

(2017) 03 KAR CK 0203
In the Karnataka High Court
Case No : 1406-1409 of 2016

Smt.Trene Pinto & Ors.

APPELLANT

Vs

Karnataka State Transport Authority & Anr.

RESPONDENT

Date of Decision : 13-03-2017

Acts Referred:

Motor Vehicles Act, 1988, Section 88, Section 88, Section 72(1), Section 72(1) - Validation of permits for use outside region in which granted - Grant o

Citation : (2017) 03 KAR CK 0203

Hon'ble Judges : S Sujatha

Bench : SINGLE BENCH

Advocate : Lokesh.R, Vijaykumar Y.H., A.S.Parasara Kumar

Judgement

1. The petitioners in W.P.Nos.1406-09/2016 have challenged the common order passed by the Karnataka State Transport Appellate Tribunal ("the Tribunal" for short) insofar as it relates to R.P.Nos.467, 468, 471 and 490 of 2015 dated 11.12.2015 wherein the Revision Petitions filed by the petitioners were dismissed confirming the assignment of timings to the service of the 2nd respondent on the route Nithalapadavu to Mulky and back and Mulky to Mallikatte and back vide Annexure-A.
2. The petitioner in W.P.No.14289/2016 has challenged the order passed by the Tribunal in R.P.No.466/2015 dated 11.12.2015, vide Annexure-B to the Writ Petition.
3. Since common questions are involved and common order is passed by the Tribunal, these petitions are heard together and disposed of by this common judgment.
4. The petitioners contend that the Karnataka State Transport Authority, Bangalore granted a stage carriage permit in favour of 2nd respondent on the route Nithalapadavu to Mulky and back (so as to operate as intrastate permit) - 1

round trip and Mulky to Mallikatte and back - 3 round trips and directed the 1st respondent to assign timings without affecting the sector operators on the route in question. Questioning the order passed by the Secretary, certain revision petitions were filed before the Tribunal and the same were numbered as R.P.Nos.982/2012, 1016/2012 and 1048/2012. The Tribunal by an order dated 14.08.2012 and 06.09.2012 set aside the timings assigned to the service of 2nd respondent and remanded the matter for reassignment of timings without affecting any sector operators on the route in question. It is submitted that in pursuance of the remand order passed by the Tribunal, the 1st respondent listed the subject on 09.09.2015 for assignment of timings. The 2nd respondent was represented by the counsel and proposed a set of timings. The existing operators appeared and opposed for proposed timings and requested to modify the proposed timings so as to maintain the priority of the services. It is the grievance of the petitioners that the 1st respondent without application of mind, there being no proper consideration, passed the order, not giving priority to the existing operators. Accordingly, Revision Petitions were filed by the petitioners challenging the assignment of the timings in R.P.Nos.466, 467, 468, 471 and 490 of 2015. The Tribunal dismissed the Revision Petitions as far as R.P.No.467, 468, 471 and 490 of 2015 and allowed R.P.No.466/2015 setting aside the assignment of timings and the matter has been remanded to the 1st respondent for reassignment of timings. Hence, petitioners in R.P.Nos.467, 468, 471 and 490 of 2015 have filed Writ Petition Nos.1406-1409/2016 whereas the respondent no.2 has challenged the order passed by the Tribunal in R.P.No.466/2015 in W.P.No.14289/2016.

5. Heard the learned counsel for the parties and perused the material on record.

6. The learned counsel appearing for the existing operators would contend that the 1st respondent failed to appreciate the vital aspects in as much as to granting fresh permit to the respondent No.2 under Section 88(1) of the Motor Vehicle Act,1988, whereas the permit was granted to the Existing Operators under Section 72(1) of the Act. The grant of permit to the second respondent is on the interstate route which cannot be equated to the intra-state or inter region route. The second respondent is operating the services on the route Nithalapadavu to Mulky and Mulky to Mallikatte. If so, each trip has to be on the inter-state route, that having not been considered while assigning the timings, maintaining the priority of the existing operators is defeated. The Tribunal without appreciating this relevant aspect dismissed the revision petitions as far as five petitioners are concerned and remanded the matter only with respect to the petitioner in RP NO.466/2015. The timings being assigned in the proceedings held on 09.09.2015 considering the existing operators operating the services on identical route, the Tribunal ought to have remanded all the matters for fresh consideration to the first respondent.

7. Learned counsel Sri. Parasara Kumar, appearing for the second respondent in Writ Petition No.1406-1409/2016 and the petitioner in Writ Petition No.

14289/2016 submits that Section 88(2) of the Act contemplates that a permit granted or countersigned by a State Transport Authority shall be valid in the whole State or in such regions within the State as may be specified in the permit. Thus, the arguments advanced at the hands of the learned counsel for the existing operators has to be negated. The second respondent operates the service from Mulky to Mallikatte covering distance of 60kms. Whereas the common routes with that of the other petitioners is about 10 kms.

8. Hence, operations of a service covering the distance of 60 kms and having a common route of about 10 kms to a service would not affect the petitioners in any manner. The Tribunal rightly taking into consideration the operations of service on the route in question proceeded to dismiss the revision petitions as far as the petitioners(existing operators) are concerned. It is further submitted that the Tribunal failed to take into consideration that once it was decided, the order passed by the first respondent is legal and dismissed the other revision petitions filed by the rival operators, the same view ought to have been taken in respect of the other existing operator in RP No.466/2015.

9. Having heard the learned counsel for the parties and perusing the material on record, it emerges that the existing operators have not participated in the proceedings of the joint route survey as specifically contended by the petitioners(existing operators) which is not disputed by the respondent. In such fact situation, this Court is of the considered view that the petitioners(Existing operators) are required to be heard while assigning the timings. It is for the operators to bring to the notice of the first respondent regarding the arguments advanced before this Court, particularly, with respect to the permit obtained by the petitioners under Section 72(1) of the Act and the permit of the second respondent issued under Section 88(1) of the Act and the proviso thereof. The finding of the Tribunal that the assignment of timings do not affect the petitioners cannot be countenanced as the same being not maintained with the equal gap considering the inter-state permit of the second respondent and the intra-state permit of the petitioners.

10. Hence, the impugned orders are set aside, the matters are remanded to the Tribunal to re-consider the matter afresh after providing an opportunity of hearing to both the parties. The Tribunal shall pass the orders in accordance with law as expeditiously as possible. Writ petitions are disposed of in terms of the above.