

(1960) 06 KL CK 0009
In the High Court Of Kerala
Case No : A. S. No. 1001 of 1959

Abraham

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 27-06-1960

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(6), 226

Citation : (1960) KLJ 1230

Hon'ble Judges : M. A. Ansari, C.J.; M. Madhavan Nair, J

Bench : Division Bench

Advocate : K. S. Sebastian, for the Appellant; C.M. Kuruvilla Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Ansari, C.J.—This appeal seeks to vary the order by a learned Judge of this Court, whereby the appellant's petition for certiorari prohibition, and madamus, has been dismissed on the ground of his not having earlier invoked the jurisdiction under Article 226. To satisfactorily adjudicate on the arguments urged in support of the appeal, which have been spread over a number of days, certain facts should be stated. The Director of the State Transport, u/s 68(C) of the Motor Vehicles Act, hereinafter referred to as the Act, had published a draft scheme for introducing regular stage carriage services on two routes, which are :

- (1) Punalur-Pathanamthitta, and
- (2) Chengannur-Pathanamthitta.

The scheme was published in the Gazette of April 15, 1958, and the appellant as well as others filed objections, because the scheme adversely affected them. It is not disputed that the objections were heard by the Secretary to Government, Public Works Department, on July 22, 1958; and the order was passed by the Minister for Transport on August 9, 1958, who, over-ruling the appellant's objections, approved the scheme, which was thereafter notified in the Gazette of

August 12, 1958. The Director of State Transport commenced two Express services from September 9, 1958, and these services were continued till March 16, 1959. Thereafter, the Director introduced two ordinary bus services on the same routes, and the appellant's case is that the change has brought about unhealthy competition with his buses, which are run on one of the two routes, with the result that he is daily losing more than Rs. 50/-. This complaint of having introduced rates for the Government buses much below those permitted to the appellant, forms the subject matter of the writ petition, that was filed in this court on June 5, 1959.

2. The learned Judge has declined to interfere on the ground of the appellant having failed to invoke the jurisdiction under Article 226 within a reasonable time of the order dismissing his objections, which, as we have already stated, was in August 1958; and the appellant's advocate has urged several grounds against this decision. One is that, at the hearing of the appellant's objections to the scheme before the Government Secretary, the Director of Transport gave an undertaking that he would introduce only Express services on the routes, which had been honoured by such services being initially introduced, and been recently broken by their conversion into passenger services. His argument is that there has been no acquiescence and laches, as only the recent change has adversely affected the appellant, who runs passenger buses, and the appellant has come within reasonable time of the introduction of passenger services. It is obvious that the averment about the undertaking having been given, on being controverted, would raise questions of fact, whose adjudication would not be gone into now,- because it is well-settled that proceedings under Article 226 are inapt for determining disputed" questions of fact. It further follows that the objection to the appellant's having delayed his petition, would then remain, and he would be bound to satisfy the court of being diligent. Therefore, the next argument urged for holding the appellant's not being negligent, is that the reduced rates for the Government passenger buses were introduced from March 16, 1959, and the appellant was justified in coming to this court only after he was made to face the discriminatory and inequitable competition, which he had done within reasonable time of being so confronted. The last argument is that - the several notifications, by which the new rates been introduced, were ultra vires, " were illegally driving the appellant from his trade and thereby have violated his fundamental right under Article 19 of the Constitution.

3. We would deal with the aforesaid arguments seriatim. But it would be better in the beginning to state how courts have come to insist on persons invoking the jurisdiction under Article 226, to be diligent. It is well-known that courts of equity, when granting their reliefs, insisted on the party claiming the reliefs to be diligent, and the principle therefore, became settled that, when the relief be discretionary, i.e., when a litigant be claiming something not as a matter of right, the courts would refuse to grant, unless the courts be satisfied about the claimant's conduct. The rule, therefore, is not that a party must invariably file petitions within a given time; on the other hand, it depends on the circumstances

of each case, whether the petitioner's conduct be such as to justify his being treated as not diligent and thus to preclude his claim to the discretionary relief. It follows that we must analyse facts of each case, and determine how far the claimant's conduct be such as to disentitle him to the issuance of the writ, which he is seeking.

4. It cannot be disputed that the appellant's objection to the scheme was only to the Government passenger service being at some time introduced on the routes; otherwise he would not be interested in raising any objection. What the appellant had to urge in support, was evidently heard by the Government. Secretary, and an adjudication on the argument, would settle the controversy. It follows that a reasonable man would soon after take steps to vacate the adjudication, and would not wait till consequential order is issued. To put it differently, quasi-judicial approach is required in determining the objection, and whatever complaint be against the procedure followed in deciding, it should be made soon after the decision be given. It follows that the appellant's complaint against the hearing of his objection being not according to principles of natural justice, would be long delayed, as the decision on the objection was on August 9, 1958, and he filed the writ petition on June 5, 1959. We, therefore, hold that the appellant, by filing the objections and pressing them to hearing, knew full well what would be the reasonable consequences of its being rejected, and he ought to have filed his writ petition soon after the decision was given. The running of the passenger services, in our opinion, would but be the consequence of what had been approved earlier; and its introduction in March 1959, would not justify the appellant being treated as diligent. Therefore, we think the claim of the order having been passed in breach of principles of natural justice, would be delayed, and the delay precludes the appellant's getting the discretionary relief. Nor do we see how the controverted fact of any undertaking having been given at the hearing of the objections, saves the claim to the relief. The counter-affidavit denies any such undertaking having been given, which thus raises an issue of fact in the proceedings under Article 226; and, we have already mentioned that such questions cannot be adjudicated in such proceedings. It follows that the ground of an undertaking having been given, also fails in establishing the appellant's diligence.

5. The appellant's advocate has then argued that fixing the new rate for buses in the Government passenger services, while maintaining those for the private owners, has furnished his client sufficient new grounds for invoking the jurisdiction under Article 226. In this connection, he relies on paragraph 5 of his affidavit, and has urged that he is under the statutory duty of not charging less than the rate of 4 Naye Paise per passenger per mile; whereas the government was charging the lesser rate of 3.44 Naye Paise per passenger per mile, which competition is ruining the client. He also argued that by overloading its buses, the State was further causing unhealthy competition and driving the client from his honest earning. It is further claimed that the State authorities were collecting 10 naye Paise on the particular routes, whereas the minimum fare collected in

other routes was at the rate of 20 naye Paise. The learned advocate for the department has placed before us a number of notifications, beginning from May 23, 1952; and we are satisfied about what is now being charged for the Government passenger service on the routes, not to be a violent departure from what was being done earlier. That apart, we feel that some competition is to the advantage of the common man, and what has been allowed to the appellant, is the maximum rate, which he can adjust, in order to compete with the lower charges for the Government buses. Moreover, the averment of the appellant's incurring such losses daily, as to be driving him from the business, apparently is not justifiable, because he is still operating on the route, despite the averment about his losses. In any case, the appellant cannot ask for certiorari against the new rate, for no quasi-judicial approach is required for such fixation. We also think that the appellant would get, on proper representation, adequate relief; and this is not a case, where mandamus should be granted without insistence on earlier demand and refusal. Nor do we see how negligent conduct on the part of the subordinates, can be treated as deliberate acts of overloading by the respondent and of creating unhealthy competition against the appellant's carrying on his passenger service. We, therefore, hold that his incurring the losses alone, would not justify the appellant's being given mandamus, without his having complied with the earlier requirement of demand and refusal. The difference in the rates on the two routes, would be also not helpful to the appellant's case; for, that would not dispense with his not making the demand earlier. Now we would come to the complaint of the appellant's fundamental right having been violated. It is clear that any scheme for the State's passenger services on routes, to the partial exclusion of the appellant, would not infringe his fundamental right under Article 19, as enactment authorising such exclusion is allowed by Article 19(6). It was next argued that the action of the State in introducing the new rate for its buses, is discriminatory, but then, every reduction in fare to the benefit of the common man, cannot be held to be against Article 14. The object is to introduce competition, and the reduction is reasonably connected with the object. Further, the difference between the State and private buses is obvious to justify the latter being excluded and rational classification exists to justify discrimination, should the new rate be held to be such. In these circumstances, we hold that no grounds have been made out for treating the fixation of new rate to be against Articles 14 and 19. We see no force in the appeal, which is dismissed with costs, Rs. 100/-.