
(1996) 12 MAD CK 0073
In the Madras High Court

The Transport Commissioner

APPELLANT

Vs

Jasmin Roadways

RESPONDENT

Date of Decision : 04-12-1996

Acts Referred:

Motor Vehicles Act, 1988 — Section 88(4)

Citation : (1997) 1 MLJ 540

Hon'ble Judges : K.A. Swami, C.J

Bench : Division Bench

Judgement

K.A. Swami, C.J.—These two writ appeals are preferred by the Transport Commissioner, Chennai, against the common order dated 30th July, 1996 passed by the learned single Judge allowing Writ Petition Nos. 2552 of 1995 and 561 of 1996.

2. In Writ Petition No. 2552 of 1995, the petitioner has prayed for issue of a writ of certiorari to quash the order dated 22.1.1995 passed by the Transport Commissioner in Proceedings R.No. E2/48055/94 demanding a sum of Rs. 1,04,400 being the difference of the tax which had become payable, according to the Transport Commissioner, in view of the fact that after the permit was transferred to the petitioner, he did not immediately obtain the counter-signature and as such, there had been delay in applying for continuance of counter-signature for the period from 13.4.1993 to 12.7.1994. In the other writ petition, the petitioner has prayed for issue of a writ of mandamus directing the Transport Commissioner to grant counter-signature to the permit.

3. The learned single Judge has taken the view that there is no time-limit prescribed for grant of counter-signature to the permit relating to the route covered by inter-State Agreement when it is transferred by the permit-holder to another. Therefore, the delay in making the application for grant of counter-signature did not have the effect of taking away the permit out of the inter-State Agreement covering the route and thereby did not make him liable for payment of the tax as demanded.

4. The learned Government Pleader appearing for the appellant has laid a stress on the fact that counter-signature was required to be obtained by the petitioner immediately on the transfer, which was effected on 13.4.1993; that as per Rule 213(5) of the Tamil Nadu Motor Vehicles Rules (hereinafter referred to as "the Rules"), on the transfer of the permit, the counter-signature, ceased to exist, therefore, during the period, when the counter-signature ceased to exist, the concession available in payment of tax was not available to the petitioner, hence, the demand made for payment of the motor vehicles tax is justified. On the contrary, it is the contention of the learned Senior Counsel for the respondent in the appeals that the counter-signature of the permit covered by the route relating to Inter-State Agreement is covered by Section 88(4) of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") Rule 213 of the Rules does not cover the counter-signature, that there is a distinction maintained in the Rules relating to counter-signature, endorsement and extension of the permit. That being so, the fact that there was a delay in making an application for counter-signature did not in any way affect the operation of the permit, as it was the one relating to the route covered by Inter-State Agreement and as such, it cannot be said that the petitioner had become liable for payment of the amount of tax as demanded by the Transport Commissioner.

5. Section 88 of the Act which occurs in Chapter V relates to validation of permits for use outside region in which it is granted. Section 88(4) of the Act further provides that the provisions of that Chapter relating to the grant, revocation and suspension of permits shall apply to the grant, revocation and suspension of counter-signatures of permits. The proviso thereto specifically exempts the procedure to be followed for grant of counter-signature in relation to the routes covered by Inter-State Agreement. The said proviso reads thus:

Provided that it shall not be necessary to follow the procedure laid down in Section 80 for the grant of counter-signatures of permits, where the permits granted in any one State are required to be countersigned by the State Transport Authority of another State or by the Regional Transport Authority concerned as a result of any agreement arrived at between the States after complying with the requirements of Sub-section (5).

In cases where an agreement has been arrived at as per Sub-section (5) of Section 88 of the Act and the route does not fall outside the area and falls within the area, covered by the said agreement, without following the procedure prescribed for grant of permit, counter-signature can be granted by the State Transport Authority of another State or by the Regional Transport Authority concerned as a result of any agreement arrived at between the States after complying with the requirements of Section 88(5) of the Act.

6. When we come to Rule 195 of the Rules, the said rule relates to "Permit-renewal of endorsement or extension". Rule 196 of the Rules deals with "Endorsements in permits." Both the rules do not speak of counter-signature, whereas Sub-rule (5) of Rule 197, which relates to "Validity of permit," says that

"any permit issued by a primary authority during the subsistence of a concurrence shall notwithstanding the | dissolution thereof under Sub-rule (4) remain effective in the complementary region so long as the permit is valid, as if it had been countersigned in that region." Sub-rule (6) of Rule 197 further states that nothing contained in Sub-rules (1) to (5) shall be deemed to preclude a complementary authority from countersigning any permit u/s 88 upon an application made to it. Therefore, the requirements prescribed in Sub-rules (1) to (5) of Rule 197 of the Rules will not apply for a complementary authority counter-signing any permit u/s 88 of the Act, upon an application made to it. Rule 279 of the Rules, which prescribes the fee to be paid on the application filed under the Act for various purposes including the one for continuance of endorsement and counter-signature, separately fixes the fee for continuance of endorsement or extension of validity of permit and for continuance of counter-signature of permit in respect of other State vehicle. In this background, if we read Rule 213(5) of the Rules, which does not at all refer to counter-signature, the picture becomes clear that Rule 213(5) does not relate to counter-signature. The said rule read thus:

(5) If a permit has been endorsed or extended under the provisions of these rules, the endorsement or extension shall cease to have effect on the date of transfer unless the Transport Authority or by its Secretary if so authorised in this behalf which granted the endorsement or extension directs that it shall be continued. An application for the continuance of endorsement or extension of validity shall be accompanied by a fee as specified in the Table under rule 279.

Similarly Sub-rule (7) of Rule 213 only provides that an application for continuance of counter-signature of permit in respect of a vehicle of other State shall be accompanied by a fee as specified in the Table under Rule 279. Reading all these rules together, the inference, rather the conclusion is inevitable that in the case of counter-signature of the permit relating to the route covered by the Inter-State Agreement, even on transfer of such permit, there is no time-limit for making an application for continuing the counter signature. In fact, there is no provision prescribing the time-limit. Of course, it cannot be said that the counter-signature does not come to an end when the permit itself lapses. If the approval of the transfer is not obtained as per the provisions of the Act and the Rules, the permit itself lapses, the counter-signature cannot be held to subsist. But in the instant case, immediately on transfer, the transfer has been got approved as per the provisions of Rules 213 of the Rules. Hence, we are of the view that the demand made by the Transport Commissioner cannot be sustained. The permit does not cease to exist, for it is the one relating to the route covered by the inter-State Agreement and there is no time-limit for obtaining the approval of the counter-signing authority as a consequence of transfer of such permit.

7. The decision relied upon by the learned single Judge in *Taj Mahal Transports (P) Ltd., Melapalayam, Tirunelveli Vs. Secretary, Regional Transport Authority, Tirunelveli and Another*, does not deal with the question of counter-signature. It

only deals with what passes to the transferee on the transfer of permit. Similarly, the decision in *M. Duraiswamy Vs. Sri Murugan Bus Service and Others*, also deals with the case of counter-signature of the permit relating to the route not covered by the inter-State agreement.

8. In the light of what is stated above, the mandamus issued by the learned single Judge for granting counter-signature cannot be held to suffer from any infirmity, as there is no option left to the Authority but to grant the counter-signature.

9. For the reasons stated above, the appeals fail and they are dismissed. No costs.

10. The Civil Miscellaneous Petitions are also dismissed.