

(1982) 09 MAD CK 0032
In the Madras High Court
Case No : C.R.P. No. 1535 of 1980

A.M.V. Jayaraman

APPELLANT

Vs

Murugan Bus Service and Another

RESPONDENT

Date of Decision : 17-09-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 8, 151
Motor Vehicles Act, 1939 — Section 64B

Citation : AIR 1983 Mad 210 : (1984) 97 LW 732 : (1982) 95 LW 732

Hon'ble Judges : Mohan, J

Bench : Single Bench

Advocate : V.C. Palaniswami, for the Appellant; G. Ramaswami, for K. Thirumalai and C.R. Krishnamurthi, for the Respondent

Judgement

1. The revision relates to the grant of stage carriage permit on the route from Nagalur to Erode. The distance is 46 kms. There were six applicants before the Regional Transport Authority which at its hearing on 18-1-1977, preferred the respondent in this revision petition, for reasons stated in the order. Aggrieved by the same, the matter was taken up in appeal to the Appellate Authority by the revision petitioners as well as another, Kannan Transport, in App. Nos. 213 and 192 of 1977. The State Transport Appellate Tribunal considered the matter in the order dated 28-3-1978, and dismissed the appeals. Aggrieved by the concurrent orders, the present revision petition has been preferred by A.M.V.Jayaraman alone. The respective qualifications of the petitioner and the respondent may be stated in the following tabular statement -

-----	Petitioner (A.M.V.Jayaraman)	Respondent (Murugan Bus Service)	-----
-----	Before R.T.A.	Applicant No.4.	Before R.T.A.
-----	Application No.8	Before S.T.A.T	Appellant in Before S.T.A.T.
-----	Respondent in App.213 of 1977	App.No.213 of 1977	Total Marks : 10 Total Marks : 10 Unit : 2 +

1 Unit : 1 + 1. Ex. 1. Lorry Operator from Bus Operator from 2-5-1973. 1.2.72
Sector : 20 kms Sector : nil Branch office : at Bhavani Branch office : Nil
Additional workshop at Bhavani Additional workshop nil History sheet : clean
Caution (vide I.A. 158/78) -----

In support of the petition, only two points are urged before me. (1) The tribunal erred in failing to note that the respondent's history sheet was not clean as it mentioned. IN fact I. A No. 158 of 1978 was filed. The same is available at page 55 of the current file and that contains a caution which can be taken note of for the purpose of assessing the manner of performance. Nevertheless, if the Tribunal were to hold that the history sheet is clean without adverting to the material placed before it by means of interlocutory application, it had committed a material irregularity. The second submission is that pending the civil revision petition, the permit granted in favour of Murugan Bus Service has been transferred to N.Thangavelu. Therefore, C.M.P. 14326 of 1981 was taken up to implead him as a party. It is stated that certain subsequent events had taken place which have a great bearing with regard to the revision. the spare bus of Murugan Bus Service, original grantee, was surrendered on 1-12-1978. It had also transferred one of the two permits it had in favour of a third party on 14-1-1979. The very permit forming the subject matter of the revision has been transferred in favour of another (Thangavelu) on 23-1-1979. Under these circumstance, by reason of the subsequent events, there is a complete change in the situation. The original grantee, namely, Murugan Bus Service, the transferor of the present respondent (N.Thangavelu) was made on the footing that he was a single bus operator. Where, therefore, the basis of the grant itself had gone, these subsequent events can be taken note of in which even it will be open to the petitioner to urge that the grant in favour of Murugan Bus Service cannot any longer be sustained. Such subsequent events can be taken note of even under the revisional jurisdiction as seen from the ruling reported in Pasupuleti Venkateswarlu Vs. The Motor and General Traders, . In Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat, , it was held that the power of revision is a part of appellate jurisdiction and such appear is conferred by reason of the fact that the High Court is a superior court. In a case in M.A.Abdul Rahiman v. A.P.Abdulla 1967 80 MLW 54 which arose under madras Buildings (Lease and Rent Control) Act a subsequent event which took place during the pendency of the revision was taken note of and necessary relief was granted.

2. These are the arguments of Mr.V.P.Raman learned counsel for the petitioner. Mr.G.Ramaswami in opposition to these arguments, would say that where during the revisional stage certain events take place, this court is not concerned with those subsequent events. Only an appeal is continuation of the suit while the revision is not. There cannot be any demur on this proposition. A careful by the petitioner, namely, Pasupuleti Venkateswarlu Vs. The Motor and General Traders, , would clearly show that the subsequent event took place only at the appellate stage before the Tribunal. This Court by reason of S. 64-B of the Motor

Act, exercises powers as are conferred under S. 115 C.P.C If that be so, in revisional jurisdiction, it cannot take note of these matters. In Hari Shankar v. Rao Girdhari Lal. AIR 1963 SC 698, in para 7 revision was pointed out. having regard to the same, this court must be held to have powers to see whether there is an error in jurisdiction, which alone is the scope of S. 115 C.P.C. To the same effect is the decision in Bhim Sen Vs. Smt. Savitri Devi, and the decision in Vora Abbasbhai Alimahomed Vs. Haji Gulamnabi Haji Safibhai, . As to the scope of revisional jurisdiction and the meaning of record can be gathered from the ruling in Swami Motor Transport (Private) Ltd. Vs. Raman and Raman (Private) Ltd. and Others, . In other words, where the High Court is concerned with the applications as on the date of R.T.A's hearing, it is not possible for the petitioner to contend that subsequent events have taken place as a result of which the original grantee be an operator and therefore the permit is liable to be set aside. Such a power is not conferred under S. 115 C.P.C The learned counsel for the respondent relies also on the decision in Sri. Raja Lakshmi Dyeing Works and Others Vs. Rangaswamy Chettiar, .

3. As regards I.A. 158 of 1978, the argument is that there is nothing on record to show that the respondent was even served, much less, there was an opportunity to verify the correctness of the same. Under these circumstances, merely because such a record is available in the current file, it cannot be held that the exercise of jurisdiction by the Tribunal is in any manner vitiated. For all these reasons, there is absolutely no reason to interfere.

4. Firstly I will take up the most important question as to the loss of qualifications attributed to Murugan Bus Service. A few relevant dates may now be noted. On 18-1-1977, as I observed above, the hearing by the R.T.A. took place. Thereafter the appeal was heard by the S.T.A.T. on 28-3-1978 with a petition to condone the delay of 130 days. On 14-11-1979 notice was ordered to the respondent on that application. The date of hearing was fixed as 6-12-1979, in the notice. Ultimately the delay came to be excused on 10-4-1980 while civil revision petition was admitted on 2-7-1980. In the meanwhile in Dec. 1978 the application for transfer of the permit forming the subject matter of revision was made seeking to transfer the same in favour of N.Thangavelu who is now impleaded as a respondent. That was notified under S. 57 (3) of the Motor Vehicles Act. Thereafter on 23-1-1979, the transfer took place. Therefore what is urged on the basis of these dates is that after the time for filing the revision was over, if the transfer had taken place, there cannot be any valid objection to the same. One thing that is striking in this case is that it cannot be gainsaid that the basis of the grant in favour of the respondent as the Tribunal would state, is as follows -

"Here in this case second Appellant with lower experience has secured two permits and another one () on the same date of hearing, Hence, the order to maintain is healthy competition among the operators and quality of opportunity in the interest of the public. I find that the lower authority has rightly preferred

the respondent to the second appellant who has obtained three route buses with lesser experience, whereas the respondent with longer experience is only a stage bus operator with clean history sheet since 1975."

Therefore the respondent was preferred as a single bus operator with a clean history sheet in 1973. It is not denied before me that the original grantor namely Murugan Bus Service had only two permits and a spare bus. Admittedly the first of the permits was transferred in favour of one P.Natarajan on 14-1-1979. The remaining permit also was transferred in favour of N.Thangavelu by Murugan Bus Service on 23-1-1979. Where, therefore the basis of grant that it is a single bus operator no longer exists, can the court exercising revisional jurisdiction take note of that event? or is it to confine itself only as the the qualifications which were prevalent on the date of the hearing by the R.T.A.namely, 18-1-1977. In other words, what is the scope of revisional jurisdiction in a case of this character where the loss of qualification goes to the root of the matter. If at all today it has to state its qualification of the transferee for a grant of permit, it could do so as a new entrant. It is no longer in the field. However, what is urged is that such subsequent events cannot be taken note of under revisional jurisdiction. In order to appreciate this contention, it is necessary for me to look at the revisional jurisdiction. The power to revise the orders of the lower authority is contained under S. 64-B of the Motor Vehicles Act. That reads as follows -

" 64-B. Revision by High Court - The State Transport Appellate Tribunal shall be deemed to be a court subordinate to the High Court for the purposes of S. 115 C.P.Code 1908 (Central Act V of 1908) and its orders shall be liable to revision by the High Court under the provision of the said section.

Provided that the State Transport Appellate Tribunal shall not entertain any application from a person aggrieved by an order of a State Transport Authority or Regional Transport Authority or Regional Transport Authority unless the application is made within 30 days from the date of the order.

Provided further that the State Transport Appellate Tribunal may entertain the application after the expiry of the said period of thirty days, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time. Provided also that the State Transport Appellate Tribunal shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.

A reading of this necessitates me to make a reference to S. 115 C.P.C. That reads as follows :-

"115. Revision - (1) The High Court may call for the record of any case which has been decided by any court subordinate to such High Court and in which no appeal lies thereto and if such subordinate court appears -

(a) to have exercised jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or or with material irregularity.

The High Court may make such order in the case as it thinks fit -

Provided -that the High Court shall not, under this section, vary or reverse any order made or ny order deciding an issue, in the course of a suit or other proceeding, except where -

(a) the order if it had been made in favour of the party applying for revision would have finallydisposed of the suit or other proceedings; or

(b) the ofder, if allowed to stand would occasion a failure of justice or cause irreparable injury to the partry against whom it was made.

(2) The High Court shall not, under this section varyor reverse any decree or order against which an appeal lies either to the High Court or to any court subordinate thereto.

Explanation : In this section, the expression "any case which has been decided" includes anyorder made, or anyorder deciding an issue, in the course of a surit or other proceeding."

What is urged is that only an appeal is a continuation of a suit while revision is not. There cannot be any demur to the legal proposition as such. However, I am of the view that where the right to sustain the application is no longer available to Murugan Bus Service, different considerations will arise irrespective of the fact that the jurisdiction that is exercised is appellate jurisdiction or revisional. In other words, if the lis is kept pending, that would enough for the court to interfere. If it were some other matter perhaps, one may not very much worry in exercising revisional jurisdiction. But here as I have stated above, the right to sustain the applicationon certain stated qualifications having disappeared, can it be said that because of this High Court exercising revisional jurisdiction and becasue it conversns itself under S. 115 C.P.C. with the jurisdiction exercised by the Tribunal or lower authority, it should shut its eves? I do not think so. The power of regision is a limited one, in comparison to the appellate power. Barring that there is no point in saying that under revisional powers, the subsequent events cannot be taken note of. Such an extreme argument will render the revisional power absolutely nugatory. In Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat, , it has been catagorically held that the powr under S. 115 C.P.C is a valuable power which is excised by the High Court as a superior Court. Therefore the right to sustain the application must survive at any stage of the order. In fact, Alagirirswami J. (as he then was) in aruling reported in Abdul Rahiman v. Abdulla (1967) 80 MLW 54, which comes under the Madras Buildings (Lease and Rent Control) Act, took note of an even that took place during the revisional stge and granted the relief. this exactly is the purport of the ruling in Pasupuleti Venkateswarlu Vs. The Motor and General Traders, . that case also related to A.P.Buildings (Lease Rent and Eviction) Controal Act. Krishna Iyer

J. speaking for the court, said as follows (at p.1410) -

"We feel the submissions devoid of substance. First about the jurisdiction and propriety vis-a-vis circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceedings. Equally clear is the principle that procedure is the hand-maid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inapt the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fair play is violated, with a view to promote substantial justice subject to course to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed. On both occasions the High Court, in revision, correctly took this view. the later recovery of another accommodation by the landlord, during the pendency of the case has as the High Court twice pointed out, a material bearing on the right to evict, in view of the inhibition written into S. 10(3)(iii) itself. We are not disposed to disturb this approach in law or finding of fact.

Therefore, if a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the court, it cannot blink at it or be blind to events which stultify or render inapt the decretal remedy. I should think that equity and justice demand my taking note of these events especially when by reason of these events, the original grantee Murugan Bus Service loses all the qualification to be a transport operator.

5. It is true in *Hari Shankar v Rao Girdhari Lal*, AIR 1963 SC 698 it was observed thus (at pp. 700 & 701):

"The distinction between an appeal and a revision is a real one. A right of appeal carries with it a right of rehearing on law as well as fact, unless the statute conferring the right of appeal limits the rehearing in some way, as, we find, has been done in second appeals arising, under the Civil P.C. The power to hear a revision is generally given to a superior Court so that it may satisfy itself that particular case has been decided according to law. Under S. 113 of the Civil P.C., the High Court's powers are limited to see whether in a case, decided,

there has been an assumption of jurisdiction where none exists, or a refusal of jurisdiction where it did, or there has been material irregularity or illegality in the exercise of the jurisdiction. The right there is confined to jurisdiction and jurisdiction alone. In other Acts, the power is not so limited, and the High Court is enabled to call for the record of a case to satisfy itself that the decision therein is according to law and to pass such orders in relation to the case, as it thinks fit."

Again, in *Bhim Sen Vs. Smt. Savitri Devi*, , the scope of revisional jurisdiction under S. 115 C.P.C. was pointed out. To the similar effect is the decision in *Vora Abbasbhai Alimahomed Vs. Haji Gulamnabi Haji Safibhai*, . It was a case which arose under the Rent Control Act. In *Swami Motor Transport (Private) Ltd. Vs. Raman and Raman (Private) Ltd. and Others*, while examining the scope of revisional jurisdiction concerning propriety, legality and correctness in paras 8 and 9 at page 184, the meaning of "record" came to be ascertained. But that does not in any way help to decide the question in issue.

6. In *Sri. Raja Lakshmi Dyeing Works and Others Vs. Rangaswamy Chettiar*, , the Supreme Court in a case which arose under Tamil Nadu Building (Lease and Rent Control) Act, point out the distinction between appeal and the revision as follows (at p.1254) -

" Appeal" and "revision" are expressions of common usage in Indian statutes and the distinction between "appellate jurisdiction" and "revisional jurisdiction" is well defined. Ordinarily, appellate jurisdiction involves a rehearing, as it were on law as well as fact and as invoked by an aggrieved person. Such jurisdiction may, however, be limited in some way as, for instance has been done in the case of second appeal under the Code of Civil Procedure, and under some Rent Acts in some States. Ordinarily, again revisional jurisdiction is analogous to a power of superintendence and may sometimes be exercised even without its being invoked by a party. The extent of revisional jurisdiction is defined by the statute conferring such jurisdiction. The conferment of revisional jurisdiction is generally for the purpose of keeping tribunals subordinate to the revising tribunal within the bounds of their authority to make them act according to law, according to the procedure established by law and according to well defined principles of justice. Revisional jurisdiction as ordinarily understood with reference to our statutes is always included in appellate jurisdiction but not vice versa. These are general observations. The question of the extent of appellate or revisional jurisdiction has to be considered in each case with reference to the language employed by the statute".

A careful reading of the above passage also shows that revisional jurisdiction as ordinarily understood is always included in appellate jurisdiction. Therefore, even with a limited exercise of revisional jurisdiction, it must be possible for the court to take note of events, which have a great impact on the right of claimant to maintain his application for the grant of a permit. As to whether the authority would have granted the permit in spite of loss of qualifications which have rendered Murugan Bus Service no longer a transport operator, is a matter which

has to be decided on the facts as are available before me. Therefore, I am of the view that even under the revisional jurisdiction such events can be taken note of for the reasons already stated.

7. In I.A. 158 of 1978, which occurs at page 55 of the current file, an allegation is made that a caution was administered. As far as Murugan Bus Service was concerned, about this, in the grounds of appeal, it is stated as follows :-

"Apart from this on the date of R.T.A hearing charges were pending against the respondent herein for his bus TME. 7118 for of 2 1/2 tickets on 5-12-1976" (vide page 15 para 8 of the grounds of appeal.

Thereafter the necessary particulars came to be given. There is nothing on record to show that the petitioner had attempted to serve the respondent. Therefore I cannot say that this material failure to advert, has in any way prejudiced the revision petitioner. Accordingly, I reject this argument on behalf of the petitioners.

8. In the result, the revision will stand allowed and the matter is remitted to the State Transport Appellate Tribunal for fresh disposal in view of the subsequent events to which I made a reference earlier.

9. Pending disposal of the appeal, the respondent (N.Thangavelu) who was impleaded in the place of Murugan Bus Service by orders of this court in C.M.P.No.14325 of 1981 can continue transport operations. This is rather a piquant situation. I have held that the original grantee has lost all the qualifications whether the transferee from the original grantee can be permitted to run itself is a matter of dispute. However, in public interest the above order is made. Therefore I hereby direct the Tribunal to dispose of the appeal on or before 30th Nov. 1982 and submit a report to this court about such disposal. No costs.

10. Revision allowed.