

(1998) 03 MAD CK 0050
In the Madras High Court

P.M. Munusamy Gounder, Prop. B.K.P.M.M. Bus Service and
Another

APPELLANT

Vs

Tamil Nadu State Transport Corporation, Salem Division-II
and Another

RESPONDENT

Date of Decision : 04-03-1998

Acts Referred:

Motor Vehicles Act, 1988 — Section 60, 60(3), 63

Citation : (1998) 2 MLJ 226

Hon'ble Judges : K. Govindarajan, J

Bench : Single Bench

Judgement

K. Govindarajan, J.—The first petitioner made an application for renewal of permit for the route Krishnagiri to Thirupathur viz.,

Kaveripattinam, Thalihalli, Velampatti, Nagarasampatti, Pochampalli, Mathur, Kannandahalli and Kakkangarai in respect of his route bus

MDD.454 for a further period of 5 years with effect from 24.6.1974. The Anna Transport Corporation Ltd., Salem also made an application for

grant of pucca stage carriage permit to ply on the said route. Both the applications were considered by the Regional Transport Authority,

Dharmapuri, and in the order dated 21.6.1974, he rejected the renewal application filed by the first petitioner and granted the permit in favour of

the Anna Roadways Transport Corporation Ltd. Aggrieved against the same, the petitioner filed further appeal in Appeal No. 442 of 1974 on the

file of the State Transport Appellate Tribunal, Madras. The appellate Tribunal also concurred with the findings of the Regional Transport Authority,

Dharmapuri and dismissed the appeal. Hence the petitioners have filed the present revision.

2. The learned Senior Counsel appearing for the petitioners has submitted that the first petitioner has been making applications for renewal, pending the proceedings. One of such applications was made on 13.1.1989 requesting renewal for five years from 24.6.1989. According to him, the said application is yet to be disposed of. Thereafter also, the first petitioner made applications and the last of such applications for renewal are for the period from 24.6.1997.

3. The Regional Transport Authority granted 7 marks to the first petitioner as per Rule 155-A of the Tamil Nadu Motor vehicles Rules 1940; (2 marks for residence, 2 marks for his workshop facilities and 3 marks for viable unit). For the Anna Transport Corporation, the Regional Transport Authority granted 9 marks, that is, 2 marks for the technical qualifications, 2 for the workshop facilities and 5 marks for being a state owned corporation. The Appellate Tribunal found that the first petitioner suffered suspension of permit thrice and those punishments were compounded by the petitioner and so the first petitioner was liable to be screened under Rule 155-A(2)(ii) of the Tamil Nadu Motor Vehicles Rules and rejected the renewal application of the first petitioner. In view of the said rejection, the State Transport Appellate Tribunal, confirmed the order of the Regional Transport Authority granting the permit in favour of the said Anna Transport Corporation. On the basis of the above facts, the learned senior counsel appearing for the petitioners has submitted that though there were orders of suspension as stated by the appellate tribunal, admittedly, they were compounded, and so it cannot be said that the first petitioner suffered punishment for the purpose of screening u/s 155(A)(2) (ii) of the Rules.

4. While dealing with the scope of Section 60(3) of the said Act, the Division Bench of this Court in Rathinaswami Pillai v. Regional Transport Authority (1965)1 M.L.J. 526, has held as follows:

The Statute prescribes the modes of punishment against an operator found to be guilty of the charges under clauses (a), (b), or (c) of Sub-section (1) of Section 60. The punishment may be either what may be termed an extreme punishment by way of cancellation, or a medium punishment by way of suspension, or the least rigorous punishment of levying something in the nature of fine. The last punishment cannot be inflicted without the

concurrence and consent of the transport operator. Ex necessitate ref the levy of composition, which an operator underwent in respect of a proved charge. Otherwise, the whole scheme of Section 60 of the Act would become impractical and unworkable. We are unable to construe Section 60(3) as clothing the operator with a subsequent fresh and independent right to have a previous punishment by way of cancellation or suspension commuted into a punishment of money compensation....Statute does not deprive him of such redress as he may have against what he may feel to be an unfounded charge. But it is, however, clear that, if he wants to avail himself of the provisions of compounding u/s 60(3) he must do so before actually the punishment is imposed upon him, and the fact that he agrees to composition, which would amount to a practical confession of the guilt, would not really affect the question. The benefit can be had only by an operator, who is frank and bona fide and who pleads for the imposition of a lesser punishment than the one by way of cancellation or suspension. We see nothing strange or anomalous in such a construction of the statute, though we must observe that the phraseology of the subsection is neither precise nor felicitous.

5. On the basis of the decision of the Division Bench, the learned Senior Counsel contends that in view of the fact that the permit holder was

permitted to compound the offence u/s 63 of the Act, any violation of the conditions of the permit within the meaning of Section 60 of the Motor

Vehicles Act cannot stand in the way of renewal being granted. I am not able to accept the said contention. Even the Division Bench has construed

the payment of compounding fee as a punishment, though it is a lesser one. Moreover, Padmanabhan, J., as he then was, in C.R.P.No. 2958 of

1978 dated 7.1.1981, following the decision of Mohan, J., as he then was, has held as follows:

The proposition of law raised by Mr. Ramanujam in this civil revision petition is that when a permit holder commits a violation of the conditions of

the permit within the meaning of Section 60 of the Motor Vehicles Act and he is permitted to compound the offence u/s 60(3) of the Act, then the

violation cannot stand in the way of renewal being granted, even though there have been two violations. It is admitted that Mohan, J., has already

held, that the mere fact that there has been compounding of the offence u/s 60(3) of the Act, will not prevent the violation being taken into account

in considering the application for renewal. The civil revision petition is therefore dismissed, but without costs.

6. The Andhra Pradesh High Court in the decision in Ramakrishna Mudaliar v. Regional Transport Authority (1967)2 AW.R. 362 has held that

though offences are compounded the entries relating to those offences made in the history sheet have to be taken into consideration at the time of

grant or renewal of permits.

7. In view of the above decisions, the appellate tribunal is correct in taking into consideration the earlier punishments for the purpose of screening

under Rule 155-A of the Rules. Once the petitioner cannot successfully get over the screening, he goes out of the consideration. He cannot raise

the other objection to issue the permit to the respondent-Corporation. To come to such conclusion, I seek assistance from the order of Mohan, J.,

as he then was, in C.R.P.No. 131 of 1982, dated 16.2.1983 in which the learned Judge has held as follows:

In seeking to revise this order, what is urged before me is that as far as the third respondent-Corporation is concerned, the records were not

available before the Tribunal and therefore it should have applied the same test with regard to the Corporation as well. I am unable to agree. If the

petitioner cannot successfully get over the screening, he goes out of the reckoning. In other words, as far as the petitioner is concerned, he is hors

de combat. Therefore, it is not open to me to say that the Corporation suffers from disqualification.

8. In view of the above, I do not find any merit in this revision. Hence this revision is dismissed. No costs.