

Veerappa Pillai vs Raman & Raman Ltd. And Others on 17 March, 1952

Equivalent citations: 1952 AIR 192, 1952 SCR 583

Author: N. Chandrasekhara Aiyar

Bench: N. Chandrasekhara Aiyar, M. Patanjali Sastri, Mehr Chand Mahajan, B.K. Mukherjea

PETITIONER:
VEERAPPA PILLAI

Vs.

RESPONDENT:
RAMAN & RAMAN LTD. and OTHERS.

DATE OF JUDGMENT:
17/03/1952

BENCH:
AIYAR, N. CHANDRASEKHARA
BENCH:
AIYAR, N. CHANDRASEKHARA
SASTRI, M. PATANJALI (CJ)
MAHAJAN, MEHR CHAND
MUKHERJEA, B.K.
DAS, SUDHI RANJAN

CITATION:
1952 AIR 192 1952 SCR 583
CITATOR INFO :
R 1954 SC 440 (11)
R 1955 SC 233 (21,22)
F 1957 SC 232 (19)
E&D 1957 SC 489 (16)
R 1958 SC 398 (19)
R 1960 SC 321 (20,23)
F 1969 SC 493 (8)
F 1970 SC 759 (3)

ACT:
Constitution of India, Art. 226--Order of Traffic Board granting permit to run motor buses to particular person--Application to High Court by rival claimant under Art. 226 for quashing the order and for a direction to grant permits to him--Maintainability-Jurisdiction of High Court

to interfere--Motor Vehicles Act, 1939 --Grant of permit--Whether depends on ownership of bus--Discretion of Traffic Board.

HEADNOTE:

The writs referred to in Art. 226 are intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record and such act, omission or error or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it is not so wide or large as to enable the High Court to convert itself into a court of appeal and examine for itself the correctness of the, decisions impugned and decide what is the proper view to be taken or the order to be made.

The Motor Vehicles Act contains a complete and precise scheme for regulating the issue of permits, providing what matters are to be taken into consideration as relevant and prescribing appeals and revisions from subordinate bodies to higher authorities, and the issue or refusal of permits is solely within the discretion of the transport authorities; it is not a matter of right.

Where, in a dispute between two rival claimants for running through a particular route five buses, which each of them alleged he had purchased from a third person, the Central Road Traffic Board, Madras, after calling for a report from the Regional Transport Officer and considering several circumstances that had a material bearing on the case, restored the permanent permits which had been granted to one of the claimants, but on an application by the other claimant under Art. 226 of the Constitution to the High Court of Madras for a writ of certiorari quashing the orders of the Regional Transport Authority, the Central Road Traffic Board and the State of Madras, and for a writ of mandamus to the respondents to transfer, issue or grant

584

permanent permits to the petitioner, the High Court set aside the order of the Central Traffic Board, relying mainly on the fact that the petitioner's title to the five buses had been established and directed the Regional Traffic Authority to grant to the petitioner permits in respect of the five buses:

Held, that under the Motor Vehicles Act, the issue of a permit for a bus was not dependent on the ownership of the bus but on other considerations also, and as the Central Traffic Board had issued an order granting permits to one of the claimants after considering all circumstances the High Court acted erroneously in interfering with the Order of

Traffic Board on an application under Art. 226 and in any event the order of the High Court issuing a direction to the Regional Transport Authority to grant permits to the other party was clearly in excess of its powers and jurisdiction.

The Motor Vehicles Act is a statute which creates new rights and liabilities and prescribes an elaborate procedure for their regulation. No one is entitled to a permit as of right even if he satisfies all the prescribed conditions. The grant of a permit is entirely within the discretion of the transport authorities and naturally depends on several circumstances which have to be taken into account.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 159 of 1951. Appeal by special leave from the judgment and order dated 13th of April, 1951, of the High Court of Judicature at Madras (Rajamannar C.J. and Somasundaram J.) in C.M.P. No. 122/15 of 1950.

M.C. Setalvad (C. R. Pattabhi Raman, with him) for the appellant.

C.K. Daphtary (M. Natesan, with him) for the respondent No.1 V.K.T. Chari, Advocate-General of Madras (R. Ganapathi Iyer, with him) for respondent No. 4.

1952. March 17. The Judgment of the Court was delivered by CHANDRASEKHARA AIYAR J.---This appeal arises as the result of special leave to appeal granted by this Court on the 1st of May, 1951, against an order of the Madras High Court dated 13th April, 1951, quashing certain proceedings of the Regional Transport Authority, Tanjore, and the Central Traffic Board, Madras, dated 19th January, 1950, and 3rd March, 1950, respectively, and an order of the first respondent (the State of Madras) dated 7th November, 1950, and directing the issue to Messrs. Raman and Raman Ltd., (Petitioners before the High Court) of permits for the five buses in respect of which a joint application had been made originally by them and one T.D. Balasubramania Pillai. The present appellant, G. Veerappa Pillai, was the fourth respondent in the High Court. The present first respondents (Messrs. Raman and Raman Ltd.) were the petitioners before the High Court. Present respondents Nos. 2, 3 and 4 were respectively respondents Nos. 1, 2 and 3 before the High Court.

The dispute is between the appellant and Messrs. Raman and Raman Ltd., who were competing bus proprietors in the Tanjore District; and it is over the issues of five permanent permits for buses Nos. M.D.O. 81, M.D.O. 230, M.D.O. 6, M.D.O. 7 and M. D.O. 759 on the route between Kumbakonam and Karaikal. It has been a long-drawn game with many moves, counter-moves, advances and checkmates, both sides displaying unusual assiduity and skill in their manoeuvres for position. But it is unnecessary to set out in great detail all the steps taken, as they have been narrated in the order of High Court and many of them are of insignificant relevance for disposal of this appeal. I shall state here only what is material.

The 'C' permits for the five buses stood originally in the name of Balasubramania Pillai. The buses were agreed to be purchased from him by Messrs. Raman and Raman Ltd., and there was a joint application by the transferor and transferee on 10th March, 1944, for transfer of the ownership and of the 'C' permits in the name of the purchasers. Two days later, Veerappa Pillai, proprietor of the Sri Sathi Viias Bus Service, who is the appellant before us, applied for temporary permits to ply two of his own vehicles over the same route, stating that the vehicles of the two agencies which held the permits were mostly out of action. It was a fact that out of the five buses sold by Balasubramania Pillai, only two were then running; the other three were under repairs. The permanent permits for the sold buses were suspended by order of the Secretary dated 28th March, 1944. Temporary permits for buses M.D.O. 920, 894, 918, M.S.C. 7632 and 7482 had been issued to Veerappa Pillai during the same month.

Now we come to another chapter in the story. Balasubramania Pillai resiled from the joint application and repudiated it as having been got from him by fraud. The Secretary, Road Traffic Board, thereupon refused to transfer the ownership on the 19th March, 1944, and this order was confirmed by the Board on 29th May, 1944, Balasubramania Pillai and Veerappa Pillai made a joint application on 10th April, 1944, for transfer of the buses and the original permits in favour of Veerappa Pillai who had on the same date agreed to purchase the vehicles. The Secretary granted this application on the same date Messrs. Raman and Raman Ltd., took the matter before the Central Road Traffic Board and they made an order on 16th August, 1944, upholding the issue of temporary permits to Veerappa Pillai for his buses M.D.O. 920, 894, 918, M.S.C. 7632 and 7482, but setting aside the transfer of registry of the original buses and the transfer of the permits relating to the same. On an application by Veerappa Pillai to review its order dated 16th August, 1944, the Central Road Traffic Board allowed on 27th November, 1944, only the transfer of the ownership of the buses but not a transfer of the permits.

Yet another move in the game was this Veerappa Pillai filed a suit in the court of the Subordinate Judge, Kumbakonam, on 3rd October, 1944, for recovery of possession of the original five buses from Messrs. Raman and Raman Ltd., on the strength of his purchase from Balasubramania Pillai. The Subordinate Judge appointed Veerappa Pillai as Receiver on 17th March, 1945, and the five disputed buses were delivered to him on 26th April, 1945. Two of the buses M.D.O. 6 and 7 were repaired by him and put on the route under his temporary permits. The suit was decreed in his favour on 2nd May, 1946. Later, he repaired the other three buses M.D.O. 759, 230 and 81 and began to run them on the same route under the temporary permits he held. Veerappa Pillai was discharged from receivership on 18th September, 1946.

On the strength of the Sub-Court decree, Veerappa Pillai again applied for a permanent transfer of the permits, and on 22nd July, 1946, the Central Road Traffic Board transferred the petition to the Regional Transport Authority with an intimation that it saw no objection to the issue of regular permits to Veerappa Pillai for the disputed buses or to their transfer in his name, provided there were valid permits in existence. This view appears to have been modified later and on 2nd September, 1946, the Regional Transport Officer directed the issue of temporary permits to the buses for the period from 3rd September, 1946, to 31st October, 1946, subject to the condition that the issue of the permits did not affect the rights of either party in the matter under dispute.

Thereupon, the Government was moved by Veerappa Pillai and also by Messrs. Raman and Raman Ltd., but the Government declined to interfere and the result was an order on 30th June, 1947, by the Regional Transport Authority to the following effect:-

" Since the subject-matter is on appeal before the High Court, the matter will lie over pending the decision of the High Court. The temporary permits are continued as is being done."

A fresh petition by Veerappa Pillai to the Central Road Traffic Board, Madras, was unsuccessful, but a further appeal to the Government of Madras ended in his favour in an order dated 29th March, 1949. The order is in these terms :--

"Shri Sathi Viias Bus Service, Porayar, Tanjore district, have been permitted by the Regional Transport Authority, Tanjore, to run their buses M.D.O. 6, 7, 81, 230 and 750 on the Kumbakonam-Karaikal route on temporary permits from 1944 pending the High Court's decision on the question of permanent ownership of the buses. Government consider it undesirable to keep these buses running on temporary permits for a long and indefinite period. Further Sri Sathi Vilas Bus Service have secured the decision of the Sub-Court, Kumbakonam, in their favour about the permanent ownership of the buses. In the circumstances the Regional Transport Authority, Tanjore, is directed to grant permanent permits for the buses of Sri Sathi Vilas Bus Service, Porayar, referred to above in lieu of the existing temporary permits."

On the basis of this Government order, permanent permits were issued in favour of Veerappa Pillai on 18th April, 1949. Getting to know of this last order, Messrs. Raman and Raman Ltd., approached the Government Madras with a petition praying for clarification of the order by making it expressly subject to the decision of the High Court regarding the title to the said five buses and that in the event of the High Court deciding the appeal in favour of Messrs. Raman and Raman Ltd. "the above said five permanent permits will be taken away from Veerappa Pillai and given to them." The Minister of Transport, who dealt with the matter, stated on the petition "that was my intention also."

The High Court reversed the decree of the Sub-Court on 2nd September, 1949, and came to the conclusion that the title of Messrs. Raman and Raman Ltd., to the five buses prevailed over that of Veerappa Pillai. On 19th September, 1949, they applied to the Government for cancellation of the five permits issued to Veerappa Pillai and for grant of the same to them. The Government declined to interfere as the Regional Transport Authority was the competent authority, vide order dated 16th November, 1949. In their application to the Regional Transport Authority dated 28th November, 1949, Messrs. Raman and Raman Ltd., asked for withdrawal of the permits. In the meantime, that is on 14th October, 1949, Veerappa Pillai applied for renewal of his permanent permits held for his own buses Nos. M.D.O. 1357, 20, 1366, 1110, 1077, M.D.O. 1368 and M.S.C.7632, which had been substituted for the disputed buses as they had become unroadworthy and useless. The application for renewal has under section 58, sub-clause (2), of the Act to be treated as a fresh application for

new permits. This procedure was followed and on 22nd October, 1949, a notification was issued inviting objections against the renewal and giving 30th November, 1949, as the date of hearing. No objections were received and the Secretary renewed the permits for two years from 1st January, 1950. This order was dated 3rd January, 1950. The Regional Transport Authority dealing with the application of Messrs. Raman and Raman Ltd., dated 28th November, 1949, resolved on 19th January, 1950, that the permanent permits issued to Veerappa Pillai should be cancelled, that the route should be declared vacant in respect of the five buses and fresh applications should be invited and dealt with on the merits. The order further stated that "in the meanwhile Sri G. Veerappa Pillai and Raman and Raman will be given temporary permits for running two and three buses respectively on the route. The permanent permits will be cancelled with immediate effect. Raman and Raman should put in the buses as quickly as possible. Till then Sri Veerappa Pillai will be given temporary permits so as not to dislocate public traffic."

Both the parties were dissatisfied with this order and preferred appeals to the Central Road Traffic Board, Madras, which dismissed the appeal of Messrs. Raman and Raman Ltd., and restored the permanent permits of Veerappa Pillai by order dated the 3rd March, 1950. Messrs Raman and Raman Ltd., moved the Government, but it declined to interfere by G.O., dated 7th November, 1950.

Thereupon, Messrs. Raman and Raman Ltd., moved the High Court on 4th December, 1950, under article 226 of the Constitution in Civil Miscellaneous Petition No. 12215 of 1950 for a writ of certiorari for quashing the orders and the proceedings of the Regional Transport Authority, the Central Road Traffic Board, Madras, and the State of Madras dated 19th January, 1950, 3rd March, 1950, and 7th November, 1950, respectively, and for the issue of a writ of mandamus or other such appropriate directions to the first respondent to transfer, issue or grant "the five pucca permits in respect of the route Kumbakonam to Karaikkal to the petitioner herein" (Messrs. Raman and Raman Ltd.) It is on this petition that the order challenged in this appeal was made by the High Court. The High Court took the view that throughout all the stages prior to the High Court's decree, the parties, the transport authorities vested with the power to issue permits, and the Government also proceeded upon the footing that the transfer of the permits was dependent on the title to the buses and that Veerappa Pillai obtained the temporary and permanent permits only in his capacity as transferee and not in his individual right. To quote the learned Chief Justice: "the conduct of the parties, the attitude of the transport authorities including the Government are all explicable only on the assumption that the rights of parties were consequent on the ownership of the five vehicles in question. The fourth respondent having obtained the benefit of temporary and permanent permits as a transferee from Balasubramania Pillai all this time cannot be heard now to say after the decision of this Court which has negatived his claim and upheld the claim of the applicant that the applicant should not enjoy the fruits of his success." He further points out that the procedure laid down by the Motor Vehicles Act and the rules for grant of fresh permits was not followed and that long before the application for renewal was allowed, the Regional Transport Authority had been informed of the decision of the High Court. The order of the Central Road Traffic Board was in his opinion most unsatisfactory, as it was based on a quibbling distinction between "withdrawal" and "cancellation" of the permits. In his view, the orders complained against deprived Messrs. Raman and Raman Ltd., of the fruits of the decree obtained by them at the hands of the High Court after much expenditure of time and money.

An examination of the relevant sections of the Motor Vehicles Act does not support the view that the issue of a permit for a bus--which falls within the definition of a "stage carriage"--is necessarily dependent on the ownership of vehicle. All that is required for obtaining a permit is possession of the bus. As ownership is not a condition precedent for the grant of permits and as a person can get a permit provided he is in possession of a vehicle which satisfies the requirements of the statute or the rules framed thereunder, we have to hold that the parties and the authorities were labouring under a misconception if they entertained a contrary view. But the assumption on which they proceeded may perhaps be explained, if not justified, on the ground that it was supposed that the question of ownership of the vehicles had an important or material bearing on the question as to which of them had a preferential claim for the permits. It may well be it was one of the factors to be taken into account and it seems to us that this was apparently the reason why the question of issue of permanent permits was postponed from time to time till we come to the order of the Government dated 29th March, on petitions presented by both the contestants.

If matters had stood as they were till the Government had made this order, something could have been said in favour of Messrs. Raman and Raman Ltd., in the event of their ultimate success in the High Court as regards the title to the five buses. But the said order altered the situation. In the order, the direction for the grant of permanent permits is not rested solely on the decision of the Sub-Court in favour of Veerappa Pillai but another reason was also given, namely, that Government considered it undesirable to keep the buses running on temporary permits for a long and indefinite period. In giving this reason, they were stating a policy.

As observed already, the High Court by their judgment dated 2nd September, 1949, reversed the decree of the Subordinate Judge and dismissed Veerappa Pillai's suit for possession of the buses based on his title. If it were the law that the question of possession based on ownership was decisive as regards the grant of permits, and if no other circumstances were available to be taken into account when the question of the issue of permanent permits again came up for consideration, it would have been easy to hold that Messrs. Raman and Raman Ltd., had at least a preferential claim. But unfortunately for them, both these requisites are not satisfied. It has been pointed out already that nowhere do we find in the Act anything to indicate that the issue of permits depends on ownership. Other circumstances which had a material bearing as to which of them was entitled to the permits had come into existence since the date of the original joint application and were taken into account by the transport authorities and by the Government. The order of 19th January, 1950, of the Regional Transport Authority sought to render rough and ready justice between the parties by the adoption of what may be called a middle course. The terms of the order have already been set out. Before disposing of the appeals of both the parties, the Central Traffic Board appears to have called for a report from the Regional Transport Officer. In this report, attention was drawn to the fact that all the five buses had been replaced by new vehicles and that the registration certificates had been cancelled as a result of the replacement. After Balasubramania Pillai, it was Veerappa Pillai who was running the buses continuously on this route for nearly 5 years and he also obtained the privilege of securing the permanent permits. The Central Traffic Board's order of 3rd March, 1950, restoring the permanent permits of Veerappa Pillai was based on the fact that Messrs. Raman and Raman Ltd. asked for withdrawal of the permits and not their cancellation and that no opportunity had been given to Veerappa Pillai to show cause why his permits should not be cancelled; and the

procedure prescribed for cancellation was not followed.

When the Government was moved by Messrs. Raman and Raman Ltd., under section 64 (a) of the Motor Vehicles Act, they had before them a petition for withdrawal of the permanent permits issued to Veerappa Pillai and for transfer or grant of five 'pukka permits' relating to the five buses. The Government granted stay of the appellate order of the Central Road Traffic Board pending disposal of the revision petition and called for a report from the subordinate transport authorities. Two important facts were brought to the notice of the Government in the report Messrs. Raman and Raman Ltd. did not file any objections to the renewal of the permits sought by Veerappa Pillai. What is more important, they had no permits from the French authorities enabling them to run any buses on the portion of the route which lay in French territory. It was further pointed out that there was no subsisting joint application to support the request for transfer and that the original permits in the name of Bala. subramanian had ceased to exist after 31st December 1944. The Government had also before them two petitions dated 8th March, 1950, and 25th October, 1950, from Messrs Raman and Raman Ltd. and two petitions dated 29th March, 1950, and 8th June, 1950, from Veerappa Pillai. It is on the basis of all these materials that the Government declined to interfere with the decision of the Central Road Traffic Board.

It is contended for the appellant that in this state of affairs the High Court acting under Article 226 of the Constitution had no right to interfere with the orders of the transport authorities.

It is unnecessary for the disposal of this appeal to consider and decide on the exact scope and extent of the jurisdiction of the High Court under Article 226. Whether the writs it can issue must be analogous to the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari specified therein and the power is subject to all the limitations, or restrictions imposed on the exercise of this jurisdiction, or whether the High Court is at liberty to issue any "suitable directions or orders or writs untrammelled, by any conditions, whenever the interests of justice so require, is a large and somewhat difficult problem which does not arise for solution now. Mr. Setalvad appearing for the appellant urged two narrower grounds as sufficient for his purposes. Firstly, he urged that however wide the jurisdiction of the High Court might be under Article 226, it could never exercise its powers under the article in such a manner as to convert itself into a court of appeal sitting in judgment over every tribunal or authority in the State discharging administrative or quasi-judicial functions. Secondly, he maintained that the Motor Vehicles Act with the rules framed thereunder dealing with the grant of permits is a self-contained code and that in respect of the rights and liabilities created by such a statute the manner of enforcement must be sought within the statute itself. It was further urged by him that in any event, the High Court could not substitute its own view or discretion for the view taken or discretion exercised by the specified authorities, even if it was erroneous or unsound.

Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice. However extensive the jurisdiction may

be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made. Mr. Daphtary, who appeared for the respondent, said nothing to controvert this position. His argument was that if all along the authorities and the Government had proceeded upon a particular footing and dealt with the rights of the parties on that basis, it was not open to them afterwards to change front and give the go by altogether to the conception of the rights of parties entertained by them till then. According to him, there was manifest injustice to his client in allowing them to do so and this was the reason which impelled the High Court to make the order which is the subject-matter of challenge in this appeal. The Motor Vehicles Act is a statute which creates new rights and liabilities and prescribes an elaborate procedure for their regulation. No one is entitled to a permit as of right even if he satisfies all the prescribed conditions. The grant of a permit is entirely within the discretion of the transport authorities and naturally depends on several circumstances which have to be taken into account. The Regional Transport Authority and the Provincial Transport Authority are entrusted under section 42 with this power. They may be described as administrative bodies exercising quasijudicial functions in the matter of the grant of permits. Under rule 8 of the Madras Motor Vehicles Rules the Regional Transport Authority is called the Road Traffic Board and the Provincial Transport Authority is called the Central Road Traffic Board. These bodies or authorities are constituted by the Provincial Government. The matters which are to be taken into account in granting or refusing a stage carriage permit are specified in section 47. By delegation under rule 134 A, the Secretary of the Road Traffic Board may exercise certain powers as regards the grant or refusal of stage carriage permits and under rule 136 there is an appeal to the Board from these orders. Similar powers of delegation are vested in the Secretary to the Central Board and an appeal lies to the Central Board under rule 148(1). From an original order of the Road Traffic Board there is an appeal to the Central Board and from the original orders of the Central Board to the Government, vide rules 147 and 148. An amendment introduced by the Madras Act XX of 1948 and found as section 64 A in the Act vests a power of revision in the Provincial Government. Besides this specific provision, there is a general provision in section 43 A that the Provincial Government may issue such orders and directions of a general character as it may consider necessary to the Provincial Transport Authority or a Regional Transport Authority in respect of any matter relating to road transport; and such transport authority shall give effect to all such orders and directions. There is, therefore, a regular hierarchy of administrative bodies established to deal with the regulation of transport by means of motor vehicles. Thus we have before us a complete and precise scheme for regulating the issue of permits, providing what matters are to be taken into consideration as relevant, and prescribing appeals and revisions from subordinate bodies to higher authorities. The remedies for the redress of grievances or the correction of errors are found in the statute itself and it is to these remedies that resort must generally be had. As observed already, the issue or refusal of permits is solely within the discretion of the transport authorities and it is not a matter of right.

We are accordingly of opinion that this was not a case for interference with the discretion that was exercised by the Transport Authorities paying regard to all the facts and the surrounding circumstances.

Further, it will be noticed that the High Court here did not content itself with merely quashing the proceedings, it went further and directed the Regional Transport Authority, Tanjore, "to grant to the petitioner permits in respect of the five buses in respect of which a joint application was made originally by the petitioner and Balasubramania Pillai and that in case the above buses have been condemned, the petitioner shall be at liberty to provide substitutes within such time as may be prescribed by the authorities." Such a direction was clearly in excess of its powers and jurisdiction.

For the reasons given above, the appeal is allowed and the order of the High Court set aside. Each party will bear their own costs of these proceedings throughout. Appeal allowed.

Agent for the appellant: S. Subrahmanyarn. Agent for respondent No. 1: M.S.K. Sastri.

Agent for respondent No. 4: P.A. Mehta.