

(2014) 01 MAD CK 0173

In the Madras High Court

Case No : Writ Petition No's. 26816, 26817 of 2009 and 4801, 5628 of 2010

S. Sivakumar

APPELLANT

Vs

The State Transport Appellate Tribunal, The Regional
Transport Authority and N. Thangavelu Mudaliar
N.
Revathy Vs Thangavelu Mudaliar, S. Sivakumar, The Regional
Transport Authority and The State Transport Appellate
Tribunal

RESPONDENT

Date of Decision : 07-01-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 82 82(1) 94

Citation : (2014) 2 MLJ 218

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : M. Krishnappan, for Mr. R. Achuthan in W.P. Nos. 26816 and 26817 of 2009 and Mr. M. Palani in W.P. Nos. 4801 and 5628 of 2010, for the Appellant; N. Srinivasan, Additional Government Pleader for for R2 in W.P. Nos. 26816 and 26817 of 2009 and for R3 in W.P. Nos. 4801 and 5628 of 2010, Mr. R. Singaravelan for R3 in W.P. Nos. 26816 and 26817 of 2009 and for R1 in W.P. Nos. 4801 and 5628 of 201, for the Respondent

Judgement

T. Raja, J.—Writ Petition Nos. 26816 and 26817 of 2009 have been filed by Mr. S. Sivakumar challenging the impugned order dated 2.12.2009 passed by the first respondent-State Transport Appellate Tribunal, Chennai in Motor Vehicle Appeal Nos. 59 and 60 of 2009, whereby both the appeals were allowed by setting aside the orders passed by the Regional Transport Authority, Thiruvannamalai dated 23.1.2009 and 29.1.2009 respectively, consequently, both the matters were remanded to the Regional Transport Authority for fresh consideration in accordance with law and in the light of the observations made in the said order within a period of three months. Writ Petition Nos. 4801 and 5628 of 2010 have been filed by Mrs. N. Revathy challenging the very same order dated 2.12.2009 passed by the fourth respondent-State Transport Appellate Tribunal, Chennai in Motor Vehicle Appeal Nos. 59 and 60 of 2009. The facts in brief leading to the

filing of the writ petitions are as follows. The petitioner in W.P. Nos. 26816 and 26817 of 2009, Mr. S. Sivakumar's grandfather and the petitioner in W.P. Nos. 4801 and 5628 of 2010, Mrs. N. Revathy's father, namely, Mr. M.K. Velu (now deceased) was operating a stage carriage bearing Registration No. TN-23-C-8294, since replaced by Registration No. TN-23-AD-1999 on the route Vellore to Sathanur Dam and a spare bus bearing Registration No. TN-23-AE-7299. While so, on 12.1.2000, both Mr. M.K. Velu and Mr. N. Thangavelu Mudaliar had jointly made an application for transfer of permit in respect of the above stage carriages from the name of Mr. M.K. Velu to Mr. N. Thangavelu Mudaliar u/s 82(1) of the Motor Vehicles Act, 1988 by stating the reason that he was a single bus operator and wanted to retire from the transport field and since Mr. N. Thangavelu Mudaliar was operating a stage carriage in Vellore District, he decided to transfer the above said permit in favour of Mr. N. Thangavelu Mudaliar. In the said transfer application, both the transferor and the transferee declared that there were no arrears of motor vehicle tax due to the Government, however, the said application was returned and finally re-presented on 25.1.2000 after rectification of the defects. Again on 7.2.2000, the transferor Mr. M.K. Velu filed a statement before the Regional Transport Authority requesting to consider the application dated 12.1.2000 and pass necessary orders. However, on 22.2.2000, Mrs. N. Revathy, daughter of the transferor, sent representations to the authority stating that her father had executed a settlement deed in her favour on 26.5.95, therefore, she was the owner and requested not to transfer the permit. Thereafter, on 3.3.2000, the transferor filed a detailed representation stating that the alleged settlement deed was illegal and void and therefore the said N. Revathy had no legal right to make any claim in the matter, on that basis, he requested the other side counsel to advise his client Mrs. Revathy to withdraw the objection.

2. In view of the pendency of the matter, the transferee Mr. N. Thangavelu Mudaliar filed W.P. No. 3545 of 2000 seeking a direction to the Regional Transport Authority to consider and pass necessary orders on the joint application for transfer of permit dated 12.1.2000. The said writ petition was disposed of by order dated 1.3.2000 directing the Regional Transport Authority to consider and pass orders on the joint application for transfer of permit within three months. Once again Mrs. N. Revathy had filed a representation not to transfer the permit. At this juncture, the permit holder Mr. M.K. Velu himself filed an application on 16.3.2000 stating that his mind was disturbed, hence, requested further time to think over on the joint application for transfer of permit with a further request not to take any action till then. In the meanwhile, one another application dated 21.3.2000 was filed by one Mr. V. Sankar, son of Mr. M.K. Velu with an objection that there was a dispute between him and his father, for which it was claimed that he had filed a suit in O.S. No. 74 of 2000 along with an application for injunction to restrain his father from alienating the stage carriages in any manner. However, the said I.A. No. 95 of 2000 was posted for hearing on 27.3.2000.

In the meanwhile, yet another application was filed by one Mr. V. Balakrishnan, claiming to be another son of Mr. M.K. Velu and adopted son of Mr. Kumaraswamy Mudaliar stating that there was a dispute in respect of the family property and for which a suit was filed in O.S. No. 680 of 2000 before the learned Additional District Munsif, Vellore along with an injunction application in I.A. No. 637 of 2000 and requested not to pass any orders on the application for transfer of permit.

3. In this background, the Regional Transport Authority passed orders on 30.5.2000 rejecting the joint application for transfer of permit on the ground that an interim injunction was granted in I.A. No. 191 of 2000 in O.S. No. 159 of 2000 said to have been filed by Mrs. N. Revathy. Aggrieved by the order dated 30.5.2000, both the transferor and transferee filed Appeal No. 244 of 2000 before the State Transport Appellate Tribunal and the said appeal was dismissed by the Tribunal on 26.7.2011. As against that, W.P. No. 8669 of 2004 was filed by Mr. N. Thangavelu Mudaliar and again the said writ petition was also dismissed by order dated 1.4.2004. Once again aggrieved by the dismissal order, W.A. No. 1590 of 2004 was filed along with W.A.M.P. No. 2986 of 2004 seeking to issue necessary direction to the Regional Transport Authority to accord permission for transfer of route permit in favour of Mr. Thangavelu Mudaliar, pending disposal of the writ appeal. The Hon"ble Division Bench, by its order dated 21.4.2004, granted an interim direction as prayed for by Mr. N. Thangavelu Mudaliar, as a result, the Regional Transport Authority passed the order of transfer of permit in favour of Mr. N. Thangavelu Mudaliar on 30.4.2004. After the above order was passed, on 2.5.2004, Mr. M.K. Velu sent a telegram stating that due to domestic reasons he was withdrawing his consent for transfer and a detailed representation would be produced at the time of hearing. On 3.5.2004, in the light of the direction given by this Court and in view of the order of transfer of permit in favour of Mr. N. Thangavelu Mudaliar, the Regional Transport Authority rejected the contention of the transferor. However, the transferor Mr. M.K. Velu again filed a detailed representation on 3.5.2004 requesting not to pursue the joint application dated 12.1.2000. During the pendency of the said application, the transferor requested not to effect transfer of ownership in favour of the transferee or any other person. In the meanwhile, the Hon"ble Division Bench by order dated 5.1.2005 dismissed the writ appeal itself, subsequently, the Regional Transport Authority cancelled the transfer of permit already granted in favour of the transferee Mr. N. Thangavelu Mudaliar.

4. As against that, Special Leave to Appeal (Civil) Nos. 716 to 718 of 2005 were filed before the Hon"ble Supreme Court and the Hon"ble Supreme Court dismissed the special leave petitions by order dated 4.3.2005 by observing that after the disposal of the suit, it would be open to the petitioner therein to take appropriate steps by moving the Regional Transport Authority on the joint application for transfer, again clarifying that in case if such a step was taken, the same shall be considered on its own merit subject to any objection by the respondents therein.

5. During the pendency of the matter, Mr. M.K. Velu expired on 5.6.2008. Thereafter, Mr. S. Sivakumar filed an application on 7.6.2008 before the Regional Transport Authority stating that during the lifetime of his grandfather, he had executed a registered Will in Document No. 99 of 2005 dated 7.4.2005 and by virtue of the said Will, he was in possession of the vehicles. In the meanwhile, on 24.6.2008, Mr. N. Thangavelu Mudaliar filed a representation before the Regional Transport Authority stating that Mr. M.K. Velu had expired and steps are taken to transfer the permit in the name of legal heirs and in this regard, he has filed a suit in O.S. No. 29 of 2005 before the Sub Court, Thiruvannamalai along with an application for mandatory injunction and the said suit was pending and therefore the permit cannot be transferred to the name of the legal heir and any transfer shall be subject to the disposal of O.s. No. 29 of 2005. Again on 19.8.2008 and 27.8.2008, Mr. N. Thangavelu Mudaliar sent detailed representations requesting the Regional Transport Authority to transfer the permit in his name and not to transfer the permit in favour of the legal heirs of the deceased Mr. M.K. Velu till the disposal of the joint application for transfer of permit. Finally, the Regional Transport Authority, on receipt of the reply from Mrs. N. Revathy that no other case was pending in any civil Court, allowed the application for transfer of permit as requested by Mr. S. Sivakumar by order dated 23.1.2009. Thereafter, by order dated 29.1.2009, the Regional Transport Authority refused to consider the request of Mr. N. Thangavelu Mudaliar for transfer of permit in his name on the ground that the permit holder Mr. M.K. Velu had withdrawn his consent for transfer on 1.5.2004.

6. When the aforesaid orders were challenged before the State Transport Appellate Tribunal, by the impugned order dated 2.12.2009, the State Transport Appellate Tribunal, finding fault with the order of the Regional Transport Authority rejecting the joint application filed by the deceased Mr. M.K. Velu and Mr. N. Thangavelu Mudaliar, set aside the order and remitted the matter for fresh consideration in accordance with law and in the light of the observations made in the order within three months, for the sole reason that the Regional Transport Authority had not given sufficient opportunity to either Mr. N. Thangavelu Mudaliar or to all the legal heirs of the deceased Mr. M.V. Velu or financier who have objected for the transfer of permit, inter alia, among other grounds, thereafter, to consider the application of Mr. S. Sivakumar for transfer of permit after hearing all the parties. Challenging the said order, these writ petitions have been filed.

7. Mr. M. Krishnappan, learned senior counsel appearing for the petitioner in W.P. Nos. 26816 and 26817 of 2009, while assailing the impugned order, contended that the impugned order is liable to be set aside for non-application of mind and non-consideration of arguments, for the reason that the permit is held to be property under the Motor Vehicles Act, therefore, the rights of the parties have to be decided only within the framework of the provisions of the Act. Moreover, when the petitioner has complied with the requirements contemplated u/s 82 for transfer of permit, the transfer of permit effected cannot be said to be illegal or

without jurisdiction, hence, the impugned order is vitiated for not properly considering the scope of transfer of permit on the death of the permit holder. Adding further, it was stated that Mr. N. Thangavelu Mudaliar having not complied with the requirements of transfer of permit u/s 82 of the Act is not entitled to oppose the transfer of permit in favour of the petitioner, inasmuch as there is no valid application for transfer after the death of the earlier permit holder and the consent for transfer was also withdrawn. Therefore, in the absence of fulfilling the requirements of Section 82 of the Act and the Rules made thereunder, Mr. N. Thangavelu Mudaliar cannot claim legally the transfer of permit. This aspect has not been considered by the State Transport Appellate Tribunal. It was further pleaded that when this Court had already held that a creditor like Mr. N. Thangavelu Mudaliar in this case may not have any locus standi to oppose the transfer of permit and his remedy lies elsewhere, and Mr. N. Thangavelu Mudaliar having specifically taken a plea before the Regional Transport Authority that the transfer of permit if any would be subject to the disposal of the suit filed by him, the State Transport Appellate Tribunal is not justified in setting aside the order of transfer of permit. Moreover, when Mr. N. Thangavelu Mudaliar himself has shown his stand that he was willing to pursue the remedy in the civil Court, the Appellate Tribunal is not justified in setting aside the order of transfer of permit.

8. The learned senior counsel, finding fault with the impugned order, further contended that the Appellate Tribunal is not justified in observing that the Regional Transport Authority has not informed Mr. N. Thangavelu Mudaliar regarding the withdrawal of consent, when Mr. N. Thangavelu Mudaliar himself has not taken any steps to challenge the withdrawal of consent given on 2.5.2004, it shows that he was very well aware of the withdrawal of consent, while so, the Appellate Tribunal in its order dated 29.1.2009 has also informed Mr. N. Thangavelu Mudaliar regarding the withdrawal of consent. This procedure is in accordance with Rule 212 of the Rules, hence, the impugned order taking a stand that no notice was issued is without jurisdiction and contrary to the provisions. Moreover, when the other legal heirs of the deceased permit holder Mr. M.K. Velu have given no objection for the transfer of permit in favour of the petitioner, it is not necessary to give any opportunity to them. Similarly, it is also not necessary to give any opportunity to Mr. N. Thangavelu Mudaliar, since he has no legal right to oppose the transfer. Therefore, the order of the Appellate Tribunal is arbitrary and illegal, hence, the same is liable to be set aside. Equally emphasising that no opportunity is required to be given to the financier, it was stated that when the vehicles transferred on the death of the permit holder did not have any hire purchase with the financier, the finding of the Appellate Tribunal that no opportunity was given to the financier, who is a third party, is also liable to be set aside. Referring to Section 94 of the Motor Vehicles Act which deals with the bar of jurisdiction of the civil Court, the learned senior counsel submitted that though the Appellate Tribunal has completely misplaced its interpretation on Section 94 of the Act, since civil suit is always maintainable for

specific performance and on such decree being obtained, the transfer of permit can be always effected. Concluding his arguments, it was stated that the petitioner is operating the vehicles with effect from 9.2.2009, hence, if the impugned order is allowed to stand, the petitioner would be put to prejudice. On this basis he prayed for setting aside the impugned order by allowing the writ petitions.

9. Mr. M. Palani, learned counsel appearing for the petitioner in W.P. Nos. 4801 and 5628 of 2010, adopting the arguments advanced by the learned senior counsel Mr. M. Krishnappan, heavily contended that the State Transport Appellate Tribunal has committed a serious error in remanding the matter to the Regional Transport Authority for fresh disposal, inasmuch as the Appellate Tribunal should have seen that in terms of Section 82(1) of the Motor Vehicles Act, on the death of the permit holder, the person who succeeds the possession of the vehicle is entitled to apply for transfer of permit and in the instant case, admittedly in terms of the Will executed by the permit holder by Will dated 7.4.2009, Mr. S. Sivakumar has succeeded to the possession of the vehicle, therefore, he is entitled to the transfer of permit, hence, the Regional Transport Authority cannot have any objection, except to allow the application for transfer of permit. Accordingly, when the Regional Transport Authority has transferred the permit in favour of Mr. S. Sivakumar in accordance with law, the Appellate Tribunal ought not to have committed an error in interfering with the order of the Regional Transport Authority. Relying upon Section 82 of the Act, Mr. M. Palani contended that when two situations are contemplated u/s 82, one relating to transfer of permit on the death of the permit holder and another relating to the transfer by the permit holder himself, the Appellate Tribunal grossly erred in interfering with the order of the Regional Transport Authority in the matter of transfer of permit, relying upon Rules 211 and 212 of the Tamil Nadu Motor Vehicles Rules. Therefore, the impugned order is vitiated by error of law warranting interference by this Court. Indicating one another error in the impugned order, it was stated that the Appellate Tribunal, having seen that in the transfer application no premium was paid by the transferee to the transferor, relying upon the correspondence between the parties, erroneously came to the conclusion that considerable consideration was said to have been passed from transferee to transferor. This observation of the Tribunal, he pleaded, would cause serious prejudice to the petitioner. Therefore, interference is called for, because the Appellate Tribunal has grossly erred in coming to the conclusion that there has been passing of consideration between the permit holder-Mr. M.K. Velu and Mr. N. Thangavelu Mudaliar.

10. Continuing his arguments, it was stated that the Appellate Tribunal has miserably failed to see that in terms of Rule 212, when the consent of either or both parties to the transfer of permit is withdrawn, before the transfer is effected, the rule contemplates that the transport authority should drop all further proceedings. Therefore, it never contemplates summoning of other parties to inform him about the withdrawal of consent. In such circumstances,

when the rule does not warrant issue of notice to other party regarding the withdrawal of consent by one of the parties, the Appellate Tribunal has grossly erred in holding that on the withdrawal of consent by the deceased permit holder, no notice was given to the proposed transferee, which is contrary to rule 212 of the Tamil Nadu Motor Vehicles Rules. Finally, concluding his arguments, it was stated that when the permit holder himself had died on 5.6.2008, on his death, automatically the joint application stood abated and there is no provision for transfer of permit. But this aspect has been completely omitted by the Appellate Tribunal, hence, the impugned order is liable to be set aside.

11. Per contra, Mr. R. Singaravelan, learned counsel appearing for the contesting respondent Mr. N. Thangavelu Mudaliar submitted that when admittedly the original stage carriage operator Mr. M.K. Velu, owner of stage carriage bearing Registration No. TN-23-C-8294, replaced by stage carriage bearing Registration No. TN-23-AD 1999 plying on the route Vellore to Sathanur Dam via Polur, Thiruvannamalai had entered into an agreement for transfer of his vehicle in favour of Mr. N. Thangavelu Mudaliar and also moved an application for transfer of permit in respect of the above said vehicle from his name to the transferee Mr. N. Thangavelu Mudaliar u/s 82(1) of the Motor Vehicles Act, 1988, the said application was returned. However, when it was re-presented on 25.1.2000 after rectification of defects, the transferor Mr. M.K. Velu, on 7.2.2000 had filed a statement before the Regional Transport Authority with a request to consider and pass necessary orders on the transfer application filed jointly on 12.1.2000.

This shows that the original permit holder Mr. M.K. Velu, prior to his death, had accepted that there was a valid agreement between him and Mr. N. Thangavelu Mudaliar, therefore, the question of filing a suit by his daughter Mrs. N. Revathy on the ground that a settlement deed was executed in her favour was far from acceptance. Moreover, the suit which has been filed in this regard would work against the petitioners by virtue of Section 94 of the Motor Vehicles Act, which states that no civil Court shall have jurisdiction to entertain any question relating to the grant of a permit under this Act, and no injunction in respect of any action taken or to be taken by the duly constituted authorities under this Act with regard to the grant of a permit, shall be entertained by any civil Court. Therefore, the filing of suit and the subsequent withdrawal of the same has nothing to do with the right of the transferee, for the simple reason that the Regional Transport Authority is the final authority for fixing the transfer of permit on the joint application filed by the transferor and transferee. Therefore, the finding arrived at by the Appellate Tribunal that no opportunity was given to the legal heirs who have objected for transfer of permit, particularly, Mr. V. Balakrishnan and Mrs. Chanda Devi Dugar, financier of the above said vehicles, cannot be, as contended by the learned counsel for the petitioners, said to be correct and acceptable. When the dispute relating to the transfer of permit for operating the stage carriage from Mr. M.K. Velu to Mr. N. Thangavelu Mudaliar has been pending from 2000, the Regional Transport Authority ought to have given due opportunity to Mr. N. Thangavelu Mudaliar or to the legal heirs who

have objected for the transfer of permit. As it was not done, the Appellate Tribunal has rightly set aside the order passed by the Regional Transport Authority and remanded the matter to the said authority. Therefore, the order of remand cannot be found fault with, as it is not going to cause any prejudice to the petitioners or the contesting respondent.

This Court finds merit in the submissions of the learned counsel for the contesting respondent, for the reason that the deceased permit holder Mr. M.K. Velu, owner of stage carriage bearing Registration No. TN-23-C-8294, replaced by stage carriage bearing Registration No. TN-23-AD 1999 plying on the route Vellore to Sathanur Dam via Polur, Thiruvannamalai had moved a joint application with Mr. N. Thangavelu Mudaliar for transfer of permit in respect of the above said vehicle u/s 82(1) of the Motor Vehicles Act, 1988 before the Regional Transport Authority along with necessary documents, making it clear that Mr. M.K. Velu desired to transfer the above permit to the name of the transferee, as he was an existing operator in Vellore district, the said application was returned. However, when it was re-presented on 25.1.2000 after rectification of defects, the said transferor Mr. M.K. Velu, on 7.2.2000, had filed a statement before the Regional Transport Authority with a request to consider and pass necessary orders on the joint application dated 12.1.2000 seeking for transfer of permit, which shows that Mr. N. Thangavelu Mudaliar was one of the necessary parties to be heard before transferring any permit. Although Section 82 contemplates that the transfer of permit is permissible on the death of a permit holder, Rule 211 of the Tamil Nadu Motor Vehicles Rules clearly shows that the Transport Authority may summon both the parties to the application for transfer of a permit to appear before it, if the application raises doubts or suspicion of trafficking in permits or involves transfer to a person who in the opinion of the Transport Authority is not qualified and eligible for the grant of a new permit. In the present case, after the joint application filed for transfer of permit in favour of Mr. N. Thangavelu Mudaliar u/s 82(1) has been pending for quite a long time, the Regional Transport Authority, knowing pretty well that Mr. N. Thangavelu Mudaliar is an interested person and has been fighting from the year 2000, in my considered view, should have been issued with a notice before effecting the transfer of permit in favour of the legal heirs of Mr. M.K. Velu. Moreover, it may not be out of context to mention that by orders dated 30.4.2004 and 3.5.2004, the Regional Transport Authority only passed orders transferring the permit in favour of Mr. N. Thangavelu Mudaliar. This also again reiterates the stand taken by Mr. N. Thangavelu Mudaliar that he is an interested person. Therefore, notice should have been issued and opportunity should have been given to him. As this aspect has been properly appreciated by the Appellate Tribunal, this Court does not find any infirmity with the impugned order of remand. For all these reasons, the writ petitions fail and they are, accordingly, dismissed. Consequently, interim order stands vacated and the M.P. Nos. 1 of 2009, 1 and 2 of 2010 are also dismissed. No costs.