

**(1967) 09 MAD CK 0005**  
**In the Madras High Court**  
**Case No : Writ Petition No. 84 of 1965**

D. Subramania Mudaliar

APPELLANT

Vs

Secretary, Regional Transport Authority, Chingleput,  
Madras-17

RESPONDENT

**Date of Decision :** 05-09-1967

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** AIR 1968 Mad 315

**Hon'ble Judges :** Ramakrishnan, J

**Bench :** Single Bench

**Advocate :** C. S. Prakas Rao, for the Appellant;

## Judgement

Ramakrishnan, J.—This writ petition raises an interesting question and for that purpose I shall state briefly the facts, which are relevant. The

petitioner, Subramania Mudaliar, got transferred to his name, by an order passed by the Regional Transport Authority, Chingleput, on 18-12-

1963, the permit of bus MDH 3580 running on the route Madras to Pondicherry. The prim permit-holder for the bus from whom the petitioner

obtained the transfer was one Syed Yacoob. It appears that on 6-5-1963, the Sub-Inspector of Police made a check and found that there were

certain passengers in the bus who were only travelling to intermediate stations, but to whom the conductor had insisted on issuing tickets for the

whole route. This was a contravention of the conditions of the permit. For such contravention under Sec. 60 of the Motor Vehicles Act, the

transport authority, which granted the permit. may cancel the permit or suspend it for such period as it thinks fit. There is a proviso to that section

which is to the effect that no permit shall be cancelled unless an opportunity has

been given to the holder of the permit to furnish his explanation.

Section 60 (3) also states that in lieu of suspension or cancellation of the permit, the permit-holder may be given an opportunity by the Transport

authority to compound the offence by payment of a sum prescribed by him.

2. For the irregularity committed on 6-5-1963, the Secretary of the Regional Transport authority, Chingleput. issued a "show cause" notice to

Syed Yacoob on 18-6-1963. On 17-7-1963 Syed Yacoob furnished his explanation. On that explanation the Checking Inspector offered on 14-

10-1963 some remarks, and the said remarks were communicated to Syed Yacoob on 9-12-1963 For further explanation, if any. In the

meantime, on 18-12-1963, both Syed Yacoob and the petitioner appeared before the Regional Transport authority and effected a transfer of the

permit under Sec. 59 read with Rules 196 to 199 of the rules framed under the Motor Vehicles Act. The relevant file supplied by the respondent

(Secretary, Regional Transport Authority, Chingleput) contains a Memorandum dated 7-9-1962 by the petitioner stating that in the event of the

transfer being, ordered he, as the proposed transferee, would have no objection to the punishment being levied and inflicted against the permit

transferred to him. That statement obviously has reference to an order of suspension already ordered before the transfer and which was the

consequence of some other contravention of the conditions of the permit. But so far as the present contravention is concerned, there appears to

have been no order of suspension or punishment passed by the Transport authority before the transfer was effected.

3. After the transfer of the permit, on 15-1-1964, the petitioner filed an explanation to the memo of charges for the contravention of the conditions

of the permit which took place on 6-5-1963, and thereafter on 14-12-1964 the Regional Transport authority, Chingleput, issued another memo

asking the petitioner to submit a further explanation. At this stage the petitioner has come forward with the present writ petition under Art. 226 of

the Constitution seeking for a writ of prohibition against the Secretary, Regional Transport Authority, Chingleput, from proceeding further with the

enquiry.

4. Learned counsel appearing for the respondent referred to the actual order of the Regional Transport authority sanctioning the transfer of the

permit, where the following is found:

In exercise of the powers conferred on me, under Sec. 59(1) of the Motor Vehicles Act, I, the Regional Transport authority, Chingleput district,

do hereby sanction the transfer of permit in respect of stage carriage MSX 6202. as applied for, subject to the condition that the transferee should

undergo the punishments on charges, if any. pending against the permit. The transferor should send the Parts A and B permit to this office for

making necessary entries therein.

Learned counsel appearing for the petitioner urges that this statement about punishment on charge, if any, pending against the permit, really had

reference to punishments already imposed upon Syed Yacoob in relation to the period when the permit was under his control, treating them as

liabilities to which the permit had already become subject to, consequent on an order imposing suspension which had been passed before the

transfer by the Regional Transport authority, after taking the explanation of Syed Yacoob, the transferor. In other words, at the time when the

aforesaid penalty was imposed, Syed Yacoob was in a position to give proper explanation, because he was the holder of the permit at the time of

enquiry and also at the time when the punishment was imposed.

But the present case deals with a different situation. The contravention which gave rise to the issue of "show cause" notice took place when Syed

Yacoob was the holder of the permit. But no order imposing penalty had been passed in regard to this contravention at the time when the transfer

was approved. In fact, after the transfer had been approved the authorities have called for the explanation of the petitioner in the memo dated 14-

12-1964 in regard to the contravention that took place at a time when Syed Yacoob was the holder. It is very likely that the petitioner would not

be in a position to give any explanation in regard to happenings that occurred when the permit-holder was a different person, He cannot be called

upon to answer, in effect, for charges of the contravention of the conditions of the permit for which his transferor, namely, S. Yacoob, was

responsible. Pressing charge against the petitioner and imposing a penalty of suspension of the permit, on the footing that though he is the transferee

of the permit, he should suffer a penalty in respect of the permit in his hands, for a contravention which took place in his predecessor's time, would

be applying the principle of vicarious liability to proceedings which are clearly quasi-criminal in nature. An order imposing a penalty, though it is described in loose language as a penalty "imposed on the permit", is really a penalty imposed on the holder of the permit. That is the reason why in the proviso to Sec. 60(1) of the Motor Vehicles Act. stress is laid upon an opportunity being given to the holder of the permit to furnish his explanation. After the transfer, in many situations, it may happen that the transferee of the permit will not be able to furnish an explanation for a contravention of the conditions of the permit which took place in his predecessor's time. It would amount to laying down an unsound proposition of law, if it is stated that for an enquiry on the quasi-criminal charge of contravention of the conditions of a permit, which took place before the transfer of the permit, the transferee can continue to figure at the enquiry, be asked to furnish the explanation for the contravention, for which his predecessor-in-title was solely responsible, and thereafter be made to suffer a penalty vicariously, for what was clearly an act of negligence or noncompliance or wilful default in fulfilling the condition of the permit on the part of the transferor. I am of the opinion that it will not be in accordance with the principles of natural justice or in compliance with the principle implied in S. 60 of the Motor Vehicles Act if such vicarious liability by way of punishment for contravention of the conditions of the permit is to be imposed on the transferee of the permit, for a default committed by the transferor following an enquiry after such transfer, and at which enquiry the transferee can offer no useful or proper defence to the charge. If the Regional Transport authority, at the time of the transfer, had in view the necessity to finalise orders of the pending enquiry into charges, as in the present case, it was open to him to withhold the sanction for the transfer of the permit. But he did not do so and imposed the condition mentioned above. In view of what I have stated above, the condition thus imposed by the Regional Transport authority in his order will apply only to orders of punishment which had fructified before the transfer, and cannot cover proceedings of the present kind, where there has been no such completed order of punishment before the order of transfer. Consequently, a writ of prohibition will issue as prayed for by the petitioner. No order as to costs.