V. Krishnamurthy and anr. Vs. the Ceded District Auto Transport Co. Ltd., Kurnool, Represented by Its Managing Director at Kurnool and ors.

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Court : Chennai

Decided On : Sep-08-1952

Reported in : AIR1953Mad321; (1953)IMLJ81

Judge : Satyanarayana Rao and ;Rajagopalan, JJ.

Acts : Motor Vehicles Act, 1939 - Sections 64 and 68; Motor Vehicles Rules - Rule 208

Appeal No. : Letters Patent Appeal No. 160 of 1951

Appellant : V. Krishnamurthy and anr.

Respondent : The Ceded District Auto Transport Co. Ltd., Kurnool, Represented by Its Managing Director at Kurnool

Advocate for Def. : Govt. Pleader and S. Obul Reddi, Advs.

Advocate for Pet/Ap. : K. Bhasyam, ;T.R. Srinivasan and ;V.V. Raghavan, Advs.

Disposition : Appeal dismissed

Judgement :

Satyanarayana Rao, J.

1. This Letters Patent Appeal is against the judgment of our learned brother, Subba Rao J. setting aside the order of the Government and that of the Central Road Traffic Board and allowing Writ Petition No. 282 of 1951 to quash the orders. The only question, that was debated before him and now before us, is whether there was a right of appeal to the Central Road Traffic Board against the order of the Regional Transport Authority dated 31st August 1950 refusing to grant the application of the appellants to extend the route of the bus service from Atmakur to Velgode. The learned Judge held that the appeal was incompetent, that therefore the order of the Central Road Traffic Board extending the permit in favour of the appellants to Velgode was without jurisdiction, and that the order passed by the Government in the exercise of their revisional jurisdiction, confirming the order of the Central Road Traffic Board was also void.

2. In order to appreciate the contention that the appeal to the Central Road Traffic Board is incompetent, it is necessary to state a few relevant facts. The appellants, two in number, were running buses along the route Kurnpol-Atmakur from the year 1944 under permits granted by the Regional Transport Authority in that year. In 1949, it was decided by the Regional Transport Authority to extend the route to Velgode, i.e. a place beyond Atmakur. Applications for that route were filed by the first respondent and also by the appellants. On 16-6-1950 the Regional Transport Authority called for objections to grant the permits for the extended route to the applicants. By an order of 28th June 1950 the Regional Transport Authority granted a permit to the first respondent to run his buses up to Velgode.

The application by the appellants, however, was not disposed of till 31st August 1950, when the Regional Transport Authority made an order rejecting their application. The order of 28th June 1950 granting a permit to the first respondent was not carried on appeal by the appellants. The order made on their application was the subject-matter of an appeal to the Central Road Traffic Board, and notwithstanding the objection of the first respondent that the appeal was incompetent, the Central Road Traffic Board, overruling the objection, set aside the order of the Regional Transport Authority and granted permits in favour of the appellants also, extending their service to Velgode. The first respondent carried the matter unsuccessfully in revision to the Government, and thereafter he filed a

writ petition, which was disposed by Subba Rao J. As stated above. he allowed the application, and held that the appeal to the Central Road Traffic Board by the appellants against the order of the Regional Transport Authority dated 31st August 1950 was incompetent.

3. In this appeal by the appellants their Learned Counsel, Mr. Bhashyam, adopted a line of argument which was not the one adopted by him before Subba Rao J. It is unnecessary therefore to deal in detail with the reasoning of the learned Judge by which he arrived at the conclusion, that the appeal to the Central Road Traffic Board was incompetent. It will be sufficient if we deal in this appeal with arguments as presented before us by Mr. Bhashyam, the Learned Counsel for the appellants. He attempted to maintain his position that the appeal was competent by relying upon Clause (a) and (b) of Section 64. He further relied on Rule 208 of the Rules framed by the Government under the Motor Vehicles Act by virtue of the power conferred upon the Provincial Government by Section 68 of the Act. His contention based on the said rule was that the applications made by the appellants should be treated as applications for the grant of a permit as laid down by that Rule, and, if so treated, the refusal to grant the extension should be deemed to be a refusal to grant a permit, which order would be appealable under Section 64 (a) of the Act. It is therefore necessary to deal with these contentions in the order in which they were stated above.

4. Learned Counsel of the appellants relied upon the second part of Clauses (a) and (b) of Section 64. It is as well that the two clauses (a) and (b) are quoted here:

(a) 'Any person aggrieved by the refusal of the Provincial or a Regional Transport Authority to grant a permit or by any condition attached to a permit granted to him, or

(b) aggrieved by the revocation or suspension of the permit or by any variation of the conditions thereof may within the prescribed time and in the prescribed manner, appeal to the prescribed authority, who shall give such person and the original authority an opportunity of being beard'

Rule 147 lays down that:

'An appeal under Section 64 of the Act against an order of the Road Traffic Board or against an order of the Secretary of the Board, shall lie to the Central Board within thirty days of the date of despatch of the order appealed against.'

Rule 148 deals with appeals to the Government against an original order of the Central Board or against an order of the Secretary of that Board, with which we are not concerned, it was contended that the refusal to grant the application of the appellants amounted in substance to a refusal to alter the original condition of the permit restricting the route from Kurnool to Atmakur and declining to extend in to Velgode. The appellants therefore, it is claimed, arc aggrieved by the condition attached to the permit that the route should be restricted to Kurnool-Atmakur, which was the effect of the decision of the Regional Transport Authority. If the order is so construed, it is urged that under the second part of Section 64(a) the appellants can be treated as persons aggrieved by the condition attached to the permit granted to them, and that the order will therefore be appealable.

This argument, in our opinion, proceeds on an erroneous view of clause in question. The clause, in our opinion, applies only to eases where by reason of the existence of a condition attached to a permit the grantee of the permit was aggrived by that condition at the time of the grant of the permit. If he was so aggrieved, it was open to him to have the condition removed or modified by an appeal under Clause (a) of Section 64. It is not claimed on behalf of the appellants that the condition that the route should be restricted to Kurnool and Atmakur was, at the time it was imposed, prejudicial to them, and that they were aggrieved by it.

Under Section 48A of the Act it is open to the Regional Transport Authority when granting a permit to attach a condition that the stage carriages shall be used only on specified routes or in a specified area. In 1944 when the original permit was granted to the appellants the only route that was declared was the route between Kurnool and Atmakur, and they were perfectly satisfied at the time of the grant of the permit with the condition or restriction that they should be confined to the route between Kurnool and Atmakur, and they were not in any manner aggrieved by such condition. It is, however, now curiously claimed that by subsequent events, the proposed extension of the route to Velgode and the restriction or the condition

in the original permit act adversely to their interests, and that therefore they are aggrieved by the condition now.

It is net, in our opinion, the intention of the Legislature when it enacted Clause (a) to give a right of appeal in such circumstances. The right of appeal is to be exercised within the period of thirty days from the date of the order granting the permit, under Rule 147, and the grievance, if any, regarding the condition that exists in the permit must be one that existed by the date of the grant of the permit. It is not a grievance which accrued or which aroso subsequent to the grant of the permit, ihat can be agitated in an appeal. According to the learned Advocate if the grievances (sic) by reason of subsequent events long after the grant of the permit it does not matter. To read the clause in the manner suggested by the learned Advocate for the appellants would be to put upon it an unnatural construction not intended by the Legislature when that clause Iwas enacted. The contention therefore that the right of appeal could be justified under Clause (a) of a. 64 cannot be upheld.

5. The next argument was that when the Legislature conferred a right of appeal under Clause (b) to a person aggrieved by any variation of the conditions of the permit, it implied and carried with it also a right of appeal in a case where the Regional Transport Authority refused to vary the conditions of the permit. The power to vary the conditions of a permit, it was argued, carries with it the power to refuse to vary the conditions, in other words, to reject the application for variation or alteration. In support of his argument learned Counsel relied strongly upon two decisions, one of the Federal Court and the other of this Court, both oi' which related to the right of appeal under the Givil Procedure Code against an order refusing to appoint a receiver.

Under the present Order 43, Rule 1. Clause (s), an order under Rule 1 or Rule 4 of Order 40 except an order under the proviso to Sub-rule (2) of Rule 4 is appealable. When we turn to Rule 1, Order 40, the orders contemplated therein are: an order appointing a receiver or removing any person from the possession or custody of the property, an order committing the same to the possession, custody or management of the Receiver and an order conferring upon the receiver the

powers enumerated in Clause (d) of Rule 1 of p. 40. In none of these orders is an order refusing to appoint a receiver included expressly. It was however ruled by the Federal Court in --'Rayarappan v. Madhavi Amma'. AIR 1950 FC 140 in an appeal against a decision of this Court that when the Code refers to the power to appoint a receiver, it includes within it the power of removal of a receiver as a matter of construction of the rule, bearing in mind Section 16, General Clauses Act.

It was therefore held that though the Legislature did not specifically and expressly refer to an order removing a receiver as appealable, such order was made appealable by adopting the rule of construction enacted in Section 16, General Clauses Act. Though no express reference is made in the earlier decision of the Full Bench in -- 'Venkatasami v. Stridavamma', 10 Mad 179 to Section 16, General Clauses Act. the reasoning of the learned Judges in thct case is more or less on the same lines, namely, that ss a matter of interpretation of Sections 503 and 588, Civil P. C. then in force (the Code of 1882) the power to appoint carried with it also the power to refuse to appoint and therefore both orders were appealable, though the latter order was not expressly mentioned either in Section 503 or Section 588.

In our opinion, these decisions and the reasoning underlying them do not at all help the appellants and support their argument. No general rule of construction of the kind invoked and applied in the decision of the Federal Court is available to support the interpretation now sought to be placed upon the second part of Clause (b). No doubt, an application to vary the conditions of a permit may be granted or refused, but the Legislature for reasons best known to itself, thought fit to make an order which varies the conditions of the permit alone appealable. If one may attempt to find the reason, it seems to be this: If the original conditions of the perrnit were not such as would be prejudicial to the grantee, he would accept the permit; if not, he would have carried the matter in appeal to the Central Road Traffic Board under Clause (a) of Section 64 within the time prescribed by Rule 147. If he did not carry the matter in appeal, it must be presumed that he was satisfied with those conditions.

If, however, at any later stage those conditions are varied by the concerned authority to the detriment of the grantee of the permit, it is but legitimate and reasonable that he should be given a right of appeal to have the matter agitated in a higher forum. There is no reason to allow a right of appeal if the conditions are not varied, because so long as the permit lasts, those conditions will continue to attach to the permit, particularly as the grantee did not feel aggrieved at the time of the grant of the permit by the existence of those conditions in the permit. That is the reason why we think no right of appeal was conferred by the Legislature in cases where the variation was refused. The analogy, therefore, of the decision of the Federal Court and of this Court in -- 'Venkatasami v. Stridavamma', 10 Mad 179 cannot be extended to the present case, and we are therefore unable to accept the argument of the learned counsel for the appellants based on the interpretation of the latter part of Clause (b) of Section 64,

6. Reliance was strongly placed on Rule 2G8T which lays down the procedure to be followed in applications to vary the conditions of the permit. That rule consists of two parts and reads as follows:

'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 authorised by the original permit the Transport Authority shall deal with the application as if it were an application for a permit.'

The argument is that the application for variation by reason of this Rule should be treated as an application for a permit and the refusal to grant it is a refusal to grant a permit, whichorder is appealable under Section 64-A of the Act. In other words, the argument amounts to this, that by implication a right of appeal is conferred by this Rule against orders refusing to vary the conditions of a permit. There are very many difficulties in the way of accepting this argument. In the first place, it is well-settled law that a right of appeal is substantive right and not a matter of procedure

and should be created or conferred expressly by a statute. It cannot be inferred by implication. In the very illuminating speech of the Lord Chancellor (Lord Westbury) in the case in -- 'Attorney General v. Sillem', (1864) 10 H L 704 the learned Lord Chancellor expressed thus:

'The creation of a new right of appeal is plainly an act which requires legislative authority. The Court from which the appeal is given, and the Court to which it is given must both be bound and that must be the act of some higher power. It is not competent to either tribunal, or to both collectively, to create any such right. Suppose the Legislature to have given to either tribunal, that is, to the Court of the First Instance, and to the Court of Error or Appeal respectively, the fullest power of regulating its own practice or procedure, such power would not avail for the creation of a new right of appeal, which is in effect a limitation of the jurisdiction of one Court, and an extension of the jurisdiction of another. A power to regulate the practice of a Court does not involve or imply any power to alter the extent or nature of its jurisdiction.'

In the well-known case of the Judicial Committee,--'Colonial Sugar Refining Co. v. Irving', (1905) A C 369 it was pointed out by Lord Macnaghten that a right of appeal was a substantive right and not a mere matter of procedure for the learned Lord observed at p. 372:

'It seems to their Lordships that the question does not admit of doubt. To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right is a very different thing from regulating procedure. In principle, their Lordships see no difference between abolishing an appeal altogether and transferring the appeal to a new tribunal. In either case there is an interference with existing rights contrary to the well-known general principle that statutes are not to be held to act retrospectively unless a clear intention to that effect is manifested.'

7. Rule 208, in terms, does not purport to confer a right of appeal; it purports to lay down the procedure applicable to applications for the variation of the conditions of a permit. It has been pointed out already that the substantive provision in the Act conferring a right of appeal in certain specified cases does not include within it a

right of appeal against an order refusing to vary the conditions of a permit. If the rule in question does not in terms confer a right of appeal against an order refusing to vary the conditions of a permit, can it be said that it impliedly confers such a right? As has been pointed out above, a right of appeal must be expressly conferred by a statute and cannot be inferred by implication. It is not within the competence of the rule-making authority constituted under Section 68 of the Act to confer a new right of appeal not recognised or granted by Section 64 of the Act.

The Legislature would not have intended by implication, if from the language of Section 68 it could be implied at all, to have conferred a power on the rule-making authority to enlarge and extend the scope of Section 64, so as to confer a right of appeal not recognised by Section 6-1. As has been rightly pointed out by the learned Government Pleader in the course of the arguments, all that Section 68 lays down with reference to appeals is that in Clause (j) of Sub-section (2) of that section it is stated that the rule-making power extends to indicate the authorities to whom, the time within which and the manner in which the appeals may be made. This does not in terms confer a power to extend the right of appeal in cases not governed by Section 64 of the Act. It was claimed, however, on behalf of the appellants by Mr. Bhashyam that the generality of the language in Clause (1) of Section 68 might be construed as implying such a power for Section 68 (1) states:

'A Provincial Government may make rules for the purpose of carrying into' effect the provisions of this Chapter',

the Chapter in which the provision relating the right of appeal, Section 64, is also included. From such a language a power to lay down by rules and confer a right of appeal cannot be inferred is gatherable from the decision of the House of Lords in--'R&W; Paul Ltd. v. Wheat Commission', (1937) A C 139. The by-law there was made by the Wheat Commission under the Wheat Act of 1932. The power to make by-laws therein was conferred among other grounds for giving effect to the provisions of the Act. Notwithstanding the generality of such a provision it was held by the House of Lords that by-law No. 20 made by the Wheat Commission in 1933 excluding the application of the Arbitration Act, 1889 to arbitration proceedings contemplated by by-law No. 20 was ultra vires. Lord Macmillan in his speech at p.

154 observed:

'The Arbitration Act is a Statute of general application and it confers a valuable and important right of resort to the Courts of law. To exclude its operation from an arbitration is to deprive the parties to the arbitration of the rights which the Act confers. When a public general statute provides for the reference of disputes to arbitration it is to be presumed that it intends them to be referred to arbitration in accordance with the general law as to arbitrations, with all the attendant rights which the general law confers.

I do not think that when Parliament enacts by one statute that disputes under it are to be referred to arbitration it can be presumed to have empowered by implication the abrogation of another statute which it has enacted for the conduct of arbitration. Rather the contrary. If this is intended, express words to that effect are in my opinion essential, and there are here no such express words. I am accordingly of opinion that the Wheat Commission exceeded their powers when they made a by-law that every dispute as to whether any substance is flour should be determined by an arbitration to which the Arbitration Act should not apply. I have only to add that the by-law must, in my opinion, be condemned as a whole and that it cannot be solved by the excision of the objectionable provision, which is not a severable but a vital part of the by-law.'

These observations of the learned Lord apply with equal for.ce to the present case. Unless the statute by its enacting provisions has expressly conferred a right of appeal, the rule-making authority would not be within their powers in conferring a new right of appeal expressly or by implication. It therefore follows that Rule 208 cannot be construed in such a manner as to transgress the limits of the power of the rule-making authority, which have been laid down and circumscribed by Section 68 of the Act.

8. In -- 'Attorney General v. Sillem', (18G4) 10 H L 704 already cited, by the 26th Section of the Queen's Remembrancer's Act (22 and 23 Vict. C. 21) the Chief Baron and two or more Barons of the Court of Exchequer were empowered to make all such rules and orders as to the process, practice and mode of pleading on the Revenue Side of the Court and also to extend, applyv or adapt any of the

provisions of the Common Law Procedure Act, 1352 and the Common Law Procedure Act, 1854, and any of the rules of pleading and practice on the plea side of the said Court to the Revenue side of the said Court.

In exercise of this power the Chief Baron and two other Barons of the Court of Exchequer purported to confer a right of appeal, and the power was sought to be justified by placing reliance on Section 26 of the Act. Notwithstanding the very wide language employed in that section of making rules and orders as to the process, practice and mode of pleading on the Revenue Side of the Court it was held by the House of Lords that the Chief Baron and the two Barons of the Court of Exchequer had no power or authority to confer a right of appeal where it did not otherwise exist. 'These rules' said Lord West bury, Lord Chancellor at page 725, 'are so many legislative enactments purporting to create a new jurisdiction in the Court of Exchequer Chamber and House of Lords and prescribing the mode in which such o new jurisdiction shall be exercised. It is simply an incorrect use of language to call such enactments provisions respecting the process, practice, or mode of pleading in the Court of Exchequer; but unless they can be property and strictly so denominated, there is not, in my opinion, any authority to make such rules conferred by the 26th Section of the Act in question.' The application therefore of the procedure applicable to the disposal of the applications for grant of a permit to cases of variation of the conditions of a permit does not oven by implication carry with it a right of appeal, assuming that otherwise the rule-making authority had the power to create a new right of appeal which, as already stated, did not sin fact, exist under Section 68. The reliance therefore placed by Mr. Bhashyam on Rule 208 in support of the right of appeal cannot be justified by authority or by principle.

9. Strong reliance was placed by learned Counsel for the appellants on the decision of the House of Lords- in -- 'National Telephone Co. Ltd. v. Postmaster General (No. 2)'. (1913) A C 546. It is a well recognised principle established by authority that if a new power or new jurisdiction is conferred upon a court which is regulated by a Code containing the procedure as well as a right of appeal, the exercise of that new jurisdiction by that court will carry with it the 'ordinary incidents of procedure, applicable thereto as welt as the general right of appeal

from its decisions. It is this principle' that is illustrated by the decision in--'National Telephone Co. Ltd. v. Postmaster General (No. 2)', (1913) A C 546. The same principle was again reiterated by the Judicial Committee in a very recent case which went up on appeal from this Court in -- 'Adaikappa Chettiar v. Chandrasekhara Thevar', ILR (1948) Mad 505 a decision under Madras Act 4 of 1938. Lord Simonds in delivering the judgment stated at page 513 the principle in these terms:

'The true rule is that where a legal right is in dispute and the ordinary Courts of the country are seized of such dispute the Courts are governed by the ordinary rules of procedure applicable thereto and an appeal lies, if authorized by such rules, notwithstanding that the legal right claimed arises under a special statute which does not in terms confer a right of appeal -- see 'Secy, of State v. Chellikani Rama Rao', 39 Mad 617 (PC) & --'Hem Singh v. Basant Das', 17 Lah 146.'

It is difficult to see how this principle would help the appellants. This is not a case where to an existing court a new jurisdiction has been added by the Act. The Act. it must be mentioned, is a self-contained Code, and creates new rights and also provides for the adjudication of the disputes arising in respect of such rights. In such a case the remedy provided by the Statute alone must be followed as pointed out by the Judicial Committee in -- 'Secy, of State v. Mask & Co.'. ILR (1940) Mad 599 quoting from Willes J.'s judgment in -- 'Wolverhampton New Waterworks Co. v. Hawkesford', (1859) 141 E R 486,

'Where the statute creates a liability not existing at common law, and gives also a particular remedy for enforcing it..... withrespect to that class it has always been held, that the party must adopt the form of remedy given by the statute'.

10. In order to determine whether a right of appeal on the facts of the case exists or not, one has to look to the provisions contained in Section 64 of the Act, and if a party claiming a right of appeal is not able to bring himself within any of the clauses enumerated in Section 64 he has no right of appeal. If the jurisdiction had been conferred upon an ordinary civil court to adjudicate upon disputes of the nature contemplated by the Act without providing a right of appeal in the Act itself, the position would have been different. Probably to such a situation the principle of

the decisions in ---'National Telephone Co. Ltd. v.. Postmaster General (No. 2)', (1913) A C 546 and -- 'Adaikappa Chettiar v. Chandrasekhara', ILR (1948) Mad 505 may be applied, but such is not the situation in the present case. The mere fact, that in the last part of Rule 208 (b) the Transport! Authority is directed to deal with the matter as if it were an application for a permit does not carry with it by implication even a right of appeal, as if it was a refusal to grant a permit within the meaning of Section 64 (a) of the Act.

11. For these reasons we agree with the learned Judge that the Control Road Traffic Board had no jurisdiction to entertain the appeal against the order of the Regional Transport Authority dated 31st August 1950. The decision appealed against is correct, and this Letters Patent Appeal must therefore be dismissedwith costs. Advocates fee Rs. 100/- one set.