
(1988) 02 KAR CK 0010

In the Karnataka High Court

Case No : Writ Petition No's. 2482 and 2483 of 1988

Sethuraman

APPELLANT

Vs

Karnataka State Transport Authority

RESPONDENT

Date of Decision : 24-02-1988

Acts Referred:

Motor Vehicles Act, 1939 — Section 57, 63 (7)

Citation : (1988) ILR (Kar) 2298

Hon'ble Judges : Balakrishna, J

Bench : Single Bench

Advocate : S.V. Krishnaswamy, for the Appellant; P.R. Ramesh, HCGP, for the Respondent

Judgement

Balakrishna, J.—These two Writ Petitions coming up for preliminary hearing are disposed of by a common order after hearing the learned Counsel for both the parties.

2. These Writ Petitions are directed against the order passed by the 2nd respondent who is the Secretary, Karnataka State Transport Authority, Bangalore, returning the application dated 3-7-1987 relating to vehicle No. MEA 4676 and also the applications dated 3-7-1987 pertaining to vehicle Nos. MEN 6616 and MEV 4446.

3. The facts of the case, in brief, are as follows :- In W.P. No. 2482 of 1988, the petitioner is an operator of Luxury Tourist Taxi Cab carrying on business of transport at Bangalore. He sought for grant of Luxury Tourist Taxi Cab permit on the Inter-state route to ply in Karnataka and Tamil Nadu by his application dated 3-7-1987 in the lapsed vacancy of permit No. P.Co.P. No. 7/81 covered by vehicle MEA 4676. The vacancy was caused on account of the failure of the Permit Holder to apply for renewal of the same.

4. In W.P. No. 2483 of 1988, the petitioner is an operator of Luxury Tourist Taxi Cab with his office at Bangalore. He filed an application dated 3-7-1987 for grant

of inter-state Luxury Tourist Taxi Cab permits in the lapsed vacancies which were caused on account of the non-filing of renewal applications in respect of permit No. P.Co. P. No. 8/81 covered by the vehicle No. MEN 6616 and P.Co.P. No. 11/81 covered by the vehicle No. MEV 4446. The Secretary, Karnataka State Transport Authority, who is common respondent in these two cases, returned the applications and therefore the petitioners are aggrieved by the impugned orders.

5. The reasons for returning the application for grant of the permit sought by the petitioner in W.P. No.2482 of 1988 are found in Annexure-B. The relevant portion reads as follows :-

"In order to select the applicants, this authority feels it necessary to notify all the vacancies inviting applications from eligible candidates for grant of All India Tourist taxi and inter-State tourist taxi permits as this authority is not in favour of considering suo moto applications against the single vacancies chosen by the applicants. Therefore, it is resolved to notify all the vacancies available to the public, invite applications from eligible candidates. Therefore, so far as the applications taken up for consideration in respect of the above three subjects, the applications shall be returned for needful action by the concerned."

6. in W.P. No. 2483 of 1988, the relevant portion of the impugned order is found in Annexure "B" which is reproduced below :-

"In order to select the applicants, this authority feels it necessary to notify all the vacancies inviting applications from eligible candidates for grant of All India Tourist taxi and inter-State tourist taxi permits as this authority is not in favour of considering suo moto applications against the single vacancies chosen by the applicants. Therefore, it is resolved to notify all the vacancies available to the public, invite applications from eligible candidates. Therefore, so far as the applications taken up for consideration in respect of the above three subjects, the applications shall be returned for needful action by the concerned."

7. The learned Counsel for the petitioners has contended that the 2nd respondent was not justified in holding that all the vacancies had to be notified and that applications should be invited from the eligible candidates. It was also contended that there is no provision either in the Motor Vehicles Act or the corresponding Rules which enables the issue of such a notification. Secondly, it was contended that the 2nd respondent was not justified in returning the applications of the petitioners even assuming that he is competent to notify the vacancies and invite applications from the eligible candidates.

8. On the other hand, the learned Counsel for the State submitted that a duty is cast on the 2nd respondent to select the best operator and also because of the fact that the number of permits available are limited, it is absolutely essential that the vacancies should be notified and applications invited from the eligible candidates. According to the learned Counsel for the State there are only 22 vacancies and when Notification inviting applications were issued on the last date for submission of applications which is 16-11-1987, a total number of 48

applications were received by the 2nd respondent. It was also submitted that though there is no provision compelling the 2nd respondent to notify the vacancies and to invite applications from the eligible candidates, there is no prohibition also either under the Act or under the Rules.

9. The learned Counsel for the State placed a reliance on the decision rendered in the case of D.P. Sharma Vs. The Karnataka State Transport Authority, Bangalore and Others, contains the relevant portion of the ratio of the decision and reads as follows :-

"13. If the legislature intended that Section 57 should apply in relation the procedure in Section 27 should be adopted to All India Permits, a reference would have been made in Section 63(7) only to Sub-section (1) and not the entire Section 57. Of the two different procedures set out in Sub-section (1) and Sub-section (2) of Section 57, the one appropriate to the nature of the All India Permits should be adopted. As pointed out by the learned single Judge, contract carriage permits and private carrier's permits stand on a different footing from All India Permits. As regards contract carriage permits and private carrier permits, there are no quotas for such permits and such permits can be granted at any time as and when applications therefore are made. As regards All India Permits, the number of permits that can be granted is fixed. Further, a responsibility is cast upon the S.T.A. to select the best transport operators for granting such permits. But, no such responsibility is cast on Transport Authorities while granting contract carriage permits and public carrier permits. It is only when applications are invited by the S.T.A. for grant of All India Tourist Permits, the transport operators in the field will come to know of the availability of such permits and will apply therefore and the S.T.A. will be in a position to select the best amongst them for grant of limited number of such permits, also taking into account the priorities under the proviso to Sub-section (7) to Section 63."

10. The learned Counsel for the petitioners argued that the said decision relied upon by the State is not applicable to the facts of the case inasmuch as the decision relates to All India Tourist Omni Bus Permits, whereas the instant cases relate to the Inter-state Tourist Taxi Cab permits and that therefore the principle laid down in the said case does not apply to the cases on hand.

11. Arguments advanced by the learned Counsel for the petitioners do not find favour with me. The ratio of the decision of the Division Bench of this Court rendered in the case of D.P. Sharma v. K.S.T.A. & Ors. is squarely applicable to the facts of the instant cases irrespective of the question whether it is in respect of All India Omni Bus Permit or in respect of Inter-State Tourist Taxi Cab Permit. In the case relied upon by the learned Counsel for the State, the relevant factors are that though there was no enabling provision for inviting applications from the eligible candidates to the existing vacancies, consideration of such availability of limited number of permits in respect of limited quota of vacancies and the need to select the best transport operators for granting such permits are the guiding factors. Just because there is no enabling provision for inviting applications and

notifying the vacancies, it cannot be said that the intention of the statute is one of prohibition of such notifications. Any prohibition ought to be explicit in the provisions of the statute itself and such a provision is not forth-coming either in the Act or in the Rules.

12. The next question for consideration is, whether the 2nd respondent was justified in returning the applications of the petitioners for grant of permits. I am of the opinion that the 2nd respondent has committed an error and he ought to have kept the applications on record to be considered along with the 48 applications which have been received by him in respect of the vacancies referred to in both these Writ Petitions.

13. For the reasons stated above, these Writ Petitions are partly allowed and the 2nd respondent is directed to receive the applications of the petitioners which were returned to them by him and consider them along with the other applications received from the eligible candidates and dispose them of in accordance with law. No order as to costs.