

## **MYSORE HIGH COURT**

K. Sethuramachar

Vs

N.S. Hirannayya

Writ Petns. Nos. 5 and 28 of 1958

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

17.03.1959

### **JUDGMENT**

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

1. These Petitions are directed against the order of the State Transport Authority which was made in the following circumstances :

2. Applications were invited for a permit for stage carriage in the route between Mylara and Kottur, both in the District of Bellary. The petitioners and six other applicants including respondent No. 4, applied for such permit. On 22-11-55, the Regional Transport Authority decided to grant the said permit to the petitioner. Thereafter, the petitioner on 26-12-55 produced his vehicle and other necessary certificates. On 4-1-1956 the permit was granted. Against the said grant appeals were filed to the State Transport Authority, Bangalore. On 29-6-56 the appeal of respondent No. 4, in W. P. No. 5 of 1958 was allowed and a permit was ordered to be granted to the said respondent. Against that decision two appeals were filed to the Government, one by the petitioner in W.P. No. 5/58 and another by respondent No. 4 in W.P. No. 28/58. These appeals stood transferred to the Mysore Board of Revenue and the Mysore Board of Revenue on 2nd May, 1957, allowed both the appeals and remanded the matter to the State Transport Authority to decide according to law. After the matter came back to the State Transport Authority on such remand the State Transport Authority took the view that all the applications were not in the prescribed form and did not contain the particulars required to be given by Section 46 of the Motor Vehicles Act and directed the Regional Transport Authority to call for fresh applications. It is against that order that these petitions, being W.P. No. 5/58 and W.P. No. 28/58, have been filed.

3. I should have mentioned that at the time when the applications for permit were made in this case Section 46 had not been amended. The said Section was amended but before the State Transport Authority gave its decision. This case, therefore, in my opinion, is governed by Section 46 as it stood before its amendment. What has to be determined is whether or not the provisions of that Section had been complied with. It is necessary therefore, for the purpose of the present applications to set out Section 46, as it stood before the amendment and also as it now stands

after the amendment. Section 46, as it stood before the amendment, reads as follows :

"46. An application for a permit to use a Motor Vehicle as a Stage Carriage (in this Chapter referred to as a Stage carriage permit), shall contain the following particulars, namely :

- (a) the type and seating capacity of the vehicle in respect of which the application is made;
- (b) the route or routes on which or the area within which it is intended to use the vehicle;
- (c) the time-table, if any, of the service to be provided, and,
- (d) such other matters as may be prescribed".

4. Section 46, as it now stands after the amendment, is as follows :

"46. Application for stage carriage permit. Application for a permit in respect of a service of Stage Carriages or to use a particular motor vehicle as a Stage carriage (in this Chapter referred to as a stage carriage permit) shall, so far as may be, contain the following particulars, namely :

- (a) the route or routes or the area or areas to which the application relates;
- (b) the number of vehicles it is proposed to operate in relation to each route or area and the type and seating capacity of each such vehicle;
- (c) the minimum and maximum number of daily services proposed to be provided in relation to each route or area and the time-table of the normal services;
- (d) the number of vehicles intended to be kept in reserve to maintain the service as to provide for special occasions;
- (e) the arrangements intended to be made for the housing and repair of the vehicles, for the comfort and convenience of passenger, and for the storage and safe custody of luggage;
- (f) such other matters as may be prescribed". It would be seen that the addition of the words "as far as may be" in the first paragraph of the old Section 46 is one of the changes introduced in the old section by the amendment.

5. I should at this stage, mention that the particulars, which were not given in the applications for permit filed before the Regional Transport Authority and for which the State Transport Authority quashed the Order of the Regional Transport Authority and directed the Regional Transport Authority to call for fresh applications, were the particulars mentioned in Columns 5, 6 and 7 of the application form which had to be filled up and were as follows :

"5. The Type of Vehicle.

6. Registration Mark.

7. (i) Seating Capacity excluding seats for Driver and Conductor.

(ii) Maximum laden weight".

These Columns were left blank and were not filled up by any of the applicants.

6. It was contended before us by Mr. Malimath appearing in support of W. P. No. 5/58 that the State Transport Authority was not justified in quashing the orders of the Regional Transport Authority and directing him to call for fresh applications. It was urged by Mr. Malimath that it is not necessary that an applicant for a permit should be in possession of the vehicle, which he wants to put on the road if the permit is granted to him. He has referred us to rule 163 of the rules framed under the Madras Board Traffic Code, 1940, which is operative in the present case and contended that a vehicle may be possessed by a person even after it is decided that the permit in question should be given to him. Rule 163(b) of the Madras Rules inter alia provides that when the applicant is unable to produce the certificate of registration on the date of his application for the permit, for the reason that he is not on that date in possession of the vehicle validly registered, or for some other reason, the Transport Authority, the appellate authority or the State Government acting under Section 64-A of the Act, as the case may be, shall grant him time which shall not be less than one month and not more than four months from the date of sanction of the application, to produce the certificate of registration of the vehicle before the Transport Authority which has to issue the permit in order that particulars of the registration mark may be entered in the permit. This rule, according to the learned Advocate, shows that it is not necessary that the applicant for a permit should, at the date of such application, be in possession of the vehicle which he wants to put on the road. In support of this contention he relied on a decision by this Bench in *Narayana Kamath v. State Transport Authority*<sup>1</sup> wherein it was held that it is not necessary that a person should be in possession of the vehicle at the time when he makes the application for a permit. From this, the learned Advocate further contended before us, that if it is not necessary that a person should be in possession of a vehicle, it is not equally necessary that he should give the particulars required to be given in columns 5, 6 and 7 of the form in question.

In other words, his contention was that it would not be necessary for the applicant to mention the type of vehicle or to give the registration mark or the seating capacity or the maximum laden weight of the vehicle to be used by him. The learned Advocate contended before us that in the said W. P. No. 595 of 1958 : AIR 1960 Mysore 33 it has also been held that it is not necessary to give those particulars that is to say the particulars as to the type of the vehicle, registration mark, seating capacity and the maximum laden weight, inasmuch as those particulars can be given and will be given when the vehicle, itself is possessed and is produced.

7. In my opinion, it is not possible to accept this contention of the learned Advocate for the petitioner. We have held in *Central Karnatak Motor Services Ltd. v. Mysore Board of Revenue*<sup>2</sup>; that the provisions of Section 46 of the Motor Vehicles Act, as it stood before its amendment and which required certain particulars to be given, are mandatory. We further held that an application for permit shall contain the particulars mentioned therein and that an application, which does not contain those particulars, cannot be said to be an application for permit under the Motor Vehicles Act. I have already referred to Section 46, as it stood prior to its amendment. The said section is

<sup>1</sup> W.P. No. 595 of 1958 : AIR 1960 Mys 33

<sup>2</sup> W.P. No. 239 of 1957 : AIR 1960 Mys 72

clearly mandatory in its terms. It provides that the particulars mentioned therein shall be given. The said particulars include the type and seating capacity of the vehicle in respect of which the application is made. Those particulars, therefore, have to be given in an application for a permit

and unless they are so given an application for a permit cannot be said to be an application under the Motor Vehicles Act. In the amending Section the words "as far as may be" have been added. Those words are not to be found in Section 46 as it stood prior to its amendment. Therefore, on a plain reading of the said section it would appear that its provisions are mandatory and the particulars mentioned therein have to be given and we have also held that unless those particulars are given, an application would not be an application for a permit under the Motor Vehicles Act.

8. Regarding our decision in W. P. No. 595 of 1958 : AIR 1960 Mysore 33 on which the learned Advocate for the petitioner mainly relied, it should be mentioned that the same was decided on its own facts. In that case, the main question, which we had to decide, was whether or not it was necessary that an applicant for a permit should be in possession of the vehicle, which he proposed to run on the road, at the time when he makes his application. That question was fully gone into by us in the said Writ Petition and we came to the conclusion that it was not necessary that an applicant for a permit should be in possession of the vehicle which he proposed to use after the permit is granted to him. In that case also the provisions of Section 46, as it stood after amendment, were applicable and not the provisions of Section 46, as it stood before its amendment and it could not be said that the amended Section 46 of the Act was mandatory in its character in view of the addition of the words "as far as may be" in the said section. Another feature, which distinguishes that case from the present one, is that in that case the type of the vehicle to be used and its seating capacity had all been mentioned by the Regional Transport Authority in advertisements which were published inviting applications for permit. My Lord Mr. Justice Somnath Iyer, who delivered the Judgment in that case, observed as follows :

"Further, as pointed out by Mr. Karanth, the notification published by the Regional Transport Authority under Section 57(2) of the Act, itself contained the particulars of the type and seating capacity of the Vehicle which had to be used. It therefore Became quite superfluous for the petitioner to state those particulars."

In this case, the notification did not mention either the type or the seating capacity of the vehicle to be used. In this case also the Section which would be operative, is not the amended section 46 but Section 46 as it stood before its amendment and the question as to whether or not a person should be in possession of the vehicle at the time when he makes an application for a permit does not arise in the present case. That being so, I am of the opinion that our decision in W. P. 595 of 1958 : AIR 1960 Mysore 33 is clearly distinguishable from the present case and no support can be derived from the said decision.

9. The learned Advocate for the petitioner contended before us that the amendment of Section 46 should have retrospective effect. His contention was that Section 46 relates to a procedural matter and wherever there has been a change in the procedure the said change operates retrospectively. In my opinion, this contention cannot be accepted. The main question is whether or not these applications can at all be treated as applications under the Motor Vehicles Act. If they cannot be treated as applications under the Motor Vehicles Act and we have held they cannot be, then no other question arises. In my opinion, the question as to whether or not the present applications are at all applications under the Motor Vehicles Act for the grant of permit is not a question which relates to procedure. There is no procedure about it. This contention of the learned Advocate must therefore fail.

10. The learned Advocate then relied on Section 134 of the Motor Vehicles Act which inter alia provides that no order made by a competent authority under this 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. The learned Advocate contended before us that the omission to give the particulars as required to be given under Section 46, as it stood before its amendment, is a mere irregularity and that being so, unless in the opinion of the authority concerned it has occasioned failure of justice, the same should not be allowed to form a ground for reversal of a decision by the said authority. Here again, in my opinion, the question, which arises, is not whether there has been or not an omission or irregularity but whether or not these applications can be said to be applications for permit under the Motor Vehicles Act. If the applications in question cannot be entertained as applications under the Motor Vehicles Act, then no question of omission or irregularity in the proceedings at all arises. Apart from this, if Section 46, as it stood before its amendment, is mandatory in its character, then the omission in question would amount to an illegality and not a mere irregularity. Section 134(2), therefore in any view of the matter, is not applicable to the present case.

11. The result therefore is that these petitions fail and are dismissed. Each party will bear and pay its own costs of these petitions.

**Somnath Iyer, J.**

12. I agree.

Petitions dismissed.