

Rahamathulla Vs. Karnataka State Transport Appellate Tribunal and ors.

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Court : Karnataka

Decided On : Nov-19-1984

Reported in : ILR1985KAR2749

Judge : K.A. Swami, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 64A

Appeal No. : W.P. No. 15585 of 1984

Appellant : Rahamathulla

Respondent : Karnataka State Transport Appellate Tribunal and ors.

Advocate for Def. : S. Udayashankar, H.C.G.P. for Respondents 1 and 2, ;Jauvaji Srinivasalu, Adv. for Respondent 3, and ;M. Rangaswami, Adv. for Respondent 4

Advocate for Pet/Ap. : C.S. Shanthamallappa, Adv.

Disposition : Writ petition dismissed

Judgement :

ORDER

K.A. Swami, J.

1. In this Petition under Articles 226 and 227 of the Constitution, the petitioner has sought for quashing the order dated 11th September, 1984 passed by the first

respondent in RevisionPetition No. 63/83 (Annexure-C). The petitioner holds a stage carriage Permit No.P. St.P.1/78-79 valid upto 31-3-1986 covered by the vehicle bearing No, MYK. 4069 for the routes (1) Agaram to Mulbagal via Koladevi trips, (2)Mulbagal to K. Byapally via Alangur-2 trips; (3) Mulbagal to Ugani via Nangali-1 trip. He has applied for variation of the conditions of the permit by curtailment of first round trip on the route Agaram to Mulbagal via Koladevi and by inclusion of the new route from Agaram to Sreenivasapura, After following the required procedure, the R.T.A. (2nd respondent) has curtailed the first round trip on the route Agaram to Mulbagal and has granted theinclusion of the route from Agaram to Sreenivasapura, by its resolution dated 3rd May, 1982 passed in Subject No, 5/82 (Annexure-B). The Karnataka State Road Transport Corporation (respondent-4) was not one of the objectors. Similarly, respondent-3 (Sri Y. Ramaiah Shetty) also was not an objector. Nevertheless, Sri Y. Ramaiah Shetty preferred an appeal bearing No. 490/82 against the aforesaid grant of variation of the conditions of permit before the first respondent. The appeal preferred by the 4th respondent was converted as Revision Petition No. 63 of 1983, as the 4th respondent was not an objector. As far as the Appeal No. 490/82 was concerned, a joint memo was filed by the appellant therein and also the grantee of the variation of the conditions of permit on 5.9.1984 for confirming the grant of variation of conditions of the permit and for assigning the modified timings. From para2 of the order of the first respondent, it is clear that the said joint memo has been allowed. However, a common order was passed both on the appeal preferred by the 3rd respondent and also the revision preferred by the 4th respondent. The first respondent came to the conclusion that since there was overlapping of the notified route included in the Kolar Pocket Scheme, the grant of variation from Agaram to Sree Sreenivasapura was not permissible in law. Accordingly, the first respondent allowed the revision petition and set aside the variation of the conditions of the permit granted by the 2nd respondent by inclusion of the route Agaram to Sreenivasapura.

2. Sri Shanthamallappa, learned Counsel for the petitioner, contends that the revision filed before the first respondent was not maintainable as the resolution granting the variation of the conditions of the permit was anappeasable order and as no appeal was preferred, the first respondent was not competent to revise the

order; in other words, the Revision Petition was not maintainable. It is also further submitted that even on merits also, the first respondent was not right in holding that there was overlapping, where as it was only an inter section.

3. The points that arise for consideration in this Petition, are as follows:

i) Whether it was open to the first respondent to exercise revisional jurisdiction against the grant of variation of conditions of the permit in the absence of an appeal?

ii) Whether the route Agaram to Sreenivasapura overlaps the notified route included in the Kolar Pocket Scheme?

4. Point No. (i): The contention is mainly based upon the wordings contained in Section 64-A of the Motor Vehicles Act (for short, the 'Act'), i.e., 'in which no appeal lies'. It is contended that as against the order passed by the 2nd respondent, an appeal is provided; therefore the revisional jurisdiction could not have been exercised by the first respondent. Learned Counsel, in support of this contention, has relied upon a decision of the Supreme Court, in *Tansukh Rai Jain v. Nilratan Prasad Shaw & Ors.*, AIR 1960 SC 1780

4.2. On the contrary, it is contended by Sri M. Rangaswamy, learned Counsel for the KSRTC (4th respondent), that the KSRTC not being an objector had no right of appeal ; therefore, it is entitled to invoke the revisional jurisdiction and the appeal preferred by the KSRTC has been treated as incompetent and it is converted into a revision. It is also submitted that the Tribunal has wide powers in the matter and the revisional jurisdiction is part of the appellate power; in other words, it flows from the power of the superior authority; therefore irrespective of the fact that the order was appealable and no appeal was preferred nothing prevented the first respondent to exercise the revisional power when the order was without jurisdiction. In support of his contentions, learned Counsel has placed reliance on two decisions of the Supreme Court, in *Nilakanth Prasad v. State of Bihar*, : AIR 1962 SC1135 and in *Shankar Ramachandra Abhyankar v. Krishnaji Dattatreya Bapat*, : [1970]1SCR322 .

4.3. Section 64-A of the Act, as it stood prior to 1st April, 1971, the revisional jurisdiction was vested with the State Transport Authority. It came to be amended with effect from 1-4-1971 by Act No. 56/69. As a result thereof, the State Transport Appellate Tribunal came to be invested with the revisional as well as appellate powers. In Tansukh Rai Nilratan Prasad the Supreme Court considered whether Section 64-A of the Motor Vehicles Act, as introduced by Bihar Amendment Act XXVII of 1950 stood repealed or was repugnant to Section 64-A of the Act, as enacted by Central Act No. 100/56 and amended by Central Act No. 56/69. Their Lordships, after considering the scope of both the sections, came to the conclusion that the amendment to Section 64-A of the Act, did not have the effect of repealing Section 64-A as introduced by the Bihar Amendment Act XXVII of 1950, inasmuch as the Bihar Act provided for revision against the orders against which no appeal was provided to State Transport Authority under Section 64-A, of the Central Act, as it stood then. The Supreme Court, in that case, was not called upon to consider whether the authority which enjoyed both appeal and revisional jurisdiction, could exercise revisional jurisdiction in a case where no appeal was preferred. Therefore, it is not possible to hold that the point in question is covered by the aforesaid decision of the Supreme Court. Whereas, in Nilakanth Prasad's case, the appeal preferred was found incompetent and the Appellate Authority exercised the revisional jurisdiction, the Supreme Court held that such a course was permissible and the revisional authority had ample power. The relevant portion of the Judgment is as follows :

'5.....In view of the fact, therefore, that the scheme had been notified and route 'AB' had already been granted to the Rajya Transport and/or the State Transport Undertaking, the Regional Transport Authority was incompetent to renew a permit over a route embracing route 'AB'. The Regional Transport Authority not having done its duty under the law, the Appeal Board was entitled, when the record was before it, to revise the order of the Regional Transport Authority, even if the appeal was incompetent, in view of the vast powers of revision under Section 64A. That Section, omitting the provisos, reads:

'The State Transport Authority may, either on its own motion or on an application made to it, call for the record of any case in which an order has been made by a

Regional Transport Authority and in which no appeal lies, and if it appears to the State Transport Authority that the order made by the Regional Transport Authority is improper or illegal, the State Transport Authority may pass such order in relation to the case as it deems fit.'The High Court came to the conclusion that it should not interfere, in its discretionary powers under Articles 226 and 227, with the order of the Appeal Board, because even if the appeal for some reason was incompetent, the Appeal Board had the record before it, and gave effect to the correct legal position arising from a notified scheme. The same view was expressed also in *Sarnath Transport Co., v. Regional Transport Authority, Nagpur*, : [1961]1SCR631 . In our opinion, we should not interfere on this ground either. In this connection, the difference between the two sets of cases arising from the fact whether the Rajya Transport, Bihar, had objected or not, completely disappears.'

Similarly, in the case of *Shankar Ramachandra Abhyankar* it has been held that the right of appeal is one of entering a superior Court and invoking its aid and interposition to redress the error of the Court below; that two things which are required to constitute appellate jurisdiction are the existence of the relation of superior and inferior Court and the power on the part of the former to review decisions of the latter. It has also been further held that the jurisdiction which is being exercised is a part of the general appellate jurisdiction of the High Court as a superior Court; and it is only one of the modes of exercising power conferred by the statute; basically and fundamentally it is the appellate jurisdiction of the High Court which is being invoked and exercised in a wider and larger sense. Therefore, it is clear that when the Appellate Authority is also the revisional authority in certain cases, it can exercise revisional jurisdiction to consider the validity of the order which could have been otherwise considered by it in the appeal. But, the question that still remains, as to whether it is open to the Appellate Authority to exercise revisional power in every case as a matter of course. It appears to me that such a course is not open to the Appellate Authority in every case. It is only in exceptional cases where it is found that the original authority has ignored the law having a bearing on its jurisdiction or has acted without jurisdiction or failed to exercise jurisdiction or has acted arbitrarily or in disregard of the principles of natural justice, in exercise of its jurisdiction or has not

complied with the required mandatory procedure ; and the order is of such nature that if it is allowed to stand, it would occasion a failure of justice or cause irreparable injury to the party against whom it is made ; then only the revisional jurisdiction can be exercised irrespective of the fact that an appeal has not been preferred. It is not permissible for the Appellate Authority to exercise the revisional jurisdiction in cases where there is only a misappreciation of evidence on record. Therefore, with the aforesaid limitation on the exercise of revisional power, it is open to the Appellate Authority exercise the revisional jurisdiction in cases where an appeal lies but no appeal is preferred. Accordingly, Point No. (i) is answered.

5. POINT NO. (ii): In the instant case, the revisional authority has interfered on the ground that there is over-lapping of the notified route; therefore, it is not permissible to grant variation. If there is overlapping of the notified route included in a scheme of total exclusion, the grant of a stage carriage permit or variation of the conditions of the 'stage carriage permit cannot be granted, is a settled position of law. If the R.T.A. grants permit in respect of such a route, it acts without jurisdiction ; therefore, it can very well be held that the first Respondent is justified in entertaining the revision.

5.2. Sri Shanthamallappa, Learned Counsel for the petitioner, submits that the finding on the question of overlapping is also not correct. He relies upon the finding recorded by the R.T.A. It is stated by the R.T.A. that the route proposed overlaps the notified route for about 5 kilometres from the Municipal jurisdiction to Hoogalgere cross, which falls within the Municipal limits. There is no basis for this conclusion. Whereas, the Appellate Tribunal has stated that the Inspector of Motor Vehicles has reported that the over-lapping portions on the notified route is 5 kilometres from the municipal limits to Hoogalgere cross and it has not been stated by the IMV that Hoogalgere cross is within the jurisdiction of the Town limits of Sreenivasapura. It is also further stated that a small town like Sreenivasapura cannot be held to have the town limit of five kilometres. Therefore, it cannot be regarded that the distance of five kilometres from Sreenivasapura to Hoogalgere cross amounts to intersection. Accordingly, it has held that there is overlapping. It is not in dispute that in order to reach Sreenivasapura on the forward journey, one has to first touch the Hoogalgere cross and then reach Sreenivasapura. When the

I.M.V. has specifically reported that Hoogalgere cross is 5 kilo metres from the Municipal limits of Sreenivasapura, there is over-lapping of five kilometres. The question of intersection does not arise at all. As to what is an inter-section and what is an overlapping, has also been made clear by the Supreme Court, in Mysore State Road Transport Corporation v. Mysore State Transport Appellate Tribunal, : [1975]1SCR615 . Therefore it is not possible to hold that the conclusion reached by the first Respondent is not based on evidence. It cannot also be characterised as perverse or unreasonable. Whereas, the conclusion reached by the first authority is based on no evidence. On the contrary, it is opposed to the report made by the I.M.V. Therefore, I am of the view that the finding on the point of overlapping does not call for interference. Point No. (ii) is answered accordingly.

6. For the reasons stated above, this Writ Petition fails and the same is dismissed.

After the order is pronounced, Sri Shanthamallappa, Learned Counsel for the petitioner, submits that the petitioner has been operating the stage carriage from May 1982 and there is an interim order passed in the Writ Petition; therefore, to enable the petitioner to seek an interim order in the appeal, the status quo as it is obtaining today may be maintained. However, Sri M. Rangaswamy, Learned Counsel for the 4th Respondent, opposes the above sub-mission. As the petitioner has a right of appeal and he has enjoyed the benefits of an interim order during the pendency of the Writ Petition, it is necessary to maintain the status quo. Accordingly, the operation of the order pronounced just now, is suspended for a period of three weeks.