

(1986) 06 MAD CK 0019

In the Madras High Court

Case No : C.R.P. No's. 466 of 1982 and 80 of 1983

G.K.T. Bus Service, Palani

APPELLANT

Vs

State Transport Appellate Tribunal, Madras and Another

RESPONDENT

Date of Decision : 16-06-1986

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 60

Citation : AIR 1988 Mad 127

Hon'ble Judges : Sathiadev, J

Bench : Single Bench

Advocate : Manivarman and Radha Gopalan, for the Appellant; Germaiah, for the Respondent

Judgement

1. Petitioner in C. R. P. No. 466 of 1982 is the owner of the stage carriage TNA 8689, which was stopped and checked at IW/8 K.M. stone on

Palani-Coimbatore, Road at 6.30 p.m., on 263-1980, and it was found carrying six passengers in excess of the permitted seating capacity of 51;

and the Registration Certificate, Insurance Certificate and the permit were not available at the time of checking. All the 57 tickets were seized and

statements from the crew of the vehicle and a passenger were recorded, resulting in charge memo being issued. After securing explanation from the

petitioner the Regional Transport Authority, Coimbatore held that the charge of overloading had been proved, and, therefore, under S. 60(I) of the

Motor Vehicles Act, he suspended the permit for three days with an option to compound at Rs. 75/- per day. The Appellate Authority agreed with

this finding resulting in this revision petition being preferred.

2. C.R.P. No. 80 of 1983: -Petitioner herein is the owner of a stage carriage TNJ

2944 which was stopped and checked at 2 K.M. stone on Vellore-Tiruvalam Road at 4.45 p.m., on 22-8-1978 and it was found carrying an overload of 6 adult passengers over its permitted seating capacity of 58. A charge memo was issued, and after receipt of petitioners representation, etc, the Regional Transport Authority, Madras Region, taking note of the fact that 64 tickets have been seized, which was a concrete proof; and the explanation offered not being satisfactory, held that the charge had been proved, and therefore, suspended the permit by one day with an option to compound at Rs. 100/-. The Appellate Authority agreed with this finding, and pointed out that whether the seating capacity is 58 or 60, nevertheless, a large number of persons than the permitted limit having traveled at the time of check, the charge of overloading had been proved, and therefore, dismissed the appeal, as against which the revision petition is preferred.

3. Mr. Manivarman, learned counsel for the petitioner in C. R. P. No. 466 of 1982 would strenuously plead that the explanations rendered and the remarks of the Inspector, have not been properly appreciated by both the authorities. He submits that, admittedly the check took place on a Panguni Uthiram Festival Day, and therefore, due to heavy traffic condition, the vehicle had to proceed very slowly, which had enabled some persons to forcibly enter the bus, and when the conductor protested and directed the driver to take the bus to the Police station, and it was at that point of time, the Checking Officer having entered the vehicle and added to it, he had compelled the conductor to issue tickets to those persons, and hence the seizure of 57 tickets could not be treated as a concrete proof of ~overloading. In spite of the unusual circumstance which developed and which was beyond the control of the conductor regarding the excess number of persons found in the vehicle, and in spite of having properly and honestly explained to both the authorities; with a closed mind they have held that the charge has been proved, when factually no overloading had occasioned. He, therefore, submits that, if only a personal hearing had been extended by the Regional Transport Authority, petitioner would have convinced him about the correctness of the claim made by him.

4. There is no dispute that 57, tickets issued by the conductor had been taken custody of. The crew of the vehicle have given a statement, along

with a statement by a passenger. It has been held that, solely resting upon the statement of the crew, the charge cannot be held to be proved;

because under the Rules, they are obliged to sign the check report. The statement of the passenger does not deal with overloading, but the

authorities have considered as to what extent these statements could be looked into. They mainly rested their finding on the seizure of 57 tickets

issued by the conductor. The plea put forth that the Checking Officer compelled the conductor to issue tickets to six unauthorised persons is quite

improbable, because it is not his case that those unauthorised persons purchased tickets for distances for which they never intended to travel. It is

not the claim of the petitioner that the said passenger was forced to give a statement. In his statement, he had nowhere stated that the Checking

Officer had compelled the conductor to issue tickets to six unauthorised persons. Even the crew have not immediately anywhere protested that the

statements had been forcibly taken from them containing false particulars. It is because of these factors, the concurrent finding having been arrived

at, there is no valid ground existing to interfere with the finding of fact about overloading of the vehicle, as charged. Yet, Mr. Manivannam learned

counsel for the petitioner in C.R.P. No. 466 of 1982, would submit that, as the Regional, Transport Authority had not extended a personal

hearing, the order under revision is vitiated, and this aspect is considered hereunder.

5. Mrs. Radha Gopalan, learned counsel for the petitioner in C.R.P. No. 80 of 1983, submits that the checking having taken place at a bus stop,

and at a time when passengers were getting out and boarding into the bus, the charge of overloading had not been proved. The Checking Officer

had seized all the 64 tickets, which were in excess of the permitted seating capacity. There was no satisfactory explanation forthcoming as to why

64 tickets should have been held by passengers, when it was checked at the bus stop. If the petitioner had carried only permitted number of

passengers with tickets, out of these ticket-holders, some of them having got down, the number of ticket-holders, in the vehicle ought to have been

lesser than the permitted capacity. Those who have boarded the bus, would be without tickets. If he had issued tickets to those who boarded the

bus standing at the entrance, then he ought not to have issued 64 tickets, and should have confined the issue of tickets only to the extent of the

number of passengers, who got out of the bus. Hence, the explanation extended having not found acceptance, by both the authorities, there is no warrant to interfere with the said concurrent finding.

6. The next point taken in both the civil revision petitions is that, the original Authority is duty bound to grant a personal hearing whether it is asked for or not.

7. Section 60 of the Motor Vehicles, 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 -

(a) on the breach of any condition specified in sub-S. (3) of Section 59, or of any condition contained in the permit, or

(b) if the holder of the permit uses or causes or allows a vehicle to be used in any manner not authorized by the permit

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

This section does not contemplate a personal hearing to be held, and only contemplates an explanation to be furnished by the affected party. There

are other sections in the Act, which contemplate different procedures to be followed, wherever a quasi-judicial determination is to be made, and

some of them alone provide for an opportunity of being heard in person. Ss. 13 (2), 15 (1), 35 (2), proviso to S. 43(l) (d) (iv) proviso 57 (5), 63

(3A) and 64 of Motor Vehicles Act and R. 125 of the Rules framed thereunder, contemplate an-opportunity of being heard when orders have to

be passed under those Sections and rule. S. 15 (3) states that an appellant can be heard, if so required. Ss. 34 (3), 50 and 55 contemplate

representations to be filed. Rule 49 (zzz (10) (i) dealing with cancellation and suspension envisages only a reasonable opportunity to be extended.

Therefore, the Act itself having contemplated different procedure to be followed, and in so far as S. 60 is concerned, there being no specific

provision made for personal hearing to be extended, whether it should still be granted is the only point to be further considered. In the Act itself,

only in " respect of certain types of orders, a personal hearing having been proved ~provided); in S. 60, there being a conscious omission to

provide "a personal hearing, it means that such an opportunity cannot be asked for, as a matter of right. Then the question will be whether it could

be, read into the section, without which compliance orders passed thereunder would be in valid. For this purpose, the following decisions are referred to by the petitioners.

8. In Travancore Rayon Ltd. Vs. Union of India (UOI), it has been held as follows :-

..... It is true that the rules do not require that personal hearing shall be given, but if in appropriate cases, where complex and difficult questions

requiring familiarity with technical problems are raised, personal hearing is given, it would conduce to -better administration and more satisfactory

disposal of the grievances of citizens

No such complexity exists in the instant case, and that was why petitioners in C.R.P. 80/83 had not asked for a personal hearing,

9. In the same volume at page 501 Union of India (UOI) Vs. Jyoti Prakash Mitter, , in dealing with the power exercised by the President of India

under Art. 217(3) of Constitution of India, which states that after consultation with Chief Justice: it was held :

.....There is nothing in cl. (3) of Art. 217 which requires that the Judge whose age is in dispute. Should be given a personal hearing by the

President. The President may in appropriate cases in the exercise of his discretion give to the Judge concerned an oral hearing, but he is not bound

to do so. An order made by the President which is declared final by cl. (3) of Art. 217 is not invalid merely because no oral hearing was given by

the President to the Judge concerned. An opportunity to make representation to the Judge, after apprising, him of the evidence which was likely to

be used against him and consideration of the representation and the evidence comply with the requirements of Art. 217(3).

10. The next decision referred to is, Swadeshi Cotton Mills Vs. Union of India (UOI), , in which it was pointed out that rules of natural Justice are

note embodied rules, and it is only a means to an end and not an end in themselves, and the two facts of natural justice are (1) notice of the case to

be met and (2) opportunity to explain The audi alteram partem rule is a very flexible, malleable and adaptable concept of natural justice. Where the

statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of

natural justice. Where an express provision in the statute provides for a post-

decisional hearing, the other provisions of the statute will have to be read in the light of such provision, and the provision for post-decisional hearing may then clinch the issue where pre decisional natural justice appears to be excluded on the other terms of the statute. A quasi-judicial or administrative decision rendered in violation of the "audi alteram partem" rule, wherever it can be read as an implied requirement of the law is null and void. The application and non-application of audi alteram partem rule depends on facts and circumstances " of each case. Immediacy or urgency requiring swift action is a situational f a c t having a direct nexus with the likelihood of adverse effect on fall in production. Relying on this decision, it is contended that, when a personal hearing is contemplated in Ss. 15 (1), 35(2), 57(5) etc, such an opportunity must be read into S. 60 as well. The nature of rights involved in those proceedings are quite different from what requires to be done under S. 60, and hence, this decision cannot be read to hold that as a personal hearing is an integral part of S. 60.

11. In S.L. Kapoor Vs. Jagmohan and Others, , it was held as follows; -

It is not always a necessary inference that if opportunity is expressly provided in one provision and not so provided in another, opportunity is to be considered as excluded from that other provision. It maybe a weighty consideration to be taken into account but the weightier consideration is, whether the administrative action entails civil consequences.... (para 10).

.....And, natural justice may always be tailored to the situation. Minimal natural justice, the barest notice and the "littlest" opportunity in the shortest time, may serve We guard ourselves against being understood as laying down any ""proposition of universal application. Other statutes providing for speedy action to meet emergent situations may well be, construed a excluding the principle audi alteram partem. All that we say is that S. -238 (1) of the Punjab Municipal Act does not, (para 11)"".

12. Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, was a case wherein an employee of the

Bombay Port Trust asked for a lawyer to be engaged, but it was ref used while legally trained officers were appointed as presenting officers of the

Port Trust, and it was then held that the refusal to enable him to be- defended by an equally competent per-son was unjustified and offended

natural justice. In the instant case, it was not the case of the petitioners that the charge memos issued against them were presented by a legally trained officer.

13. National Textile Workers' Union and Others Vs. P.R. Ramakrishnan and Others, is referred to show that unless there is an express exclusion,

a right of person affected by an order having civil consequences, cannot be deprived of a personal hearing. In dealing with case relating to winding

up of a Company, it was held that the workmen, who would be affected by an order of winding-up, are entitled to be heard. This decision only

shows that the affected party will have a right of being heard before an adverse order having civil consequences is passed. As for petitioners are

concerned, show cause notices are issued, their explanations were called for, and it is then forwarded to the Checking Officer for. His comments

and his views are forwarded to the petitioner, and only after consideration of their representations, the final order was passed. Therefore, this is not

a case wherein no opportunity at all is given to the affected party.

14. Then reference is made to Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, wherein it was

held" as follows

.....And this principle is so integral to good government, the onus is on him who urges exclusion.

We may not be taken to say that situational modifications to notice and hearing are altogether impermissible.... This circumstantial flexibility of fair

hearing has been underscored in Wiseman v. Borneman (1971) AC 297 by Lord Reid when he said he would be "sorry to see this fundamental

general principle degenerate into a series of hard-and-fast rules"...The myriad may be and the diverse urgencies are five factors natural justice

should not destroy administrative order by insisting on the impossible.

15. In The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee, , it was held as follows :-

Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded

against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of such

situation, no breach of natural justice can be complained of. Unnatural expansion

of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating

16. In dealing with the Sea Customs Act, in *F.N. Roy Vs. Collector of Customs, Calcutta*, , it was held as follows : -

It was then stated that the petitioners had not been given personal hearing of the appeal that he preferred to the Central Board of Revenue and the application in revision to the Government. But there is no rule of natural justice that at every stage a person is entitled to personal hearing.....

17. In *State of U.P. v. Mohd. Nooh* AIR 1958 SC 86 it was observed as follows : -

.....If an inferior court or tribunal of first instance, acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the

proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the

superior courts sense of fair play, the superior court may quite properly exercise its power to issue the prerogative writ of certiorari to correct the

error of the court or tribunal of first instance.....

This decision is cited to show that if principle of natural justice is violated, the order would be a nullity.

18. Lastly, in *T.V. Ramaswami Chettiar Vs. Regional Transport Officer, Nilgiris and Another*, , is referred to for the limited purpose of showing

that a proceeding u/s is quasicriminal nature.

19. Therefore, in so far as S. 60 is concerned, personal hearing having not been contemplated, but more than one opportunity being extended by

way of representations to be made in writing the affected persons are extended a reasonable opportunity of putting forth their submissions. This

procedure statutorily evolved, is not so obnoxious as to run counter to the principles of natural justice. None of the decisions above referred to has

gone to the extent of holding that, wherever an opportunity to make representations or furnish explanation is provided, it should always result in a

personal hearing being extended. What had been pointed out is that depending upon facts and circumstances of each case and on what complex

facts and law may get involved in a particular matter, in the absence of any statutory provision made for extending personal hearing, it would still

The obligatory on the part of the concerned authority to give a personal hearing, so, that, what could not be effectively put forth in writing, could be

further amplified, and clarified during the course of the person at, hearing. Hence, the contention of the learned counsel for the petitioners that

holding a personal hearing must be read into S. 60 as an integral part of it, and the concerned authority is duly bound to extend a personal hearing,

whether asked for or not, in each matter cannot be accepted.

20. Even if it is asked for, it does not mean that it must be extended for the mere asking. As pointed out in The Chairman, Board of Mining

Examination and Chief Inspector of Mines and Another Vs. Ramjee, , ""unnatural expansion of natural justice without reference to the administrative

realities and other factor of a given case, can be exasperating"". In these two matters, on what had been analysed in the earlier part of this order,

whatever relevant materials require to be placed, had been put forth in written explanations given by them, and there being no offer extended to

examine any witnesses, and at no point of time prior to the presentation of the revision petition, such a request, having been ever made a personal

hearing to be given; the facts and circumstances of these cases do not in any manner show that there had been any violation of the principles of

natural justice in not extending a personal hearing to the respective petitioners.

21. Hence, these cases do not come under the category of exceptional cases involving complex intricacies relating to facts of law. Hence, these

revision petitions are dismissed with, costs. Counsel fee Rs. 100/- in each petition.

22. Petitions dismissed.