

(1972) 10 MAD CK 0017

In the Madras High Court

Case No : Civil Revision Petition No. 1954 of 1972

A. Somu Achari

APPELLANT

Vs

R. Rajamanickam

RESPONDENT

Date of Decision : 31-10-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Motor Vehicles Act, 1988 — Section 48(1), 57(2), 57(3)
Transfer of Property Act, 1882 — Section 106

Citation : AIR 1973 Mad 350 : (1973) 86 LW 563 : (1973) 1 MLJ 205

Hon'ble Judges : Ramaprasada Rao, J

Bench : Single Bench

Judgement

1. The petitioner was the respondent in an appeal filed by the respondent in this civil revision petition before the State Transport Appellate

Tribunal. The subject matter of the appeal related to the grant renewal of a stage carriage permit for the bus MDS 4009 (Since replaced by MDU

8715) in respect of the route Kambainallur to Hogainaikkal via Dharmapuri for a period of five year from 9-6-1971. The respondent herein had

also applied for grant of a stage carriage permit to him to ply on the same route. The relevant dates may now be noticed. The normal permit of the

petitioner was to expire on 9-6-1971. He made an application for renewal on 9-2-1971. Representations were called for u/s 57(3) of the Motor

Vehicles Act on 5-4-1971, and the last date for filing such representations was fixed at 30-4-1971. The Respondent herein sent his

representations on 28-4-1971, and also made a counter application for the grant of the permit in his favor which was also notified in the usual

manner on 4-5-1971. Again representations on the counter application made by the respondent were called for and a date for filing such

representations was also fixed. At the meeting of the subject by the Regional Transport authority on 18-9-1971, the respondent's application was refused and the petitioner's application for renewal was granted. Against this order the respondent filed an appeal. The appellate authority allowed the appeal after considering the merits and qualifications of both the petitioner and the respondent. The appellate authority found that the petitioner was not a suitable person for being considered for renewal in preference to the respondent who applied for an independent grant of the permit to himself. While coming to this conclusion the appellate authority took into consideration three suspensions suffered by the petitioner in respect of non-adherence to schedule of timings, overload of passengers and missing of trips. The appellate Tribunal was of the view that they were serious offenses from the point of view of public interest and therefore denied renewal to the petitioner. It also found as fact that the respondent had experience of 8 year and 7 months, has his own workshop, resides on the route and was a single bus operator with a clean history and therefore he deserved an encouragement. The appeal therefore was allowed. As against this the present civil revision petition has been filed.

2. Learned counsel for the petitioner did not touch upon the merits but argued a legal question about the want of jurisdiction the part of the authorities in having entertained an application by the respondent for the grant of an independent permit when an application for renewal was contemporaneously on file for consideration. The main ground of attack can be stated in the words of the petitioner as presented in the grounds of revision:

1. The grant of the permit to the respondent herein is vitiated by illegality and material irregularity in the exercise of jurisdiction and is totally without jurisdiction in so far as Section 57(2) of the Motor Vehicles Act requires that any application for permit should be made within not less than six weeks from the date on which the permit would take effect and any application for renewal was to be made 120 days before the expiry of the permit, and in the present case, the respondent had made his application for permit only on 30-4-1971 while the permit was renewed with effect from 9-6-1971, the difference being 40 days.

2. The learned Appellate Tribunal acted with illegality and material irregularity in

the exercise of jurisdiction and also acted totally without jurisdiction in granting the respondent a permit on the route Kumbainallur to Hogeneikal, when the application made by him under the Act was for the route Dharmapuri to Hogeneikal, the distance of the former route being 42 miles and the latter 28 miles, when proviso to Section 48(1) of the Motor Vehicles Act read: Provided that no such permit shall be granted in respect of any route or area not specified in the application"".

3. It is admitted that these grounds were not urged at any time before the original or the appellate authority. It is equally not denied that these grounds could have been urged before such authorities and the lower tribunals had the jurisdiction to decide one way or the other if such a contention was raised before them. But what is urged is that notwithstanding the fact that such a contention has not been raised, as the application made by the respondent was not in conformity with the prescriptions as to time, etc., laid down under the Motor Vehicles Act and the rules made thereunder, there is a total absence of jurisdiction in the tribunal and therefore the consequential orders passed by the appellate authority refusing the renewal as if the application for an independent grant by the petitioner was maintainable is a nullity and has to be set aside. In the conspectus of the above, the legal question which arises is whether the application made by the petitioner on 28/30-4-1971 for the grant of a stage carriage permit on the route Kambainallur to Hoganiakkal is a valid application and whether it is maintainable by the authorities and whether such a question as to non-maintainability can be raised for the first time in this Court.

4. That there is an infirmity in the application made by the respondent for the grant of the stage carriage permit inasmuch as it was beyond the prescribed time is not seriously disputed. But the argument of the learned counsel for the respondent is that the petitioner has the respondent is that the petitioner has waived such an objection and has participated in the enquiry without raising such a defense and he is therefore estopped from raising it for the first time in this Court u/s 115, Civil P.C. It is that at best the appellate tribunal irregularly or erroneously exercised its jurisdiction and if such exercise of is not stemmed at the appropriate time by a specific plea taken in that behalf by the petitioner before such a tribunal, then he cannot raise such a plea at any time thereafter.

5. The law on the subject is very well settled. If an authority considers a subject which it has no jurisdiction to deal with, then even though the parties to the lis before it refrains from objecting to the exercise of such jurisdiction in such circumstances, the resultant order would be a coram non iudice. But in a case where the concerned tribunal erroneously or irregularly exercised such jurisdiction and no one brought to its notice that what was being done was irregular, when if one party succeeds before such a tribunal, the other party cannot in a collateral proceeding or in a later proceeding challenge the resultant conclusion in the only ground that the tribunal was lacking in jurisdiction. Again here the Tribunal has the power to condone the delay in the matter of presentation of such application. Even if (it?) has not the power, the availability of such jurisdiction is a matter which could have been pleaded and raised and thereafter decided upon by the tribunal itself. In such circumstances, it is not open to the objecting party to contend later that the decision was arrived at without jurisdiction or the conclusion affects the core and substance of the case. As I have stated already, the petitioner did not raise such an objection as, (to ?) jurisdiction and maintainability before the appellate authority. He participated in it and obtained a decision which ran against him. In those circumstances this is a case where at best it could be said that there has been an irregular or erroneous exercise of jurisdiction by the appellate authority and not a case where the tribunal lacked jurisdiction to entertain the same. The decision is not therefore coram non iudice. It depended on the pleadings, representations and contentions. By the attitude of the petitioner the reasonable inference is that he was prepared to waive the irregularity in the presentation of the petition for grant made by the respondent. He cannot now be allowed to take up the position for the first time that the application for the grant was belated and therefore not maintainable. If the appellate authority was apprised of the matter when the matter was in issue the tribunal could have decided the matter on material available and placed before it.

6. An analogous provision under the Madras Buildings (Lease and Rent Control) Act, 1960, was referred to sustain the argument urged on behalf of the petitioner. In an application for eviction filed by the land lord against the tenant the question arose whether a notice of determination of

tenancy u/s 106 of the Transfer of Property Act is a necessary pre-requisite to vest jurisdiction in the Rent Controller and the higher authorities to decide the subject matter. There was a conflict of view on this question. One set of authorities took the view that in the absence of such a notice of determination of tenancy the resultant order passed by the statutory tribunals was *coram non judice* and was a nullity. Equally a catena of decisions of decisions took a contrary view. The later view of the majority of Judges of this Court was that the absence of a notice of determination of tenancy by itself does not go into the core of jurisdiction of the authorities unless it has been pleaded, raised, argued and dealt with by the tribunals one way or the other. If it has not been raised at the appropriate time then it constituted a waiver and so understood the resultant orders of statutory tribunals in such proceedings cannot be challenged in the higher hierarchy on the only ground of lack of jurisdiction. My view as reported in *T.S. Doraiswamy Naidu Vs. Seth T.N. Ahuja and Co.*, that where there is no notice of determination of tenancy u/s 106 of the Transfer of Property Act, entire proceedings lack jurisdiction and the point that such absence of notice of determination of tenancy not having been raised or belatedly raised is an irrelevant consideration has been dissented from by Kailasam, J in *K.N. Ramakrishnan Vs. C. Kerala Chand and Another*, and by Ramamurti, J after reviewing all the authorities of our Court and that of the Supreme Court and with particular reference to the observations in *Maganlal Chhotabhai Desai Vs. Chandrakant Motilal*, observed that the question which is alleged to create want of jurisdiction is one which the Court itself is bound to decide. Shortly the matter is not one relating to jurisdiction. It is a fact like any other fact which the court has to decide and if there is an error in the decision it can only be remedied by an appeal or any other procedure known to law. Agreeing with the view of Kailasam, J., the learned Judge stated as follows (C.R.P.No.1791 of 1968):--

The distinction between a tribunal lacking inherent jurisdiction and it exercising its jurisdiction, through irregularly or in an erroneous manner, is well recognized. In the first case the whole proceeding is *coram non judice* and a nullity. In the latter case the order passed cannot be questioned in collateral proceedings, though it be erroneous upon its fact or even though it relates to a fact which in the former

stage of the proceeding was essential to confer jurisdiction on the tribunal"".

The view of Ramamurti.J in S.A. Henry Vs. J.V.K. Rao, gained approval by C R P 1971 of 1968, Rajaratnam v. Susai Manickammal, a decision

of a Division Bench of our Court presided over by the learned Chief Justice. Veeraswami. C.J speaking for the Bench said:-

The learned Judge (Ramamurti.J) has pointed out that the Supreme Court considered the plea of absence of valid notice to quit as one of the

pleas that will have to be raised by the defendant at the appropriate stage and not as an objection against inherent lack of jurisdiction of the Court.

We concur in this view.

Thus it is seen that there is ample authority for proposition that the question whether a tribunal has jurisdiction or not could be raised by way of a

plea in the objections before the tribunal concerned and the tribunal has the authority to decide that matter. If that plea is not raised it cannot be

raised at a later stage. It is not in dispute in this case that the tribunal had the jurisdiction to entertain a plea whether representations to the

appropriate tribunal were made in time or not. This was not raised at any stage before any authority. I am unable to agree with the learned counsel

for the petitioner that it could be raised at this stage. This is not a matter where the tribunal can never at all entrain the objections or the appeal and

deal with it. If an objection as to jurisdiction has been raised before the tribunal below it could have decided it. It was not raised is not in dispute.

Thus following the ratio which is practically settled in our court, I hold that the petitioner cannot raise this objection as to lack of jurisdiction at this

belated stage as he cannot approbate and reprobate. He has elected not to raise that plea earlier and therefore he cannot be allowed to do so

now. As already stated, no other question was argued and the merits were not touched upon. There is no material irregularity in the order. The civil

revision petition is dismissed, but there will be no order as to costs.

7. Petition dismissed.