

(2013) 09 KAR CK 0135

In the Karnataka High Court

Case No : Writ Petition No. 42825 of 2013 (MV)

Sri. Mohammed Noorulla, Prop: MAG Motor Service

APPELLANT

Vs

The Regional Transport Authority

RESPONDENT

Date of Decision : 30-09-2013

Acts Referred:

Citation : (2013) 09 KAR CK 0135

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : A.S. Parasara Kumar, for the Appellant; T.K. Vedamurthy, HCGP, for the Respondent

Judgement

B.S. Patil, J.—Learned Government Pleader takes notice for the respondents. The matter lies in a short compass. Hence, the same is taken up for final disposal with the consent of the learned counsel for both parties.

2. Challenge in this writ petition is to the order dated 29.06.2013 passed by the Tribunal in Appeal No. 21/2013 dismissing the appeal as barred by time. Petitioner is also challenging the order dated 01.10.2008 passed by the 1st respondent fixing the time limit till 15.11.2008 to enable the petitioner to produce the documents pertaining to the vehicle operated by him for securing the replacement.

3. The Tribunal has dismissed the appeal on the ground that the affidavit filed by the petitioner discloses that he had secured the certified copy of the order passed by the 1st respondent on 09.05.2012 and that the appeal before it had been filed on 02.01.2013 and therefore, if 30 days was calculated from 09.05.2012, the appeal presented was beyond the period of limitation.

4. Learned counsel appearing for the petitioner takes me through the affidavit filed before the Tribunal in support of the prayer for condonation of delay. In the said affidavit, at paragraph 2, petitioner has stated that without notice to him and without providing any opportunity of being heard, the respondent took up

the matter on 01.10.2008 along with 40 other subjects and passed the order on the same day and the free copy of the order was not communicated to the petitioner. However, in the last week of December, 2012 when he has filed an application for replacement and for renewal of permit before the 1st respondent, the concerned case worker informed him about the passing of the order dated 01.10.2008 by the 1st respondent. Thereafter, petitioner has applied for certified copy of the order on 9.5.2012 and has obtained it on the same day and filed the present appeal within 30 days from the date of receipt of a certified copy. This, as rightly submitted by the learned counsel for the petitioner, appears to be a typographical error in the affidavit filed, as he has filed the application for certified copy on 28.12.2012 and had obtained the certified copy on the same day. He had made that averment stating that the appeal filed on 02.01.2013 was within 30 days. The Tribunal has lost sight of this aspect of the matter and has dismissed the appeal stating that the appeal had not been presented within 30 days from 09.05.2012 and therefore, it deserved to be dismissed. In the ends of justice and keeping in mind, the averments made in the affidavit stating that the petitioner was neither notified, nor heard by the 1st respondent when the order impugned before the Tribunal was passed, I am inclined to allow this appeal accepting the submission of the learned counsel for the petitioner that the appeal was presented on 02.01.2013 i.e. within 30 days from the date of receipt of certified copy of the order i.e. from 28.12.2012 and that there is no delay in filing the appeal before the Tribunal. The C.C. was applied for not on 9.5.2012 but on 28.12.2012. In addition, it is not in dispute that the order passed was not communicated to the petitioner. Therefore, this writ petition is allowed. Impugned order passed by the Tribunal is set aside. The delay, if any, is condoned. The Tribunal is directed to hear the appeal on merits in accordance with law.

Learned Government Pleader is permitted to file memo of appearance within three weeks from today.