

(1981) 11 MAD CK 0062

In the Madras High Court

Case No : Civil Revision Petition No. 1860 of 1979

S. Rajagopala Vandayar and Sons

APPELLANT

Vs

Royal Transports (P) Ltd.

RESPONDENT

Date of Decision : 30-11-1981

Acts Referred:

Tamil Nadu Motor Vehicles Rules, 1940 — Rule 155A(2)

Tamil Nadu Motor Vehicles Taxation Act, 1974 — Section 47(1), 64B

Citation : (1982) ILR (Mad) 286

Hon'ble Judges : Mohan, J

Bench : Single Bench

Advocate : V.P. Raman, for V. Subramanyam and V. Gopalakrishnan, for the Appellant; M.N. Rangachari and S. Srinivasan, for the Respondent

Final Decision : Allowed

Judgement

Mohan, J.—This revision raises an important and interesting question of law, which will be set out after setting out the facts, with regard to the grant of a stage carriage permit to ply on the Mayuram Town Service, Route No. 19, viz., From Mayuram Junction to Komal, via Mayuram Bus stand, Elanthangudi, Mangainallur and Manganallur village. On a consideration of the matter under Item No. 16 by the Regional Transport Authority at its meeting held on 8th February 1976, the permit was awarded in favour of Shri S. Rajagopal Vandayar & Sons, who was Applicant No. 1 before it. Aggrieved by this order an appeal was preferred by the Respondent herein (Royal Transport Private Limited). The Tribunal on a consideration of the matter thought fit to allow the appeal. As a result of which the permit granted in favour of the Regional Transport Authority's grantee was set aside and the same was granted in favour of the Respondent. It is to revise this order, the present revision has been preferred.

2. It is argued by Mr. V. P. Raman, learned Counsel for the Petitioner, that the order of the Tribunal suffers from many errors of law apparent on the face of the record. They are as follows (1) Specific attention of the Tribunal was drawn to

the fact that the Respondent had not performed his services on several occasions which were all detailed in paragraph 6 of the counter affidavit filed in Interlocutory Application No. Nil of 1979 in Interlocutory Application No. 225 of 1979. This was not considered. (2) In paragraph 9 of the same counter it was categorically asserted that the Respondent has got a tiled roofing with wooden after as such the workshop is not fire proof and therefore he is (SIC) to be screened. The Tribunal applying a ruling of this Court in Civil Revision Petition No. 446 of 1975 states that such a workshop would conform to the requirement of the rule. This is clearly wrong in view of the later decision of this Court in Civil Revision Petition No. 1837 of 1978. (3) the Respondents' entry in the history sheet though was not there he had been cautioned. That had not been considered. Therefore, where the Tribunal fails to consider the relevant materials, more so it chooses to reverse the grant in favour of the revision Petitioner, will clearly amount to failure to exercise jurisdiction which warrants interference in this civil revision petition.

3. In opposition to this Mr. M.N. Rangachari, learned Counsel for the Respondent, in seeking to support the order of the Tribunal states that it is true that the non-performance has not been considered by the Tribunal, but on that score it cannot be held that the order is in any way vitiated. Having regard to the superior claim of the Respondent he had come to be granted the permit. As regards the workshop the Tribunal followed the then ruling available. Therefore it cannot be held that the order of the Tribunal suffers from any material irregularity. Even otherwise, where there are two views possible with regard to the interpretation of Rule 155-A(2)(iv) of the Tamil Nadu Motor Vehicle Rules, 1940 if the Tribunal takes up one view it cannot be said that it had committed an error. In the instant case, it is for the lower Court on question of fact to decide whether the workshop is made of combustible material or not and where the finding on fact has been rendered this Court exercising revisional jurisdiction ought not interfere. The further argument of the learned Counsel with regard to the interpretation of the rule is that in Civil Revision Petition No. 1634 of 1980 (Judgment, dated 16th November, 1981) the requirements of the rule have been clearly set out. Having regard to that rule it must be held that building is the part of the equipment, If that be so the absence of one of the equipments would only disentitle the Respondent from obtaining two marks. But it is impossible to say that the Respondents is liable to be screened On this it is argued even, if these two marks are deducted there will be equality. Even then the Respondent would be entitled to reference and the screening is out of question.

4. It is well-settled that caution is not punishment. However, when there are other superior claiming there is no question of the Respondent not being preferred. Therefore it is urged by the learned Counsel that there is absolutely no scope to interfere with the order of the Tribunal.

5. Before I proceed to consider the failure of the Tribunal to have in mind the non-performance of the Respondent the details, of which have been set out in

the counter affidavit in paragraph 6, I must first address myself to the important and interesting question I have categorically laid down in Civil Revision Petition No. 837 of 1978 that, if the workshop is housed in wooden rafters it would not be in conformity with Rule 155-A(2)(iv), Under these circumstances in view of the admitted fact that the Respondents workshop is housed in wooden rafters is it liable to be screened or only two marks required to be deducted is the question. This requires to make a reference to Clause (iv) of Sub-rule (2) of Section 155-A. Clause (iv) read as follows:

absence of workshop facilities, or arrangements on the route or within a radius of eight kilometers from any point in the route to attend to repairs efficiently in a workshop as detailed in the explanation to this sub-rule.

After the ruling of this Courting Civil Revision Petition No. 1837 of 1978, a workshop housed in wooden rafters would not conform to the rule and it has to be screened because it will fall under the main clause, viz., absence of workshop facilities. I should also add in this connection that it is not the case of the Respondent that he has made arrangements on the route or within the radius of eight kilometers. Therefore this is clearly a case of absence of workshop facilities or arrangements. However, what is argued is two marks alone have to be deducted. This means a reference has to be made to Sub-rule 3(C). The said sub-rule says that after eliminating in the manner laid down in Sub-rule (2), the applicants who are unsuitable, mark shall be awarded for assessing the different qualifications of the remaining applications for the grant permit as follows:

(C) Workshop facilities:

two marks shall be awarded to the applicant who is in possession of workshop: facilities as given in the explanation under item (2)(iv).

Apart from this rule, the award of marks has to take place after elimination as contemplated in Sub-rule (2). One thing that i striking is Clause (iv) occurs under the elimination process. If already the operator has been eliminated there is no question of deducting two marks. In such a case, undoubtedly. he has to be screened. As a matter of fact in setting out the requirement of this particular rule I stated in Civil Revision Petition No. 1454 Of 1980, as follows:

Rule 115-A lays down the guiding principles for. the grant of stage carriage permits. This is in addition to the considerations set out in Section 47(1) of the Motor Vehicles Act.

After classifying the routes as short, medium and long, Sub-rule (2) lays down the principle which governs the grant of stage carriage permits. In that process would arise what is called screening Which contains several criteria and in Clause (iv) it is stated as follows:

Absence of workshop facilities, or arrangements on the route or within a radius of eight kilo meters from any point in the route to attend to repairs efficiently in a workshops detailed in the explanation to this sub-rule.

A careful reading of this clause reveals the following;

(1) Absence of workshop facilities in a workshop as detailed in the explanation to the Sub-rule (2) Arrangement on the route in a workshop as detailed in the explanation to the sub-rule; (3) workshop facilities or arrangements within a radius of eight kilometers from any point in the route; and (4) to attend to repairs efficiently. The explanation requires minimum personnel and equipment for a workshop for a unit of five stage carriages. This is a minimum requirement and has to be insisted upon. In other words, if it is an unit of five stage carriages, the absence of anyone of the requirement either in relation to the personnel or equipment which have been set out in detail above, would render the workshop as not a workshop within the meaning of Clause (iv). However, if it were not to be a unit of five stage carriage buses, for instance a new entrant or one bus operator, or again, a two bus operator, what is dispensed with by reason of the explanation is the requirement as to the personnel or equipment. By no stretch of imagination could be contended that even workshop facilities are dispensed with That would be renewing the rule ineffective or nugatory. If really, as the Supreme Court has no more than one occasion pointed out the touchstone on which the permit is granted in public interest, the public" interest would require attending to the repairs efficiently for which the workshop facilities at least arrangements would be essentially required. In the absence of that one can neither proclaim nor claim to be a transport operator, because, it is ultimately the public interest that will suffer if these workshop facilities are altogether dispensed with on the ground that the applicant is, not a unit of five stage carriages. This certainly will run counter to the letter and spirit of the rule.

6. In the instant case the first two conditions set out above are absent.

7. I am not persuaded to accept the argument that workshop can be characterized or brought within the term of equipment. Equipment as stated in the Oxford Dictionary means equipping or being equipped; manner in which person or thing is equipped; outfits tools; apparatus necessary for expedition; job; warfare; etc. Therefore certainly workshop cannot be brought within the term equipment. Apart from that is one of the cardinal rules of construction that while interpreting a particular rule it must (SIC)as a whole. So const(SIC), it leads to only one conclusion that the Respondent is liable to be screened. Consequently I have to reject the argument of Mr. M. N. Rangachari, learned Counsel for the Respondent, that where two views are possible, the Tribunal has taken one view no interference is called for. Nor again, could I accept the arguments that the Tribunal had merely applied the law as it then stood. A careful reading of the judgment of RAMANUJAM J., in Civil Revision Petition No. 446 of 1975 discloses that the learned Judge did not lay down any much proposition to hold that a tiled roofing workshop would conform to the requirement of rules 155-A(2)(iv). As seen from the discussion this is not a question of fact not warranting interference in revision. On the contrary, it is a pure question of law in relation to the interpretation of rules. Where, therefore,

the rule has been thoroughly misconstrued I cannot, but interfere.

8. The order of the Tribunal does not disclose that there was any consideration in relation to the non-performance of the Respondent and equally the caution. This aspect ought to have been considered. Having regard to all these, I have no other alternative but to set aside the order of the Tribunal which is accordingly set aside and the matter will stand remitted to the Tribunal for fresh disposal in the light of the observation made above. The civil revision petition is allowed. No costs.