

(1966) 02 KL CK 0019
In the High Court Of Kerala
Case No : O.P. No. 1584 of 1965

A. Gopinatha Menon

APPELLANT

Vs

Regional Transport Authority and Another

RESPONDENT

Date of Decision : 17-02-1966

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 57(7)

Citation : AIR 1967 Ker 26

Hon'ble Judges : V.P. Gopalan Nambiyar, J

Bench : Single Bench

Advocate : V.R. Krishna Iyer and K. Ramakumar, for the Appellant; Government Pleader for No. 1, V.K.K. Menon, M. Ramachandran and P.A. Mohammed for No. 2, for the Respondent

Final Decision : Allowed

Judgement

V.P. Gopalan Nambiyar, J.—The petitioner is the owner of the two stage carriage permits one operating on the route Kallettunkara to Kattoor via Irinjalakuda, and the other on the route Enammavu to Irinjalakuda, via Thriprayar, in the Trichur District, The 2nd respondent is the owner of a stage carriage permit on the route Puthenvelikkara to Irinjalakuda covering, it is alleged a distance of 22 miles. The 2nd respondent applied to the 1st respondent for a temporary variation of its route by extension of the same upto Thriprayar, a further distance, it is alleged of 14 miles. The same was rejected by the 1st respondent by order dated 16-8-1962, (Ex R-I) which reads as follows:

"There is no temporary need, but there is permanent need Hence notify for variation."

The above order was carried up in revision to the Stale Transport Authority and was eventually disposed of by Ex. R-2 dated 20-12-1963, which reads as follows:

"Heard the counsels for the Revision Petitioner and the counter-petitioner It is

seen that the R. T A has already taken steps u/s 47(1) to ascertain the need or otherwise for the variation. Hence the finding of the R. T A dated 16-8 1962 that there is permanent need is premature and is set aside The stay order is vacated and the Revision Petition dismissed "

As indicated in (he above order, the 1st respondent had on 3-9-1962 called for applications for a permanent or pucca variation of the route. The 1st respondent on 29-9-1964 passed an order which reads:

"Sanctioned "

A copy of the order has been filed as Ex. P-I. Representations were again made before the State Transport Authority against this one-word order and the said authority disposed of the same by an order dated 23-4-1965 filed as Ex R-3 which reads:

"Heard the Advocates for the Revision Petitioners and the counter-petitioners and perused the records of the case. It is seen that S 47 (1) Notification was published by the R. T. A. that the interested parties filed objections and that they were heard by the R. T A which finally took a decision that variation was necessary. Presumably the Revision Petitioners are under the impression that the order of the R. T. A. on the Section 47(1) notification amounts to a summary grant of the permit which is not really the case. The R. T. A has taken further steps u/s 57. The Revision Petitioners have also got opportunity to file their objections in reply to Section 57(3) Notification. In the circumstances, thin authority does not find sufficient grounds to interfere in the matter. The revision petitions are dismissed."

The father steps taken by the R. T. A. referred to above, had reference to the publication in the gazette dated 8-12-1964 u/s 57 of the Motor Vehicles Act for variation of the route. In response to the publication, the petitioner filed objections 9 copy of which has been filed as Ex. P-2. in the said objections, the petitioner stated that there was no need for the additional service between Thriprayar and Zrinjalakuda and gave details to substantiate the same. It was stated that the condition of the road was unsatisfactory. It was alleged that route it not a condition of the permit and variation of the route is not contemplated or permitted by Section 57(8) of the Motor Vehicles Act. The 1st respondent again disposed of the matter by a one line order: Sanctioned", a copy of which has been filed is Ex. P-3. This writ petition has been filed to quash Ex. P-3.

2. The petitioner's counsel urged that Ex. P-3 cannot be regarded as a proper disposal by the 1st respondent in the manner required or contemplated by the provisions of the Statute, that it violates the rules of natural justice in so far as it was not a "speaking order" and gave no indication of having taken into account the objections evidenced by Ex. P-2, and that the order was mala fide. It was also argued by the petitioner's counsel that route is not a condition of the permit and the variation of the conditions of the permit which alone is contemplated by Section 57(8) of the Motor Vehicles Act, would not comprehend a variation of the

route.

3. Save the last of the contentions, the rest of the submissions urged by the petitioner's counsel seem to me, to ultimately revolve on the question whether there has been a quasi judicial order by the 1st respondent after applying its judicial mind to the question before it. Mala fides was sought to be made out only on the ground that there had not been a proper compliance with the requirements of the statute.

4. Counsel on both sides debated at length before me the scope and implications of the doctrine of "speaking orders". The petitioner's counsel strongly relied upon the decision in *P.J. Joseph v. Superintendent of Post Offices*, 1960 KLT 1304: AIR 1961 Ker 167 and *Sardar Govindrao and Others Vs. State of Madhya Pradesh*, . Reliance was also placed upon the decision reported in 1965 KLT 706 at 70d where the passing of laconic and uncommunicative orders by quasi judicial authorities was deprecated; and on the un-reported decision of Raman Nayar, J in O. P. 2878 of 1966 where a one word order "Sanctioned" of the type we have in this case, in regard to the grant of a temporary permit was condemned and quashed by the learned Judge.

5. Counsel for the 2nd respondent made a broad submission that the requirement of a "speaking order" could apply only in relation to appealable orders and could not therefore be invoked against the present order, which was non-appealable. The proposition in this wide form was not supported by any authority except inferentially and by implication from a passage in the decision reported in *C. R. H. Readymoney Ltd., Bombay v. State of Bombay* AIR 1958 Rom 181 at p. 190 where the Chief Justice Chagla, observed:

"We are also in agreement with the learned trial Judge that inasmuch as a right of appeal is provided against the decision of the Collector, the Collector should state his reasons for refusing a licence in writing so that the appellate authority should be in a position to consider his reason."

The above observation appears to me to afford too slender a foundation for the submission of the counsel for the respondent.

6. In *P.J. Joseph Vs. Superintendent of Post Offices and Another*, the order of termination which was attacked was appealable but no appeal was filed. Ansari, C. J. who delivered the judgment of the Division Bench after a survey, of the authorities observed at " 1308 (of Ker LT): (at p. 199 of AIR):

"It follows that where the order by administrative authorities be quasi-judicial, it must be "speaking order", and absence of reasons in would be fatal to its legality."

In *Sardar Govindrao and Others Vs. State of Madhya Pradesh*, the Supreme Court had to consider the validity of the order passed u/s 5 (3) of the Central Provinces and Berar Revocation of Land Revenue Exemption Act, 1948, on an application for grant of money or pension as suitable maintenance to the descendants of

certain former ruling Chiefs. The application had been rejected by the Government by an order which gave no reasons for the same. As far as can be gathered from the report, the order appears to have been non-appealable, Section 5 authorising the State Government to make the order, and Section 6 barring the jurisdiction of the Civil) Courts. In quashing the order, the Supreme Court observed in paragraph 10:

"10. The next question is whether Government was justified in making the order of April 26, 1965? Thai order gives no reasons at all The Act lays upon the Government a duty which obviously must be performed in a judicial manner The appellants do not seem to have been heard at all The Act bars a suit and there is all the more reason that Government must deal with such cases in a quasi-judicial manner giving an opportunity to the claimants to state their case in the light of the report of the Deputy Commissioner The appellants were also entitled to know the reason why their claim for the grant of money or a pension was rejected by Government and how they were considered as not falling within the class of persons who it was clearly intended by the Act to be compensated in this manner Even in those cases where the order of the Government is based upon confidential material this Court has insisted that reason should appear when Government performs curial or quasi-judicial functions (See *Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others*, : (1962) 2 SCR 339). The High Court did not go into any other question at all because it rejected the petition at the threshold on its interpretation of Section 6 (S). That interpretation has been found by us to be erroneous and the order of the High Court must be set aside. As the order of Government does not fulfil the elementary requirements of a quasi judicial process we do not consider it necessary to order a remit to the High Court."

7. The judgment of Raman Nayar, J. in O. P. No. 2878 of 1965 was again concerned with a non-appealable order sanctioning a temporary permit u/s 62 of the Motor Vehicles Act. The decision can perhaps be distinguished on the ground that it was impossible to discern from the single-word order "Sanctioned", on which of the several jurisdictional conditions mentioned in Section 62 of the Act, the grant of the temporary permit was founded. The decision of the Supreme Court seems to be clear that a speaking order is "an elementary requirement of a quasi-judicial process." Counsel for the 2nd respondent stated that u/s 57(7) of the Motor Vehicles Act, reasons have to be recorded only while refusing a permit and not while sanctioning one. In the light of the above pronouncements there seems to be little force in this contention.

8. That aspect apart, it seems to me that it is impossible to regard the order Ex. P-3 as one passed after the application of the judicial mind to the points in controversy. It was not disputed that the 1st respondent in passing the order Ex. P-8 had to perform a quasi-judicial function. It was not disputed either, that by reason of Section 57(8) of the Motor Vehicles Act, the procedure in dealing with an application for the grant of a new permit had to be followed in dealing with an

application, to vary the conditions of the permit. The said procedure involves calling for objections and a consideration of the same. There is nothing in Ex. P-3 to indicate that there was any advertence to, or consideration of the objections evidenced by Ex. P-2 as already noticed. One of the objections was to the jurisdiction of the R. T. A. to vary the route, on the ground that variation of the route is not a variation of the condition of the permit. This objection, going as it does, to the very jurisdiction of the 1st respondent, has not even been adverted to or considered. I am of the view that if the 1st respondent had jurisdiction to deal with the matter at all there has not been a judicial consideration and disposal of the same.

9. In this view, it is unnecessary for me to consider the petitioner's objection that a variation of the route is not a variation of the conditions of the permit and that the R. T. A. had no jurisdiction u/s 57 to deal with the same.

10. I allow the O. P. and quash Ex. P-3. There will be no order as to costs.

11. This order will not preclude the 1st respondent from dealing with the 2nd respondent's application for variation of the route in accordance with law.