

(2003) 12 MAD CK 0157

In the Madras High Court

Case No : Writ Petition No. 29810 of 2003

The Drivers Conductors Bus Service (P) Ltd.

APPELLANT

Vs

The Regional Transport Authority Erode District Erode and
Others

RESPONDENT

Date of Decision : 01-12-2003

Acts Referred:

Companies Act, 1956 — Section 397, 398, 433(f)
Motor Vehicles Act, 1988 — Section 82, 82(1)

Citation : (2003) 12 MAD CK 0157

Hon'ble Judges : D. Murugesan, J

Bench : Single Bench

Advocate : M. Palani, for the Appellant; S.V. Durai Solaimalai Government Advocate for R1, Mr. M. Krishnappan for R2, Mr. M.S. Krishnan for M/s Sarvabhauman Associates for R3, Mr. N. Muralikumaran for M/s McGan Law Firm for R4 and R5 and Mr. V. Subramanian for R6 to R9, for the Respondent

Final Decision : Dismissed

Judgement

D. Murugesan, J.—The Drivers Conductors Bus Service (P) Limited, Erode is a registered company under the Indian Companies Act. The said company was formed in the year 1967 with the object of operating stage carriage services in Erode town. There were four Directors when the company was incorporated. The deponent of the affidavit filed in support of the writ petition by name Mr. S. Rasool (hereinafter called as the "deponent"), was one of the Directors on its formation. One Mr. S. Ramasamy was the Managing Director. One Mr. S.R. Subramaniam was one among the four Directors. At the time of formation of the company, it had a permit to ply on the route from Erode bus stand to Bhavani bus stand in respect of the vehicle bearing Registration No. TN-57-C-9000. Sometime during the year 1990, the then Managing Director namely, Mr. S. Ramasamy resigned and on his resignation, his share was purchased by the son of the deponent as well the son of Mr. S.R. Subramaniam. The said S.R. Subramaniam was elected as Managing Director. Mr. S.R. Subramaniam died on

11.12.2000. It is the claim of the deponent that after the demise of the said S.R. Subramaniam, he became the Managing Director. The wife and son of the deceased Subramaniam became the Directors. Two more Directors were also appointed to the company and in all, there were six Directors including the deponent as Managing Director. Since the company faced financial crisis and was not in a position to operate the vehicle, majority of the Board of Directors decided to transfer the permit in favour of one M. Thangamani, the second respondent. Based upon the decision of the majority of the Board of Directors, the company filed a joint application for transfer of permit with the first respondent, the Regional Transport Authority, Erode on 25.6.2003. A notice of hearing dated 18.8.2003, fixing the date of hearing on 25.8.2003, was issued by the first respondent. The said notice was issued both to the transferor and transferee namely, the company and the second respondent as well the third respondent by name Mrs. S. Eswari on the ground that the said Eswari is one of the objectors also claiming right to the permit through her deceased father viz., S.R. Subramaniam. Though notice issued to the third respondent was opposed by the petitioner in the meeting held on 25.8.2003 on the ground that the third respondent did not have locus standi to object to the transfer of permit, as in the matter of transfer of permit, the lis was only between the transferor, transferee and the transport Authority, the same was not accepted by the Transport Authority. He further adjourned the hearing to 13.10.2003 by issuing notice of hearing dated 5.9.2003 to the third respondent also. In the circumstances, the petitioner has approached this Court for a Writ of Prohibition, prohibiting the first respondent from hearing the third respondent in the matter of transfer of permit in pursuant to the hearing notice made under Memo No. 41512/A2/03 dated 5.9.2003.

2. This Court while admitting the writ petition on 23.10.2003 had also granted interim injunction restraining the Regional Transport Authority from hearing the third respondent in the matter of transfer of permit in respect of the stage carriage in question. The third respondent has filed W.V.M.P. No. 2158 of 2003 for a direction to vacate the order of interim injunction. This Court, by order dated 7.11.2003 directed that until further orders, the first respondent shall not effect any transfer of permit.

3. One Mrs. S. Parvatham and Mr. S. Panneerselvam, admittedly, the Directors of the company have also filed W.P.M.P. No. 39169 of 2003 to implead them as the respondents in the writ petition on the ground that they opposed the transfer of permit in the meeting of the Board of Directors. They have also filed W.V.M.P. No. 2164 of 2003 to vacate the interim injunction granted on 23.10.2003. Similarly, one Mr. M.S. Ramalingam claiming to be the Managing Director of the writ petitioner company and three Directors by names Mr. P. Senthilkumar, Mr. V. Ananthan and Mr. M.D. Eswaran have filed W.P.M.P. No. 40084 of 2003 to implead them as respondents in the writ petition on the ground that the third and fourth petitioners in the said W.P.M.P. were appointed as Directors of the company on 24.1.2003 and the first petitioner was appointed as Managing

Director and the second petitioner was allotted 100 equity shares in the company on 2.8.2002. They have also filed W.V.M.P. No. 2207 of 2003 seeking to vacate the interim injunction.

4. Considering the fact that the matter pertains to transfer of permit and the same requires immediate disposal, by consent of all the respective learned counsel appearing for the parties, the writ petition itself is taken up for disposal.

5. Mr. M. Palani, learned counsel for the petitioner would submit that after the death of S.R. Subramaniam, the then Managing Director, one Mr. S. Rasool, the deponent became the Managing Director. On and after 11.12.2000 viz., after the death of the then Managing Director by name S.R. Subramaniam, following are the Directors of the company:-

1. S. Rasool -Managing Director
2. Syed Khaja Nivas-Director
3. Tmt. S. Parvatham W/o S.R. Subramaniam-Director
4. S. Panneerselvam S/o S.R. Subramaniam-Director
5. N. Muthukani-Director
6. S. Kamalasekaran-Director

By a majority decision of the Board of Directors, a joint application for transfer of permit to the second respondent was made to the first respondent. It appears that the third respondent objected to such transfer on the ground that she is the daughter of S.R. Subramaniam and she is also entitled to the share of her father. The third respondent being a third party to the permit is not entitled to the permit. He would rely upon Section 82(1) of the Motor Vehicles Act, 1988 and contended that the enquiry contemplated at the time of the hearing is only with a view to ascertain about the question relating to trafficking in permit or qualification of the transferee for the grant of new permit and only for the said purpose notice is issued. Such notice is contemplated only to the transferor and transferee and not to the third party. He would also rely upon the order of this Court in W.P. Nos. 2619 and 2620 of 1996 dated 27.6.2003 in support of the above submission. The learned counsel would therefore submit that Section 82(1) of the Act does not contemplate hearing of the third party before the transfer is effected.

6. I have also heard Mr. M. Krishnappan, learned counsel for the second respondent viz., the transferee. He would also argue that so long as the third respondent is neither a Director nor a shareholder of the company, she cannot claim herself to be a person aggrieved and consequently can have no locus standi to object to the transfer of permit.

7. I have also heard Mr. M.S. Krishnan. learned counsel for the third respondent. He would submit that after the demise of S.R. Subramaniam, the then Managing

Director on 11.12.2000, the deponent, without any authority of law, self styled himself to be the Managing Director. His claim to be the Managing Director itself is questioned before the Company Law Board. In fact the Company Law Board, by order dated 5.9.2003, directed the status quo to be maintained in regard to the transfer of permit on the ground that if the lone valuable asset of the company viz., the bus is sold during the pendency of the company petition, the entire substratum would be lost and the grievances cannot be remedied. The said order is in force. He would submit that in view of the dictum of the Apex Court in " M/s. World Wide Agencies Pvt. Ltd. and another Vs. Mrs. Margarat T. Desor and others, that even the legal representative has a right over the permit, as such right is devolved on the third respondent from her father. He would also submit that without reference to the third respondent and without even conducting mandatory meeting, the brother of the third respondent and her mother were alone made as Directors. Further, four new Directors were appointed again without following the mandatory requirements. He would also submit that the decision of the Board of Directors to transfer the permit was not unanimous. In the circumstances, the third respondent would be an aggrieved person and has locus standi to object to the transfer of permit on valid grounds.

8. I have also heard Mr. N. Muralikumaran, learned counsel appearing for the petitioners in implead petition in W.P.M.P. No. 39169 of 2003. According to the learned counsel, the petitioners are admittedly the Directors of the company even according to the deponent. They objected to the transfer of permit in the Board's meeting. Therefore, they are necessary parties to the writ petition and they should be also heard before any transfer of permit is effected. Similarly, Mr. V. Subramanian, learned counsel appearing for the petitioners in implead petition in W.P.M.P. No. 40084 of 2003 would also submit that the petitioners were also Directors, the first petitioner being the Managing Director and hence they are also entitled to be heard by the Transport Authority before any transfer is effected.

9. I have carefully considered the respective submissions. Mr. M. Palani, learned counsel for the writ petitioner would fairly submit that he has no objections for ordering the implead petitions as they may be necessary parties to the writ petition. In view of the said fair submission. W.P.M.P. Nos. 39169 and 40084 of 2003 are ordered and the petitioners in those petitions are impleaded as respondents 4 to 9 in the writ petition.

10. On the above factual background, let me now consider the rival claims of the petitioner and the third respondent. Much reliance is placed on Section 82(1) of the Motor Vehicles Act, 1988 and the order of this Court in W.P. Nos. 2619 and 2620 of 1996 dated 27.6.2003 to contend that the third respondent has no locus standi to object to the transfer of permit as she is not either a shareholder or a Director of the transferor company. Section 82 of the Motor Vehicles Act, 1988 reads as under:-

"Transfer of permit.-(1) Save as provided in sub-section (2), a permit shall not be

transferable from one person to another except with the permission of the transport authority which granted the permit and shall not, without such permission, operate to confer on any person to whom a vehicle covered by the permit is transferred any right to use that vehicle in the manner authorized by the permit.

(2) Where the holder of a permit does, the person succeeding to the possession of the vehicle covered by the permit may, for a period of three months, use the permit as if it had been granted to himself:

Provided that such person has, within thirty days of the death of the holder, informed the transport authority which granted the permit of the holder and of his own intention to use the permit:

Provided further that no permit shall be so used after the date on which it would have ceased to be effective without renewal in the hands of the deceased holder.

(3) The transport authority may, on application made to it within three months of the death of the holder of a permit, transfer the permit to the person succeeding to the possession of the vehicles covered by the permit:

Provided that the transport authority may entertain an application made after the expiry of the said period of three months if it is satisfied that the applicant was prevented by good and sufficient cause from making an application within the time specified."

Following are the relevant Rules under the Tamil Nadu Motor Vehicles Rules, 1989 relating to the transfer of permit and the same reads as under:-

"208. Permit-transfer of.-When the holder of a permit desires to transfer the permit to some other person under sub-section (1) of section 82, he shall together with the person to whom he desires to make the transfer make joint application in writing to the Transport Authority by which the permit was issued, setting forth the reasons for the proposed transfer. Fee for transfer of permit shall be as prescribed in the Table under rule 279.

209. Particulars of premium etc.-On receipt of an application under rule 208 the Transport Authority may require the holder and the other party to state in writing whether any premium, or payment of other consideration arising out of the transfer, is to pass, or has passed between them and the nature and amount of any such premium, payment or other consideration.

211. Summoning of parties.-The Transport Authority may summon both the parties to the application for the transfer of a permit to appear before it. If the application raises doubts or suspicion of trafficking in permits or involves transfer to a person who in the opinion of the Transport Authority is not qualified and eligible for the grant of a new permit, the application shall be rejected."

These provisions in fact came up for consideration before a learned single Judge of this Court in W.P. Nos. 2619 and 2620 of 1996. That was a case where one M.

Muthusami Thevar had a stage carriage permit. Since he became ill, he decided to transfer the permit in favour of his daughter-in-law. A joint application was filed before the Transport Authority. On the basis of the application permit was also transferred. One M. Doraiswami claiming to be the son of the said Muthusami Thevar through his first wife, filed an appeal before the State Transport Appellate Tribunal questioning the transfer on the ground that he was not heard. The appeal was allowed and the matter was remanded to the original authority for fresh consideration and disposal. The said order of the Tribunal was questioned by Muthusami Thevar and his daughter-in-law separately in the above two writ petitions. On the facts of that case, while considering the provisions of Section 82(1) and the relevant rules, this Court held that the enquiry u/s 82(1) is only with a view to ascertain about the question relating to trafficking in permit or qualification of the transferee for the grant of new permit and the provisions do not contemplate issuing of any notice to any third party claiming right over the permit. In fact the learned counsel relied upon the order in C.R.P. Nos. 1052 of 1982 and 4561 of 1983 dated 15.4.94 holding that "the rules at the relevant point of time when the petitioner/objector objected to the transfer, he had no right or locus standi whatever to make any objection to the transfer he being not a party to the joint application filed and consequently could not be said to be a person aggrieved to file any appeal or revision under the provisions of the Motor Vehicles Act, 1939".

11. It is true that in view of Section 82(1) of the Act, notice is contemplated only to the transferor and transferee and the enquiry contemplated under the said section is with a view to ascertain the question relating to trafficking in permit or qualification of the transferee for grant of new permit. Under the said section, the transferor and for that matter the applicants in the joint application are entitled to the notice.

12. With the above law kept in mind, it should be now considered as to whether the third respondent is entitled to object to the transfer of permit. It must be kept in mind that the above orders, heavily relied upon by the learned counsel for petitioner, were passed in respect of the case where the transferor in whose name the permit individually stood intended to transfer the permit in favour of the transferee. Only in that context this Court held that a third party who is no more interested in the permit and is not a permit holder is not entitled to be heard. The permit in that case was in the individual name of one Muthusami Thevar. His decision to transfer the permit in favour of his daughter-in-law, was questioned by one M. Doraiswami claiming himself to be son. In the revision petitions, objections were sought to be made by a third party being an operator running on the same route. The decisions rendered were only on the above facts of the case.

13. Coming to the facts of this case, it is not in dispute that the permit stands in the name of the writ petitioner company and not individually either in the name of the deponent or of the Directors. The deponent claims that he is the Managing

Director of the company and by a majority decision of the Board of Directors a joint application was filed to transfer the permit. Fact is also not in dispute that the impleaded fourth and fifth respondents by names Mrs. S. Parvatham and Mr. S. Panneerselvam are admittedly the Directors of the petitioner company even according to the deponent. According to them, there was no resolution authorising anybody to sell the bus and transfer the permit. The decision to transfer the permit by meagre sum is only to defeat them of their legitimate share. Insofar as the third respondent, it is her specific case that she is the daughter of S.R. Subramaniam, the then Managing Director who held 50% of the shares of the company. There is a dispute pending as to the appointment of the deponent as Managing Director before the Company Law Board wherein the third respondent has not only sought for a direction to set aside all legal resolutions passed in the Board's meeting alleged to have been conducted after the death of S.R. Subramaniam, but has also specifically sought for a direction to set aside the alleged Board meeting dated 19.5.2003 resolving to transfer the permit. She has also filed interlocutory application wherein the Company Law Board has passed the following order:-

"I have considered the arguments of both counsel for the petitioner as well respondents 1 to 3. At this stage, I am not considering merits of the case. However, the admitted position is that the lone valuable asset owned by the Company is the bus bearing Regn. No. TN-57C-9000. If this asset is sold, during pendency of the Company Petition, then the entire substratum would be lost and the grievances, if any, cannot be remedied. In the circumstances, without prejudice to the contentions of either of the parties, the Company will maintain status-quo in regard to the bus, being the subject matter of the Company Petition, until further orders. While passing this order, I have not interfered with the authority of the R.T.O. under the Motor Vehicles Act."

Since the permit stands in the name of the petitioner company and not in the individual names of either the Managing Director or any one of the Directors, the right of the third respondent should be considered with reference to her claim on the ground that she is the daughter of the then Managing Director who held nearly 50% of the total shares of the company. Right of a legal heir even to maintain an application under Sections 397 and 398 of the Companies Act, 1956 came up for consideration before the Apex Court in M/s World Wide Agencies Private Limited case (supra). That was a case relating to the transmission of shares of the company more particularly, with regard to the illegal operation of the bank accounts etc. A petition was filed under Sections 397 and 398 of the Companies Act and in the alternative for winding up of the company by the respondents therein. The issue as to the maintainability of the petition by the persons who are not members of the company, as their names were not recorded in the register of members, ultimately came up for consideration before the Apex Court in the said judgment. The Apex Court posed two questions of law for consideration. The first being whether the legal heirs of a deceased shareholder can be treated as members of the company for the purpose of maintaining a

petition under Sections 397 and 398 of the Act, and the second being, whether a composite petition under Sections 397, 398 and 433(f) of the Act is maintainable. We are not concerned with the second question posed by the Apex Court, as the same is not applicable to the facts of this case. After elaborately considering the first question, the Apex Court ultimately held as follows:-

"Admittedly in the present case, the legal representatives have been more than anxious to get their names put on the register of members in place of deceased member, who was the Managing Director and Chairman of the company and had the controlling interest. It would, therefore, be wrong to insist their names must be first put on the register before they can move an application under Ss.397 and 398 of the Act. This would frustrate the very purpose of the necessity of action. It was contended on behalf of the appellant before the High Court that if legal representatives who were only potential members or persons likely to come on the register of members, are permitted to file an application under Ss.397 and 398 of the Act, it would create havoc, as then persons having blank transfer forms signed by members, and as such having a financial interest, could also claim to move an application under Ss.397 and 398 of the Act. The High Court held that this is a fallacy, that in the case of persons having blanks transfer forms, signed by members, it is the members themselves who are shown on the register of members and they are different from the persons with the blank transfer forms whereas in the case of legal representatives it is the deceased member who is shown on the register and the legal representatives are in effect exercising his right. A right is devolved on them through the death of the member whose name is still on the register. In our opinion, therefore, the High Court was preeminently right in holding that the legal representatives of deceased member whose name is still on the register of members are entitled to petition under Ss.397 and 398 of the Act. In the view we have taken, it is not necessary to consider the contention whether as on the date of petition, they were not members."

14. The above paragraph is the authority as to the law in issue. The claim of the third respondent that she is the daughter of S.R. Subramaniam, the then Managing Director who held 50% of the shares of the company is not disputed. Therefore, a right has devolved on her on the death of her father. Mr. M. Palani, learned counsel for the petitioner would however submit that in the case before the Apex Court, the name of the deceased member remained in the register. Therefore, in that context the Apex Court held that the legal representatives are entitled to maintain the petition. On the contrary, in this case, name of the deceased member viz., S.R. Subramaniam is not in the register and therefore that judgment is not applicable to the facts of this case. The said submission is totally misconstrued. For the purpose of filing an application under Sections 397 and 398 of the Companies Act, of course, the name of the member should remain in the register. Only in that context the Apex Court held that the petition was maintainable by the persons who are not members but claim to be the legal heirs of the member whose name is still in the register. In the event an enquiry

is held u/s 82(1) of the Act, whenever a transfer of permit is sought and the permit stands in the individual name, the transferor viz., the permit holder and the transferee are alone entitled to be heard. In case the permit stands in the name of the company, each of the Director or for that matter the legal heir of the deceased Director on whom a right is devolved shall also be entitled to be heard.

15. Coming to the facts of this case, though the name of the deceased member is not in the register, for the purpose of filing objections before the Transport Authority, it will be only sufficient for the third respondent to satisfy that she is a legal heir of the deceased S.R. Subramaniam and consequently is entitled to inherit the proportionate share held by her father in the company. When such right is devolved on the third respondent over the share of her father, the right to object the transfer of permit cannot be denied as any disposal of the permit may likely affect her also, especially the sale consideration and the very decision of the Board to sell the bus and transfer the permit are in dispute. In this context, it is also to be seen that after the demise of S.R. Subramaniam, an agreement dated 31.1.2001 was also entered into between the Directors and the legal heirs of the said S.R. Subramaniam including the third respondent whereby, it was agreed that the third respondent and the other legal heirs of the deceased S.R. Subramaniam will be paid a sum of Rs. 17 lakhs within a period of six months in lieu of the value of the shares held by the deceased S.R. Subramaniam. The said amount was not paid as agreed and the agreement lapsed by efflux of time. But for the purpose of adjudging the claim of the third respondent, it must be seen that even it is the admitted case of the deponent and other Directors that the third respondent is also entitled to the proportionate share of the assets held by the deceased S.R. Subramaniam in the company.

16. For all the above reasons, I find that the third respondent is a person entitled to make objections as to the transfer of permit on valid and available grounds. Accordingly, I hold that the third respondent has locus standi to maintain her objection before the Transport Authority in the enquiry u/s 82(1) of the Motor Vehicles Act seeking for the transfer of permit, which stand in the name of the company, in favour of the second respondent. In that view of the matter, I do not find any merit to issue the writ as prayed for. Accordingly, the writ petition fails and the same is dismissed. No costs. Consequently, W.P.M.P. No. 36361 of 2003 and W.V.M.P. Nos. 2158. 2164 and 2207 of 2003 are closed.