

T. Muthulakshmi Vs Sri Meenakshi Bus Transports and Jeeva Transport Corporation Ltd.

Court: Madras High Court

Date of Decision: Oct. 21, 2009

Acts Referred: Motor Vehicles Act, 1988 " Section 100(4), 57(2)
Tamil Nadu Special Provisions Motor Vehicle (Amendment) Act, 1992 " Section 7

Hon'ble Judges: Prabha Sridevan, J; M. Sathyanarayanan, J

Bench: Division Bench

Advocate: R. Krishnamurthy for K. Sanjeevi, for the Appellant; A. Alagirisamy for V. Ramajagadeesan, for R1, M. Dhandapani, Spl. Govt. Pleader for R2 and G. Sankaran, for R4, for the Respondent

Final Decision: Allowed

Judgement

Prabha Sridevan, J.

In brief, the history of the case, which commenced from 1964 relates to the grant of two stage carriage permits to ply on the route Salem to Erode u/s 57(2) of the Old Motor Vehicles Act.

2. By proceedings dated 25.04.1964, permit was granted to the appellant herein and also to one L.R.N. Bus Service Private Limited, who is not a

party here. Aggrieved by this, eleven appeals were filed and the appellant and the first respondent were also impleaded in the said appeals. The

State Transport Appellate Tribunal dismissed ten appeals and Appeal No. 1765 of 1966 filed by the first respondent alone was allowed setting

aside the grant made in favour of the appellant. The grant made in favour of the L.R.N. Bus Service mentioned above, who is not a party here, was

also confirmed. The dispute does not really concern L.R.N. Bus Service. The ten appellants, whose appeals were dismissed, did not challenge the

same and the orders have attained finality. Aggrieved by the order against the appellant, Civil Revision Petition No. 1500 of 1978 was filed. In this,

the first respondent and L.R.N. Bus Service were parties. On 19.07.1978, when the revision petition was admitted, all the three operators were

permitted to ply on the route. On 25.11.1981, the revision was allowed and the matter was sent back to the Appellate Tribunal with a direction to

keep the appeal pending till the draft scheme was finalised. This Court also directed maintenance of status quo, which meant all the three operators

continued to ply on the two routes. There upon, the appeal was restored and was pending till 1990.

3. On 01.07.1989, the 1988 Motor Vehicles Act, came into force. As per Section 100(4) of the Act, which provided that if a scheme is not

published as an approved scheme within a period of one year, it is deemed to have lapsed, the draft scheme lapsed. The appeal was also not taken

up for consideration for a while. On 31.07.1992, the Tamil Nadu Special Provisions Motor Vehicle Act, 1992 (Tamil Nadu Act 41 of 1992)

came into force. According to Section 7, every application for the grant of new permit on a notified route and all the appeals arising there from or

relating thereto made or preferred before the date of publication of the Act and pending before the Court or an Officer or an authority or the

Tribunal, abated. On 07.08.1995, the Appellate Tribunal dismissed the appeal as abated, since in its view Section 7 of the Act, applied to the

proceedings pending before it. Therefore, the first respondent herein filed Writ Petition Nos. 12826 and 12827 of 1995. Pending the writ petitions,

again there was an interim order and both the appellant and the first respondent were operating on the route. On 18.06.2003, the writ petitions

were disposed of and while doing so, the learned single Judge held that the appeal had not abated and that since the Appellate Tribunal must

decide the same on merits, remanded the matter to the Appellate Tribunal. He also directed the maintenance of status quo regarding the operation

of the buses as on the date of the order till the disposal of the appeal by the Appellate Tribunal. Clarifying the position, the order reads as follows:

85. ...In other words, those who have been operating on the route Salem to Erode via Sankari in respect of the two grants shall continue to

operate as such operation shall be in the interest of the travelling public and their interest has to be taken into consideration and more so in view of

the passage of four decades and it is admitted that there is demand for such operations.

4. The grievance of the appellant is that the learned Judge while remanding the matter, restored all the appeals for decision on merits after issuing

notice of hearing. Therefore, before us, the only ground raised is that the learned single Judge ought not to have directed the State Transport

Appellate Tribunal to consider de novo the ten appeals, which had been dismissed earlier and which had not been challenged by the respective

appellants. The finding that the appeal had not abated and that Section 7 will not apply, is not challenged and the appellant quite understandably is

also not aggrieved by the maintenance of the status quo directed by the learned single Judge. Therefore, all that we have to decide is whether the

learned single Judge ought to have directed the restoration of all the appeals.

5. We have seen earlier from the narration of the facts that though eleven appeals were filed against the grant dated 25.04.1964, ten appeals were

dismissed and only the appeal filed by the first respondent herein was allowed. Aggrieved by that, the appellant filed C.R.P. No. 1500 of 1978,

but the dismissal of the other ten appeals remained unchallenged. It is by the order passed in the above C.R.P., the matter was remitted to the

Tribunal directing that the appeal should be kept pending finalisation of the draft scheme. It is also only by this order that the parties herein

continued to operate. Therefore, when the Tamil Nadu Act 41 of 1992 came into force, the only appeal that was pending before the Appellate

Tribunal was the appeal that was filed by the first respondent, which was remanded by order passed in C.R.P. No. 1500 of 1978. No other

appeal was then pending consideration by the Appellate Tribunal. Therefore, the order of abatement could have only related to that appeal. The

relevant paragraph reads as follows:

84. The 3rd respondent, State Transport Appellate Tribunal, is directed to restore all the appeals, decide the same on merits and according to law.

It is needless to add that the State Transport Appellate Tribunal shall decide the appeal without further delay since grant in question is the subject

matter of pending proceedings for the past four decades or thereabout. The State Transport Appellate Tribunal shall give priority and take up the

appeals and dispose of the same after issuing notice of hearing to the appellants and respondents in all the connected appeals, which were

disposed of as abated.

6. The above paragraph seems to indicate that the learned Judge was under the impression that all the appeals had been dismissed as abated.

Perhaps, it is in these circumstances that he directed that notice should go even to the ten appellants, who were satisfied with the dismissal of the

appeals.

7. The learned senior counsel appearing for the appellant relied on Cumbum Roadways (P) Ltd. Vs. Somu Transport (P) Ltd. and Others, and

1969 (1) SCWR 495 (R. Sambasivan and N. Doraiswamy Reddiar), which arose out of almost identical issues. In Cumbum Roadways" case, the

State Transport Appellate Tribunal disposed of seven appeals against the order of the Regional Transport Authority by one single order. The

Supreme Court held that even though all the appeals in respect to one route may have been disposed of by a single appellate order, in reality, it

amounted as many orders as there are appeals and therefore, if the parties, who are concerned in the seven appeals had not come to Court, then

the High Court had no jurisdiction to interfere with the orders of the Appellate Tribunal either in favour or against the parties which had not come

to it and therefore, the remand must be confined only to those parties which came to the High Court. In 1969 (1) SCWR 495, the Supreme Court

held that when there were plurality of applicants for grant of permit and one of the applicants, who was refused permit, filed a writ petition, the

High Court ought to have remanded only that case, which was challenged by the aggrieved applicant and the cases of other non-appealing

applicants, who had allowed the orders to have become final, could not have been remanded for further consideration and in this the Supreme

Court followed the earlier decision in Cumbum Roadways.

8. In view of the facts before us and also the decisions of the Supreme Court, we allow the appeal setting aside only the direction given to the State

Transport Appellate Tribunal to give notice to the other ten appellants and the respective respondents and to dispose of the same after hearing the

parties. The State Transport Appellate Tribunal shall take up only the appeal filed by the first respondent and dispose it of in accordance with law.

Thereafter, as and when a timing conference is convened, the fourth respondent shall be allowed to take part. The direction granting status quo will

continue since that is not challenged. No costs. Consequently, M.P. No. 1 of 2007 is closed.