

(1954) 05 MAD CK 0025
In the Madras High Court
Case No : Writ Petition No. 893 of 1953

K. Muthuvadivelu

APPELLANT

Vs

Regional Transport Officer, Vellore, North Arcot Dt. and
another

RESPONDENT

Date of Decision : 07-05-1954

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1954) 05 MAD CK 0025

Hon'ble Judges : Rajamannar, C.J;Umamaheswaram, J

Bench : Division Bench

Advocate : M.K. Nambiar, for the Appellant; K. Rajah Aiyar for Miss Perueen Amiruddin, for the Respondent

Final Decision : Dismissed

Judgement

1. This petition originally came up for hearing before Rajogopala Aiyangar, J. who directed that it may be heard by a Bench. The question which arises for decision is not free from difficulty, and after hearing counsel on both sides, we have arrived at a conclusion unaided by any authority but relying on general principles of equity and fairness and having regard to the implications of the material provisions of the Motor Vehicles Act and the rules framed thereunder.

2. The petitioner was granted a stage carriage permit on the route Polur to Veeralur by the Regional Transport Authority, North Arcot, on 16-3-1951. There was an appeal to the Central Road Traffic Board by the 2nd respondent, a rival applicant, and the Board set aside the order of the Regional Transport Authority, and directed the grant of a permit to the 2nd respondent, the appellant before the Board. The petitioner thereupon preferred a revision petition to the Government under S. 64-A of the Motor Vehicles Act, and pending the revision petition, applied for stay of the operation of the order of the Board.

The Government ordered interim stay, but eventually dismissed the revision

petition- The petitioner then filed a petition in this Court under Article 226 of the Constitution, praying for the issue of a writ of certiorari to quash the orders of the Central Road Traffic Board and the Government. Along with the writ petition, he also filed an application for stay of the operation of the order of the Central Road Traffic Board. Stay was ordered, and the writ petition No. 353 of 1951 was heard by Subba Rao, J. who allowed it on 10-1-1952 and quashed the order of the Central Road Traffic Board and left it open to the authorities to consider the matter afresh.

Once again, the Central Road Traffic Board passed an order in favour of the 2nd respondent. There was again a revision petition to the Government filed by the petitioner, which was rejected on 26-6-1952. The petitioner again applied to this Court for the issue of a writ W. P. No. 514 of 1952. There was also a stay of the operation of the order of the Central Road Traffic Board, pending the writ petition. The writ petition was finally disposed of by Govinda Menon, J. on 4-9-1953.

The learned Judge dismissed it as unnecessary on the ground that the original permit which was the subject of controversy had long ago lapsed.

3. Meanwhile other events had happened, which it is necessary now to state. The period of the original permit granted by the Regional Transport Authority to the petitioner expired on 16-3-1951. The petitioner then applied for a renewal thereof, which was granted under S. 58. Motor Vehicles Act. The renewed permit was for the period expiring on 31-3-1953. There was a further renewal of the permit upto 31-3-1955.

4. Immediately after the dismissal of W. P. No. 514 of 1952, the 2nd respondent intimated the fact to the Transport authorities and demanded the grant of a permit. The Regional Transport Authority called upon the petitioner to surrender his renewed permit, so that it could be made available to the 2nd respondent. It is against this order of the Regional Transport Authority that the petitioner has filed the above writ petition.

5. The contention on behalf of the petitioner was shortly this: The renewed permit is for all purposes a new permit, and though the previous permit in respect of which renewal was made might have been invalidly granted, that invalidity would not attach to the renewed permit. Support for this contention is sought to be found in Section 58 (2) , Motor Vehicles Act, which runs thus:

A permit may be renewed on an application made and disposed of as if it were an application for a permit.

It was urged that when an application for renewal of a permit is made, the procedure followed in the case of original application for a permit has to be followed, and there could be other applications as well. It is on a consideration of all the applications that the Transport Authority should decide to whom to grant the permit.

All that the proviso to Section 58 (2) says is that in considering the applications, other considerations being equal, the application for renewal shall be given preference over new applications. But it was stated at the Bar, that the practice is not always so, and more often than not is automatically granted, and no fresh applications are received. Reference was made in this connection to the rules which certainly leave us in doubt on this matter.

The relevant rules as to renewal are rules 183 and 185 which run as follows:

185. Application for the renewal of a permit shall be made in Form PRA to the Transport authority by which the permit was issued, not less than six weeks, in the case of a stage carriage permit or a public carrier's permit, and not less than one month in other cases, before the expiry of the permit, and shall be accompanied by Part A of the permit. The application shall state the period for which the renewal is desired and shall be accompanied by the fee prescribed in rule 167.

183. If an application for the renewal of a permit has been made in accordance with these rules and the prescribed fee paid by the prescribed date, the permit shall continue to be effective, until orders are passed on the applications or until the expiry of three months from the date of receipt of the application whichever is earlier.

If orders on the application are not passed within three months from the date of receipt of the application, the permit holder shall be entitled to have the permit renewed by the Transport authority for the period specified in the application or for one year whichever is less and the Transport Authority shall call upon the permit holder to produce the registration certificate or certificates and Part B or Parts A and B of the permit, as the case may be, and endorse the renewal in parts A and B of the permit accordingly and return them to the permit holder;

Provided that the permit holder shall forfeit his claim to have the permit renewed under this rule if he fails to produce the documents aforesaid within fourteen days from the date of despatch of the order requiring the production of the records;

Provided further that the Secretary of the Transport authority may, if satisfied, on an application made to him in writing by the permit holder within the period of fourteen days aforesaid that there is sufficient ground, grant an extension or extensions of time not exceeding four months in the aggregate for the production of the records.

The rules are not clear on the point whether other applications could be called for or should be considered, though the proviso to Section 58 (2) does suggest that fresh applications are also permitted and will have to be dealt with. In any event, we do not think that the rules by themselves, can enlarge the scope of the statutory provisions.

6. Rajagopala Aiyangar, J. had to consider the question as to how far a renewed

permit is a fresh permit but for different purposes, in W. P. Nos. 822 and 823 of 1952 (Mad) (A)". The learned Judge held that a renewed permit was in effect a new permit, so that the Transport Authorities could impose new conditions not enforced at the time of the grant of the original permit. But as observed by Rajagopala Aiyangar, T. in his order of reference, there was no question in those petitions of the invalidity of the original permit.

After giving the question our deepest consideration, we have arrived at the conclusion that though for certain purposes a renewed permit may be treated as a fresh permit the validity of a renewed permit depends on the validity of the original permit. If for any reason subsequent to the grant of the original permit it is eventually decided by a competent tribunal that it was wrongly granted, the result would be as if no permit had ever been granted at all. If that be so, there could not be a renewal of such a non-existent permit. If, however, a renewal had been made, such renewal would cease to have any effect after the original permit had been set aside.

This is on a purely legal basis. For instance, there cannot be a validly renewed lease in exercise of an option for renewal, if the original lease is held by a competent Court of law subsequently to have been void "ab initio".

7. There is also another aspect from, which the same result follows:

Even if there be other applications along with the application for renewal, the applicant for the renewal gets a preference over the others, a preference founded on his having already a valid permit. If the original permit were to be set aside, it would mean that the renewal was obtained on the basis of a qualification, which the applicant did not really possess. In equity, he should disgorge the benefit so obtained.

8. Mr. Rajah Aiyar for the respondent brought to our notice a certain amount of confusion on account of the stay orders passed by the Transport Authorities, the Government, and this Court. The effect of such orders and orders of suspension appears to have been greatly misunderstood. Such orders do not have the effect of automatically reversing the decision of the tribunal below.

To give an illustration, if the Regional Transport Authority grants a permit to A and rejects the application of B, and on appeal the Central Road Traffic Board sets aside the grant to A and directs the issue of a permit to B and there is a further revision to the Government or a writ petition to this Court, pending which a stay is ordered, by virtue of that stay order, A does not get a right to the permit, because the order in favour of B has not been vacated. If this is borne in mind, no confusion will ever arise.

9. Let us now look at the facts in this case On 14-7-1951, the Central Road Traffic Board set aside the permit granted to the petitioner and directed the issue of a permit to the 2nd respondent. There was a revision petition to the Government, pending which there was a stay of the order of the Central Road

Traffic Board. Subsequently, pending W. P. No. 353 of 1951, there was also a stay of the order of the Board and of the Government.

Now, the petitioner obtained a renewal of the permit originally granted to him by the Regional Transport Authority, long subsequent to the decision of the Central Road Traffic Board setting aside the permit granted to him, a decision confirmed by the Government in revision. Really speaking the petitioner must be deemed to have obtained a renewal of a permit which did not exist in law. The stay orders which he obtained did not have the effect of reviving the original permit which had been set aside.

The same disability applies to the subsequent renewal also. At no time after the original grant by the Regional Transport authority had been set aside did the petitioner have a valid permit in his favour. The final decision went against him and he was no longer entitled, indeed he was never entitled really, to retain the renewed permit. The order, therefore, of the Regional Transport Authority calling upon him to surrender his renewed permit was in the circumstances both legal and equitable.

10. It may be that in an exceptional case, when a person having an original permit in his favour, nevertheless, does not apply for a renewal of the permit but makes a new application for a permit and does not rely in any manner or to any extent on the fact that he was already the holder of a permit and succeeds in obtaining a permit in open competition with other applicants, even if subsequently the original permit were to be held invalid, the second permit - we should not call it a renewed permit - would stand on its own merits.

But it was admitted at the bar that in none of the cases before us anything like that happened. In the view we have taken, the writ petition must be dismissed with costs.