

(2009) 09 MAD CK 0120

In the Madras High Court

Case No : Writ Petition No. 62 of 2009 and M.P. No. 2 of 2009

Smt. B. Poomani

APPELLANT

Vs

The State Transport Appellate Tribunal, The Regional
Transport Authority and K. Kumar

RESPONDENT

Date of Decision : 02-09-2009

Acts Referred:

Constitution of India, 1950 — Article 19(1), 21
Motor Vehicles Act, 1988 — Section 82, 82(2), 82(3), 89
Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992 — Section 10
Tamil Nadu Motor Vehicles Rules, 1989 — Rule 208, 211, 212, 213, 214

Citation : (2011) 1 RCR(Civil) 727 : (2011) 1 RCR(Civil) 727

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : K.M. Venugopal, for the Appellant; V. Arun, AGP for R. 2 and V. Raghavachari, for R. 3, for the Respondent

Judgement

P. Jyothimani, J.—The writ petition is directed against the order of the first respondent, appellate authority under the Motor Vehicles Act

passed in M.V. Appeal No. 119 OF 2008 dated 20.11.2008, reversing the order of original authority viz., the second respondent dated

25.4.2008 and for direction against the second respondent to transfer the permit to the petitioner's name after affording opportunity to the mentally

insane person viz., the first legal heir viz., K. Saguntala, who is the wife of deceased S. Karruppiah Pillai as per the Guardian and Wards Act.

2. The petitioner's father, S. Karruppiah Pillai was a stage carriage operator, operating the vehicles, viz., the bus TN60-D-0644 and the spare bus

TN 60-B-3556, on the route Periyakulam Munsif Court to Theni Bus stand. After his death, the third respondent, who is the son applied for

transfer of permit in respect of those two vehicles by producing death certificate, registration certificate, insurance certificate, legal heir certificate

and no objection certificate from all other legal heirs of the deceased S. Karruppiah Pillai. The petitioner being the daughter of the said S.

Karruppiah Pillai, having given no objection certificate earlier, has objected to the transfer of permit at the time of consideration of application for

transfer of permit on the ground that her signature was obtained by force by the third respondent. It was, in those circumstances, the second

respondent rejected the said application on the ground that one of the legal heirs viz., the petitioner has objected. It was, as against the order of the

second respondent, the third respondent filed a statutory appeal before the first respondent u/s 89 of the Motor Vehicles Act, 1988 and the said

appeal was allowed by the appellate authority, against which the present writ petition has been filed.

3. The case of the petitioner is that the first respondent has allowed the appeal of the third respondent on the basis of a Will said to have been

executed by S. Karruppiah Pillai, in respect of which a suit filed by the petitioner in O.S. No. 233 of 2008, to declare the Will as invalid is pending

and the suit itself was laid on the allegation that the third respondent obtained the signature of the deceased father unnaturally and unintentionally,

that the petitioner has not been paid any money as stated in the Will, that the third respondent has never operated the vehicles during the life time of

S. Karruppiah Pillai and that the first legal heir of S. Karruppiah Pillai viz., his wife, K. Saguntala is mentally insane and her thumb impression was

obtained for giving no objection.

4. The impugned order of the first respondent is assailed by the petitioner on various grounds including that the same is against the evidence,

against the Guardian and Wards Act and that the pendency of the suit in respect of genuineness of the Will, and by the order granting permit to the

third respondent, the petitioner's rights guaranteed under Article 19(1)(g) and Article 21 of the Constitution of India have been violated.

5. It is the counter affidavit of the third respondent that the third respondent was the only son of S. Karruppiah Pillai and during the life time of S.

Karruppiah Pillai along with him and after his life time, the third respondent has been plying the bus from Periyakulam Munsif Court to Theni Bus

stand and the said S. Karruppiah Pillai died on 12.2.2008 and he executed a Will during his life time, by which the third respondent is the

beneficiary of the permit and it is based on the Will, he applied to the second respondent along with various documents including no objection

certificate and the Will dated 13.12.2006 and that was rejected by the second respondent on the basis that the petitioner has chosen to object. It

is the case of the third respondent that the petitioner who has raised objection before the second respondent, Regional Transport Authority that the

no objection certificate was obtained from her by coercion, has taken a different stand before the appellate authority, the first respondent that no

objection certificate was fabricated and the appellate authority considered each and every one of the aspects of the matter and passed the

impugned order. It is stated that other two sisters of the third respondent viz., Eswari and Vanaja have given registered instruments in favour of the

third respondent on 3.11.2008. The petitioner having given no objection certificate has filed the suit in O.S. No. 23 of 2008 claiming that her father

had no competency to execute the Will dated 13.12.2006 and the same is null and void. It is due to the inconsistent stand taken by the petitioner

and taking note of the fact that the petitioner herself has not filed any objection within 30 days against operating the vehicle, the first

respondent/appellate authority allowed the appeal of the third respondent.

6. Mr. K.M. Venugopal, learned Counsel appearing for the petitioner would submit that as per the Tamil Nadu Motor Vehicles Rules, 1989

especially Rule 212, when the consent was withdrawn, the authority has no power to issue the permit, by placing reliance on the Division Bench

judgment in N.A. Thangavelu v. The State Transport Appellate Tribunal and Ors. 2005 WLR 185 and also on C. Sathish v. V.R. Rajangam and

Ors. (2006) 4 CTC 454.

7. On the other hand, it is the contention of Mr. V. Raghavachari, learned Counsel appearing for the third respondent that the said judgments relied

upon by the learned Counsel for the petitioner are not applicable, especially when the appellate authority has decided exhaustively on the merits of

the case.

8. It is not in dispute that originally the vehicles belonged to S. Karruppiah Pillai, the father of the petitioner and the third respondent and the said S.

Karruppiah Pillai was having the route permit to run the vehicles from Periyakulam Munsif Court to Theni Bus stand via Periyakulam bus stand,

Jaya Theatre, Moondranthal, Kallipatti, Venkatachalapuram Vilakku, Kailasapatti, Lakshmipuram, Vada Pudupatti, Annanji, Bommayagoundan

Petti and Allinagaram. The original authority viz., the second respondent before whom the application for transfer of permit was filed by the third

respondent, after an objection was raised by the petitioner being a daughter of S. Karruppiah Pillai, original permit holder, rejected the application

filed by the third respondent and directed that the parties are free to apply again after the impediment is settled.

9. The appellate authority, by referring to Section 82 of the Motor Vehicles Act read with Rule 214 of the Tamil Nadu Motor Vehicles Rules,

1989 and taking note of the fact that within 30 days after the death of S. Karruppiah Pillai, on 12.10.2008, the third respondent expressed his

intention to use the permit and also filed application for transfer within three months on 23.2.2008 and also the fact that except the petitioner no

other legal heirs including the wife of the deceased and his other daughters have raised objection and on the other hand, they gave no objection

certificate and also taking note of the fact that the petitioner has admitted her signature in the no objection certificate but thereafter raised objection

in the legal notice dated 17.3.2008 that her signature was obtained by force, who thereafter took a different stand stating that the no objection

certificate was fabricated by fraudulent means and taking note of the admission made by the petitioner that after the death of her father, the third

respondent has taken possession of the transport business and operating the vehicles, held that the order of the second respondent in rejecting the

permit is unlawful.

10. In the impugned order the first respondent/appellate authority has stated that even in case the civil Court comes to a conclusion that the Will is

not valid, it is always open to the petitioner to cancel the transfer of permit and thereafter orders can be passed in accordance with law. With that

view, the first respondent has allowed the appeal of the third respondent and directed the second respondent/original authority to pass orders on

the transfer of permit in favour of the third respondent as per the provisions of the Motor Vehicles Act and Rules.

11. Section 82(2) of the Motor Vehicles Act, 1988 enables that in cases where a permit holder dies, the person succeeding to the possession of the vehicle is entitled to run the same for three months by using earlier permit provided he informs about the death to the transport authorities within 30 days from the date of death of the holder of permit and he makes an application within three months for transfer on the basis that he succeeds the deceased person. Of course, there is the power given to the authorities to extend the period. Section 82 reads as follows:

82. Transfer of permit.-

(1) Save as provided in Sub-section (2), as permit shall not be transferable from one person to another except with the permission of the transport authority which granted the permit and shall not, without such permission, operate to confer on any person to whom a vehicle covered by the permit is transferred any right to use that vehicle in the manner authorised by the permit.

(2) Where the holder of a permit dies, the person succeeding to the possession of the vehicle covered by the permit may, for a period of three months, use the permit as if it had been granted to himself:

Provided that such person has, within thirty days of the death of the holder, informed the transport authority which granted the permit of the holder and of his own intention to use the permit:

Provided further that no permit shall be so used after the date on which it would have ceased to be effective without renewal in the hands of the deceased holder.

(3) The transport authority may, on application made to it within three months of the death of the holder of a permit, transfer the permit to the person succeeding to the possession of the vehicles covered by the permit:

Provided that the transport authority may entertain an application made after the expiry of the said period of three months if it is satisfied that the applicant was prevented by good and sufficient cause from making an application within the time specified.

12. The procedure for transfer of permit on the death of permit holder is enunciated under Rule 214 of the Tamil Nadu Motor Vehicles Rules, 1989 which is as follows:

214. Transfer of permit on death of permit holder.-

(1) An application for the transfer of permit under Sub-section (3) of Section 82 shall be accompanied by the fee specified in the Table under Rule

279 together with the certificate of death of the permit holder issued by the competent authority a heir ship certificate issued by an officer of the

revenue department not below the rank of a Tahsildar and "No objection Certificate" from all the legal heirs other than the applicant, if there are

more than one legal heir to the deceased permit holder. If in such cases, the permit has been endorsed or extended under the provisions of these

rules, the endorsement or extension shall cease to have effect on the date of transfer unless the Transport Authority which granted the endorsement

or extension directs that it shall be continued.

(2) If the Transport Authority allows the transfer of the permit it shall call upon the applicant to produce, within four months from the date of

receipt of the order sanctioning the transfer, the certificate of registration of the vehicle with the particulars of the transfer of ownership of the

vehicle stated thereon together with valid certificate of fitness and proof for the payment of the current tax under the Tamil Nadu Motor Vehicles

Taxation Act, 1974 (Tamil Nadu Act 13 of 1974) and the permit. In the event of the applicant failing to produce the relevant records within the

period of four months aforesaid, the transport authority shall revoke the sanction.

(3) The Transport Authority may delegate the power conferred upon it under Sub-rule (2) to its Secretary in cases where the Secretary has

sanctioned the transfer of permit.

(4) The powers referred to in Sub-rule (2) shall also be exercisable by the appellate or revisional authority, as the case may be, if the transfer of

permit is allowed by such authority.

13. The said rule no doubt provides for consideration of application for transfer of permit subject to the production of records including no

objection certificate but the no objection certificate must continue till the authority passes the order transferring the permit. The transfer of permit

may be either by the death of the party in which event Rule 214 is applicable or by the conduct of the parties in which event Rules 208 and 213

would apply. It is relevant to point out that even if such no objection certificate has been given or other documents have been filed, the transport

authority is entitled to summon the parties to clear/clarify the doubts in respect of eligibility of the person to whom the transfer is sought for and if doubts are not cleared, he can reject the application. Similarly, when the consent given by the parties is withdrawn before the transfer is sanctioned, the transport authority has to drop the further proceedings and if there is withdrawal of consent, the only requirement of the authority is to inform the other party about the factum of withdrawal of consent. Rules 211 and 212 are as follows:

Rule 211. Summoning of parties.-

The Transport Authority may summon both the parties to the application for the 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, the application shall be rejected.

Rule 212. Withdrawal of consent for transfer.-

When the consent of either or both the parties to the transfer of a permit is withdrawn before transfer is sanctioned, the Transport Authority shall drop further proceedings in regard to the transfer of that permit: Provided that, when either of the parties withdraws such consent, the Transport Authority shall, before dropping such proceedings inform the other party of the withdrawal of consent.

14. The said Rules 211 and 212 apply for both voluntary transfer and the transfer due to death of a person which is by way of succession. The right to run the vehicle with permit is no doubt a property right and that right can be exercised only after the permit is transferred in the name of the successor. The authority who has to grant transfer under the Rules has to necessarily drop further proceedings in respect of transfer application when one of the legal heirs who has given consent withdraws the same. In that circumstance, it is not for the transport authority to decide whether such withdrawal is valid or not. This is obviously due to the reason that the right to succeed the permit which is a property right is to be decided by the competent civil Court, when such dispute is raised by one of the successors.

15. On the facts and circumstances of the case, it is true that the petitioner appears to have taken a contradictory stand viz., at one place, she has

said that her signature in the no objection certificate was obtained by coercion and in another place, she has changed her stand and stated that the

no objection certificate has been manipulated. She also challenges the Will said to have been executed by the original permit holder S. Karruppiah

Pillai, by which the said S. Karruppiah Pillai is stated to have transferred his right of permit to his only son, the third respondent, on the ground that

the Will has been obtained from S. Karruppiah Pillai not voluntarily and it was obtained against his will and in the said respect, a suit is pending.

16. It is no doubt true that under these circumstances, the transport authorities cannot decide either about the genuineness of the Will or the

correctness of the withdrawal of no objection certificate given by the petitioner which is well within the realm of the competent civil Court. As per

the Rules, when such objection is raised, certainly the transport authorities have to suspend the enquiry on the application as was done by the

second respondent which, in my view, is correct.

17. In the absence of any contradiction between the provision of law and the Rules, it is not possible to accept the contention of the learned

Counsel for the third respondent that the authority should apply its mind to find out the genuineness of any such objection. In any event, on the facts

and circumstances of the case, I do not think that the claim of the petitioner is not genuine even though there appears to be a contradictory stand

taken by her. As one of the daughters of S. Karruppiah Pillai, she has definite right over the properties of her father and inherit the same in the

manner known to law. She has in fact approached the competent civil Court for declaration against the Will which has been relied upon by the

third respondent. When the competent Court is seized of the matter, certainly it is not open to the transport authorities to decide the genuineness of

the Will or conduct of the petitioner, as it is not within their jurisdiction. On the face of it, I am able to see that the appellate authority has not even

chosen to refer to Rule 212 of the Tamil Nadu Motor Vehicles Rules, 1989 and simply relied upon Rule 214 along with Section 82 of the Act and

passed the impugned order.

18. In the present case, even before the order of transfer has been passed, the consent has been withdrawn. If the consent has been withdrawn

subsequent to the passing of order, probably, the position would be different.

Under similar circumstances, while referring to the provisions of Motor Vehicles Act as well as Rule 212 of the Tamil Nadu Motor Vehicles Rules and while considering a similar issue on the backdrop of withdrawal of the consent, the First Bench of this Court in *N.A. Thangavelu v. The State Transport Appellate Tribunal and Ors.* 2005 WLR 185 held as follows:

12. W.P. No. 14830 of 2004 is filed against the order dated 3.5.2004 by one N. Revathi daughter of M.K. Velu, who is the original permit holder. W.P. No. 14831 of 2004 is filed by the said M.K. Velu himself questioning the very same order. The thrust of challenge to the order is that even prior to the impugned order allowing transfer of permit the consent for transfer has been withdrawn on 01.05.2004 in terms of Rule 212 of the Tamil Nadu Motor Vehicle Rules, 1989. Hence, in the absence of any application pending before the Regional Transport Authority, the transfer of permit by the impugned order itself is illegal and cannot be sustained. The Regional Transport Authority ought not to have transferred the permit in favour of the appellant in the writ appeal. Therefore, we set aside the impugned order dated 03.05.2004. Both the writ petitions are allowed. No Costs....

19. I had an occasion to consider a case where a joint application was made for transfer and before the authority could pass orders permitting the transfer, one of the joint signatories withdrew his consent and consequently, the authority rejected the application, and after referring to Rule 212 of the Tamil Nadu Motor Vehicles Rules read with Section 10 of the Tamil Nadu Motor Vehicles Special Provisions Act, 1992 (Tamil Nadu Act 41/92), held that as per Rule 212, when one of the joint applicants withdrew consent before the application was ordered, the conduct of the authority in rejecting the application is valid. That was the case in *C. Sathish v. V.R. Rajangam and Ors.* reported in (2006) 4 CTC 54 and the relevant portion is as follows:

8. ...Finally, the said order concludes rejecting the plea of joint permit in the name of objector namely Chinnammal for the time being and there is a direction to the objector and the transferor-Rajangam to apply afresh to the authority separately or jointly provided requisite conditions are satisfied. The order has also stated about Rule 212 by clearly saying that by

virtue of remand order the joint application for permit transfer was

alive and the petitioner before the authority was fully entitled under law to withdraw his consent before any decision is taken on the said

Application. In such circumstances, the joint application by the said Rajangam being the transferor and the petitioner being the transferee was

correctly rejected.

20. In such view of the matter, I have no hesitation to hold that the appellate authority viz., the first respondent has failed to consider about the

implication of Rule 212 of the Tamil Nadu Motor Vehicles Rules, 1989 and hence, the order of the first respondent passed in MV. Appeal No.

119 of 2008 stands set aside and the writ petition stands allowed. It is made clear that it is open to the parties to work out their remedy for the

purpose of transfer of permit in the manner known to law. No costs. Connected miscellaneous petition is closed.