

(1951) 08 MAD CK 0006

In the Madras High Court

Case No : Civil Miscellaneous Petition No. 9968 of 1950

V. Natesa Pillai

APPELLANT

Vs

Central Road Traffic Board and Another

RESPONDENT

Date of Decision : 21-08-1951

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 64

Citation : AIR 1952 Mad 39 : (1951) 64 LW 860 : (1951) 2 MLJ 406

Hon'ble Judges : Subba Rao, J

Bench : Single Bench

Advocate : N. Natesan, for the Appellant; A.G. for State Counsel, T.R. Srinivasan and S. Gopalaratnam, for the Respondent

Final Decision : Allowed

Judgement

Subba Rao, J.—This is an application for issuing a writ of Certiorari to quash the order of the Central Road Traffic Board, Madras, dated

the 16th March 1950 and of the Government of Madras, dated the 14th October 1950.

2. Sri Rama Vilas Service Limited, Kumbakonam, surrendered four permits in respect of route Pudukottai-Tanjore. The Regional Transport

Authority, Tiruchirappalli, called for applications to fill" up the four vacancies. The petitioner, along with others, applied for permits. The petitioner

filed three applications, one for a permit to run a bus between Puddkottai and Tanjore, and two other applications for the variation of the existing

route, Nagarapatti to pudukottai by extending it to Tanjore. The third respondent L. Narayanamurthy and Company, also applied for a permit on

1st December 1949. The Regional Transport Authority passed a resolution granting two permits to the Pudukottai Co-operative Transport

Limited, Pudukottai and one permit to the petitioner in variation Of the route, Pudukottai to Nagarapatti, up to Tanjore, and the fourth permit to

Messrs. Raja-mani Transport Ltd., Pudukottai, in variation of the route, Vendampatti to Pudukottai up to Tanjore. The other applications were

rejected. The third respondent and others whose applications were dismissed preferred appeals against the orders of the Regional Transport

Authority to the Central Road Traffic Board, Egmore, Madras. The third respondent's appeal was directed only against the grant of two permits

to the Pudukottai Cooperative Transports Ltd., and to that appeal the petitioner was not made even a party. The grant of permit to him was not

questioned in that appeal. The Central Road Traffic Board disposed of all the appeals together on 16th March 1950. The appeals filed by the

applicants other"" than the third respondent were dismissed. In the appeal filed by the third respondent he was given a pucca permit in place of the

petitioner and the appeal was allowed to that extent. The petitioner preferred a revision to the Government of Madras, who by an order dated

14th October 1950, declined to interfere. The petitioner has now filed this petition for the issue of a Writ to quash these two orders of the Central

Road Traffic Board and the Government of Madras.

3. Learned counsel for the petitioner contended that the order of the Central Road Traffic Board was illegal, as they had a relief granted to the

third respondent in respect of a permit which was not the subject-matter of the appeal, and against the petitioner, who was not a party to the

appeal. The respondents' counsel contended that though to the particular appeal filed by the third respondent the petitioner was not made a party,

and though the permit issued to the petitioner was not the subject-matter of the appeal, inasmuch as all the appeals were heard together, and as the

petitioner had an opportunity to support the order in his favour, the order of the Central Road Traffic Board was valid. It was further argued that

as another remedy by way of a revision to the Government lay and that remedy was availed of, this petition was not maintainable. The main

question, therefore, in this application is whether the Central Road Traffic Board can give a relief to an appellant in respect of a matter not covered

by that appeal to the detriment of a person not a party to that appeal.

4. It is settled law that a right of appeal can only be conferred by a statute and

the scope of that appeal is also confined to the limits prescribed by the statute. It is also not disputed that the Regional Transport Authority, in exercise of his original Jurisdiction, and the Central Road Traffic Board and the Government in discharge of their appellate and revisional jurisdictions, are bound to act judicially. Section 64 confers appellate Jurisdiction on the Central Road Traffic Board. The relevant provision of that section reads as follows:

Section 64 . Any person (a) aggrieved by the refusal of the Provincial or a Regional Transport Authority to grant a permit or by any condition attached to a permit granted to him..... may within the prescribed time and in the prescribed manner appeal to the prescribed authority who shall give such a person and the original authority an opportunity of being heard.

The prescribed authority under the rules is the Central Road Traffic Board. Under this provision, if a permit is refused to an applicant, he is entitled

to prefer an appeal, to the prescribed authority, if he be aggrieved by such a refusal. The third respondent preferred an appeal as he was not given

the two permits issued to the Pudukottai Co-operative Transports Limited. The memorandum of appeal grounds were directed only against) that

refusal. The only respondent made a party to that appeal was the Pudukottai Co-operative Transports Ltd. A perusal of the appellate grounds

discloses that the third respondent had no grievance against the order issuing a permit to the petitioner or against the order refusing that permit to

him. The subject-matter of the appeal was the issue of two permits to the Pudukottai Co-operative Transports Ltd. The third respondent was

aggrieved only by the issue of the said two permits and his appeal was, therefore, confined to that subject-matter. Section 64 does not in terms or

by necessary implication empower an appellate authority to dispose of appeals in contravention of the well-recognised confines of an appellate

Jurisdiction, The appellate authority, obviously, cannot, therefore, after having dismissed the appeals filed by the other parties, give a relief to the

third respondent in respect of a, matter not before it in that appeal and against a party not impleaded therein. The fact that the Central Road Traffic

Board heard all the other appeals together for convenience could not empower them to dispose of the appeal in a manner which they could not

have done, if the appeal filed by the third respondent was heard separately.

5. I shall now proceed to consider some of the cases cited, which would throw some light on the question raised before me. The principle that no

judgment should be given against a party who had no notice is stated in clear terms in Broom's Legal Maxims, 9th Edition, page 78:

It has long been a received rule that no one is to be condemned, punished or deprived of his property in any judicial proceeding unless he has had an opportunity of being heard.

That maxim was applied by the Court of Appeal in "Rex v. North",; Oakey Ex parte (1927) 1 K.B. 491 to the facts of the case before them.

There a faculty was granted to a vicar and churchwardens to restore a screen in a church. In the course of the work of restoration damage not

authorised by the faculty was done to a fresco. A parishioner interested in the fresco petitioned the consistory Court for a faculty to repair the

damage. The petition alleged that the damage was done by the vicar's order, but did not ask that he should pay the costs. Though a general

citation was issued, no special citation was issued to the vicar. The Judge of the consistory Court granted the faculty asked for and ordered the

vicar to pay expenses of restoration and the costs of the petition. The Court of appeal held that the order made without giving the Vicar an

opportunity of being heard in his defence was without Jurisdiction. At page 504, Stratton, L.J., observed:

..... As I have already said, to order a man to pay what is in the nature of a penalty for an offence without first giving him notice that an

application for such an order is going to be made, is both contrary to the general law of the land, and is so vicious as to violate a fundamental

principle of justice.....

Atkin, L. J., says at page 506:

..... But whether that is so or not I think it is quite plain that the fact of there being a remedy by way of appeal is no answer to a writ of

prohibition where the want of jurisdiction complained of is based upon the breach of a fundamental principle of justice, such as I conceive to have

been the case here.....

The next decision cited is more apposite to the question raised in this application. In the "King v. The Minister of Transport", Ex parte Up minister

Services Ltd. (1934) 1KB 277. the opponents to the grant of a road service

licence and backing authorising the running of a service of motor-coaches along a particular route appealed to the Minister against the grant on the ground that the service was not needed in the Interest of the public. The only subject-matter of the appeal before him was whether the licence and backing had been properly granted. But the Minister made an order to the effect that the Commissioner should revoke the licence and backing as soon as he was satisfied, after consultation with the Traffic Commissioners for the Eastern Area, that adequate provision has been made for road services between Up minister and London. The Court of Appeal set aside that order on the ground that the order of the Minister was in effect an usurpation of the original jurisdiction conferred upon the Commissioner. When it was argued that the Minister, in an appeal filed before him, could pass any proper order, Romer, I J., negating such a broad contention expressed his view in the following words:

..... No one can suppose that the Legislature intended to create a dictatorship in the person of the Minister of Transport; if and when-ever an appeal happened to be brought before him under that section. It is equally incredible that the sub-section should have been intended to give the Minister power to make any order he might think fit relating to road transport in general, or even road transport in the area affected by the matter brought before him on the appeal. The sub-section, after all. Is not one-dealing with the powers of the Minister Of Transport as such. It is dealing with his powers as an appeal tribunal exercising quasi-judicial junctions, and the orders that he may make as such. The most, natural, and, in my opinion, the proper meaning of the sub-section is that the Minister may give such decision on the question raised by any particular appeal as he may think right, and give such directions as may be necessary for giving effect to that decision. But his decision must be confined, as in the case of other judicial or quasi-judicial tribunals, to the questions brought before him on the appeal, and he must not travel outside them.....

I respectively adopt the weighty observations extracted above. The said observations, If applied to the present case would indicate that the Central Road Traffic Board, in setting aside the permit issued to the petitioners, travelled beyond its Jurisdiction and passed an order which it had no power to do.

6. I cannot also agree with the second contention raised by the learned Counsel for the respondents. If the order made by the Central Road Traffic

Board, was without Jurisdiction, the fact that the Government refused to interfere could not give it higher sanctity or make it any the less an order

passed without jurisdiction. Further, the passage extracted from "Rex v. North",; Oakey Ex parte (1927) I K.B. 491 shows that a writ of

certiorari could be issued if fundamental principles of jurisprudence were violated, notwithstanding the fact that an appeal lay against the order

sought" to be quashed.

7. I therefore set aside the orders of the Central Road Traffic Board and the Government of Madras issuing a permit to the third respondent The

respondents will pay costs to the petitioner. Advocate's fee Rs. 100.