

(1957) 07 KL CK 0012
In the High Court Of Kerala
Case No : O. P. No. 27 of 1956 (K)

The Indian Motor Service, Mancheri	Vs	APPELLANT
The Regional Transport Authority, Kozhikode and two others		RESPONDENT

Date of Decision : 19-07-1957

Acts Referred:

Motor Vehicles Act, 1939 — Section 57(4), 64(2)

Citation : (1957) KLJ 641

Hon'ble Judges : M.S. Menon, J

Bench : Single Bench

Advocate : N. Sundara Iyer, for the Appellant; V.K.K. Menon for 3rd Respondent, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Menon, J.—The petitioner is the Indian Motor Service, Manjeri. The 1st respondent is the Regional Transport Authority, Malabar, the 2nd, the State Transport Appellate Tribunal, Madras, and the 3rd, the Sri Narayana Transports, Kozhikode. The 3rd respondent sought a variation of the permit of the bus MDM 5396 by an application to the 1st respondent dated 16-9-1955. The variation requested was the alteration of the route, Kozhikode-Kondotty, as Kozhikode-Manjeri via Kondotty. The 1st respondent rejected the application on 26-4-1956. The proceedings of the hearing held on that day (Ext. D) read as follows:

Sub:

To consider and record the orders of the R. T. A. on the application for variation of route ?Kozhikode-Kondotty? as ?Kozhikode-Manjeri via Kondotty? in respect of bus MDM 5396.

Applicant:

Sree Narayana Transports, Kozhikode.

Representators:

Nil.

Resolution of the RTA:

Application rejected.

2. The 3rd respondent then filed an application before the 2nd respondent u/s 64 (2) of the Motor Vehicles Act, 1939, and succeeded in that application. The order of the 2nd respondent is Ext. E dated 18-10-1956. The concluding portion of that order is:

In the result, I set aside the order in question of the Regional Transport Authority and direct the grant of variation applied for by the petitioner and to fix the consequential revision of timings.

The 3rd respondent did not implead the petitioner in the application to the 2nd respondent u/s 64 (2) of the Motor Vehicles Act, 1939, and it is admitted that no notice of the application was as a matter of fact issued to the petitioner. The petitioner's contention is that the petitioner had a right to be heard and that Ext. E which was passed without notice cannot be sustained.

3. The main prayers in the petition are prayers A and B. They are worded as follows:

For the reasons stated in the affidavit filed herewith, the petitioner prays that this Hon'ble Court may be pleased-

A. To issue, a Writ of Prohibition or other appropriate Writ, direction or order to the 1st respondent to forbear from issuing a permit for the Bus No. MDM 5396 of the 3rd respondent for the route Kozhikode to: Manjeri via Kondotti, as per the order of the 2nd Respondent in Proceedings R. No. 25740/A1/56 dated 18-10-1956 (Ext. E) or to ply the said Bus on the said route as varied by the said order, or do anything else in pursuance of the said order.

B. If deemed necessary, to call up the records in the said Order (Ext. E) of the 2nd respondent and quash the same by the issue of a Writ of Cartiorari.

The learned counsel for the 3rd respondent contended before me that the more important prayer is prayer B, and that if for any reason that prayer cannot be allowed, prayer A will also have to be refused. According to him prayer B cannot be allowed for lack of jurisdiction over the 2nd respondent whose office is at Madras and not anywhere within this State. In the view I am taking in the paragraphs that follow, it is unnecessary to evaluate the contention and it is not considered in this judgment.

4. The important question for consideration as I see it is whether the petitioner had a right to receive notice of the application filed by the 3rd respondent before the 2nd respondent u/s 64 (2) of the Motor Vehicles Act, 1939.

5. In the light of Rule 208 of the Madras Motor Vehicles Rules, 1940, there can be no doubt that the procedure that had to be followed by the Transport

Authority in disposing of the 3rd respondent's application dated 16-9-1955 was the same as that laid down for dealing with an application for a permit and that the relevant statutory provisions are sections 47 and 57 of the Motor Vehicles Act, 1939. Section 47 (1) provides that a Regional Transport Authority shall, in deciding whether to grant or refuse a stage carriage permit, have regard to the matters specified in that sub-section

and shall also take into consideration any representations made by persons already providing road transport facilities along or near the proposed route or routes or by any local authority or police authority within whose jurisdiction any part of the proposed route or routes lie or by any association interested in the provision of road transport facilities.

6. Ext. A dated 24-11-1955 is the notification of the 1st respondent u/s 47 (1) of the Motor Vehicles Act, 1939. It reads as follows:

It is proposed to vary the following existing route as detailed against it and the conditions attached to the permit of bus MDM 5396 plying on the route.

EXISTING ROUTE

ROUTE AFTER VARIATION

Kozhikode-Kondotty.

Kozhikode-Manjori via Kondotty.

2. Those who have any Representation to make in this connection should do so in writing so as to reach this office on or before 15-12-1955.

A copy of Ext. A was sent to the petitioner. The petitioner, and others, made their representations and the following resolution was recorded by the 1st respondent on 27-1-1956:

"Heard the applicant and the objectors. At present the route from Kozhikode to Manjeri is well served by through operators and the present proposal will curtail the existing facilities in the sector between Kozhikode and Kondotty. Proposal is not therefore approved". (Ext. B)

7. According to the petitioner the 1st respondent became functus officio on the passing of the resolution (paragraph 9 (A) of the affidavit dated 19-11-1956). It is impossible to agree with this contention and treat Ext. B as the final and conclusive pronouncement on the subject.

8. Sub-sections (3) and (4) of section 57 of the Motor Vehicles Act, 1939, read as follows:

3. On receipt of an application for a stage carriage permit or a public carrier's permit, the Regional Transport Authority shall make the application available for inspection at the office of the Authority and shall publish the application or the substance thereof in the prescribed manner together with a notice of the date

before which representations in connection therewith may be submitted and the date, not being less than thirty days from such publication, on which, and the time and place at which, the application and any representations received will be considered.

4. No representation in connection with an application referred to in sub-section (3) shall be considered by the Regional Transport Authority unless it is made in writing before the appointed date and unless a copy thereof is furnished simultaneously to the applicant by the person making such representation.

Ext. C dated 31-1-1956 is the notification issued by file 1st respondent under sub-section (3) of section 57. Paragraph 2 of the notification said:

"Those who have any representation to make in this connection should do so in writing on or before 29-2-56 furnishing a copy thereof simultaneously to the applicant. Representation received after the prescribed date or the copies of which have not been furnished simultaneously to the applicant will not be considered".

9. The petitioner's contention is that there was no compliance with the provisions of Rule 125-A (1) of the Madras Motor Vehicles Rules, 1940, that the petitioner did not as a matter of fact receive a copy of Ext. C and was hence precluded from making representations as directed therein. There is no alternative case in the petition or the affidavit in support of it to the effect that even if the petitioner had to be deemed to have notice the petitioner was still entitled to ignore paragraph 2 of Ext. C on account of any defect or infirmity in the wording of the notice.

10. A perusal of the Madras Motor Vehicles Rules, 1940, will make it clear that the provisions of Rule 125-A (1) have no application to the case and that the Rules that apply are Rules 154 and 155:

154. Upon receipt of an application for a stage carriage permit or a public carrier's permit, the Secretary of the Regional Transport Authority or the Provincial Transport Authority, as the case may be, shall publish the substance of the application together with the notice of the date before which representations may be submitted and of the date appointed for consideration, on a suitable notice board situated on the premises of the Authority.

155. It shall be sufficient compliance with the provisions of sub-section (3) of section 57 of the Act if the particulars specified in that sub-section are posted on the official notice board of the Transport Authority not less than 15 days before the date appointed for the receipt of representations.

The date appointed for the receipt of representations, as can be seen from paragraph 2 of Ext. C extracted above, was 29-2-1956 and the endorsement in the file is clear to the effect that there was a due posting as directed by Rule 155 on the official notice board of the Transport Authority on 10-2-1956, that is, more than 15 days before the date appointed for the receipt of representations.

In view of this the petitioner should be deemed to have received notice, and the only question is whether the failure to make representations before the 1st respondent will not negative the petitioner's right to receive notice of the application filed by the 3rd respondent before the 2nd respondent u/s 64 (2) of the Motor Vehicles Act, 1939.

11. In A. I. R. 1955 Mad 661 the effect of not making representations in pursuance of section 57 (3) of the Act was dealt with as follows:

Section 57 (3) makes provision for the interested public being notified and S. 57 (4) provides the limitations. If an operator or a person interested does not take steps in time, he has no right to be heard before orders are passed and that is the effect of S. 57 (4). But merely because a person files a representation out of time, he does not become in any sense a party to the proceeding. When an appeal or a revision is filed, though there is no statutory provision in that regard the principles of natural justice require that notice should be given to those who were parties to the proceedings. But it is contended by Mr. Krishna swami Aiyar, learned counsel for the appellants that such a notice should be given not merely to those who in a sense have made themselves parties to the proceedings by filing representations within the time limited by S. 57 (3) but to all those who would be adversely affected by the order. To a question by us, as to whether if this view were accepted, any logical distinction could be drawn between persons who had filed objections out of time and other parties who though equally interested had not filed any representations, as regards the necessity for notice and hearing, Mr. Krishna swami Aiyar stated that no such distinction could be drawn. According to him it was the duty of the appellate or revisional authority to make an enquiry as to the persons likely to be affected by any order which they might pass and deal with the appeal or revision before it after notice to and hearing such parties. In other words, the argument is that the duty cast upon the appellate or revisional authority is more extensive than even that laid down by S. 57 (3). In his attempt, to circumscribe the scope of S. 57 (4) to the original authority, learned counsel is really attempting to enact provision similar to S. 57 (3) at each stage of an appeal or a revision which is certainly not warranted by any rule of construction.

I am in entire agreement with this view and must hold that Ext. E is not liable to be set aside for lack of notice to the petitioner and that the petition should be dismissed. Order accordingly. No costs.