

(2001) 10 MAD CK 0107

In the Madras High Court

Case No : Writ Petition No's. 7889 and 8539 of 1995 and W.M.P. No's. 12597 and 13617 of 1995

Smt. D. Radhika and Another

APPELLANT

Vs

The State Transport Authority and The State Transport
Appellate Tribunal

RESPONDENT

Date of Decision : 05-10-2001

Acts Referred:

Motor Vehicles Act, 1939 — Section 60(1), 81(5), 87

Citation : (2001) 10 MAD CK 0107

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : S. Radhagopalan, for the Appellant; S.P. Prabakaran, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—Petitioner, a Stage Carriage Operator, was the permit holder in respect of inter-State route from Chittoor to Vellore via Katpadi. As per the agreement, primary permit was granted by the State Transport Authority, Andhra Pradesh and subsequently counter-signed by the State Transport Authority, Madras (hereinafter referred to as the "Respondent"). Initially the primary permit was only for one vehicle, but subsequently a variation of condition was granted and one more vehicle was included in the said permit as per the order dated 16.2.1982 passed by the State Transport Authority, Andhra Pradesh. Counter signature was also given by the Respondent. Permit which was being renewed from time to time was due to expire by 24.9.1989. The Petitioner applied for renewal of primary permit and renewal of counter-signature. But as the matter remained pending, the Petitioner had filed W.P. No. 13217 of 1989. While entertaining such writ petition, this Court has passed an interim direction to maintain status quo. Pursuant to the aforesaid direction, the Petitioner had applied for grant of temporary permit for the period from 25.1.1990 to 24.5.1990 and from 25.5.1990 to 24.9.1990. Applications were never considered during the

currency of the period for which temporary permit had been sought for, but the Petitioner was plying the vehicles. Subsequently by a Memo dated 28.7.1993 issued by the Respondent stating that temporary permit had been applied for till 18.7.1991 and subsequently no such application had been made, the Petitioner was called upon to show cause as to why the permit should not be suspended u/s 60(1) of the Motor Vehicles Act, 1939. The Petitioner filed show cause and also appeared before the Respondent through counsel. However, ultimately by an order dated 2.6.1994 in R. No. 59008/E3/89 the prayer for issuance of temporary permit for the period from 25.9.1990 to 24.5.1994 was rejected on the ground that the application was belated. The State Transport Appellate Tribunal rejected the Revision by the order dated 8.3.1995. Said order has been assailed in W.P. No. 7889 of 1995. After dismissal of the Revision, the Respondent called upon the Petitioner to deposit a sum of Rs. 3,65,410/- for the period from 25.5.1990 to 24.5.1994 as amount payable including penalty. Said direction is under challenge in W.P. No. 8539 of 1995.

2. It has been contended by the Petitioner that since application for permanent permit was pending and the High Court had given interim direction and since the application by the Petitioner regarding grant of temporary permit had not been dealt with by the concerned authority within the stipulated period, the Petitioner under a bona fide impression had not made any further application for issuance of temporary permit. The Petitioner has therefore prayed for quashing the order imposing penalty.

3. Even though several contentions have been raised in the writ petition and combated by the counsel for the Respondent, due to admitted subsequent events, it is not necessary to notice various contentions raised by the parties. It appears that in the meantime the application for renewal of permanent permit has been granted by Andhra Pradesh Authority and the same has been counter-signed by the Tamil Nadu State Transport Authority. This is apparent from the additional typed-set of papers filed by the counsel appearing for the Petitioner. In view of such subsequent event, the counsel for the Petitioner has submitted that in view of the provisions contained in Section 81(5) of the Act, even if some amount was payable for plying the vehicle on temporary permit, such amount paid/payable in excess of the amount for permanent permit is to be refunded. Therefore, the counsel for the Petitioner has contended that since subsequently permanent permit has been renewed even if the Petitioner would have paid any amount towards temporary permit, the same would have been refunded, as such there is no question of directing the Petitioner to pay additional amount demanded by the Respondent.

4. learned Counsel for the State, on the other hand, has submitted that he has no instructions regarding the subsequent event and the matter should not be finally determined by this Court as there may be some factual dispute.

5. From the order furnished as part of the additional typed-set of papers, it is apparent that the permit has been renewed. Section 81(5) of the Motor Vehicles

Act is quoted hereunder:

81(5)- Where a permit has been renewed under this section after the expiry of the period thereof, such renewal shall have effect from the date of such expiry irrespective of whether or not a temporary permit has been granted under Clause (d) of Section 87, and where a temporary permit has been granted, the fee paid in respect of such temporary permit shall be refunded.

6. A perusal of Section 81(5) makes it clear that where a permit has been renewed, such renewal takes effect from the date of expiry of the earlier permit irrespective of grant of temporary permit. It is further clear that where a temporary permit had been granted, the fee paid towards the grant of temporary permit is to be refunded. Therefore, even if a temporary permit would have been granted to the Petitioner, any fee paid by the Petitioner towards such temporary permit would have been refunded.

7. A question may arise that penal action may be taken against the Petitioner for having plied "the vehicles without obtaining temporary permit. However, since the vehicles have been plied apparently on the basis of the interim order passed by the High Court and since the earlier application for grant of temporary permit had not been dealt with by the authority within the period for which such temporary permit had been sought for, the assertion of the Petitioner that the vehicles have been plied on the bona fide impression that no such temporary permit was necessary appears to be acceptable and as such it is observed that the Petitioner is not to be penalised for such technical lapse.

8. For the aforesaid reasons, both the writ petitions are allowed and it is made clear that the Petitioner would not be liable to pay any amount towards the temporary permit or any penalty. However, it goes without saying that the Petitioner is to pay the amount payable under the permanent permit which has been subsequently renewed. Consequently, W.M.P. Nos. 12597 of 1995 and 13617 of 1995 are closed. There shall be no order as to costs.