

Sri Ram Vilas Service Ltd., Kumbakonam

Vs

Raman & Raman Private Ltd., & Anr.

Civil Appeal No. 258 of 1967

(J. C. Shah, S. M. Sikri, J. M. Shelat JJ)

20.10.1967

JUDGMENT

SIKRI, J. -

This appeal by certificate granted by the High Court of Madras is directed against its order dated October 3, 1966, allowing the writ petition filed under Art. 226 of the Constitution by M/s. Raman & Raman (P) Ltd., Kumbakonam, and quashing the order of the Regional Transport Authority, Thanjavur, dated March 28, 1966, whereby the Regional Transport Authority had granted the application for variation of the route Sirkali to Kumbakonam of M/s. Sri Ram Vilas Service Ltd. Kumbakonam, in respect of two stage carriages.

On December 9, 1965, the application of M/s. Sri Ram Vilas Service Ltd., Kumbakonam for variation of the route Sirkali to Kumbakonam was notified under s. 57(3) of the Motor Vehicles Act, 1939. M/s. Raman & Raman (P) Ltd., among others, filed objections and after hearing the objections, by order dated March 28, 1966, the Regional Transport Authority, Thanjavur, granted the application as, according to it, the variation applied for was in the interest of the travelling public. The distance covered by the variation extended beyond 24 kilometers M/s. Raman & Raman (P) Ltd. filed the petition under Art 226 of the Constitution to quash the order of the Regional Transport Authority.

The question which arises in this appeal is whether the Regional Transport Authority had jurisdiction to vary the route by extending it beyond 24 kms. The High Court, following its earlier decision in M/s. Swami Motor Transport (P) Ltd. v. M/s. Murugan Transports, Tiruchirapalli and Others [Writ Petition No. 3744 of 1965, judgement dated September 7, 1966.] held that "any variation in excess of 24 kilometers would be ex facie illegal and violation of the intendment of the Legislature enacting Act 3 of 1964."

The answer to the question posed above depends upon the true construction of some sections of the Motor Vehicles Act, 1939, as amended by the Madras Act III of 1964. The relevant statutory provisions are as follows :

"48(1). Subject to the provisions of Section 47, a Regional Transport Authority may on an application made to it under Section 46, grant a stage carriage permit in accordance with the application or with such modification as it deems fit or refuse to grant such a permit;

Provided that no such permit shall be granted in respect of any route or area not

specified in the application.

(3) The Regional Transport Authority, if it decides to grant a stage carriage permit, may grant the permit for service of stage carriages of a specified description or for one or more particular stage carriages, and may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely :

(i) that the stage carriage or stage carriages shall be used only on a specified route or routes or in a specified area.

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(xxi) that the Regional Transport Authority, may after giving notice of not less than one month :

(a) vary, extend or curtail the route or routes or the area specified in the permit.

Provided that in the case of -

(i) variation, the termini shall not be altered and the distance covered by variation shall not exceed 24 kms.

(ii) extension of the distance covered by the extension shall not exceed 24 kms. from the termini

(aa) vary any other condition of the permit."

"S. 57(8). An application to vary the conditions of any permit other than a temporary permit by the inclusion of a new route or routes or a new area or by the variation, extension or curtailment of the route or routes or area specified in the permit or in the case of a stage carriage permit, by increasing the number of services above the specified maximum, or in the case of a contract carriage permit by increasing the number of vehicles covered by the permit shall be treated as an application for the grant of a new permit."

"Rule 208. (a) Upon application made in writing by the holder of any permit, the Transport Authority may, at any time, in its discretion, vary the permit or any of the conditions thereof subject to the provisions of sub-rule (b).

(b) If the application is for the variation of the permit by the inclusion of an additional vehicle or vehicles or if the grant of variation would authorize transport facilities materially different from those authorized by the original permit the Transport Authority shall deal with the application as if it were an application for a permit. Provided that nothing contained in this rule shall prevent the Transport Authority or its Secretary, if authorized in this behalf, from summarily rejecting an application for the variation of a stage carriage permit so as to provide transport facilities on a road which had been or is certified to be unfit for motor vehicular traffic by an officer not below the rank of Divisional Engineer of the Highways Department.

(c) Every application for variation of conditions of permit under sub-section (8) of Section 57 of the Act in respect of a transport vehicle shall be in form PVA.

(d) The provisions of rules 163(b) shall, mutatis mutandis, apply to application for the variation of a permit or the variation of the counter-signature, if any, thereof by the inclusion of an additional vehicle sanctioned subject to the production of the registration certificate of the additional vehicle."

Section 5 of the Madras Act III of 1964, reads as follows :

"5(1). Notwithstanding anything contained in the principal Act, the route or routes or the area specified in every stage carriage permit granted before the commencement of this Act shall be deemed to be a condition attached to such permit under sub-section (3) of Section 48 of the principal Act, as if this Act were in force on the date of grant of such permit.

(2) Notwithstanding any judgment or order of any Court, all proceedings taken for the grant of, and all orders passed granting any variation, extension or curtailment of the route or routes or the area specified in a stage carriage permit before the commencement of this Act by the State Transport Authority or by a Regional Transport Authority or by an authority or person to whom the powers and functions of the State Transport Authority or a Regional Transport Authority have been delegated, or by an authority exercising the powers of appeal or revision against the orders of the State Transport Authority or a Regional Transport Authority, shall not be deemed to be invalid merely by reason of the fact that the State Transport Authority or the Regional Transport Authority, as the case may be, had no power to grant such variation, extension or curtailment and all such proceedings taken or orders passed shall be deemed always to have been validly taken or passed in accordance with law notwithstanding the distance covered by the variation or extension exceeded twenty-four kilometers."

The learned counsel for the respondent contends that s. 48(3) (xxi), as amended, operates whether a condition to that effect has been put in a permit or not. But we are unable to read s. 48 in this sense. Section 48(3) clearly enables the Regional Transport Authority to attach to the permit any or one of the twenty-one conditions. It may in a particular case put one or two or more of the conditions or it may put all the conditions. It seems to be common ground that if any of the first twenty conditions in s. 48(3) is not attached to a permit it will not have effect. What makes condition (xxi) different is hard to appreciate. If condition (xxi) as amended is not attached to a permit it is difficult to see how the Regional Transport Authority can derive any power from the existence of s. 48(3)(xxi) in the Act. Section 5(1) of Act III of 1964 makes the route or routes or the area specified in every stage carriage permit granted before the commencement of the Amending Act a condition attached to such permit under sub-section (3) of Section 48 of the principal Act; it does not say that s. 48(3)(xxi) shall be deemed to be a condition attached to every such permit. The learned counsel for the respondent says that this was the intention of the amendment, but if this was so, the intention has not been carried out.

It was argued before us that the history of legislation supports the interpretation placed by the High Court but, in our view, the Act as it stands amended by Act III of 1964 is quite clear and it is not necessary to go into the history of the legislation.

It seems to us that the High Court erred in holding that s. 48(3)(xxi) of the Act, as amended, by itself gave power to the Regional Transport Authority to vary the route within certain limits. This power, in our view would be exercisable only if a condition to that effect is put in the permit. In the case of the appellant we saw the permit and what it contained was a condition similar to the condition mentioned in s. 48(3)(xxi) before its amendment by Act III of 1964. Therefore, for the purpose of this appeal we must treat s. 48(3)(xxi), as amended, as non-existent. If s. 48(3)(xxi), as amended is, treated as non-existent, then there can be no difficulty in coming to the conclusion that no limitation had been placed on the powers of the Regional Transport Authority in respect of the grant of applications for variation of the route. The order of the Regional Transport Authority cannot, therefore be challenged as being beyond its jurisdiction.

Another question that was debated before us was whether r. 208 of the Madras Motor Vehicles Rules, extracted above, confer powers on a Transport Authority to vary permits or whether it is merely a procedural rule. It seems to us that as the Act stands at present, r. 208 does confer power on a transport authority to vary all kinds of permits or conditions attached therein. This power is exercised on an application made in writing by the holder of any permit.

It follows from the above reasoning that the Regional Transport Authority had the authority under r. 208 to vary the permit and nothing contained in s. 48(3)(xxi) limited its power in respect of the distance covered by the variation in this case.

We may mention that it was argued before us that s. 57(8) is not merely procedural but also implies a power of receive applications and vary the conditions in a permit. This may be so, but it is not necessary to decide in this case because in Madras r. 208 clearly confers power on the Transport Authority to vary the conditions of the permit.

In the result the appeal is allowed and the judgment of the High Court set aside. The appellant will have the costs incurred in this Court.

Appeal allowed.

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