

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2016

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THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Writ Appeal No.1018 of 2016
and
CMP.No.13268 of 2016

The Managing Director,
Tamil Nadu State Transport Corporation
(Salem) Ltd.,
Salem - 7. Appellant

vs.

1. The Secretary,
Tamil Nadu State Transport Appellate Tribunal,
Madras High Court,
Madras.
2. The Regional Transport Authority,
Dharmapuri. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 15.06.2016 in W.P.No.20152 of 2016 petition filed under Article 226 of the constitution of India, praying to issue a writ of certiorarified mandamus to call for the records of the 1st respondent pertaining to the return of Appeal Papers in R.No.000495/ 2016/A4 to 000536/ 2016/A4 and 000538/ 2016/A4 000539/ 2016/A4 dated 25.4.2016 and quash the portion of order stating that the appeals are beyond the Statutory Appellate Tribunal and accept the appeal and to place before the 1st respondent passed by the learned Single Judge of this Court.

For Appellant : Mr.P.Paramasiva Doss

For Respondents : Mr.K.Dhananjeyam (R2)
Additional Government Pleader

JUDGMENT

(Order of the Court was made by HULUVADI G. RAMESH, J.)

Heard Mr.P.Paramasiva Doss, learned counsel for the appellant and Mr.K.Dhananjeyam, learned Additional Government Pleader for the second respondent.

2. The present writ appeal is filed by the State Transport Corporation against the dismissal of the writ petition preferred by them.

3. The facts made available herein would reveal that the second respondent has suspended the permit of the vehicle belonging to the appellant Corporation for a period of 30 days under Section 86(1) of the Motor Vehicles Act, 1988 (hereinafter shortly referred to as 'Act') with an option to compound the offence by paying penalty to the tune of Rs.9,000/-, for the alleged violation of plying the vehicle on an unauthorized route. Aggrieved over the same, the appellant preferred an appeal, which was returned by the first respondent - Tribunal by order dated 25.04.2016 stating that the appellant has not filed the appeal within the stipulated time of 30 days from the date of receipt of order copy. Challenging the same, the appellant filed a writ petition in W.P.No.20152 of 2016, which was dismissed by the learned single Judge by the impugned order. Hence, this writ appeal.

4. While dismissing the writ petition, the leaned single Judge has observed as follows:

"3. The said order was put to challenge before the State Transport Appellate Tribunal, Chennai well beyond the period of limitation. Now the petitioner has come up with the present writ petition challenging the "return memo" issued by the State Transport Appellate Tribunal. Section 89 of the Motor Vehicles Act, 1988 deals with provisions relating to appeals. Sub-section 1 of Section 89 deals with the nature of orders, against which, appeals can be filed before the State Transport Appellate Tribunal and it states that such appeal may be filed within the prescribed time and in the prescribed manner.

4. Rule 157 of the Tamil Nadu Motor Vehicles Rules stipulates the manner in which the appeal should be filed and the period of limitation. Sub-Rule 1 of Rule 157 states that an appeal under

Sub-Section 1 of Section 89 shall lie to the State Transport Appellate Tribunal within 30 days from the date of receipt of the order appealed against. However, what is relevant for the present case is Sub-Rule 3 of Rule 157 which states that the provisions of the Limitation Act, 1963 will not be applicable to the appeals filed under Rule 157.

5. Thus, there is no power for the State Transport Appellate Tribunal to condone the delay and therefore, the State Transport Appellate Tribunal was fully justified in returning the appeal memorandum. At this stage, it would also be beneficial to refer to the decision of the Hon'ble Division Bench of this Court in Muthammal Transports v. P. Swathanthirarajan, 2007 (3) CTC 389.

6. In the light of the above legal position, the impugned "return memo" issued by the State Transport Appellate Tribunal calls for no interference. Accordingly, the writ petition fails and the same is dismissed. No costs."

5. Learned counsel for the appellant, by relying on Section 101 of the Act, sought to argue that a state transport undertaking may, in the public interest, operate additional services for the conveyance of the passengers on special occasions. However, without considering the same, the second respondent has suspended the permit of the vehicle belonging to the appellant for the alleged violation of plying the vehicle on unauthorised route. He further contends that the order of the Tribunal, returning the appeal papers filed by the appellant on the ground of delay, would not serve the purpose. Learned counsel also submits that in view of the enabling provision under Section 101 of the Act, the very order of dismissing the appeal on the ground of delay is non-est in law and the delay will have to be condoned. Apart from that, learned counsel further submits that the decision relied on by the learned single Judge regarding the absence of any provision for condonation of delay, cannot be read along with the statute. Therefore, he seeks for interference of this Court to the order impugned herein.

6. A reading of the impugned order as extracted above, would go to show that the learned single Judge, after taking into consideration the relevant provisions of the Motor Vehicles Act and Tamil Nadu Motor Vehicles Rules, was of the view that the

State Transport Appellate Tribunal has no power to condone the delay and was fully justified in returning the appeal memorandum and accordingly dismissed the writ petition. While doing so, the learned Single Judge has referred to a decision of the Division Bench of this Court reported in 2007 (3) CTC 389 (Muthammal Transports v. P.Swathanthirarajan), wherein, the Division Bench has cited various judgments of the Hon'ble Supreme Court with regard to non-application of Section 5 of the Limitation Act and also to the effect that the High Court has no power to extend the period of limitation by exercising jurisdiction under Article 226 of the Constitution of India or direct the Appellate Authority to consider the appeal on merits without reference to the period of limitation.

7. We are of the opinion that the view expressed by the learned Single Judge is based on the relevant provisions of the Act and Rules and by relying upon the decision of the Division Bench of this Court. Further, the issue involved herein is well settled by the Apex Court against the Transport Corporation. Therefore, we find no error or illegality in the order so passed by the learned single Judge of this Court.

8. At this juncture, learned counsel for the appellant would submit that in the event of dismissal of this appeal, the appellant has to pay penalty to the tune of Rs.9,000/- for each vehicles for the purpose of compounding the offence. As rightly pointed out by the learned single Judge of this Court in the impugned order, the second respondent has not imposed any capital punishment for the alleged violation committed by the appellant and has only suspended the permit, with an option to compound the offence by paying penalty at Rs.9,000/- for each vehicles, which, in our view, is just and reasonable and the same does not call for any interference by this Court.

9. However, considering the apprehension of the appellant, we are inclined to extend the time by another 15 days from the date of receipt of a copy of this judgment, so as to enable the appellant to pay the penalty for compounding the offence and get the suspension of permit revoked. The appellant is also at liberty to raise all the contentions including the enabling provision under Section 101 of the Act, before the authority concerned, at the time of seeking permission to ply the vehicle beyond the route permitted.

10. With the above observation, the writ appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Tamil Nadu State Transport Appellate Tribunal,
Madras High Court,
Madras.

2. The Regional Transport Authority,
Dharmapuri.

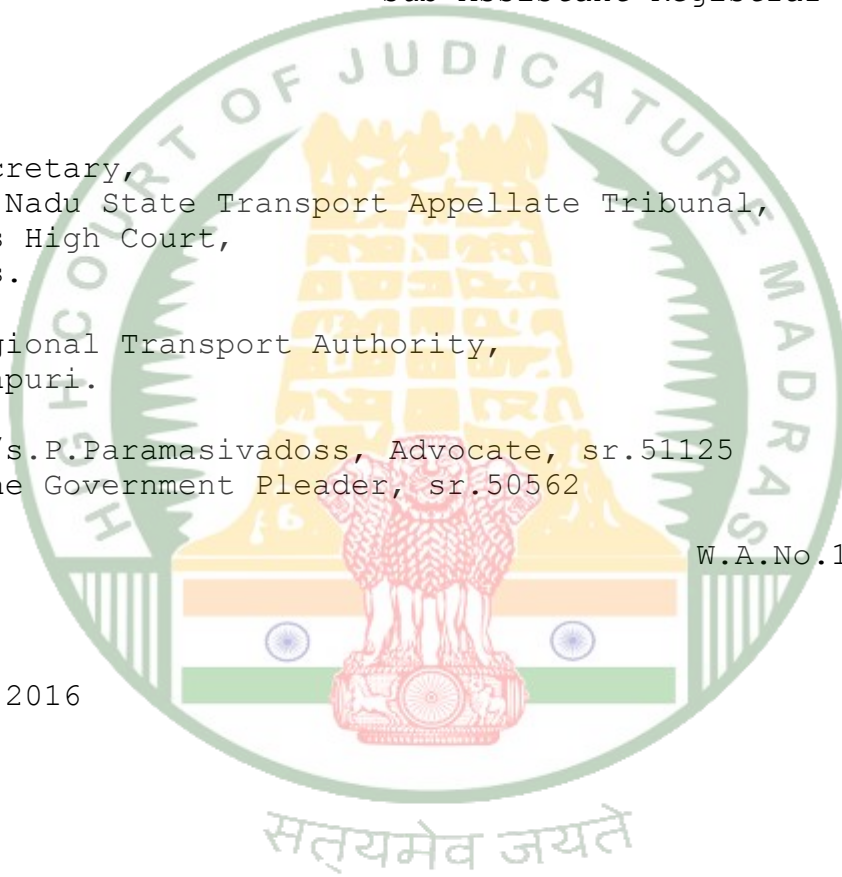
1 cc to M/s.P.Paramasivadoss, Advocate, sr.51125

1 cc to The Government Pleader, sr.50562

W.A.No.1018 of 2016

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