KUNDUR RUDRAPPA

v.

THE MYSORE REVENUE APPELLATE TRIBUNAL & ORS.

July 31, 1975

[A. ALAGIRISWAMI, P. K. GOSWAMI AND N. L. UNTWALIA, JJ.]

Motor Vehicles Act, 1939, *s.* 64—*Order granting permit—Issue of permit in pursuance of the Order—If appealable.*

The appellant was granted a stage carriage permit by the Regional Transport Authority in May, 1963. Appeals against the grant to the State Transport Appellate Tribunal and further appeals to the Mysore Revenue Appellate Tribunal were dismissed. Thereafter, in April, 1967, the Secretary of the Regional Transport Authority after calling upon the appellant to produce the relevant documents, *issued* the permit. Appeals by the respondents to the State Transport Appellate Tribunal *against the issue of the permit* to the appellant were allowed on the ground of limitation. The appeal of the appellant to the Revenue Appellate Tribunal was dismissed. The appellant's writ petition to the High Court was also dismissed.

Allowing the appeal to this Court,

HELD : There was a clear error of jurisdiction on the part of the State Transport Appellate Tribunal and the Revenue Appellate Tribunal in interfering with the *issue* of permit to the appellant. The High Court was, therefore, not right in dismissing the writ application. [190D-E]

Appeal is a creature of the statute. Section 64 of the Motor Vehicles Act, 1939, is the only section creating rights of appeal against the grant of permit and other matters. But there is no appeal provided against an order issuing a permit in pursuance of an order granting the permit. Issuance of the permit is only a ministerial act necessarily following the grant of the permit. Hence, the appeal to the State Transport Appellate Tribunal and the further appeal are not competent under the section. [190B-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 481 of 1973.

From the Judgment and Order dated the 9th February 1973 of the Mysore High Court at Bangalore in W.P. No. 1922 of 1970.

H. B. Datar and *K. N. Bhat*, for the appellant.

S. S. Javali and *B. P. Singh*, for the respondents Nos. 1, 3-13

The Judgment of the Court was delivered by

GOSWAMI, J. This appeal by special leave is directed against the judgment of the Mysore High Court (now High Court of Karnataka) of February 9, 1973, rejecting the appellant's writ petition under article 226 of the Constitution by which the orders of the State Transport Appellate Tribunal and the Mysore Revenue Appellate Tribunal had been challenged.

A Briefly the facts are as follows :—

The appellant was granted a stage carriage permit under section 48 of the Motor Vehicles Act, 1939 (briefly the Act) for the route Devenagere to Shimoga via Honnali by the Regional Transport Authority, Shimoga, by its order dated May 3/4, 1963. Some of the respondents preferred appeals against the said order to the State B Transport Appellate Tribunal and obtained stay of the order. The appeals were, however, dismissed on September 27, 1963. Again, some of the respondents preferred further appeals to the Mysore Revenue Appellate Tribunal against the order of the State Transport Appellate Tribunal. This time also the appeals met with the same fate and were dismissed on February 27, 1967. It appears, however, that C no order of stay was granted by the Mysore Revenue Appellate Tribunal.

On April 25, 1967, the Secretary to the Regional Transport Authority, Shimoga, called upon the appellant to produce the relevant documents and the certificate of registration for making necessary entry in the permit. The appellant produced the same on April 26, 1967, D and the permit was issued on the same day. Against the order of the issue of the permit, respondents 4 to 13 preferred appeals to the State Transport Appellate Tribunal on the ground that the Secretary to the Regional Transport Authority, Shimoga, had no jurisdiction to issue a permit under rule 119 of the Mysore Motor Vehicles Rules, 1963 (briefly the Rules) after a lapse of such a long time from the date of the grant of the permit. It was contended that the issue of the permit E was made beyond the prescribed period of limitation under rule 119. It may be mentioned that at the time of the grant of the permit the Mysore Motor Vehicles Rules, 1945 (old Rules) were in force and rule 151 of the old Rules was replaced by rule 119 with effect from July 1, 1963. It was contended by the appellant before the appellate authorities that there was no period of limitation under rule 151 of the old Rules, which was applicable to his case, for the issue of a F permit. The appeals of the respondents were allowed by the State Transport Appellate Tribunal by majority on January 29, 1969. The District Judge Member, however, dissented. An appeal filed by the appellant to the Revenue Appellate Tribunal against the order of the State Transport Appellate Tribunal was dismissed which led to the unsuccessful writ application in the High Court and hence this appeal.

G The point that arises for consideration is whether any appeal lay under section 64 of the Act to the State Transport Appellate Tribunal against the issue of a permit in pursuance of an earlier resolution of the Regional Transport Authority granting the permit. It is only necessary to read section 64(1)(a) which is material for the purpose of this appeal :

H . 64(1)(a) : "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 man-

ner, appeal to the State Transport Appellate Tribunal constituted under sub-section (2), who shall, after giving such person and the original authority an opportunity of being heard, give a decision thereon which shall be final".

We are not required to consider the other clauses of section 64(1) which are admittedly not relevant. Section 64 has to be read with rule 178 of the Rules which prescribes the procedure for appeal to the various authorities.

Appeal is a creature of the statute. There is no dispute that section 64 of the Act is the only section creating rights of appeal against the grant of permit and other matters with which we are not concerned here. There is no appeal provided for under section 64 against an order issuing a permit in pursuance of the order granting the permit. Issuance of the permit is only a ministerial act necessarily following the grant of the permit. The appeals before the State Transport Appellate Tribunal and the further appeal to the Mysore Revenue Appellate Tribunal are, therefore, not competent under section 64 of the Act and both the Tribunals had no jurisdiction to entertain the appeals and to interfere with the order of the Regional Transport Authority granting the permit which had already been affirmed in appeal by the State Transport Appellate Tribunal and further in second appeal by the Mysore Revenue Appellate Tribunal. There was, therefore, a clear error of jurisdiction on the part of both the Tribunals in interfering with the grant of the permit to the appellant. The High Court was, therefore, not right in dismissing the writ application of the appellant which ought to have been allowed.

Although arguments were addressed by counsel with regard to old rule 151 and rule 119 of the Mysore Motor Vehicles Rules, 1963, we do not feel called upon to pronounce upon the legal effect of these rules in this appeal.

In the result the appeal is allowed. The order of the High Court is set aside and necessarily the order of the State Transport Appellate Tribunal of January 29, 1969 and the order of the Mysore Revenue Appellate Tribunal of May 8, 1970, also fall. The order granting the permit to the appellant stands restored. There will be no order as to costs.

V.P.S. *Appeal allowed.*