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(2002) 02 MAD CK 0184

Madras High Court

Case No: Writ Petition No. 10151 of 1995 and W.M.P. No. 16101 of 1995

M. Duraiswami, Prop. Sri Senthil Raja Bus Service	APPELLANT
Vs	
The State Transport Appellate Tribunal and The Regional Transport Authority, Periyar District	RESPONDENT

Date of Decision: Feb. 5, 2002

Citation: (2002) 02 MAD CK 0184

Hon'ble Judges: P.K. Misra, J

Bench: Single Bench

Advocate: Radha Gopalan, for the Appellant; S.P. Prabhakaran, Special Govt. Pleader, for the Respondent

Final Decision: Allowed

Judgement

P.K. Misra, J.

Petitioner is a Stage Carriage Operator. He had a spare vehicle TDX4041 which was at times being plied on the basis of special permit. The Petitioner had obtained one such temporary permit for the period between 10.12.1990 and 13.12.1990 for taking tourist passengers from Erode to Sendamangalam and then to Guruvayoor, Erimeli, Pambai, Courtallam, Madurai, Palani, Sendamangalam and back. On 13.12.1990, the Motor Vehicles Inspector at Amarampalayam Checkpost issued a vehicle check report stating that the vehicle was found plying through Govindapuram on Pollachi Meeukkarai Road instead of going to Madurai and Palani and a charge memo was issued stating that the vehicle was plying on an unauthorised route. The Petitioner submitted a detailed explanation to the effect that while returning from Sabarimalai due to diesel shortage and unavailability of diesel, the driver of the vehicle was constrained to go through a short-cut route.

2. By an order dated 1.1.92, the second Respondent directed the Petitioner to pay a fine of Rs. 300/- without specifying the period for which the permit was to be suspended. Being aggrieved, the Petitioner filed an Appeal No. 85 of 1992 before the first Respondent, who by an order dated 3.11.1992, remanded the matter to the second Respondent for fresh disposal. After remand, the second Respondent passed an order suspending the permit for a period of 10 days with option to compound at the rate of Rs. 100/- per day. The only reason that has been given was to the following effect:

...A perusal of the records available in the file and the explanation of the permit holder, it is found that the explanation of permit holder is not acceptable...

3. Aggrieved by the aforesaid order, the Petitioner again preferred Appeal No. 147 of 1993. The Appellate Authority while accepting the contention of the Petitioner to the effect that the Original Authority had not given any reason, observed

... The remarks received from the Regional Transport Authority relating to this appeal makes it abundantly clear that the authority has passed the impugned order without going through the file and without going through the earlier judgment of the Tribunal dated 3.11.92" ..." Hence all the above will go to show that the lower authority - the quasi judicial authority has passed the subsequent impugned order after the matter was remanded without proper application of mind and even without exercising minimum care to go through the file and judgment of the Tribunal, which attitude is highly lamentable...

In spite of the aforesaid observation, the Appellate Authority without coming to any particular conclusion directed

...Considering the nature of offence and other circumstances, the Tribunal is of the view that suspension of permit for one day with option to compound at Rs. 100/- would suffice to meet the ends of justice squarely...

4. It is obvious that the Appellate Authority which found fault with the Original Authority for not giving any reason, has fallen into same error by imposing some penalty though of less severe nature, without coming to particular conclusion regarding the explanation furnished by the Petitioner.

5. The Petitioner has contended that the explanation to the effect that due to shortage of diesel, the driver of the Petitioner was constrained to take a short-cut has not been considered either by the Original Authority or by the Appellate Authority. learned Counsel for the Petitioner has submitted that in similar circumstances, on many occasions, the High Court had exonerated the concerned operator on the ground that there had been no wilful default. Particularly my attention is invited to the decision of this Court in W.P. No. 6509 of 1982 dated 10.3.1989, wherein it was observed:

...Therefore, plying of the vehicle ACC 5997 in the State of Tamil Nadu on 31.3.1982 was not with an object of violating the provisions of the Motor Vehicles Act and it was due to

the circumstances that went beyond the control of the Petitioner.

Aforesaid observation was followed subsequently in W.P. No. 247 of 1990 dated 9.1,1990.

6. In normal course, I would have remanded the matter to the Original Authority to consider the explanation furnished by the Petitioner for not following strictly the routes indicated in the temporary permit. However, keeping in view the minor nature of infraction and the fact that the alleged infraction happened more than a decade back and the Petitioner has already been harassed by facing prolonged proceedings, twice before the Original Authority and twice before the Appellate Authority, I quash the impugned order directing suspension of permit for one day or payment of Rs. 100/- in view (sic) (lieu?) of such suspension.

7. For the aforesaid reasons, writ petition is allowed and the impugned order is quashed. No costs. Consequently, WMP. No. 16101 of 1995 is closed.