

Johnson Vs. R.T.A.

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SooperKanoon Citation : sooperkanoon.com/724228

Court : Kerala

Decided On : May-24-2006

Reported in : AIR2006Ker307; 2006(2)KLT1016

Judge : Thottathil B. Radhakrishnan, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 89, 89(1) and 90; State Transport Tribunal Rules, 1988 - Rules 2, 9 and 10

Appeal No. : W.P.(C) No. 8677 of 2000

Appellant : Johnson

Respondent : R.T.A.

Advocate for Def. : P. Deepak, Adv. and Government Pleader

Advocate for Pet/Ap. : P. Ravindran, Adv.

Disposition : Petition allowed

Judgement :

Thottathil B. Radhakrishnan, J.

1. Third respondent was granted a variation of a stage carriage permit. Consequently, the timings were also fixed. Petitioner is also a stage carriage operator. Both the services operate on the same route from Kozhikode to

Kunnamkulam which is stated to be for a distance of more than 102 kms.

2. By Ext.P4 judgment, at the instance of the petitioner, this Court ordered the Secretary, RTA to consider the petitioner's objection regarding timings. Thereupon, Ext.P6 order was issued after a timing conference.

3. Fourth respondent challenged Ext.P6 before the Tribunal by filing a revision under Section 90 of the [Motor Vehicles Act, 1988](#). The Tribunal passed Ext.P9 interlocutory order without giving a pre-decisional opportunity of hearing to the petitioner.

4. The petitioner challenges Ext.P9 contending that the third proviso to Section 90 provides for a pre-decisional hearing, without which even an ex pane interlocutory order cannot be passed by the Tribunal unless such interlocutory order is one which can be treated as not to the prejudice of such a person. So contending, it is urged that the petitioner was entitled to be heard before Ext.P9 was issued.

5. Per contra, the learned Counsel for the respondent attempted to urge that the third proviso occurring in Section 90 can be treated and has to be read only as final order and as if it does not include any interlocutory order.

6. Section 89 of the Act provides for appeals. Sub-section (1) of Section enumerates the different situations in which appeals may be filed. Section 90 provides for revision. The third proviso to Section 90 reads as follows:

Provided also that the State Transport Appellate Tribunal shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.

There is, however, no such provision in Section 89, governing appeals.

7. Section 89 provides for appeals from certain specific orders or decisions, while revision provided by Section 90 is for redressal of grievances against the orders against which no appeal lies. Thus, qualitatively, apart from the content of the jurisdiction, the situations envisaged under Sections 89 and 90 are different.

8. The State Transport Appellate Tribunal Rules, 1988 (hereinafter referred to as 'the Tribunal Rules') includes Rules 9 and 10 thereof. They read as follows:

9. Procedures for seeking stay or suspension of the impugned order or for any direction.-

(1) Where a party seeks any interim relief, he shall file a separate application for the same duly affixing a court fee stamp of the value of Rs. 2.

(2) Every such application shall be supported by an affidavit of the party seeking the relief.

(3) A copy of the petition and the affidavit shall be served on the Standing Counsel and obtain acknowledgement in the original affidavit.

10. Stay or suspension of the impugned order or order of direction.- No interim order shall be passed by the Tribunal unless the Tribunal is satisfied that a copy of such petition and affidavit, if any, is served on the Standing Counsel and if objected to, only after hearing the Standing Counsel and the petitioner:

Provided that when the Tribunal is satisfied that an interim order is absolutely necessary in the circumstances of the case, it may pass such interim order to be effective for a period not exceeding 14 days, without hearing the Standing Counsel:

Provided further that such interim orders may be modified or revoked on motions by any parties to the proceedings.

9. For the purpose of the Tribunal Rules, 'standing counsel' is defined in Rule 2(k) which reads as follows:

'Standing Counsel' means the counsel appointed by the State Government generally to appear, act and plead on behalf of the State Transport Authority and Regional Transport Authorities of the State and the Secretaries of these Authorities before the Tribunal and to receive notices issued by the Tribunal to the above said authorities and includes any person to act on his behalf in his absence.

So much so, an application for stay or suspension of an order impugned in an appeal or revision or an order of direction pending in appeal or revision cannot be moved without following the procedure in Rule 10 in cases where the standing counsel is to be heard. The first proviso to Rule 10 also takes care of only situations requiring the standing counsel to be heard. Rule 10 does not take care of, or provide any exemption from hearing a person who would be aggrieved by any order, including an interlocutory order that would be passed by the Tribunal.

10. It has also to be at once noticed that the third proviso to Section 90 of the Act is part of primary legislation and any provision in the Tribunal Rules that contradicts the primary legislation has to be read down to fall in tune with the primary legislation. Viewed in this angle, Rule 10 of the Tribunal Rules has to be understood as being applicable only to the cases requiring the standing counsel to be heard.

11. Legislature has, in its wisdom, made no classification in the third proviso to Section 90 between the interlocutory orders and final orders. At the same time, the Legislature has imposed a restriction that no order prejudicial to the interest of a person shall be passed without hearing him. This means that even if an interlocutory order is to be passed prejudicial to the interest of the other person, he is entitled to be heard. It also provides that if an order is not prejudicial to another, he will not be entitled to be heard. So much so, if an order, even if interlocutory in nature, would affect any person prejudicially, the same cannot be passed without affording an opportunity to him, of being heard.

12. The petitioner, obviously, is a person who has been prejudicially affected by the impugned order. This stand is also not disputed by the contesting respondent. In the aforesaid circumstances, the impugned Ext.P9 ought not to have been passed without a pre-decisional notice and opportunity for hearing being afforded to the petitioner.

In the result, the impugned Ext.P9 order is quashed. The Writ Petition is allowed as prayed for No costs.

