
(1980) 01 MAD CK 0078
In the Madras High Court

The State Transport Authority

APPELLANT

Vs

S. Chinnaraju

RESPONDENT

Date of Decision : 10-01-1980

Acts Referred:

Motor Vehicles Act, 1988 — Section 54, 55, 56, 57, 58

Citation : (1980) ILR (Mad) 358 : (1981) 1 MLJ 214

Hon'ble Judges : M.M. Ismail, C.J

Bench : Single Bench

Judgement

M.M. Ismail, C.J.—This is an appeal against the judgment and order of V. Ramaswami, J., dated 28th February, 1979, allowing W. P. No. 3909 of 1978.

2. Most of the facts are not in controversy. The respondent herein was the grantee of a National permit in the proceedings of the State Transport Authority, Madras, the appellant herein, dated 9th May, 1978. The proceedings communicated to the respondent herein stated that the grantee shall produce the registration certificate of the vehicle with valid fitness certificate and valid insurance certificate with current tax paid together with a remittance of Rs. 500 being the authorisation fee by way of crossed bank draft in favour of the appellant herein within two months from the date of the receipt of the order, which time could be extended specially for valid and adequate reasons on specific requests, failing which the sanction accorded was liable to be revoked. The said proceedings were received by the respondent herein on 13th May, 1978. The respondent remitted a sum of Rs. 500 being the authorisation fee referred to above, before 13th July, 1975, the two months' period referred to in the proceedings. However, he was not able to produce the vehicle within the two months' time. On 7th July, 1978, he applied to the appellant herein for extension of time and also stated that there was scarcity of Leyland lorries and that that was the reason why he was not able to produce the lorry. He also produced a letter from Masses T. V. Sundaram Iyengar and Sons Ltd., stating that the respondent had placed an order for purchase of a lorry, that they could not

comply with his request due to scarcity of vehicles and that they would be in a position to supply the same in the beginning of August, 1978. The appellant in his proceedings dated 2(sic)th July, 1978, acting under Rule 163(b) of the Motor Vehicles Rules, 1940, granted time upto 12th September, 1978, with a rider that no further extension would be granted. The significance of the terminal date 12th September, 1978 is that since the original proceedings dated 9th May, 1978, were received by the respondent on 13th May, 1978, the four months' time which he would have had would expire by 12th September, 1978. The respondent herein on 11th September, 1978 filed another petition for extension of time for producing the vehicle, as he had to build up the body on the chassis purchased by him on 11th September, 1978. On 22nd September, 1978, the appellant rejected the said petition on the ground that he had no jurisdiction to extend the time under Rule 163(b) beyond the period of four months and that the said period of four months from 13th May, 1978, expired on 13th September, 1978. He accordingly revoked the sanction already granted. It is to quash the said order that the writ petition in question was filed by the respondent herein.

3. The learned Judge allowed the writ petition on the ground that Rule 163(b) of the Tamil Nadu Motor Vehicles Rules authorised the permit granting authority to give time upto four months, that it did not contemplate the authority granting time for a period of less than four months, that only on 20th July, 1978, the appellant herein referred to Rule 163(b) of the Rules in his proceedings and in the original order dated 9th May, 1978, there was no reference to Rule 163(b) at all and that consequently it must be held that the time of two months granted by the proceedings dated 9th May, 1978, was only ex gratia and the statutory time-limit prescribed under Rule 163(b) commenced only from 20th July, 1978, when the appellant expressly referred to Rule 163(b). It is the correctness of this conclusion that is challenged in the present writ appeal filed by the State Transport Authority.

4. The matter to be considered in this appeal is the scope and effect of Rule 163(b) of the Tamil Nadu Motor Vehicles Rules, 1940 and whether the order of the learned Judge is correct with reference thereto.

5. Rule 163(a) of the Rules states that no permit shall be issued until the registration mark of the vehicle to which it relates has been entered therein.

6. Rule 163(b) consists of two paragraphs and the same after its amendments in 1978 and 1979 reads as follows:

163(b) when the applicant is unable to produce the certificate of registration on the date of his application for the permit, for the reason that he is not on that date in possession of a vehicle duly registered, or for some other reason, the Transport Authority or the Tribunal, as the case may be, shall grant him four months' time to be, reckoned from the date of receipt of the orders passed by them on the application, to produce the certificate of registration of the vehicle before the Transport Authority which has to issue the permit in order that

particulars of registration mark may be entered in the permit. In cases where the State Transport Authority's order is stayed by the State Transport Appellate Tribunal and is subsequently vacated, the time for production of the registration certificate should be calculated from the date of receipt of the order of State Transport Appellate Tribunal confirming the Transport Authority's order. If, however, the applicant acquired the vehicles and is able to produce the certificate of registration thereof within the four months' time allowed under this Rule, the Transport Authority concerned shall issue the permit in respect of that vehicle, provided that in cases where the orders of the Transport Authority or Tribunal for issue of permit are stayed by the High Court and the order of stay is vacated subsequently, the time for production of the records shall be calculated from the date of pronouncement of the order of the High Court vacating the stay.

The acquisition of a vehicle in pursuance of an order sanctioning the permit shall be at the sole risk of the applicant as the order sanctioning the permit may be reversed on appeal or revision under the Motor Vehicles Act and Rules and such acquisition shall not be deemed to be a point in favour of the applicant while disposing of the appeal or revision. If any applicant fails to produce the certificate or registration, together with current fitness certificate, within the four months' time, the Transport Authority, or the Tribunal, as the case may be, shall revoke its sanction:

Provided that in the case of permits for tourist vehicles, the time for production of certificate of registration of the vehicle shall be six months reckoned from the date of receipt of orders passed on the application to produce the certificate of registration of the vehicle before the Transport Authority.

It is true that Rule 163(b) merely uses the expression "four months" time" and it does not say whether the said four months" time should be given at a time or in aggregate on different occasions by way of extending the shorter time already granted, Mr. T. Chengalvaroyan, learned Counsel for the respondent, sought to support the conclusion of the learned Judge by pointing out that the rule merely talks of four months" time being granted at the first instance itself and that it does not refer to any aggregate period amounting to four months which alone will contemplate the grant of a shorter period than four months and the subsequent extension thereof once or more than once. We are unable to accept this argument. When Rule 163(6) refers to four months" lime, it does not say whether that time should be granted at one instance or by way of subsequent extensions, the aggregate periods totalling to four months. In such a context, we are unable to agree with the learned Judge as well as the learned Counsel for the respondent that simply because the appellant on 9th May, 1978, gave only two months time, he was not exercising his powers under Rule 163(b) and that he was granting that time ex gratia. Further, it is well settled that whenever a statutory authority exercises any power and performs any function, the said exercise and performance is relatable to the statutory provisions which confers the power and authorises the exercise of the function, even though the

proceedings themselves do not mention the particular statutory provision. Consequently, no inference can be drawn from the fact that in the proceedings dated 9th May, 1978, no reference was made to Rule 163(b) and that such a reference was made only in the proceedings dated 20th July, 1978. Apart from that, we are unable to appreciate the finding of the learned Judge that there can be any ex gratia grant of time by a Statutory authority like the appellant herein.

7. Even assuming for the sake of arguments that under Rule 163(b) the appellant was bound to give four months" time by his proceedings dated 9th May, 1978, itself and therefore his conduct in granting two months" time by the said proceedings was illegal, it does not necessarily follow that the respondent will be entitled to a fresh four months" period from 20th July, 1978. However if according to the respondent, the action of the appellant on 9th May, 1978, granting two months" time was illegal and he was entitled to four months" time from the date of the receipt of the proceedings on 13th May, 1978, all that he can contend is that he had a right to claim a period of four months from 13th May, 1978, without being under an obligation to apply for extension of time on the expiry of two months. Even if that position is accepted, the appellant had not produced the vehicle and the registration certificate within the four months" time from 13th May, 1978. and therefore the respondent will not be entitled to any further extension of time and consequently the appellant had no alternative but to revoke the sanction.

8. Mr. Chengalvaroyan, learned Counsel for the respondent, sought to argue that the provision for revocation of sanction occurs only in the last sentence of the second para, in Rule 163(b) and that therefore the rule must be taken to have contemplated the reckoning of the period of four months from the date of the disposal of the appeal by the Appellate Tribunal and not from the date of the receipt of the proceedings of the original authority, namely, the appellant herein. Having regard to the very detailed provisions in Rule 163(b) providing for all possible contingencies and in view of the categorical expression contained in the opening of Rule 163(b) that the said four months" time should be reckoned from the date of the receipt of the orders passed, we cannot accept the argument of the learned Counsel for the respondent.

9. The learned Counsel for the respondent then contended that Rule 163(b) itself did not apply to the present case, because the permit granted by the appellant in favour of the respondent was a national permit and with reference to such a national permit, Section 63(15) of the Motor Vehicles Act, 1939, contemplated the Central Government framing rules, that the Central Government have not framed any such rules and that therefore the appellant was not bound by any time-limit of four months, as provided in Rule 163(6). We are unable to accept this argument either. It is true that such a contention was put forward by the respondent in the affidavit filed in support of the writ petition; but the learned Judge, since he allowed the writ petition on another ground, did not go into the same. Consequently, we have to examine this contention

10. Section 63(1) of the Motor Vehicles Act states:

63(1). Except as may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region shall not be valid in any other region, unless the permit has been countersigned by the Regional Transport Authority of that other region, and a permit granted in any one State shall not be valid in any other State unless countersigned by the State Transport Authority of that other State or by the Regional Transport Authority concerned.

There are two provisos to this section, which it is unnecessary to refer to for the purpose of this case. Sub-section (11) was introduced into this section by the amending Act XXVI of 1976. That Sub-section reads as follows:

63(11). Notwithstanding anything contained in Sub-section (1), but, subject to the rules that may be made by the Central Government under Sub-section (15), the appropriate authority may, for the purpose of encouraging long distance inter State Road Transport, grant to the public carriers in a State such number of national permits as the Central Government may specify in this behalf in relation to that State and the provisions of Sections 54, 55, 56, 57, 58, 59, 59-A, 60, 61 and 64 shall, as far as may be, apply to or in relation to the grant of national permits. Provided that the number of national permits specified for a State shall not be varied or modified except after consultation with the concerned State Government.

There is an Explanation to this sub-section which, among others, defined the expression "national permit" as meaning a permit granted by the appropriate authority to a public carrier authorising him to operate as a public carrier throughout the territory of India or in such contiguous States, not being less than five in number (including the State in which the permit is issued), as may be specified in such permit in accordance with the choice indicated by the public carrier to whom such permit is granted.

11. The Central Act XXVII of 1977 amended the above provision by substituting the expression, "grant in a State, national permits to the owners of motor vehicles who use, or intend to use, such vehicles for the carriage of goods for hire or reward, in respect of such number of motor vehicles" for the expression "grant to public carriers in a State such number of national permits" occurring in Sub-section (11) and by substituting the expressions "to the owner of a motor vehicle authorising him to operate as a public carrier" and ""indicated by such owner" respectively for the expressions "to a public carrier authorising him to operate as a public carrier" and "indicated by the public carrier" occurring in the Explanation to Sub-section (11).

12. Sub-section (15) of Section 63, as introduced by Act XXVI of 1976 reads as follows:

15(a). The Central Government may make rules for carrying out the provisions of Sub-section (11).

(b) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

- (i) the authorisation fee payable for the issue of a national permit;
- (ii) the fixation of the laden weight of the motor vehicle;
- (iii) the distinguishing particulars or marks to be carried or exhibited in or on the motor vehicle;
- (iv) the colour or colours in which the motor vehicle is to be painted;
- (v) any matter, not specified in this Act. which shall be borne in mind by the appropriate authority in granting of national permit.

The contention of Mr. T. Chengalvaroyan is that Sub-section (11) of Section 63 has to be read with Sub-section (15)(b)(v) of Section 63 of the Act, and if so read, it will be clear that it is the Central Government which could make a rule prescribing the period within which the registration certificate and the vehicle should be produced and that the Central Government not having made any such rule, Rule 163(b) as such has no application. We are unable to accept this argument. A reading of Sub-section (11) of Section 63 will make it clear that it dislodges the provisions of Section 63(1) to the extent to which under that sub section the validity of a permit granted by the Regional Transport Authority is confined to that region and the validity of a permit granted by the State Transport Authority is confined only to that State and provides that in respect of grant of a national permit, these barriers have been removed. Except to this extent, Sub-Section (11) does not displace all the other provisions of the Act or the rules applicable to the grant of permits by the authorities contemplated by the Act. similarly, the rule contemplated by Sub-section (15) (b) (u) of Section 63 cannot have any reference to the period fixed for the production of the vehicle or the registration certificate as the case may be. Hence we are of the opinion) that the contention of the learned Counsel for the respondent that it is only the rule that may be made by the Central Government u/s 63(15) (b) (v) that will govern the case of the respondent and not Rule 163(b), which is very general in terms; fails.

13. Under these circumstances, we allow the writ appeal, set aside the order of the learned Judge and dismiss the writ petition filed by the respondent herein. There will be no order as to costs.

14. It goes without saying that if the respondent herein, who had obtained a vehicle and who was ready to produce the same, though after the expiry of the period of four months from 13th May, 1978, applies for a permit, certainly the same will have to be considered taking into account the peculiar facts of his case and the fact that it was not the respondent who was responsible for not being able to produce the vehicle within the period of four months as contemplated by Rule 163(6) of the Rules.