KERALA HIGH COURT

N.K. Dharmadas

Vs.

State Transport Appellate Tribunal of Kerala

Writ Appeal No. 90 of 1961

(M.S. Menon, C.J., T.K. Joseph and S. Velu Pillai, JJ.)

29.05.1962

JUDGMENT

M.S. Menon, C.J.,

1. This is an appeal by the 3rd respondent in O. P. No. 313 of 1958 against the decision in that petition. The decision has since been reported, *Nambudiripad v. State Transport Appellate Tribunal*[1]*,*

2. The Regional Transport Authority, Kozhikode, granted a stage carriage permit to the petitioner in O. P. No. 313 of 1958 and rejected the application of the 3rd respondent. The 3rd respondent challenged the correctness of the order before the State Transport Appellate Tribunal by an appeal under Section 64 of the Motor Vehicles Act, 1939, Appeal No. 35 of 1957. The State Transport Appellate Tribunal set aside the order and remanded the case for fresh disposal to the Regional Transport Authority, Kozhikode. The Original Petition was directed against the order of remand.

3. Vaidialingam, J. held that the State Transport Appellate Tribunal had no powers of remand, and that even if it had such a power, the circumstances of the case did not justify the remand directed by the Tribunal. We are in entire agreement with the second of the two conclusions and that is sufficient to entail a dismissal of this appeal.

4. In considering the second aspect of the case the learned Judge reviewed all the relevant facts and said :

> "I am satisfied that the order of remand in the circumstances of this case, is absolutely unnecessary. The entire materials were available before the appellate tribunal and the appellate tribunal could have certainly, on those materials, come to a conclusion either agreeing with or differing from the conclusions arrived at by the R. T. A. The remand in this case, in my opinion, is really an abdication by the appellate authority of its proper and legitimate duty under Section 64 of the Motor Vehicles Act. Even on this view the order

of the appellate tribunal will have to be set aside".

[1]1951 Ker LJ 863

There is nothing on record which indicates that the conclusion is incorrect and we are unable to accept the contention of the appellant that a different conclusion is possible.

5. The question whether a State Transport Appellate Tribunal in dealing with an appeal under Section 64 of the Motor Vehicles Act, 1939, has the power to remand the case to the Regional Transport Authority for fresh disposal or not is a question of importance. It is essentially for a decisionn of that question that this appeal has been posted before a Full Bench.

6. Section 64 of the Motor Vehicles Act, 1939 only says that the persons specified therein may, within the prescribed time and in the prescribed manner, appeal to the prescribed authority who shall give such persons and the original authority an opportunity of being heard. A power of remand is not specifically mentioned in the section. But as pointed out by the Supreme Court in *Ram Gopal v. Anant Prasad*[2], Section 64 is not concerned with defining the powers of the appellate authority and does not purport to do so".

7. The only question is whether a power to remand should be considered as having been granted by necessary implication. It is certainly not excluded by the fact that the original authority gets an opportunity of being heard.

8. In *Yagsen Ram Prasad Khewat v. Chief Commr. Ajmer*[3], Nigam, J. C. said :

> "In my opinion, the power of remand is inherent in the very constitution of an appellate Court. An appellate Court has the right to set aside the order of the trial Court. When it does so, it may go further and substitute its own order for the order appealed against or it may not go so far and may merely quash the order appealed against and automatically require the subordinate authority to restore the original cause and to decide it afresh.

In my opinion, the absence of a power of remand would limit and to some extent negative the completeness of the power of the appellate authority and I am, therefore, of opinion that whether there is a specific provision or not, the power to order a remand must be taken to be inherent in every appellate Court in its very constitution as an appellate authority". To the same effect is *Swarajyalakshmi v. State of Andhra Pradesh*[4], *Narendra Kumar Das v. Transport Appellate Board Assam*[5] also takes the view that the power to remand is implicit in the power to dispose of an appeal.

9. All the three decisions mentioned above relate to Section 64 of the Motor Vehicles Act, 1939. We are in agreement with them and consider it unnecessary to deal with the decisions under analogous enactments. In final analysis the powers, if any, that will be deemed to have been granted by necessary implication will depend on the jurisdiction conferred and on whether that jurisdiction is untrammelled or trammelled, and if trammelled, to what extent. Decisions under one enactment can in the very nature of things be of little or no assistance for the decision of the question under
another enactment.

[2] AIR 1959 SC 851
[3] AIR 1956 Ajmer 41
[4] AIR 1959 And Pra 321
[5] AIR 1960 Ass 100

10. We may, however, mention two decisions under the Madras Buildings (Lease and Rent Control) Act, 1946, on which considerable reliance was placed by counsel for the respondents, *Segu Abdul Khadir v. A. K. Murthy*[6], and *Devichand Moolchand v. Dhanraj Kantilal*[7] In the first of the two cases the Chief Judge of the Court of Small Causes in his capacity as the appellate authority under the Act heard and allowed an appeal after being satisfied that notice of the appeal had been duly served on the respondent as required by the rules. Subsequently the respondent sought to get the order allowing the appeal set aside on the ground that he had not been duly served and the Chief Judge set aside the order and directed a fresh hearing of the appeal. The Court said :

> "It is beyond doubt that the learned Chief Judge at the hearing of the appeal on 2nd April when no appearance on behalf of the respondent was made, found that notice of the appeal had been served in conformity with R. 9, above-mentioned; thereupon he heard the appeal and ordered possession of the premises to be given and his order was subsequently drawn up." and :
> "The argument of learned counsel for the respondent was that his client had been condemned without having been given an opportunity of being heard and consequently the learned Judge was correct in setting aside the order. The ground for that contention is that his client was not properly served. Order 9, Rule 13, Civil Procedure Code provides for setting aside a decree passed ex parte against a defendant if the Court is satisfied that the summons was riot duly served or that he was prevented by any sufficient cause from appearing at the hearing. There is a corresponding provision regarding appeals to be found in Order 41, Rule 21 of the Code. In *Neelaveni v. Narayana Reddi*[8], it was held by a Full Bench of this Court that it has no power, apart from Rule 13 of Order 9 to set aside an ex parte decree; and, it must follow also with regard to setting aside an order in appeal, pursuant to Rule 21 of Order 41. It is, in my view, to be regretted that the provisions of the Code have not been made applicable to proceedings under the Control Act, and that, when the Provincial Government exercising the power conferred by Section 17 of the Act, made rules of procedure, they did not in those rules do what would have been, I think, desirable; they did not enable the provisions of the Code, so far as applicable and relevant, to be made use of in proceedings under the Control Act,. In the absence of rules, it was argued, nevertheless the principles of them must be applied. I am unable to accept that contention".

11. The reference to ILR 43 Mad 94 : AIR 1920 Madras 640 is significant. The decision in that case was that there was no inherent power in a court to set aside an ex parte decree made by itself by summary procedure and that the power of a court to do so should be traced to the provisions of rule 13, Order 9, of the Code of Civil Procedure, 1908. In these circumstances it cannot but be clear that the power under that rule will not be available unless the rule itself had been made applicable.

[6] AIR 1948 Mad 235
[8] ILR 43 Mad 94, : AIR 1920 Mad 640

[7] AIR 1949 Mad 53

12. In AIR 1949 Madras 53 the question was whether a legal representative of the petitioner could be brought on record and the proceedings continued or whether he should file a fresh petition. The contention on his behalf was that

> "though there was no provision either in the Act or in the rules made thereunder incorporating or making applicable any of the provisions of the Code of Civil Procedure, nevertheless the principle of those rules would apply because the Rent Controller must be deemed to be a Court of civil jurisdiction within the meaning of Section 141 of the Code, as the Rent Controller was invested with powers to adjudicate upon civil rights of parties".

All that the court did was to reject that contention and add,

> "But in this case we are not much impressed with the technical objection taken that a separate application should have been filed by the petitioner instead of an application to be brought on record to continue the petition filed by his father. The affidavit of the petitioner dated 18th Feburary 1947 to which reference has already been made contains all the material particulars required to be mentioned in an application praying for eviction and it appears to be the height of technicality to disregard this fact and insist upon a formal petition for the same purpose. The question whether it would be competent for the legal representative to be brought on record as such in an application before the Rent Controller in every case need not be decided by us".

13. It was suggested that the absence of a provision making the Code of Civil Procedure, 1908, applicable to the proceedings indicates that the power of remand was not intended to be granted. This is clearly wrong. If the power of remand is implicit in an appellate jurisdiction on the ground that it is incidental to and essential for, the proper exercise of that jurisdiction, the fact that the Code of Civil Procedure, 1908, has not been made applicable can have no reaction on the existence or otherwise of that power. It may be that if some of the provisions of the Code are made applicable to a tribunal and others left out, a contention is possible that the provisions left out, have been deliberately excluded. Such is not the case before us.

14. There is no doubt that the proceedings before a State Transport Appellate Tribunal are quasi-judicial in character. There is a specific statement to that effect in *New Prakash Transport Co., Ltd. v. New Suwarma Transport Co. Ltd*[9]*.,*

15. In *C. S. S. Motor Service v. State of Madras*[10]*,* Venkatarama Aiyar, J., said :

> "The grant or refusal of permits by the transport authorities in all its stages including Section 64-A is a judicial act".

This decision was cited with approval in *Raman and Raman Ltd. v. State of Madras*[11]*,*

16. An appeal is a complaint to a superior body of an injustice done or error

[9] AIR 1957 SC 232 [11] AIR 1959 SC 694

[10] AIR 1953 Mad 279

committed by an inferior one with a view to its correction or reversal. It is a creature of statute, not a constitutional or inherent right. But, as pointed out by Maxwell, where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution (11th Edition, page 350).

17. A remand by an appellate court is usually made when the record before it is in such shape that the appellate court cannot in justice determine what final judgment should be rendered and the power to do so cannot but be an essential requisite of the very jurisdiction to entertain the appeal. It is an old maxim of the law that to whomsoever a jurisdiction is given, those things also are supposed to be granted, without which the jurisdiction cannot be exercised : cui jurisdictio data est, ea quo-que concessa essee videntur, sine quibus jurisdictio expllcari non potest.

18. Kent says that the grant of a jurisdiction implies the grant of all the powers necessary to its exercise (1 Kent, Comm. 339). And Sutherland that where a statute confers powers or duties in general terms, all powers and duties incidental and necessary to make such legislation effective are included by implication (3rd Edition, Vol. 3, Page 19).

19. It is unnecessary to pursue the discussion any further. We entertain no doubt that a power to remand is available to a tribunal functioning under Section 64 of the Motor Vehicles Act, 1939, that the said power is incidental to and implicit in the appellate jurisdiction created by that section, and that the learned Judge's decision to the contrary cannot be sustained. We decide accordingly.

20. In the light of what is stated in paragraphs 3 and 4 above, however, the appeal must fail and has to be dismissed. We do so, but in the circumstances of the case without any order as to costs.
Appeal dismissed.