

(2007) 04 MAD CK 0180

In the Madras High Court

Case No : Writ Appeal (MD) No. 485 of 2005 and WAMP. No. 682 of 2005

Smt. Muthammal Transports

APPELLANT

Vs

P. Swathanthirarajan and Regional Transport Authority

RESPONDENT

Date of Decision : 16-04-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Customs Act, 1962 — Section 27
Limitation Act, 1963 — Section 5
Motor Vehicles Act, 1988 — Section 89, 89
Tamil Nadu General Sales Tax Act, 1959 — Section 31
Tamil Nadu Motor Vehicles Rules, 1989 — Rule 157(1), 157(2), 157(3), 3

Citation : (2007) 3 CTC 389 : (2008) 2 LW 742

Hon'ble Judges : S. Tamilvanan, J; P. Sathasivam, J

Bench : Division Bench

Advocate : M. Palani, for the Appellant; T. Kokilavani and K. Elango, Spl. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

P. Sathasivam, J.—Aggrieved by the order of the learned single Judge dated 16.09.2005, made in W.P. No. 8572 of 2005, Tmt. Muthammal Transports, has filed the above appeal.

2. For convenience, we shall refer the parties as arrayed before the learned single Judge.

3. The writ petitioner, P. Swathanthirarajan, aggrieved by the proceedings of the Regional Transport Authority, Tiruchirappalli in Rc. No. 48748/A2/2004 dated 22.07.2005, renewing the Stage Carriage permit of the second respondent for their vehicle bearing registration No. TN-45-AA-7447, plying on the route Tiruchirappalli to Dindigul via. Manaparai, for a further period of five years from 31.08.2004 to 30.08.2009, filed W.P. No. 8572 of 2005.

4. On 16.09.2005, the learned single Judge, after hearing the writ petitioner as

well as the contesting second respondent, and after finding that the issue involved in the writ petition is covered by a Division Bench decision of this Court in 2005 W.L.R. 136 (Tamil Nadu State Transport Corporation Ltd., v. C. Durai), dismissed the writ petition. However, the learned Judge, granted 10 days time to the writ petitioner to file an appeal before the authority concerned. In the same order, the learned Judge, further observed that, if any such appeal is filed, the authority is directed to consider and pass orders on the same on merits without non-suiting the petitioner on the ground of limitation, within a period of one week from the date of receipt of copy of the order.

5. Mr. M. Palani, learned Counsel appearing for the appellant/2nd respondent, submitted that absolutely there is no dispute or grievance as to the dismissal of the writ petition by the learned Judge. However, according to him, the learned Judge, committed an error in permitting the appellate Tribunal in entertaining the appeal of the writ petitioner (first respondent herein), without insisting the limitation period if the appeal is filed within 10 days from the date of the order in the writ petition. He further contended that, inasmuch as the period of limitation as per Rule 157(1) of the Tamil Nadu Motor Vehicles Rules, 1989 is 30 days from the date of receipt of the order and in the instant case, the order was received by the first respondent on 24.07.2005 and the last date for filing the appeal is 23.08.2005, whereas, the writ petition was filed in this Court directly challenging the said order only on 08.09.2005, i.e., 16 days after the prescribed period, consequently, the learned Judge, ought not to have expanded the time for filing appeal, which is not provided under the Act.

6. On the other hand, Mrs. T. Kokilavani, learned Counsel appearing for the first respondent/writ petitioner, submitted that inasmuch as pursuant to the direction of the learned Judge, the first respondent herein initially filed only revision, for which there is a provision for condoning the delay, the order of the learned Judge cannot be faulted with. In any event, according to her, this Court has ample power to issue such direction, including the direction, granting time to enable the aggrieved person to approach the appellate or revisional authorities in the interest of justice.

7. The short point that arise for consideration in this appeal is, whether the learned Judge is right in granting 10 days time to file an appeal before the appellate authority, after expiry of the prescribed period?

8. In the renewal application dated 02.07.2004 of Tmt. Muthammal Transport, Tiruchirappalli, appellant herein, the Regional Transport Authority, Tiruchirappalli, after considering all the aspects, in the absence of violation and infringement of the permit conditions and in the interest of travelling general public, renewed her permit in respect of Stage Carriage TN 45-AA-7447, plying on the route Tiruchirappalli to Dindigul via. Manaparai, for a further period of five years from 31.08.2004 to 30.08.2009. The aggrieved person, viz., the writ petitioner/first respondent herein, ought to have filed an appeal before the State Transport Appellate Tribunal u/s 89 of the Motor Vehicles Act, 1988 (in short, "the M.V.

Act"). As per Rule 157 (1) of the Tamil Nadu Motor Vehicle Rules, 1989 (in short, "the Rules"), the period of limitation prescribed is 30 days from the date of receipt of the order. In the case on hand, it is brought to our notice that the order was received by the first respondent herein on 24.07.2005 and as per Sub-rule (1) of Rule 157, the last date for filing the appeal was 23.08.2005. Admittedly, he did not file an appeal within 30 days from the date of receipt of the order, however, the writ petition was filed in this Court directly challenging the order of the Regional Transport Authority, Tiruchirappalli on 08.09.2005, i.e., 16 days beyond the prescribed period. In view of the fact that the Regional Transport Authority granted renewal of permit in favour of the appellant, the provisions of Sub-rule (1), (2-g) of Rule 157, make it clear that the aggrieved party/first respondent herein could have filed the appeal within 30 days from the date of receipt of the order, i.e., on or before 23.08.2005.

9. Mr. M. Palani, learned Counsel for the appellant has also brought to our notice that Rule 157(3), which makes it clear that the provisions of Limitation Act, 1963 will not be applicable to appeals filed under this Rule. In view of Sub-rule (3) of Rule 157, excluding the provisions of Limitation Act, it is clear that against the order of the Regional Transport Authority, the aggrieved party is permitted to file an appeal to the appellate authority / State Transport Appellate Tribunal only within 30 days from the date of receipt of the order. Admittedly, there is no other provision giving any authority, including this Court to either condone the delay or extend time to enable the aggrieved party to file appeal after 30 days of the date of the receipt of the order.

10. Though Mrs. T. Kokilavani, learned Counsel for the contesting first respondent submitted that in the case of revision there is an enabling provision to condone the delay, and in view of the fact that against the impugned order dated 22.07.2005, a revision was filed, on objection by the writ appellant, the same was converted as appeal under Rule 157(2-g) of the Rules; hence, the defence taken by her cannot be sustained. To put it clear, the conjoint reading of Section 89 of the Act and Rules 157 (1), (2) (2-g) and (3) of the Rules, makes it clear that after expiry of 30 days from the date of receipt of copy of the order of Regional Transport Authority, no appeal could be filed before the appellate authority. However, though the writ petition came to be filed on 08.09.2005, which is beyond the prescribed period of 30 days, the learned Judge granted 10 days time to file an appeal before the appellate authority. The said direction/recourse ordered by the learned Judge is contrary to the above mentioned provisions.

11. Now, let us consider various decisions arising under the Motor Vehicles Act as well as similar provisions in the other enactments. In 2002 (1) C.T.C. 406 (Indian Coffee Worker's Co-operative Society Ltd., v. Commissioner of Commercial Taxes), a Division Bench of this Court had an occasion to consider similar issue in a matter arising under the Tamil Nadu General Sales Tax Act. In the case before the Division Bench, the petitioner, Indian Coffee Workers Co-operative Society

contended that the assessment order was received by them on 06.10.1990 and the petitioner filed an appeal before the Appellate Assistant Commissioner on 05.11.1990, however, the same was not in form, the appeal in the prescribed form complying with all the requirements was filed on 01.02.1991. It was contended by the Department that the appeal has to be filed within 30 days and a delay of 30 days alone can be condoned and this Court may not in exercising its discretionary powers under Article 226 of the Constitution of India, pass orders as prayed for by the petitioner or otherwise, the same would be violative of the principles of the Act. It further shows that appeal against the order of the original authority/Deputy Commercial Tax Officer, lies before the Appellate Assistant Commissioner of Commercial Taxes within 30 days of receipt of the said order. Section 31 of the Tamil Nadu General Sales Tax Act, 1959, makes it clear that any person objecting to an order passed by the appropriate authority, may prefer an appeal to the Appellate Assistant Commissioner within a period of 30 days from the date on which the order was served on him. The first proviso to Sub-section (1) makes it clear that the Appellate Assistant Commissioner is empowered to admit the appeal presented after the expiration of the said period, if he satisfied that the appellant had sufficient cause for not presenting the appeal within the said period. In that case, the assessment order was received on 06.10.1990 and the last date for filing appeal was 05.11.1990, whereas the appeal was filed on 01.02.1991, thereby there was 93 days delay in filing the appeal. The contention of the petitioner was that this Court has ample power under Article 226 of the Constitution of India to condone the delay and direct the appellate authority to dispose of the matter on merits. For that the Department contended that once the statute prescribes outer limit for condoning the delay, any delay beyond that period cannot be condoned. The Division Bench, taking note of the decision of the Supreme Court in Mohd. Ashfaq Vs. State Transport Appellate Tribunal, Uttar Pradesh and Others, , which arose under the Motor Vehicles Act and Rules and other decisions relating to Arbitration Act, Land Acquisition Act, Tamil Nadu General Sales Tax Act, has concluded that this Court has no jurisdiction to pass such an order as otherwise it would be nothing but re-writing the provisions of the Act in exercise of its powers under Article 226 of the Constitution of India. The sum and substance of the said decision is that, while the High Court exercising jurisdiction under Article 226 of the Constitution of India, it cannot direct the appellate authority to consider the matter on merits, when the proposed appeal is beyond the prescribed period. In other words, this Court cannot re-write the provisions of the Act.

12. In Union of India and Another Vs. Kirloskar Pneumatic Company Limited, , questioned the validity and correctness of Clause (3) of the Bombay High Court. Clause (3) of the Bombay High Court order dated 23.06.1985 reads as follows:

The respondents shall not reject the refund application on the ground that it is time- barred.

It is seen that as per the provisions, particularly, Section 27 of the Customs Act,

1962, the claim for refund or an order of refund can be made only in accordance with the said provisions, which inter-alia includes the period of limitation mentioned therein. A contention was raised that the period of limitation prescribed by Section 27 does not apply either to a suit filed by the importer or to a writ petition filed by him and that in such cases, the period of limitation would be three years. After hearing and referring the decisions of the counsel, the Hon'ble Supreme Court framed the following question:

Yet the question is, whether it is permissible for the High Court to direct the authorities under the Act to act contrary to the aforesaid statutory provision?

For the above said question, Their Lordships have answered in the following manner:

We do not think it is, even while acting under Article 226 of the Constitution of India, the power conferred by Article 226/227 is designed to effectuate the law, to enforce the rule of law and to ensure that the several authorities and organs of the State act in accordance with law. It cannot be invoked for directing the authorities to act contrary to law. In particular, the Customs authorities, who are the creatures of the Customs Act, cannot be directed to ignore or act contrary to Section 27, whether before or after the amendment....

13. In *Danda Rajeshwari Vs. Bodavula Hanumayamma and others*, , the only question raised is, whether the direction issued by the High Court in the impugned order to file an election petition within three weeks from the date of disposal of the writ petition and after filing of the petition to dispose of the same, without going into the question of limitation is valid in law? The Andhra Pradesh High Court in the order dated 26.06.1995, without going into the questions raised in the writ petition and finding that the appropriate forum is Election Tribunal, permitted the petitioners to file an election petition within three weeks from the date of the order and directed that if such petition is filed, the same shall be entertained by the Election Tribunal without going into the question of limitation and dispose of it in accordance with law as expeditiously as possible. The said direction was upheld by the Supreme Court in *Union of India and Another Vs. Kirloskar Pneumatic Company Limited*, . The facts of that case is that the election of a Sarpanch was held and result was declared on 24.06.1995 and the writ petition was filed on 25.06.1995 i.e., on the next day. Power of the Government on the process of electoral rolls was challenged in a batch of writ petitions. The writ petition in question is also one of such writ petitions. Under the circumstances, the High Court thought it expedient that since elections were already held, the disputed questions of facts would be canvassed in an election petition as provided in Rule 3 of the Rules and declined to investigate the disputed questions of facts and directed the parties to pursue the remedy of election dispute. Though the High Court has permitted the petitioner to file an election petition within three weeks from the date of disposal of the writ petition and further directed the Tribunal not to go into the question of limitation, as rightly pointed out by Mr. M. Palani, the writ petition was filed on the next day

after declaring the result and admittedly the direction of the High Court to file an election petition within three weeks falls within the prescribed period of limitation. In such circumstances, the Hon'ble Supreme Court upheld the direction of the Andhra Pradesh High Court. The ratio in that decision has no bearing to the facts of this case, since the writ petition was filed within the prescribed period and the time granted by the High Court also fell within the limitation period.

14. In *Tirumurthi Transports (P.) Ltd. Vs. The Regional Transport Authority*, , Coimbatore, this Court has held that, where a statutory authority passed an order in relation to the matter exclusively committed to its jurisdiction, the remedy provided for by that statute against such order must be pursued and the fact that a particular person has not availed himself of that remedy and has allowed the same to be barred by limitation is no ground or justification for allowing him to approach the High Court under Article 226 of the Constitution of India. The learned Judge, rejected the claim of the petitioner therein, since the petition was filed beyond the prescribed period. The learned Judge has also held that if petition is filed within the statutory period, the Court is well within its power to ask the parties to approach the concerned authority under the Act and no such direction after the expiry of the said period. The said decision is in consonance with the ratio laid down in the above mentioned Supreme Court cases.

15. In *A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another*, , Constitution Bench of the Supreme Court has held, if any one has disabled himself from availing himself of the statutory remedy by his own fault in not doing so within the prescribed time, he can not certainly be permitted to urge that as a ground for the Court dealing with his petition under Article 226 of the Constitution to exercise its discretion in his favour.

16. In W.P. No. 15528 of 1995 dated 12.02.1996, learned single Judge of this Court, after finding that the petitioner Annai Sathya Transport Corporation Ltd., has approached this Court without exhausting the alternative remedy by way of appeal provided under Rule 157(2)(d) of the Tamil Nadu Motor Vehicles Act, 1989 and as the period to prefer an appeal has already expired, dismissed their writ petition. The said conclusion is also in consonance with the legal principles as laid down by the Supreme Court in the above referred cases.

17. In *Prakash H. Jain Vs. Ms. Marie Fernandes*, , in para 10 of the judgment, their Lordships have held that,

10... There is no such thing as any inherent power of Court to condone delay in filing proceedings before a Court/authority concerned, unless the law warrants and permits it,....

18. In *Damodaran Pillai and Others Vs. South Indian Bank Ltd.*, , the Hon'ble Supreme Court has held,

14. It is also trite that the civil court in absence of any express power cannot condone the delay. For the purpose of condonation of delay in absence of applicability of the provisions of Section 5 of the Limitation Act, the court cannot invoke its inherent power.

15. It is well-settled that when a power is to be exercised by a civil court under an express provision, the inherent power cannot be taken recourse to.

16. An application u/s 5 of the Limitation Act is not maintainable in a proceeding arising under Order XXI of the Code. Application of the said provision has, thus, expressly been excluded in a proceeding under Order XXI of the Code. In that view of the matter, even an application u/s 5 of the Limitation Act was not maintainable. A fortiori for the said purpose, inherent power of the court cannot be invoked....

19. In view of Section 89 of the Tamil Nadu Motor Vehicles Act, 1988 and Rules 157 (1), (2), (2-g) and (3) of the Tamil Nadu Motor Vehicle Rules, 1989, in a writ petition filed against the order of the authority after the prescribed period (in the case on 30 days), the High Court has no power to extend the period of limitation by exercising jurisdiction under Article 226 of the Constitution of India, or direct the appellate authority to consider the appeal on merits without reference to the period of limitation. In view of the above conclusion, the direction of the learned Judge in para 3 of the order dated 16.09.2005 made in W.P. No. 8572 of 2005, granting 10 days time to file an appeal before the appellate authority cannot be sustained and the same is set aside. Consequently, the writ appeal is allowed. No costs. Connected miscellaneous petition is closed.