

**(1969) 04 MAD CK 0020**  
**In the Madras High Court**  
**Case No : Writ Petition No. 218 of 1967**

Shanmugham Transports (P.) Ltd., Tircuchrapalli  
Vs  
V. Kunju Chettiar and Another

APPELLANT  
RESPONDENT

**Date of Decision :** 18-04-1969

**Acts Referred:**

Central Motor Vehicles Rules, 1989 — Rule 147, 148A  
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1, Order 41 Rule 3  
General Clauses Act, 1897 — Section 14(1)  
Motor Vehicles Act, 1988 — Section 64, 64(1), 68(2)

**Citation :** AIR 1971 Mad 37

**Hon'ble Judges :** Alagiriswami, J

**Bench :** Single Bench

## Judgement

1. The Regional Transport Authority, Tiruchi, proposed to open a new route between Musiri and Eragudi and invited applications for the grant of a permit to run a bus on that route. There were 24 applications and the authority granted the permit to the petitioner. There of the disappointed applicants including the first respondent appealed to the State Transport Appellate Tribunal, which allowed the appeal of the first respondent and set aside the permit granted to the petitioner. The petitioner thereupon filed a write petition No. 787 of 1961 and another appellant before the Tribunal filed W. P. 197 of 1962. Both these petitions were allowed and the writ appeals were also dismissed. The Tribunal later re-heard the appeals and on 30-11-1966 again set aside the grant of the permit granted to the petitioner and awarded it to the first respondent. This writ petition is filed to quash the order of the Tribunal.

2. The only point argued before this court was that the appeal filed by the first respondent before the Tribunal was not in times

3. The original order of the Regional Transport Authority was dated 30-12-1961. That order was received by the first respondent either on 20-1-

1961 or on 6-2-1961. The exact date on which it was received by the first respondent does not make any difference to the decision as the appeal

was filed on 13-2-1961. It was filed without the certified copy of the Regional Transport Authority's order as required under the rules. On 22-2-

1961, the Tribunal returned the appeal for representation on or before 6-3-1961. On that date the first respondent represented it with a request

for grant of time for two more weeks for compliance. Somehow the office of the State Transport Appellate Tribunal seems to have overlooked the

request and did not return it.

On 30-3-1961, the original order of the Regional Transport Authority was filed. When the question was taken up before the State Transport

Appellate Tribunal, the question of limitation was specifically raised. It should also be mentioned that in the earlier writ proceedings before this

court the question of limitation was specifically left open. Before the Tribunal, the same arguments that were advanced before this court, seem to

have been urged, but the Tribunal held that the appeal was in time. Therefrom, the matter may be discussed here on its merits and it is not

necessary to go into the reasons given by the Tribunal itself for holding that the appeal was in time.

4. u/s 64 of the Motor Vehicles Act, any person aggrieved may, within the prescribed time and in the prescribed manner, appeal to the prescribed

authority. u/s 68(2), clause (j) rules may be made with respect to the authorities to whom, the time within and the manner in which appeals may be

made. Rule 147 of the Motor Vehicles Rules provides for the period within which an appeal should be field. That rule runs as follows--

An appeal under sub-section (1) of Section 64 of the Act shall lie to the State Transport Appellate Tribunal within thirty days of the date of

receipt of the order appealed against.

Under Rule 148-A, an appeal shall be accompanied by the original or a certified copy of the order which is the subject-matter of the appeal.

Under the second proviso to Rule 147, the Tribunal, if the appeal is presented within 30 days of the date of the receipt by the person aggrieved of

the order appealed against may return it for representation in the prescribed

manner and if such an appeal is represented in the manner prescribed and within the date, if any, specified by the Tribunal it shall be deemed to have been presented within the prescribed time for purpose of that rule.

The appeal in this case has been filed within 30 days of the date of receipt of the order by the first respondent It has been returned by the Tribunal and it has been represent within the date specified buy the Tribunal but without complying with the return made by the Tribunal. If on the appeal being represented on 6-3-1961, the Tribunal had refused to grant further time for compliance different considerations might arise. But as the Tribunal does not seem to have noticed the defect till the matter was actually thicken up for argument, the matter has, to proceed on the basis that the failure to return, either refusing to grant time or granting further time, is due to the fault of the Tribunal.

It is well established that one of the first and highest duties of all courts is to take care that the act of the court does no injury to any of the suitors.

See the decision Jagat Dhish Bhargava Vs. Jawahar Lal Bhargava and Others, . As the Tribunal when the question of delay was taken up before it held that the appeal was in time on the ground that it was occasioned by its own failure to make a return on the appeal being represented on 6-3-1961, it should be held that it was satisfied that if its notice had been drawn to the matter on 6-3-1961, it would have been prepared to grant further time for production of the certified copy of the order appealed against. The question, therefore, reduces itself to this; whether the Tribunal had the power to make a return.

There is no dispute that the Tribunal has got such power at least in the first instance as is only too clear from the second proviso to the rule. But it is urged that such power can be exercised only once. I can see no warrant for this contention., Order 41, Rule 3, C.P.C. which deals with appeals before the Civil Courts also provides that when the memorandum of appeal is not drawn up in the manner prescribed it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the court or be amended then and there. It does not provide for the appeal memorandum being returned more than once. But it is well known that it is the common practice for a number of returns to be made and such practice has never been questioned. This matter apparently is

governed by Section 14 of the General Clauses Act, sub-section

(1) of the which provides as follows--

Where by any Central Act or regulation made after the commencement of this Act, any power is conferred, then, unless a different intention

appears, that power may be excised from time to time as occasion arises.

It was argued that while the Civil Court can exercise the powers under Order 41, Rule 3 of the Civil Procedure Code, any number of times as the

power contained in Order 41, Rule 3 is a power conferred by a Central Act, that is not the case with regard to the power conferred by Rule 147

of the Motor Vehicles Rules. I do not think there is any substance in this contention The Supreme Court in The State of Uttar Pradesh and Others

Vs. Babu Ram Upadhyaya, , after quoting the statement of law in ""Maxwell on Interpretation of Statutes"" 10th Edn. pages 50-51, has held that the

rules made under a statute must be treated for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same

effect as if contained in the Act and are to be judicially noticed for all purposes of construction or obligation. I am of opinion therefore, that it

should be held that the Tribunal in this case has the power if it so chose to make a return in case of appeals filed before it as often as it thinks

necessary.

5. The further question still remains whether the presentation of the appeal originally made by the first respondent on 13-2-1961 without the

certified copy of the Regional Transport Authority's order is a proper presentation. The argument on behalf of the petitioner is that it was not a

proper presentation and therefore it is no presentation at all. This is on the ground that the appeal memorandum was not accompanied by a certified

copy of the Regional Transport Authority's order. Support for this argument is sought from the decisions rendered under Order 41. C.P.C. Under

Order 41, Rule 1 every memorandum of appeal shall be accompanied by a certified copy of the decree appealed from and (unless the Appellate

Court dispenses therewith) of the judgment on which it is founded. In Balakrishna Industrial Works Vs. C.S. Venkatachari and Another, a Bench

of this court held that this provision is imperative and the presentation of a Memorandum of civil miscellaneous appeal without a copy of the decretal

order appealed against is not a valid presentation and that rule does not

empower an Appellate Court to dispense with the production of a copy of the decree with the Memorandum of appeal.

The Bench has held that the appellate court had no power to dispense with the production of the certified copy of the decree, but that it could

dispense with the production of the copy of the judgment. But in that case itself the production of the certified copy of the decree even the time

when the appeal was heard and the judgment reserved was deemed to be proper presentation by holding that the delay filling it was not due to the

appellant's negligence. In Jagat Dhish Bhargava Vs. Jawahar Lal Bhargava and Others, , the Supreme Court pointed out that Rule 1 of Order 41

C.P.C empowers the appellate court to dispense with the filing of the judgment but there is no jurisdiction for the appellate court to dispense with

the filling of the decree and there is no doubt that the requirement that the decree should be filed along with the memo of appeal is mandatory and

in the absence of the decree the filing of the appeal would be incomplete, defective and incompetent. There their Lordships, of course, were not

dealing with the question of excusing the delay even in a case where the decree is filed subsequently as was the case in Balakrishna Industrial

Works Vs. C.S. Venkatachari and Another, already referred to. The power of the court to excuse the delay in producing the copy of the decree

appealed against was not considered by their Lordships of the Supreme Court and there is no doubt that the court has such a power.

It should, therefore, be held that in this case the Tribunal had the power to grant time for the production of the certified copy of the order. This is

not a case where the Tribunal dispensed with the production of the order and the two decisions above cannot help the petitioner. As the Tribunal

has got the power return to the appeal in order to enable the appellate authority to comply with the requirements of the rules and as the failure of

the second respondent to file the copy of the order in time was due to the failure of the Tribunal to make the return, its order holding that the

appeal was in time should be held to contain no error apparent on the face of the record.

6. The prescription regarding the production of the certified copy of the order appealed against is under Rule 148-A. That as well as Rule 147

provided the power to the Tribunal to return the appeal for representation in the

prescribed manner. The prescribed manner of presentation or representation is with the copy of the order. Therefore, that power would include the power to return the memorandum of appeal for representation with the certified copy also. Therefrom, in the first instance when the Tribunal returned the appeal for production of the certified copy, it was exercising a power which it had. As I have pointed out it had power to return it as often it considers necessary and, produced not merely within the period fixed in the first return, but if further returns are made in order to enable the appeal to be represented the certified copy can be produced within such time as is granted on the further occasions also. As the Tribunal in this case did not make a return after the first respondent had represented the appeal on 6-3-1961 and the copy of the order was actually filed on 30-3-1961, that copy should be deemed to have been filed even while the question of granting further time under the consideration of the Tribunal and the final decision of the Tribunal holding that the appeal was in time should be held to amount to a direction either to grant further time or to excuse the delay in producing the copy of the order.

7. The writ petition is dismissed with costs of respondent-1; Advocate's fee Rs. 100.

8. Petition dismissed.