

(2011) 06 AP CK 0011

Andhra Pradesh High Court

Case No: Writ Petition No: 17430 of 2004

Andhra Pradesh State Road
Transport Corporation

APPELLANT

Vs

The State Transport Appellate
Tribunal, Regional Transport
Authority and S.V.V.S.S.
Devasthanam

RESPONDENT

Date of Decision: June 29, 2011

Acts Referred:

- Motor Vehicles Act, 1988 - Section 90

Citation: (2011) 5 ALD 435 : (2011) 5 ALT 646

Hon'ble Judges: Sanjay Kumar, J

Bench: Single Bench

Advocate: Kallakuri Srinivasa Rao, for the Appellant; GP, for the Respondent Nos. 1 and 2 and T.S. Venkat Ramana, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Sanjay Kumar, J.

The Andhra Pradesh State Road Transport Corporation (A.P.S.R.T.C), being aggrieved by the rejection of its revision in RP. No. 448 of 2003 by the State Transport Appellate Tribunal, Hyderabad, on the ground of limitation, filed the present writ petition.

2. The said revision was filed u/s 90 of the Motor Vehicles Act, 1988 (for brevity "the Act of 1988") aggrieved by the grant of permit to S.V.V.S.S. Devasthanam, Annavaram, East Godavari District by the Secretary, Regional Transport Authority, Kakinada on the mofussil route Annavaram to Danavaipet.

3. In the first instance, when the Devasthanam was granted permit dated 23.04.2001 in respect of this route, the same was challenged by the A.P.S.R.T.C in Revision Petition No. 19 of 2001, which was allowed by the State Transport Appellate Tribunal, Hyderabad, by order dated 12.11.2002 remanding the matter to the Regional Transport Authority, Kakinada. Thereupon, after affording an opportunity to both the parties on 25.01.2003, the order was passed by the Secretary, Regional Transport Authority, Kakinada, granting the permit to the Devasthanam. It is however to be noticed that the said order, though it bears the date 25.01.2003, was actually signed by the authority on 07.04.2003. The proceedings issuing the permit in favour of the Devasthanam were subsequently passed on 30.07.2003, valid for a period of five years, i.e. upto 29.07.2008. The permit is stated to have been renewed thereafter.

4. Be that as it may, the A.P.S.R.T.C, claiming that it was ignorant of the order dated 25.01.2003, filed an application only on 01.09.2003 for issue of a certified copy thereof. It is on the basis of this certified copy that the revision was filed before the Tribunal.

5. The Tribunal, taking note of the fact that the application filed by the A.P.S.R.T.C did not disclose that it wanted a certified copy for the purpose of filing a revision, held against it on that ground. Further, placing reliance on the Division Bench judgment of this Court in [APSRTC Vs. T. Saidaiah and Others](#), the Tribunal held that once the A.P.S.R.T.C failed to file an application for condonation of delay, the revision filed by it was barred by limitation. On these two short grounds the Tribunal dismissed the revision. The rejection of the revision on the ground that the application did not disclose its purpose does not stand to reason. No such requirement is prescribed in law. The approach of the Tribunal in this regard therefore cannot be countenanced.

6. As stated supra, the order dated 25.01.2003 passed by the Regional Transport Authority, Kakinada, in favour of the Devasthanam was signed only on 07.04.2003. Section 90 of the Act of 1988 provides that the Appellate Tribunal shall not entertain a revision unless it is made within 30 days from the date of the order. No doubt, under the second proviso to Section 90, the Tribunal has been given 1 [APSRTC Vs. T. Saidaiah and Others](#), the discretion to entertain such revision even after the expiry of 30 days if it is satisfied that the applicant was prevented by good and sufficient cause from making the application in time. However, in this case a peculiar situation arises as the date of the order sought to be revised is 25.01.2003 but it was actually signed only on 07.04.2003. Therefore, it was practically impossible for the revision to have been filed within 30 days from the date of the order as required u/s 90 of the Act of 1988. In this regard, reference may be made to the judgment of the Supreme Court in [Assistant Transport Commissioner, Lucknow and Others Vs. Nand Singh](#), wherein the Supreme Court was dealing with a similar provision in the U.P. Motor Vehicles Taxation Act which required an appeal to be filed within 30 days from the

date of the order. The order in that case was dated 24.10.1964 but was actually communicated on 29.10.1964. The appeal filed by the aggrieved party was within 30 days from the date of communication, 29.10.1964. Faced with this situation/the Supreme Court opined that mere writing an order in the file kept in the office is no order in the eye of law in the sense of affecting the rights of the parties for whom it is meant. Such order must be communicated either directly or constructively in the sense of making it known, which may make it possible for the authority to say that the party affected must be deemed to have known the order. The Supreme Court therefore observed that generally speaking, an order would be effective against the person affected by it only when it comes to his knowledge either directly or constructively, otherwise not. It accordingly held that 2 [Assistant Transport Commissioner, Lucknow and Others Vs. Nand Singh](#), limitation commenced from the date of communication of the order in that case.

7. Therefore, in the present case unless the order was directly or constructively communicated to the A.P.S.R.T.C, it could not have been imputed with the knowledge of the said order and the limitation in terms of Section 90 of the Act of 1988, cannot be said to have commenced. In any event, the order of the Tribunal dismissing the A.P.S.R.T.C's revision on the ground that it was beyond the period of 30 days without even affording it an opportunity to seek condonation of delay, if any, cannot be countenanced. In this regard, reference may be made to the un-reported decision of a Division Bench of this Court in A.P.S.R.T.C v. The State Transport Appellate Tribunal, Hyderabad W.A. No. 252 of 2005 dated 23.02.2005.. Having considered the earlier judgment in T. Saidaiah case (1 supra), the Division Bench was of the opinion that the ratio therein would mean that in the absence of material, it would not be permissible for the Tribunal to condone the delay but it would be necessary for the Tribunal to afford an opportunity to the Appellant to file an application for seeking the delay, if any. In the present case, owing to the facts aforesaid, it would be necessary for the Tribunal to go into the issue as to whether there is any delay at all and if so, whether sufficient grounds were made out for condonation of delay by allowing the A.P.S.R.T.C to seek condonation of such delay. It ought not to have foreclosed the issue at the preliminary stage without affording an opportunity to the A.P.S.R.T.C to seek condonation of delay, if necessary.

8. The order dated 06.01.2004 passed by the State Transport Appellate Tribunal, Hyderabad, in R.P. No. 448 of 2003 is accordingly set aside. It shall be open to the A.P.S.R.T.C to file an application for condonation of delay, if any, in the filing of the revision within two weeks from the date of receipt of this Order, duly setting out the extent of the delay, if any, and the reasons therefor. Such application shall be considered on merits by the Tribunal after giving due opportunity to the Devasthanam to oppose the same. The writ petition is accordingly allowed. In the circumstances, there shall be no order as to costs.