
(1958) 02 MAD CK 0006
In the Madras High Court

Lion Automobile Service Co.

APPELLANT

Vs

State Transport Authority and Another

RESPONDENT

Date of Decision : 28-02-1958

Acts Referred:

Motor Vehicles Act, 1988 — Section 44(3), 44(3)(c), 64, 64(d)

Citation : (1958) 2 MLJ 300

Hon'ble Judges : Balakrishna Ayyar, J

Bench : Single Bench

Judgement

Balakrishna Ayyar, J.—The petitioner is a transport company plying five buses or stage carriages between Tirunelveli and Srivilliputhur via

Sankarankoil. The second respondent is another transport company running thirteen buses between Madurai and Rajapalayam. The map shows

that the routes on which these two companies are operating overlap in the section between Srivilliputhur and Rajapalayam.

2. On 17th September, 1952, the second respondent applied to the Central Road Traffic Board, Madras, for permits that would enable it to

extend the operation of three of its buses from Rajapalayam to Sankarankoil. On 16th April, 1953, the Regional Transport Officer, Madurai,

notified that the application of the second respondent would be taken up for consideration and that representations, if any, should be made to him

before 8th May, 1953. On 29th April, 1953, the Regional Transport Officer, Tirunelveli, published a similar notification. On 12th May, 1953, the

Regional Transport Officer, Ramanathapuram, published a like notification. On 27th June, 1953, the Regional Transport Authority, Madurai,

recorded this view:

Recommended as it is represented that there is public necessity.

On 22nd July, 1953, the Regional Transport Authority, Ramanathapuram, at Madurai, came to this decision:

Heard. The extension is not necessary.

3. The papers supplied to me indicate that the Regional Transport Authority, Ramanathapuram, considered the application only in respect of two

buses. On 30th November, 1953, the Regional Transport Officer, Ramanathapuram, published another notification inviting representations on the

application of the second respondent to run three buses to Sankarankoil via Rajapalayam. On 4th February, 1954, the Regional Transport Officer,

Ramanathapuram, rejected the application of the second respondent. In doing-so he observed:

the sector Rajanarayam upto district border is well served by a number of buses. There is no case justifying the introduction of additional buses in

the sector. Considering the traffic density I do not see any reason to allow the variation asked for.

The second respondent then went up in revision to Government, which set aside the order of the Regional Transport Officer, Ramanathapuram and

directed

that the variation asked for be granted in respect of two out of the three buses of the petitioner.

The petitioner then came up to this Court in Writ Petition No. 494 of 1954 to quash the order of the Government. That petition was dismissed. A

writ appeal was filed and that too was dismissed on 26th August, 1955.

4. Now, as the Regional Transport Officer, Ramanathapuram, had jurisdiction to grant the variation only in respect of the district of

Ramanathapuram, the result of all the proceedings up to this stage was that the second respondent got the permission of the Regional Transport

Authority, Ramanathapuram, to extend the operation of two of its buses up to the border between Ramanathapuram and Tirunelveli.

5. The second respondent then took up the matter with the Regional Transport Authority, Tirunelveli. On 8th June, 1956, that Regional Transport

Authority rejected the application on the following grounds:

The applicant and the objector were heard in detail. The point for consideration is whether there is any necessity for extending this service between

Madurai and Rajapalayam to Sankarankoil. So far as the sector from Rajapalayam to Sankarankoil is concerned, there are now 8 buses in

addition to these now running on temporary permits. In any case so far as the applicant is concerned the need for extension has to be considered

with reference to the through-passenger facilities. It is seen from the statements furnished by the operator himself that the number of through-

passengers from Madurai to Sankarankoil is from nil to 3 per bus per day. This clearly indicates that whatever might have been the position at (the)

time when the Government considered the matter, there is now no case for providing through facilities for passengers between Madurai and

Sankarankoil. I have also examined the invoices with reference to the traffic between the stations from Madurai to Srivilliputhur and Rajapalayani

to Sankarankoil. Here also there is no case for providing through facilities. It may also be mentioned that Madurai and Sankarankoil are directly

connected by train. There are four trains each way. In view of these points, I consider that there is no necessity for granting the variation asked for.

The proposal is rejected.

6. The second respondent then filed a revision petition before the State Transport Appellate Tribunal. The Tribunal on 30th November, 1956,

considered that in view of the conflict of opinion expressed by the Regional Transport Authority, Tirunelveli and the Regional Transport Authority,

Ramanathapuram, the matter ought to have been referred to the State Transport Authority u/s 44(3)(c) of the Motor Vehicles Act, and proceeded

to pass the following order:

I accordingly set aside the order in question of the Regional Transport Authority, Tirunelveli and remand the case for fresh disposal after referring

the matter to the State Transport Authority and getting the difference of the opinion regarding the need for direct transport facilities between

Madurai and Sankarankoil settled by the State Transport Authority u/s 44(3)(c) of the Motor Vehicles Act.

There were further proceedings with which we are not now concerned. It is enough to say that on 3rd December, 1956, the Government passed

an order directing the Regional Transport Authority, Tirunelveli, to extend the route of two of the buses belonging to the second respondent and

plying between Madurai and Rajapalayam up to Sankarankoil. Obviously in view

of this order of Government, the second respondent withdrew the appeal which it had preferred to the State Transport Appellate Tribunal from the order of the Regional Transport Authority, Tirunelveli, rejecting its application.

7. The result of all this was that on 5th June, 1957, the Regional Transport Authority, Tirunelveli, had before it two orders. One was the remand

order made by the State Transport Appellate Tribunal on 30th November, 1956 and the other was the order of the Government, dated 3rd

December, 1956. After considering both these the Regional Transport Authority, Tirunelveli, passed the following order:

In their order Ms. No. 3377, Home, dated 3rd December, 1956, the Government have decided that the route Madurai to Rajapalayam should be

extended upto Sankarankoil in Tirunelveli District. The statistics of passengers from Madurai to Sankarankoil for a period spread over five months

showed that there were very few through-passengers. The sector Rajapalayam and Sankarankoil is served by as many as eight buses with sixteen

single trips. There are also through train facilities from Madurai to Sankarankoil. The Regional Transport Authority feels that the variation of the

permit of one bus will meet the needs of the traffic. Hence variation is allowed in respect of only one bus of the applicant company. The application

in respect of one more bus is rejected.

Against this order the petitioner and the second respondent filed revision petitions before the State Transport Authority, Madras. On 23rd

December, 1957, the State Transport Authority, set aside the order of the Regional Transport Authority, Tirunelveli, in so far as it refused to give

the second respondent permission to run a second bus also to Sankarankoil. In other words, it placed the parties in the position which they would

have occupied if the order of the Government, dated 3rd December, 1956, had taken effect. The second respondent thus got permission to run

two of its buses from Madurai to Sankarankoil. The present petition has been filed to quash the order of the Regional Transport Authority made on

5th June, 1957 and of the State Transport Authority, dated 23rd December, 1957.

8. Of the four points that Mr. Mohan Kumaramangalam, the learned advocate for the petitioner, raised, the first was this. If a person who holds a

permit to operate a bus or stage carriage in one district or region wants to

operate in another district or region he must first of all obtain a variation of his original or primary permit from the Regional Transport Authority which gave him that permit. Thereafter he must obtain an endorsement from the Regional Transport Authority into whose jurisdiction he seeks to extend his operations. This means that the second respondent should have first of all obtained a variation of its primary permit from the Regional Transport Authority, Madurai, and, thereafter obtained endorsement from the Regional Transport Authority, Ramanathapuram and the Regional Transport Authority, Tirunelveli. This, the second respondent has not done. The second respondent has obtained endorsements from the Regional Transport Authorities of Ramanathapuram and Tirunelveli, but it had not prior to that obtained variation of its primary permits from the Regional Transport Authority, Madurai. At the meeting which the Regional Transport Authority, Madurai, held on 27th June, 1953, all that it did was to recommend that three of the buses of the second respondent should be allowed to run to Sankarankoil but it did not actually vary the terms of the permit. It is no doubt true that the file dealing with the application of the second respondent which was pending before the Regional Transport Officer, Madurai, was transferred to the file of the Regional Transport Officer, Ramanathapuram, for necessary action in pursuance of an order of the Central Road Traffic Board, dated 30th October, 1953. But, the Central Road Traffic Board had no power to direct the transfer and the order passed by the Regional Transport Officer, Ramanathapuram, based as it was on such a transfer is bad.

9. To this objection the learned Advocate-General made the following reply. He first of all pointed out that this objection was not taken before the State Transport Authority and since that was not done it is not open to the petitioner to raise that objection before this Court, particularly because it involves the investigation of certain facts. Besides, as a matter of actual fact, a variation of the primary permit which the second respondent held, had actually been made. I may mention here that during the arguments a document was shown to me which contained the variation. Mr. Mohan Kumaramangalam replied that the variation made on the primary permit shown to me must have been effected by the Regional Transport Authority, Madurai, under a misapprehension of the legal and factual position.

That may be so or may not be so. But, the objection of the learned

Advocate-General that since this point was not taken earlier as it should have been done the petitioner cannot raise it now must be upheld. I am

also inclined to uphold the objection of the learned Advocate-General for the further reason that this objection appears to me to be very technical.

The substance of the matter only requires that all the concerned Road Transport Authorities should permit the operator to run his buses in the

territories of all of them. That this concurrence has been given by all the three Authorities at least in respect of one bus is clearly manifest. Whether

such concurrence should be deemed to have been given in respect of the second bus also would depend upon other considerations which will be

investigated presently.

10. The second contention of Mr. Mohan Kumaramangalam was this. The Road Transport Authority, Tirunelveli, was prepared to countersign the

permit which the second respondent held in respect of one bus. But, it was not prepared to do so in respect of the second bus which it wanted to

operate inside the district of Tirunelveli. Clause (d) of Section 64 provides:

Any person...aggrieved by the refusal of the State or a Regional Transport Authority to countersign a permit or by any condition attached to such

counter-signature,...may, within the prescribed time and in the prescribed manner, appeal to the prescribed authority....

11. When, therefore, the Regional Transport Authority, Tirunelveli, refused to countersign the permit of the second respondent in respect of the

second bus it had a right of appeal to the State Transport Appellate Tribunal which is the prescribed authority u/s 64. Where a right of appeal

exists no revision can be entertained by the State Transport Authority Vide Section 64-A. In consequence the State Transport Authority, to whom

the second respondent went up in revision against the order of the Regional Transport Authority, Tirunelveli, refusing to countersign its permit in

respect of its second bus, had no jurisdiction to entertain the matter. His order, therefore, is null and void.

12. To this the learned Advocate-General replied as follows. Sub-section (1) of Section 63 runs:

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 countersigned 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 countersignature of the Regional

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

13. This section consists of two parts, or, as he put it, of two limbs. The first applies to operations inside the same State or to intra-State transport.

The second limb applies to operations in more than one State or to inter-State transport. Clause (d) of Section 64 applies only to matters included

in the second limb of Section 63(1). The words used in Section 64(d), so far as necessary, reproduce the actual words in the latter limb of Section

63(1). The legislature must have considered that no right of appeal was necessary in respect of intra-State transport because adequate provision in

that regard exists in Section 44(3). If in the same State one Regional Transport Authority grants a variation of a permit and another Regional

Transport Authority refuses to countersign it then the State Transport Authority can step in by virtue of Section 44(3) and settle the dispute

between two Regional Transport Authorities. Therefore, there is no right of appeal available to the second respondent u/s 64(d), and, its revision

petition to the State was in order.

14. He also referred to the decision in *Krishnamurthy v. C.D.A. Transport Co.* (1953) 1 M.L.J. 81 : AIR Mad. 321.

15. This argument looks attractive. I do not, however, think that it effectively disposes of the objections raised by Mr. Mohan Kumaramangalam.

The case in *Krishnamurthy v. C.D.A. Transport Co.* (1953) 1 M.L.J. 81 : AIR Mad. 321, which the learned Advocate-General referred to is not

really in point. That turned on the terms of Rule 208(b) and raised the question whether the rule conferred a right of appeal, and, it was held that

the direction in the rule that an application for the variation of a permit shall be dealt with as if it were an application for a permit did not carry with

it a right of appeal. Here we are dealing with the question of countersignature which is expressly provided for in Section 64(d).

16. Sub-section (2) of Section 63, in terms applies to all Regional Transport Authorities without qualification and not merely to Regional Transport

Authorities when exercising their powers in relation to inter-State transport. The Regional Transport Authorities may attach conditions to their

countersignature. A person aggrieved by the imposition of such conditions is given a right of appeal by Section 64(d). It would not be in

accordance with the ordinary rules of interpretation to say that the former part of Section 64(d) applies to intra-State transport and the latter part

to inter-State transport. Besides, if the contention of the learned Advocate-General were right and a person in the position of the second

respondent to whom a countersignature had been refused by the Regional Transport Authority had no right to appeal, one would expect the

legislature to have indicated or prescribed the procedure by which he would move the State Transport Authority to exercise its powers u/s 44(3).

This objection of Mr. Mohan Kumaramangalam, appears to me to be well taken and I am inclined to hold that the State Transport Authority had

no jurisdiction to entertain the revision petition filed by the second respondent.

17. The third objection which Mr. Mohan Kumaramangalam raised was this. The State Transport Authority which heard the revision petition filed

by the second respondent was Mr. Ragupathi Rao Naidu. He was the Deputy Transport Commissioner before he became the State Transport

Authority. On 10th September, 1956, he had been consulted by the Government in this matter before they issued their order, dated 3rd

December, 1956. The papers read in the order of Government of that date expressly refer to a letter of the Deputy Transport Commissioner,

dated 10th September, 1956. In the body of the order also Government say that they had consulted the Deputy Transport Commissioner.

Therefore, when as State Transport Authority he passed orders in the revision petition filed by the second respondent, he was acting in a matter in

respect of which he had already advised Government and committed himself to a definite view. He was, therefore, disqualified to hear the revision

petition.

18. On this contention three observations may be made. When a situation of this

kind arises in a judicial proceeding it is normally solved by the transfer of the case to the file of another officer. I have not been shown any provision in the Motor Vehicles Act which enables the difficulty to be solved in such a manner. Secondly, the proceedings of the State Transport Authority are so much more administrative in the nature that the need for the enforcement of the convention that an officer who had previously expressed an opinion in a matter should not hear it judicially is not so rigid. Finally I have found that as an appeal lay from the refusal of the Regional Transport Authority, Tirunelveli, to countersign the permit of the second respondent the State Transport Authority was acting without jurisdiction in hearing and disposing of the revision petition filed by the second respondent. So far as the petitioner is concerned, it had itself invoked the jurisdiction of the State Transport Authority by going up in revision to him and so it cannot make a complaint of this matter.

19. On the merits of the case, Mr. Mohan Kumaramangalam contended that the conclusion recorded by the Regional Transport Authority, Tirunelveli, is inconsistent with the reasons it had assigned. On 8th June, 1956, the Regional Transport Authority, Tirunelveli, had definitely placed on record its conclusion that in view of the traffic facilities available there was no need for extending the operation of the buses of the second respondent into Tirunelveli. When it took up the matter on 5th June, 1957, it summarised the reasons it had already given, and, logically it should have reached the same conclusion as it did in 1956. In permitting a variation in respect of one bus it was not really recording its own view but merely deferring to the opinion of Government as recorded in the G.O. of 3rd December, 1956.

20. There is some measure of justification for this criticism. Nevertheless on 5th June, 1957, when the Regional Transport Authority reconsidered the matter it was entitled to revise the opinion it had previously held. I am not, therefore, prepared to say that when it reached the conclusion it did on 5th June, 1957, it was acting in a manner opposed to law or arbitrarily or capriciously.

21. The result, therefore, is that the writ petition is allowed to this extent. The order of the State Transport Authority in so far as it allowed the second respondent to run a second bus to Sankarankoil is vacated. This means,

that the order of the Regional Transport Authority, Tirunelveli, will stand, and, the second respondent will be permitted to run one bus from Madurai to Sankarankoil. There will be no order as to costs.