

B.A. Bhavikumar Vs. Regional Transport Authority and ors.

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Court : Karnataka

Decided On : Feb-03-2006

Reported in : II(2006)ACC482; AIR2006Kant160; ILR2006KAR1164; 2006(2)KarLJ191

Judge : S. Abdul Nazeer, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 57(3), 71, 71(3), 115, 214 and 214(3); Code of Civil Procedure (CPC) - Order 20 Rule 3

Appeal No. : Writ Petition No. 26839/2005

Appellant : B.A. Bhavikumar

Respondent : Regional Transport Authority and ors.

Advocate for Def. : H.B. Nagaraja, Adv. for R-2, ;H.M. Manjunath, HCGP for R-1 and ;K. Nagaraja, Adv. for R-3

Advocate for Pet/Ap. : M.R. V. Achar, Adv.

Judgement :

ORDER

S. Abdul Nazeer, J.

1. Petitioner is a stage carriage operator, operating his services in Coorg District. He had filed an application for grant of stage carriage permit to operate on the route between Coorg border and Somawarpet, via Kutta, Srimangala, Ponnampet, Gonikoppa, Virajpet, Madikere and back, one round trip a day. Since the said application was not considered by the 1st respondent he had filed writ petitions before this Court in W.P. Nos. 17455/2001 to 17459/2001. This Court by the order dated 31.5.2001 directed the Regional Transport Authority, Madikeri, (For short 'RTA') to consider the said application in accordance with law. Thereafter, the R.T.A. considered the application of the petitioner along with several other applications and passed a resolution as per Annexure 'B' on 27.8.2005 resolving to grant permit in favour of the petitioner. Timings have been assigned by the Secretary of the RTA as per Annexure 'D' on 24.9.2005. The permit was issued in favour of the petitioner as per Annexure 'E'. Since there was a mistake in the resolution of the R.T. A, a Corrigendum was been issued as per Annexure 'F', correcting the said mistake.

2. The 2nd respondent is a rival stage carriage operator operating his services in Coorg District. He has challenged the grant of the said permit before the Karnataka State Transport Appellate Tribunal, Bangalore (for short 'the Tribunal') in RP No. 724/2005 mainly on three grounds. First ground is that Corrigendum issued by the 1st respondent is contrary to the rules of natural justice. Secondly, that the permit is contrary to Section 71(3)(a) of the [Motor Vehicles Act, 1988](#) and thirdly, that each page of the resolution was not signed by the Chairman and Members of the R.T.A. Thus, the resolution is i 1 legal and unenforceable in law. The Tribunal has allowed the revision petition and hits set aside the permit in question by the impugned order. The petitioner has called in question the said order of the Tribunal in this writ petition.

3. I have heard Sri. M.R.V. Achar, learned Counsel appearing for the petitioner, Sri. H.B. Nagaraja, learned Counsel for the respondent No. 2 and Sri. K. Nagaraja, learned Counsel for respondent No. 3.

4. Learned Counsel for the petitioner submits that the petitioner had filed the application seeking grant of permit from Coorg border to Somwarpet. He has not

sought for a permit from Coorg border to Kodlipet. The route from Coorg border to Somwarpet does not traverse the notified routes. The RTA has wrongly shown in its resolution that the application is on the route Coorg border-Kutta-Madikeri-Kodlipet and back. He has drawn my attention to the route map, the assignment of timings and the permit granted by the RTA pursuant to the resolution. Since there was an error in the resolution, a Corrigendum was issued as per Annexure 'F' correcting the mistake in the resolution. Learned Counsel for the 2nd and 3rd respondents argue that the 2nd and 3rd respondents have opposed grant of permit in favour of the petitioner before the RTA. Therefore, the RTA ought to have heard them before issuing the corrigendum as per Annexure 'F'. Thus, the corrigendum at Annexure 'F' is opposed to the rules of natural justice.

5. Learned High Court Government Pleader has produced the original records. It is evident from the records that the petitioner has filed the application on 30.8.2000 seeking grant of permit on the route from Coorg border to Somwarpet and back. The route map annexed to the application is also clear that the application of the petitioner was from Coorg border to Somwarpet. The route in question does not traverse any of the routes in Hassan District. It is not in dispute that the route from Coorg border to Somwarpet does not traverse any of the notified Schemes, However, in the resolution of the R.T.A. it is noted that the application of the petitioner was from Coorg border to Kodlipet via Kutta and Madikeri. The RTA has assigned timing on 24.2.2005 pursuant to its resolution. The timings assigned are from Coorg border to Somwarpet. Permit has been issued as per Annexure 'E'. Even as per the permit, the proposed route is from Coorg border to Somwarpet and back. Thus, it is clear that an error has crept in, in the resolution at Annexure 'B' wherein it was noted that the application was from Coorg border to Kodlipet and back. Therefore, a corrigendum has been issued by the RTA as per Annexure 'F' correcting the mistake that has crept-in its resolution. The corrigendum is as follows:

CORRIGENDUM

With reference to the subject No, 29/ 2000-01, in the proceedings dated 27.8.2005, the matter to be read as Coorg border to Somwarpet and back, instead

of Coorg border to Kodlipet and back. Hence the corrigendum.

If the application of the petitioner is read along with the resolution, assignment of timing and the proposed route in the permit, it is clear that RTA has considered grant of permit on the route from Coorg border to Somwarpet. The Corrigendum has only corrected the mistake that had crept-in in the resolution. No prejudice, whatsoever has been caused to the contesting respondents by the correction of the mistake. It is not the case of the respondents that the route from Coorg border to Somwarpet traverses the notified routes. Therefore, securing a joint route survey report is unnecessary. RTA was justified in granting permit to the petitioner on the route from Coorg border to Somwarpet because it is in conformity with the application of the petitioner seeking grant of permit. In my view the Tribunal has erred in holding that the RTA has considered the application for the route not applied for by the petitioner.

6. In so far as the second ground is concerned, Learned Counsel for the petitioner argues that the Tribunal is not justified in holding that the permit granted in favour of the petitioner is contrary to Section 71(3)(a) and Section 115 of the Act. It is pointed out that Section 71(3)(a) has no application because the Central Government has not directed the State Government to limit the number of stage carriages to generally or of any specified type operating in the area in question. It is further argued that the decision relied on by the Tribunal in *A.G. Belliyappa and Ors. v. Union of India and Ors.* W.P. 23625/1994 dated 24.09.1997 has no application to the facts of this case. On the other hand, Learned Counsel for the respondent No. 2 contends that the permit granted by the RTA in favour of the petitioner is contrary to the directions contained in *A.G Belliyappa's case (supra)*.

7. Section 71 of the Act provides the procedure for considering the application for stage carriage permits. Sub-Section (3)(a) of Section 71 of the Act states that the State Government shall, if so directed by the Central Government having regard to the number of vehicles road conditions and other relevant matters, by notification in the Official Gazette, direct a State Transport Authority and a Regional Transport Authority to limit the number of stage carriages generally or of any specified type, as may be fixed and specified in the notification, operating on city routes in towns

with a population of not less than five lakhs. The provision makes it clear that the State Government has to issue a notification as may be directed by the Central Government. It is not the case of the respondents that Central Government has issued any directions in accordance with the said provision. Without there being such a direction, question of State Government issuing a notification directing the STA and the RTA as the case may be to limit the number of stage carriages in the area in question does not arise. In A.G Belliyappa's case (supra) the respondents were directed to evaluate the situation in the light of upto date number of permits issued and if necessary to issue notification under Section 71(3)(a) read with Section 115 of the Act. Four months time was granted from the date of disposal of the writ petition to complete the said process, and until the process is complete the authorities were directed not to issue new permits. The Court has made it clear that the State Government has to issue notification under Section 71(3)(a) of the Act if necessary. As noticed above, it is not the case of the respondents that Central Government has issued a direction to the State Government to issue notification in terms of Section 71(3)(a) of the Act. It is not even the case of the respondents that the State Government has issued any notification either under Section 71(3)(a) or under Section 115 of the Act prohibiting grant of stage carriage permits to operate in the area in question. Therefore, in my view the said decision is not applicable to the facts of this case. The Tribunal without taking note of this aspect of the matter has held that grant of permit in favour of the petitioner is contrary to law. In my view the finding of the Tribunal is clearly not sustainable for the reasons stated above.

8. On the third ground, learned Counsel for the petitioner would argue that though the resolution was not signed by the Chairman and Members at each page, the last page was signed by them. During the pendency of the case before the Tribunal the matter was taken up again by the RTA as per Annexure 'L' dated 23.11.2005. The mistake committed earlier has been rectified by signing on each page of the resolution. Thus, the procedural irregularity committed earlier has been cured. Apart from the above, learned Counsel for the petitioner would further argue that having regard to Section 214(3) of the Act, the Tribunal is not justified in reversing the order of the RTA particularly when it is not shown that the error or the omission or irregularity has not occasioned failure of justice. On the other

hand, learned Counsel for the 2'd respondent would argue that the resolution of the RTA is illegal as the same has not been signed on each page by its Chairman and the Members. In support of his contention, he has placed reliance on the decision of this Court in *Doraiswamy v. Karnataka State Transport Authority and Ors.* W.A. No. 3399/2005 disposed of on 27.9.2005.

9. From the material on record, it is clear that when the revision was filed before the Tribunal, the resolution was signed by the Chairman and its Members only on its last page. Admittedly each page of the resolution was not signed by the Chairman and the members of the RTA, which is only a procedural irregularity. The material on record also establishes that during the pendency of the proceedings, RTA has taken up the matter again for the purpose of curing the defect in the resolution. It is noticed that in a revision involving similar question, the Tribunal has set aside the resolution and the matter was remitted to the RTA following the decision in *Doraiswamy's* case. The RTA cured the deficiency pointed by the Tribunal. Similarly, RTA rectified the procedural irregularity in the resolution in question by signing on each page. It is true that this Court in *Doraiswamy's* case (*supra*) has held that each page of the resolution has to be signed by the Chairman and the Members with a view to avoid mal-practices/ manipulation on the part of the Administrative/Ministerial Staff of the Tribunal. However, in the present case, the irregularities committed has been cured subsequently which is evident from the proceedings of the RTA dated 23.11.2005. Thus, the resolution has become valid and enforceable. In the case of *Iqbal Ismail Sodawala v. The State of Maharashtra and Ors.* : 1974 CriLJ1291 the Hon'ble Supreme Court has held that failure of the Presiding Judge to sign the Judgment at the time of pronouncing it is only a procedural irregularity. It is found that the Judgment was subsequently signed by the Presiding Judge and that the procedural irregularity has not occasioned failure of justice. In *State of West Bengal v. Sree M.A. Engineering and Anr.* : [1988]1SCR69 the Apex Court was considering the validity of an unsigned award. It has been held that the defect is only a formal in nature and that timing for making the award could be extended so that the Arbitrator could sign the same and cure the technical error. Again in *Vinod Kumar Singh v. Banaras Hindu University and Ors.* : [1988]1SCR941 , while considering order 20 Rule 3 of C.P.C. the Apex Court has been held that when a

Judgment pronounced in the open Court, parties act on the basis that judgment and that the signing is a formality to follow.

10. It is not the case of the 2nd respondent before the Tribunal that due to non-signing of the resolution on each page by the Chairman and the Members, the 2nd respondent has been put to any prejudice or that the same has occasioned a failure of justice. Sub-Section (3) of Section 214 of the Act states that no order made by a competent authority under the Act shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the proceedings, unless it appears to the prescribed Appellate Authority or Revisional Authority as the case may be that such error, omission or irregularity, has in fact, occasioned a failure of justice. This Court in *A. Narayana Kamath v. State Transport Authority and Ors.* AIR 1960 MYSORE Page 33 was considering the violation of Section 57(3) of the old Act. It has been held that such a violation is merely a procedural irregularity. It has been further held that the Tribunal would have been right in quashing its proceedings, had it, as required by Section 134(2) of old Act (which corresponds to Section 214(3) of the New Act) recorded a finding that the irregularity had in fact occasioned failure of justice. It is to be stated here that although a resolution without signature on each is a procedural irregularity, it is impressed upon the RTA's that signing each page of the resolution should be strictly adhered to in order to avoid mal-practice/manipulations on the part of the administration/ministerial staff. It is not urged on behalf of the contesting respondent that the defect in the resolution of the RTA has occasioned failure of justice. The irregularity committed by the RTA is at best a procedural irregularity; which has been cured subsequently. The contesting respondent is not put to any kind of prejudice by the defect in the resolution. The Tribunal has interfered with the resolution of the RTA without noticing the mandate contained in Section 214(3) of the Act. In my view, the decision in *Doraiswamy* 's case is not applicable to the facts of this case.

11. In the result, the writ petition succeeds and it is accordingly allowed. The order of the Tribunal in R.P. No. 724/2005 dated 7.12.2005 (Annexure 'K') is hereby quashed. No costs.

