

(1978) 03 MAD CK 0019

Madras High Court

Case No: Civil Revision Petition No. 673 of 1978

Cheran Transport Corporation
Ltd., Coimbatore

APPELLANT

Vs

The State Transport Appellate
Tribunal, Madras and Another

RESPONDENT

Date of Decision: March 27, 1978

Acts Referred:

- Motor Vehicles Act, 1939 - Section 134(1A), 57, 68F(1A), 88F(10)

Citation: AIR 1978 Mad 372

Hon'ble Judges: Mohan, J

Bench: Single Bench

Advocate: N.G. Krishna Iyengar, for the Appellant; M.N. Rangachari, for V. Subramaniam, for the Respondent

Judgement

Mohan, J.

This is rather an unfortunate case. The second respondent (V. C. K. Bus Service) applied for renewal of permit in respect of

the buses TNE 5406 and MDB 7206 plying on the inter-State route Coimbatore to Koduvapur for a period of five years from 1-7-1977 for the

portions lying in the State of Tamil Nadu. The applications were notified u/s 57(3) of the Motor Vehicles Act, 1939 (hereinafter referred to as the

Act), In response to the notification, representations were received from the revision petitioner (Cheran Transport Corpn. Ltd.. Coimbatore)

objecting to the renewal. It also stated therein that a draft scheme for the nationalisation of the route u/s 68-C of the Act had been published in the

Tamil Nadu Government Gazette dated 15-9-1976, and temporary permit could be granted u/s 68-F (1-A). It has further stated that the history

sheet of the applicant (V. C. K. Bus Service) was bad and no renewal could be granted. The State Transport Authority by its order dated 28-2-

1978 rejected the renewal on the ground that the permit of the second respondent herein was suspended on 12 occasions for offences like

overloading etc., which the authority considered to be a serious disqualification. It was also of the view that having regard to the draft scheme, the

proviso to Section 68-F (1-D) would apply in which case if a renewal took place, it should be to limit the same to the date of finalisation of the

scheme. On this reasoning it rejected and later on granted temporary permits in order to maintain continuity of service to the revision petitioner.

Against this order rejecting the request for renewal, an appeal was preferred to the Tribunal. In the appeal, interlocutory applications were taken

out for issue of necessary directions u/s 134 (1-A) of the Act and interim directions were issued. To cancel the interim directions, the revision

petitioner took out an interim application. All these applications came up on 15-3-1978 for consideration and the Tribunal passed an order

confirming the interim directions on the view that the lower authority has not given any detail about the history sheet excepting a passing reference

that the appellant's permit has been suspended on 12 previous occasions for offences like overloading etc. and since this is the very crux of the

matter which is to be decided in the appeal pending the appeal discretion may be exercised u/s 134 (1-A). It is against this order. Cheran

Transport Corporation has come up by way of revision.

2. Mr. N. G. Krishna Iyengar, learned counsel for the petitioner, urges that this is a case in which the consideration as set out u/s 68-F (1-D) read

with Section 68-F (1A) will have to be applied. Those considerations loomed large before the Regional Authority, namely, the Transport

Authority. When an appeal was filed against that order rejecting renewal on the ground that there were 12 offences against the appellant including

overloading, the Tribunal ought to have considered the applicability of Section 134 (1-A) to a case falling under Chap. IV-A. That has not been

done. Instead, it merely grants renewal as a routine stating that the question, relating to the punishment could be relegated to the final decision in the appeal. Therefore, exercise of the discretion is highly improper. More so when in order to maintain continuity of service and to avoid inconvenience to the passenger public temporary permits had been granted to the revision petitioner-Corporation.

3. Mr. M. N. Rangachari, learned counsel for the second respondent in meeting these contentions urges that this is a case in which the Tribunal felt that the question relating to offences could be conveniently gone into during the final hearing of the appeal. Nevertheless Section 134 (1-A) would enable the Tribunal to exercise the discretion in favour of his client. Chapter IV-A is not a self-contained Code; not does it exclude the application of Section 134 (1-A). Even by the application of Section 68-F (1D), the renewal could be ordered in favour of the second respondent, because the renewal is not altogether excluded excepting that it would be limited to the date of finalisation of the scheme. In support of this, the learned counsel relies on Mohd. Ashfaq Vs. State Transport Appellate Tribunal, Uttar Pradesh and Others, .

4. I have very carefully gone through the order of the Tribunal. It leaves me with the impression that the Tribunal had not considered this case in the light of the existence of a draft scheme, because in such a case Section 88-F (1D) proviso will have a great bearing. The renewal therein, no doubt, could be granted in the discretion of the authority concerned, but that is a limited renewal so as to synchronise with the finalisation of the scheme.

This is precisely how the matter was approached by the original authority. It found, while exercising that discretion, the second respondent before me had 12 punishments including for overloading. Certainly it was well open to the original authority to consider that as a serious disqualification.

Where therefore in consideration of the same, it rejects the renewal, certainly no objection could be taken to the same. Later on, it found temporary permits will have to be issued and therefore it did issue temporary permits. What the Tribunal does is, relegates the question of punishment to the final hearing and chooses to exercise its discretion u/s 134 (1-A). In the first part of the order relating to the exercise of

discretion u/s 134 (1-A) it is not even conscious of the statutory provisions occurring under Chap. IV-A. To a case falling under Chap. IV-A

whether the discretion could be exercised u/s 134 (1A) or not, does not seem to have occurred to the Tribunal. The reason why I am saying this is

because of Section 68-B. No doubt in Mohd. Ashfaq Vs. State Transport Appellate Tribunal, Uttar Pradesh and Others, it is stated-

Moreover, it is implicit in the enactment of Section 68-B that Chap. IV-A is not a self-contained Chapter to which the other provisions of the Act

are inapplicable. If Chap. IV-A were a self-contained Code by itself, there would have been no need to give overriding effect to the provisions in

that Chapter as against the other provisions of the Act." But the real question is, was the Tribunal aware whether it could entertain an appeal, in a

matter falling under Chapter IV-A? If it is so, u/s 134 (1). it could entertain an appeal in which event, because of the non obstante clause occurring

u/s 134 (1-A) it could exercise its discretion. Not one of these considerations prevailed with the Tribunal. There is no use, now, the learned

counsel for the respondent trying to buttress the order with the Supreme Court case, since the Tribunal should have been conscious of this legal

position and yet must have chosen to exercise its discretion. It cannot merely say that the question relating to punishment should be relegated to

final hearing and discretion could be exercised, What are the details relating to history sheet that were required? Could not the Tribunal have asked

for those details, especially when the lower authority was available at its elbow? Nothing of the sort was done. In my view, there is every

justification for the complaint of Mr. N. G. Krishna Iyengar that the discretion has been exercised as a matter of course.

5. Worst still to follow. As if it is a logical conclusion, having chosen to exercise its discretion, the temporary permits granted in favour of the

revision petitioner Corporation are stayed. Why should it be stayed? No reason is found, as if it is a case of balancing between two rival claims.

One is independent of the other. Therefore. I see no justification for the Tribunal ordering so. In the result I am fully satisfied that the Tribunal

seriously erred in exercising its discretion without having regard to the relevant provisions of law and as a matter of course. Therefore, this revision

petition is allowed. No costs.

6. I think the interest of justice would be met by directing the Tribunal to take up the main appeal itself and dispose of the same on or before 10-4-

1978.

7. Order accordingly.