

(1999) 09 KAR CK 0066
In the Karnataka High Court

V.C. Basavanna

APPELLANT

Vs

Karnataka State Transport Appellate Tribunal and Others

RESPONDENT

Date of Decision : 29-09-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Karnataka Motor Vehicles Rules, 1989 — Rule 65 (2)
Motor Vehicles Act, 1988 — Section 89 (b), 90

Citation : (2000) 1 ACC 199

Hon'ble Judges : M.P. Chinnappa, J

Bench : Single Bench

Judgement

M.P. Chinnappa, J.—The brief facts leading to this Writ Petition are that the petitioner is the holder of stage carriage permit No. 10/96-97 operating on the route Yakanur to Kayamballi. The 3rd respondent was granted with stage carriage permit by the 2nd respondent under subject No. 173/93-94 dated 3.11.1993 with a direction to the Secretary to assign timing and issue the permit within 30 days from the date of the timings proceedings. Notwithstanding the fact that the RTA fixed the timings as on 1.2.1994 and directed to produce the documents and obtain the permit within 30 days thereafter as per the resolution, the 3rd respondent has not produced the same. He had not obtained the permit even upto 1995 nor had he made any application under Rule 65 of the Karnataka Motor Vehicles Rules, 1989, (for short "the Rules") seeking extension of time in the year 1994. Therefore, the 2nd respondent under subject No. 110/94-95 dated 27.1.1995 revoked the sanction of permit granted under Rule 65 of the Rules as per Annexure A. As against it, the 2nd respondent preferred revision petition in R.P. 275 of 95 and for a period of 4 years no attempt was made either to produce the documents or to obtain permit. Thereafter, the K.S.A.T. while exercising jurisdiction u/s 90 of the Motor Vehicles Act, allowed the revision petition and granted time upto 29.5.1999 as per Annexure B. Subsequently also the respondent did not obtain the permit within 29.5.1999 as per the order under Annexure. B. Therefore, on his application, the Tribunal has further

extended the time till 30.6.1999 as per Annexure C. This order is questioned by the petitioner who is an existing operator under Articles 226 and 227 of the Constitution of India. The 3rd respondent also filed his detailed objections.

2. Heard the learned Counsel Mr. B.R.S. Gupta for the petitioner, the learned Government Advocate for the respondents 1 and 2 and Mr. M.R.V. Achar for R-3.

3. The learned Counsel for the petitioner at the very outset submitted that the Tribunal ought not to have entertained the revision petition u/s 90 of the Act as it is a case where the RTA, Mysore, has withdrawn the permit granted in favour of the 3rd respondent. As against the order of withdrawal only appeal u/s 89(b) has to be preferred and not revision u/s 90 of the M.V. Act.

4. However, the learned Counsel for the respondent No. 3 contended that it is a case where the RTA has withdrawn the order of granting the permit as he has not obtained the permit within the stipulated time. Therefore, the revision petition is maintainable. He also while emphasising his arguments submitted that as against such orders, only revision petitions were entertained hitherto and this objection was not raised by anyone before the Tribunal. The Tribunal has exercised its jurisdiction as provided under the Act. Therefore, it does not call for interference by this Court.

5. To appreciate these arguments, it is now relevant to refer to Section 89 of the Act which reads:

(1) Any person-

(a) aggrieved by the refusal of the State or a Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to him; or

(b) aggrieved by the revocation or suspension of the permit or by any variation of the conditions thereof; or

Sub-clauses (c) to (g) are not necessary for our purpose, hence omitted.

So from the reading of Sub-clause (b) of Section 89 it is clear that in the case of revocation or suspension of the permit or by variation of the conditions thereof an appeal lies to the Karnataka Transport Appellate Tribunal. This will have to be read alongwith Rule 65(2) of the Karnataka Motor Vehicles Rules which reads:

No permit shall be issued until the registration mark of the vehicle to which it relates has, if the form of permit so requires, been entered therein and in the event of any applicant failing to produce the certificate of registration within the prescribed period the Transport Authority may withdraw its sanction of the application.

6. In Rule 65, the word "withdrawal" is used. Therefore, the learned Counsel for the respondent submitted that no permit was issued insofar as the 3rd respondent is concerned in this case. On the other hand, only an order came to be passed. Under those circumstances, it is not a cancellation or revocation of

permit or any variation of the conditions of the permit. Therefore, it is not an appealable order as the authority has withdrawn the order passed by it. In view of this, it is now necessary to find out as to whether the word "withdrawal" includes the revocation or cancellation of the permit. According to Chamber 20th Century dictionary "withdrawal" means to draw back or away; to take back, to recall.

Recall = to call back - revoking

revoke = to recall, call back, withdraw.

If a reference is made to the meaning of those words the words, "revoke" "recall" or "withdrawal" give the same meaning. Just because the words "revoke" and "recall" are not used in Rule 65, but the word "withdrawal" is used, it cannot be said that the appeal does not lie as the words "recall", "revoke" are used in Section 89(2) of the Act. Hence the order withdrawing the permit granted in an appealable order. In view of this, the argument of the learned Counsel that the permit was not obtained by the 3rd respondent and hence the condition of the permit was not violated cannot be accepted. But the Trial Court has imposed a fine of Rs. 3,000/- and directed to obtain the permit. Under those circumstances, he submitted that it is only violation of the condition of the permit. Therefore, the only revision petition lies cannot be sustained. When once an order is withdrawn, the permit sought for is deemed to have been rejected. That being the case, only an appeal lies and not revision petition. Therefore, the order passed by the 2nd respondent is an appealable order as the order was withdrawn which otherwise means that there is no order at all or in other words it means that the order was cancelled or revoked. On that ground, the writ petition ought to be allowed setting aside the order of the Tribunal which entertained the revision and passed the order which is impugned in this writ petition.

7. At this stage, it may be noted that no one including the RTA raised any objection in regard to maintainability of the revision petition. The petitioner was not a party respondent before the KSTAT. Therefore, he had no opportunity to raise this objection. Further, the learned Counsel for R-3 submitted that in cases of this nature, only revision petitions were filed and entertained and no appeal was preferred. Further, no one so far had raised any objections and, therefore, the Tribunal had entertained the revision petitions. This argument was not countered by the petitioner but he submitted that since objections were not raised by anyone in regard to maintainability of the revision petition, the revision petitions were entertained and no one had applied their mind on this question. Therefore, he submitted that as these objections are raised now, the Court may give a ruling so that the parties may approach the Tribunal by preferring an appeal. From these pleadings, it is clear that hitherto either under the Old Motor Vehicles Act, 1939, or after coming into force of the New Motor Vehicles Act, the revision petitions have been entertained in cases where the order in regard to granting of permit was cancelled or withdrawn, failing to produce the stage

carriage alongwith the valid documents and obtain permits within the time granted by the authority. But now I am of the considered view that only appeals lie and not revision petition for the reasons stated above. As no objection was raised, the petition was entertained and orders came to be passed and at this belated stage, I do not want to set aside the order on that ground in this case. The respondent filed a revision petition in view of the long standing practice of filing revision petition in a case of this nature.

8. Counsel for the petitioner has brought to my notice that the authority granted stage carriage permit No. 173/93-94 dated 3.11.1993 with a direction to the Secretary, Regional Transport Authority, Mysore, to assign the timings and the issue the permit within 30 days from the date of timings proceedings. The Secretary, Regional Transport Authority, Mysore, by his order dated 1.2.1994 fixed the timings to the service of the 3rd respondent with a direction to produce the documents and obtain the permit within 30 days as per the resolution of the 2nd respondent failing which permit stands cancelled and the said permit is granted only for a period of 5 years. However, the 3rd respondent has not obtained the permit nor application was filed under Rule 65 of Karnataka Motor Vehicles Rules, 1989, seeking extension of time till 1995. Therefore, the 2nd respondent under subject No. 110/94-95 dated 27.1.1995 revoked the sanction of permit granted under Rule 65 of the Karnataka Motor Vehicles Rules, 1989, as per Annexure A. As against the said resolution, the 2nd respondent preferred Revision Petition 275/95 as stated above. Therefore, it is clear that from 1.2.1994 till 27.1.1995 permit was not obtained. But by revisional jurisdiction and without considering the reason for extension of time sought for by the 3rd respondent and without applying its mind and without there being a speaking order granted time till 29.5.1999 to obtain the permit alongwith a fine of Rs. 3,000/- as per Annexure-B. Therefore, the K.S".T.A.T. ought to have rejected the revision petition filed by the 3rd respondent.

9. Section 90 of the Motor Vehicles Act, 1988, reads as follows:

The State Transport Appellate Tribunal may, on an application made to it, call for the record of any case in which an order has been made by a State Transport Authority or Regional Transport Authority against which no appeal lies, and if it appears to the State Transport Appellate Tribunal that the order made by the State Transport Authority or Regional Transport Authority is improper or illegal, the State Transport Appellate Tribunal may pass such order in relation to the case as it deems fit and every such order shall be final."

(Emphasis supplied)

10. As stated above, as against the order of the STA, an appeal lies u/s 89(2) of the Act. However, as no objection was raised, the revision was entertained as the said practice was in vogue during that time and the Tribunal also has not examined this position of law. Be that as it may, while granting stay also, the Tribunal has not examined whether there is any illegality or impropriety in the

order passed by the authority which was impugned in the revision petition as by then the 3rd respondent failed to obtain the permit from 1.2.1994 the date on which the Secretary fixed the timings till 27.1.1995 the date on which permit was withdrawn. Blindly, the stay order was granted on 2.3.1995 initially till 16.3.1995. Further, it was extended until further orders vide order dated 3.6.1995. The respondent had taken advantage of this order and the matter was pending before the Tribunal for over 4 years without there being any order. Ultimately, on 22nd April, 1999, obviously after he had made all arrangements and after a lapse of a long period, the impugned order was set aside. There was even a delay in preferring the revision petition and without there being any reason the delay also, was condoned. There is no application of mind either to grant stay order as indicated above to allow the revision petition and no finding is given as to whether the order impugned was illegal or improper. As a matter of course, the revision petition was allowed and the time was extended till 29.5.1999. Even as on the date of the order, he was not ready with the bus though he had undertaken before the Court that he would put the bus on route within the stipulated time. After 29.5.1999 also he filed application before the same Tribunal for extension of time and the Tribunal again without going into the question of bona fides on reasonableness on the part of the 3rd respondent herein, extended time till 30.6.1999. It is a clear case of abuse of process of the Court. The respondent has taken advantage of the time granted by the Tribunal and somehow no order was passed as a result of which for 5 long years, the bus was not provided even to the common people who are solely depended on stage carriages. It is further evidenced by the fact that the petitioner had undertaken to operate the service between T. Narasipur and Ukkalageri and back and in the connection it is necessary to refer to Annexure R-1 filed by the respondent. The villagers of Ukkalageri and Mavinahalli of T. Narasipur had represented to the authorities on 26.5.1999. Besides that on 6.2.1999 they made representations before the Motor Vehicles Adalat to provide bus facility to these villages. Tahsildar T. Narasipur also had written a letter dated 23.4.1999 informing that the villagers have sought on 21.4.1999 for introduction of bus service. The villagers further requested the Dvl. Commissioner, Mysore, by letter dated 17.4.1999 to provide bus service. Even on 26.5.1999 the villagers personally represented to provide bus service. At that time, the petitioner had come forward to operate the service for the benefit of the villagers. From this it is clear that the 3rd respondent notwithstanding the fact that he had obtained the order to operate the service facility neglected to put the bus into operation for over 6 years as a result of which neither he operated the service nor he allowed others to operate the service causing untold misery and inconvenience to the common man. These aspects were not considered by the KSTAT but blindly extended time facilitation to him to take sufficient time to put the stage carriage in the permit. In the normal course, the revision petition should not have been entertained at the initial stage and having entertained, the Tribunal ought not to have granted time without insisting on him to operate the service within a stipulated time, more so in this case as there is delay of more than two years.

11. Even otherwise, the respondent could have filed a fresh application as the grant was withdrawn under the new Act. The permits are granted for mere asking unless there is any other legal prohibition. The respondent with a view to avoid others from applying for permits and he being not ready to put the bus into operation and to gain time, filed revision petition. The Tribunal could as well direct him to file fresh application taking into consideration the inordinate delay in introducing the service. As stated above, he successfully dodged the matter for over six long years. The interest of travelling public is a paramount consideration of the authority and the Court. The respondent by his tact abused the process of the Court and the Tribunal also has not applied its mind while granting stay or granting time in the revision petitions on two occasions. There was nothing to stay by the Tribunal as the order was only withdrawn.

12. It is true that subsequent to June, 1999, he started operation of service under the permit granted on 3.11.1993. Before that the petitioner under the circumstances explained above commenced the operation with a view to cater to the needs of the public. In the normal course, I would have set aside the order but in this case, he has commenced the operation of the service and the commuters also were in dire need of the service. Such being the position, if the order is set aside at this belated stage, the 3rd respondent who had invested money for purchasing the bus and to put it into operation and also the commuters who have been accustomed and depending on this for commuting would suffer to a larger extent. Hence under these extraordinary circumstances, I dismiss this petition with the following observations which shall be complied with by the authority as well as the Tribunal hereinafter:

(i) The authority shall not grant more than two months' time at the request of the applicant after the expiry of 30 days initially granted from the date of assignment of timings to obtain the permit and commence operation of service. After 90 days from the date of assignment of timings if the grantee failed to commence operation, the permit granted shall be deemed to have been withdrawn under Rule 65 and the Secretary shall place it before the concerned authority for necessary orders;

(ii) As against the order of withdrawal passed under Rule 65 of Karnataka Motor Vehicles Rules, only appeal lies u/s 89(b) and not revision petition u/s 90. However, if the revision petitions are pending before the KSTAT those petitions shall be disposed of u/s 89(b) only as hitherto it was being entertained by the Tribunal. All the other cases to be filed in future as against the order of withdrawal under Rule 65 shall be registered as appeal.

(iii) If any appeal is preferred, the Tribunal shall not stay the order mechanically. Stay may be granted in the rarest of rare cases as stay would greatly prejudice the commuters. Even if any stay is granted, the appeal shall be disposed of within a maximum period of three months. The stay if granted shall be made till the next date of hearing and the date should be fixed by the Tribunal. However, the appeal should not go beyond the period of 3 months at any rate. These

guidelines are issued in the best interest of the travelling public and to avoid the grantees prolonging to obtain the permits after the assignment of timings by the Secretary. However, in this case on hand though the permit was granted in favour of the respondent in the year 1993, in view of the above observation, I hold that he is not entitled for priority of timings as against this petitioner who commenced the operation at the request of the travelling public much earlier to this petition.