

(1961) 08 MAD CK 0036

In the Madras High Court

Case No : Writ Petitions No's. 736 and 1086 of 1959 and 49 of 1960

R. Venugopal Reddiar, Sri Devi Transports Srirangam and
Others

APPELLANT

Vs

M. Palanimuthu and Others

RESPONDENT

Date of Decision : 09-08-1961

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 59, 59(1), 64(1)

Citation : (1965) ILR (Mad) 630

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Advocate : V.K. Thiruvenkatachari, General for T. Chengalvaroyan and Ramakrishnan, for K. Parasaran and T.R. Ramachandran, for the Appellant; S. Mohan Kumaramangalam, for B. Kalyanasundaram and R.G. Rajan for M.M. Ismail, Additional Government Pleader and V.K. Thiruvenkatachari, General for T. Chengalvaroyan, for Respondent 3 in Writ Petition No. 1086 of 1959, for the Respondent

Final Decision : Dismissed

Judgement

Veeraswami, J.—The Petitioner in the writ petitions, and one Palanimuthu, who is a common Respondent in all of them were rival Applicants for a stage carriage permit on the route Tiruchi to Purathakudi in Tiruchirappalli district. The route is twelve and a half miles and is a short route within the meaning of G.O. Ms. No. 2265, Home, dated August 9, 1958. At its meeting held on September 25, 1958 the Regional Transport Authority, Tiruchirappalli, granted the permit to R. Venugopal Reddiar, Sri Devi Transports, Srirangam, who is the Petitioner in Writ Petition 736 of 1959. Palanimuthu and the Petitioners in the other two writ petitions as well as some of the original Applicants, who were unsuccessful, filed appeals to the State Transport Appellate Tribunal. By its order, dated July 22, 1959, the Tribunal set aside the order of the Regional Transport Authority and granted the permit to Palanimuthu. It is common ground that the selection for

the purpose of grant of the permit was to follow the directions contained in the said Government Order as modified by G.O. Ms. No. 3547, Home, dated December 18, 1958. Before the Regional Transport Authority, the Petitioner in Writ Petition No. 736 of 1959 obtained three marks which were the highest and Palanimuthu got a quarter mark which was the lowest. Each of the Petitioners in Writ Petitions Nos. 1086 of 1959 and 49 of 1960 secured half a mark. The permit was, therefore, granted to Venugopal Reddiar. The Tribunal, however, reallocated the marks and as a result, Venugopal Reddiar got two marks and Palanimuthu as well as the Petitioner in Writ Petition No. 49 of 1960 got each only a quarter mark. The Petitioner in Writ Petition No. 1086 of 1959 secured nothing. Nevertheless, on the ground that Palanimuthu was a new entrant and because of his experience as a bus operator from October 21, 1957 to March 14, 1958, which the other new entrants did not have, the Tribunal considered him to be entitled to preference. Venugopal Reddiar, who lost before the Tribunal and the Petitioners in Writ Petitions Nos. 1086 of 1949 and 49 of 1960, who were unsuccessful before both the authorities below, have come up to this Court to have the order of the Tribunal quashed under Article 226 of the Constitution. As the petitions pertain to the same route and order, they have been heard together.

2. On behalf of the Petitioner Venugopal Reddiar, in Writ Petition No. 736 of 1959, the learned Advocate-General, who appeared for him, made three submissions : (i) that the Tribunal entirely misdirected itself in proceeding on the assumption that the firm of partnership of which he was a partner was an illegal partnership and that this error apparent on the face of the record vitiated its order ; (ii) that Palanimuthu's appeal being as a person aggrieved by the refusal of the Regional Transport Authority to grant a permit to him, it was not for him to question the merits or demerits of the grant of the permit to Venugopal Reddiar in the first instance besides the fact that the point, based on the partnership being allegedly illegal, was entirely a new one, only taken before the Tribunal and (iii) that the Tribunal's order was also ex facie erroneous because in granting the permit to Palanimuthu it took into consideration not only the route in question but also two other routes which were town routes, to wit, Tiruchi Main Guard Gate to Tiruverambur and Tiruchi Main Guard Gate to Manachanallur, and bore in mind the claims of all the operators in the light of certain principles enunciated in its order relating to the route, Tiruchi Main Gate to Tiruverambur. As regards the first point, Sri Mohan Kumaramangalam, the learned Counsel appearing for Palanimuthu, the first Respondent in Writ Petition No. 736 of 1959, urged that it did not arise in the light of the findings of the Tribunal and that, as a matter of fact, his client neither raised the point before the Tribunal nor would argue the same in this Court.

3. To appreciate the first point, it is necessary to notice the relevant circumstances. Though it was not before the Regional Transport Authority, one of the questions which some, among the Appellants other than Palanimuthu, argued before the Tribunal, pertained to whether the application of Venugopal Reddiar was made on his own behalf, or on behalf of the firm of partnership of which he

was a member and whether the partnership was illegal. It is not disputed that Venugopal Reddiar owns in his individual capacity three stage carriage permits on the routes, Tiruchi to Samayapuram, Tiruchi to Labbaikudikadu (via) Perambalur, and Unniyur to Musiri (via) Kattuputhur, besides a spare bus. In addition to this information, there was reference in the application to a firm of which Nataraja Reddiar, Padmanabhan and Venugopal Reddiar were partners. This reference also included particulars as to the extent of the financial interest of each of the partners in the firm. These details were given in the application in answer to column 2 (b) which read:

In the case of partnership and registered or unregistered firms specify the names of all persons constituting the body, the nature and extent of the financial interest of each of those persons in existing Road Transport undertaking.

4. The contention presented before the Tribunal against Venugopal Reddiar was that the mention of the partnership showed that the application for a stage carriage permit was by the firm itself and that it was an illegal partnership inasmuch as it involved a transfer in its favour of the three stage carriage permits of Venugopal Reddiar without the requisite permission therefor of the Transport Authority which had granted those permits. The implication of the contention was that if it was accepted, it would deprive Venugopal Reddiar of the one mark allotted under column 3 in the mark list, that is to say, mark on the ground that the Applicant was a firm of partnership. The Tribunal's order does not show that there was any material apart from what the application itself of Venugopal Reddiar contained, to assume that the permits, which stood in the name of Venugopal Reddiar, had been transferred to the firm or to the names of its three partners. Merely on the basis of the reference against column 2 (b) in the application to the names of the partners and the extent of the financial interest of each of them, the Tribunal was prepared to hold that the Applicant was the firm itself. On that view, the Tribunal posed for itself two questions : (i) whether the partnership itself was illegal and was precluded from making the application because of the fact that the three permits, which were treated in the application as belonging to the partnership, had actually not been transferred to the names of the three partners constituting the partnership by the Regional Transport Authority u/s 59 and (ii) on what footing were the marks to be assigned to the Applicants in respect of sector qualification and experience and in particular whether they should be treated as new entrants. On the first question, the Tribunal answered that the partnership was illegal in regard to the transactions arising out of the three permits mentioned in the application and in coming to this conclusion the Tribunal relied on a decision of a division Bench of this Court in Maniam Hiria Gowder v. Naga Maistry (1957) 2 M.L.J. 264. But, at the same time, as observed by the Tribunal, it did not appear so clear to it whether the illegality would extend to the limit of precluding the partners from filing an application for a new permit ignoring the three permits for which credit was taken in the allotment of marks. But the question was finally disposed of by the Tribunal thus:

But it is unnecessary in this case to consider this point because I feel that even on the other grounds the permit granted to the Respondent must be set aside.

5. The net result of this is that the Tribunal proceeded on the footing that the application of Venugopal Reddiar, viewing it as one made on behalf of the firm, was competent. In fact, the Tribunal went further and was prepared even to confirm the award of one mark to the Applicant on the ground that it was a firm. In effect, the decision of the Tribunal on the point did not prejudice in any manner the Petitioner in Writ Petition No. 736 of 1959. It was for this reason, Sri Mohan Kumaramangalam urged, that the point based on the alleged illegality of the partnership was of no importance and that he did not, therefore, have to reply to the argument of the learned Advocate-General, in this respect.

6. It may, however be stated that, in my opinion, the Tribunal was not right in its view that the partnership was illegal. Whether a firm is an illegal partnership will depend on the particular facts in each case in relation to specific terms of inhibition by or under a statute. Sub-section (1) of Section 59 of the Motor Vehicles Act, 1939 prohibits the transfer of a permit by its owner to another without the permission of the Transport Authority which granted it and further provides that an unauthorised transfer will not entitle the transferee to use the vehicle covered by the permit. A transfer of a permit without the permission of the prescribed authority will have to be proved like any other fact in issue by proper evidence and cannot be assumed merely from a contract to transfer a stage carriage permit or formation of a partnership in transport business with a holder of a stage carriage permit or permits as one of its members. It is possible that a holder of a stage carriage permit may engage himself in running his own bus and at the same time be a partner of a firm in transport business having nothing to do with such permit or running of the bus covered by such permit. In such a case, no question could obviously arise of the firm being illegal vis a vis Sub-section (1) of Section 59 of the Act. *Maniam Hiria Gowder v. Naga Maistry* (1957) 2 M.L.J. 264 was a case of an agreement of partnership which entailed a transfer of a permit without the requisite permission therefor from the prescribed authority. In other words, the agreement of partnership there apparently involved a transfer of a permit in contravention of the statutory prohibition. It was in that sense, the Court in that case declined to grant dissolution of the partnership and taking of its accounts. That this was so would be evident from the reference in the above decision to *Viswanathan v. Namakchand Gupta* (1954) 2 M.L.J. 782 which was decided under the Cinematograph Act (II of 1918). *Velu v. Sivasooriam* ILR (1950) Mad. 997 (F.B.) was under the Abkari Act in which it was held that a partnership entered into for the purpose of conducting the business in arrack or toddy on a licence granted or to be granted only to one of the partners was void ab initio, whether the contract was entered into before the licence was granted or afterwards, in that it either involved a transfer of the licence, which was prohibited under Rule 27 of the Abkari Rules and punishable u/s 56 of the Abkari Act or a breach of Section 15 of that Act punishable u/s 55, because the unlicensed partner by himself or through his agent, the other

partner sold without a licence. The principle of this decision was also referred to in *Maniam Haria Gowder v. Naga Maistry* (1957) 2 M.L.J. 264. In that case the partnership was evidently engaged in a lorry business involving the transfer of a permit without the requisite permission. It was in such circumstances that the partnership in *Maniam Hiria Gowder v. Naga Maistry* (1957) 2 M.L.J. 264 was held to be illegal and void. But what are the facts in the present case? Beyond the particulars given in the application for permit, there are no further materials, and those particulars, obviously are hardly sufficient to hold that the partnership was engaged in transport business necessarily involving a transfer, without permission, of the stage carriage permits held by Venugopal Reddiar. As a matter of fact, the Tribunal has nowhere in its order found that there was such a transfer of permits by their holder to the firm of partnership of which he was a member. Whether Sub-section (1) of Section 59 of the Motor Vehicles Act, 1939, is infringed by a firm of partnership doing nothing more than sharing the profits arising from the plying of a bus by the holder himself of a permit will be a nice question which will have to be decided when occasion arises. Prima facie in my view, such a partnership with a such a limited basis may not necessarily involve transfer of the permit but it is unnecessary to express here my final opinion on it. It will also be a question for consideration whether a mere contract to transfer a permit or an agreement of partnership, in anticipation of a transfer of a permit with requisite permission therefor to be obtained, is an infringement of Section 59. The learned Advocate-General contended that a contract would be good if it could be carried out legally. He stated that for a holder to transfer his permits to a firm, first, the firm should be formed, next, agreement on the terms of transfer should be come to and then an application for transfer made, and that none of these preliminary steps could be regarded as infringing the inhibition in Section 59(1). In support, the learned Advocate-General invited my attention to a few authorities of the English Courts. But as I consider that on the finding of the Tribunal, none of these questions arises for decision, it is not necessary to pursue the questions and express my opinion thereon. Suffice it to say that I am unable to agree with the view of the Tribunal that the partnership was an illegal one merely on the basis of the meager information contained in the application itself of Venugopal Reddiar. The Tribunal overlooked that in *Maniam Hiria Gowder v. Naga Maistry* (1957) 2 M.L.J. 264 rights were claimed on the basis of an invalid transfer but it is not the case here. But this conclusion does not, however, by itself affect the grant of the permit by the Tribunal to Palanimuthu.

7. On the second point of the learned Advocate-General as a proposition it is certainly correct that Section 64(1)(a) of the Act is confined to cases where a person is aggrieved by the refusal of the Regional Transport Authority to grant a permit to him. It was so held by a division Bench of this Court in *Nadar Transports v. State of Madras* ILR (1953) Mad. 367. That means that an Applicant, who did not oppose the grant of a permit to a rival Applicant before the Regional Transport Authority, would not in his appeal be entitled to succeed on the demerits of the grantee not opposed by him earlier. It is also

unexceptionable, as the learned Advocate-General, contended that no aggrieved person in his appeal, before the Tribunal would be entitled to urge a point for the first time which was not urged and for which no factual foundation was laid when the matter was heard by the Regional Transport Authority. But neither of the two propositions appears to help the learned Advocate-General in this case. So far as the first Respondent in Writ Petition No. 739 of 1959 is concerned, he of course did not raise the point based on the alleged illegality of the partnership and did not also rely on the point in this Court. The question was, however, raised for the first time by certain other Appellants and was gone into by the Tribunal. But eventually, as noticed by me while considering the first point of the learned Advocate-General, the actual finding of the Tribunal sustaining the application of Venugopal Reddiar and allotting marks on the footing that the Applicant, was a firm, showed that its observation that the partnership was an illegal one did not in any way affect its conclusion to grant the permit to Palanimuthu. The second point is also without substance and is rejected.

8. There remains to consider the third and last point of the learned Advocate-General. In paragraph 30 of its order the Tribunal stated:

So far as the present route is concerned, it is not a town route and it is only a mufussal route the other two routes, Trichy Mainguard Gate to Tiruverambur and Triothy to Manachanellur, are town routes. I have considered all the three routes together and borne in mind the claims of all the operators in the light of the principles enunciated above and I have come to the conclusion that the permit in the present route should go to a suitable, new entrant and the permits in the other two routes should be confirmed in favour of the Respondents therein who are existing operators. I feel that to keep out the now entrants even in the present route on the ground that the new entrants have secured less marks than the existing operators would be open to the charge of not making an honest attempt to encourage new entrants. Now among the new entrants the best in my opinion is Sri M. Palanimuthu who has had experience as bus operator from 21st October 1957 to 14th March 1958, whereas the others have not had experience as operators themselves.

9. It is manifest from the extract that notwithstanding what it stated, namely, that it had considered all the routes together and borne in mind the claims of all the operators in the light of the principles enunciated by it on constructions of the relevant Government orders, the ultimate decision of the Tribunal was based upon the principle that in respect of a short route, new entrants should be preferred as against the existing operators. The enunciation of that principle is based upon the Tribunal's own views of the construction of G.O. Ms. No. 2265, Home, dated August 9, 1958, as modified by G.O. Ms. No. 3547, Home, dated 18th December 1958. I am unable to see any error in the application of that principle to the facts of the case. But at the same time, this Court is not to be understood as approving the procedure of the Tribunal in considering the three routes together and bearing in mind the claims of all the operators in the light of

the principles which it had enunciated for itself on the basis of the relevant Government orders. The scheme of the Act suggests that the Regional Transport Authority as well as the Tribunal should consider the grant or refusal of permits in respect of each route separately in the light of the merits or demerits emerging from the facts and circumstances pertaining to the particular route and the rival claimants for permit or permits for that particular route. But in this case I am satisfied that the Petitioner in Writ Petition No. 739 of 1959 was not in any way prejudiced by the erroneous procedure followed by the Tribunal because the grant of the permit to Palanimuthu was based on the principle that in respect of a short route, new entrants should be preferred instead of the existing operators. The last point urged on behalf of the Petitioner Venugopal Reddiar also fails.

10. The Petitioners in Writ Petitions Nos. 1086 of 1959 and 49 of 1960 are each of them lorry operators and were considered to be new entrants for purposes of that particular route. But the Tribunal, as I have already said, preferred Palanimuthu on the ground that he had experienced as a bus operator from October 1957 to March 1958 and the Petitioners in these two petitions did not possess any such experience. There is, therefore, no error vitiating the Tribunal's conclusion in making the grant of permit to Palanimuthu.

11. The petitions are dismissed. But in the circumstances, there will be no order as to costs in any of them.