

(1974) 10 KAR CK 0002

In the Karnataka High Court

Case No : Writ Petition No's. 2496 and 2497 of 1972

Y.R. Raju and Another

APPELLANT

Vs

Mysore Revenue Appellate Tribunal and Others

RESPONDENT

Date of Decision : 31-10-1974

Acts Referred:

Karnataka Revenue Appellate Tribunal Regulations, 1969 — Regulation 85
Motor Vehicles Act, 1939 — Section 57 (3), 57 (5)

Citation : AIR 1975 Kar 171 : (1975) 1 KarLJ 401

Hon'ble Judges : K. Jagannatha Shetty, J

Bench : Single Bench

Advocate : C.S. Shantamallappa, for the Appellant; M.R. Venkatanarasimha Char and A.S. Viswanath, for the Respondent

Judgement

1. These two petitions under Articles 226 and 227 of the Constitution arise out of the common order dated 14th September, 1972 made in Appeal No. 189 of 1970 (MV) on the file of the Karnataka Revenue Appellate Tribunal. Bangalore.

2. The facts leading up to these petitions are these :

Respondents 4 and 5 jointly filed an application on 28th March, 1963, before the Regional Transport Authority, Bangalore, for a permit to operate a stage carriage on the route Kelamangala to Bangalore and back. The said application was published in the Gazette inviting representations from the public. Among those who filed the representations opposing the grant of permit was, one Y. K. Rudrappa, father of the petitioner in W. P. No. 2496 of 1972. The petitioner in W. P. No. 2497 of 1972 also filed his representation. The Regional Transport Authority, after considering the representations, refused to grant the permit to the applicants by its Resolution dated 10th December, 1965. The Regional Transport Authority was of the opinion that there was no need for the grant of permit and the applicants being new entrants were also not entitled for it. The applicants took up the matter in an appeal before the Karnataka State Transport Appellate Tribunal. The Tribunal dismissed the appeal while affirming the said

findings recorded by the Regional Transport Authority. Thereupon the applicants preferred a second appeal before the Karnataka Revenue Appellate Tribunal, Bangalore. In the said appeal, Y. K. Rudrappa was impleaded as respondent 11 and the petitioner in W. P. No. 2497 of 1972 as respondent 3. Both of them were duly served with the notices of the appeal on or about the 22nd November, 1968. On 6th April, 1969, during the pendency of the appeal, Rudrappa died. On 6th September, 1972 the appellants therein filed an application praying for deleting the name of Rudrappa and that prayer was immediately granted by the Tribunal. The appeal was thereafter heard on merits without bringing on record the legal representatives of the deceased Rudrappa. On 14th September, 1972 the Tribunal allowed the appeal and granted the permit to operate a stage carriage on the proposed route from Kelamangala to Bangalore via Dankanikota, Than, Madhugondanahalli, Kalakondanahalli, Bylagondanahalli, Modahalli, Poonahalli border, Sammandur, Anekal, Bagadadenahalli, Iggalur, Chandapur, Madiwala. The grant was subject to the condition that the operators should not pick up or set down passengers on the monopoly route operated by the State Road Transport Corporation.

3. W. P. No. 2496 of 1972 has now been brought by the son of Rudrappa, challenging the validity of the permit on the main ground that he has succeeded to the interests of his father; that he was a necessary party to the appeal before the Tribunal and the permit granted by the Tribunal without notice to him was illegal and without authority of law. W. P. No. 2497 of 1972 has been preferred on the contention among others, that there was no need for the grant of permit.

4. Both these petitions can be conveniently disposed of by this common order.

5. The first question which arises for consideration is, whether it was obligatory for the appellants before the Tribunal to have brought on record the legal representative of the deceased Rudrappa who was a party respondent in the appeal. This question turns on the principle whether in the case of death of an objector, his legal representative is necessary party to the "proceedings for the grant of permit under the Motor Vehicles Act. If the legal representative is held to be a necessary party, then it goes without saying that the Tribunal could not have proceeded with the appeal and granted the impugned permit since admittedly Rudrappa's legal representative was not brought on record.

6. The Motor Vehicles Act, does not provide provision for impleading the legal representatives of a deceased applicant for permit, or to bring on record the person who succeeds to the rights of a deceased objector. Order XXII of the CPC does not apply to proceedings under the Motor Vehicles Act. The courts, however, by relying on Section 61 of the Motor Vehicles Act providing for transfer of permit on the death of the holder of a permit, have laid down that a successor to the possession of the vehicle could come on record, if the authority under the Act allows such substitution in the public interest. In Dhani Devi Vs. Sant Bihari and Others, the Supreme Court observed :

"We are inclined to think that in the case of death of the applicant before the final disposal of his application for the grant of a permit in respect of his vehicles the Regional Transport Authority has power to substitute the person succeeding to the possession of the vehicles in place of the deceased applicant and to allow the successor to prosecute the application. As the relief sought for in the application is dependent upon and related to the possession of the vehicles, the application is capable of being revived at the instance of the person succeeding to the possession of the vehicles."

It was further observed:

"Where the successor is allowed to prosecute the application, the Regional Transport Authority may have to take into consideration many matters personal to the successor, such as his experience, the facilities at his disposal for operating the services and his adverse record, if any. The matters personal to the deceased applicant can no longer be taken into account."

In *Ram Autar Lal Jain Vs. Maya Kaur and Others*, , the Supreme Court after considering the principles stated in *Dhani Devi Vs. Sant Bihari and Others*, , observed thus :

"A person in possession of a transport vehicle is not entitled to a permit as a matter of right. The only right is to make the application for the grant of a permit. There is no provision in the Act as to what happens on the death of an applicant for permit during the pendency of the application. The Regional Transport Authority has jurisdiction and discretion in the matter of allowing or refusing substitution."

It was also observed:

"In the case of death of an applicant for the grant of a stage carriage permit before the grant of a permit the heirs can apply for substitution in place of the original applicant. There is no legal right to the grant of a permit. The Regional Transport Authority has jurisdiction and discretion in the matter of allowing or refusing substitution.

If the proceedings are likely to be delayed or a substitution will be detrimental to the interest of the public, the Regional Transport Authority is not bound to allow substitution. There is jurisdiction to grant or allow or refuse substitution. The Regional Transport Authority will exercise discretion in a judicious manner on the facts and circumstances of each case as to whether a substitution may be allowed."

From these decisions, it is clear that it is within the judicial discretion of the authorities under the Motor Vehicles Act to permit substitution of heirs in place of the deceased applicants. The heirs cannot claim that they have a right to prosecute the application or appeal for permit.

What then is the right of the heirs of an objector who died after making a

representation opposing the proposed grant of permit. Certainly, he cannot be in a better position than the heirs of an applicant for permit. The objector's right is no more than to make a representation against the proposed grant of permit as provided by Section 57 (3) of the Act. If he makes any representation, he gets a right of hearing either in person or by his duly authorised representative as provided by Section 57 (5) of the Act. It is a right personal to the objector and cannot as of right be claimed by his heirs, unless and until the authority before whom the representation was made, allows substitution of the heirs of the objector. The allowing or refusing substitution of the heirs as observed by the Supreme Court in *Ram Autar Lal Jain Vs. Maya Kaur and Others*, is always within the judicial discretion of the authority and the heirs cannot claim that they have right to come on record. From these principles, it can safely be observed that the heirs of a deceased objector cannot be regarded as necessary (parties to the proceedings for the grant of permit and the applicant for permit is under no obligation to implead them.

7. Mr. Shanthamallappa, learned counsel for the petitioners did not dispute the above proposition of law. But he submitted that the position in the appeal would be different. According to him, Rudrappa was anecessary party to the appeal against the order rejecting the application for permit and, since Rudrappa died during the pendency of the appeal, his successor was also necessary party to the appeal and that appeal could not have been decided without impleading the necessary parties.

8. I do not see any logical distinction in the principles governing the original and the appellate proceedings. The appeal is a continuation of the original proceedings. If the heirs of an objector are not necessary parties to be impleaded in the original proceedings for the grant of permit, I fail to see any good principle why they should be considered to be necessary parties to the appeal.

9. Mr. Shanthamallappa, in support of the contention, relied upon Regulation 85 of the Karnataka Revenue Appellate Tribunal Regulations, 1969. The said Regulation provides:

"85. If the respondent or opponent dies while the appeal or petition is pending and the same cannot be (proceeded with unless his legal representative is made a party to the appeal or petition, the appellant or petitioner shall apply to the Tribunal for making legal representative of such deceased person a party to the appeal or petition within 80 days from the date on which the respondent or opponent dies. If the appellant fails to do so, the appeal petition shall abate as regards deceased. If the deceased be the sole respondent or opponent, then the appeal or petition shall be dismissed. Otherwise, it shall be proceeded with, in respect of the remaining respondents or opponents."

It was contended that, even if the Motor Vehicles Act does not provide procedure or provision for substitution of the heirs of a deceased objector, it was the duty of

the appellants before the Tribunal to have impleaded the heirs of Rudrappa, under the said Regulation.

I do not think that that regulation is of any assistance to the contention urged. The said regulation provides for impleading the legal representative of the deceased respondent or opponent who dies during the pendency of an appeal or a petition which appeal or petition could not be proceeded with, for want of legal representatives, it is only in such cases the substitution of the heirs of the deceased would be obligatory, to avoid abatement of the appeal or petition. In the instant case, the appeal before the Tribunal would not have abated if the successor or heir of the deceased Rudrappa was not impleaded. The appellants did not claim any relief against Rudrappa. The authorities under the Motor Vehicles Act, are not adjudicating the inter se rights of the parties i.e. the applicants and the persons who file any representation. They are required to grant or refuse permits taking into consideration the interest of the public.

10. I shall now turn to the next contention urged for the petitioners, i.e., whether the impugned (permit was contrary to Section 48 of the Motor Vehicles Act.

It was urged that the application made for permit on the route Kelamangala to Bangalore did not mention the intermediate places in the order in which they are on the route from Kelamangala to Bangalore, and the permit on such application should not have been granted u/s 48 of the Act. Section 48 provides :

"Subject to the provisions of Section 47, a Regional Transport Authority may, on an application made to it u/s 46, grant a stage carriage permit in accordance with the application or with such modification as it deems fit or refuse to grant such a permit."

It is true that the applicants have committed an error in mentioning one or two names of the villages not in the order in which they are situated on the route from Kelamangala to Bangalore. But the Tribunal by its operative portion of the order has correctly set out the names of villages in the order in which they come on the said route. u/s 48 of the Act, the authority could grant permit in accordance with the application made for the purpose, or with such modification as it deems fit. In the exercise of that power, the Tribunal has corrected the error committed by the applicants in their application. I, therefore, reject the contention urged for the petitioners.

Apart from that, the applicants asked for permit on the route from Kelamangala to Bangalore and that was one which was granted by the Tribunal, The error, if any, in mentioning the intermediate villages on the said route, in my view, is not fatal to the application, so long as the intention of the applicants and the authority, remains the same, i.e., to obtain or grant permit on the route Kelamangala to Bangalore.

11. The next contention urged was relating to the schedule of timings. It was urged that the schedule of timings proposed by the applicants in their application

would seriously prejudice the interests of the petitioners as they are rival operators on the sector of the route. Counsel for the grantee submitted before me that the schedule of timings is yet to be assigned and the permit has not yet been issued. If that is the position, the contention cannot be considered at this stage.

12. The last contention urged that there was no need for the grant of permit must also be rejected, I have perused the order of the Tribunal. The conclusion of the Tribunal that there is a need for the grant of permit is justified on the evidence on record. The Tribunal has reached that conclusion on the appreciation of evidence, which must be held to be conclusive in these petitions.

13. In the result, these petitions fail and are dismissed. In the circumstances, I make no order as to costs.

14. Petitions, dismissed.