

T.E. Ebrahim Saheb Vs. the Regional Transport Authority

T.E. Ebrahim Saheb Vs. the Regional Transport Authority

SooperKanoon Citation : sooperkanoon.com/783686

Court : Chennai

Decided On : Aug-18-1950

Reported in : AIR1951Mad419; (1950)2MLJ592

Judge : Rajamannar, C.J. and ;Viswanatha Sastri, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 76; [Constitution of India](#) - Article 226; Madras Motor Vehicles Rules, 1940 - Rule 268; Motor Vehicles Rules, 1923 - Rule 27D; Motor Vehicles Act, 1914; [Madras General Clauses Act, 1891](#) - Sections 18

Appeal No. : Civil Misc. Petn. Nos. 2963 and 3365 of 1950

Appellant : T.E. Ebrahim Saheb

Respondent : The Regional Transport Authority

Advocate for Def. : The Adv.-General for the Government Solicitor and ;State Counsel

Advocate for Pet/Ap. : K.V. Ramachandra Aiyar, Adv.

Judgement :

Rajamannar, C.J.

1. These two applications are connected and relate to the same matter. The petitioner in the two applications is one T. E. Ebrahim Sahib. He is the lessee of a site in Ward No. 6 in Tanjore Town which has been used as a bus stand in

accordance with licences granted from time to time by the Tanjore Municipality. The stand is situated near the railway station and it is common ground that from several years past it has been the only bus stand in the town and it has been the place from and at which all bus traffic to and from places such as Kumbakonam, Pattukottai, Tiruvarur etc. was starting and terminating. Some time in 1947, there appears to have been a complaint that the bus stand was narrow and inconvenient and thereupon the Municipality discussed a proposal to construct a new bus stand at another suitable place. The Regional Transport Authority also appears to have convened meetings to consider the question of shifting the bus stand, but the subject was dropped in May 1948. Subsequently there appear to have been again complaints and at the instance of the Tanjore Municipality, the Government passed G. O. No. 231 on 19-1-1950 directing the Regional Transport Authority to consider the Municipality's representation regarding the unsuitability of the existing bus stand of the petitioner. The subject was placed before the Regional Transport Authority at its meeting on 21-2-1950 and it passed on that day a resolution that the existing bus stand would be declared unsuitable from 1-4-1950. This resolution was communicated to the petitioner and he filed O. M. P. No. 2963 on 24-3-1950 praying for the issue of a writ of certiorari to call for the papers from the Regional Transport Authority, Tiruchirapalli, and quash the proceedings of 21-2-1950 above mentioned. He also prayed for an interim order of stay of all proceedings pending disposal of the main petition. On 27-3-1950 this Court issued a rule nisi and notice on the application for stay. This fact was intimated to the respondent authority both by the petitioner and by his advocate, but the respondent met and passed on 31-3-1950 a further resolution which runs thus :

'Perused and recorded. No direction has so far been received from the High Court, Madras. Resolved not to act on the representation of Janab Muhammad Ibrahim or his vakil.

As resolved already by this authority on 21-2-1950 and communicated to the parties on 27-2-1950 the site within Tanjore Municipality where the private bus stand is conducted by Janab T. B. Ibrahim Sahib is hereby declared to be unsuitable for use as a bus stand and that this bus stand shall cease to be the approved stopping place and also the approved starting and terminus of motor

buses from 1-4-1950.

The bus stand newly erected by the Tanjore Municipal Council in the approved site in T. S. No. 1468 of Ward 3 in accordance with the proceedings dated 21-2-1950 of the Regional Transport Authority, Tanjore is hereby fixed as the approved stopping place and as also the approved starting and terminus places of Motor buses (stage carriages) from 1-4-1950.

The Regional Transport Officer will inform forthwith all permit holders of Motor buses (stage carriages) in writing of the new approved stopping as well as starting and terminus points from 1-4-1950 and make other necessary arrangements.

Regional Transport Office, Tiruchi,

dated 31-3-1950.'

2. The petitioner seeks to quash this resolution in c. M. P. No. 3365 of 1950. It was contended for the petitioner that both the resolutions of the respondent dated 21-2-1950 and 31-3-1950 respectively are void and passed without jurisdiction and contrary to the principles of natural justice, as they were passed without notice to the petitioner and without giving him an opportunity of presenting his case.

3. Though there was a specific averment in the affidavit filed by the petitioner in c. M. P. No. 2963 that the order of the respondent authority was made without any previous notice or intimation or hearing, the counter affidavit filed on behalf of the Regional Transport Officer did not traverse this allegation. In para. 4 there is a reference to proceedings in August 1948, in respect of which prior notice is stated to have been given to the petitioner, but there is no statement that notice of the two meetings at which the impugned resolutions were passed was given to the petitioner and that the petitioner was given an opportunity to be heard. Though it may be difficult to define exactly the principles of natural justice it is now firmly established that any order passed against a person that is to say to his detriment, by any quasi judicial body contravenes the canons of natural justice if it was passed without notice to him. The Judicial Committee dealing with an order of removal of a person from the membership of a Devasthanam committee observed

thus :

'Any order made in such a matter in disregard of the requirements of natural justice, such for instance, as proceeding without giving the member sought to be removed notice, or affording him an opportunity of defending himself, would clearly be voidable or void.'

See *Balalcrishna Udayar v. Vasudeva Aiyar*, 40 Mad. 793 : A.I.R. 1917 P. C. 71. The maxim *audi alteram partem* sums up this rule. In this case it cannot be denied that the orders in question seriously affected the petitioner. It was incumbent, therefore, on the authority to have given due notice before passing the orders. As it has failed to do this the orders must be quashed on this sole ground.

4. We do not wish, however, to dispose of these applications merely on this ground. The power of the respondent to pass the resolution in question has been discussed at some length by the learned counsel for the petitioner and by the learned Advocate-General on behalf of the respondent and as the subject of discussion relates to a matter of public importance, namely, public transport, we desire to deal with it. In the counter affidavit filed by the Regional Transport Officer, it was stated that the resolutions were passed by the authority in exercise of the power conferred by Section 76, Motor Vehicles Act. The learned Advocate-General also attempted to maintain that position. Section 76 runs thus :

'The Provincial Government or any authority authorised in this behalf by the Provincial Government, may in consultation with the local authority having jurisdiction in the area concerned, determine places at which motor vehicles may stand either indefinitely or for a specified period of time, and may determine the places at which public service vehicles may stop for a longer time than is necessary for the taking up and setting down of passengers.'

It appears to us from the plain language of the section that it cannot have any possible reference to resolutions like those in question. As the marginal note clearly indicates the section deals with provision for parking places and halting stations. The section, as the learned Advocate-General also conceded, falls into two parts. The first part applies to all motor vehicles and not only to public service

vehicles. The authority concerned can determine the places at which motor vehicles in general may be parked indefinitely or for a specified period of time. This part has obviously no application to the facts of this case. The second part certainly deals with public service vehicles. Such vehicles can ordinarily stop to take up or set down passengers at prescribed places. We are familiar with bus stops. But there may be places at which for the convenience of the public, the public service vehicles may have to halt for a longer time than is just necessary for the taking up and setting down of passengers. There may be places where though no passenger intends to alight and no passenger is actually present to be taken up, yet, the vehicle should stop for some time on account of various reasons which we need not now consider. Such places may be correctly called halting stations, and the authority concerned can determine such places. But these places cannot mean the permanent bus stands, like for instance, the petitioner's bus stand which is a sort of a radiating centre of all the bus traffic for the town. We have no hesitation in holding that the resolutions in question do not fall within the scope of the powers of the Regional Transport Authority under Section 76, Motor Vehicles Act.

5. Reference was then made to Rule 268, Madras Motor Vehicles Rules (1940), made in the exercise of the powers conferred by several sections of the Motor Vehicles Act of 1989. It is in the following terms:

'In the case of public service vehicles (other than motor cars) if starting places and termini have not been fixed in accordance with the provisions of any statute, the transport authority may, after consultation with such other authority as it may deem desirable, fix starting places and termini between which such vehicles shall be permitted to be used within its jurisdiction. A list of such places shall be supplied by such authority to every holder of a permit for such vehicle. When such places have been fixed, every such vehicle shall start only from such places.'

This rule certainly empowers the Transport Authority, after consultation with any other authority as it may deem desirable, like for instance, the local authority (the Municipal Council or District Board) to fix starting places and termini between which public service vehicles other than motor cars shall be permitted to be used.

The contention of Mr. Eamachandra Aiyar, the learned counsel for the petitioner, is that the respondent will be entitled to do so only in one contingency, namely, if starting places and termini have not been fixed in accordance with the provisions of any statute. His contention is that starting-places and termini have been fixed in accordance with Rule 27-D, Motor Vehicles Rules, 1923. On 3-4-1934, the District Magistrate, Tanjore, passed an order, under this rule fixing the petitioner's bus stand as the starting place for all the buses plying for hire between Tanjore and Pudukottai and between Tanjore and Deva-kottai. On 3-6-1937, the District Superintendent of Police, Tanjore, declared this bus stand as the starting place and the terminus of all buses plying from and to Tanjore and prohibiting the use of any other bus stand. This order of his purported to be under Rule 27-D, Motor Vehicles Rules, 1923. That rule ran as follows:

'The Commissioner of Police in the City of Madras and District Superintendent of Police elsewhere may fix starting places and termini between which motor buses shall be permitted to be let or plied for hire within their respective jurisdictions. When such places have been fixed, every motor bus shall start on its forward and return journeys only from such places. The departure of motor buses from the said places shall be regulated in accordance with the directions of the police officers at such places.'

6. It cannot be denied that the order of the District Superintendent of Police in 1937 was passed in accordance with the provisions of Rule 27-D as it stood at the time. The petitioner, therefore, contends that starting places and termini have been fixed in accordance with the provisions of the prior statute and therefore the respondent cannot purport to fix new starting places and termini under E. 268 of the present rules. To meet this contention the learned Advocate General was driven to the extreme position of contending that as the Motor Vehicles Act, 1914, was repealed by the [Motor Vehicles Act, 1939](#), the rules including Rule 27-D framed under the provisions of the earlier Act I ceased to have any force and consequently the order of the District Superintendent of Police made in pursuance of the power conferred by Rule 27-D of the old rules ceased to be in force. No authority in support of this contention, which is likely to have far-reaching consequences, was cited to us. In fact the learned Advocate-General admitted that

the Government Department did not proceed on that assumption with regard to all the orders and notifications issued and things done under the old rules. It is a well accepted rule of interpretation of statutes that where an enactment is repealed and re-enacted with or without modification, all things lawfully done under the repealed enactment shall continue to be in force under the corresponding provisions of the later enactment unless of course there is anything in the later enactment repugnant thereto; see Section 18, Madras General Clauses Act.

7. It is true that as the rule stands at present, there is likely to be an impasse, if the starting places and termini already fixed become unsuitable and have to be shifted. We agree with the learned Advocate-General that there should be power to alter the starting places and the termini for good and proper reasons. Such alteration should be after notice to the parties affected thereby. It will be open to the Government to amend the rule and introduce a provision conferring on the appropriate authority the requisite power to alter from time to time the starting places and termini.

8. One other construction of Rule 268, which may obviate the necessity of an amendment such as that indicated above suggested itself to us, though this aspect was not placed before us by the learned Advocate-General. Rule 268 speaks of fixing starting places and termini from the stand-point of the public service vehicles. These places are places between which such vehicles shall be permitted to be used. A list of such places has to be supplied by the Authority to every holder of a permit for such vehicles. The fixing of the places appears therefore to be in respect of the vehicles. Now these vehicles are always run under permits granted by the prescribed authority. These are either temporary or only of a limited duration. It may be that if the holder of a permit of a public service vehicle has been intimated of particular starting places and termini for his vehicle, it may not be open to the Transport authority to alter them during the subsistence of the particular permit. Once the period of the permit elapses the Transport Authority could have the power to fix different starting places and termini and intimate them to the holder of the fresh permit or the renewed permit, as the case may be. This will only mean that the starting places and termini once fixed will be in force without alteration in respect of any vehicle so long as the permit for the vehicle

continues. After that period, it will be open, when granting a fresh permit to fix new starting places and termini. This is a plausible interpretation of E. 268. In spite of this we think it is desirable to make matters plain by specifically providing for the alteration of starting places and termini for valid reasons and after notice to the parties affected thereby.

9. There appears to be no provision in the Motor Vehicles Act or the rules made thereunder, under which it is open to the Eegional Transport authority to pass an order declaring a particular bus stand, private or public, to be unsuitable for use as a bus stand. The maintenance of public and private bus stands within municipalities will be governed by the provisions of the Madras District Municipalities Act, Sections 270-B to 270-E. Section 270-B deals with public cart stands which includes stands for motor vehicles and Section 270-E with private stands. Once the Municipality chooses to grant license to any person to open or keep open a stand, it is doubtful if it is open to the Regional Transport Authority acting under the Madras Motor Vehicles Act, to declare that stand to be unsuitable ; though the existence of a private cart stand or bus stand may not by itself prevent the Municipal Council from constructing or providing public Municipal stands: but this has nothing to do with the Motor Vehicles Act.

10. For the reasons stated above, we quash the two orders of the Eegional Transport Authority dated 21-2-1950 and 31-3-1950 as prayed for by the petitioner. The rules nisi already issued will be made absolute.

11. The respondent will pay to the petitioner costs in C. M. P. No. 2963 of 1950.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com