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C.R.P. (MD) Nos.1618 & 1921 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 21.06.2023	Pronounced on: 14.07.2023
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THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(PD).(MD)Nos.1618 & 1921 of 2021
and C.M.P.(MD).Nos.8769 & 10346 of 2021

C.R.P.(PD).(MD).No.1618 of 2021:

S.Sonaimani

.. Petitioner

Vs.

1.Sivakamasundari

2.The Regional Transport Authority,
Dindigul.

3.Selvan Minor. M.Athipathi,
Rep. By Father & Guardian M.Maruthupandian.

.. Respondents

C.R.P.(PD).(MD).No.1921 of 2021:

Selvan Minor. M.Athipathi,
Rep. By Father & Guardian M.Maruthupandian.

.. Petitioner

Vs.

1.Sivakamasundari

2.The Regional Transport Authority,
Dindigul.

3.S.Sonaimani

.. Respondents



Common Prayer: Civil Revision Petitions are filed under Article 227 of the Constitution of India, praying to call for the records pertaining to the order passed by the learned State Transport Appellate Tribunal, Chennai dated 20.11.2019 in M.V.Appeal No.65 of 2019, reversing the order passed by the 2nd respondent herein in R.No.A3/056272/2019 dated 02.08.2019 and set aside the same.

[In C.R.P.(PD).(MD).No.1618 of 2021]:

For Petitioner : Mr.A.Mohamed Yusuf
For R1 : No appearance
For R2 : Mr.S.Kameswaran
Government Advocate
For R3 : Mr.S.Murugaganesan

[In C.R.P.(PD).(MD).No.1921 of 2021]:

For Petitioner : Mr.S.Murugaganesan
For R1 : No appearance
For R2 : Mr.S.Kameswaran
Government Advocate
For R3 : Mr.A.Mohamed Yusuf

COMMON ORDER

Both these petitioners have challenged the impugned order dated 20.11.2019 passed by the Appellate Tribunal in M.V. Appeal No. 65 of 2019, filed by the 1st respondent whereby order dated 02.08.2019 passed by the 2nd respondent has been reversed.



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2. These two Civil Revision Petitions are at the behest of the transferor, a minor named Athipathi.M and transferee of a Transport Permit.

3. The 3rd Respondent, Minor Selvan M.Athipathi in C.R.P. (MD).No.1618 of 2021 has filed C.R.P.(MD).No.1921 of 2021.

4. Relevant Portion of the Impugned order reads as under:-

“11. As per section 27 of the Guardians and Wards Act, the guardian may do all acts which are reasonable and proper for the realisation, protection or benefit of the property. Here, the guardian has sold the property in favour of the transferee by name transfer. Therefore, the guardian without having any express power to dispose the property, though it is movable, he has to protect or do any act for the benefit of the property. The disposition of the minor's property is not at all comes under the protection or for the benefit of the property. Therefore, the lower authority has not taken into consideration whether the disposition of the permit in favour of the transfer of permit would benefit the minor's property. Further, there is no documents furnished to show any security or welfare of the minor's property. The court is the paramount guardian of the minor's property, though it is objected by third party. While considering the welfare of the minor's property, the lower authority should have gone through whether any benefit is realised to the



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minor's property. This Tribunal finds that there is no benefit of realisation or protection to the minor's property as stated in section 27 of the Guardians and Wards Act. As per E.S. Subrahmanyam's Guardians & Wards Act and Indian Majority Act, second edition, 1986 in page No. 45, "in the definition of Guardian of property", the term "property" in section 7 is used in a generic sense. It has a wide connotation and is not restricted to the kind of property in which the minor has a beneficial enjoyment. A guardian of property of a minor can be appointed, irrespective of the nature of property. The section seems to contemplate appointment of guardians to minor in regard to all types of property. Enjoyment is not an essential element to constitute property within the purview of the Act. Therefore, the act done by the transferor, father and guardian of minor is without getting the permission from the competent court and the disposition has been taken place. In view of section 7 and 29 of Guardians and Wards Act, 1890, this Tribunal feels that without getting proper permission from the competent court and without any documents to show that the disposition was in respect of realisation, protection and benefit of the minor's property, the transfer done by the guardian is not permissible and the lower authority should have been doubly cautious before transferring the permit stood in the name of the minor. Therefore, on perusal of the case records and the application, the order, etc., the age of the minor and the date of birth of the minor have not been mentioned anywhere. Therefore, without analysing all the above aspects, the lower authority has ordered for the transfer of permit is liable to be set aside in the interest of the minor. If the natural guardian should have got permission from the competent court, it is completely different scenario. Therefore, this Tribunal is of the opinion that the



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transfer of permit is unsustainable and impressive in law and point No. (i) is answered accordingly.

12. Point No. (ii). In view of the findings for point No (1) since, the guardian is not entitled to transfer the permit which stood in the name of minor, the order is not valid. Further, on perusal of the impugned order, it is found that the order was not passed by the Regional Transport Authority. As per section 86(1) of the Motor Vehicles Act, 1988, the transport authority which granted a permit may cancel the permit or may suspend it for such period as it thinks fit and as per section 86(2) of the Act, the transport authority may exercise the powers conferred on it under sub-section (1) in relation to a permit granted by any authority or person to whom power in this behalf has been delegated under sub- section (5) of Section 68 as if the said permit was a permit granted by the transport authority.

Rule 143 of Tamil Nadu Motor Vehicles Rules, 1989 deals with delegation of powers of Transport Authorities, and the proviso to rule 143, provides that the powers so delegated, shall be in respect of the permits of the following classes of transport vehicles only, namely:-

Goods carriage; Contract carriages; and Private service vehicles.

Thus, from the above, it is very explicit that the stage carriage is not covered by the rule provided for the delegation of powers. When the Act itself did not empower the authority to delegate the powers in the case of stage carriage then, the order passed by the officer on behalf of the Regional Transport Authority is apparently found against the Act. In the instant case, the vehicle in question is a stage carriage and there is no question of delegation of power by the



Regional Transport Authority to Secretary or anybody. Furthermore, though the appellant / objector filed objection for transfer of permit, no opportunity of hearing was given to the appellant before passing the impugned order. Thus, the impugned order is not valid and unsustainable for the above said reasons and is liable to be set aside. This point is answered accordingly.

13. Point No. (iii): In view of the findings for point No. (i) and (ii), this appeal is allowed and the order of the lower authority is set aside and the point is answered accordingly.

In the result, the appeal is allowed and the order of the Regional Transport Authority, Dindigul, made in Proceedings in R.No. A3/056272/2019, dated 02.08.2019 is set aside.”

5.The second respondent Road Transport Authority by an order dated 02.08.2019 had transferred the permit standing in the name of the transferor the petitioner in C.R.P.(MD)No.1921 of 2021 to the transferee the petitioner in C.R.P.(MD) No.1618 of 2021.

6.The specific case of the Transferee in C.R.P.(MD)No.1618 of 2021 is that the MVA.No.65 of 2019 filed by the first respondent, Mrs.S.Sivakamasundari before the State Transport Appellate Tribunal, Chennai, was without jurisdiction.



7.It is submitted that appeal in MVA No.65 of 2019 was filed under Section 89(1)(b) of the Motor Vehicles Act, 1988. It is submitted that an appeal can be filed only by “a person aggrieved” by either revocation or suspension of 'permit' or on account of any variation in the conditions of 'Permit' under Section 82 of the Motor Vehicles Act, 1988.

8.It is submitted that only against the refusal to transfer a permit under Section 82 of the Motor Vehicles Act, 1988, an appeal under Section 89(1)(c) of the Act was maintainable by “a person aggrieved”. It is therefore submitted that the Tribunal had no jurisdiction to entertain MVA No.65/2019 and therefore, the State Transport Appellate Tribunal has committed an error in allowing the appeal by cancelling the permit that was transferred in favour of the petitioner in C.R.P.(MD)No.1618 of 2021 vide order dated 02.08.2019.

9.On the other hand, the learned counsel for the first respondent in C.R.P.(MD)No.1618 of 2021 in C.R.P.(MD)No.1921 of 2021 submits that the appeal that was filed before the Tribunal was well within the scope of Section 89(1)(b) of the Act. It is therefore submitted that the impugned order of the Tribunal was well reasoned and does not require any interference under Article 227 of the Constitution of India.



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10. That apart, it is submitted that the order transferring the permit under Section 82(1) of the Act read with Rule 208 of the Tamil Nadu Motor Vehicles Rules, 1989 [hereinafter referred to as “the Rules”], was not signed by the Road Transport Authority, but by the Secretary to the Road Transport Authority.

11. It is submitted that there was no delegation of powers to the Secretary by the Road Transport Authority under Rule 143 of the Rules to transfer the permit of the petitioner in C.R.P.(MD)No.1921 of 2021. Hence, it is submitted that the impugned order does not call for any interference. It is further submitted that the permit has also expired on 04.02.2022, therefore, there is no necessity to interfere with the impugned order dated 19.08.2021 of the Tribunal in MVA.No.65 of 2019 and hence, prayed for dismissal of C.R.P.(MD)No.1618 of 2021 and C.R.P.(MD)No. 1921 of 2021.

12. I have considered the arguments advanced by the learned counsel for the petitioners and respondents. I have also perused the provisions of the Motor Vehicles Act, 1988 and the Tamil Nadu Motor Vehicles Rules, 1989.



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13. Before admitting the Appeal, at the instance of the 1st respondent in either of the CRPs, the Tribunal ought to have considered whether the appeal filed was a bona-fide and whether the filed appeal was within the jurisdiction of the Tribunal under Section 89 of the Motor Vehicles Act, 1988.

14. Appeal in MVA No. 65 of 2019 could have been filed before the Tribunal under Section 89 (b) of the Motor Vehicles Act, 1988, only if the 1st respondent was aggrieved by the revocation or suspension of permit or by any variation in the conditions thereof.

15. In this case, only Transfer of Permit under Section 89(1)(c) of the Motor Vehicles Act, was made. A person can be said to be “aggrieved” only when there was a refusal to transfer the permits under Section 82 of the Act.

16. In other words, if the 2nd respondent had declined to transfer the permits or varied the permit, either of the petitioners could have approached the Tribunal by the way of Appeal under Section 89 of the Indian Motor Vehicles Act, 1988 as “aggrieved persons”.



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17.If the transfer of the permits was made against the interest of the 1st respondent, it was open to the said respondent to file an Appeal under Section 89 of the Motor Vehicles Act, 1988. The 1st respondent who had filed MVA No. 65 of 2019 under Section 89(1)(b) of the Motor Vehicles Act, 1988 is a total stranger. Therefore, the 1st respondent cannot be said to be an “aggrieved person” for the purpose of the aforesaid provisions of the Motor Vehicles Act, 1988.

18.Appeal in MVA No. 65 of 2019 was both misconceived and not *bona-fide*. The Tribunal lacked the jurisdiction to entertain the said appeal at the behest of the 1st Respondent. As such the Tribunal has committed an error in entertaining the appeal filed by the 1st Respondent.

19.Reference to Rule 143 of the Tamil Nadu Motor Vehicles Rules, 1989 r/w Rule 208 of the aforesaid Rule was irrelevant as the respondent cannot be said to be an “Aggrieved person” by the transfer order dated 02.08.2019 of the 2nd respondent.

20.In the light of the above discussion, both the Civil Revision Petitions deserve to be allowed and are accordingly allowed. The order



C.R.P. (MD) Nos.1618 & 1921 of 2021

dated 20.11.2019 passed by the learned State Transport Appellate Tribunal, Chennai in M.V.Appeal No.65 of 2019 is set aside.

Consequently, the connected Miscellaneous Petitions are closed. No costs.

14.07.2023

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Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes / No

Note:- Issue order copy on 13.09.2023.



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C.R.P. (MD) Nos.1618 & 1921 of 2021

C.SARAVANAN, J.

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To

- 1.The Regional Transport Authority,
Dindigul.
- 2.The State Transport Appellate Tribunal,
Chennai.

C.R.P.(PD).(MD).Nos.1618 & 1921 of 2021

14.07.2023



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C.R.P. (MD) Nos.1618 & 1921 of 2021

CRP.PD (MD) Nos.1618 & 1921 of 2021
and
CMP(MD) Nos.8769 & 10346 of 2021

C.SARAVANAN,J.

Today, i.e. 29.09.2023 these Civil Revision Petitions are listed under the caption “for being mentioned” at the instance of the learned counsel for the first respondent in the respective civil revision petitions.

2. It is submitted by the learned counsel for the first respondent that in the pre-amble to the order, there is a mistake as it states that “No appearance” on behalf of the learned counsel for the first respondent though in the order, elaborate arguments made by the learned counsel for the first respondent has been recorded.

3. The submission of the learned counsel for the first respondent is correct and accepted.



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C.SARAVANAN.J.

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4. Registry is directed to carry out the necessary corrections by deleting the words “ No Appearance” in the pre-amble to the respective orders by substituting it with the name of Mr.T.Padmanabhan, learned counsel for the first respondent.

29.09.2023

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Note : Issue Order Copy on 03.10.2023

CRP.PD (MD)Nos.1618 & 1921 of 2021
and
CMP(MD)Nos.8769 & 10346 of 2021