

(2002) 08 MAD CK 0058

In the Madras High Court

Case No : Writ Petition No. 8381 of 1995

S.P. Dhandapani

APPELLANT

Vs

The State Transport Authority, Madras, The State Transport
Appellate Tribunal, Madras and N. Krishnasami Chetty

RESPONDENT

Date of Decision : 08-08-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 08 MAD CK 0058

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

Bench : Single Bench

Advocate : P. Vedavalle, for the Appellant; P. Chandrasekaran, Special Govt.
Pleader for respondents 1 and 2 and Radhagopalan, for 3rd respondent, for the
Respondent

Final Decision : Dismissed

Judgement

K.P. Sivasubramaniam, J.—The petitioner seeks for the issue of a writ of certiorari to call for the records from the State Transport

Appellate Tribunal, Madras, in Appeal No.37 of 1993 dated 16.2.1995 and to quash the same.

2. The petitioner applied for renewal of permit to his stage carriage plying on the route Cuddalore to Tindivanam via Pondicherry. The permit was

granted by the State Transport Authority. But as the renewal of the permit was refused by the said Authority, the petitioner preferred an appeal in

Appeal No.1 of 1992 to the State Transport Appellate Tribunal, Pondicherry. The said appeal was allowed. The third respondent tried to

intervene as a respondent before the State Transport Appellate Tribunal, Pondicherry, to permit him to come on record. As against the said

application to intervene, the petitioner preferred W.P.No.72 of 1992 for the issue

of Writ of Prohibition. In the interlocutory petition for interim injunction, this Court granted interim injunction restraining the third respondent from impleading himself in the appeal. The appeal filed by the petitioner was allowed by the State Transport Appellate Tribunal, Pondicherry. Against the said order, the third respondent preferred W.P.No.811 of 1992 which was dismissed.

3. Thereafter, the petitioner also applied for renewal of counter signature by the State Transport Authority, Madras. But as the same was refused, the petitioner preferred an appeal in Appeal No.37 of 1993. Along with the said appeal R.P.No.4 of 1993 filed by the petitioner as against the granting of counter signature to the third respondent, was also heard. The State Transport Appellate Tribunal, Madras, dismissed the petitioner's appeal and aggrieved by the same, the petitioner has filed the above writ petition.

4. I have heard learned counsel for the petitioner. At the outset, learned counsel has made it clear that the petitioner is not pursuing any remedy as against the third respondent and hence the question of grant of renewal of counter signature in respect of the third respondent nor the inter se dispute between the petitioner and the third respondent would arise for consideration in this writ petition.

5. The State Transport Appellate Tribunal in its impugned order rejected the claim for renewal of counter signature mainly on three grounds:-

(1) There was no continuity of renewal in favour of the petitioner so as to entitle the petitioner for renewal. For the period from 4.1.1983 to

3.1.1988, the petitioner had submitted the application for renewal of the permit belatedly u/s 58 of the (old) Motor Vehicles Act. The said

application having been rejected, the petitioner filed a writ petition before this Court which was subsequently dismissed as infructuous. Therefore,

according to the Tribunal, the period from 4.1.1983 to 3.1.1988 was not covered by any renewal and hence there was no question of subsequent renewal.

(2) The original permit was granted under the Old Motor Vehicles Act, 1939 which was valid up to 4.1.1993 and the present application for

renewal cannot be entertained after coming into force of the Motor Vehicles Act, 1988 in terms of the judgment of the Supreme Court in

Secretary, Quilon Distt. Motor Transport Workers" Co-operative Society Ltd. Vs. Regional Transport Authority and Others, .

(3) As far as the number of permits are concerned, the inter-State agreement provided for only one route and hence as the renewal of counter

signature had been granted in favour of the third respondent, there is no justification to grant one more permit in the name of the petitioner.

6. Of the aforesaid three grounds, on which the Tribunal held against the petitioner, the first two issues can be disposed of.

7. As regards the ground of rejection arising out of there being no renewal in favour of the petitioner for the period between 4.1.1983 and

3.1.1988, it is seen that from the beginning, the petitioner had been agitating the issue and renewal was also granted by the State Transport

Authority, Pondicherry, and confirmed by the State Transport Appellate Tribunal, Pondicherry. Therefore, this issue need not stand in the way of

the claims of the petitioner.

8. On the second issue namely, as regards the requirement of the applicant to file a fresh application under the New Act, it is true that in the

judgement in Secretary, Quilon Distt. Motor Transport Workers" Co-operative Society Ltd. Vs. Regional Transport Authority and Others, ,

supra, it was held that as regards permits which were granted under the Old Act, no renewal could be sought for and only fresh applications have

to be filed. The said judgment was rendered, on the interpretation of the provisions of the Act as it existed then. Subsequently, by virtue of the

Motor Vehicles Amendment Act 27 of 2000, Section 217-A has been inserted. In terms of the said provision, notwithstanding the repeal, any

certificate of fitness or registration or licence or permit issued or granted under the said enactments (1939 Act), they may be renewed under 1988

Act. Therefore, the said issue also deserves to be answered in favour of the petitioner.

9. However, on the issue relating to the number of permits I am unable to uphold the contentions on behalf of the petitioner. According to learned

counsel after the Motor Vehicles Act, 1988 came into force, the Government had adopted a policy of liberalisation in the matter of grant of

permits. Considering the passage of time in this case, the need to have one more bus on the route cannot be disputed by the respondent.

According to learned counsel, increase in the number of inter-State permits was possible even in the absence of another agreement increasing the

number of permits. In this context, learned counsel for the petitioner relies on the following judgments. In *Nasur-ud-Din Vs. State Transport*

Authority and Others, the Division Bench of Delhi High Court held that it cannot be said that once there is an agreement between two States

limiting the issue of a certain number of inter-State permits, no increase in the number of permits was possible without an additional agreement. It

was further stated that there was nothing either u/s 63(3) of 1939 Act or the proviso therein which would amount to stating that once there was an

agreement, there cannot be grant of permit beyond the agreed number of permits.

10. Learned counsel also relies on the judgment of N.V. Balasubramanian, J. in a batch of cases in W.P.Nos.17934 of 2001 etc. batch.

11. In this context, I have considered the submissions of learned counsel for the petitioner and I am inclined to hold that the issue is covered by the

judgment of the Supreme Court in *Mohd. Ibrahim, etc. Vs. The State Transport Appellate Tribunal, Madras, etc.*, and the relevant portion is

extracted below:-

Para.12. The effect of the proviso to Sec. 63(3) is that in the case of inter-State permits where an agreement has been arrived at between the

States the provisions of Section 57 of the Act need not be followed for the grant of counter-signatures of permits. In other case the procedure in

Section 57 of the Act will apply .. Section 47(3) of the Act will not in our opinion apply to inter State permits In the absence of specific rules,

the best way of harmonising the powers and functions is to allow these inter-State authorities to exercise their power within their respective spheres

in regard to grant and counter-signature of permits by agreement and accord.

Para 14: As in the case of inter-State permits the harmonious reading of the sections will be to make Sections 42 to 68 of the Act applicable

wherever it is possible to do so. The fixing of limit of number of stage carriage permits in or within the region is entrusted to the Regional Transport

Authority because of the particular local matters contemplated in Section 47(1) of the Act, namely, adequacy of other transport services between

the places to be served, benefit to a particular locality to be afforded by the

service, conditions of the roads included in the proposed route or area.

These considerations in the case of inter-State permits as also in the case of inter-regional permits cannot be said to be entrusted to the Regional

Transport Authority to which the application is made because both in the case of inter-State permits and inter-regional permits considerations in

different States and in different regions will become relevant and are not embraced within the scope and intent of Section 47(3) of the Act. We are

therefore of opinion that Section 47(3) of the Act will not apply either to grant or to countersignatures of permits both in the case of inter-State and

inter-regional permits. The relevant authorities in two States or two regions will ensure agreement and act in concert as the case may be. The

number of services in the region can of course be fixed by the Regional Transport Authority but they will be for the region only. The number of

services for inter-regional or inter-State routes beyond the frontier of the region will have to be determined by agreement.

12. Though the judgment of the Supreme Court was taken note of by the Division Bench of the Delhi High Court, with due respect, I am inclined

to state that the Delhi High Court had tried to distinguish the said judgment. In the unreported judgment of N.V. Balasubramanian, J. as mentioned

above, there is no reference to the judgment of the Supreme Court in Mohd. Ibrahim, etc. Vs. The State Transport Appellate Tribunal, Madras,

etc.,

13. There is yet another judgment of the Supreme Court in which the Supreme Court held that an inter-State route has to be reciprocal and cannot

be unilaterally created by one State or an authority in the State and that both the Governments should deliberate and decide on the routes to be

operated vide Ashwani Kumar and Another Vs. Regional Transport Authority Bikaner and Another, . This judgment was considered by N.V.

Balasubramanian, J. and on the facts of the case before him, the learned Judge took note of the minutes of the meeting which was held between the

ministers of both the States agreeing for adding new buses covered under the agreement. In the present case before us there are no such features

of even any such agreement between the two State Governments, though not incorporated in the agreement. Therefore, the facts of the case in

W.P.No.17934 of 2001 cannot be applied to this case.

14. Hence, considering the law laid down by the Supreme Court in the aforesaid judgment in Mohd. Ibrahim, etc. Vs. The State Transport

Appellate Tribunal, Madras, etc., , it is not possible to grant renewal of permits or countersignatures beyond the number of permits covered by the

inter-State agreement.

15. Therefore, the findings of the Tribunal with reference to the said point deserves to be confirmed.

16. In the result, the writ petition is dismissed. No costs.