
(1988) 07 KAR CK 0059
In the Karnataka High Court
Case No : W.P. No. 5221/1987

T.M. Maddanappa

APPELLANT

Vs

Karnataka State Transport Authority and Others

RESPONDENT

Date of Decision : 14-07-1988

Acts Referred:

Motor Vehicles Act, 1939 — Section 47

Citation : (1988) 3 KarLJ 355

Hon'ble Judges : H. G. Balakrishna, J

Judgement

Balakrishna, J.-The petitioner has filed this writ petition questioning the propriety of the judgment and order of the Karnataka State Transport Appellate Tribunal, Bangalore (Respondent-2) dated 6-4-1987 vide Annexure-E remitting the matter back to the Karnataka State Transport Authority, Bangalore, (Respondent-1) with a direction to return the application of the grantee (petitioner in this writ petition) for rectification of the defect.

2. The material facts of the case are:

The petitioner filed an application on 21-10-1978 for grant of Stage Carriage Permit on the route Challakere to Chikkajogihalli viz Talak, B.G. Kere, Kondlahalli, Molakalmuru, Rayadurga and back Molakalmuru and Soorenahalli for performing one round trip. Together with the application, the petitioner annexed the proposed timings and a rough sketch. The application was published by the State Transport Authority in the Karnataka Gazette dated 23-11-1978 inviting objections. The application was considered by the State Transport Authority at its meeting in Subject No. 13/85 on 27/28-1-1983. Respondents-3 to 5 raised several contentions objecting to the grant of the permit in favour of the petitioner. The main objection was that not only the application was defective, but also the Gazette notification. Another contention was that no need existed for grant of stage carriage permit and that the portion of the route between Molakalmuru and Rayadurga overlaps the notified routes of A.P.S.R.T.C. According to the petitioner, the contention regarding the defective nature of the

application and the Gazette notification was taken for the first time only at the time of consideration of the application and not earlier. After hearing the rival contenders, the State Transport Authority gave a finding that none of the objectors has prejudiced by the alleged defects and that the scheme published by the A.P.S.R.T.C. does not have extra territorial operation. As regards need for grant of permit, the existence of need was accepted by the State Transport Authority. The State Transport Authority also accepted the time schedule as proposed by the petitioner. According to the petitioner, permit was granted to him and he commenced the operation of the service in the year 1985.

3. Aggrieved by the order of the State Transport Authority, respondents-3 to 5 preferred appeals to the State Transport Appellate Tribunal in Appeal Nos. 685 to 830/85 and 46/86 respectively. At the time of consideration of the applications for interim order filed by the appellants therein, the State Transport Appellate Tribunal assigned interim time schedule and the petitioner continued to operate his service on the basis of the said time schedule. The State Transport Appellate Tribunal heard the appeals on 6-4-1987 and passed orders allowing the appeals on four issues and deciding the rest in favour of the petitioner. The petitioner is aggrieved by the findings of the Appellate Tribunal on issues 1 to 4 and also by the operative portion of the judgment of the Appellate Tribunal which reads as follows:

"A. Nos. 685/85, 830/85 and 46/86 are hereby allowed, the impugned resolution is hereby set aside and the matter is remitted back to the KSTA with a direction to return the application of the grantee for rectification of the defect in the light of the observations made in the course of this judgment and if that application is re-presented after correction, to dispose of the same in accordance with law and on its merit."

4. The main thrust of the argument of the petitioner is that there is no defect either in the application or in the Gazette notification contrary to the allegations made by the rival operators. The alternative argument is that, along with the application for grant of Stage Carriage Permit, the petitioner had produced a rough sketch of the route map as well as the time chart and, reading them together, the route in respect of which the petitioner desired the Stage Carriage Permit would be self explanatory and self-evident as also the intermediary places and the number of trips on the said route. It is also contended that the contents of the application filed by the petitioner and the substance of the Gazette notification as published by the 1st respondent were intelligible to the objectors at the time of filing of objections and that, significantly enough, the objectors did not point out the defect, if any, either in the application, or in the Gazette notification, but proceeded to raise such an objection for the first time only at the time of consideration of the application by the 1st respondent and, therefore, the finding that the State Transport Authority lacked initial jurisdiction to entertain the application, cannot be countenanced.

5. On the other hand, it is contended by the learned Counsel for respondent-3

that defacto not only the application for grant of Stage Carriage Permit but also the Gazette notification is inherently defective and such a defective application is hit by the proviso to Section 48(1) of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act"). It was also contended by the learned Counsel for respondent-3 that the defect in description of the route or area for which the permit is desired in column 3 of the Karnataka Gazette notification November 23, 1978 vide Annexure-A contains misdescription and it is inconsistent with the description given in column 5 of the application for grant of Stage Carriage Permit. In short, it was strongly urged by the learned Counsel for respondents that no permit can be granted in respect of any route or area which is not specified in the application and the permit granted to the petitioner by the granting authority (respondent-1) was in respect of the route which is not in consonance with the route specified and described in the application. On this basis, the judgment of respondent-2 was sought to be justified by the learned Counsel.

6. Arising out of the above facts, the only point for consideration is whether respondents was justified in holding that the order of respondent-1 is not sustainable for the reason that the application of the petitioner is defective and, directing respondent-1 to return the application of the petitioner for rectification of defects and to afford an opportunity to the petitioner to re-present the rectified application before respondent-1 for its consideration and disposal in accordance with law.

7. I have examined the material on record with particular reference to the annexures containing the description of the route. The application of the grantee (petitioner) dated 21-10-1978 is for the route "Challakere to Chikkajogihalli via Talak, B.G. Kere, Kondlahalli, Molakalmuru, Rayadurga and back Molakalmuru, Soorenahalli, etc." In the said application and in the relevant column the grantee has mentioned "daily one round trip". But the State Transport Authority has assigned timings by virtue of which the grantee (petitioner) could make two more single trips between B.G. Kere and Rayadurga though an additional trip is not found to be sought by the petitioner in his application. The description of the route given both in the application and in the Gazette notification is materially different from what has been sanctioned by the State Transport Authority. In column 3 of the Gazette notification, the following is the route mentioned:

"Challakere to Chikkajogihalli via Talak, Bommagondanakere, Kondlahalli, Konasagara, Molakalmuru, Rayadurga and back to B.G. Kere and on to Chikkajogihalli viz Soorenahalli, Chinnobanahalli, Udeeu, Lökkikere, Kanahosahalli and Siddapura and back to Challakere via Siddapura, Kanahosahalli, Chinnobanahalli, Surenahalli, B.G. Kere, Hirehalli, Talak and Naikanahatti. One round trip per day."

In the column meant for indicating the maximum and minimum number of daily services proposed to be operated relating to each route, the petitioner has mentioned "daily one round trip". In column 4 of the application of the petitioner for grant of permit dated 21-10-1978 the following is the route mentioned:

"Challakere to Chikkajogihalli via Talak, B.G. Kere, Kondlahalli, Molakalmuru, Rayadurga and back Molakalmuru, Soorenahalli etc.,"

This column does not contain the full description of the route. Ultimately, the State Transport Authority has granted two round trips between B.G. Kere and Rayadurga despite the fact that the petitioner has sought for only one round trip. From the above facts, it is clear that the State Transport Authority has not only sanctioned the route different from what was applied for, but also has assigned timings for a route different from the route applied for and, added to it, has granted an additional trip which was not sought for by the petitioner. In the light of this admitted factual situation, whether the State Transport Authority was justified in its action is the point to be considered with reference to the relevant provision of law. If what has been done by the State Transport Authority is contrary to any of the statutory provisions contained in the Act, then the order of the State Transport Authority cannot be sustained.

8. The provisions of law relied upon by the learned Counsel for respondent-3 is Section 48(1) proviso of the Act. The said provision reads as follows:

"48. Grant of stage carriage permits:

(1) Subject to the provisions of Section 47, a Regional Transport Authority may, on an application made to it under Section 46, grant a stage carriage permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit:

Provided that no such permit shall be granted in respect of any route or area not specified in the application."

According to this provision, a Regional Transport Authority, subject to the provisions of Section 47, on an application made to it under Section 46, may grant a stage carriage permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit provided that no such permit shall be granted in respect of any route or area not specified in the application. The learned Counsel has placed strong reliance on the proviso which prohibits grant of permit in respect of any route which is not specified in the application. According to the learned Counsel, in the instant case, admittedly, permit has been granted in respect of a particular portion of the route which has not been specified in the application by the petitioner. The word "route" is defined in Section 2(28A) of the Act as "a line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus and another". If this line of travel passes through several destinations, it is necessary for the petitioner to specifically mention every one of the destination station or the place through which the line of travel traverses and in respect of which the petitioner wants grant of permit. There is no escape for the petitioner from this statutory mandate. Obviously, in this case, there is not only misdescription in the Gazette notification, but also description of the route as sanctioned by the State Transport Authority which is at material variance with the description of the route

mentioned by the petitioner in his application for grant of permit. It is not open to the State Transport Authority to grant a permit which covers a route that is different from the route applied for. Section 48(1) proviso refers to the application and its contents. The said provision does not make any reference whatsoever either to the route sketch or to the proposed time schedule furnished by the petitioner along with the application for grant of permit. In other words, what is relevant for the purpose of Section 48(1) is only the contents of the application giving a description of the route or the area as regards the specifics. This defect cannot be cured even if the route sketch and the proposed time schedule might supply the correct information. Even if the route sketch and the proposed time schedule contain the correct information as regards route or the area, that information would still clash with the information supplied in the application. Such an inconsistent information and description in the application is not curable unless on a return of the application by the State Transport Authority, fresh and correct information is supplied by rectifying the defects and by representing the application to the State Transport Authority. What the statutory provision prohibits, the statutory authority cannot permit. The statutory authority exercising the power under Section 48(1) of the Act is strictly and rigidly bound by the provisions which invest him with power. The tenor of the language in the proviso conveys an unmistakable meaning that no permit shall be granted in respect of any route or area which is not specified in the application. The language of the section is unequivocal and absolutely clear. The purpose of the provision is to prevent grant of permit in an arbitrary manner by including the route or area for which actually no application has been made. The applicant for a permit cannot get more than what he seeks and the statutory authority cannot give more than what the applicant seeks. The applicant can only get what the statutory provision permits. Viewing the case from this perspective, I have absolutely no doubt in my mind that the order of the State Transport Authority is not sustainable and the impugned order of the State Transport Appellate Tribunal deserves to be confirmed.

9. The following decisions have been brought to my notice by the learned Counsel for the 3rd respondent:

In the case of *Srinivasa Reddy v R.T.A. Chitradurga*, 1979(2) Kar.L.J. 412, it was held that mistake in mentioning the route in the notification under Section 57(3) would render the notification illegal and that such error cannot be characterised as an irregularity within the meaning of Section 134(2) of the Act.

In the case of *SGM Transport. Co. v Mysore Revenue Appellate-Tribunal*, AIR 1959 Mysore 62, this Court took the view that if the Regional Transport Authority does not publish the real substance of the application made to it and the substance published is different from the substance of the application actually made, it would amount to contravention of Section 53(3).

In my opinion, the principles enunciated in the above decisions are attracted to the facts of the case on hand.

The decision of the Division Bench of this Court in the case of Haji Khan v R.T.A. Kolar and another (Writ Petition No.1272 of 1961 dated 27-11-1961) is not applicable to the facts of this case.

10. In the result, for the reasons stated above, the writ petition is dismissed. Rule is discharged.

ORDER ON ORAL APPLICATION FOR STAY

Immediately after the above order was pronounced, the learned Counsel for the petitioner prayed that the operation of the order be stayed for a reasonable time to enable the petitioner to prefer a Writ Appeal before the Division Bench of this Court. Prayer is allowed and the operation of my order is stayed by two weeks.