

(1960) 01 KL CK 0015

In the High Court Of Kerala

Case No : O.P. No's. 334, 335 and 352 of 1957

Rayappa Gounder

APPELLANT

Vs

State Transport Appellate Tribunal, Trichur and Others

RESPONDENT

Date of Decision : 18-01-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1960) KLJ 385

Hon'ble Judges : T.C. Raghavan, J;M.A. Ansari, J

Bench : Division Bench

Advocate : G.B. Pai, P. Govindan Nair, P.K. Kurien and K. Sukumaran, for the Appellant; C.M. Kuruvilla, Government Pleader, for 1st Respondent, T. Chandrasekhara Menon, for 10th Respondent in O. P. 334/57, T. Chandrasekhara Menon, T. Unnikrishna Menon, for 2nd Respondent in O. P. 335/57 and K.K. Mathew, for 2nd Respondent in O. P. 352/57, for the Respondent

Judgement

M.A. Ansari, J.—These three writ petitions seek to vacate the orders of the State Transport Appellate Tribunal under the Motor Vehicles Act, No. IV of 1939. O. P. 334 and 335 of 1957 claim the refusal by the aforesaid Tribunal to bring the heirs of the deceased appellant on record to be legally wrong. One Marappa Gownder, who was the father of the writ petitioner, had applied that the permit for the Palghat-Guruvayoor route via Shornoor and Kootanad be given to him. It appears that the Regional Transport Authority, Malabar, had called for such applications and the writ petitioner's father had thereupon applied on September 16, 1956. Respondents 2 to 10 to the writ petition No. 334/1957 were the other applicants for the permit on the same route. The Regional Transport Authority on February 11, 1957, rejected the application by the petitioner's father as well as by respondents 3 to 10, and granted permit to P.N. Unnikrishna Panicker, who is the second respondent to the writ petition. Thereafter the petitioner's father filed an appeal against the second respondent claiming cancellation and issue of permit in his favour; but he died on May 27, 1957. The writ petitioner filed the application before the Appellate Authority, seeking permission to prosecute the

appeal as the additional appellant, but it has been rejected on July 30, 1957, and O. P. 334/57 seeks to vacate the order. The next O. P. 335/57 is also concerned with the same order, and appears to have been filed because the writ petitioner's father, at the time of his application for the permit being given to him, had also objected to another's getting the permit. That objection failed when the writ petitioner's father's application for the permit was refused by the Regional Transport Authority. The applicant filed a separate appeal against the rejection order, on the ground of his right to object being a separate statutory right. After the father's death, the writ petitioner had applied for being allowed to continue the appeal as well, and against rejecting the request O. P. 335/57 has been filed. It follows that the grounds for vacating the order in the two appeals are similar, and the reasons for accepting or refusing the writ petitions in these circumstances would be common. The counsel for the writ petitioner has fairly argued the cases on behalf of his client, and has referred us to two decisions wherein a distinction is drawn between the right of a person to get a permit under the Motor Vehicles Act, and the right of such a person after the permit has been granted. In *Ratan Lal Gupta Vs. State Transport Authority and Another*, the learned Judges have held that the right to apply for permit is neither transferable nor heritable, and would lapse on the death of the appellant. Similar view has been entertained by the Madras High Court in *Ulaganatham v. State Transport Appellate Tribunal*, 1957 (2) M.L.J. 50 which is clear from the notes on this unreported decision. It is therefore not controverted that the order dismissing the application to be brought on record, as the heir of the deceased appellant, is correct in the appeal against the order rejecting the prayer for the permit being given. We think the position should not be different, where the objection to another's getting the permit is closely associated with the prayer for getting the permit. We have seen in this case the form in which the writ petitioner's father had raised the objection; and we are convinced that the main object of the petitioner's father was to obtain the permit. It follows that what was ancillary to the main application cannot survive its abatement. The counsel for the writ petitioner has argued that the right to object is a distinct statutory right, given in order to guard the rights of a permit holder, and as the deceased applicant was a permit holder, his death would not result in the appeal against the dismissal order abating so long as the heir held the permit. In this case a decision on such a right of objection being not personal is not necessary, because the object of filing the objection by the deceased appears to us to be merely subordinate to his desire of getting the permit, and would fall on the main application having abated. We would, therefore, dismiss writ petitions 334 and 335 of 1957.

2. O. P. 352/57 challenges a different order by the Appellate Tribunal. The applicant therein is the Managing Director of a company that is doing motor transport business and had purchased buses belonging to the United Motor Union (Private) Ltd. The vendor held a permit for operating a bus from Thodupuzha and Kanjar, which had been cancelled by the Transport Authority, and a fresh permit

had been issued in favour of the second respondent to the writ petition, notwithstanding the objection of the vendor of the writ petitioner to the other getting such a permit. An appeal was thereafter filed against the grant of the permit and still awaits adjudication before the Appellate Authority. After the sale of the buses in favour of the writ petitioner's company, the Appellate Authority was asked to implead the purchaser as additional appellant in the appeal; but that prayer has been rejected. That rejection order is challenged in O. P. 352/57. Now one of the several reasons, on which the orders of subordinate judiciary can be reversed, is their failure to exercise jurisdiction and that forms a well known ground for exercise of powers u/s 115 of C. P. C. It follows that such a failure by a lower Tribunal due to a legal error should also be corrected by this Court in exercise of its supervisory jurisdiction. It is equally well established that courts have powers of impleading parties for the purposes of effectively and finally adjudicating the disputes before them, provided that such an addition does not prejudice the trial between the parties already on record, and that rule flows from the jurisdiction vested in courts to adjudicate on disputes. It would follow that a lower Tribunal vested with the authority of deciding questions would have similar power of impleading new parties where presence of such persons appears proper for deciding the disputes. The order challenged by the writ petitioner has erred by not examining the application to bring on record the purchaser from this angle, and has resulted in failure to exercise jurisdiction. It should, therefore, be determined how far the petitioner's company should be made a party to the appeal pending before the appellate authority in order to effectively and satisfactorily decide the dispute covered by the grounds of appeal. Generally vendors after transfers are not anxious to pursue diligently litigations started earlier to the transfers, and the writ petitioner's company may justifiably feel that the vendor would not be actively pursuing the appeal after the sale in their favour. It follows that the appellate authority should approach the application made to it to implead a fresh appellant from this point and it has erred in dismissing the application. Therefore we allow O. P. 352 with direction to the Appellate Tribunal to decide afresh the application having regard to what have been stated about impleading a fresh party in order to finally decide the question in dispute between the parties. O. Ps. 334 and 335 are dismissed, and O. P. 352 is allowed. The successful parties will be entitled to their costs, i.e. it is given in O. Ps. 334 and 335 to respondent No. 2, and to the petitioner against respondent No. 2 in O. P. 352.