

In the High Court of Judicature at Madras

Dated: 11.02.2016

Coram:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI
and
The Hon'ble Mr.Justice M.VENUGOPAL

W.A.No.150 of 2016

A.Mohan Kumar .. Appellant

Vs.

1.Tamil Nadu State Transport Corporation
(Salem) Ltd.,
Dharmapuri Region,
Bharathipuram,
Dharmapuri.

2.The Regional Transport Authority,
Dharmapuri.

3.The Presiding Officer,
State Transport Appellate Tribunal,
High Court Campus,
Chennai-600 104.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent,
against the order of this Court dated 13.10.2015 and made in
W.P.No.17444 of 2015.

WP.No.17444 of 2015: filed Under Article 226 of the Constitution
of India, to issue a Writ of Certiorari to call for the records
of the 3rd Respondent order dated 30/4/2015 made in MV Appeal
No.151/2014 filed under Section 89(1)(9) of the MV Act 1988
against the order of the Regional Transport Authority Dharmapuri
made in his Proceedings R.No.A3/1187/2013 dated 13/10/2014
rejecting the application for renewal of permit in respect of
stage Carriage MDS 4184 on the route Muthur Dam to Vaniyambadi.

For Appellant : Mr.AR.L.Sundaresan, Sr. C
for Ms.AL.Gandhimathi

J U D G E M E N T

[Judgment of the Court was made by
M.VENUGOPAL, J.]

The Appellant/First Petitioner has focused the instant intra-Court appeal before this Court as against the order dated 13.10.2015 in W.P.No.17444 of 2015 passed by the Learned Single Judge.

2.The learned Single Judge while passing the impugned order in W.P.No.17444 of 2015 (filed by the First Respondent/Petitioner/Transport Corporation) on 13.10.2015 filed by the Appellant/First Petitioner at paragraphs 15 to 17 had observed the following:

"15.The permit was originally granted in favour of M/s. Mohan Brothers. The application filed 21.12.2012 shows that it was filed at the instance of A.Mohankumar, Proprietor of K.Rathna Motor Service and he has to establish before the Regional Transport Authority that he is entitled to make an application for renewal in spite of the fact that the permit was originally granted to M/s. Mohan Brothers and it is the responsibility of the 1st Respondent to plead and prove the said fact before the authority.

16.It has also been held in the judgment delivered by this Court in W.P.No.2628 of 2013 dated 21.08.2013 that the 1st Respondent is a unsuccessful stage carriage operator and he has not established before the Regional Transport Authority that he is entitled to make an application for renewal in view of the fact that the permit was originally granted to M/s Mohan Brothers. At present, the firms is not in existence and no stage carriage permit is in existence. Hence, the request of the 1st Respondent is to be treated as absurd, as the Regional Transport Authority can only recognize the firm M/s. Mohan Brothers, KRMS, Dharmapuri and the 1st Respondent will have to be recognized only as a stranger although he is one of the partners, as the charter name and style of the firm which existed was no more during the Act 41 of 1992.

17.Without considering all these factual aspects, the 3rd respondent in a slipshod manner remanded the case to the 2nd Respondent, which is against the provisions of the Act. Hence this Court finds its appropriate to quash the said order of the 3rd Respondent as illegal and

improper and accordingly, the same is quashed."

3.Challenging the correctness, validity and legality of the impugned order dated 13.10.2015 in W.P.No.17444 of 2015, the Learned Senior counsel for the Appellant/First Respondent contends that the Learned Single Judge had committed an error in observing that the Permit obtained by the family of the Appellant/First Respondent had expired as early as on 31.12.1973 and the permit was not brought alive, no renewal applications were made from time to time and the application filed before the Authority for renewal of Permit on 27.12.2012 for 7 spell periods is contrary to the provisions of the Tamil Nadu Motor Vehicles Act.

4.Advancing his argument, the Learned Senior counsel for the Appellant/First Respondent submits that the 'Permit' under the Motor Vehicles is a property and a constitutional right under Article 300 A of the Constitution of India (which is available to the Permit Holder) and the said right cannot be taken away on mere technicalities.

5.According to the Learned Senior counsel for the Appellant, the First Respondent/Writ Petitioner is not an aggrieved person for the reason he is not running the vehicle or the route even though the same is vacant for more than 30 years and that apart, even today, it is not running its vehicle. However, the Third Respondent/Tribunal had allowed the Motor Vehicle Appeal No.151 of 2014 through its order dated 30.04.2015, by directing the Appellant/First Respondent to pay a costs of Rs.25,000/- to the District Legal Services Authority, City Civil Court, High Court Campus, Chennai, within a period of 20 days from 30.04.2015 and in fact, the Appellant had complied with the said order by remitting the amount on 06.05.2015. Apart from that, in regard to the direction to produce the vehicle along with Fitness Certificate, Insurance Registration Certificate and Certificate of payment of dues of the Government is concerned, the Appellant had produced all the above said documents on 17.05.2015 itself. But these vital aspects of the matter were not taken into account by the Learned Single Judge at the time of passing the impugned order in the Writ Petition.

6.It is represented on behalf of the Appellant that the Learned Single Judge should have seen that public interest is required that permit in question ought to be allowed to be operated in the interest of travelling public. Added further, that the First Respondent/Transport Corporation not having any valid Permit for the said route and plying any buses in the said route does not have any 'Locus' to challenge the ground of renewal of Permit in favour of the Appellant/First Respondent.

7.The Learned Senior counsel for the Appellant/First Respondent takes a stand that the Learned Single Judge had erred in holding that the Appellant should be considered as a 'Stranger' to the Permit.

8.Lastly, it is the contention of the Learned Senior counsel for the Appellant that the order dated 21.08.2013 in W.P.No.2628 of 2013 passed by this Court (filed by A.Mohan Kumar-the Appellant in W.A.No.150 of 2016) was wrongly construed by the Learned Single Judge at the time of passing the impugned order in W.P.No.17444 of 2015.

9.At this stage, this Court worth recalls and recollects the decision of the Hon'ble Supreme Court in Union of India and others Vs. M.K.Sarkar reported in 2010 (2) Supreme Court Cases at page 59 and at special page 66, whereby and whereunder at paragraphs 14 to 16 it is observed as follows:

"14.The order of the Tribunal allowing the first application of respondent without examining the merits, and directing the appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. The ill-effects of such directions have been considered by this Court in C.Jacob Vs. Director of Geology and Mining [2008 (10) SCC 115 : 2008 (2) SCC (L&S) 96]: (SCC pp.122-23, para 9]

"9.The Courts/Tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the representation does not involve any 'decision' on rights and obligations of parties. Little do they realise the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employer gets a relief, which he would not have got on account of the long delay, all by reason of the direction to 'consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief.

In this manner, the bar of limitation or the laches gets obliterated or ignored."

15. When a belated representation in regard to a "stale" or "dead" issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a Court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

16. A court or tribunal, before directing "consideration" of a claim or representation should examine whether the claim or representation is with reference to a "live" issue or whether it is with reference to a "dead" or "stale" issue. If it is with reference to a "dead" or "stale" issue or dispute, the court/tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or tribunal deciding to direct "consideration" without itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect."

10. This Court, while going through the impugned order dated 13.10.2015 in W.P.No.17444 of 2015, is of the considered view that the Learned Single Judge at para 16 had inter alia observed that the First Respondent was an unsuccessful stage carrier operator and he has not established before the Regional Transport Authority that he is entitled to make an application for renewal in view of the fact that the Permit was originally granted to M/s.Mohan Brothers. At present, the firm is not in existence and no stage carriage Permit is in existence" and ultimately, at para 17 had rightly opined that "without considering all these factual aspects, the Third Respondent in a slipshod manner remanded the case to the Second Respondent, which is against the provisions of the Act etc.," and accordingly, quashed the same by allowing the Writ Petition and

the same does not suffer from any serious material irregularities or patent legal infirmities or illegalities in the eye of Law. Consequently, the Writ Appeal sans merits.

11.In fine, the Writ Appeal is dismissed leaving the parties to bear their own costs. Resultantly, the impugned order passed by the Learned Single Judge in W.P.No.17444 of 2015 dated 13.10.2015 is affirmed by this Court for the reasons assigned in this Appeal.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

DP

To

1.Tamil Nadu State Transport Corporation
(Salem) Ltd.,
Dharmapuri Region,
Bharathipuram,
Dharmapuri.

2.The Regional Transport Authority,
Dharmapuri.

3.The Presiding Officer,
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+1 cc to Mrs.AL.Ganthimathi Advocate sr.9043
+1 cc to the Government Pleader High Court Madras
sr.9113

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