

(1961) 09 KL CK 0010
In the High Court Of Kerala
Case No : A.S. No. 441 of 1960

Anamalais Bus Transport (Pte) Ltd.

APPELLANT

Vs

Kunhippalu and Others

RESPONDENT

Date of Decision : 22-09-1961

Acts Referred:

Constitution of India, 1950 — Article 19

Citation : (1961) KLJ 1135

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

Bench : Division Bench

Advocate : V.K.K. Menon, C.S. Padmanabha Iyer, M. Ramachandran and P.A. Mohammed, for the Appellant; P. Govindan Nair, P.K. Kurien, G. Balagangadharan Nair, K. Sukumaran for 1st Respondent and C.M. Kuruvilla, Government Pleader for Respondents 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

Ansari, C.J.—The appellant seeks to vary the judgment by a learned Judge of this Court, whereby the State Transport Appellate Tribunal's order has been vacated, and the writ petition against the order allowed. The facts necessary for deciding the appeal are that the Regional Transport Authority had invited applications for the grant of a stage carriage permit in the route Chalakudy Kuzhoor via Ashtamichira, Vynthala, Annamanada, and Valiyaparamba. Several persons had applied, and the Regional Authority granted the permit to Shri K. V. Kunhippalu, the proprietor, K. M. S. Bus Service, Trichur, who is the first respondent to this appeal. Two of the unsuccessful applicants, the Anamalais Bus Transports (P) Ltd. Branch Chalakudy, the appellant before us, and A.T. Thomas, proprietor, St. Thomas Motor Service, the 4th respondent, appealed to the State Transport Appellate Tribunal. The 4th respondent's appeal was dismissed, and the appellant's granted. Aggrieved by the order, the first respondent filed O. P. No. 1322/1959, which the learned Judge has allowed.

2. To appreciate the ground, on which the writ been allowed, some more facts

should be stated. The route in question is 18 miles long, and was a, new route, because no bus had been earlier operating along the entire route. Six buses, however, of which five belong to the appellant company, commonly known as A. B. T., were running on the first six miles of the route, which lay from Chalakudi to Ashtamichira. For the next six miles from Ashtamichira to Annamanada, there was as yet no bus traffic, which part of the route has been referred to as a virgin sector. A bus of a third person was operating over the next three miles from Annamanada to Valiyaparamba, and one bus that belongs to the appellant was running over the last three miles from Valiyaparamba to Kuzhoor. It is also not disputed that another bus, owned by the appellant, was operating along a different route, i.e., between Chalakudy and Kuzhoor, which route goes from Ashtamichira to Mala instead of Annamanada, and joins the present route at Valiyaparamba, with the result of this bus covering nine out of the 18 miles of the new route. The position, therefore, is that out of the seven buses on parts of the route, five belong to the appellant, two to others, and in addition to the five, another bus belonging to the appellant is operating a different route, but between the same termini. It follows that there is concentration of permits over the routes in the hands of the appellant.

3. The Regional Transport Authority had eliminated the appellant on the ground of being the biggest operator about Chalakudy, and the grant of permit to such a person would not be in the interests of the travelling public. The aforesaid authority, then considered the qualifications of the other applicants, and finding the first respondent to the appeal before us to be the best of the three, had granted the permit to him. The Appellate Tribunal, when rejecting an application for the stay of the grant of the permit pending the appeals, had held that the appellant being the biggest operator, it might be open to the Regional Authority to make a choice among the remaining applicants taking into consideration their comparative qualifications; but, when deciding the appeals, had taken a different view. The Appellate Tribunal then held that there was no provision in the Motor Vehicles Act or in the Rules by which an operator could be eliminated on the sole ground that he was the biggest operator, and on the strength of the decision, *M. Ramayya v. Andhra* (A. I. R. 1956 Andhra 217), found the fact of the appellant operating on part of the route to be a qualification. Then after considering the merits of the contestants, the Tribunal came to the conclusion that the appellant was qualified to serve the interests of the public, and, therefore, can be permitted. The learned Judge has allowed the writ petition on the ground, which is summarized in paragraph 7 of his judgment and reads thus:

As we have seen it was not really on the ground that the third respondent was the biggest operator in the area, or on the ground that the third respondent was already operating on part of the route that the R. T. A. rejected the application. It was on the ground that the third respondent held a monopoly of permits on the route and that the grant of this permit to it would not be in the interests of the travelling public. The R. T. A.'s rejection was on a ground valid in law and, in holding that the rejection was bad in law and in setting it aside on a complete

misapprehension of the ground on which it proceeded, it seems to me that the S. T. A. T. committed an error of law apparent on the face of the record.

Very briefly the learned Judge has held that the Regional Authority was right in rejecting the appellant's application on the ground that a concentration of the existing permit over the route in the hands of the appellant amounted to a monopoly; and, that the elimination of such a person on the score of monopoly would be valid in law. The next extract from the judgment relevant for the purposes of our decision is as follows:-

As pointed out in Madras case i.e., *Shri R. V. Service v. Raman and Raman (Pr.) Ltd.* (A. 1. R. 1959 Madras 492), and in *N. Transport Co. v. S. T. Authority* (A. I. R. 1959 MP 320), a monopoly can operate against the public interest, and an elimination of the third respondent on the score of monopoly would be valid in law, coming as it would within Section 47(1)(a) of the Motor Vehicles Act. As I have already indicated, the main evil of monopoly is that lack of competition tends to abuse, and I cannot accept the argument advanced on behalf of the third respondent that unless a person already operates along the entirety of a route, there can be no question of his securing a monopoly over that route. To create a monopoly in the sense in which that word is used it seems to me is sufficient if the buses whether over the whole or substantial portion of the route are largely operated by him.

With respect we disagree with the learned Judge; for monopoly, though an evil has been permitted to exist, where the public interests be thereby served. It would be recalled that the English Crown conferred by Letters Patent privileges whereby individuals or associations got exclusive right to produce or trade in specified articles of commerce, and the principal evils which led to public outcry against the practice were the powers of fixing the price by the individual and thereby injuring the public, of enabling limitation on production, of causing deterioration in quality of the article, and of the impoverishment of labor. These led to the final denial of the power in *Case of the monopolies* (11 Coke Rep. 84(d).), where the grant of a patent for the exclusive making and importing playing-cards was held void as contrary to the common and statute law and to public policy; but the right of the Crown to grant patent for new inventions was admitted by the Judges. In 1623, this judicial view was maintained by the Statute of Monopolies, which, while prohibiting the grant of monopolies generally, expressly excepted grants already made for a period not exceeding twenty-one years or to be made for a period not exceeding fourteen years. In these circumstances, the definition of the word "monopoly" by Coke laid particular emphasis on hindrance by royal grant in the lawful trade. The definition thus embraced only a consequence arising from an exertion of sovereign power, and did not cover restrictions or prohibitions obtained from individual's creation. The dread of monopoly had, however, resulted in the emanation of another rule, which regarded contracts in restraint of trade to be illegal.

4. In England, the earliest cases show a disposition to avoid all contracts that

prohibited a person to use a lawful trade at any time, or at any place, as being against the public benefit. But, soon it became clear that the common good would not suffer if a man, who sold the goodwill of a business, bound himself not to enter into immediate competition with the buyer; and thus it was laid down in *Rogers v. Parry* ((1613) Bulst 136) that a man cannot bind one, that he shall not use his trade generally, but for a time certain, and in a place certain, a man may well be bound, and restrained from using of his trade. A rule thus became established that contracts in general restraint of trade were invalid, but that contracts in partial restraint, if reasonable and not contrary to the public interest, would be upheld. Finally, Lord Macnaghten in *Nordenfeldt v. Maxim Nordenfeldt Guns and Ammunition Co.* ((1894) A. C. 535) , laid the foundation of the modern law on the subject, which now can be summarized as providing that all restraints of trade, in the absence of special justifying circumstances, are contrary to public policy; and finally that a restraint can only be justified if it is reasonable in the interests of the contracting parties, and in the interests of the public. We have given the above summary to show that the dread against monopoly from the very beginning had rested on the ground of its consequences being injurious to the public. Therefore, concentration in few hands, should such consequences be not apprehended and public interests served, would not be objectionable.

5. The position is not different so far as the American law is concerned, where the dread of monopoly as an emanation of governmental power passed away early, because of the result of the structure of the Government, but that did not serve to assuage the fear as to the evil consequences which might arise from the acts of individuals producing or tending to produce the consequences of monopoly. Modern economic development, however, has served to modify some of the earlier conceptions regarding certain phases of monopoly and restraint of trade, and the monopoly is sometimes permitted where it be in the interests of the public. It would be useful at this stage to extract the following passage from *National Transport Co. Vs. The State Transport Authority and Others*, , where White C. J. treats the subject in these words:

Without going into detail, and but very briefly surveying the whole filed, it may be with accuracy said that the dread of enhancement of prices and of other wrongs which it was thought would flow from the undue limitation on competitive conditions caused by contracts or other acts of individuals or corporations led, as a matter of public policy, to the prohibition or treating as illegal all contracts or acts which were unreasonably restrictive of competitive conditions, either from the nature or character of the contract or act, or where the surrounding circumstances were such as to justify the conclusion that they had not been entered into or performed with the legitimate purpose of reasonably forwarding personal interest and developing trade, but on the contrary, were of such a character as to give rise to the inference or presumption that they had been entered into or done with the intent to do wrong to the general public and to limit the right of individuals, thus restraining the free flow of commerce and tending to bring about the evils, such as enhancement of prices, which were

considered to be against public policy...

6. It follows that in that country as well, the contract, trust or combination is monopolistic, should it tend to control the given market to the detriment of public and is then obnoxious to both the common law and the anti trust statutes. There also the question to be resolved is whether the given arrangement or combination is injurious in any perceptible degree to the public or to any considerable portion of it, in tendency of effect. (Vide American Jurisprudence, Vol. XXXVI, p. 483).

7. We have the guarantee under Article 19 to carry business, but this freedom is subject to reasonable restriction in the interest of the general public. It follows that the restrictions, whereby certain classes of people are alone allowed to do the business, would be reasonable, should such restriction be in the public interest. In *P.V. Sivarajan Vs. The Union of India (UOI) and Another*, the rule under the Coir Industry Act, 1953, provided that only persons who had exported, in the preceding three years, not less than a prescribed minimum quantity of coir yarn or coir products, would be registered as exporters of coir yarn or coir products, and the aforesaid test was contested on the ground that it would extinguish the small traders as well as tend to establish a monopoly in the export trade. But the Supreme Court held that it could not interfere with the determination of the rule-making authority, who had taken into consideration the conditions of the trade and imposed a quantitative rather than qualitative test, which was, according to the rule-making authority, most conducive to the public interest. In *M.C.V.S. Arunachala Nadar etc. Vs. The State of Madras and Others*, the court upheld the validity of the Madras Commercial Crops Markets Act, 1933, which provided for the establishment of certain controlled markets for the sale of commercial crops and provided that after the establishment of such markets, no person would be allowed to establish any other market within specified distances of the controlled markets, so that the growers of such crops would be obliged to resort to the controlled markets only for the sale of their produce. These markets were to be controlled by regulations, which ensure correct weighment, payment of reasonable prices and the like, facilitating equal bargaining between the producers and the buyers. The Act did not directly prohibit the business of middlemen engaged in the trade of selling commercial crops; but the result of the operation of the Act was to eliminate middlemen. Yet it was held that the total or substantial elimination of middlemen was a reasonable restriction in order to prevent the exploitation of the poor cultivators engaged in the production of commercial crops, which necessitated such marketing legislation.

8. It follows that neither historically nor constitutionally would the objection of a person's getting exclusive right, be fatal unless the exclusion of others be injurious in tendency or effect, to the public or to any considerable portion of it. We would now examine the two decisions to see whether something contrary been laid in them. *Rajamannar C. J. in Sri R. V. Service v. Raman & Raman (Pr.) Ltd.* (A. I. R. 1959 Madras 492) was dealing with dismissals of two writ petitions

against the orders of the Appellate Tribunal holding the writ petitioners not entitled to the permits, on the ground of their getting monopoly. He sustained the dismissal of the writ petitions on the ground that the decisions by the Tribunal on the facts and circumstances of each case should not be interfered with by the High Court. But while doing so, the learned Chief Justice at page 497 observed as follows:

The statement in Rottachaefer's book only goes to show that in certain circumstances the grant of a monopoly of a class of business to a private corporation would not violate any rights guaranteed to those excluded from such business by the due process clause of the 14th Amendment. In the present case the question is not whether excluding an applicant on the ground that the grant of another permit to him has the effect of giving him a monopoly would be an unreasonable restriction. We have already held that such exclusion would be in the interests of the public. The restriction is certainly not unreasonable because the appellants have not been completely precluded from carrying on the business of motor transport...

It is clear that having found the exclusion on the facts of the cases to be in the public interest, the grant of the permit would have been injurious to the public and would, therefore, amount to monopoly. In that context the learned Chief Justice determined how far the complaint of the appellant's fundamental right having been thereby infringed was correct, and rejected it. The decision is no authority for the proposition that, even if the public interests be not adversely affected by a number of permits being in one hand, yet such a person must be refused the permit. The other case of *N. Transport Co. v. S. T. Authority* (A. I. R. 1959 M. P. 320) also is not against the view we are taking; for, the learned Judge Shrivastava J. at page 321 clearly states the rule to be as follows:

It is a question of opinion whether allowing the operator to have almost all the services on a route is in public interest, and the view taken by the Regional Transport Authority cannot be said to be unreasonable. At any rate, it is for that authority to appreciate how public interest would be best served, and we do not find anything wrong in its considering that the permits should be evenly distributed.

9. We think the Regional Authority had erred in not determining how far the appellant's application on merits deserved being allowed; for, had it been otherwise not acceptable, the rejection would then be justified. On the other hand, had it been the most deserving, it would be liable to rejection only where getting the permit would injuriously affect the public interest, and where no such consequences be apprehended, the writ petitioner would not be justified in complaining that giving the permit to the appellant has resulted in violation of his fundamental right of doing business, the restriction then becoming in the public interest. The Regional Authority had, therefore, erred in treating the monopoly to be something always evil and not to be bad only where it be against the public interest. This we think is not the correct legal position. If monopoly, wherein the

public interest be served, be a reasonable restriction on the right of a citizen to carry on trade, we do not see how giving majority permits to one person would amount to something contrary, where such interest is not injured. We do not think the Madras decision justifies a contrary view, nor the other decision which contemplates the permits being distributed on merits of the applications being equal. We further feel that the Appellate Tribunal had also erred in not determining whether the absence of the competition caused by the appellant's getting the most permits on the route would be in the particular circumstances, contrary to the public interest. This is necessary, because the other applicants would then complain about the restriction on their right to carry trade not being in the interest of the general public. We, therefore, think that the writ petition has been incorrectly allowed on the ground that in the particular locality the grant of the permit would make the appellant a monopoly holder, and the Appellate Tribunal should be directed to further determine the question how far the grant of one permit to the appellant before us would amount to such concentration of permits as to prejudice the public interests. We, therefore, allow the appeal, reverse the order of the learned Judge, and remand the case to the Appellate Tribunal to decide the appeal afresh, in view of the observations on the legal point made in this judgment. The parties will bear their costs.