

(1994) 07 MAD CK 0058
In the Madras High Court
Case No : Writ Petition No. 11191 of 1994

A.M. Naveen

APPELLANT

Vs

State of Tamil Nadu and another

RESPONDENT

Date of Decision : 01-07-1994

Acts Referred:

Constitution of India, 1950 — Article 245
Criminal Procedure Code, 1973 (CrPC) — Section 417(3)
Limitation Act, 1963 — Section 29(2), 5
Motor Vehicles Act, 1988 — Section 89(1)
Tamil Nadu Motor Vehicles Rules, 1989 — Rule 157(3)

Citation : AIR 1995 Mad 161(1)

Hon'ble Judges : Raju, J

Bench : Single Bench

Advocate : Miss. P. Vedavalli, for the Appellant;

Judgement

1. The above writ petition has been filed for the following relief :--

Writ of declaration declaring Rule 157(3) of the Tamil Nadu Motor Vehicles Rules, 1989 as ultra-vires and opposed to Section 89(1) Motor

Vehicles Act, 1988 by excluding the applicability of Section 5 of the Limitation Act.....

2. The petitioner claims that he is an inter State carriage operator, operating his vehicle on the route Tiruthani to Panapakkam via, Vanganoor, R.

K. Pet, Sholinghur, Banava-ram Kaveripakkam and Ocheri, that the vehicle was checked on 9-12-1990 at 5.55 p.m. by the Motor Vehicles

Inspector, Kancheepuram at 71/6 kms. on Madras-Vellore road and noticed certain irregularities for which after issuing a show cause notice and

considering the representation, the permit of the petitioner was suspended for a period of ten days with option to compound at the rate of Rs.

300/- per day. The proceedings of the Regional Transport Authority dated 9-3-1994 awarding suspension is said to have been received on 29-3-

1994 and it is stated that since the petitioner was ill, the appeal could not be filed within time, viz., within the period of 30 days prescribed therefor.

The petitioner would state in the affidavit that since the Tribunal has taken the view in similar matters that Section 5 of the Limitation Act, 1963 will

have no application to enable any condonation of delay in view of Rule 157(3) of the Tamil Nadu Motor Vehicle Rules, 1989, the petitioner has

approached this Court directly without going before the Tribunal seeking for a declaration as notice above.

3. Miss. Vedavalle, learned counsel appearing for the petitioner contended that the provisions of Rule 157(3) of the Tamil Nadu Motor Vehicles

Rules, 1989, which excludes the applicability of Section 5 of the Limitation, Act, 1963 in respect of appeals filed under the said Rule cannot be

applied to appeals filed u/s 89(1) of the Motor Vehicle Act, 1988. This submission is based on the assumption that Rule 157(3) will have

applictions only to appeals filed by virtue of the prescription of illustrative cases u/s 89(1)(g) and provisions contained in Rule 157(2) and not to

appeals filed by virtue of the provisions contained in Section 89(1) of the Act. The further submission of the learned counsel for the petitioner is

that inasmuch as the Act, as such does not expressly exclude the applicability of the provisions of the Limitation Act 1963, by virtue of Section

29(2) of the Limitation Act 1963, the provisions of Section 5 of the Limitation Act would apply to the appeals filed invoking the provisions of

Section 89(1) of the Act. The learned counsel relied upon the decision reported in Mangu Ram Vs. Municipal Corporation of Delhi, in support of

her contention that unless specifically excluded, the provisions of Section 5 of the Limitation Act would apply to the filing of a belated appeal by

virtue of Section 29(2) of 1963 Act. The further contention of the learned counsel is that when the provisions of the Act as such did not exclude

the applicability of Section 5 of the Limitation Act, the Rules cannot do so and doing so by Rules would amount to exceeding the very scope of the

rule making powers under the Act. I have carefully considered the submission of the learned counsel appearing for the petitioner, but unable to

countenance any one of them, for the reasons to be set forth hereinafter.

3A. Section 89 of the Motor Vehicles Act provides for any person aggrieved against various kinds of orders or proceedings illustrated in Clauses

(a) to (g) of sub-section (1). While Clauses (a) to (f) itself stipulate the proceedings, that can be challenged in appeal either with reference to the

provision of the Act under which they were passed or the nature of the order, Clause (g) of sub-section (1) of Section 89 provides and enables the

Rule Making Authority to prescribe the other categories of order also with reference to which an appeal can be filed under Section 89.

Consequently, an appeal filed availing of the provisions contained u/s 89 and the various limbs of the Section read with relevant rules including the

one made with reference to clause (g) of sub-section (1) of Section 89 has to be considered to be an appeal filed only u/s 89 of the Act and it is

misnomer to call the categories of appeals filed pursuant to a prescription made under clause (g) of sub-section (1) of Section 89 as appeals made

under the Rules and try to distinguish them as different kinds of appeals filed otherwise under the statute alone. The resultant provision in my view,

is that any appeal filed under the various Clauses of subsection (1) of Section 89 read with the rules made therefore including the rule traceable to

Section 89(1)(g), shall be considered to be appeal filed under the provisions of Section 89 only. While that be the position. I am unable to

appreciate the difference or distinction sought to be made out by the learned counsel that different considerations should weigh with appeals filed

invoking the Rules made u/s 89(1)(g) of the Act and the other appeals of filed either of the sub-clauses of sub-section (1) Section 89 of the Act. in

the matter of application of Rule 157(3) the Tamil Nadu Rules.

4. So far as Rule 157 of the Tamil Nadu Motor Vehicles Rules 1989 is concerned, it applies to all categories of appeals filed under various clauses

of sub-section (1) of Section 89 and merely because sub-rule (2) illustrates the category or nature of orders that can be challenged on an appeal

u/s 89(1)(g), the appeal of the nature illustrated by Prescription under said sub-rule (2) cannot be considered in isolation from the other limbs of

Rule 157 or treated as different classes of appeals filed otherwise than u/s 89(1) of the Act. There can be no controversy over the position that sub-

rule (1) of Rule 157 alone prescribes the period of limitation for all categories of appeals envisaged to be filed under sub-section (1) including the

various sub-clauses mentioned therein and such limitation is 30 days from the date of receipt of the order appealed against. Section 89 while stipulating that "any person may within the prescribed time and in the prescribed manner, appeal to the State Transport Appellate Tribunal constituted under sub-section 2", enables the Rule Making Authority alone to prescribe the period of limitation and does not itself prescribe the limitation. It is only taking advantage of the enabling provisions contained in section 89, the Rule Making Authority has fixed the period of limitation at 30 days. Since the power to fix the limitation itself has been left completely with the Rule Making Authority, inevitably, the making of a provision for condonation of the limitation also has to be considered to have been left with the Rule Making Authority in the absence of any specific provision to the contra in the Act itself. Therefore, the Rule Making Authority, which has prescribed the rules among other things, the period of limitation for filing appeal and the procedure for regulation of the appeal, has thought fit to exclude the applicability of the provisions of Section 5 of the Limitation Act 1963 to the appeals filed under "this Rule", meaning thereby all appeals for which the period of limitation has been prescribed under the said rule.

Sub-rule (3) of Rule 157 stipulates that the exclusion is in respect of appeals filed under this Rule, It means the appeals filed awaiting of the procedure prescribed under both under sub-rules (1) and (2) of Rule 157 and there is no justification to confine the operation of sub-rule (3) of only the categories of appeal envisaged under sub-rule (2) which as noticed earlier is once again referable to only Section 89(1)(g) of the Act. Therefore, I am unable to agree with the submission of the learned counsel in this regard.

5. The further submission that when the Act itself has not chosen to exclude the provisions of the Limitation Act 1963, the Rules could not do so and if it is does so, it would amount to contravention of the provisions of the Act, has no merit of acceptance. The reliance placed on the decision of the Supreme Court reported in Mangu Ram Vs. Municipal Corporation of Delhi, is inappropriate so far as the case on hand is concerned. That is a case where the appeal provisions under consideration was Section 417(3) of the Code of Criminal Procedure 1898 which provided its own

period of limitation and in the absence of any provision in the Act excluding the applicability of Section 5 of the Limitation Act by placing reliance upon Section 29, their Lordships of the Supreme Court held that the provisions of the Limitation Act particularly Section 5 would apply to a case of appeal under the provisions of the Code of Criminal procedure referred to therein. There was no occasion for the Apex Court to consider an issue of the nature involved in this case. In this case, as noticed earlier, there is a statutory provision, which specifically excludes the applicability of the Limitation Act of course by means of a statutory rule which indisputably has been made by virtue of the Rule Making Authority conferred under the enactment. Inasmuch as the prescription of period of limitation has been left entirely to the discretion of the Rule Making Authority, it is but natural that it should be presumed that the question of condonation also has been similarly left to the discretion of the Rule Making Authority and when that be the position, there can be hardly any challenge to the validity of the sub-rule (3) of Rule 157 of the Tamil Nadu Motor Vehicles Rules on the ground that it exceeds the provisions of the Act, A provision for condonation is essentially part of provision for fixing limitation. The provisions of the Act particularly Section 89, which is the provision providing for appeals, does not even indicate or give any impression suggestive of the position that the Motor Vehicles Act, 1988, as such had the object of not excluding or on the other hand making applicable the provisions of the Limitation Act to the appeals. This aspect, as noticed earlier has also been absolutely left to the discretion of the Rule Making Authority and when the Rule Making Authority has chosen to make a specific rule, I am of the view that the challenge on the ground that it exceeds the provisions of the Act do not appeal to me or deserve the merit of acceptance. For all the reasons stated above. I am unable to see any merit in the challenge to the validity of the sub-rule (3) of Rule 157 of the Tamil Nadu Motor Vehicles Rules. 1989. The Writ Petition, therefore fails, and shall stand dismissed.

6. Petition dismissed.