

(1964) 03 MAD CK 0003

In the Madras High Court

Case No : Writ Petition No's. 848 of 1961 and 189 of 1962

Swami Motor Transports (P) Ltd., Tanjore

APPELLANT

Vs

Raman and Raman (P) Ltd. Kumbakonam and Another

RESPONDENT

Date of Decision : 10-03-1964

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 208
Motor Vehicles Act, 1939 — Section 43

Citation : AIR 1965 Mad 321 : (1964) ILR (Mad) 747 : (1965) 78 LW 244 :
(1965) 1 MLJ 594

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Judgement

(1) These are connected petitions to quash the same order of the State Transport Authority dated 12-6-1961, setting aside the order of the

Regional Transport Authority, dated 30-4-1957, which granted the variation of the route Tanjore to Kumbakonam as Tanjore to Koradachery via

Kumbakonam and Kodavasal, in favour of Swami Motor Transport (P) Ltd. The State Transport Authority directed the Regional Transport

Authority to dispose of the application of Swami Motor Transport (P) Ltd, afresh according to the law. By G. O. Ms. No. 3199 Home, dated 16-

11-1956, the State Government in the purported exercise of its owner under S. 43-A(2) of the Motor Vehicles Act, 1939, directed the Regional

Transport Authority, Tanjore, to vary the existing route Tanjore to Kumbakonam as Tanjore to Koradachery via Kumbakonam via Kumbakonam

to vary the existing route Tanjore to Kumbakonam as Tanjore to Koradachery via Kumbakonam and Kodavasal in respect of two buses. The

Government made this order as a result of three petitions, two of them in July 1956 by two members of the local legislative Assembly and the third

on 6-8-1956 by Swami Motor Transport (P) Ltd. The Regional Transport authority relied on the Government order and in keeping with it, so was

it stated, granted the variation of the route in respect of two buses MDO, 1959 and MDO 1960 of Swami Motor Transport (P) Ltd.

Raman and Raman (P) Ltd. who was an objector and not an operator on the route, filed a revision petition to the State Transport Authority against

that order. The State Transport Authority was of the view that the order should be set aside on two grounds (1) That the Regional Transport

Authority should not have relied on the Government Order, as a direction to grant the variation in favour of Swami Motor Transport (P) Ltd, but it

should have called for applications from all the existing operators on the route Tanjore to Kumbakonam and chosen one or more applicants,

according to the need and merits of the case and (2) that Swami Motor Transport (P) Ltd., itself being an applicant for variation, the Regional

Transport Authority was wrong in issuing to it a notice under S. 48-A of the Motor Vehicles Act, for which there was no need. Since in its view

the Regional Transport Authority did not properly interpret the order of the Government, the State Transport Authority set aside the order the

order and remarked the matter for fresh disposal according to the law.

(2) Swami Motor Transport (P) Ltd., in W. P. No. 843 of 1961 seeks to quash the order for the State Transport Authority on the ground that the

revision petition was not competent and on the further ground that the State Transport Authority was not right in its view of the propriety and effect

of the notice under S. 48 A of the Act to Swami Motor Transport (P) Ltd., on the order of the Regional Transport Authority. In my opinion,

neither of the grounds can be sustained.

(3) Section 34-A provides for a revision to the State Transport Authority against an order of a Regional Transport Authority from which no appeal

lies. Section 64(1) allows appeals to the prescribed authority, which is the State Transport Appellate Tribunal in specified cases, two of them being

by a person aggrieved by the refusal of the State or a Regional Transport Authority to grant a permit or by any condition attached to a permit

granted to him or bring a local authority or police authority or an association which, or a person providing transport facilities who having opposed

the grant of a permit, is aggrieved by the grant thereof or by any condition

attached thereto.

Learned Advocate General for Swami Motor Transport (P) Ltd., submits that an appeal from the order for the Regional Transport Authority under

S. 57(8) lies under S. 65(1)(f) relation to the second category of the two cases I have mentioned Section 57(8) enjoins that an applications to vary

a condition of a stage carriage permit by inclusion of a new route should be treated as an application for the grant of a new permit. The effect of

this is that an application should be disposed of by complying with the procedure for the grant of such carriage permits. According the learned

Advocate General, the deeming clause implies also a right of appeal to an aggrieved objector who provides transport facilities, to any condition

attached to a permit. In V. Krishnamurthy and Another Vs. The Ceded District Auto Transport Co. Ltd. and Others, this court rejected a

contention based on Rule 208 of the Motor Vehicles Rules, namely, that the applications made by the appellants in that case should be treated as

applications for the grant of a permit as laid down by that rule and if so treated, the refusal to grant the extension should be deemed to be a refusal

to grant a permit and it would be an appealable order under S. 64 (1) (a). The ground was that as was held in Attorney General v. Sillem, 1864-

10 HL 704, the creation of a new right of appeal was plainly on act which required legislative authority but Section 64(1) did not provide for an

appeal form an order varying a condition of a permit. Satyanarayana Rao and Rajagopalan JJ. observed at page 324:

If the rule in question does not in terms confer a right of appeal against an order refusing to vary the conditions of a permit, can it be said that it

impliedly confers such a right? As has been pointed out above, a right of appeal must be expressly conferred by implication. It is not within the

competence of the rule making authority constituted under S. 68 of the Act to confer a new right of appeal not recognised or granted by S. 64 of

the Act.

Learned Advocate General says that what was a rule has since been embodied in sub-section (5) of S. 57 and this will make a difference to

maintainability of an appeal against such an order u/s 64(1)(a) of (f). I am unable to accept this view.

In my opinion, the only effect for the deeming provision in sub-section (8) of S.

57 is to attract to the disposal of an application for variation of a condition the procedure applicable to the grant of permits. Section 64(1) does not expressly provide for an appeal from an order under 57(8). Nor is or can such a right of appeal be implied in S. 64(1) merely because an application for variation should be disposed of as if it was for a new permit. There is no room for such an implication. Further with respect I agree with Satyanarayana Rao and Rajagopalan JJ. that a right of appeal cannot be inferred by implication. A right of appeals not a common-law right but it springs from express legislative authority. *Lion Automobile Service Co. Vs. State Transport Authority and Another*, is not in point as that was a case of a counter signature and S. 64(1)(d) gives a right of appeal to an aggrieved person against a refusal to countersign. Nor did *W. A. Nos. 48 and 58 of 1958 (Mad)*, decide the point. Upon my view I have indicated, I hold that the revision petition before the State Transport Authority was competent.

(4) There is also a further point why the petitioner's objections of the jurisdiction of the State Transport Authority should fall. The objection was

taken before that Authority itself. There is *Motor Transport (P) Ltd.*, cannot be permitted to take the objection at this stage either on the ground of

acquiescence or from the standpoint of certiorari, the ground not having been taken before and therefore not dealt with by the State Transport

Authority. its order cannot be quashed on the ground of error. *Lakshmanan Chettiar v. Commissioner of Corporation of Madras*, ILR 50 Mad

130: AIR 1927 Mad 130 decided by a Full Bench of three learned Judges of this Court held:

Failure to object to jurisdiction before the lower court is a bar to obtaining a writ of certiorari, whether the objection to jurisdiction is based on a

pure point of law or based on facts which were or should have been within the knowledge of the applicant during the proceedings in the lower

court.

In support of this proposition, the learned Judges relied on a number of English decisions. Dealing with a petition under Article 32 of the Constitution

the Supreme Court in *Pannalal Binjraj Vs. Union of India (UOI)*, observed that if the petitioners before it had acquiesced in their cases were

transferred, they were not entitled to raise the objection before the Supreme

Court under that Article. The Supreme Court then observed at page 412:

It is well settled that such conduct of the petitioners would disentitle them to any relief at the hands of this court"".

Learned Advocate General however urges that since the question of jurisdiction went of the root for the matter, this court could deal with it under

Art. 226 of the Constitution. But the point is not so much of the court's power but the conduct of the party who invokes the jurisdiction of this

court under that Article.

(5) This court in *Swami Motor Transport (P) Ltd. v. Raman and Raman (P) Ltd.*, AIR 1961 Mad 130 held that the very Government Order relied

on by the Regional Transport Authority was extraneous or irrelevant to the proceedings before it and that it was also improper and irrelevant in the

circumstances it was made. In *Swami Motor Transport (P) Ltd., v. Regional Transport Authority Thanjavur*, W. P. No. 96 of 1961 (Mad) this

court again examined the question of relevancy of such an order and was of the view that not only an order of the Government passed in exercise

of its power under S. 43A(2) would be irrelevant to a quasi judicial consideration by the Regional Transport Authority of grant or refusal of a

variation of a condition of a permit by extension of a route but if the order of the Government directing the extension of a route was passed pending

quasi judicial consideration of the very question at any stage or after the quasi judicial authority had decided the question, such an order would

itself be improper and in excess of the powers of the Government under S. 43A(2) of the Act. It follows, therefore, that the Transport Authority

was right in setting aside the Regional Transport Authority's order which was passed on the order of the Government under S. 43A(2). In passing,

it may be noted that the view of a Full Bench, of this court that route was not a part for the condition of a permit and therefore S. 57(8) did not

cover a variation of a route by extension, no longer holds the field in view for the Motor Vehicles (Madras Amendment) Act, 1964.

(6) The point of *Swami Motor Transport (P) Ltd.*, based on S. 48-A is in my view not substantial. I think the State Transport Authority was

correct in its view that it being an appeal for variation, no notice to *Swami Transport (P) Ltd.*, under that section was necessary. That disposes

of W. P. 843 of 1961.

(7) W. P. No. 189 of 1962 is by Raman and Roman (P) Ltd., to quash that part for the order of the State Transport Authority remanding the

matter to the Regional Transport Authority for fresh disposal. The only ground urged in this petition is that since the entire matter was based on

directions in G. O. Ms. No. 3199 Home dated 16-11-1956 and this order has since been held to be invalid, the State Transport Authority ought

to have quashed the entire proceedings. I do not think that the result follows from invalidity of the Government Order. Its only effect is that the

Regional Transport Authority, while disposing of the matter afresh, should pay no regard to the said Government Order by apply its mind

independently of it to the matter under S. 47(1) and the merits on record placed before it.

(8) Both, the petitions are dismissed, but with costs is neither.

(9) Petitions dismissed.