

(1971) 11 MAD CK 0046

In the Madras High Court

Case No : Civil Revision Petition No"s. 1716 and 1779 of 1971

V. Shorooop Sundar and Another

APPELLANT

Vs

The Regional Transport Authority and Others

RESPONDENT

Date of Decision : 11-11-1971

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Motor Vehicles (Amendment) Act, 1971 — Section 11, 2(3), 9

Motor Vehicles Act, 1988 — Section 47(3), 59, 61(1), 64(1), 64A

Citation : AIR 1973 Mad 245

Hon'ble Judges : Ramaprasada Rao, J

Bench : Single Bench

Judgement

Ramaprasada Rao, J.

1. These Civil Revision Petitions are directed against the order of the State Transport Appellate Tribunal who refused to entertain an appeal filed by the petitioners against the order of the Regional Transport Authority who in turn acted u/s 47(3) of the Motor Vehicles Act and directed the opening of a new route with one vehicle on it. The petitioner"s case is that even before the amending Act No. 16 of 1971 of the Tamil Nadu Legislature their right of appeal to the State Transport Appellate Authority against orders passed by the Regional Transport Authority u/s 47(3) read with Sec. 64(1)(i) is preserved by Rule 147(2) (ii). The argument proceeds that notwithstanding the amending Act the right to present an appeal against an order passed u/s 47(3) by the appropriate authority not having been expressly taken away as was attempted to be done by Section 9 of the amending Act by which the right of revision against such orders have been taken away the inference is that the right of appeal is still available. We shall now look into the statutory provisions. Section 47(3) as it stood prior to the passing of the amending Act 16 of 1971 runs thus :

47(3) "A Regional Transport Authority may having regard to the matters mentioned in sub-section(1), limit the number of stage carriages generally or of

any specified type for which state carriage permits may be granted in the region or in any specified area or on any specified route within the region."

Under Section 64(1)(i) an appeal was available to an aggrieved person against any order other than those dealt with by Section 61(1)(a) to (hh) provided it was so prescribed u/s 2(21). According to Section 2(21) "prescribed" means prescribed by rules made under this Act. Section 68 deals with the rule making power of the named statutory authority. It is u/s 68 rules have been framed. Inter alia Rule 147(2)(i) provides for an appeal against an order passed u/s 47(3) of the Act. Therefore, prior to the passing of the amending Act the appeal which is ordinarily a creature of statute was provided under the rules framed in accordance with the mandate u/s 64(1)(i) of the principle Act. After the passing of the amending Act, certain changes were effected particularly in the provision of appeals and revision against certain orders of the regional transport authority. One such provision which originated from the Tamil Nadu Ordinance No. 6 of 1971 and which later on became part of the enactment viz., Act 16 of 1971 runs thus :--

"The State Transport Appellate Tribunal shall be deemed to be a Court subordinate to the High Court for the purposes of Section 115 of the CPC 1908 (Central Act V of 1908) and its orders shall be liable to revision by the High Court under the Provisions of the said Section."

Section 2(3) of the amended Act which is practically a substitute for the earlier Section 47(3) runs thus :

"A Regional Transport Authority may after taking into consideration the interests of the general public and the adequacy of other passenger transport services operating or likely to operate in the near future whether by road or other means between the places to be served, by order--

(a) limit the number of stage carriages generally or of any specified type for which stage carriage permits may be granted in the region or in any specified area or on any specified route within the region ; or

(b) open any new route;

and such order shall be final,"

It is also useful to refer at this stage to Section 9 and also Section 11 of the amending Act which run as follows :--

9. "In Section 64-A of the Principal Act, after the expression "record of any case", the expression "(not being a case relating to the limiting the number of stage carriage or the opening of a new route under sub-section (3) of S. 47)" shall be inserted."

11. "All applications for, and proceedings whether original or by way of appeal relating to--

- (a) the grant of a stage carriage permit; or
- (b) the renewal of a stage carriage permit; or
- (c) the transfer of a stage carriage permit u/s 59; or
- (d) the limiting the number of stage carriages or the opening of a new route pending before any Court transport authority or officer on the 18th June 1971 and appeal or revision, if any arising from such pending application or proceeding shall be disposed of under the Principal Act, as amended by this Act."

These substantive provisions which cast a change in the pre-existing law made the order of the regional transport authority passed by him in exercise of his powers u/s 47(3) as final, Section 9 of the amending Act also says that no aggrieved person shall take up a matter such as the one decided upon by the regional transport authority u/s 47(3) in revision to the revisional authority u/s 64-A of the Principal Act. In effect, therefore, both an appeal and a revision as against an order of the regional transport authority under sub-section (3) of s. 47 were specifically excluded by the amending Act. The controversy however is based upon the interpretation of Section 11 of the amending Act. I have already extracted the same. Section 11 is an enabling provision applicable to pending applications and the language of Section 11 includes within its compass proceedings whether original or by way of appeal. All such proceedings in the instant case proceedings by way of appeal relating to the limitation of the number of stage carriages or the opening of a new route, an order which is normally passable u/s 47(3) of the Act shall be dealt with by any Court. Transport Authority or Officer under the Principal Act as amended by this Act. Incidentally, I may mention that the Ordinance which preceded the Act was promulgated on the 18th June 1971 and the amending Act itself came into effect on 30th July 1971. In order to remove doubts or difficulties about the application of the amended law during 18-6-1971 and 30-7-1971 Section 11 which is essentially processual in character says that all pending appeals before the appropriate authority on the 18th of June, 1971 shall be disposed of under the principal Act, as amended by this Act. It therefore means that all appeals filed prior to the 18th June, 1971 and which were not disposed of on that date and therefore pending on that date shall be dealt with under the provisions of the amended Act. If this is the normal interpretation and understanding of the text of Section 11 of amending Act. It follows that the disposal of the appeals pending on the 18th June 1971 shall be done in the light of Section 2(3) of the amending Act which is the present section corresponding to S. 47(3) of the principal Act. In this section all orders passed by the Regional Transport Authority u/s 47(3), which is the amended provision are made final. The argument however is that this provision can only be prospectively applicable to appeals filed after the 18th June 1971 and not to appeals pending on that date. I am unable to agree. The text of Section 11 the purport of it as well as its intendment makes it clear that all appeals pending on the 18th of June 1971 shall be dealt with under the amended Act which means that no appeal can be entertained against such orders

if so pending and not yet disposed of on the 18th of June 1971 because the order in made final.

2. The word "final" has been interpreted by jurists as a provision which excludes the right of appeal as all appeals are creatures of statute. It follows that the statute which creates a right of appeal can also extinguish it. In the instant case by the amending Act u/s 47(3) the statute extinguished the quondam right of appeal provided under the earlier Act under S. 64(1)(i) read with Rule 47(2)(i); as all such appeals pending on 18th June 1971 have to be dealt with under the amended provision of the Act, this finality of the orders passed by the regional transport authority has to be given effect to and if so given effect to an appeal is obviously excluded. This has been rightly found to be so by the appellate authority.

3. One other argument of the learned counsel for the petitioner is that, as in the statute book Rule 147(2)(i) still is to be found some effect has to be given to this text in the Act for it cannot straightway be ignored. There is a fallacy in this argument. If the substantial provisions of an enactment are abrogated amended or modified, then it is only to that amended provision that the authority applying it should look to, but not the old rule which still continues by accident or error in the text of the Act and the rules made thereunder; a situation which is diametrically opposite to that contemplated by the amended provisions has to be ignored not only on the well accepted principle that the entire Act and the provisions thereto have to be harmoniously interpreted but also on the ground that a rule cannot prevail over a substantive provision of an enactment. I am of the opinion that the presence or continuance of R. 147(2)(i) under which appeals were filed prior to 18th June 1971 is a provision which has no legal force and it would not therefore enable the petitioner to take advantage of it and file an appeal thereunder. It would result in an anomalous situation; whereas one section of the litigant public who are anxious to bar or ban an appeal would rely upon the substantive provision viz., Section 47(3) of the amended Act, another part of the public who are interested in filing an appeal would invoke Rule 147(2) (ii) and maintain that as against the same order an appeal will lie. Such an inconsistency cannot be upheld or countenanced when the interpretation of such provisions comes up before Courts of law. It would be incongruous to accept such an inconsistency and allow it to be perpetrated. On this broad principle also and for the reason that the substantive provision ought to prevail over a rule which is ineffective in the eye of law. I am unable to agree that the petitioner has still a right of appeal though the statute has taken it away. As the contentions raised fail and as there is no error of jurisdiction in the order complained of the Civil Revision Petitions are dismissed. There will be no order as to costs.

4. Petitions dismissed.