

# **MYSORE HIGH COURT**

Central Karnataka Motor Services Ltd

Vs

Mysore Board of Revenue

Writ Petn. No. 239 of 1957

(S.R. Das Gupta, C. J. and A.R. Somnath Iyer, J.)

09.07.1958

## **JUDGMENT**

### **S.R. Das Gupta, C.J.**

1. The Petitioner before us is a public limited company operating bus service. Pursuant to a notification published by the State Transport Authority, which is the 2nd respondent before us, under Section 57(2) of the Motor Vehicles Act calling for applications for the grant of a bus permit in the route Harihar-Agumbe, the Petitioner and 23 other persons made applications for the grant of such permit. On 17-4-1956 on scrutiny of all the applications made before it the State Transport Authority rejected the application of the petitioner and of some of the other applicants as not being in the prescribed form. The said authority retained the applications of 11 persons whose applications they held were in the prescribed form. On 3rd July 1957 the State Transport Authority communicated its said Order to the Petitioner. Thereafter the Petitioner appealed to the Government. Pending the hearing of this appeal the States Reorganization Act came into operation on 1-11-1956 and the power of hearing appeals against the orders of the State Transport Authority vested in the Board of Revenue. Thereupon the Government sent the said appeal to the Board of Revenue for disposal. The Board of Revenue felt some difficulty on the question as to whether or not any appeal lies against an order of this nature and they referred the matter to a Fuller Bench for decision. The Full Bench of the Board of Revenue came to the conclusion that no appeal lies against the said Order. The present application has been filed challenging the said decision of the Board of Revenue.

2. The petitioner has made two prayers in this petition. His first prayer is that the judgment and order of the Board of Revenue should be quashed. His second prayer is that if this Court comes to the conclusion that the said Order of the Board of Revenue was correct, then this Court should be pleased to quash the Order of the 2nd Respondent dated 17-4-1956 rejecting the application of the Petitioner. I shall take up these two matters one after the other.

3. In support of the prayer for quashing the Order of the Board of Revenue, the learned Advocate for the Petitioner urged before us that Section 64 (a) of the Motor Vehicles Act allows an appeal to be filed against an order of this nature. Section 64 (a) provides that any person aggrieved by the refusal of the State or a Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to him, may within the prescribed time and in the prescribed manner, appeal to the prescribed authority who shall give such person and the original authority an opportunity of being heard. It was contended before us that this was an Order which comes within clause (a) of the said section. In other words, it was contended that this was a case of refusal by the State Transport Authority to grant a permit and is therefore governed by clause (a) of Section 64.

4. I am unable to accept this contention. This, in my opinion, is not a case where the State Transport Authority can be said to have refused to grant permit, but this is a case where the State Transport Authority has refused to entertain the application as a valid application for permit. It should be mentioned that Section 46 of the Motor Vehicles Act provides that an application for a permit shall contain the particulars mentioned in clauses (a), (b) and (c) and such other matters as may be prescribed.

The Government by its rules had prescribed the form which requires various particulars to be given and in which an application for permit is to be made. The present application, if it be assumed that it does not comply with the provisions of Section 46 of the Motor Vehicles Act, cannot be said to be an application within the meaning of the Act. In such a case the order of the State Transport Authority refusing to entertain the application as an application under the Motor Vehicles Act for grant of a permit would not amount to an order refusing to grant a permit within the meaning of the said clause of Section 64. In my opinion, at that stage no question of granting or refusing a permit would arise. Such a question would arise only if the application is held to be an application under the Motor Vehicles Act and is decided one way or the other, I should also mention that in clause (7) of Section 57 of the Motor Vehicles Act it is provided that when a Regional Transport Authority refuses an application for a permit of any kind, it shall give to the applicant in writing its reasons for the refusal. That refusal would take place after the matter has passed through -the various stages mentioned in clauses (1), (2), (3), (4), (5) and (6) of the said Section. In other words, it is after an application is desired to be made and after the application has been received and has been advertised and after representation against such application has been heard and decided that the question of the Regional Transport Authority granting or refusing under clause (7) of Section 57 of the Act to grant a permit would arise. What the State Transport Authority has done in this case is to refuse to entertain the application, holding that it is not an application under the Motor Vehicles Act. This order, to my mind, does not amount to refusing to grant a permit. I do not for a moment suggest that if the State Transport Authority arbitrarily refuses to entertain application although it is valid application under the Motor Vehicles Act, the applicant has no remedy. But in my view Section 64 (1) does not afford any remedy in such a case. In other words, there is no right of appeal against such a decision. That

being so, I am of the opinion that this prayer of the petitioner cannot be granted.

5. Coming to the next prayer of the petitioner, viz., that we should issue a Writ quashing the order dated 17-4-1936 passed by the 2nd respondent, I am equally of the opinion that the said prayer cannot be granted. I have already referred to Section 46 of the Motor Vehicles Act and I have mentioned that the said section requires certain particulars to be given. The provisions of that Section, to my mind, are mandatory. It says that an application for a permit shall contain particulars mentioned therein.

It follows there from that an application in order to be a valid application under the Indian Motor Vehicles Act must comply with the provisions of Section 46 and must set out the particulars given therein. The question, therefore, arises as to whether or not the present application complies with all the provisions of Section 46 and gives the particulars as mentioned therein. We have seen the application itself and we find that most of the particulars set out in Section 46 of the Act have not been given in the said application; nor has the said application been made in the form prescribed by the Government under the rules framed by it. That being so, this application, to my mind, cannot be said to be an application for a permit under the Motor Vehicles Act. In such a case the State Transport Authority was, in my opinion, fully justified in rejecting the application and the petitioner is not entitled to question that order of the State Transport Authority.

6. The result, therefore, is that both the prayers of the petitioner are refused, and this application is rejected. There will be no order as to costs of this application.

**Somnath Iyer, J.**

7. I agree.

Application dismissed.