
(1981) 11 MAD CK 0010
In the Madras High Court

S.P. Subramanian

APPELLANT

Vs

S. Chockalingam

RESPONDENT

Date of Decision : 16-11-1981

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 155A(2)(iv)

Citation : (1982) 2 MLJ 104

Hon'ble Judges : S. Mohan, J

Bench : Division Bench

Judgement

S. Mohan, J.—For the grant of a stage carriage permit on the route Madurai to Piranmalai, there were several applicants. The revision

petitioner, Section P. Subramanian, was applicant No. 1, while the respondent Section Chockalingam was applicant No. 5. The Regional

Transport Authority awarded 10 marks to each of them on the following basis:

Applicant No. 1, Thiru S.P. Subramanian, Proprietor, S.P.S. Transport, Madurai gets 10 marks for the qualifications as noted below:

Applicant No. 5, Thiru S. Chockalingam, No. 215, Main Bazaar Street, Singampunari, gets 10 marks for his qualification as noted below:

The Regional Transport Authority preferred the revision petitioner for the grant on the ground that even though applicant No. 5 secured equal

marks as applicant No. 1, he has become a bus operator by getting permits on transfer recently, and his performance has to be watched before

any fresh permit can be granted. Aggrieved by this order, the matter was taken up by the respondent in appeal (Appeal No. 231 of 1977) to the

State Transport Appellate Tribunal. The Tribunal held that the workshop of the revision petitioner did not conform to Rule 155-A(2)(iv) of the

Motor Vehicles Rules, and therefore, it reduced two marks, as a result of which the marks of the revision petitioner came to 8. Under these

circumstances, obviously having regard to the superiority of the marks and there being nothing to be said against the respondent that it would not

be in the public interest to make a grant in his favour, the grant in favour of the revision petitioner was set aside, and the respondent was favoured.

Thus, the revision.

2. The learned Counsel for the revision petitioner, Mr. V.P. Raman, urges the following points : (1) Rule 155-A (2)(iv) of the Motor Vehicles

Rules in relation to the workshop merely lays down that the workshop must be of non-combustible material as nearly as practicable. That does not

mean that even when a workshop is resting on wooden rafters over which asbestos sheets have been laid, that would not conform to the

requirements. There is no authoritative ruling on this aspect of the matter, excepting an observation found in one of the judgments of this Court in

M. Govindaswami v. D. Gnanaprakasam C.R.P. No. 2646 of 1979. As a matter of fact, the earlier judgment of this Court in V. Raju v. Abdul

Khader C.R.P. No. 446 of 1975, takes a contrary view. (2) Even under the Petroleum Rules what is stated with regard to the conditions of

licence is that beams, rafters, columns, doors and windows may be of wood. If such is the position with reference to a dealer in combustible

material like petroleum, to say that the wooden rafters would be combustible is wrong. (3) As both the revision petitioner and the respondent are

new entrants, the insistence on such a qualification is improper, because in V. Raju v. M. Abdul Khader C.R.P. No. 446 of 1975, this Court took

the view that for a new entrant, the requirement in relation to a workshop cannot be insisted upon. If that principle had been adopted, the reduction

of 2 marks is wrong, and on the same baste, the 2 marks in favour of the respondent also should not have been awarded, in which event there

would be equality of marks, and, therefore, the preference of the respondent should have been on a ground other than this.

3. I am not able to accept any one of the above arguments as tenable. Rule 155-A(2)(iv) of the Motor Vehicles Rules, in relation to workshop,

lays down as follows:

The workshop shall be housed in a pucca building sufficiently spacious and with

roofing of corrugated zinc sheets or asbestos, making them as nearly fire proof as practicable and should have inspection comp.

My reading of the Rule when it says ""as nearly fire proof as practicable"" is that it does not mean that one can insist upon fire proof of execution.

But it is common knowledge that wooden rafters are combustible especially in a place like this where one is bound to carry out repairs on the top of the bus with welding.

4. With regard to the wooden poles, there are a number of judgments of this Court. However, when this petition was argued in M. Govindaswamy

v. D. Gnanaprakasam C.R.P. No. 2646 of 1979, what I observed was:

As regards the workshop my interpretation must be with reference to the object of the Rule, the object of the Rule being that a workshop should

be housed in a pucca building making it as fire proof as possible. In other words, it should not be exposed easily to fire hazards. I am unable to

hold that any distinction could be made between a workshop housed on a wooden pole and a workshop consisting of wooden rafters. Anyhow, I

leave this question to be decided in appropriate proceedings because that is not a ground on which the Tribunal chose to set aside the permit. On

the contrary, it found that the superior qualifications of the respondent would outweigh the calls of the revision petitioner.

The result in that case became necessary because that point had not been gone into by the Tribunal then. In the case on hand, this point has been

gone into and the Tribunal has taken the view that it does not conform to the requirement since the wooden rafters are combustible in nature. I am

of the view that the distinction that is sought to be made between a workshop housed on a wooden pole and a workshop consisting of wooden

rafters is a distinction without difference because both are easily combustible. I am unable to take a view different from the one I have taken earlier,

as seen in the extract above.

5. The condition of the Petroleum Rules, 1976, relating to the licence is stated thus:

The Petroleum shall be stored in the licensed storage shed which shall be constructed of suitable non-combustible material, but the beams, rafters, columns, doors and windows may be of wood.

The Court is concerned with the interpretation of the Rule, and not the wisdom or the policy of incorporating the same in the Motor Vehicles

Rules. Therefore, I am unable to see any relevance of this rule to decide the matter in issue.

6. It is true that Ramanujam, J., has observed in V. Raju v. M. Abdul Khader C.R.P. No. 446 of 1975, as follows:

The learned Counsel for the petitioner submits that to get two marks the workshop should be such as is not susceptible to catch fire and that the

respondent's workshop is not one such. But this requirement applies only to a workshop of a fleet operator who is owning more than 5 buses and

persons operating less than 5 buses cannot be required to have a workshop built with unflammable materials. In this case both the authorities

below have proceeded on the basis that the respondent's workshop was with unflammable materials and it is only on that basis two marks have

been granted to the respondent. I am of the view that the award of two marks to the respondent under the head "workshop" cannot be challenged.

Here, both the revision petitioner and the respondent stake their claims basing on the ownership of workshops. Under those circumstances, the

Regional Transport Authority as well as the Tribunals are well-entitled to consider whether marks have to be awarded on the basis of their claims.

But once it is found, that the workshop of the petitioner does not conform to the requirement of the Rule, certainly it warrants reduction. Even,

otherwise, supposing no marks have been awarded for the workshop so far as the respondent is concerned, what happens is that there would

have been an equality of the marks, and in such a case, the claim of the respondent could easily be upheld in view of the fact that he has got a

workshop which conforms to the requirements under Rule 155-A(2)(iv) of the Motor Vehicles Rules. For all these reasons, I see no merit in this

revision petition.

7. The revision petition is dismissed. There will be no order as to costs. The "status quo as on today will be maintained for two weeks from this date.