
(1979) 08 MAD CK 0034
In the Madras High Court

V.S. Krishnaswami (died) V.S.K.R. Transport and Another APPELLANT
Vs
M. Marappan and Another RESPONDENT

Date of Decision : 03-08-1979

Acts Referred:

Motor Vehicles Act, 1988 — Section 57(3)

Citation : (1980) 2 MLJ 291

Hon'ble Judges : V. Ramaswami, J

Bench : Division Bench

Judgement

V. Ramaswami, J.—In pursuance of a notification dated 1st September, 1972, published u/s 57(3) of the Motor Vehicles Act (hereinafter referred to as the Act) for the grant of a stage carriage permit to ply on a new short route from Kandili to Pernambut via. Tirupattur bus stand, eight applicants applied for the grant of the permit. One V.S. Krishnaswami, the petitioner in the civil revision petition and the first respondent herein were two among the applicants. By an order dated 15th February, 1974, the Regional Transport Authority, North Arcot, granted the permit to the first respondent herein. V.S. Krishnaswamy filed an appeal before the State Transport Appellate Tribunal raising various contentions. The State Transport Appellate Tribunal, however, confirmed the order in favour of the first respondent and dismissed the appeal. Thereafter V.S. Krishnaswamy preferred this civil revision petition. Pending the civil revision petition, V.S. Krishnaswamy died on 10th October, 1976, and his wife filed an application to bring herself on record as a party petitioner and that was ordered.

2. The learned Counsel for the respondent raises a preliminary objection that the civil revision petition cannot be proceeded with since on the death of the original petitioner V.S. Krishnaswamy, the cause of action abated.

3. Similar questions have come up for consideration before the Supreme Court on three earlier occasions. The earliest of the decisions is reported in Dhani Devi Vs. Sant Bihari and Others, . Shortly stated, the facts of that case were as follows:

4. One of the applicants for the grant of a stage carriage permit who had applied for the same before the last date appointed for that purpose, died even before the Regional Transport Authority finally disposed of the applications. His widow who succeeded to the possession of the transport vehicles left by the deceased, got an order u/s 61(2) of the Act from the Regional Transport Authority in respect of other permits held by the deceased for other routes. She also applied to bring herself on record as the legal representative of her deceased husband in respect of the proceedings for the grant of a new stage carriage permit. That application was allowed and finally the permit was also given to her. Unsuccessful applicants preferred appeals against the order u/s 64 of the Act. At the hearing of the appeals, it was contended that the order was without jurisdiction as the widow had no right to prosecute the application filed by her deceased husband. The State Transport Tribunal accepted the contention and set aside the order of the Regional Transport Authority and directed the grant of the permit to another applicant. A revision petition was filed under the then existing provision u/s 64-A to the Government. The Government held that the order of the Regional Transport Authority was not without jurisdiction and set aside the order of the State Transport Appellate Tribunal and restored the grant in favour of the widow. Two writ petitions were filed in the Patna High Court challenging the order of the Government. The High Court allowed the petitions, quashed the order of the Government and remanded the matter to the Government for fresh disposal according to law. It was against that order of the High Court, an appeal was preferred to the Supreme Court,

5. The question for consideration, as set out in the judgment of the Supreme Court was "whether on the death of an applicant for a stage carriage permit in respect of his transport vehicles, the Regional Transport Authority has power to allow the person succeeding to the possession of the vehicles to prosecute the application filed by the deceased applicant". After noting that there is no express provision on the subject in the Motor Vehicles Act or the Rules framed thereunder, the Supreme Court observed as follows:

In the event of the death of an applicant after the expiry of the time appointed for making the applications, the person succeeding to the possession of the vehicle cannot, having regard to the lapse of time, make another application in his own right. The successor cannot obtain the permit unless he is allowed to prosecute the application filed by his predecessor and we see no reason why he cannot be permitted to do so. Where the successor is allowed to prosecute the application, the Regional Transport Authority may have to take into consideration many matters personal to the successor, such as his experience, the facilities at his disposal for operating the services and his adverse record, if any. The matters personal to the deceased applicant can no longer be taken into account. The rival applicants should, if necessary be given suitable opportunity to file objections against the grant of the permit to the successor. Section 57 does not deal with the situation arising on the death of an applicant nor has it prescribed any time for the making of an application for substitution of the successor or for the filing

of objections against the grant of the permit to him. In the absence of any statute or statutory rule, the Regional Transport Authority may devise any reasonable procedure for dealing with the situation.

The Supreme Court further observed as follows:

Likewise, in the case of the death of an applicant during the pendency of an appeal u/s 64, or a revision petition u/s 64-A, the appellate or the revisional authority has power if it thinks fit to substitute the successor in place of the deceased applicant in the records of the proceedings.

6. It is clear from this decision that if the applicant dies even before the grant of the permit by a Regional Transport Authority in favour of any person, the applicant's successor could be brought on record provided the Regional Transport Authority considers the merits of the successor as an applicant for the permit, not on the basis of the merits of the deceased, and also subject to the condition of giving an opportunity to the other applicants to put forward any case or objection in respect of the legal representative who was brought on record.

7. The next of the cases which came up for consideration before the Supreme Court was the one reported in *Ram Autar Lal Jain Vs. The Minister of Transport and Others*, . In that case also, the facts were almost similar to the one in the decision in *Ram Autar Lal Jain Vs. The Minister of Transport and Others*, . An applicant for a permit died before the consideration of the applications by the Regional Transport Authority and the legal representative of the applicant was brought on record. The Appellate Authority set aside the grant of the Regional Transport Authority on merits, but did not go into the question of legality of the substitution of the legal representative in the place of the deceased applicant. When the matter came up before the Supreme Court, the question that was agitated was whether, upon the death of an applicant for a stage carriage permit before his application had been considered by the Regional Transport Authority, the legal representative has a right to step into the shoes of the deceased applicant and prosecute the application filed by him before the Regional Transport Authority. The Supreme Court held:

An application made for a permit under Chapter IV of the Motor Vehicles Act gives only the right that the merits of the applicant will be considered vis-a-vis the other applicants. These merits depend generally upon the peculiar position, capabilities, and qualifications of an applicant which may be either personal or peculiarly on organisation. It is not necessary that an heir or successor of an applicant will also have the applicant's qualifications or capabilities with regard to a transport service for the benefit of the public. Probably it was for this reason that neither the Motor Vehicles Act nor the rules made thereunder provide for the substitution of heirs to prosecute the application of a deceased claimant for a permit.

The decision in *Ram Autar Lal Jain Vs. The Minister of Transport and Others*, was referred to in this decision. The Supreme Court distinguished its earlier decision

in the case cited supra and observed:

The ratio of *Dhani Devi Vs. Sant Bihari and Others*, , was simply this : Since the right to and possession of the vehicles goes from a deceased holder of a permit or an applicant for its "transfer" to his heirs, the right to continue an application must also necessarily go to them. It does not decide what will happen if there is no motor vehicle to which a deceased applicant's heirs or legal representatives can succeed. Moreover, *Dhani Devi Vs. Sant Bihari and Others*, , was one which was specifically covered by Section 61 of the Motor Vehicles Act where the permit actually granted and held for a period specified, Seems to be treated as an adjunct of the possession of the vehicle. It becomes a kind of property right attached to the business of running a vehicle which is actually serving the public on the road. In such a case the right does not remain a mere personal right to apply, but is of a transferable character.

Ultimately the Supreme Court held in the case that the legal representative could not have been brought on record and the grant made by the Regional Transport Authority was set aside.

8. The other decision reported in *Ram Autar Lal Jain Vs. Maya Kaur and Others*, , also relates to the same applicant whose case was considered in *Ram Autar Lal Jain Vs. The Minister of Transport and Others*, , and under the same circumstances. But this was with reference to a different route. But the Supreme Court took a different view in this case and held:

In the case of death of an applicant for the grant of a stage carriage permit before the grant of a permit, the heirs can apply for substitution in place of the original applicant. There is no legal right to the grant of a permit. The Regional Transport Authority has jurisdiction and discretion in the matter of allowing or refusing substitution.

In that view, the Supreme Court in that case held that the bringing in of the legal representative on record was in order.

9. Though there is an apparent conflict in the ratio of these two decisions in *Ram Autar Lal Jain Vs. The Minister of Transport and Others*, , and *Ram Autar Lal Jain Vs. Maya Kaur and Others*, , the principle enunciated in *Dhani Devi Vs. Sant Bihari and Others*, , had not been interfered with by the Supreme Court in the later judgments. The ratio of these three decisions, in my opinion, is that if an applicant for a permit dies during the stage when the applications were under consideration by the Regional Transport Authority, the legal representative could be brought on record subject to the condition that in considering the application for the grant, the individual merit of the successor alone is considered and an opportunity is given to the other applicants to file objections, if any, or to put forward their case vis-a-vis the merits of the successor applicant. Even in such a case, if the Regional Transport Authority considers that there are difficulties in bringing the legal representative involving larger questions and it may delay the further consideration of the applications, the Regional Transport Authority has a

discretion to grant or refuse to grant substitution. In a case where an applicant was successful and had obtained a permit either from the Regional Transport Authority or in an appeal from the State Transport Appellate Tribunal, there could be no doubt that pending a further appeal or a revision as the case may be, if he dies, his legal representative has to be brought on record because the right of the deceased had become a vested heritable property right and the consideration of the question in the appellate and the revisional stages could be with reference to the original applicant and not with reference to the successor. Accordingly, if an applicant was the successful grantee of a permit, at any stage his legal representative has a right to be brought on record, it is in respect of these cases, in my opinion, the Supreme Court in the earliest decision observed that in the case of death of an applicant during the pendency of an appeal u/s 64 or a revision u/s 64-A, the appellate or the revisional authority has power to substitute the successor in the place of the deceased in the records of the proceedings. But, if on the other hand, an applicant was never successful either before the Regional Transport Authority or before the State Transport Appellate Tribunal, his legal representative could not be brought on record, as in considering the application for the grant of the permit, the Regional Transport Authority has to take consideration many matters personal to the applicant such as his experience, the facilities at his disposal for operating the service and his adverse record, if any. In the appellate or revisional stages, it is not possible to consider the matters personal to the successor. In this case, since the applicant died pending the revision before this Court and he was not successful either before the Regional Transport Authority or the State Transport Appellate Tribunal, the legal representative could not pursue the matter since many matters personal to the successor could not be considered in revision as that would require giving opportunities to the various other applicants to compare their case vis-a-vis the successor on merits. The preliminary objection is, therefore, upheld and the civil revision petition is accordingly dismissed. There will be no order as to costs in the petition.