

(1977) 10 MAD CK 0018
In the Madras High Court
Case No : C.R.P. No. 2553 of 1976

K.A. Natarajan

APPELLANT

Vs

M. Naina Mohamed and Another

RESPONDENT

Date of Decision : 03-10-1977

Acts Referred:

Motor Vehicles Act, 1939 — Section 64, 68C, 68F(1)

Citation : AIR 1978 Mad 280 : (1978) ILR (Mad) 415

Hon'ble Judges : Ramanujam, J

Bench : Single Bench

Advocate : K.K. Venugopal, for S.B. Anthonisami and M. Krishnappan, for the Appellant; M.N. Rangachari, for the Respondent

Final Decision : Allowed

Judgement

Ramanujam, J.—In respect of a new route from Paramakudi to Madurai covering a distance of 49 miles, applications were called for u/s

57(2) of the Motor Vehicles Act, hereinafter referred to as the Act and there were 35 applicants for the said route. After consideration of the

various applications, the R. T. A. granted the permit to the first respondent herein, on 23-11-1966. An appeal to the State Transport Appellate

Tribunal having failed, the matter was taken to this court by way of a writ petition. The writ petition was allowed and the grant in favour of the first

respondent was set aside. However, in writ appeal the order of the State Transport Appellate tribunal was restored. Subsequently, the matter was

taken to the Supreme Court in C. A. No. 98 of 1975 and the Supreme Court has remitted the matter for fresh consideration by the Tribunal, by

order dated 23-7-1975. By that time there was a draft scheme notified u/s 68-C of the Act on 4-6-1976, for the identical route and the permit

issued in favour of the first respondent had also been renewed on 14-7-1976 for a period of three years.

2. When the appeal was taken up for fresh hearing by the State Transport Appellate Tribunal on 13-9-1976, in pursuance of the remit order

passed by the Supreme Court, the first respondent contended that the appeal before the Tribunal is not maintainable for the reason that a draft

scheme had been notified u/s 68-C, that in between the date of publication of the draft scheme and the date of the approval of the scheme there is

no scope for considering the grant of a permit or renewal thereof, that there being a statutory bar u/s 68-F (ID) of the Act, the Tribunal cannot go

into the question as to whether the appellant could be granted a permit for the route which is covered by a draft scheme and that, therefore, the

appeal itself is not maintainable. The Tribunal upheld the said objection as to the maintainability of the appeal after publication of the draft

notification holding that inasmuch as the draft scheme had been framed for the identical route, any order in favour of the appellant will definitely run

counter to the statutory bar contained in Section 68-F(ID) of the Act that therefore, the Tribunal, will be incompetent to pass any order in favour

of the appellant and as such the appeal cannot be entertained. The said decision of the Tribunal has been challenged in this revision by the

petitioner herein appellant before the Tribunal.

3. The contention of the petitioner is that the Tribunal is in error in holding that the appeal is not maintainable in view of the draft scheme, that the

effect of an order in favour of the appellant may not amount to grant of a fresh patta which alone is prohibited by Section 68-F (ID), that allowing

of the appeal by the Tribunal will only amount to substitution of its order in the place of the order of the Regional Transport authority, that the

Tribunal, by allowing the appeal is not making any fresh grant of permit, that any order passed by the Tribunal allowing the appeal will only date

back to the order of the Regional Transport authority and that having regard to the object of Section 68-F (ID) which is to see that no new vehicle

is introduced on the route, the consideration of the appeal by the Tribunal is not prohibited by the issue of a draft scheme. It is also contended by

the learned counsel for the petitioner that if the draft scheme is not approved u/s 68-D, the dismissal of the appeal as not maintainable would have

deprived the appellant of a valid right of competing for a permit, as there is no provision for restoration of the appeal in the event of the scheme not being approved.

4. Section 64 states that any person aggrieved by the refusal of the State or a R. T. A. to grant a permit may, within the prescribed time and in the prescribed manner, appeal to the State Transport appellate Authority who shall, after giving such person and the R. T. A. an opportunity of being heard give a decision thereon which shall be final. In this case, it is not in dispute that the appeal before the Tribunal was properly filed and validly entertained. The question is whether this statutory right of appeal which has already been exercised is in any way affected by the issue of a draft scheme u/s 68-C or any of the provisions in Chapter IV-A. Section 68-B says that the provisions of that Chapter IV-A and the rules and the orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in Chapter IV of the Act or in any other law for the time being in force. Section 64 occurs in Chapter IV and therefore as Section 68-B gives an overriding effect for the provisions in Chapter IV-A it has to be seen whether there is anything in Chapter IV-A which will take away the right of appeal given to an aggrieved party u/s 64.

5. Section 68-C provides for the preparation and publication of a draft scheme in respect of any area or route or portion thereof. Section 68-D provides for the approval of the draft scheme after hearing objections from those referred to in Sub-section (1). Section 68-F (I) provides for the issue of permits to the State Transport undertaking in pursuance of an approved scheme. Section 68-F (1-A) says that when a draft scheme is published u/s 68-C, the State Transport undertaking may apply for a temporary permit in respect of the route notified if there is need for increasing the transport facilities on that route. Section 68-F (1-C) states that if no application for a temporary permit is made by the State Transport undertaking under Sub-section (1-A) a temporary permit may be granted to any person in respect of the notified route, but the permit so granted shall cease to be effective on the issue of a permit to the State Transport Undertaking in respect of that route in pursuance of the approved scheme. Then we come to Section 68-F (1-D) which is as follows -
Save as otherwise provided in Sub-section (1-A) or Sub-section (1-C), no permit

shall be granted or renewed during the period intervening between the date of publication, u/s 68-C of any scheme and the date of publication of the approved or modified scheme, in favour of any person for any class of road transport service in relation to an area or route or portion thereof covered by such scheme:

Provided that where the period of operation of a permit in relation to any area, route or portion thereof specified in a scheme published u/s 68-C,

expires after such publication, such permit may be renewed for a limited period, but the permit 90 renewed shall cease to be effective on the

publication of the scheme under Sub-section (3) of Section 68-D." The question for consideration is whether the provision extracted above stands

in the way of the Tribunal disposing the appeal against a grant of permit preferred by an aggrieved party long before the date of the notification of

the draft scheme u/s 68-C. The view taken by the Tribunal is that if it were to allow the appeal and direct the grant of permit to the appellants

before it, it will be practically granting a permit to the appellant which will be contrary to Section 68 (1-D) and that, therefore, no appeal could be

maintained after the notification of a draft scheme even in respect of a grant made earlier. The learned counsel for the petitioner questions the

correctness of the view taken by the Tribunal on the ground that the statutory right of appeal available to an aggrieved party against the grant of a

permit has not been taken away either expressly or by implication on the issue of a draft scheme, that the grant having been made long earlier to the

publication of the draft scheme, the only question before the Tribunal was as to who should have the permit and that the question before the

Tribunal was not whether a permit should be granted or not on the route notified in the draft scheme.

6. Section 68-F (1-D) does not expressly take away the appellate power of the Tribunal. Nor is it possible to hold that the appellate power of the

Tribunal is impliedly repealed or withdrawn by the provisions in Section 68-F (1-D). The question is whether Section 68-F (1-D) which does not

expressly or impliedly affect the appellate power of the Tribunal is capable of affecting the power of the Tribunal as soon as a draft scheme is

published u/s 68-C. On a due consideration of the matter, I am clearly of the view that the appellate power of the Tribunal against the grant of

permit made earlier to the notification of a draft scheme is not in the least affected by the provisions of the scheme. There is always a clear-cut

distinction between the power of the Tribunal to entertain and dispose of an appeal and the relief which the Tribunal can give. The mere fact that

some restrictions are placed on the Tribunal in respect of the relief to be granted, that will not amount to the repeal of the appellate power to

entertain and dispose of the appeal. It may be, in view of a particular provision in the statute it is not possible for the Tribunal to give a particular

relief, but that will not mean that the Tribunal cannot entertain the appeal and dispose of the same. Even assuming that the Tribunal is not

empowered to grant a permit in respect of a route covered by a draft scheme, that will not mean that the appeal filed earlier cannot be maintained.

Therefore, the reasoning of the Tribunal that the appeal is not maintainable after the draft scheme is notified in respect of the route cannot at all be

sustained.

7. The next question is whether it is possible for the Tribunal to allow the appeal if it comes to the conclusion that the grant made in favour of the

first respondent by the R. T. A. could not be sustained. It is the contention of the petitioner that the grant having been made already by the R. T. A.

long before the draft scheme was notified, the Tribunal can modify the order of the B. T. A, granting the permit to the appellant in the place of the

first respondent and that such an order will not amount to grant of a permit which alone is prohibited u/s 68-F (1-D). It is said that the object of

Section 68-F (1-D) being not to allow any new vehicle to ply on the notified route, any order affirming or varying the grant made earlier by the R.

T. A. will not be hit by the said section. It is also urged by the learned counsel for the petitioner that public interest being the prime consideration in

the grant of stage carriage permits, the grant should be made to a suitable person who will serve public interest better, that if any grant made before

the draft scheme was notified is not to be appealed against, public interest will definitely suffer if the grantee from the R. T. A. is found to be

unsuitable, that construing Section 68-F (1-D) as a bar to the Tribunal considering the merits of the grant made by the R. T. A. will be against

public interest and, therefore, such a construction should be avoided especially when the section does not in terms purport to take away the power

of the Appellate Tribunal. On a due consideration of the matter, I am inclined to agree with this contention of the petitioner.

8. The normal procedure is for the R. T. A. to consider the various applications for the grant of permit and choose the most qualified among them

having public interest in mind. Then follows the ministerial act of the grant of permit. The appeal before the Tribunal is against the order directing

the grant of permit and not against the ministerial act of granting the permit. The Tribunal, while considering the appeal on merits only deals with the

order of the Regional Transport Authority rejecting the claims of others and choosing a particular person. Therefore, if the Tribunal agrees with the

view of the R. T. A. it confirms his order and if it does not agree it sets aside that order and substitutes its own decision therefor. Thus the Tribunal

merely deals with the correctness or otherwise of the order of the R. T. A. in making the selection for the grant of permit. Therefore whatever be

the effect of the order passed by the Tribunal, the same cannot be said to amount to a fresh grant of the permit. In the nature of things the Tribunal

merely deals with the question as to who should be the grantee in respect of the permit granted already. As soon as the Tribunal passes its order,

that order replaces the order of the R. T. A. Though the Tribunal passes the order in respect of a grant made earlier by the R. T. A. after the draft

scheme has been published, the Tribunal's order should be deemed to have been passed for purpose of Section 68-F (1-D) before the draft

scheme. In this view, therefore, the Tribunal should be taken to have the power to dispose of the appeal on merits.

9. Any other contrary view will lead to anomalies or inequities. While all the grants made by the Regional Transport Authority will normally be

subjected to appeal before the Tribunal u/s 64, such of those grants made by the R. T. A. just prior to the draft notification will not be amenable to

the appellate jurisdiction. This will create inequality and the same cannot be justified with reference to the object sought to be achieved by the

introduction of a scheme for nationalisation which is initiated by the issue of a draft scheme. The object of the scheme of nationalisation is definitely

not to see that a particular operator is benefited or to give immunity to the private operators who were granted permits just before the draft scheme

from attack before the Appellate Tribunal. This is also another reason as to why Section 68-F (1-D) cannot be construed as affecting the power of

the Appellate Tribunal to hear appeal as regards the grant made earlier to the draft scheme.

10. Section 68-F (2) also in a way indicates that Section 68-F (1-D) will not apply to permits granted earlier and which were the subject matter of

appeals before the Tribunal, Section 68-F (2) enables the R. T A. to (a) refuse to entertain any application for grant or renewal of any other permit

or reject any such application which may be pending, (b) cancel any existing permit or (c) modify the terms of the existing permit. In this case, the

permit which is the subject matter of appeal before the- Tribunal will come within the expression "existing permit." While under Sub-section (2) of

Section 68-F the permit in question is an existing permit will not become a fresh grant of permit if the Tribunal modifies the order of the Regional

Transport authority. In my view, therefore, the Tribunal has jurisdiction to deal with the appeal before it on merits.

11. Besides, there are other considerations to be taken into account in dealing with the appellate power of the Tribunal. As already stated, the

Tribunal has, in this case, dismissed the appeal as not maintainable because of the existence of a draft scheme. It is common knowledge that the

draft scheme which have been notified are of various kinds (1) covering the entire route, (2) covering a sector of the route and (3) dealing with

particular services such as mofussil or town services. Some of the schemes also contemplate private operators plying their vehicles simultaneously

with the vehicles of the State Transport Undertaking either on the whole route or in portions of the route. It cannot, therefore, be said that once a

draft scheme is notified the grant of any permit on the route is a bar unless the provisions of the scheme are looked into for purpose of finding out

the extent to which the operation of the service on the basis of the permit will be affected. As already stated the Tribunal in this case has not

considered the provisions of the scheme to see whether the operation of service under the permit could be validly carried on notwithstanding the

provisions of the scheme. The Tribunal is not, therefore, justified in rejecting the appeal as not maintainable without considering the terms of the

draft scheme,

12. The learned counsel for the first respondent refers to the decision of the Supreme Court in Ali Ahmad and Sons, Bus Operators, Kothi Road,

Rewa Vs. Ramgopal Satya Narain and Others, as an authority for the proposition that after a draft scheme is published, the Tribunal cannot

entertain an appeal even against the grant of permit granted earlier. I do not see how that decision can be taken to be an authority for the above

proposition. In that case A held a stage carriage permit in respect of a route covering a distance of 82 miles. He applied for extension of that route

which was allowed. An appeal against the order granting extension was dismissed, but the extension of the permit was quashed by the High Court.

The matter was taken to the Supreme Court was pending, the Madhya Pradesh State Road Transport Corporation published a draft scheme In

respect of the entire route including the extended portion. The Supreme Court dismissed the appeal as infructuous on the ground that even If the

appeal were to be allowed the petitioner cannot get the extension of the permit, as the permit for the extended route had already expired by efflux

of time even before the publication of the scheme. As per the facts of that case the permit for the extended route which was the subject matter of

the appeal before the Supreme Court had expired by efflux of time before the publication of the draft scheme and, therefore, if the Supreme Court

were to grant the extension it will mean a fresh grant for the extended route and therefore the petitioner could not be granted an extension of the

permit after the publication of the, draft scheme. In any event the above decision does not hold that the appeal before the Supreme Court was not

maintainable as has been done by the Tribunal in this case. Therefore the dismissal of the appeal by the Tribunal as not maintainable cannot be

sustained.

13. It is no doubt true that in deciding the appeal the Tribunal has to take the circumstances as they were at the time of the hearing of the appeal,

and this means that the Tribunal has to take note of the draft scheme which has been notified in relation to the route. But that will not mean that the

publication of the draft scheme will make ineffective an appeal filed against the earlier grant of a permit and thus making the grant immune from

attack at the instance of the aggrieved person. As already stated, Section 68-F (1-D) is not concerned with as to who should have the benefit of

the permit granted earlier to the publication of the draft scheme and its object is only to prohibit grant of renewal of permits on areas or routes

covered by the draft scheme and to make provision for grant of temporary permits to the State Transport undertaking or in its place to any other operator to meet the need of the travelling public for the period intervening between the date of publication of the scheme u/s 68-C and the date of publication of the approved or modified scheme u/s 68-D. Once a grant has been made earlier to the draft scheme and the route is being served by an operator on the basis of the said permit, the continued operation of that permit cannot be said to be affected by Section 68-F (1-D). The continued operation on the route may be either by the grantee of the Regional Transport authority or by the grantee of the Tribunal. By substituting another person in the place of the original grantee by the Regional Transport authority or by the Tribunal cannot be said to defeat the object of Section 68-F (1-D).

14. The learned counsel for the first respondent has also raised another contention as to why the appeal before the Tribunal cannot become ineffective by the publication of a draft scheme. Admittedly in this case the appeal has been filed long before the publication of the draft scheme. If the appeal has been disposed of on the day when it is filed, the Tribunal would have undoubted power to set aside the order of the R.T.A. and substitute its own order. The fact that the appeal has been pending before the Tribunal for some time till the publication of the draft scheme will not affect the power of the Tribunal to deal with the appeal on merits. It is well established that an act of Court cannot prejudice a party (*Actus curiae neminem gravabit*) where a case stands over on account of multiplicity of business in the court, the party ought not to be prejudiced by the delay in the disposal of the case by the court. As the delay is the act of the Court neither party should suffer for that delay. In a recent decision of the Supreme Court in *The Cheran Transport Co. Ltd. Vs. Kanan Lorry Service and Another*, the question arose as to whether an application for renewal of a permit which was pending on the date of the publication of the draft scheme could be entertained after that date and disposed of in accordance with the proviso to Section 68-F (1-D). The Supreme Court had expressed the view that where applications for renewal in conformity with the law have been filed and thus the legal machinery for the grant of renewal has been set in motion by the party claiming renewal, the

publication of a draft scheme u/s 68-C before the actual grant of renewal will not intercept or extinguish the process of law set in motion already by

the party, that In such cases the R. T. A, has to consider the application for renewal on merits, that if for reasons beyond the control of the

applicant the renewal process gets delayed or prolonged, he cannot be penalised, and therefore, the renewal can be granted on such an application

notwithstanding the existence of a draft scheme. The same principle will apply to the facts of this case as well where an appeal has already been

filed and the legal process by way of an appeal has been set in motion.

15. As already stated, the Tribunal, while disposing of the appeal, has to take Into account the publication of the draft scheme. It may be that the

scheme provides for complete exclusion or partial exclusion of a private operator or prohibits only a particular kind of service, say, mofussil service

or town service. The Tribunal cannot merely refer to the draft scheme and dismiss the appeal without going Into the question as to how far the

relief claimed by the appellant could be granted without infringing the provisions contained in the draft scheme. It may be, in respect of certain draft

scheme, operation of service jn pursuance of the permit under appeal may not be prohibited. Therefore to what extent the draft scheme prohibits

the operation of a service under a particular permit will have to be considered with reference to the provisions of the scheme. The Tribunal is not,

therefore, justified in dismissing the appeal without duly considering the provisions of the scheme and finding out as to how far the scheme affects

the operation of service under the permit in question. In this view, I allow the revision petition, set aside the order of the Tribunal and direct the

Tribunal to rehear the appeal on merits with reference to the provisions of the draft scheme. There will be no order as to costs.