K.M. Viswanatha Pillai vs K.M. Shanmugham Pillai on 25 November, 1969

Equivalent citations: 1969 AIR 493, 1969 SCC (1) 188

Author: S.M. Sikri

Bench: S.M. Sikri, K.S. Hegde

PETITIONER:
K.M. VISWANATHA PILLAI

Vs.

RESPONDENT:
K.M. SHANMUGHAM PILLAI

DATE OF JUDGMENT:
25/11/1969

BENCH:
SIKRI, S.M.
BENCH:
SIKRI, S.M.
HEGDE, K.S.

CITATION:
1969 AIR 493 1969 SCC (1) 188

ACT:
Motor Vehicles Act (4 of 1939), ss. 49(1) and 60(1)(c)-Persons owning buses benami-Whether bar for obtaining permit.

HEADNOTE:
The appellant was the owner of 5 buses. The Vehicles stood in the name of the respondent, appellant's benamidar, and the stage carriage permits were also obtained in the respondent's name. The appellant, who was running the buses, flied a suit claiming the buses along with their permits. It was decreed by the trial court, and the lower appellate court confirmed the decree in respect of 4 buses. The High Court, in further appeal, held that the appellant and the respondent together practised fraud in contravention of as. 41(1) and 60(1)(c) of the Motor Vehicles Act, 1939 in as much as the respondent representing himself to be the owner falsely obtained the permits in his own name, and allowed

the true owner, who had no permit to conduct the actual business and dismissed the suit in toto. In appeal this Court,

HELD: There is nothing in the Motor Vehicles Act, which expressly or by implication bars benami transactions or persons owning buses benami and applying for permits on that basis.

Section 42(1) does not require that the owner himself should obtain the permit; it only requires the owner to see that the transport vehicles shall not be used except in accordance with the conditions of the permit. The definition of 'permit' itself shows that all permits need not be in the name of the owner because the latter part of the definition shows that it is only in the case of a private earner or a public carrier that a permit has to be in the owner's name. The same inference follows from the definitions of 'private carrier' and 'public carrier'. [899 H]

The amended s. 60(1)(c) provides for one of the contingencies in which permit can be cancelled. According to it, it is permissible for the Transport Authority to cancel a permit if the holder of it ceases to own the vehicle covered by the permit. It is only a permissive clause and the Transport Authority has only been g/yen a discretion to cancel the permit in that contingency. It may or may not cancel it, even if the holder of the permit ceased to own the vehicles covered by it. But it is by no means necessary that cl. (c) should be applicable to the case of every permit holder. There may be permit holders who own the vehicle covered by the permit and there may be permit holders who do not own the vehicle. This clause appears to apply only to the former case and not to the latter. [900]

Veerappa Pillai v. Raman & Raman, [1952] S.C.R. 583, followed.

Khallil-ul-Rahman Khan v. State Transport Appellate Tribunal, A.I.R. 1963 All. 383, Gut Narayan v. Sheolaf Singh, (1919) 46 Cal. 566 (P.C.) and C.I.T. Gujarat v. Abdul Rahim & Co., 55 I.T.R. 651, approved.

Varadarajulu Naidu v. Thavasi Nadar, (1963) 2 M.LJ. 20 and Chavali Venkataswami v. Chavali Kotayya, (1959) 2 and W.R. 407, disapproved.

897

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1453 of 1966. Appeal from the judgment and decree dated September. 14, 1965 of the Madras High Court in Second Appeal No. 1394 of 1963.

A. K. Sen, R.M. Mehta and J.B. Dadachanji, for. the appellant.

R. Gopalakrishnan, for the respondent. The Judgment of the Court was delivered by Sikri, J. This appeal by certificate granted by the High Court of Madras is directed against its judgment and decree modifying the decree passed by the District Judge. The relevant facts for the determination of the points raised before us are as follows: The plaintiff, K'. M. Viswanatha pillai, appellant before us and hereinafter referred to as the plaintiff, and K.M. Shanmugham Pillai, respondent before us and hereinafter referred to as the defendant, were originally members of a Joint Hindu Family. On June 29, 1953, the six brothers who constituted the Joint Hindu Family entered into a partition of the properties belonging to the Joint Family, evidenced by a registered document Ex. A-35. A motor bus MDH 662 fell to the share of the plaintiff. At the time of partition the permit was not in the name of the defendant and some proceedings for the transfer of the permit to his name were pending. Accordingly it was provided in the partition deed as follows:

> "As soon as its route permit and registration etc. are transferred in the name of Shanmugam Pillai, he shall have the same transferred in the name of the 4th individual of us, Viswanatha Pillai."

In September 1953, the permit was transferred in the name of the defendant. In April 1954, the plaintiff purchased two more vehicles, namely, MDO 1106 and MDH 730, but the permits were obtained in the name of the defendant in whose name the vehicles were also actually acquired. As the defendant was going to Kuala Lumpur on business he executed a general power of attorney, Ex. A-55, in favour of the plaintiff. In this power of attorney the defendant admitted that the three buses above mentioned belonged to the plaintiff and were plying in his name as requested by the plaintiff. Two more buses seem to have been acquired since then.

The plaintiff's case in brief was that the defendant was carrying on business on his behalf as a benamidar. He accordingly prayed for a declaration that the five buses alongwith the stage carriage permits belonged to him and that he was entitled to run the same in terms of the power of attorney which was irrevocable. The defendant had joined with the plaintiff earlier in filing a joint application for transfer of permits before the Regional Transport Authority. The defendant, however, withdrew his consent and the application was rejected. The plaintiff, accordingly, seeks a mandatory injunction directing the defendant to execute necessary documents required to effectuate the transfer of the permits.

The suit was decreed entirely by the Trial Court, but the District Judge confirmed the decree only with reference to four of the buses. With reference to Bus No. MDU 4069 the decree was set aside.

The High Court held that "the plaintiff and the defendant practiced a fraud upon the authorities, conjointly, in contravention of the express provision of the Motor Vehicles Act. The benamidar of the vehicles, representing himself to be the owner, falsely obtained the permits in his name, and allowed the true owner, who had no permit, to conduct the actual business; there cannot be a more flagrant violation of the basic requirements of the Act, or of its scheme." The High Court, accordingly, felt that they could not possibly grant mandatory injunction compelling 'the defendant to co-operate in any further application for transfer, since that would, in effect, give recognition to the fraudulent contrivance and effectuate rights on the very basis of that contrivance. The High

Court also agreed with the District Judge that the plaintiff could not get a declaration as far as bus No. MDU 4069 was concerned.

The learned counsel for the appellant, Mr. A.K. Sen urges 'before us that no provision of the Motor Vehicles Act, 1939 (IV of 1939) hereinafter referred to as the Act has been contravened and that it is not necessary under the Act that a permit should be obtained only by the real owner of the bus.

The relevant statutory provisions may now be noticed, and they 'are as follows:

> "The Motor Vehicles Act, 1939 Section
>
> 2. (3) "contract carriage" means a motor vehicle which carries a passenger or passengers for hire or reward under a contract expressed or implied for the use of the vehicle as a whole at or for a fixed or agreed rate or sum and from one point to another without stopping to pick up or set down along the line of route passengers not included in the contract; and includes a motor cab notwithstanding that the passengers may pay Separate fares."
>
> (19) "owner" means, where the person in possession of a motor vehicle is a minor, the guardian of such minor, and in relation to a motor vehicle which. is the subject of a hire-purchase agreement, the person in possession of the vehicle under that agreement."
>
> (20) "permit" means the document issued by the commission or a State. or Regional Transport Authority authorising the use of a transport vehicle as a contract carriage, or stage carriage, or authorising the owner as a private carrier or public carrier to use such vehicle."
>
> (22) "private carrier" means an owner of a transport vehicle other than a public carrier who uses that vehicle solely for the carriage of goods which are his property or the carriage of which is necessary for the purposes of his business not being a business of providing transport, or who uses the vehicle for any of the purposes specified in sub-section (2) of section 42.
>
> (23) "public carrier" means an owner of a transport vehicle who transports or undertakes to transport goods, or any class of goods, for another person at any time and in any public place for hire or reward, whether in pursuance of the terms of a contract or agreement or otherwise, and includes any person, body, association or company engaged in the business of carrying the goods of persons associated with that person, body, association or company for the purpose of having their goods transported."

Section 42(1) on which the High Court has relied reads thus:

> "42(1) No owner of a transport vehicle shall use or permit the use of the vehicle in any public place, save in accordance with the.
>
> conditions of a permit granted or countersigned by a Regional or State Transport Authority or the Commission authorising the use of the vehicle in that place in the

> manner in which the vehicle is being used; .... "

This section does not, in our view, on the language require that the owner himself should obtain the permit; it only requires the owner that the transport vehicle shall not be used except in accordance with the conditions of the permit. The High Court would add the words "to him" after the words "permit granted", but, in our view, there is no justification for inserting those words. The definition of the "permit" itself shows that all permits need not be in the name of the ,owner because the latter part of the definition shows that it is only in the case of a private carrier or a public carrier that a permit has to be in the owner's name. The same inference follows from the definitions of "private carrier"

> and "public carrier". This Court came to the same conclusion in Veerappa Pillai v. Raman & Raman(1).
>
> Some reliance was placed on the amendments made in s. 60(1) (c). The, section as' amended reads :, "60 (1) The transport authority which granted a permit may cancel the permit or may suspend it for such period as it thinks fit--
>
> (c) if the holder of the permit ceases to (own)(2) the vehicle or vehicles covered by the permit," ....

There has been a conflict of opinion between the different High Courts as to the inference following that amendment. It seems to us that the High Court of Allahabad in Khalil-ul-Rahman Khan v. State Transport Appellate Tribunal(3) rightly gives the effect of the amendment. Srivastava, J., observed:

> "A reference was, however, made to cl.
>
> (c) of sub-section (1) of Section 60 of the Act and on the basis of that clause it was urged that it assumed that the permit holder should be the owner of the vehicle. That clause provides for one of the contingencies in which a permit can be cancelled. According to it, it is permissible for the Transport Authority to cancel a permit if the holder of it ceases to own the vehicle covered by the permit. It is only a permissive clause and the Transport Authority has only been given a discretion to cancel the permit in that contingency. It may or may not cancel it, even if the holder of the permit ceases to own the vehicle covered by it. But it is by no means necessary that el. (c) should be applicable to the case of every permit holder.

There may be permit holders who own the vehicle covered by the permit and there may be permit holders who do not own the vehicle. This clause appears to apply only to t he former case and not to the latter. On its basis, therefore, it cannot be held to be a requirement of the (1) [1952] S.C.R. 583..

(2) Substituted by s. 54 of the Motor Vehicles (Amendment) Act, 1956 (100 of 1956) for "possess" (w.e.f. 16-2-1957). A.I.R. 1963 All. 383, 388.

Act that in each case the person in whose favour a permit has been issued should necessarily be the owner of the vehicle covered by it."

We agree with these observations. The contrary view held in Varadarajulu Naidu v. Thavasi Nadar(x) that s. 42(1) contemplates that only an owner will have a permit is erroneous.

The decision of the Andhra High Court in Chavali Venkataswami v. Chavali Kotayya(2) that s. 60(1)(c) of the Act envisages the grant of a permit to the owner alone must also. be dissented from.

The learned counsel for the respondent says that at any rate the Act does not contemplate persons applying for permits benami. In India benami transactions are recognised and not frowned upon. (see Gut Narayan v. Sheolal Singh)(a). In C.I.T. Gujarat v. Abdul Rahim & Co. (4) it was held by this Court that the registration of the partnership deed under s. 26A of the Indian Income Tax Act, 1922, could not be refused on the ground that K was the benamidar of V. We see nothing in the Act which expressly or by implication bars benami transactions or persons owning buses benami and applying for permits on that basis. In the result the appeal is allowed, the decree of the High Court set aside and the decree passed by the District Judge restored. We may mention that Mr. Sen did not press the claim regarding the fifth bus, MDU 4069. The appellant will have half costs in this Court. The parties. will bear their own costs in the High Court.

y.p. Appeal allowed.

(1) (1963) 2 M.L.J.
(2) (1959) 2 Andh. W.R. 407.
(3) (1919) 46 Cal. 566 (PC).
(4) 55 I.T.R. 651.