

(1980) 03 KAR CK 0010

In the Karnataka High Court

Case No : Writ Petition No. 13408 of 1979

V.T. Rajakumar and Another

APPELLANT

Vs

The State Transport Appellate Tribunal, Bangalore and
Another

RESPONDENT

Date of Decision : 10-03-1980

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Motor Vehicles Rules, 1963 — Rule 134, 134 (4)
Motor Vehicles Act, 1939 — Section 59 (1), 61

Citation : AIR 1980 Kar 184 : (1981) ILR (Kar) 546 : (1980) 1 KarLJ 404

Hon'ble Judges : K. Jagannatha Shetty, J

Bench : Single Bench

Advocate : N.R. Venkatanarasimhachar, for the Appellant; L. Sreenivasa Reddy, Govt. Pleader, for the Respondent

Judgement

1. Petitioner No. 2 B. R. Vijayachandra is the holder of a stage carriage permit authorised to operate on the route between Siddapura to Virajpet. The *To quash judgment of K. S. T. A. T., Bangalore in Appeal No. 883 of 1:978, said permit is covered by a vehicle bearing Registration No. MYM 3422. He wanted to transfer the permit in favour of petitioner No. 1 V. T. Rajakumar. Both the petitioners approached the Regional Transport Authority ("R.T.A."), Kodagu with an application prescribed for the purpose. Along with the application, the petitioners filed separate affidavits in which they have in identical terms stated that they have been operating the service hitherto under a partnership firm and since petitioner No. 2 has been appointed as a Secretary of Sarvodaya Mahileyara Upadhyaya Shikshana Tharabeti Vidyalaya Committee, it would be difficult to give his undivided attention towards the operation of the stage carriage and he would, therefore, like to transfer the permit in favour of petitioner No. 1. In support of the averments, a partnership deed and a letter intimating the appointment of petitioner No. 2 as a Secretary of the said Educational Institution were also produced. The R.T.A. by its meeting held on 28th Sept. 1978 rejected

the application-. The appeal preferred by the petitioners before the State Transport Appellate Tribunal was also dismissed.

Hence the petitioners have moved this Court under Art. 226 of the Constitution.

2. Before examining the contentions urged for the petitioners, it will be necessary to refer to the "reasons given by the R.T.A. for rejecting the application of the petitioners. To avoid repetition, I would rather, extract hereunder the relevant portion of the said order:

"It is possible to create this document on any date. There is no other document to support the claim that it was a partnership business. Besides, the reason given that since the seller wants to settle down in the Management of private teachers college does not appear to be valid inasmuch as he continues to be a dormant partner along with this permit. Moreover, the buyer has already 3 permits in his name. The members also felt that this may be another way of circumvention of the law on trying to monopolise the route since getting a fresh permit will be otherwise difficult. It was, therefore, resolved that this application for transfer of permit be rejected and ask both the parties to appear before the R.T.A. For fresh permit under Rule 134 (4) of the Karnataka Motor Vehicles Rules, 1963."

It is clear from the above order "that the R.T.A. has given the following three reasons: (1) That the partnership deed produced by the petitioners does not appear to be genuine. (2) that the reasons given by petitioner No. 2 that he wants to settle down as a Secretary of the Educational Institution does not appear to be valid inasmuch as he continues to be a dormant partner along with petitioner No. 1. (3) Petitioner No. 1 has already 3 permits in his name and if the permit in question is also transferred to him it would be circumventing the law relating to grant of permits and he would try to monopolise the route.

3. Mr. Achar, learned counsel for the petitioners urged that these reasons are invalid inasmuch as they are extraneous to the issue under consideration. It seems to me that the contention urged is well founded and must be accepted as correct. S. 59 (1) of the Motor Vehicles Act provides for transfer of permits. It states that save as provided in Section 61, a permit shall not be transferable from one person to another except with the permission of the transport authority which granted the permit. R. 134 of the Karnataka Motor Vehicles Rules, 1963 provides procedure for making an application for transfer and disposal of such applications. It provides that a party must make a joint application in writing in Form No. 78 P. Tr. A. to the R.T.A. setting forth the reasons for the proposed transfer. The R.T.A. upon receipt of the application may require any party to state in writing whether any premium, payment or other consideration arising out of the transfer, is to pass or has passed between them and the nature and amount of any such premium, payment or other consideration. The rule further provides that if upon an enquiry the R.T.A. is satisfied that any matter stated to it by the parties was false it may refuse to transfer the permit and may declare void any transfer made upon such application. For the purpose of the enquiry, the R.T.A.

may summon both the parties to the application to appear before it and may, if it deems fit, deal with the application as if it were an application for a permit. The rule also states that if the R.T.A. is satisfied that the transfer of a permit may properly be made it may make consequential entries In Parts A and B of the permit.

It is seen from these provisions that a transfer of a permit from one person to another is prohibited unless it is permitted by the Transport Authority who granted that permit. For granting such "permission or for rejecting it, S 59 or the Rules framed there under do not provide any guidelines. But it is apparent that the section is for benefit of ;the permit-holder. It is the duty of the courts to construe such provisions so as Ito encroach as little as possible on the liberties of the permit holders.

The Rules provide that an application for transfer may be disposed of as if it were an application for permit. That means the action of the R.T.A. should solely be guided in the interests of the traveling public generally. Exercise of power to sanction the transfer of a permit under S. 59 (1) is held to be quasi-judicial (See Ravi Roadways Vs. Asia Bi and Others, Since the power is quasi-judicial. There shall be an objective determination of the question without the consideration of irrelevant or extraneous Matters.

4. With these prefatory observations, let me now examine the validity, of the reasons given by the R.T.A. The first reason given by the R.T.A. is that the partnership business by which the vehicle in question is being operated by the petitioners appears to be not genuine. In my view, it is immaterial whether there is a partnership business between petitioner No. 1 and petitioner No. 2. Petitioner No. 2 does not want to transfer his permit in the name of the partnership firm. He seeks permission of the R.T.A., to transfer his permit in the name of petitioner No. 1. Therefore, whether Inhere is a partnership business as between the parties and whether that partnership) business is genuine or not is wholly beside the point. Likewise, the other reasons given by the R.T.A. are also not relevant and if I may say so, are wholly irrelevant. The R.T.A. has stated that petitioner No. 1 has three permits and if he gets one more by transfer it would be a circumvention of the law and an attempt to monopolise the route. Firstly, there is no law preventing a person to get one more permit if he is already in possession of three permits. On the contrary if he gets one more permit, it would take him nearer to a viable unit. R, 140 defines "a viable unit" to mean "an operator who is the owner of not less than 5 stage carriages or public carriers plying within the State, Viable unit in the context means, to make the operator economically sound to operate effectively the services in the interest of the public. Secondly, it would be wrong to state that petitioner No. 1 would be monopolizing the route. The question of monopoly does not arise since he is yet to attain a viable unit.

What remains to be considered is whether the personal disability pleaded by petitioner No. 2 stating that he has been appointed as a Secretary of an

Educational institution and, therefore, he could not give his undivided attention to transport business is true or not. The R.T.A has stated that it does not appear to be valid inasmuch as he continues to be a dormant partner along with petitioner No. 1. Petitioner No. 2 has Produced unimpeachable document Exhibit "C" which is a letter written by the President of the Sarvodaya Educational Trust, Virajpet, Kodagu stating that petitioner No. 2 is working as full-time Secretary of the Educational Trust. There is no good reason to doubt this documentary proof. Here is a case where the holder of a permit finding himself unable to give his undivided attention to the transport business wants to transfer his permit in the name of petitioner No. 1 so that the latter with his rich experience could serve the interests of the public better. The R.T.A., in my judgment, ought not to have refused to grant the permission sought for. If the holder of a permit intends to transfer his permit in the name of another on account of personal difficulties or other genuine problems and if the other person is in a better position to serve the interests of the traveling public by taking over the service, then there is every justification for the R.T.A. to sanction the transfer.

5. In the result, the rule is made absolute and the impugned orders are quashed. The R.T.A. Kodagu shall grant the required permission for petitioner No. 2 to transfer the permit in favour of petitioner No. 1, in accordance with law.

6. In the circumstances, however, I make no order as to cost.

7. Petition allowed.