

(1963) 10 MAD CK 0031
In the Madras High Court

B. Rajagopal Naidu

APPELLANT

Vs

The State Transport Appellate Tribunal and Others

RESPONDENT

Date of Decision : 29-10-1963

Acts Referred:

Motor Vehicles Act, 1988 — Section 47, 47(1)

Citation : (1964) 1 MLJ 92

Hon'ble Judges : S. Ramachandra Iyer, C.J.; S. Ramachandra Aiyar, C.J

Bench : Division Bench

Judgement

S. Ramachandra Iyer, C.J.—This is an appeal from the Judgment of Srinivasan, J. rejecting an application taken out by the appellant, B.

Rajagopal Naidu, under Article 226 of the Constitution, to quash the order of the State Transport Appellate Tribunal, which superseded the grant

made by the State Transport Authority and granted one stage carriage permit to each of respondents 2 and 3. The route in question is Madras to

Krishnagiri, a distance of 158 miles. There were as many as 118 applicants for permits before the State Transport Authority. That Authority,

though not convinced of the utility of the marking system prescribed by G.O. Ms. No. 1298, Home, dated 28th April, 1956, in the matter of

selecting the proper person for a long distance route of this character, nevertheless, applied that system for adjudging the comparative merits of the

applicants. It found that the appellant was the best qualified operator and it passed an order on 8th May, 1958, granting both the permits to him.

Eighteen of the disappointed applicants, among whom were respondents 2 and 3, filed appeals against that order.

2. Pending the appeals, the State Government by G.O. Ms. No. 2265, Home, dated 9th August, 1958, superseded G.O. No. 1298, dated 28th

April, 1956, and issued revised instructions to the Regional and State Transport Authorities in the matter of selection of proper persons for grant of stage carriage permits.

3. The appeals before the Appellate Tribunal were disposed of on 4th July, 1959. While so doing, the Tribunal adopted and applied the marking

system prescribed by G.O. No. 1298 for the due evaluation of the merits of the parties before it. The marks thus allotted enabled respondents 2

and 3 to obtain one permit each, with the consequence that the two permits given to the appellant by the State Transport Authority were set aside.

The appellant feeling aggrieved, applied before Srinivasan, J., for the issue of a Writ of certiorari to quash that order and being unsuccessful in that attempt, has come forward with this appeal.

4. Mr. Mohan Kumaranangalam appearing for the appellant has raised two contentions:

1. G.O. No. 1298, on which the Transport Authority as well as the Tribunal relied for the conclusion they reached, is invalid as amounting to an

undue restriction on the appellant's Fundamental Right to carry on his business of plying for hire a stage carriage. Even otherwise, the G.O. being

contrary to the provisions of Section 47 of the Motor Vehicles Act, should be declared to be invalid.

2. Assuming that G.O. to be valid, that having been superseded by G.O. Ms. No. 2265 dated 9th August, 1958, the merits of the various

applicants should have been adjudged in accordance with the latter G.O. and that the Appellate Tribunal erred in applying the former one.

5. Both G.O. No. 1298 and G.O. No. 2265 have been passed by the State Government by virtue of the powers granted to it u/s 43-A of the

Motor Vehicles Act. That section has been introduced into the main Act by the Madras Amending Act XX of 1948, and it provides that the State

Government may issue orders and directions of a general character in respect of any matter relating to road transport.

6. Although there appears to have been some argument before the learned Judge as to the validity of Section 43-A, learned Counsel for the

appellant conceded before us that he could not sustain that position, and that the authority conferred on the Government u/s 43-A to issue

executive instructions must be regarded as valid. Learned Counsel has, however,

contended that in spite of the wide language employed in that section, it will not be competent to the State Government to give administrative instructions in the matter of selection of operators for the grant of permits, as that would amount to an arbitrary interference with the fundamental right of the individual. In other words, the contention is that as the right to ply a vehicle is a fundamental right, any restriction on such a right, in order to be valid, should come within the ambit of Article 19(6) of the Constitution. That provision enables the State to make any law imposing, in the interests of general public, reasonable restrictions on the exercise of the right conferred by Article 19(1). It is argued from this that restrictions on fundamental rights could only be imposed by law and not otherwise like that under an administrative order. As G.O. No. 1298 is only administrative in character, not having any statutory force, the directions contained therein must be regarded as impediments placed in the way of the exercise of the fundamental right of carrying on business. This argument indeed runs counter to the principle laid down in two recent decisions of the Supreme Court. In *Raman and Raman Ltd. Vs. The State of Madras and Others*, the Supreme Court held that an order issued by the State Government u/s 43-A would be a reasonable restriction coming within Article 19(6) of the Constitution. It was observed. The appellant had a fundamental right to carry on the business of motor transport subject to reasonable restrictions imposed by law under Article 19(6) of the Constitution. The Act imposed reasonable restrictions on the said right. One such restriction was that the Government may issue such orders and directions of a general character as it may consider necessary in respect of any matter relating to road transport to the State Transport Authority. When the appellant applied for a permit, he must be deemed to have had the knowledge of the fact that his application would be disposed of by the State Transport Authority in accordance with orders and directions of a general character issued by the State Government. This decision has, however, been sought to be distinguished on the ground that the subject-matter of dispute in that case concerned a different Government Order altogether. We cannot see any force in this contention, because the Supreme Court was dealing not with a particular Government Order issued by the State Government, but rather with such orders

or directions as it might give under the provisions of Section 43-A of the Act. G.O. No. 1298 is one such order given to the authorities under that statutory provision. This position is made clearer still by the later decision of the Supreme Court in *R. Abdulla Rowthar v. S.T.A. Tribunal* AIR 1959 S.C. 896. Referring to G.O. No. 1298, the identical one with which we are now concerned, Gajendragadkar, J., observed:

The executive orders properly so-called, do not confer any legal enforceable rights on any person and impose no legal obligations on the subordinate authorities for whose guidance they are issued ; that is not to say that the directions are not valid and should not be followed by the said authorities ; the said authorities are undoubtedly expected to follow the said directions and their breach may expose them to disciplinary or other appropriate action.... The direction itself, though valid, and in a sense binding on the subordinate authorities, is not a statutory rule and has not the force of law and so its misconstruction cannot be said to be an error of law....

It will be clear from the passage cited above, that the Supreme Court regarded a Government Order properly issued u/s 43-A of the Act as a reasonable restriction within Article 19(6).

7. It has however been argued on behalf of the appellant that in so far as G.O. No. 1298 dated 28th April, 1956, was mandatory in form, it should be regarded as an illegal impediment cast in the way of the appellant exercising his right to carry on business. Support for the contention is sought from the decision of this Court in *In Re: V. Chakkarai Chettiar*, where it was held that a citizen had a right to ply a motor vehicle on a public road and any infringement of that right could be justified only if it fell within the scope of Article 199(6), of the Constitution. The view taken by this Court in that case has since been approved by the Supreme Court in *Saghir Ahmad Vs. The State of U.P. and Others*, . In the former the learned Judges in the course of their judgment, gave expression to the desirability of the State Government, framing Rules for selection solely in the interests of the public, which could be binding on the Transport Authorities. The directions contained in G.O. No. 1298 were issued in pursuance statelyle of the observations made by this Court in that Judgment ; but it will be noticed that no Rules as such u/s 68 of the Motor Vehicles Act have yet been made ; only administrative orders have been issued. This circumstance is relied

on by Mr. Mohan Kumaramangalam to support his contention that the aforesaid Government Order, which is merely administrative in character, cannot have the force of law, and therefore any restrictions to the carrying on the business of motor transport which it might impose not being law must be regarded as invalid. The fallacy of the argument lies in the fact that the directions contained in the said Government Order do not amount to a restriction on the fundamental rights of the citizen. The two decisions of the Supreme Court, to which we have made reference earlier, point out clearly the true nature of the Government Orders issued u/s 43-A of the Act. They are mere executive directions for the guidance of the Transport Authorities, not having the force of law and not being capable of creating rights in parties. The Government Order only states that the Transport Authority shall have regard to certain matters specified in it, in addition to those mentioned in Section 47(1) of the Act. It mentions certain disqualifications which render the applicant for a stage carriage permit liable to be screened ; for example, financial instability, adverse record in respect of efficiency and integrity as an operator, trafficking in permits, applying for permits on behalf of undisclosed persons with a view to evade the Rules, etc. It then sets out the desirability of forming viable units and prescribes the marking system, by which the qualifications possessed by the operators have to be assessed. Possession of adequate repair and maintenance facilities, location of residence or place of business of the applicant on the route, technical or business experience of transport, of the operator, are some of the qualifications laid down. The instructions are general in nature. They can be said to be of an educative nature giving to the Transport Authority technical or practical advice. The object of the Government was undoubtedly to secure precision and uniformity in the matter of selection of operators for grant of stage carriage permits.

8. But all these prescribed qualifications have been made subject to the important clause in the Order giving liberty to the Transport Authority to ignore the marking system, if it worked unfairly. It is true that if an authority were to discard the marking system, it should give reasons for doing so. But that cannot take away the essentially judicial character of the disposal of the comparative merits of the applicants. It cannot, therefore, be

held that a Government Order of this kind imposes any restrictions in the exercise of fundamental rights by any individual. It is only general direction for the purpose of assuring a fair selection amongst the competing applicants. Once Section 43-A is held to be valid, the directions given by the State Government under it (which are also valid) when particularly they do not even have the force of law, can in no sense be regarded as a restriction. As we said directions contained in the Government Order now in question are merely intended to assist the Transport Authority in the due and Judicial disposal of the applications before it.

9. Learned Counsel for the appellant himself has conceded, that if the provisions of the Government Order were enacted by way of statutory Rules

under the provisions of Section 68 of the Act, as indeed it had been done by the Andhra Pradesh Government, they would be perfectly valid. In

other words they are reasonable restrictions : We fail to see how it could be otherwise simply because they have taken the form of certain general

administrative directions, not intended to govern any particular case but only generally. It is not contended that adoption of it in a judicial order will

amount to any contravention of any rights in a party. It is, however, contended that as this Court in *In Re: V. Chakkarai Chettiar*, has observed that

Rules should be framed by the Government under Act for the guidance of the Transport Authorities executive orders passed u/s 43-A. to achieve

the same purpose must be regarded as invalid. We are unable to see how the absence of Rules framed by the Government, will take away the

power of the Government to pass orders under the provisions of Section 43-A. It may be that the rule-making authority could enact Rules to

achieve the same purpose. But the rule-making authority is not compelled to frame Rules under the Act and the fact that it did not choose to frame

Rules cannot take away the authority of the-State Government conferred by the Statute under the provisions of Section 43-A of the Act.

10. It was then faintly argued that G.O. No. 1298 amounted to an encroachment on the judicial power. We pointed out earlier that the

Government order self has made an express provision that it would be open to the Transport Authority not to apply the instructions contained

therein. Further its terms are in no way contrary to the rights guaranteed by the Constitution or under any statute. Whether in a particular case the

administrative directions, which are advisory in character, should be followed or not, is a matter for judicial determination by the authority

concerned. There is therefore no substance in the contention that G.O. No. 1298 is invalid on the ground that it amounts to an infringement of the

fundamental right of an individual to carry on business.

11. It is next suggested that the impugned Government Order will be contrary to the provisions of Section 47 of the Act. It has been held over and

over again that Section 47(1) of the Act is not exhaustive of the considerations that should weigh with the Transport Authority in deciding as to to

which of the applicants the stage carriage permit is to be granted and that it would be competent for that Authority to take note of other relevant

circumstances not set out in the section the touchstone being the interest of the public. The Government Order under consideration provides a

scheme of selection in the interests of public and has given by way of instructions certain relevant circumstances as a matter to be taken note of by

the authority, which would undoubtedly be of value in the proper selection of the operator to whom the permit is to be granted.

12. The next argument was that G.O. No. 1298 having been superseded by G.O. No. 2265 during the pendency of the appeals before the State

Transport Appellate Tribunal, that authority should have followed only the later Government Order, and not the earlier one. Both the Government

Orders contain directions to the Transport Authority in the matter of granting stage carriage permits etc. They do not, in terms, apply to the State

Transport Appellate Tribunal. The Appellate Tribunal might, therefore, prima facie have a wider power in the matter of the disposal of the appeals.

But the power, at the same time is a judicial power. The Appellate Tribunal will undoubtedly have authority to deal with the appeals--before it after

taking into consideration, matters which the Transport Authority took into consideration. If, therefore, the Transport Authority applied the

provisions of G.O. No. 1298, the Appellate Tribunal which has inter alia to see whether that authority had acted in accordance with law or not,

has necessarily to apply the same Government Order. Otherwise, it cannot say that the Transport Authority committed any error in the disposal of

the applications before it. It is unnecessary for us now to consider whether the Appellate Tribunal, circumstanced as it was in the present case,

could adjudge the merits of the rival applicants on the basis of the later Government Order which had come into force before the appeals were

heard. What all we say is that when it proceeded to decide the appeals on the basis of the facts and circumstances existing and in the light of the

Government instructions contained in G.O. No. 1298 which existed at the time of the disposal of the applications by the Transport Authority, it

could not be said to have committed any error apparent on the face of the record, or exceeded its jurisdiction.

13. We are therefore, in entire agreement with the view taken by Srinivasan, J., and dismiss the appeal with costs.