

(1990) 11 KAR CK 0008

In the Karnataka High Court

Case No : Writ Petition No's. 2309 to 2311 of 1988

Sharifunnisa

APPELLANT

Vs

Karnataka State Transport Authority

RESPONDENT

Date of Decision : 20-11-1990

Acts Referred:

Karnataka High Court Act, 1961 — Section 9

Citation : (1991) ILR (Kar) 3008 : (1991) 1 KarLJ 169

Hon'ble Judges : Rama Jois, J;Mirdhe, J

Bench : Division Bench

Advocate : Ananda Shetty, for C.S. Shanthamallappa, for the Appellant; N. Devadas, Government Advocate for R-1 and R-2, B.R.S. Gupta, S.V. Krishnaswamy and A.S. Vishwanath, for the Respondent

Final Decision : Dismissed

Judgement

Rama Jois, J.—in these three Writ Petitions, the petitioner has prayed for quashing the order of the Karnataka State Road Transport Appellate Tribunal, allowing the appeal presented by respondent No. 3 in each of these Petitions and granting stage carriage permit, on the ground that the petitioner had not been impleaded as a respondent to the appeal.

2. Brief facts of the case, are these: A stage carriage permit on the route Thamballapalli to Chintamani was held to one C. Puttanna Chetty, in the first instance. The said permit had been transferred in favour of Pyarejan Saheb, the husband of the petitioner, by an endorsement dated 25-1-1979. Respondent No. 3 in each of the petitions had filed application for stage carriage permit on a route which overlapped the route in respect of which the husband of the petitioner held a stage carriage permit. The said Pyarejan Saheb filed objections to the applications. During the pendency of the applications before the State Transport Authority, Pyarejan Saheb died on 11-4-1984. Nearly two years four months thereafter, on 14-8-1986, the State Transport Authority rejected the applications of respondent No. 3 in each of the petitions. The matter was taken in

appeal before the State Transport Appellate Tribunal. The appeal was allowed by order dated 21-11-1987. Aggrieved by the said order, the petitioner has presented these Petitions.

3. The sole contention urged in the Writ Petitions was that the petitioner was a necessary party to the appeal before the State Transport Appellate Tribunal as her husband Pyarejan Saheb was an objector and therefore the order of the Appellate Authority was liable to be set aside on the ground that the necessary party was not made a party in the appeal.

4. When the matter came up before Murlidher Rao, J., for Preliminary Hearing, the learned Counsel for the petitioner, in support of his contention, relied on a Judgment of this Court rendered by another learned Judge, in Venkatachalaiah Vs. Karnataka State Transport Appellate Tribunal, In the said case, the learned Judge had held that when an objector to an application for stage carriage permit dies, his legal representatives were entitled, to continue the objections. The learned Judge further held that it was obligatory for the applicant to bring the legal representatives of the deceased objector on record, and that though the provisions of Order 22 of the C.P.C. were not made applicable to the proceedings before the R.T.A. or the S.T.A., it must be applied and therefore unless the legal representatives of the deceased objector were not brought on record, the proceedings cannot continue. The learned Judge referred the matter to Division Bench u/s 9 of the Karnataka High Court Act, as he considered that the Judgment rendered in the case of Venkatachaliah might require reconsideration. Accordingly, the matter has come up before us for Preliminary Hearing.

5. We have heard the learned Counsel for the parties. On material facts, there is no dispute. Though originally one Putta Chetty was the holder of the stage carriage permit on the route Thamballipalli to Chintamani, the same had been transferred in favour of the husband of the petitioner by an endorsement made as early as on 25-1-1979. Shortly thereafter, on 19-2-1979 Pyarejan Saheb filed objections to the applications presented by respondent No. 3 in each of the petitions for grant of stage carriage permit on a route which overlapped the route, in respect of which Pyarejan Saheb held the stage carriage permit. But it so happened that the proceedings continued for more than seven years. During the pendency of the proceedings, on 11-4-1984 Payarejan Saheb died. After the death of Pyarejan Saheb the petitioner did not make any application before the State Transport Authority stating that she was continuing the objections filed by her late husband. The State Transport Authority, as stated earlier, passed a final order on 14-8-1986 rejecting the applications for permits. When the appeal was filed, the third respondent did not implead Pyarejan Saheb as a respondent for the reason that Pyarejan Saheb was not alive and the State Transport Appellate Tribunal allowed the appeal. Now the question raised in these Writ Petitions is, the appeals were incompetent as the legal representatives of Pyarejan Saheb had not been brought on record as respondents to the appeal.

6. In support of the contention, the learned Counsel relies on the Judgment in

the case of Venkatachaliah¹. The learned Counsel also submitted that the said view was taken following a Division Bench Judgment of this Court in Y.R. Raju and Another Vs. The Karnataka Revenue Appellate Tribunal and Others, If the Division Bench had taken the view that in a proceeding before State Transport Authority for grant of a permit, if an objector dies his legal representatives should be brought on record and without doing so the proceedings cannot continue, then we have no alternative than to follow the said Judgment, unless we consider that the said Judgment requires reconsideration, in which event the only course open to us is to refer the matter to a Full Bench. But as can be seen from Raju's case, the view expressed in the said Decision is that if an objector, who has been impleaded as a respondent in an appeal, dies during the pendency of the appeal, his legal representatives are entitled to be heard in such appeal. But the precise question which arises for consideration in this case is entirely different. The question is, if an objector dies during the proceedings before the Regional or State Transport Authority, is it obligatory for the applicant for a stage carriage permit to bring the legal representatives of the deceased objector on record. In our view it is one thing to say that the legal representatives of the deceased Pyarejan Saheb are entitled to continue the objections and it is entirely a different matter to say that the applicant for a stage carriage permit is under an obligation to bring the legal representatives of the deceased objector on record. In this behalf, it should be pointed out that an objector to an application for grant of a stage carriage permit is not in a position of a defendant or a respondent in a dispute or an appeal or a suit. Several persons come as objectors on their own. The objectors have the choice of not pressing the objections or continuing the objections. From this it follows that if an objector dies during the pendency of the proceedings, it might be open to his legal representative to continue the objection after informing the authority of his intention to do so. But when no such step is taken by the legal representative, the consequence of the death of an objector is that the objection ceases to exist. It is no doubt true that the learned Judge who decided the case of Venkatachaliah has stated as follows:

"As the right to object to an application filed for grant of a stage carriage permit is a legally recognised and well defined right of an existing operator on the route, it forms an integral part of the permit itself. Therefore, it goes along with the permit and becomes available to a holder of such permit. Consequently, if an objector dies before consideration of the application filed for grant of stage carriage permit, the successor-in-interest of the objector is entitled to come, on record and pursue the objections filed by his predecessor-in-interest. Therefore, the successor-in-interest of such operator shall have to be brought on record. From what is stated above, it follows that there is an obligation cast on the applicant seeking a stage carriage permit to bring on record the legal representative or successor-in-interest of the deceased-objector before the application is taken up for consideration. Though the provisions of the CPC are not made applicable to a proceeding before the R.T.A. or S.T.A., nevertheless the

principle embodied in Order 22 of the Code of Civil Procedure, must be applied to the proceeding for grant of stage carriage permit. There is no doubt that a transferee of a stage carriage permit held by the objector is also entitled to come on record and pursue the objections..."

To the extent the learned Judge has held that in the event of death of an objector, the successor in interest of the objector is entitled to come on record and pursue the objections, if he so desires, we respectfully agree. But with great respect, we are unable to agree that in the event of the death of an objector, it becomes obligatory for the applicant seeking a stage carriage permit to bring the legal representatives of the deceased objector on record. The above view receives support from the Judgment of the Supreme Court in the case of Ram Autar Lal Jain Vs. Maya Kaur and Others, The relevant portion of the Judgment reads:

"If the proceedings are likely to be delayed or a substitution will be detrimental to the interest of the public, the Regional Transport Authority is not bound to allow substitution. There is jurisdiction to grant or allow or refuse substitution. The Regional Transport Authority will exercise discretion in a judicious manner in the facts and circumstances of each case as to whether a substitution may be allowed."

After giving careful consideration to the submission made by the learned Counsel, we are of the view that the objector is not in a position of a defendant or a respondent in a dispute or a suit in which he is being sued. An objector comes on record voluntarily on his own to file objections to the application for a stage carriage permit. Therefore, any successor-in-interest or legal representative of an objector, who dies after filing objection to an application for grant of a stage carriage permit, is entitled to continue the objection, if he so desires. But it cannot be said that the proceedings cannot continue unless the legal representatives of the deceased objector are brought on record or that the applicant is under an obligation to bring the legal representatives of the deceased objector on record. For these reasons, we respectfully disagree with the view taken in Venkatachaliah's case.

7. Now coming to the facts of the case, there is no dispute that Pyarejan Saheb, who filed his objection, died on 11-4-1984. Thereafter, the petitioner did not make any application before the State Transport Authority stating that she was continuing the objection filed by her deceased husband. If she had done so, then it would have become necessary for respondents 3 to 5 to implead the petitioner as respondents in the appeal. In view of the failure on the part of the petitioner to come on record before the S.T.A. to continue the objection filed by her husband, the position as on 14-8-1986, on which date the State Transport Authority decided the matter, was, the husband of the petitioner was not alive and therefore he was no longer an objector and the petitioner was also not an objector as she had not chosen to continue the objection by intimating the S.T.A. to that effect. Therefore, there was no question of the third respondent

impleading Pyarejan Saheb or the petitioner to the appeal.

8. In the circumstances, we make the following order: The Writ Petitions are dismissed.