

indira Devi Vs. the Karnataka State Transport Appellate Tribunal and ors.

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Court : Karnataka

Decided On : May-02-1988

Reported in : AIR1989Kant182

Judge : M. Rama Jois and ;S. Rajendra Babu, JJ.

Acts : [Motor Vehicles Act, 1939](#) - Sections 59(l), 61, 61(1), 61(2), 63(7) and 590

Appeal No. : Writ Appeal Nos. 2653, 2654, 4658 and 4659 of 1982

Appellant : indira Devi

Respondent : The Karnataka State Transport Appellate Tribunal and ors.

Advocate for Def. : M. Rangaswami, Adv. and ;R.U. Chandangowdar, Govt. Adv.

Advocate for Pet/Ap. : H.B. Datar, Adv. for ;C. Narasimhachar, Adv.

Judgement :

M. Rama Jois, J.

1. These four appeals arise out of a common order passed in W.P. Nos. 31931 and 31932/1982.*

2. The facts, in brief, which lead to these appeals are as follow:

(i) One K. Jayaraja Ballal was the Managing Partner of the firm 'M/s. Ballal Motor Service' (for short 'the firm'). He had a permit bearing No. 4/77-78 issued under S. 63(7) of the [Motor Vehicles Act, 1939](#) (for short 'the Act') by the Karnataka State Transport Authority, Bangalore (for short 'KSTA'). The motor vehicle covered by the permit was bearing registration No. MEG 5142. As disputes arose among the partners, they were referred to the Arbitrators. One of the disputes referred for arbitration was the right to the aforesaid permit and the vehicle. On 31-12-1981 the said K. Jayaraja Ballal died leaving behind him his wife and major and minor children, his mother, brothers and sisters. Both the widow of the said K. Jayaraja Ballal and the Firm reported the date of the petitioner to the KSTA and requested for transfer of the permit. There is no dispute that during the lifetime of Sri Jayaraj Ballal he had admitted that the motor vehicle bearing registration No. MEG 5142 belonged to the Firm, in the pleadings filed before the Civil Court in which the disputes were pending. The KSTA by its resolution dt. 21st and 22nd June, 1982 held that as there were disputes over the rights regarding the permit and such disputes were of a civil nature, it was not competent for it to decide the same and that as the records disclosed that the permit in question stood in the name of Sri Jayaraj Ballal, the same should be transferred to his wife.

(ii) Against the order of the KSTA the firm filed an appeal and a revision petition before the Karnataka State Transport Appellate Tribunal, Bangalore (Tribunal' for short). The Tribunal allowed the appeal and the revision petition by its judgment dt. 30-8-1982. It directed the KSTA -to enter the name of the firm in the permit in place of

late K. Jayaraja Ballal and also enter the vehicle bearing registration No. MEG 5142 in the said permit as before subject to declaration of rights by Civil Court.

(iii) Aggrieved by the said order, the wife of Sri Jayaraj Ballat filed two writ petitions. The learned single Judge who heard the writ petitions, quashed the order of the Tribunal and that of the KSTA and directed the restoration of both the applications before the KSTA made by the petitioner and the Firm with a direction to dispose them of in conformity with the final award of the arbitrators and the decree of the Civil Court under Chapter-11 of the Arbitration Act, 1940. The

learned single Judge also directed that till then the person who was operating the motor vehicle MEG 5142 as on 21-6-1982, is entitled to operate the same.

3. For the sake of convenience, hereafter, I shall refer to the firm as the appellant and the wife of Jayaraj Ballal as the respondent. The respondent is aggrieved by the last part of the order setting aside the order of the KSTA and directing that the person who was operating the motor vehicle bearing No. MEG 5142, as on 21-6-1982 is entitled to operate the permit. The firm is aggrieved by the order of the learned single Judge, quashing the order of the Tribunal.

4. It was contended by the learned counsel for the Firm that the order of the learned single Judge was based on several misconceptions of law and that without appreciating correctly the factual circumstances, has set aside the order of the Tribunal. It was contended for the respondent that there was no basis for the conclusions reached by the learned single Judge and for setting aside the order of the KSTA and further that there was no justification for permitting the operation of the vehicle MEG 5142 by the person who was operating the permit as on 21-6-1982.

5. The decision of the learned single Judge is based on two grounds :

(a) That the respondent was entitled to grant of trans in law to the permit and the vehicle and the person who has mere physical possession of the vehicle was not entitled to the transfer of the permit.

(b) That it was not permissible for the Tribunal, an authority of limited jurisdiction to decide a question of benami transaction even for the limited purpose of deciding the questions arising before it and should have awaited the decision of the Civil Court on the award of the arbitration.

6. The correctness of the decision under appeal based on the above said grounds is questioned by the learned counsel for the appellant.

7. Section 61 of the Act, under which both the appellant and the respondent filed the application before the KSTA, reads :

'S. 61. Transfer of Permit on Death of Holder

(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 had 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 that no permit shall be used after the date on which it would have ceased to be effective without renewal in the hands of the deceased holder.

(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 vehicle covered by the permit.'

A reading of the section at once shows that when a holder of a permit dies, the person who succeeds to the vehicle covered by the permit, becomes entitled to use the permit for a period of three months and he is also entitled to apply before the transport authority and get transfer of the permit to his name. This section, as pointed out by the learned counsel for the respondent, does present some difficulty in cases in which owner of the vehicle covered by the permit is different from the holder of the permit. In such a case, a question would arise as to whether the legal representative of the holder of the permit is not entitled to get transfer of the permit and whether the person who succeeds to the possession of the vehicle also gets the permit, which did not belong to him and of which he does not secure ownership either by testamentary or intestate succession. Such question could arise for the reason that an owner of the permit need not always be an owner of the vehicle. But in this case no such question arises for consideration, for, it is not in dispute that the appellant-firm, was the owner of the vehicle and was in possession of it even during the lifetime of Jayaraj Ballal and it did not succeed to the possession of the vehicle after his death. Therefore, the appellant could not invoke or rely on S. 61 of the Act as held by a Division Bench of this Court in *A. V. Ravi v. M.S.T.A.T.*, AIR 1967 Mys 140. The relevant portion of the judgment reads

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'.....If it is true as contended by the respondents 3 and 4 that the permit was owned by the firm of which Puttamallegowda was a partner, no question of transfer of the permit under S. 61 can arise. If in such a case, and if the partnership still continues and remains undissolved, all that the surviving partners are required to do is to ask the concerned authority to specify the name of the firm in the place of the deceased partner. An application to that purpose is really outside the purview of S. 61.'

Further, as admittedly the respondent did not succeed to the possession of the vehicle on the death of her husband, she could not also invoke or rely on S. 61 of the Act. Therefore, neither of them were entitled to make an application before the KSTA under S. 61 of the Act.

8. The learned counsel for the appellant did not dispute the correctness of the above position in law. He, however, pointed out the learned single Judge had proceeded on the basis that S. 61 of the Act enabled the legal representative of a person who claims to have succeeded to the permit also to invoke the provisions of S. 61, though it was not so. He invited my attention to the following portion of the judgment of the learned single Judge, *Indira Devi v. K.S.T.A.T.*, (1983) 1 Kant LJ 33 in which the wording of S. 61 has been wrongly resumed, which conveys such a meaning :

'31. S. 61 of the Act very advisedly uses two crucial words 'succeeding to the permit and the vehicle'. These words indubitably recognise succession in law to the permit and the vehicle, if any on the death of the holder of the permit. On the death of the holder of the permit, succession opens to that and other properties and the same is regulated by his personal law of succession. The person entitled to use the permit and the vehicle, before the Transport authority makes its order, is only the person that succeeds in law to the permit and the vehicle, if any, and not the person who has mere physical possession of the vehicle. Succession necessarily includes testamentary and intestate succession.' (Underlining by us)

The above Para of the judgment supports the submission of the learned counsel. The language of S. 61 is clear. It does not use the words 'succeeding to the permit' but only speaks about the succeeding to the possession of the vehicle covered by a permit. The learned Judge proceeded on the basis that the section uses the words 'succeeding to the permit' though those words are not found in the section and on that basis held that the application of respondent who claimed to have succeeded to the permit which stood in the name of Jayaraj Ballal, and did not claim to have succeeded to the possession of the vehicle covered by the permit, was to be considered under S. 61 of the Act. As S. 61(l) only enables the person who succeeds to the possession of the vehicle to use the permit for three months and S. 61(2) enables such person only to seek transfer of the permit to his name, the respondent could not invoke or rely on S. 61. As far as the appellant is concerned, it has been in possession of the vehicle even during the lifetime of the husband of the respondent and does not claim to have succeeded to the possession of the vehicle after his death, Hence the appellant also could not seek transfer of the permit under S. 61 as held by this Court in the case of Ravi (AIR 1967 Mys 140). Therefore, I hold that the applications of both could not be dealt with under S. 61 of the Act.

9. This takes us to the crucial question arising for consideration in this case. From the facts stated earlier, it may be seen that whereas the plea of the appellant has been that the permit though stood in the name of the husband of the respondent, who was the Managing Partner of the appellant-firm, the real holder of the permit was the appellant firm, the plea of the respondent has been that her husband was the real holder of the permit and not the firm. Therefore, the real question for determination before the KSTA and the KSTAT was, whether the husband of the respondent was merely a benamidar of the appellant and the appellant was the real holder and therefore she was not entitled to have the permit transferred to her name and the appellant was entitled to have the permit transferred to it?

In the case of K. M. Viswanathan Pillai v. K. M. Shaninugam Pillai, : [1969]2SCR896 the Supreme Court has ruled that the Act does not bar benami transactions. Therefore, though both the parties had on a misconception about the applicability of S. 61 made the applications under S. 61, the applications could

have been considered under S. 59(I) only. S. 59(I) of the Act reads:

'S. 59. General Conditions Attaching to All Permits :

(1) Save as provided in S. 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.'

From the language of S. 59(I), it is clear that transfer of a permit from the name of the person in whose name it stands, to the name of any other person, except in cases falling under S. 61, has to be with the permission of the authority which granted the permit. Therefore, if in a given case a person seeks transfer of the permit to his name on the ground that the person in whose name the permit stands was only a benamidar, the authority which granted the permit has the power to decide whether it was true and if found to be true it has the power to effect transfer to the applicant - real owner, notwithstanding the fact that the person in whose name the permit stands or if he is dead his legal representative, disputes the claim of the applicant seeking transfer. The power to decide such a dispute is incidental to the power to accord permission for the transfer of the permit, conferred under S. 59(I) of the Act.

10. 1 receive support for our view from the decision of the Allahabad High Court the case of Asad Yar Khan v. S.T.A. Tribunal, : AIR1976 All185 . The relevant portion of the judgment reads :

'6. Sri R. N. Trivedi, learned counsel for the respondent, Srimati Afsari Begum, contended that the appellate Tribunal was right in holding that the transport authorities could not decide the question of title as they had no' power to summon witnesses and examine and cross-examine them on oath. I do not think that this contention of the learned counsel is sound. A reference was made to a decision of this Court in State of U.P. v. Ratan Shukla, : AIR1956 All258 wherein it was held that unless a positive authorisation is conferred by law a constituted authority though administering the laws and affecting the rights of the parties cannot

summon witnesses on oath and then examine or cross-examine them. I do not doubt the correctness of this proposition. The Regional Transport Authority not having been specifically authorised in that regard cannot examine or cross-examine witnesses on oath. Even if it may be so, the Regional Transport Authority having been constituted as a body to decide all disputes relating to permits and to call for any material information in that connection has to record finding in order to arrive at its decision. Nobody disputes and can dispute that the Regional Transport Authority in granting permits or transferring permits acts quasi-judicially. It has to give fair opportunity to every party interested before it. A body which is under a duty to act quasi-judicially has to hear the parties and on the information before it arrive at conclusions or findings. It has to perform that duty though it may be that it has no power to call for witnesses and examine them on oath. As already observed above, taking of benami permits under the Motor Vehicles Act being permitted as the verdict of the Supreme Court referred to above shows it cannot, as a matter of law be held that the Regional Transport Authority cannot go into the question of benami. In my judgment it cannot throw out a party only for the reason that it is difficult to decide the question of benami and then direct him to go to Civil Court. It may be observed here that the Regional Transport Authority has to do its best in resolving such questions. But its verdict as to the ownership of the vehicle may not be final as it is only an incidental question to be decided in order to grant a permit or transfer it. I think it is always open to a party to go to a Civil Court for a declaration that he is the owner of a vehicle. The provisions under the Act and the rules made thereunder do not anywhere constitute the Regional Transport Authority as the forum to decide finally the title of a vehicle. No doubt, as observed above, that is a relevant fact for the purpose of coming to a conclusion as to the grant of a permit or to transfer a permit. This incidental question has to be decided by the Regional Transport Authority in order to do its duty under the law as it is the exclusive forum where all questions relating to permits of stage carriages have to be determined.' (Underlined by me)

I am in respectful agreement with the above view and respectfully disagree with the view taken by the learned single Judge to the effect that the KSTA and the Tribunal had no authority to decide as to who was the real owner of the permit and that the matter should be kept pending, till the dispute is decided by the Civil

Court. Such a view, which deprives the effective exercise of the power granted to the authority under S. 59(l), is not warranted. The decision of the authorities under S. 59(l) however, as held by the Allahabad High Court has to be subject to the decision by the Civil Court. This is analogous to the entries made in the record of rights by the authorities under the provisions of the Land Revenue Laws which is required to be corrected so as to bring it in conformity with the decree of Civil Court, if made in favour of the party aggrieved by the entries in the record of right, in a civil suit filed by him which he is entitled to institute.

11. In the present case, the Tribunal did consider the question in the right perspective and the findings recorded by it were :

(a) that the vehicle MEG 5142 covered under the permit was in the possession of the Firm and undisputedly belonged to the Firm;

(b) that it was the practice of the Firm to have the vehicles and permits belonging to the, Firm in the individual names of the partners,

(c) that no consideration passed by the firm to the said Jayaraja Ballal for utilisation of the permit nor by the said Jayaraja Ballal to the firm for utilisation of the vehicle covered under permit,

(d) the parties admitted that the vehicle belonged to the firm and was operated for the benefit of the Firm, and

(e) the interim award by the arbitrators provided that the permit which stood in the name of the said K. Jayaraja Ballal should be transferred to the name of the firm pending final award.

On these findings the Tribunal held that the permit should be transferred to the name of the appellant-firm.

12. The learned single Judge set aside the order of the Tribunal on the ground that it had no jurisdiction to deal with the question as to who was entitled to the transfer of the permit taking the view that the Tribunal as Courts of limited jurisdiction should not decide complicated question of the nature of benami transactions which

are disputes of civil nature. We have disagreed with that view, as indicated earlier. The Tribunal, in our opinion, was right in holding that it had the jurisdiction to decide the dispute subject to the declaration of rights of the parties by the Civil Court. As far as the finding of fact recorded by the Tribunal to the effect that the appellant was the real holder of the permit is concerned, we are of the view that its conclusions are based on cogent and convincing material.

13. In the result, in reversal of the order made by the learned single Judge in Indira Devi's case (1983 (1) Kant LJ 33), I make the following order :

(i) The order of the learned single Judge under appeal, is set aside.

(ii) The order dt. 30-8-1982 of the State Transport Appellate Tribunal, Bangalore, in Appeal No. 588/82 and Revision Petition No. 224/82 is restored subject to the final award of the Arbitrators and the decree of the Civil Court under Chapter-11 of the Arbitration Act, 1940.

(iii) If the interim award made by the Arbitrator becomes final, there shall be no modification in the order of the Tribunal.

Rajendra Babu, J.

14. I agree that Appellant-Firm's appeals should be allowed but I wish to add a few words of my own.

15. Section 61 of the Act is applicable only to cases where the holder of the permit dies and someone seeks transfer of the permit to his name after death. In the present case the appellant is claiming that the permit in question belonged to it and not to Jayaraja Ballal in his own right. S. 61 of the Act can have no application to such a case in view of the decision in A. P. Ravi v. Mysore S.T.A.T., AIR 1967 Mys 140.

16. As late Jayaraja Ballal had admitted even during his lifetime, the vehicle MEG 5142 covered by the permit in question belonged to the appellant being indisputable the respondent cannot seek transfer of the permit in question as she is not a person succeeding to the possession of the vehicle covered by the permit.

Supreme Court in *Dhani Devi v. S. B. Sharma*, : [1969]2SCR507 held that on the death of a person holding a stage carriage permit in respect of his transport vehicle, the transport authority has power to allow the person succeeding to the possession of the vehicle to prosecute the application filed by the deceased-applicant. However, in *Ram Autar v. Minister of Transport*, : [1974]2SCR514 it was held that the said observation does not cover a case where the deceased-applicant was not in possession of the vehicle covered by the permit to which the deceased-applicant's heirs succeed. Though these observations have been made by the Supreme Court in the context of death of the parties during the pendency of the proceedings for grant of permit, the principle set out that where the deceased himself was not in possession of the vehicle covered by the permit, S. 61 of the Act is not attracted is applicable to the present case. As the respondent is not a person succeeding to the possession of the vehicle covered by the permit, as deceased Jayaraja Ballal himself was not in possession of the vehicle covered by the permit, S. 61 of the Act is not attracted as held by the Supreme Court in the cases referred to above. Thus I agree with the conclusion of my learned brother that neither the application of the appellant nor of the respondent is covered by S. 61 of the Act.

17. Now as to the question as to how the applications made by the parties have to be dealt with; S.59 of the Act deals with the general conditions of the permit and sub-sec. (1) thereof provides that a permit is not transferable except with the permission of the Transport Authority but the exception is S. 61 of the Act. Although S. 59(1) of the Act refers to transfer of permits, the transfer is not merely confined to those made inter vivos between the two parties but is extended to all cases of transfer whether by act of parties or by operation of law. In a limited way S. 61 of the Act recognises the heritability of the permit and thus it deals with cases where the rights inherited on the death of a deceased holder of a permit are concerned. Although succession to property is ordinarily understood as transmission of rights by operation of law, S. 61 of the Act authorises the Transport Authority to 'transfer' the permit and S. 59(1) of the Act opens with the expression 'save as provided in S. 61'. Hence the expression 'transfer of permit' used in S. 59 of the Act is used in the broadest etymological sense to cover all situations of transfer except those covered by S. 61 of the Act. Hence under S. 59(1) of the Act the transport authority

has powers to consider and decide an application for transfer of permit not covered by S. 61 of the Act including claim for, transfer by a real owner to his name from that of a benamidar.

18. In *Asad Yar Khan v. T. A. Tribunal*, AIR 11976 All 185 what was considered and decided is where a person claiming to be a real owner applied for transfer in his name of the permit standing in the name of another on the ground that the latter is only a benamidar, the transport authority not barred from deciding the question of benami though its verdict may not be final but subject to the decision of the Civil Courts. Therefore, the transport authority though of limited jurisdiction has power to decide all questions necessary and incidental to transfer of the permit.

19. What we are here concerned with is whether it is legally competent to vest a particular power in a statutory body and in regard to this the proper rule of interpretation would be that unless the nature of the power is such as to be incompatible with the purpose for which it is created and unless the particular power is contra-indicated by any specific provision of the enactment bringing the Tribunal into existence, any power which would further the provision of the Act could be legally inferred to have been conferred on it. While I agree with my learned brother on this respect also, with great respect to the, learned single Judge, I do not agree that the Tribunal could not decide the benami nature of the permit. The Tribunal has concluded on sound reasoning that the permit really, belonged to the appellant to which my learned brother has referred, in great detail. Hence, I agree with the order proposed by my learned brother that the appeals of the appellant-firm be allowed and those of the respondent dismissed.

20. Order accordingly.