

(2003) 11 KAR CK 0069

In the Karnataka High Court

Case No : Writ Petition No's. 34855-56 and 36937-38 of 2003

The Hanuman Transport Co. Pvt. Ltd. and Another

APPELLANT

Vs

The Regional Transport Authority and Others

RESPONDENT

Date of Decision : 11-11-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 83, 86, 86 (1) (c), 86 (5)

Citation : AIR 2004 Kar 164

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : C.B. Srinivasan and A.S. Parasara Kumar, for the Appellant; B.G. Raghuram, for No. 3 and S. Phalakshaiah, Govt. Pleader for Nos. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

R. Gururajan, J.—These petitions are filed challenging the order of the Karnataka State Transport Appellate Tribunal passed in Appeal No. 1495/2002 and No. 1496/2000 dated 29-5-2003.

2. Facts in brief in W.P. No. 34855-56 of 2003 are as under :

Sri Manamohan Shetty, third respondent, is a holder of stage carriage permit No. 67/ 93-94 operating on the route Sringeri to Shimoga and back via Udupi in the aforesaid permit vehicle bearing No. KA 20:2511. Third respondent has filed an application on 20-3-1998 for grant of replacement of the vehicle by a later model vehicle u/s 83 of the Motor Vehicles Act, 1988 ("Act" for short). While considering the said application, second respondent, the Secretary, Regional Transport Authority, Shimoga, granted permission by an order dated 20-3-1998. A condition was imposed on third respondent to produce the vehicle within 60 days from the date of the order of replacement i.e. on or before 19-4-1998. He must also obtain an endorsement of replacement by that time, failing which the grant of permit stands automatically revoked. It is a conditional replacement order.

Though the vehicle was released on 20-3-1998, no arrangements were made by the third respondent upto 4-11-1998 in putting the vehicle and obtaining endorsement of replacement. Third respondent's subject was later listed by the first respondent with regard to release of the vehicle from the permits on the ground of non-production within time in terms of the order of the second respondent. On 4-11-1998 first respondent, after hearing the permit holders, granted time till 10-11-1998 to produce the documents of the vehicle and to obtain an endorsement of replacement by paying a compounding fee of Rs. 2,000.00. The order dated 4-11-1998 is at Annexure-A. Third respondent was present in person on the said date. It was pronounced in the open meeting. Third respondent was aware of the order dated 4-11-1998. No steps were taken by him till Oct. 2002. On 1st Oct. 2002, third respondent filed an application for grant of a certified copy of the order dated 4-11-1998 passed by the first respondent. It was delivered to the third respondent on 4-10-2002. After obtaining a copy, third respondent filed an appeal against the order of the first respondent dated 4-11-1998 in so far as it relates to automatic cancellation of third respondent's permit. It was numbered as Appeal No. 1495 of 2002. According to the petition averments a false affidavit was filed before the Tribunal stating therein that the first respondent did not communicate free copy of the order dated 4-11-1998 and that therefore he applied for a certified copy on 1-10-2002 and obtained a copy on 4-10-2002. Appeal was filed on 28-10-2002. According to the petitioner, permit held by the third respondent was valid upto 28-1-1999. Permit stood expired on the facts of this case. Second respondent on 1-10-2002 ruled that the permit held by the third respondent was cancelled in terms of the Subject No. 31/98-99 dated 4-11-1998. Third respondent, after obtaining the second endorsement at Annexure-C filed another appeal in Appeal No. 1496 of 2002 before the Tribunal. Both the appeals were clubbed by the Tribunal. The Tribunal by a common order allowed these appeals with certain conditions. Annexure-E is the order. Annexure-E is challenged by the petitioner.

3. Petitioner further says that the vehicle of the third respondent was released from the permit on 20-3-1998. Vehicle was included in the permit in terms of the order of the Tribunal dated 29-5-2003 in Appeal No. 1495 of 2002 and No. 1496 of 2002. Endorsement of replacement is dated 26-6-2003. According to the petitioner, during the period from 20-3-1998 to 29-5-2003, timings of the petitioner were varied by way of revision of timings. Petitioner started operating the vehicle in terms of the timings. Petitioner has filed a revised timings in terms of Annexure-G. According to the petitioner, allowing of two appeals by the Tribunal is contrary to law and it affects the petitioner's interest.

4. Third respondent entered appearance and has filed a statement of objections. According to the third respondent, similar compounding orders are being passed in the matter of cancellation or suspension of the grant of permits in terms of Section 86(1)(c) of the Motor Vehicles Act, 1988. Respondent No. 3 has filed various orders in such circumstances. He says that the order of the Tribunal requires confirmation.

5. Brief facts in W.P. No. 36937-38 of 2003:

These two petitions are filed by the President, Transport Co-operative Society Limited, Koppa, Chikkamagalur District, challenging the very order that is under challenge in the earlier connected petitions. Petitioner in these petitions states that the petitioner is the holder of stage carriage permit bearing No. 42/97-98 operating between Koppa and Theerthahalli, and in relation another permit No. 2/2001-2002 operating between Shimoga and Sringeri, the entire route in question having been common, Third respondent Manamohan Shetty's permit was cancelled and the petitioner obtained a permit thereafter within the interval of five minutes on the common route Koppa to Theerthahalli -- in respect of first service, and Shimoga to Sringeri in respect of the second permit. He has also referred to the facts as in the connected petition. He is also challenging the very same order with the same or similar contentions/grounds raised as in the earlier connected petition.

6. Objections have been filed in this case also by the third respondent. Third respondent in this case also repeats the same arguments as in the connected matter.

7. Learned Government, pleader made available the original records to me. Matter was heard at great length.

8. Learned counsel for the petitioner essentially attacks the order by contending that no compounding of offence in terms of Section 86(1)(c) is available to the petitioner in the given circumstances. He elaborately contends before me that the petitioner is not entitled for any relief in the light of violation of conditions in terms of the earlier proceedings. They say that no ease was made out for compounding the offence in terms of Section 86(1)(c) of the Act. Parties have also referred to me various case laws in support of their submissions. Per contra, learned counsel for the respondents says that petitioner's permit has been now renewed in his favour and he is operating the vehicle in the case on hand . He has entered into an agreement with another party, and such agreements are recognised in law. In so far as Section 86 is concerned, he says that the said order was passed in exercise of its discretionary power by the Tribunal. He supports the order. He relies on several judgments.

9. After hearing the learned counsel, I have carefully perused the material on record.

10. Facts and grounds are same or similar in both these cases. Hence this common order is passed.

11. Petitioners in W.P. Nos. 34855-56/ 2003 is an operator and timings of the petitioner were varying in the light of the order of the Tribunal . Petitioner has provided comparable timings in the ease on hand. Petitioner is suffering in the light of the relief granted by the Tribunal. Petitioner's service is affected. In the circumstances, it cannot be said that petitioner Hanuman Transport Company has

no locus to maintain these petitions. Petitioner is certainly aggrieved on account of an order of the Tribunal . Thereafter, notwithstanding the serious objections of Sri Raghuram, learned counsel for the third respondent, I deem it proper to entertain W.P. Nos. 34855-56/ 2003 at the instance of M/s. Hanuman Transport Company Private Limited. Similarly petitioner in Writ Petition Nos. 36937-38 of 2003 is also affected and the same has been elaborated in para 13 of that case. In the given set of circumstances, I am of the view that these petitions can be entertained at the instance of these petitioners. In fact, I have considered this very question in Writ Petition No. 41896 of 1999 disposed of on 3-3-2000. In the said case, I have held that such aggrieved parties , if shown their difficulties, are entitled to maintain a petition challenging the order of the Tribunal to which they are not parties before the Tribunal. This judgment, I am told in the course of arguments, is confirmed by the Bench. On the facts of this case and in the light of the judgment of this Court, I reject the contention of no locus in favour of the petitioners as urged by the Respondent No. 3.

12. Third respondent's counsel refers to a Judgment of the Supreme Court in The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others, to contend that the petitioners have no locus standi. That is a case where the Court was considering with regard to shifting of machinery from the existing location by the parties in the said case. Competitors in that case questioned the shifting of location. The Supreme Court after noticing the facts of that case, ruled that the petitioners in that case have no locus. That finding was given in the light of no infringement of right as I see from paragraph 10 of that judgment. The facts of this case stands entirely on a different footing. The said judgment does not help the petitioner.

13. Coming to the merits of the matter, admitted facts reveal that the third respondent Manamohan Shetty held a stage carriage permit bearing No. 67/93-94 valid upto 28-1-2004. On 20-3-1998 he had filed an application seeking an order to replace the vehicle by a later model vehicle. It was considered favourably. It is stated therein that the petitioner had to produce the vehicle within 60 days from 19-4-1998 and obtain an endorsement to that effect. It further provides for revocation of the permit automatically . Petitioner did not make any arrangement in terms of the earlier order. However, his subject was listed before the first respondent. On 4-11-1998 after hearing the parties item was granted upto 10-11-1998 to produce the documents of the vehicle and obtain an endorsement of replacement by paying compounding fee of Rs. 2,000.00. Petitioner had not taken any steps in terms of the order dated 4-11-1998. Instead, for the first time in 2002 he filed a copy application and obtained a copy of the order dated 4-11-1998. Thereafter, he filed an appeal in Appeal No. 1495 of 2002. In the meanwhile, an endorsement was issued by the second respondent cancelling the permit in the light of failure to comply with the condition .That order dated 1-10-2002 was challenged in Appeal No. 1496 of 2002. The Tribunal has allowed this appeal. It is seen that in Appeal No. 1495 of 2002 order dated 4-11-1998 was challenged in 2002. The order was not clear as

to whether delay was condoned or not. At the time of arguments, learned counsel for the third respondent produced a copy of the affidavit filed in respect of the delay in filing the appeal. Tribunal has allowed the said application dated 17-4-2003 in the light of no objection by the State. I have seen the affidavit filed by the third respondent. Affidavit is as bald as it could be. There is absolutely no acceptable reason forthcoming in the delay petitions, it is rather unfortunate that the State representative has not chosen to file any objection resulting in allowing of the said application. The said order is not challenged and hence, expressing my displeasure, I deem it proper not to express any views on the order dated 17-4-2003.

14. In so far as merits of the matter is concerned, it is seen that the Appeal No. 1495 of 2002 was directed against the order dated 4-11-1998 and the Appeal No. 1496 of 2002 was directed against the order dated 1-10-2002, and that both the appeals were heard together. Memo is filed by respondent No. 3 (appellant before the Tribunal) agreeing to deposit compounding fee of Rs. 5,500.00 for non operation of the vehicles from 20-3-1998. Respondent-In charge Assistant Law Officer has not objected to the said memo and instead he has nodded his head to dispose of the appeals in terms of the Memo subject to renewal of permit. Tribunal has passed an order ordering the petitioner to deposit compounding fee of Rs. 5,500.00 and to produce the documents of replacement of the vehicle and obtain replacement endorsement and to commence operation of service within 30 days subject to renewal of permit. On seeing this memo and the no objection, I called for the original file, and the original file was made available to me. In the original records, it is seen that the memo filed reads as under : ,

"The Appellant is agreeable to pay the compounding fee of Rs. 5,500.00 for the delay in the replacement of the vehicle which was released from the permit on 20-3-1998 and the Secretary, RTA, Shimoga may be directed to renew the permit in the application pending for renewal of the permit."

From the original records, it is seen that the respondent has endorsed of the memo as "seen". He has not objected to the same. Learned Judge has accepted the same. It is rather unfortunate that the contesting respondent and the learned Judge have not chosen to see the relevant provisions of law before accepting the memo. Admittedly an order of 1998 is challenged in 2002 and the conditions are not complied with by respondent No. 3 (appellant before the Tribunal) resulting in the cancellation of the permit in terms of the law governing the subject. That cannot be set at naught by way of review after four long years by payment of compounding fee of Rs. 5,500.00 in terms of the memo as accepted by the other side and also by the learned judge. Let me see the law on the subject. Elaborate arguments are advanced by either of the counsel.

15. Section 86 of the Motor Vehicles Act, 1988 provides for cancellation or suspension on the breach of any of the conditions specified in Section 84 or of any condition contained in the permit, or if the holder of the permit uses or causes or allows a vehicle to be used in any manner not authorised by the

permit, or if the holder of the permit ceases to own the vehicle covered by the permit, or if the holder of the permit has obtained the permit by fraud or misrepresentation, or if the holder of the goods carriage permit, fails without reasonable cause, to use the vehicle for the purposes for which the permit was granted, or if the holder of the permit acquires the citizenship of any foreign country. A reading of the Section 86(5) of the Act would show that the compounding is permissible in the event of cancellation or suspension under Clause (a) or (b) or (e) of Sub-section (1) of Section 86. Even the acceptance of the compound fee is subject to the authorities forming an opinion that having regard to the circumstances of the case it would not be necessary or expedient to so cancel or suspend the permit in the event of payment, Therefore , what is clear to this Court is that compounding is not automatic, and it is only in the event of cancellation or suspension under Clause (a) or (b) or (e) of Sub-section (1) of Section 86. Even if the cancellation is in respect of Clause (a) or (b) or (e) of Sub-section (1), even then, the authorities are to form an opinion by applying their mind to the circumstances of the case, and, therefore, it is not automatic or mechanic as argued by the respondent No. 3. Admittedly, in the case on hand, respondent No. 3, namely the holder of permit, ceased to own the vehicle covered by the permit in terms of the earlier order. It was for this reason that his permit was cancelled that too after an opportunity. In 1998 the order was passed. It is admitted that he did not have the vehicle on the said date. It is also to be seen that Section 86(1)(c) is not applicable to the facts of this case. Admittedly, Section 86(5) does not refer to Section 86(1)(c) of the Act. Therefore, compounding is impermissible in terms of Section 86(1)(c) for the purpose of compounding under Sub-section (5) of Section 86 of the Act on the facts of this case. Unfortunately, even without looking into the provisions of the Act, the State authorities have chosen to agree for allowing of the appeals and learned Judge also, in my view without taking note of the relevant provisions of the Act, has chosen to allow the appeals contrary to the provisions of law. Learned Judge, in the circumstances, ought not to have accepted the memo and ought to have rejected the memo in the light of violation of Section 86(1)(c) of the Act. Therefore, I have no hesitation in holding that the impugned order suffers from errors on the face of the record.

16. In so far cancellation is concerned, that is also challenged in appeal No. 1496/ 2002. That was against refusal to consider renewal of the application in the light of cancellation of the permit on 4-11-1998. It is a consequential order. Nothing has been mentioned about this aspect of the matter. Therefore, petitioner is right in his submission in this matter.

17. However, I must notice the submissions of Respondent No. 3 that Section 86 is discretionary power, and that discretion has been exercised in this case, and, that therefore, this Court should not interfere. Normally, discretion is always available to a discretionary authority. But, when the statute provides as to how the said discretion has to be exercised, this Court cannot shut its eyes to the same and allow illegal orders on the ground of discretion. Discretion is not to

nullify a provision of law. In the circumstances of this case, discretion is a conditional discretionary power u/s 86(5) of the Act. This argument of the respondent therefore has no legs to stand in a Court of law.

18. Learned counsel for the respondents placed before me various judgments to contend that the compounding is allowed and that same is accepted by this Court in several cases. He relies on certain judgments in Writ Petition No. 5663 of 2001 disposed of on 18-4-2001, W.A. No. 1097/2002 & W.A. No. 1096/2001 disposed of on 21-6-2001, W.P. No. 35954-955/2002 disposed of on 19-8-2003, W.A. No. 4081/2001 and W.A. No. 4347/2001 disposed of on 4-9-2001. Insofar as the order in W.P. No. 35994-955/2002 is concerned, there was no such objection as in the present case. Similarly, in Writ Appeal No. 1097 & 1096 of 2001 facts are totally different. Similarly, in WP No. 5663 of 2001 the Court was not considering as to whether compounding could be allowed notwithstanding exclusion of Section 86(1)(c) in Section 86(5). Specific issue with which I am dealing in this case was not raised as a subject matter in any one of the decisions referred to above by Respondent No. 3. Hence, Respondent No. 3 does not derive any support from these judgments.

19. Third respondent, however, relies on a judgment of this Court in Writ Appeal No. 4081/2001 & WA No. 5347/2001 dated 4-9-2001. In the said judgment, the Court notices that a condition was imposed on a deposit of guarantee and the time was also given. The Court notices that the permit was lapsed. This Court however made it clear in Para 9 that the said order is not to be treated as precedent in other cases of similar nature. Therefore that judgment is not available to the petitioner.

20. After exhausting this argument with regard to Section 86(1)(c) of the Act, learned counsel for the respondent No. 3 pleaded that his clients running the vehicle as on today and he must be allowed to run the vehicle, as otherwise great injury and irreparable loss would be caused to him. I would have certainly considered this plea of the petitioner but for the stiff opposition by the respondents. Petitioners point out to me that Respondent No. 3 is not running the vehicle and the vehicle is given to some other individual. It is also admitted before me that the third respondent was not operating the vehicle right from March 1998 till June 2003. It is only after the impugned order, he has chosen to operate the vehicle. It is no doubt true that law recognises liberty of third parties, and that liberty is available in all cases. In the given circumstances and in the absence of operating of the vehicle by the Respondent No. 3 till 2003, and in the light of cancellation of the permit to run the vehicle in 1998, compounding cannot be a ground for continuing the petitioner to run the vehicle. Continuing to run the vehicle by way of permission by this Court in the given facts would be contrary to statutory provisions available on record. In the circumstances, notwithstanding the repeated pleas made by the third respondent, I am not inclined to consider his prayer for permission to continue the vehicle in the light of non-availability of compounding in terms of Section 86(1)(c) of the Act.

Having come to this conclusion, I have no hesitation in holding that the impugned orders are liable to be set aside and I do so in these cases. I see that the authorities are fully justified on merits in rejecting the permit of Respondent No. 3 in the light of non-complying with the conditions. In the circumstances, I deem it proper to close this matter itself by upholding the order of the respondents in the admitted circumstances, and any remand would be a futile exercise of power. I deem it proper to observe that the petitioner is always at liberty to apply afresh seeking for permit and that this order will not come in his way of obtaining any permit.

21. In the result, these petitions are allowed without any order as to costs. I also deem it proper to direct the Registry to send a copy of this order to the Secretary, Transport Department for his information for such remedial action as deemed fit at least in future in the interest of State and justice.