

(1982) 07 MAD CK 0027

In the Madras High Court

Case No : Writ Petition No. 11504 of 1981

Ajantha Travels, Pondicherry

APPELLANT

Vs

State Transport Authority, Pondicherry and Another

RESPONDENT

Date of Decision : 09-07-1982

Acts Referred:

Motor Vehicles Act, 1939 — Section 60, 60(1), 60(3)

Citation : AIR 1983 Mad 365

Hon'ble Judges : Padmanabhan, J

Bench : Single Bench

Advocate : G. Ramaswamy, for V.T. Gopalan and Radhagopalan, for the Appellant; G. Govindaswamy, Government Pleader and V. Manivannan, for the Respondent

Judgement

Padmanabhan, J.—This writ petition is filed to quash the order passed by the State Transport Appellate Tribunal, the second respondent herein, on 17-7-1981 in MVA No. 12/81. The facts leading to the filing of the writ petition may be stated as follows:-

The petitioner M/s. Ajantha Travels are contract carriage and stage carriage operators in Pondicherry State. They obtained a temporary permit to ply a stage carriage on the route Pondicherry to Karaikal for a period of four months from 2-5-1979 to 1-9-1979. On 19-5-1979 the vehicle was checked by the Motor Vehicle Inspector, Grade I, flying squad, Thiruchirapalli. It was discovered that the vehicle was over loaded by 14 passengers and that the R.C. and I. C. permits were not carried for check. A charge memo was served on the petitioner calling upon the petitioner to show cause as to why the permit should not be suspended or cancelled for the said violation. At the time of hearing before the State Transport Authority, Pondicherry on 23-8-1980 it was contended on behalf of the petitioner that the temporary permit had expired and consequently no action could be taken against them for the alleged violation. Secondly it was contended that the explanation offered by the petitioner should be accepted. The first

respondent held that the charge of overloading was proved and accordingly imposed a fine of Rs. 150/-. The petitioner preferred an appeal in MVA No. 12/81 before the second respondent, the State Transport Appellate Tribunal, Pondicherry. The second respondent found that the first respondent was right in coming to the conclusion that the charge of over loading stood proved. However, the second respondent accepted the contention of the petitioner. In the latter view the second respondent set aside the order of the first respondent imposing a fine of Rs. 150/- on the petitioner and allowed the appeal. It is under these circumstances, the present writ petition has been filed.

2. Mr. G. Ramaswamy, learned counsel for the petitioner urged two contentions before me namely (1) the temporary permit was granted for a period of four months only from 2-5-1979 to 1-9-1979. Even though the check of the vehicle was made on 19-5-1979 and a charge memo was issued before the expiry of the permit, at the time when the matter was heard by the first respondent, the permit had expired. u/s 60 of the Motor Vehicles Act, hereinafter referred to as the Act, the 1st respondent has only the power to cancel or suspend the permit in certain circumstances. Section 60(3) provides for the compounding of the offences by directing the payment of a certain sum of money. In as much as in this case the permit has expired at the time the first respondent passed the order on 23-8-1980, the order was without jurisdiction and the Act did not confer any power on the first respondent to impose a fine of Rs. 150/-. The second respondent having understood correctly understood the legal position and having set aside the order of fine, had no jurisdiction to enter a finding of guilt on the charge of over-loading against the petitioner. (2) In any view of the matter the finding of the second respondent that the charge of over-loading stood proved was vitiated by an error apparent on the face of the record and by failure to take into consideration relevant materials. Mr. G. Ramaswamy further submitted that under the Motor Vehicles Rules, applicable to the Pondicherry State there is no prohibition in the issue of a combined ticket to children of a particular age group as in Madras. In other words, so far as Pondicherry State is concerned, there was no prohibition for one full ticket being issued to two children and it will not be necessary to issue separate half ticket for each of the children. In this case the petitioner's explanation was that there were a number of children and the petitioner had issued combined tickets.

3. Mr. Govindaswamy, learned Government pleader for State of Pondicherry, met the arguments of G. Rangaswamy, by contending that the proceedings against the petitioner had been initiated even during the currency of the permit even though the matter came up for hearing before the first Respondent only after the expiry of the permit. In the circumstances, both the Respondents were competent to enter a finding whether the Petitioner was guilty of over-loading or not even though no punishment could be imposed as stated by the second Respondent. As regards the second contention urged by Mr. G. Ramaswamy, the learned Government Pleader submitted that the question of over-loading was one of fact and this Court should not interfere with the finding of fact entered by the

second respondent.

4. The first contention of Mr. G.Ramaswamy is well founded. Section 60 of the Act reads as follows;

"(1) The transport authority which granted a permit may cancel the permit or may suspend it for such period as it thinks fit:-

under certain circumstances mentioned in clauses (a) to (f). The proviso to the section states that:

"No permit shall be cancelled unless an opportunity has been given to the holder of the permit to furnish his explanation."

It is not necessary to extract in detail the clauses (a) to (f). It is not disputed by the learned counsel for the petitioner that for the offence of over-loading the transport authority has got right to cancel or suspend a permit for such a period as it thinks fit. Section 60(3) of the Act provides that where a permit is liable to be cancelled or suspended under clauses (a) to (f) of sub-sec. (1) and the transport authority is of opinion that having regard to the circumstances of the case, it would not be necessary or expedient so to cancel or suspend the permit if the holder of the permit agrees to pay a certain sum of money, then, notwithstanding anything contained in sub-section (1), the transport authority may instead of cancelling or suspending the permit, as the case may be, recover from the holder of the permit the sum of money agreed upon.

5. It is therefore clear that Sec. 60 contemplates the cancellation or suspension of a permit for violation of any or all of the grounds mentioned in clauses (a) to (f) of Section 60(1). Section 60(3) provides for the offence being compounded in the discretion of the transport authority by calling upon the permit holder to pay a certain sum of money. Therefore, in order to attract Secs. 60(1) and (3) of the Act a permit must be subsisting. If the permit had expired and is no longer subsisting, there cannot be any question of the permit being cancelled or suspended has not been drawn by the learned Government Pleader to any other provision which would enable the transport authority to impose any fine on the permit holder for any of the reasons mentioned in Clauses (a) to (f) of Section 60, or for any violation of the conditions of the permit. It is not sufficient if proceedings are initiated against the petitioner for violation of the provisions of Section 60 during the currency of the permit. Since the punishment that is contemplated u/s 60(1) of the Act is the suspension or cancellation of the permit it is absolutely necessary that the permit must be subsisting at the time when the state Transport Authority passes an order of cancellation or suspension of a permit. When once it is admitted that at the time the matter comes up for hearing before the State Transport Authority, the permit had expired, the authority will not be in a position to cancel or suspend the permit. In other words, then the authority will have no jurisdiction to proceed further with the matter in accordance with Ss. 60 or 61(1) of the Act.

The learned Government Pleader did not attempt to argue before me that when once the proceedings for the cancellation or suspension of a permit have been properly initiated in terms of Section 60(1) by the issue of a charge memo or a show cause notice, then it would be open to the State Transport Authority to impose a punishment of a fine on the permit holder even though at the time when the order is passed, the permit has expired. It must therefore follow that the State Transport Authority will have no jurisdiction at all to enter a finding on the question whether there has been a violation of the conditions of the permit. The ultimate aim of Section 60 is to cancel or suspend the permit the violation of the conditions of the permit. If the cancellation or suspension of the permit is no longer possible by reason of the fact, the currency of the permit has expired, there cannot be any question of the State Transport Authority going to the merits of the case and entering a finding whether the alleged violation has been committed by a permit holder or not. Admittedly, in this case, the permit has expired on the date on which the State Transport Authority passed its order imposing a fine. The order of the fine was without jurisdiction, was rightly set aside by the Appellate Authority and was not attempted to be sustained before me by the learned Government Pleader. That being the case, both the State Transport Authority and the Appellate Authority had no jurisdiction to enter a finding whether the petitioner has been guilty of overloading or not. In view of my accepting the first of the contentions of Mr. Ramaswamy, it is unnecessary to consider the second of the contentions urged by him.

6. The result is the impugned order passed by the State Transport Appellate Authority to the extent that it is against the petitioner by reason of the finding given therein that the petitioner is guilty of overloading has to be set aside and is set aside.

7. The writ petition is allowed. No costs.

8. Petition allowed.