

(1998) 07 KL CK 0043

High Court Of Kerala

Case No: W.A. No. 1911 of 1997

A. Vidyasagar

APPELLANT

Vs

Regional Transport Authority,
Trichur and Others

RESPONDENT

Date of Decision: July 1, 1998

Acts Referred:

- Constitution of India, 1950 - Article 226
- Kerala State Transport Appellate Tribunal Rules, 1988 - Rule 11, 14
- Motor Vehicles Act, 1988 - Section 89

Citation: AIR 1998 Ker 376

Hon'ble Judges: D. Sreedevi, J; A.R. Lakshmanan, J

Bench: Division Bench

Advocate: P. Gopalakrishna Menon, for the Appellant; Govt. Pleader and Jose Thettayil, for the Respondent

Final Decision: Allowed

Judgement

Ar. Lakshmanan, J.

Heard Mr. Gopalakrishna Menon learned counsel for the appellant and learned Government Pleader Sri Jose Thettayil.

2. The Writ Appeal is directed against the judgment of the learned single Judge of this Court dated 7-8-1997 in O.P. No. 13648 of 1997 dismissing the Original Petition filed against the direction of the State Transport Appellate Tribunal. The learned Judge dismissed the original petition on the ground that there is no patent illegality in the order of the S.T.A.T. and even if it is illegal, he was not exercising the jurisdiction under Arts. 226 and 227 of the Constitution as no manifest injustice was caused by the order of the State Transport Appellate Tribunal and that every order of the Tribunal, whether it is legal or illegal, need not be interfered by this Court as it is a discretionary jurisdiction.

3. With respect, we are unable to subscribe to the views expressed by the learned single Judge. We give below our reasons for interfering with the order impugned in this writ appeal.

4. The appellant in this case had applied for the grant of regular stage carriage permit to operate on the route Porathur-Trichur via. Peringottukara, Anthikad, Kanjani and Olari in the vacant timings of a defaulted service KRH 101. Previously KRH 101 belonging to another operator was operating the service on the route in question and he surrendered the permit and in that vacancy the appellant had applied for the grant of regular stage carriage permit to operate on the route in question. The above application was considered by the Regional Transport Authority; Trichur along with another application submitted by another person in the same vacancy. The regular permit applied for by the appellant was rejected on the ground that the vehicle offered was having a valid permit on another route. The regular permit was accordingly granted to the second applicant. The order rejecting the application on 2-5-1997 has been produced and marked as Ext. P1 in the original petition. Thereafter, the offer of the appellant to put another vehicle was not accepted by the Regional Transport Authority, Trichur. .

5. Aggrieved by the order, Ext. P1, the appellant filed M.V.A.A. No. 791 of 1997 before the third respondent, namely, State Transport Appellate Tribunal, Ernakulam u/s 89 of the Motor Vehicles Act in the prescribed manner as is required under the Kerala State Transport Appellate Tribunal Rules, 1988. Rule 141 of the Kerala Motor Vehicles Rules prescribed the procedure for filing appeal. The appeal has to be filed in accordance with the State Transport Appellate Tribunal Rules, 1988. Rule 11 of the Rules prescribed the procedure for registration of the appeal which reads thus :

"11. Procedure after registration of appeal or revision petition has been registered, the Tribunal shall fix a date for hearing and issue notice in Form D to the parties by registered posts with acknowledgment due in the address furnished in the appeal or revision petition. A copy of the memorandum of appeal or revision petition or miscellaneous petition; as the case may be, and the affidavit, if any, shall also be furnished to respondent/to respondents. The Tribunal shall also call for the records and remarks from the Authority or Authorities who passed the impugned order."

As per the above provision the State Transport Appellate Tribunal shall call for the records and remarks from the authority or authorities who passed the impugned order for the purpose of proper adjudication of the appeal. The decision in appeal u/s 89 of the Motor Vehicles Act is final. Therefore, it is the duty of the Appellate Tribunal to call for the records and remarks by issuing notice in Form D which reads as follows :

FORM D

Notice of Appeal/Revision Before the State Transport Appellate Tribunal,
Ernakulam

M.V.A. /M.V.A.R.P. No.....

Appellant/Revision Petitioner: Respondent:

To

The respondent No.....

Whereas the appellant/revision petitioner has filed this appeal/revision petition against the Order dated of the S.T.A./R.T.A. and whereas the case is posted toyou

are hereby requested to appear before this Tribunal on the said date failing which the appeal/revision petition will be heard and disposed of in your absence. Copy of the appeal/memorandum/revision petition along with affidavit are forwarded herewith.

Respondent No..... is requested to send the records along with the order in appeal/revision petition with his remarks, if any, on the various averments contained in the appeal memorandum/revision petition so as to reach this office, before the posting date, failing which it would be presumed that he has no remarks to offer and appropriate orders will be passed.

Yours faithfully,

(By Order)

Sheristadar."

Ernakulam

Form D is the notice of appeal/revision. The respondent was required to appear before the Tribunal on the date fixed, failing which the appeal/revision petition would be heard and disposed of in his absence. In Form D notice the respondent before the Tribunal was required to send the records along with the order in appeal/revision petition with his remarks, if any, on the various averments contained in the appeal memorandum so as to reach the office of the State Transport Appellate Tribunal before the posting date. Thus, it is seen that it is the duty of the Appellate Tribunal to call for the records and remarks by issuing notice in Form D. Rule 14 of the State Transport Appellate Tribunal Rules provides for production of additional documents calling for reports and ordering inspections. Rule 14(1) says that the parties to the appeal or revision petition shall not ordinarily be entitled to produce additional documents before the Tribunal except with the leave of the Tribunal and upon such terms as the Tribunal thinks fit. A fee of Rs. 10/- by way of court-fee stamp shall be affixed to each document so produced. Rule 14(2) says that "no application for production of additional documents shall be entertained unless such application is filed at least a week in advance on the day set for hearing of the matter and notice of the same is given to the opposite party at least three days before that dates." Rule 14(3) says that "the Tribunal, may, on a petition stamped with court-fee stamp of the value of Rs. 10/- and which is

supported by an affidavit of the petitioner, after hearing all the parties concerned, order report or reports to be called for from the Secretaries of the concerned Transport Authorities regarding any fact or facts in issue in the relevant appeal or revision and Rule 14(4) says that "the Secretary concerned shall submit the report or reports called for to the Tribunal without delay." Under Rule 14(5) the Tribunal may also issue a commission to such person, as it thinks fit, directing him to make such inspection and report thereon to the Tribunal on such terms and conditions as the Tribunal may deem fit and proper for the purpose of elucidating any further matter in dispute. Thus fixing of court-fee stamp of the value of Rs. 10/- is provided only in Rule 14 for application filed by parties to the appeal or revision before the Tribunal to call for additional documents.

6. As noticed earlier, the appellant herein filed appeal against the order, Ext. P1, with copy to the standing counsel. The appellant also produced sufficient notice in Form D along with the appeal memorandum. Form D notice itself directs the Secretary to produce the records. But the State Transport Appellate Tribunal expressed that unless separate application is filed to call for the records, the records will not be called for. Therefore, the appellant filed petition evidenced By Ext. P3 for calling for the records affixing a court-fee stamp of Rs. 2/-. Though Ext. P3 application was against the rules, the said verified petition was filed by counsel for the appellant for an early disposal of the appeal and for that purpose the records are highly necessary. In that petition he prayed that the Tribunal may be pleased to direct the 2nd respondent to call for the records relating to the rejection of the application of the appellant in respect of Order No. C9/45061/94 dated 2-5-1997 in item No. 157 in the route in question. But the third respondent Tribunal returned the application for insufficiency of stamp duty. The appellant, therefore, requested the office to place the matter before the Bench. The Tribunal, after hearing counsel for the appellant has held that calling for additional documents for which an application is necessary and court-fee of Rs. 10/- should be affixed. This order passed by the Tribunal has been produced and marked as Ext. P4 in the original petition.

7. Aggrieved by the order of the Tribunal, the appellant filed original petition No. 13648 of 1997 which was dismissed by the learned single Judge in limine on the grounds mentioned in the earlier part of this judgment. The opinion expressed by the learned single Judge that this Court need not interfere with the discretionary jurisdiction of the Transport Appellate Tribunal is not correct. In this case, the State Transport Appellate Tribunal did not exercise the discretionary jurisdiction to dispose of the appeal. As already noticed, under Rule 11 of the State Transport Appellate Tribunal Rules, it is the duty of the State Transport Appellate Tribunal to call for the records in Form D which was not a discretionary function of the State Transport Appellate Tribunal. On the other hand, without calling for the records as provided under the statutory provision of Rule 11, the Tribunal insisted the appellant to file a petition to call for the records. Though the said application was not in accordance with the provisions of the Rules, the appellant filed the petition to

call for the records, by affixing court-fee of Rs. 2/-, as an interlocutory application. In our opinion, such an application is not necessary. That application was rejected saying that court-fee of Rs. 10/- is necessary as calling for the records will amount to calling for additional documents. The opinion of the Tribunal is clearly against Rules 11 and 14 of the State Transport Appellate Tribunal Rules. The learned single Judge did not interfere with the order Ext. P4. The contention of the appellant was that it is the duty of the State Transport Appellate Tribunal to call for the records from the original authority and to peruse the same while disposing of appeal u/s 89 of the Motor Vehicles Act as the decision of the Tribunal will become final and hence the State Transport Appellate Tribunal should be vigilant enough to pass appropriate orders. On the other hand, the Tribunal had taken it for granted that calling for the records would amount to calling for additional documents. The views taken by the State Transport Appellate Tribunal and the learned single Judge of this Court are not correct and against the statutory provision of Rules 11 and 14 of the Rules. Both the orders are, therefore, liable to be interfered with and set aside.

8. Accordingly, the order of the State Transport Appellate Tribunal dated 23-7-1997 and the order of the learned single Judge in O.P. No. 13648 of 1997 are set aside. The Tribunal is directed to call for the entire records from the Secretary, Regional Transport Authority, Trichur under Rule 11 of the State Transport Appellate Tribunal Rules immediately and dispose of the appeal filed by the appellant within two months from the date of receipt of a copy of this judgment.

The writ appeal is allowed. However, there will be no order as to costs.