
(1961) 05 MAD CK 0004

In the Madras High Court

Case No : Writ Petition No's. 1295 and 1296 of 1960

Kannan Lorry Service, Pollachi

APPELLANT

Vs

Nataraja Motor Service, Pollachi and Others

RESPONDENT

Date of Decision : 05-05-1961

Acts Referred:

Motor Vehicles Act, 1988 — Section 44, 57(2)

Tamil Nadu Motor Vehicles Rules, 1940 — Rule 153

Citation : AIR 1962 Mad 198 : (1962) 75 LW 625 : (1962) 1 MLJ 111

Hon'ble Judges : Ramakrishnan, J; Ramachandra Iyer, J

Bench : Division Bench

Judgement

Ramakrishnan, J.—These two petitions are filed for the issue of a writ of certiorari to quash the order of the State Transport Appellate

tribunal in App. No. 211 of 1960. The prior facts necessary for a consideration of these two petitions are briefly the following. On 12-9-1959 the

Regional Transport Authority, Coimbatore, issued a notification under S. 57(2) of the Motor Vehicles Act in the following terms:

The Secretary, Regional Transport Authority Coimbatore, will receive applications in form S.P.C.A. upto 30-9-1959 for the grant of pucca stage

carriage permit for two buses..... to ply on the route "Pollachi to Sungam" upto State limit via Anmalai Sethumadai and top slip (Mt. Stuart).....

Applications received after the date specified above, viz., 30-9-1959 will not be considered.

2. There were a number of applications but we are concerned now with the application of Nataraja Motor Service Market Road, Pollachi

(respondent 1 in W. P. No 1295 of 1960 and respondent 2 in W.P.No 1295 of 1960) and of Kannan Lorry service (petitioner in W.P. No 1269

of 1969). Nataraja Motor Service operator got the highest marks of all. The Regional Transport Authority found that he was a resident of

Neemara in Kerala State and had his principal place of business there. His contention was that he had a branch office at Pollachi, but to weight

was given to this circumstances. The Regional Transport Authority rejected his application and granted permits to the two petitioners in these writs.

3. Appeals were filed before the State Transport Appellate Tribunal by a number of disappointed applicants, of whom Nataraja Motor Service

was the first. The State Transport Appellate Tribunal considered certain prior decisions to this High Court in W.P. No. 102 of 1952, (Mad) and

W. P. No. 497 of 1952 (Mad) relating to the interpretation to be placed upon Sec. 45 of the Motor Vehicles Act. It came to the conclusion, that

the route notified in this case, was an inter-State route, and therefore applications for a permit to ply on such a route should be made to the

Regional Transport Authority of the region in which the applicant resides or has his principal place of business as provided in the second proviso to

Sec. 45, Since the applicant Nataraja Motor Service resides in Kerala State, the application should have been made to the Regional Transport

Authority in Kerala State. But the regional Transport Authority had not rejected the application of Nataraja Motor Service on this ground. It

considered that application and awarded it the highest marks but it rejected the claim of Nataraja Motor Service on the ground that preference had

to be given to local applicants with primary permits who were well qualified.

4. The State Transport Appellate Tribunal considered this ground of rejection to be inadequate. Its view was that Nataraja Motor Service's

application should not have been considered at all, without compliance with the formalities in the second proviso to Sec., 45 of the Motor Vehicles

Act. The proper course in such a case would be to return the application of Nataraja Motor Service under Rule 153-A of the Madras Motor

Vehicles Rules, for being presented to the Authority having proper jurisdiction, namely, the Regional Transport Authority, Palghat. The State

Transport Appellate Tribunal Therefore set aside the order of the Regional Transport Authority and remanded the case for fresh consideration

after complying with provision in Sec. 45 read with the Rule 153-A in dealing with the application of Nataraja Motor Service.

5. From the aforesaid decision, these writs of certiorari are filed by the two persons who have been granted permits by the Regional Transport

Authority. Namely, Kannan Lorry Service and Ramaswami and Bros. They are represented by Sri Mohankumaramangalam and Sri Venugopal

respectively. The learned Advocate General represented Nataraja Motor Service.

6. Section 44 of the Motor Vehicles Act authorises the constitution of Regional Transport Authorities, who have the duty of exercising the powers

conferred by the Act within their respective regions. Section 45 reads,

Every application for a permit shall be made to the Regional Transport Authority of the region in which it is proposed to use the vehicle or vehicles.

Provided that if it is proposed to use the vehicle or vehicles in two or more regions lying within the same State the application shall be made to the

Regional Transport Authority of the region in which the major portion of the proposed route or area lies, and in case the apportionment of the

proposed route, or area each to the regions is approximately equal to the Regional Transport Authority of the region in which it is proposed to

keep the vehicle or vehicles;

Provided further that if it is proposed to use the vehicle or vehicles in two or more regions lying in different states, the application shall be made to the

Regional Transport Authority of the region in which the applicant resides and or has his principal place of business;

Provided that the State Government may, by notification in the Fort St. George Gazette direct that applications for such class of permits and in

such region as may be specified in the notification shall be made to the State Transport Authority.

7. There is also Sec. 57 which reads,

1. An application for a contract carriage permit or a private carrier's permit may be made at any time.

2. An application for a stage carriage permit or a public carrier's permit shall be made not less than six weeks before the date on which it is desired

that the permit shall take effect, or if the Regional Transport Authority appoints dates for the receipt of such applications on such dates....

8. The other clauses of Sec. 57, provide for the manner in which the Regional Transport Authority, should dispose of applications made before it,

including due publication, hearing of objections and so on. Section 63(1) reads,

Except as may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region shall not be valid in any other

region, unless the permit has been countersigned by the Regional Transport Authority of that other region and a permit granted in any one State

Shall not be valid in any other State unless counter-signed by the State Transport Authority of that other State or by the Regional Transport

Authority concerned;

provided that a private carrier's permit granted by the Regional Transport Authority of any one region with the approval of the State Transport

Authority, for any area in any other region or regions within the same State shall be valid in that area without the counter signature of the Regional

Transport Authority of the other regions or of each of the other regions concerned"".

9. It has to be pointed out that at the time of the hearing of the arguments, the learned Advocate General appearing for the Nataraja Motor Service

did not contend that the order of the State Transport Appellate Tribunal was right, and should be maintained. One Point on which both the

petitioner's learned counsel as well as the learned Advocate General were agreed was that the correct position of the law in regard to such

applications should be laid down and the appeal remanded so that the State Transport Appellate Tribunal may be annealed to deal with the matter

afresh in accordance with proper and relevant considerations.

10. The State Transport Appellate Tribunal has relied on two unreported decisions of this court, namely that of Subba Rao J. In W.P. No. 497 of

1952 (Mad) and of Govinda Merno J. In W. P. No. 102 of 1952 (Mad). There are some other unreported prior decisions on this point to which

we shall refer presently. We have also got to point out that Sec. 45 has undergone an amendment in 1956, but it is not in controversy, that for the

purpose of the points not for consideration, the amendment has not made any difference.

11. In W. P. 497 of 1952 (disposed of by subba Rao J. On 29-7-1952) (Mad) the Regional Transport Authority Cuddapah invited applications

for permits on a Chittoor Ciuddapah inter district route. We use the word ""inter-district"" to mean the area lying within the jurisdiction two or more

R. T. As. In the same State. The order bought up before Subba Rao J. For being

quashed, in the writ proceedings, was an order of the

Government of Madras holding that that applicants who reside or have their principal place of business in Chittoor Dt. Could not apply for a permit

to the Regional Transport Authority, Cuddapah, under Sec. 45 of the Act. After referring to the relevant provisions, Subha Rao J. Laid down the

following propositions; (i) the provisions of S. 45 prescribing the forum and the qualifications of an applicant are clear and unambiguous; he shall

reside or have his principal place of business in the region over which the Authority Concerned has jurisdiction. (ii) There was no intelligible reason

why the residential qualifications prescribed in the case of suo motu applications should be omitted in the case of applications made in response to

an invitation by the Regional Transport Authority.

12. In W. P. No. 102 of 1952 (Mad) in which Govinda Menon J. Gave his decision on 7-8-1953 the order that was sought to be quashed in the

writ proceedings was that of the Regional Transport Authority, North Arcot. The Regional Transport Authority, Chingleput, invited applications,

for permits for buses to ply on routes lying over three districts Chingleput, South Arcot and North Arcot and North Arcot. The Government had

set aside the earlier order to the Central Road Traffic Board, which granted permit to an applicant whose principal place of business was in south

Arcot. The Government had observed that the Regional Transport Authorities of South Arcot and North Arcot could not invite applications in

respect "" of the same proposal""; nor could they transfer applications received by them to another Regional Transport Authority, instead of

disposing them in accordance with Sec. 57 of the Motor Vehicles Act. The Government remitted the case to the Regional Transport Authority,

Chingleput. The petitioner who had obtained the above relief from the Government, and who had ho principal place of business in North Arcot

district, applied to the Regional Transport Authority, North Arcot, who rejected his application stating that he could not transfer it to the Regional

Transport Authority, Chingleput, in view of certain orders of the Government. Govinda Menon J. Laid down that in that particular case since the

Chingleput Regional Transport Authority had invited applications, the Authority to whom applications had to be made was certainly and decidedly

the Chingleput Regional Transport Authority. To give effect to the second part of

Section 45, the applicant had to apply to the Regional transport

Authority North Arcot. Sect. 45 did not prohibit the transmission of an application by the Regional Transport Authority, North Arcot, to the

Regional Transport Authority Chingleput, in order that the a petitioner's application could be considered on the merits. The view of the

Government that he could not so transmit was not correct. Therefore, the order was quashed.

13. On 30-7-1952, in pursuance of the directions of the State Government, the Central Road Traffic Board issued a circular for the purpose of

evolving a co-ordinated policy of road transport where it was desired to have through services operating on areas covered by more than one

Regional Transport Authority. The gist of the circular was (1) that the two or three Regional Transport Authorities, as the case may be, should first

agree, regarding the need and desirability of opening the route and its lay-out ; and (2) as to which of the Regional Transport Authorities should

call for applications. After the proposal is approved by the Chairman of the Central Road Traffic Board the Regional Transport Authority which

proposes to issue the primary permit, should notify u/s 57(2) only that portion of the route which lies in its district. According to the circular.

This will enable any operator either from that district or from the neighbouring district or districts to apply. After the issue of the primary permit the

other Regional Transport Authority of Regional Transport Authorities as the case may be, should endorse the permit, for the portion or portions

lying in its or their district limits after following the prescribed procedure.

14. This circular as well as Sec. 45 of the Motor Vehicles Act along with the decisions referred to above, came up for consideration before

Rajagopala Aiyangar J. In a batch of writ petitions (W. P. 786 787 etc. Of 1953). The petitioners in those applications were residents of or had

their principal place of business in Coimbatore or Malabar district., The order of the Government which was sought to be quashed was that the

petitioner who resided outside the jurisdiction of the Regional Transport Authority Nilgiris, were precluded from applying to that Regional

Transport Authority for the grant of permits under Sec. 45 of the Motor Vehicles Act. Rajagopala Aiyangar J. Referred to the decisions above

cited, and pointed out that it was not clear from those decisions as to whether

the route that was notified and for which applications were initiated

lay within the exclusive territorial jurisdiction of the Regional Transport Authority. The learned Judge distinguished those cases and enumerated the

following points:

(1) Where a route extending beyond the territorial limits of a Regional Transport Authority has been notified, and a notification under sec. 57(2) is

made inviting applications for the grant of permits on such a route, an operator who makes an application in response thereto so possibly

expressing an intention that he proposes to use the vehicle in more than one region and therefore he can make an application only to the Regional

Transport Authority of the area where he resides or has his principal place of business.

(2) In any event, where the notification under Sec. 57(2) expressly states that the permit for the grant of which applications are invited is confined

to the route within the territorial jurisdiction of the Regional Transport Authority, inviting the application the transport operator who makes an

application in pursuance of such invitation can only propose to use the vehicle on that route and on no other route. In such a case therefore, there is

no question of making applications to any authority other than the Regional Transport Authority, which has published the notice and invited these

applications. In the latter case, the fact that by the grant of other areas or other permits the route may be extended to other areas or other

jurisdictions is irrelevant for the purpose of considering the true nature of the original grant. *Rajagopala Aiyangar J.* Had before him another

decision of *Govinda Menon J.* In W. P. No. 391 of 1953 (Mad) which broadly expressed the same view as above.

15. We wish to clear up initially one point of difficulty. The place of residence or the principal place of business of the applicant for a permit is

relevant only for the purpose of defining the forum of the application in the particular circumstances which are indicated in Sec. 45 of the Act,

namely, when the route is an inter-district route (i.e., lying in the areas of R. T. As. Of more than one region in the same State) or an inter-State

route. But it does not affect the jurisdiction of the Authority to grant the permit, provided the application is properly made to him in regard to a

route that lies exclusively within his jurisdiction and for which his powers are

conferred by Sec. 44. We are of the view that the crucial test in regard to the power of a Regional Transport Authority to Grant a permit is whether the route notified is exclusively within his jurisdiction. It is immaterial whether the applicant after he test the permit for that route, desires to apply to the Regional Transport Authority of another region, for counter-signature of that permit to enable him to ply the vehicle in the jurisdiction of the latter Authority. Though an attempt was made before us by Sri Venugopal. To show that Section 45 covers only suo motu applications that it was really based upon analogous provisions in the English enactment, and that a distinction has to be made between the case of applicants who respond to notifications under Sec. 57 and applicants who apply suo motu. Since none of the cases before us dealt with a suo motu application, it appears to unnecessary to express any view as to the law which should govern suo motu applications. These are cases in which applications were made in response to a notification inviting applications and it will be sufficient for out present purpose to state the law applicable to such cases.

16. Applying the above principles to the present case, the notification in question, which has been extracted above, clearly specifies, that applications were invited for plying a vehicle on the rout upto the Madras State limit. Therefore, the Regional Transport Authority, Comibatore, had jurisdiction to entertain the applications of both the petitioners as well as of Nataraja Motor Service. Since the route notified was neither an inter-District route not an inter-State route, provisos (1) and (2) to Sec. 45 did not apply, but the main part of Sec. 45 which required every application for a permit to be made to the Regional Transport Authority of the region in which it is proposed to use the vehicle or vehicles would apply and give jurisdiction to the Regional Transport Authority, Coimbatore, to dispose of the these applications. In this connection we would like to point out the effect of Rule 153 A of the Motor Vehicles Rule on which the State Transport Appellate Tribunal laid considerable stress. Apparently the State Transport Appellate Tribunal was of the view that if the application the Nataraja Motor Service was ignored the R. T. A. Would not be following Rule 153-A and if he were to consider that application he would be contravening the provisions of Sec. 45.

17. In the conclusion we have expressed above, no such difficulty will arise. Actually Rule 153-A will not take the applicant any further. If

Nataraja Motor Service is required to apply to the palghat Regional Transport Authority, on the ground that he is a resident of or has his principal

place of business in Palghat territory and it makes such application all that the Regional Transport Authority. Palghat could do under Transport

Authority Palghat could do under Rule 153-A would be to return the application to the petitioner, and petitioner would have again to come to the

Coimbatore Regional Transport Authority for grant of the permit,. The mere presentation of the application to the Regional Transport Authority,

Palghat and mere endorsement on it by way of a return for want of jurisdiction, will not give any fresh jurisdiction to the Regional Transport

Authority, Coimbatore, to deal with the application, if it did not have such jurisdiction before. The simple question is therefore one of jurisdiction to

receive the application and to deal with it. In the case of application and to deal with it. In the case of applications for which notifications are issued

the route notified gives jurisdiction to the Regional Transport Authority, Coimbatore both to receive the application as well as to dispose of it.

18. We allow these writ petitions and quash the order of the State Transport Appellate Tribunal and remand the appeals to him for fresh disposal.

The Rule nisi is made obsolete, There will be no order as to costs. Petitions allowed.