

M/s. Ravi Roadway

Vs

Asia Bi and Others

And

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Civil Appeal No. 550 of 1967

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

01.04.1970

JUDGMENT

SHAH, J. -

1. se three appeals are filed with certificate granted by the High Court of Madras.
2. On October 17, 1963, Sabulal Sahib holder of a permit for plying stage carriage No. MDS-5217 for the route Namakkal to Pandamangalam agreed to transfer for Rs. 40,000/- the permit and the vehicle to M/s. Ravi Roadways-hereinafter called "Roadways". Rs. 27,500/- out of the consideration were paid by the Roadways on the date of the agreement and the balance in February 1964. Sabulal and the Roadways then applied to the Regional Transport Authority, Salem, to sanction the transfer of the permit. The application was notified by the Transport Authority under Section 57(3) of the Motor Vehicles Act, and on January 24, 1964, at a public hearing the Transport Authority sanctioned the transfer subject to confirmation by the Transport Commissioner. This latter direction was made in compliance with G.O. 2205 issued by the State Government in purported exercise of power under Section 43-A of the Motor Vehicles Act introduced by Madras Act 20 of 1948.
3. The Roadways challenged by Writ Petition No. 1298 of 1964 filed in the High Court of Madras the validity of the order of the Transport Authority submitting the order of sanction to the Transport Commissioner, on the plea that the Government was incompetent by executive order to issue any directions fettering the discretion of the Regional Transport Authority when exercising quasi-judicial functions.
4. Shortly thereafter Sabulal died, and his estate devolved upon his widow Asia Bi and his children. On October 23, 1964 the Roadways informed the Regional Transport Authority, Salem, about the death of Sabulal and claimed that they were entitled to use the permit as they were in possession of the vehicle and the permit under the agreement of sale. Asia Bi in her turn applied for transfer to her name the permit of the vehicle No. MDS-5217, and addressed a letter to the Regional Transport Authority intimating that she had withdrawn the consent to the transfer of the permit to the

Roadways and requested the proceeding for transfer of the permit pending before the Transport Commissioner be dropped under Rule 199-A of the Motor Vehicles Rules. But on the application of the Roadways under Section 61 of the Motor Vehicles Act to transfer the permit to their name, the Transport Authority, Salem, directed that the permit in respect of stage carriage No. 5217 be transferred to the name of the Roadways.

5. Asia Bi then moved a petition in the High Court of Madras being Petition No. 201 of 1965 for a writ quashing the order of the Transport Authority. The petition was rejected by Srinivasan, J. Against that order, Asia Bi preferred an appeal under the Letters Patent. The appeal filed by Asia Bi and petition No. 1298 of 1964 filed by the Roadways were heard by the Madras High Court. The High Court accepted the plea of the Roadways that G.O. No. 2205 Home, dated July 1, 1961, issued by the Government of Madras could not control the exercise of quasi-judicial functions of the Regional Transport Authority. But the High Court was of the view that after the death of Sabulal the permit relating to vehicle No. MDS-5217 could not be transferred under Section 61 of the Motor Vehicles Act to the Roadways, for, in their view the rights which the Roadways may have could only spring from Section 59(1) and not Section 61(2) of the Motor Vehicles Act. The High Court observed that the agreement between the Roadways and Sabulal was "inchoate in the sense that it was contingent upon the consent to be given by the regulating Authority, namely the State, to the proposed transfer", and that depended upon a statutory discretion to be exercised by the Transport Authority, and that the Transport Authority had not exercised his discretion, and even if the Roadways had obtained possession of the vehicle during the life-time of Sabulal they had not succeeded to the possession of the vehicle. The High Court was accordingly of the view that the application under Section 59(1) by the Roadways, and the application by Asia Bi under Section 61(2) must be heard and disposed of by the Transport Authority according to law. The High Court observed :

"If he (Regional Transport Authority, Salem) decides now to make the transfer, notwithstanding the withdrawal under Rule 199-A by legal representative of Sabulal (deceased) then, there is really no further question for decision under Section 61 of the Act. For the permit itself will thereafter vest in the transferee (Messrs. Ravi Roadways). If, on the contrary, the transfer is not recognised, then the application of the legal representative or representatives under Section 61(2) will have to be allowed, if factual possession by such party or parties can be proved on and after October 8, 1964, namely, the date of death of Sabulal."

The High Court allowed the appeal filed by Asia Bi and directed that further proceedings be taken in the light of the observations made in the judgment. Against that order the Roadways have preferred Appeals Nos. 145 and 146 of 1967 and Asia Bi has preferred Appeal No. 550 of 1967.

6. G.O. No. 2205-Home issued by the Government of Madras is without the authority of law. By that Order it is directed, inter alia, that all proposals formulated by the Transport Authorities regarding the transfer of permits in respect of stage carriages shall be submitted to the Transport Commissioner for confirmation. This Order was issued in exercise of the powers conferred by Section 43-A of the Motor Vehicle Act which was introduced by the Madras Legislature into the Motor Vehicles Act by Madras Act 20 of 1948. The section reads :

"The State Government may issue such orders and directions of a general character as it may consider necessary, in respect of any matter relating to road transport, to the State Transport Authority or a Regional Transport Authority; and such Transport

Authority shall give effect to all such orders and directions."

This Court in *B. Rajagopala Naidu v. State Transport Appellate Tribunal and Others* ((1964) 7 SCR 1) held that Section 43-A confers power on the State Government to issue orders and directions to the State Transport Authority only in relation to its administrative functions. The Court further held that in dealing with applications for permits and evaluating the respective claims of the parties, the Transport Authority discharges quasi-judicial functions and an order issued by the State Government giving directions to the Transport Authority in respect of a matter entrusted to it under the Act which has to be dealt with by it in exercise of its quasi-judicial authority is outside the purview of Section 43-A of the Act. The same principle applies in the present case. Exercise of the power to sanction the transfer of a permit under Section 59(1) is quasi-judicial, and the State government is not competent to impose any restriction upon the exercise of that power by issuing executive instructions. The High Court was, in our judgment, right in holding that no such instructions as are contained in G.O. No. 2205-Home, dated July 1, 1961, directing the Regional Transport Authority to submit the proposal for transfer of a permit in respect of stage carriage shall be submitted to the Transport Commissioner for confirmation could be issued. G.O. No. 2205-Home was, therefore, invalid in law, and the Transport Authority was not competent to submit the papers regarding the proposed transfer of the permit standing in the name of Sabulal to the Roadways for confirmation to the Transport Commissioner. The direction submitting the order of the Transport Authority for confirmation must therefore stand vacated.

7. Whether Asia Bi could in the circumstances of the case withdraw the consent given by her husband Sabulal to the transfer of the vehicle to the Roadways has then to be considered.

Section 59, by sub-section (1), provides :

"Save as provided in Section 61, a permit shall not be transferable from one person to another except with the permission of the transport authority which granted the permit and shall not without such permission operate to confer on any person to whom a vehicle covered by the permit is transferred any right to use that vehicle in the manner authorised by the permit."

Section 61, in so far as it is material, provides :

"(1) Where the holder of a permit dies, the person succeeding to the possession of the vehicles covered by the permit may, for a period of three months, use the permit as if it has been granted to himself :

Provided that such person has, within thirty days of the death of the holder, informed the transport authority which granted the permit of the death of the holder and of his own intention to use the permit :

#Provided further x x x x##

(2) The transport authority may, on application made to it within three months of the death of the holder of a permit transfer the permit to the person succeeding to the possession of the vehicles covered by the permit."

The High Court was of the view that the expression "the person succeeding to the possession of the vehicles covered by the permit" does not include a transferee of the vehicle during the lifetime of

the holder of the permit. On the view we have taken, it is unnecessary to decide whether Asia Bi could, on the footing that the transfer was not sanctioned by the Transport Authority during the lifetime of Sabulal, withdraw the consent given by Sabulal and whether the Transport Authority was bound to drop the proceeding under Rule 199-A.

8. Sabulal had entered into a contract to transfer the vehicle to the Roadways. The Roadways had paid the price stipulated. It is true that the transfer of the permit relating to the vehicle may be effective only if sanction of the Transport Authority is given. In the present case by order, dated January 24, 1964, the Transport Authority said that he did not see any objection to permit the transfer, and recommended the transfer to the Transport Commissioner. The recommendation being, for reasons already stated, invalid, the order of the Transport Authority that he had no objection to permit the transfer must, in our judgment, amount to sanction of the transfer. That order was made during the lifetime of Sabulal and the transfer became effective in favour of the Roadways.

9. On its plain terms Rule 199-A of the Madras Motor Vehicles Rules, 1940, has no application after the transfer is sanctioned. The Rule provides :

"When the consent of either or both the parties to the transfer of a permit is withdrawn before transfer is sanctioned, the Transport Authority shall drop proceedings in regard to the transfer of that permit."

10. Appeals Nos. 145 and 146 of 1967 are allowed, and Appeal No. 550 of 1967 is dismissed. The Roadways will get their costs in the three appeals in this Court and in the High Court. There will be one hearing fee in this Court.

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