

(1963) 01 MAD CK 0014

In the Madras High Court

Case No : Writ Petition No's. 732 of 1960 and 810 of 1961

V. Maruthavanan

APPELLANT

Vs

M. Balasubramaniam and Others

RESPONDENT

Date of Decision : 16-01-1963

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 127A, 47(1), 64

Citation : AIR 1963 Mad 292 : (1964) ILR (Mad) 71 : (1963) 76 LW 286 :
(1963) 1 MLJ 295

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Advocate : S. Mohan Kumaramangalam and M.N. Rangachari, K. Rajah Iyer, for C.S. Prakasrao, for the Appellant; A.G., S.V. Patrachari and S. Mohan for Addl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Veeraswami, J.—By its order dated 24-5-1960 the Tribunal set aside the grant of a single permit to the petitioner and granted the same to

the first respondent. The route is Annamalainagar to Kothamchari, which is a short route. This petition is to quash the Tribunal's order.

2. The only point argued by Mr. Mohan Kumaramangalam for the petitioner is that the first respondent having applied for a permit as a firm but

during the pendency of its appeal before the Tribunal, the firm having been dissolved by one of the two partners going out of it, the appeal became

infructuous.

3. The argument so addressed is based on the assumption that the application was by a firm. Though it does not appear to have been noticed by

either the Regional Transport Authority or the Tribunal and the parties proceeded

on the footing that the application was by the firm

Balasubramaniam and Co. on the actual verification of the original application it is found that the application was by M. Balasubramaniam, son of

A. R. Muthiah Pillai. Whether the application was by a firm or by an individual will have to be decided by the terms themselves of the application.

The form of the application should be as prescribed by the rules namely S.P.C.A.

As is evident from the form, the first column relates to the name of the applicant. Against this column the only name given is M. Balasubramanian,

son of A. R. Muthiah Pillai. Column 2(a) relates to the "name of the father and the nature and extent of his financial interest in existing road

transport undertaking." But this column was left blank apparently because in column (1) the firm's name has already been given. Clause (2) (b)

requires information to be given in the case of partnership and registered or unregistered firm specifying the names of all persons constituting the

body, the nature and extent of the financial interest of each of these persons in existing road transport undertaking. While filling up of this column it

is stated "M. Balasubramaniam, managing partner and K. Natarajan, partner. Share capital Rs. 25,000 each. I have service experience as the

manager for Lakshmi Bus service, Chidambaram.

4. Then comes the address column and the address is given as "M. Balasubramaniam and Co, No. 61 Malaikatti St, Chidambaram." The next two

columns require mention about the particular route for which the permit is applied and the details of the vehicle. From the 8th column it is seen that

no vehicle had been purchased at the time of the application. The payment as seen, from the chaltan also was in the name of Balasubramaniam,

managing partner. The application was signed as "M. Balasubramaniam, managing partner". Nowhere in the application does it appear that M.

Balasubramaniam applied for and on behalf of the firm. From the information supplied against column 2(b) and the signing of the application as "M.

Balasubramaniam, managing partner" alone, it cannot be interred that the application itself was on behalf of the firm. It the application was not on

behalf of the firm, as I am inclined to think it was not, the point of law urged by counsel for the petitioner does not fall to be considered.

5. But as a full argument has been addressed to me on the question, I think it but fair to deal with it. The contention is that where a firm of

partnership applied for a permit but failed to get a permit in the first instance and appealed against the refusal and while the appeal was pending one

of the partners went out with the result the firm stood dissolved, the appeal was at an end and no question of thereafter granting a permit to the firm

or one of the quondam partners could arise.

6. Counsel for the petitioner recognised that a firm of partnership unlike an incorporated company, is not a legal entity distinct and different from

the individual members composing it. A firm of partnership is but a creature of contract, its rights and liabilities depending on the terms thereof as

well as the relevant statutory provisions governing partnerships. For certain purposes, as for instance, suing and being sued in the name of the firm,

the firm is recognised as an entity. But except as provided by the law, a firm is but a convenient name to describe a collection of individuals who

enter upon a business or other venture subject to the terms of the agreement inter se. One of the privileges of a partner is to represent the other

partners and the firm and be in a position to act for and on behalf of all the partners. The liability of the firm is joint and several liability of its

partners. It therefore follows that notwithstanding certain privileges or attributes which may tend to show that a firm is an entity, the essence of the

concept is that it is but a convenient name or description of individuals entering into combination upon a joint venture.

It is not the case of the petitioner that the CPC is applicable to the proceedings before the Regional Transport Authority or the Tribunal. Nor has

counsel for the Tribunal invited my attention to anything in the Partnership Act itself which will support his contention that on account of one of the

partners going out and of the consequent dissolution of the firm, the appeal abated. So long as it is clear that a firm is not a legal entity, the

conclusion seems to be irresistible that the application which is purported to be for a firm is in fact and truth one by the individuals who are partners

of the firm. I consider, therefore, that the effect of one of the partners going out is not to render the appeal by the erstwhile firm infructuous or to

make it abate. That precisely was the view expressed by the Tribunal. The Tribunal said, ""The application must in fact be treated as an application

of two persons one of whom has withdrawal and it would be nothing but a technicality to hold that the application is invalid and that the appeal

cannot be pursued by Sri Balasubramaniam.

6. I can find no error in that view even applying the technical test.

7. But Sri Mohan Kumaramangalam developed an argument based on Sections 127-A and 47(1) (a) and (e) of the Motor Vehicles Act. So far as

the first of the sections is concerned, it does not in my view require serious consideration. That section relates to offences and the responsibility

therefore to be fixed upon individuals where the permit-holder is an incorporated company or a firm in the case of an incorporated company the

liability for an offence is cast on every person who, at the time the offence was committed, was in charge of, and was responsible, to the company

for the conduct of its business. There is an explanation to the section which says that a company would include also a firm and a director of a firm

will be equivalent to a partner of the firm. Prima facie the section would appear to proceed on the basis that a firm is a legal entity. But on a closer

examination of the section, it seems to me the section so far as it concerns itself with offences committed by the firm only provides by way of

abundant caution that the liability for the offence should be on the partners or the firm. It is more in the nature of removing a doubt and the section

does not seem to lay down a principle which is not recognised under the law of partnership. The very nature and concept of the firm of partnership

suggests that the liability on the firm is really a liability on each of the individual partners. No more does Section 127-A lay down.

8. As for Section 47(1) (a) and (e) the argument for the petitioner is that the qualification and disqualification which become relevant under those

provisions are those of a firm when it is the applicant and not of any or all the partners of such a firm. The argument again, it must be obvious,

presupposes that a firm is a legal entity. But that does not appear to be the intention of Section 47(1) . An illustration, I think, will show the

unsoundness of the argument. Suppose a fleet owner and an individual new entrant in respect of a permit to be given for a short route entered into

a partnership and the firm applied for the permit. If the argument of Mr. Mohan Kumaramangalam for the petitioner is accepted, notwithstanding

the fact that the fleet owner is one of the partners, the firm as such "must, as a new entrant, be given the permit. That result, in my opinion, is not in

the contemplation of Section 47 (1) (a) and (e). On this aspect of the case, I am

inclined to accept the contention of the learned Advocate General

that where a firm is an applicant, the qualifications and disqualifications to be considered in relation to that firm will not only be of the firm but also

of the individual partners. Otherwise as it seems to me it will lead to all kinds of unhealthy devices.

I may give another instance. Suppose a person who is having a helpless record or is found to be trafficking in permits, enters into a partnership with

another, if the argument of the petitioner is to be accepted, such a person can successfully urge that not all his bad records or his trafficking in

permits can stand in the way of the firm being considered for grant of a permit. Neither the sections relied on by the petitioner nor any other

provision in the Act or the rules to which my attention was drawn compels me to hold that the Tribunal took a wrong view in proceeding upon the

footing that the application in fact was made by two persons jointly and that in the absence of one of them the grant could be made to the other

who continued to remain to prosecute the appeal before the Tribunal.

9. The petition fails and is dismissed But without costs.

10. W. P. No. 810, 1961: This petition is by one of the applicants before the Regional Transport Authority who failed before it as well as the

Tribunal. The Tribunal preferred the first respondent on the ground that he had better experience than the petitioner. There was also 3

consideration by the Tribunal of the workshops each of them had at one of the termini of the route. Dissatisfied with the appraisal by the Tribunal

of the merits of the petitioner, he has applied to this Court to quash the Tribunal's order.

11. From what I have said above, it is obvious that the question pertains to the application of the Government Order relating to the selection

among the competing applicants on the basis of the marking system. There is no question here of the Tribunal committing any error of law as such,

apparent or otherwise, or taking into account any irrelevant or extraneous circumstances Sri K. Rajah Aiyar, for the petitioner, however,

contended that the Tribunal before it made up its mind against the petitioner on the question of experience should have called upon the petitioner to

satisfy it by such proof as he might produce. But the point is that the Tribunal on the materials before it was not satisfied that the petitioner's

experience was better than that of the first respondent. The Tribunal had jurisdiction to decide this on appreciation of the materials before it.

12. I am not satisfied that the Tribunal's order suffers from any error such as this Court can set right in certiorari.

13. The petition is dismissed, but with no costs.