
(1967) 11 MAD CK 0006
In the Madras High Court

M. Jayaram

APPELLANT

Vs

Sri Rama Vilas Service Ltd. and Another

RESPONDENT

Date of Decision : 24-11-1967

Acts Referred:

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

Citation : (1968) 2 MLJ 433

Hon'ble Judges : P.S. Kailasam, J

Bench : Single Bench

Judgement

P.S. Kailasam, J.—This petition has been filed for the issue of a writ of certiorari calling for the records of the State Transport Appellate

Tribunal, Madras in Appeal No. 433 of 1967, dated 4th August, 1967, and to quash the order. The petitioner is a bus operator in South Arcot

region. His bus MDF 1866 is plying on the route Cuddalore to Sirkali viz, Portonoyo, Bhuvanagiri, Chidambaram and Coleroon. In April, 1966 he

applied to the Regional Transport Authority, South Arcot, the primary authority for varying the condition of the permit. He sought to extend the

route from Cuddalore to Sirkali as Cuddalore to Vaitheeswarankoil. The Regional Transport Authority, South Arcot considered the petitioner's

application and felt that the extension was in the interest of the public. The Regional Transport Authority, Tanjore did not give his concurrence for

the extension of the route. The Regional Transport Authority, South Arcot then moved the Transport Commissioner for settlement of the dispute

u/s 44(3)(c) of the Motor Vehicles Act. The Transport Commissioner found that the extension of the route was desirable in the public interest. The

Regional Transport Authority, South Arcot, thereafter considered the matter and granted the variation of the condition of the permit applied for to

enable the petitioner to run his bus from Guddalore to Vaitheeswarankoil. The first respondent objected to the extension of the route and preferred

an appeal against the order of the Regional Transport Authority, South Arcot to the State Transport Appellate Tribunal, Madras.

2. The State Transport Appellate Tribunal, Madras raised four points for determination, namely:

(1) Whether the application by the respondent for variation of his route as Cuddalore to Vaitheeswarankoil is not maintainable;

(2) Whether the variation or extension could be granted only by the Regional Transport Authority, Thanjavur.

(3) Whether the order of the lower authority is vitiated on the ground that it had not applied its mind; and

(4) Whether the order of the lower authority is not proper.

The State Transport Appellate Tribunal held that the variation or extension as prayed for could be granted by the Regional Transport Authority,

South Arcot. It also found that the order of the Regional Transport Authority, South Arcot was not vitiated on the ground that it did not apply its

mind. On the fourth point it held that the grant of the extension, if the application is treated as one for extension, was fully justified. The State

Transport Appellate Authority allowed the appeal of the first respondent on the ground that the application was one for variation and not for

extension, and as such the application was not maintainable. The petitioner submitted before the State Transport Appellate Tribunal that he was

bound to send in the application in the prescribed form, and as the form relates to the variation, it cannot be said that the petitioner was in error in

filling up the various columns in the form as he was required to do. But this contention was rejected by the State Transport Appellate Tribunal on

the ground that the application was made subsequent to the amendment introduced by Act III of 1964 to Section 48(3) of the Motor Vehicles

Act. The attempt of the petitioner to rely on Section 184(2) of the Motor Vehicles Act was also rejected by the State Transport Appellate

Tribunal on the ground that it related to an order of the Transport Authority, and not to an application which was made for variation.

3. Section 48(3)(xxi) as amended by Madras Act III of 1964 provides that the Regional Transport Authority may vary, extend, or curtail the route

or routes or the area specified in the permit; provided that in the case of variation, the termini shall be altered, and the distance covered by the

variation shall not exceed twenty-four kilometres and in the case of extension, the distance covered by the extension shall not exceed twenty-four

kilometres from the termini. This amended sub-clause enables the authorities to grant a variation or extension provided the distance does not

exceed 24 kilometres. But, so far as the variation is concerned, it is also provided that the termini shall not be altered. In this case, the original route

was between Cuddalore and Sirkali and the route was sought to be extended as between Cuddalore and Vaitheeswarankoil, which is four or five

miles beyond Chidambaram. The word " variation " is used to denote any alteration in the route where both the termini are kept in tact. In this

case, as the route is extended from one termini, it will not be variation, but only an extension. Therefore, the application for variation was not right.

It was submitted that Rule 208 of the Madras Motor Vehicles Rules prescribed the procedure for variation of the permit and it was followed. Rule

208 (c) of the said rules required that an application for variation of conditions of permit under Sub-section (8) of Section 57 of the Act in respect

of a Transport Vehicle shall be in form PVA. It is admitted that the word " variation " in Rule 208 (c) of the Rules includes variation as well as an

extension, as both will be a variation of conditions of permit. The applicant is required to fill up form PVA, Column (13) of form PVA requires that

the nature of variations desired and the manner in which public interest will be served thereby should be given. The word " variation " under this

column would include both variation and extension. When the nature of the variation is given, it cannot be said that the requirements of the rule

have not been complied with. According to the terminology used in Section 48(3) (xxi) of the Act, it is clear that what was asked for was an

extension, though the word "variation " is used. It is also not disputed that the extension asked for does not exceed 24 kilometres from the termini

and as such the Regional Transport Authority has ample jurisdiction to grant the extension as prayed for. Even if it is taken that the petitioner was in

error in making an application for variation, if the Regional Transport Authority had the power to grant what was in fact prayed for, it could grant it

in spite of the fact that the name given is erroneous. The view taken by the State Transport Appellate Tribunal is wholly technical and

unsupportable in law. In fact, Mr. K. K. Venugopal, learned Counsel appearing for the respondent did not support the order of the State

Transport Appellate Tribunal on this ground.

4. He submitted that the order of the State Transport Appellate Tribunal can be supported on the ground that the proceedings of the Regional

Transport Authority was not in accordance with the law. He contended that on the application made by the petitioner, the Regional Transport

Authority, South Arcot granted the extension of the route subject to the concurrence of the Regional Transport Authority, Tanjore. The Regional

Transport Authority, Tanjore, refused concurrence by an order, dated 27th June, 1966. Subsequently, the Regional Transport Authority, South

Arcot, made a reference to the Transport Commissioner under Section 44(3)(c) of the Act for settling the dispute. The Transport Commissioner

decided the question in favour of the Regional Transport Authority, South Arcot holding that it is in the public interest to grant the extension prayed

for. Again, the matter was taken up by the Regional Transport Authority, South Arcot who after hearing the parties, held on 14th February, 1967,

that the variation prayed for should be granted and granted the extension. It was submitted by Mr. K. K. Venugopal, that the proceeding of the

Regional Transport Authority, South Arcot for determining the question whether the variation was called for or not was judicial in nature, and when

the Regional Transport Authority, South Arcot granted an extension subject to the concurrence by the Regional Transport Authority, Tanjore and

when the concurrence was declined by the Regional Transport Authority, Tanjore, the proceedings came to an end, and the subsequent reference

by the Regional Transport Authority, South Arcot to the Transport Commissioner and his further proceedings after the reference was submitted to

be illegal and beyond jurisdiction. This point is taken for the first time before this Court. Before the State Transport Appellate Tribunal, it was

submitted that when the Transport Commissioner took the view that the variation was for public interest, the Regional Transport Authority, South

Arcot, did not apply his mind over the question and therefore the order of the lower authority was vitiated on the ground that it was guided by the

direction given by the Transport Commissioner. This point as already stated was found against by the State Transport Appellate Tribunal which

found that the Regional Transport Authority, South Arcot had applied his mind. For the first time in the counter affidavit filed in this writ petition, the 1st respondent submitted that the reference by the Regional Transport Authority, South Arcot to the Transport Commissioner was not only misconceived but the direction given by the Transport Commissioner was without jurisdiction and the order of the Regional Transport Authority, South Arcot after the receipt of the order of the Transport Commissioner was illegal. The objection now taken, namely, that the proceeding of the Regional Transport Authority, South Arcot, before reference to the Transport Commissioner was judicial in nature that the petition was finally disposed of when the Regional Transport Authority, Tanjore, passed his order and that the Regional Transport Authority, South Arcot cannot again take up the matter for disposal, has not been raised even in the memo of grounds. Mr. M. N. Rangachary, learned Counsel for the petitioner submitted that the respondent should not be allowed to urge this point, as not only it is raised for the first time in this Court, but that a decision on the question would involve a decision on disputed facts. According to Mr. Rangachary, the proceeding at the first instance when the Regional Transport Authority, South Arcot expressed himself in favour of the variation subject to the concurrence by the Regional Transport Authority, Tanjore was purely administrative in nature and when there was a difference of opinion between the two Regional Transport Authorities, the reference to the Transport Commissioner was also administrative in nature. According to the learned Counsel for the petitioner, only the proceeding after the receipt of the opinion by the Transport Commissioner when notice was issued to the parties was judicial in nature. The question raised by Mr. K. K. Venugopal cannot be decided without giving a decision on the disputed facts. As this cannot be done at this stage, and as this question is raised for the first time in this writ petition, I decline permission to the learned Counsel for the respondent to impeach the order of the Regional Transport Authority, South Arcot on this ground.

5. In the result, the Writ Petition is allowed and the order of the State Transport Appellate Tribunal is quashed. There will be no order as to costs.