to sustain the order Annexure-V condoning the delay in preferring the appeals and place reliance upon the decision of a Division Bench of this Court in Sree Gajanana Motor Transport Co. Ltd. Vs. The Karnataka State Transport Appellate Tribunal and Others,

6. At the threshold, it is relevant to extract Section 89 of the Act and Rule 88 of the Karnataka Motor Vehicles Rules, 1989, for short Rules.

Section 89 reads thus:

89. Appeals - (1) Any person-

(a) xxxx

(b) xxxxx

(c) xxxxx

(d) xxxxx

(e) xxxxx

(f) xxxxx

(g) xxxxx

may, within the prescribed time and in the prescribed manner, appeal to the State Transport Appellate Tribunal constituted under Sub-section (2), who shall, after giving such person and the original authority an opportunity of being heard, give a decision thereon which shall be final.

(2) xxxxxxxx

(3) xxxxxxxx.

Rule 88 of the Rules reads thus:

88. Appeals and revision

(1) An appeal to the State Transport Appellate Tribunal u/s 89, against the order of any Transport Authority, shall be made within thirty days of the date of receipt of the order by the person preferring the appeal. It shall be in the form of a memorandum submitted in duplicate setting forth the grounds of objection to the order appealed against, and shall be accompanied by a certified copy of the order appealed against and (shall be affixed with a court-fee stamp of the value of rupees one hundred). The grounds of objection to the order shall be stated concisely and under distinct heads.

(2) xxxxxxxxx.

(Emphasis Supplied)

7. The time within which the appeal is to be preferred is prescribed in the Rule which is 30 days from the date of receipt of the order, by the person preferring the appeal. The reason for such a prescription is obvious since, under the Act, the RTA is not required to furnish to the respondents copies of its orders granting variation of permit by way of extension in favour of the petitioners'', and it is only after the respondents became aware of the orders, applied for and secured copies, and within 30 days therefrom filed the appeals. Having regard to the fact that the appeals were filed well within 30 days from the date of receipt of the orders by the respondents, the contention that the appeals were filed beyond the period of limitation cannot be countenanced. The applications by KSRTC to condone the delay in filing the appeals were unnecessary and hence the KSTAT disposed off the applications by order dated 8.3.2006 Annexure-V.

8. In the case of The Commissioner of Sales Tax (Supra), the Apex Court having regard to the specific provision of law under the U.P. Tax Rules, while interpreting the said provision observed thus:

If the legislature in a special statute prescribes a certain period of limitation for filing a particular application thereunder and provides in clear terms that such period on sufficient cause being shown, may be extended, in the maximum, only up to specified time limit and not further, then the Tribunal concerned has no jurisdiction to treat within limitation, an application filed before it beyond such maximum time limit specified in the statute, by excluding the time spent in prosecuting in good faith and with due diligence any prior proceeding on the analogy of Section 14(2) of the Limitation Act.

9. In L.S. Synthetics Limited''s Case (Supra), the Apex Court observed thus:

33. The Limitation Act, 1963 is applicable only in relation to certain applications and not all applications despite the fact that the words "other proceedings" were added in the long title of the Act in 1963. The provisions of the said Act are not applicable to the proceedings before bodies other than courts, such as a quasi-judicial tribunal or even an executive authority. The Act primarily applies to the civil proceedings or some special criminal proceedings. Even in a tribunal, where the CPC or Code of Criminal Procedure is applicable; the Limitation Act, 1963 per se may not be applied to the proceedings before it. Even in relation to certain civil proceedings, the Limitation Act may not have any application. As for example, there is no bar of limitation for initiation of a final decree proceedings or to invoke the jurisdiction of the court u/s 151 of the CPC or for correction of accidental slip or omission in judgments, orders or decrees; the reason being that these powers can be exercised even suo motu by the court and, thus, no question of any limitation arises.

10. Having regard to Section 89 and the prescription of limitation in Rule 88 coupled with the fact that the respondents preferred the appeal within 30 days from the date of receipt of the order, neither of the aforesaid two judgments of the Apex Court have application to the facts and circumstances of this case. The Order dated 8.3.2006 Annexure-V of the KSTAT disposing off the applications to condone the delay in filing the appeals as being unnecessary, does not call for interference.

11. Section 80(3) of the Act invests a jurisdiction in a Transport Authority to vary the condition of permit more than once. Curtailment is different from extension and the Statute prescribes a coaling of 24 kms in regard to extension, without a limit over the extent of curtailment. So also, the extending of curtailment cannot be counted for the purpose of calculating the extent of variation or extension of the permit. This is precisely the law laid down by the Division Bench of this Court in A. Diwakara Naik Vs. The Karnataka State Transport Authority, Bangalore and Others, . Applying the law laid down, therein, it is needless to state that the grant of variation to the petitioners'' permits by the impugned endorsements Annexure-F, G; J, J1 and K, K1 being contrary to the Statute, were rightly held to be illegal by the KSTAT. The Orders, Annexures-V, W and X of the KSTAT cannot be found fault with.

In the result, this writ petition is without merit and is, accordingly rejected.

