

(2007) 02 KAR CK 0049
In the Karnataka High Court
Case No : Writ Petition No. 1632 of 2007

Smt. Raheem Bee

APPELLANT

Vs

The State Transport Authority in Karnataka and Others

RESPONDENT

Date of Decision : 09-02-2007

Acts Referred:

Citation : (2007) ILR (Kar) 1191 : (2007) 2 KarLJ 78 : (2007) 2 KCCR 1468

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : Mohammed Subhanulla Sharief C, for the Appellant; Akkamahadevi, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J.—Petitioner claiming to be a stage carriage permit holder operating on route Bellary to Molkalmuru and back, within the Bellary scheme, applied for and secured renewal of permit under The Motor Vehicles Act, 1988, for short Act, from the Karnataka State Transport Authority (for short "KSTA"). This order when called in question in Revision Petitions before the Karnataka State Transport Appellate Tribunal (for short "KSTAT") by the Karnataka State Road Transport Corporation, North East State Road Transport Corporation and the Andhra Pradesh State Road Transport Corporation Respondents 4, 3 and 5 respectively, was set-aside by common order dated 6-10-2006. Hence, this Writ petition.

2. An examination of the order impugned discloses that the KSTAT on securing the records from the KSTA, noticed that M/s. KSRTC and North East Karnataka State Road Transport Corporation had no notice of the meeting dated 18/19-4-2000, to consider the applications of the petitioner and 20 others, for renewal of permits. The KSTAT further noticed that APSRTC filed its objections contending that the route for which renewal of permit was sought, overlapped the APSRTC scheme.

3. The KSTAT repelled the contention of the petitioner that on being issued with a temporary permit, as there was no material particulars to establish the fact of existence of a valid interstate route permit as on 31.3.2000 the cut-off date under the modified Bellary scheme, and that the permit issued to the petitioner expired on 10-07-1996.

4. In addition, KSTAT recorded a finding that there was no material whatsoever, on record, to conclude that the route for which the renewal of permit was sought, did not overlap the notified route under the Bellary, Shimoga and Bangalore schemes and that the KSTAT failed to record a factual finding as to whether the monopoly route as contended by the APSRTC, and the route for which renewal of permit was sought were different

5. Before the KSTAT, petitioner advanced a contention that the period for which the permit was renewed having spent itself and the statutory corporation having not called in question the future renewals, the Revision Petitions were rendered infructuous. The KSTAT, following the observation of this Court in W.A.No. 1956/1989 D.D. 1-6-1994, extracted at Paragraph 7 of the order impugned, rejected the said contention holding that if the renewal in question is not sustainable, the subsequent renewals would have no legs to stand.

6. In the light of the observations of this Court in W.A.No. 3757 and 3758/2005 D.D. 25-11-2005, that an operator under the scheme would be exempt if he held a valid route permit on the cut-off date as the State Government intended to save the operation of such operators, the KSTA having not recorded a finding of fact as to whether the petitioner did hold a valid permit to operate on the said route, on the cut-off date, a pure question of fact, touching upon its jurisdiction to renew the permit, the contention to the contrary was rightly rejected by the KSTAT.

7. It was next urged before the KSTAT that it has coextensive powers with that of KSTA entitled to consider the renewal of permit after securing the records, as if it was the original authority. It is no doubt true that KSTAT has coextensive powers with that of the KSTA. But in the instant case, the KSTA, without collating material and recording a finding whether the renewal of permit will not impair the scheme, a jurisdictional question left undecided, the KSTAT was fully justified in remitting the proceeding for consideration afresh. The observations of this Court in the case of Jayaram and Another Vs. State of Mysore, in the circumstances is apposite:

A remand, in our opinion, would be justified only if there is no material at all on the basis of which the question left undecided by the original authority can properly be decided by the appellate Authority or if the latter finds that the material is insufficient to enable it to come to a just decision on the question.

8. This Court, in the case of Karnataka State Road Transport Corporation Vs. Sri. Pauli Govis and another etc., , considered all important earlier pronouncements having a bearing on the decision making, and recorded its summary of findings

in the form of principles deduced at Page 305, one of which reads thus:

That jurisdiction of the Authority, to grant a permit would depend upon the existence or non-existence of a Scheme and the total or partial ban it may contain against any private operator, operating a service on a notified route. Determination of these facts, would be essential as the same are jurisdictional facts without which the Authority concerned, cannot take a proper decision in the matter;

9. The KSTA, in the first instance, without determining the jurisdictional fact, in a cavalier manner, ordered renewal of the permit which is an error apparent on the face of the record, vitiating its order. The order of the KSTA smacks of principles of natural justice as the KSRTC and the NEKSRTC had no notice over the consideration of the 21 applications for renewal of permits. The fallacy in the reasoning of the KSTA lies in its superficial and cursory nature of consideration undertaken therein, without reference to the jurisdictional question, vitiating the entire proceeding.

10. The KSTAT while remitting the proceedings granted two months' time for fresh consideration, which having elapsed, I think it appropriate to direct the KSTA to extend reasonable opportunity of hearing to the parties concerned, collate relevant material and pass orders on the petitioner's application within two months from today. The parties are directed to appear before the Secretary, KSTA on 26-02-2007 either in person or through their learned Counsel without further notice.

11. The request of the learned Counsel for the petitioner to permit the petitioner to operate the services until the disposal of the proceedings before the KSTA, in my considered opinion cannot be acceded to. I say so because, the petitioner does not hold a valid permit as contemplated by the Act, and the KSTA is yet to consider and pass orders over the petitioner's application for renewal of permit. Moreover, the KSTA's jurisdiction to renew the permit is dependent upon a finding of fact as to the existence or nonexistence of a scheme for the route in question. In this regard, I am supported by a decision of this Court in *M. Haneef and Ors. v. KSTAT and Ors.* 1985 (2) KarLJ 383 wherein a learned Single Judge of this Court held (hat the KSTAT had acted illegally and without jurisdiction in permitting the applicants to operate the services during the pendency of the proceedings before the RTA.

12. The contentions of the petitioner as aired by her learned Counsel are the very same as were advanced before the KSTAT. For the reasons stated supra, the same are unmeritorious and are rejected. The order impugned is not shown to suffer from any legal infirmity occasioning grave injustice to the petitioner calling for interference. The petition is accordingly rejected.