

(1959) 02 MAD CK 0019
In the Madras High Court
Case No : Writ Petition No. 194 of 1957

Dhanmull Sowcar

APPELLANT

Vs

The Regional Transport Authority, Salem and Another

RESPONDENT

Date of Decision : 27-02-1959

Acts Referred:

Motor Vehicles Act, 1939 — Section 60(1)

Citation : AIR 1959 Mad 531 : (1959) CriLJ 1443 : (1959) ILR (Mad) 901 : (1959) 72 LW 472 : (1959) 2 MLJ 118

Hon'ble Judges : Balakrishna Ayyar, J

Bench : Single Bench

Advocate : M.R. Narayanaswami, for the Appellant; Addl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Balakrishna Ayyar, J.—The petitioner had a stage carriage permit for his bus, MDJ 1953. On 18-5-1956, the Motor Vehicles Inspector, South Salem, stopped the vehicle at the 15th mile stone on the Salem-Harur road, and checked it. He then found that the bus was carrying 49 passengers, excluding the driver and the conductor, while its authorised seating capacity was only 40 passengers. The bus was overloaded by 9 passengers. In addition, it was found that 31 baskets of mangoes were being transported by that bus, for which freight charges had been collected at the rate of four annas per basket.

2. The Secretary to the Regional Transport Authority, Salem, called for the explanation of the petitioner in respect of these irregularities. In the explanation which the petitioner submitted, he stated that the allegation that there were 49 passengers was untrue and that the bus carried only 40 passengers. He further mentioned that a constable was travelling in that bus and that the constable should be examined in support of his explanation. He, further pleaded that the charges had been brought against him purposely out of prejudice. So far as the baskets of mangoes were concerned, the explanation of the petitioner was that

they constituted the luggage of certain passengers.

3. The Secretary, Regional Transport Authority, rejected the explanation tendered by the petitioner. He considered that there was no need to examine the constable, because, that constable himself had signed the report drawn up by the Motor Vehicles Inspector. He rejected the plea that the mangoes constituted the luggage of certain persons, because, not one of the passengers claimed it as his luggage. In the result he suspended the permit of the petitioner for a period of 3 months for the offence of having overloaded the bus by 9 passengers and for one week for the offence of having carried the baskets of mangoes.

4. On appeal, the State Transport Appellate Tribunal, confirmed the findings of the Secretary, Regional Transport Authority, but reduced the period of suspension from three months to one month in respect of the offence of overloading. He confirmed the punishment in respect of the other offence.

5. The petitioner has now come to this court for the issue of an appropriate writ to quash the orders of the authorities below.

6. The first contention of Mr. M. R. Narayanaswami, the learned counsel for the petitioner, was that the Secretary of the Regional Transport Authority contravened the principles of natural justice when he declined to take the evidence of the constable whom the petitioner has cited as a defence witness.

7. The authorities proceeded against the petitioner for contravention of clause (b) of Section 60(1) of the Motor Vehicles Act. Sub-section (1) of section 60 enumerates six categories of matters and provides that, should a contravention occur in respect of any of these, the permit may be cancelled or suspended for such period as the appropriate authority deems fit. There is a proviso to this which runs :

"Provided that no permit shall be cancelled, unless an opportunity has been given to the holder of the permit to furnish his explanation."

It will be noticed that this section does not require that the authorities concerned should record any evidence. Therefore, it is not possible to say that, when the Secretary of the Regional Transport Authority declined to record the evidence of the constable whom the petitioner referred to, he contravened any provision of the statute. The next thing to remember is that the authorities referred to in this sub-section have not been given power to summon witnesses or to enforce their attendance. The omission in the statute in this respect suggests that it was not the intention of the legislature that the authorities in question should examine any witnesses. It may also be mentioned that the petitioner did not offer to produce the constable before the Secretary, Regional Transport Authority, for his examination.

8. Another circumstance may be mentioned here. All that the proviso to sub-s. (1) of Section 60 requires is that, before a permit is cancelled, the holder of the permit should be given an opportunity to furnish his explanation. The suspension

of a permit is a less serious penalty than its cancellation. Even as regards cancellation, all that the statute requires is that the operator should be given an opportunity to furnish his explanation. It seems to stand to reason that in respect of the lesser penalty the statute could not have required that a more elaborate procedure should be followed.

9. When we examine the scheme of the Act, it will be found that contraventions of its provisions and of the rules made thereunder are placed in two categories. In one category is placed those contraventions, for which the offender may be prosecuted and punished in the ordinary criminal courts. Such matters are provided for in Chapter 9 of the Act. In respect of other contraventions what I may call departmental action is provided for. This is a very summary method, and all that the authorities concerned are required to do is to give the person proceeded against an opportunity to furnish his explanation. It follows that all that be required is that the person proceeded against should be notified what the allegations against him are and that he should be given an opportunity to explain them.

10. The further comment I would make is that the right of the petitioner to ply a stage carriage vehicle is derived under the Act. The extent of that right and the circumstances under which that right is liable to be curtailed, abridged or withdrawn are all provided for in the Act and the rules framed thereunder. And so long as these have been complied with the petitioner cannot properly complain. But this does not mean that the proper authorities are precluded from examining the witnesses and in a proper case they would be exercising a wise discretion if they do examine witnesses produced by a party. All that I would say at this stage is that, under the statute, a person placed in the position of the petitioner has no right to insist that his witnesses should be examined when he is being proceeded against for a transgression of any of the matters enumerated in Sub-section (1) of Section 60.

11. Mr. Narayanaswami referred to the decision given u/s 18 of the Arms Act in W. P. Nos. 449 and 450 of 1953 (Mad) and contended that he should have been given an opportunity to examine his witnesses. In respect of that decision, I would make two observations. The first is that in W. P. Nos. 449 and 450 of 1953 (Mad), the person concerned was given no opportunity whatever even to give his explanation. He was not even told what the allegations against him were. On that ground alone, that decision is distinguishable. The nature of the procedure which has to be adopted when the conditions referred to in the various sub-clauses of Sub-section (1) of Section 60 are contravened is indicated in that sub-section itself. There is no such indication in Section 18 of the Arms Act.

12. Mr. Narayanaswami finally contended that the reasons given by the State Transport Appellate Tribunal for holding that the mangoes were not luggage are unsound. Even granting that the reasons are open to question, the fact remains - this fact is recorded by the Regional Transport Authority, that no one claimed the mangoes as his luggage. Instead, freight charges had been collected for them at

the rate of four annas per basket. These articles, therefore, constituted goods and cannot be treated as luggage. Mr. Narayana-swami argued that, even if these mangoes were treated as goods, that would not involve a contravention of the terms of the permit. I had occasion to consider a similar argument earlier in the course of the week and I held then that such transport would constitute a contravention of the terms of the permit.

13. In the result, this writ petition is dismissed. There will be no order as to costs.