

(1963) 11 KL CK 0024
In the High Court Of Kerala
Case No : O.P. No. 2276 of 1962

C. Kunhikutty

APPELLANT

Vs

The State Transport Appellate Tribunal, Ernakulam and
Another

RESPONDENT

Date of Decision : 15-11-1963

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 47(1)

Citation : AIR 1964 Ker 253

Hon'ble Judges : P. Govindan Nair, J

Bench : Single Bench

Advocate : V.B. Krishna Iyer and V. Sivaraman Nair, for the Appellant; Govt. Pleader, for Respondent No. 1, V.K.K. Menon, M. Ramachandran and C.J. Balakrishnan, for the Respondent

Final Decision : Dismissed

Judgement

P. Govindan Nair, J.—By an order passed by the Regional Transport Authority, Kozhikode, at its meeting held on 30-10-1961, a permit was issued to the petitioner who was applicant No. 2 on the route Murad-Azhiyur Sub Registry Office, via Badagara. The seventh applicant before the Regional Transport Authority is the second respondent to this writ application. The Regional Transport Authority allotted the highest marks among the applicants to applicant No. 7, but denied him a permit on the ground that

"Applicant No. 7 the Punchiri Motor Service has as many as 9 routes overlapping portions along this route and hence it is considered that in the interest of maintaining healthy competition his claims to this route should be rejected."

2. Appeals were taken by the unsuccessful applicants before the State Transport Appellate Tribunal, the first respondent herein, and the State Transport Appellate Tribunal by order produced along with this writ application, Ext. P-3, cancelled the issue of the permit to the petitioner and granted the permit to the second

respondent. It is this order Ext. P-3, that is challenged in this writ application.

3. Various contentions were raised by counsel on behalf of the petitioner. Firstly it is submitted that G. O. No. 1298 and the principles laid down therein have been relied on by the Regional Transport Authority and the State Transport Appellate Tribunal and that this should not have been done. Support for this proposition was sought to be gained from the observations in a Judgment of this Court in Writ Appeal No. 67 of 1962. That Judgment in Paragraph 2 commented on the cancellation of the above G.O. and the direction given by the Government in their D.O. letter dated 23-1-1959 to the District Collectors Kozhikode, Palghat and Cannanore, who are ex-officio Chairmen of the respective Regional Transport Authorities. In the letter dated 23-1-1959 it is said:

"That the principles laid down In G. O. (ME) No. 1298 dated 28th April 1956 of the Madras Government which has already been cancelled may as far as possible be followed in deciding whether a stage carriage permit should be granted or refused."

Regarding this procedure, this Court observed:

"Motor Vehicles Act is in operation throughout the State; and applications for stage carriage permits under it are being disposed of in every district of the State. The relevance and necessity of a uniform set of rules in the matter are alike throughout the State. It may be that, in the light of experience gained and rulings rendered, the Madras G.O. may be found to require amendment in certain respects. The Government of a welfare State is bound to do such things promptly and issue revised rules for the guidance of the authorities throughout the State. Cancelling the rules and requesting some only of the statutory authorities in the State to follow the principles therein cannot be a matter of satisfaction to any Government. We hope that the Government will take particular notice of the above facts and do the needful soon."

I do not think that the petitioner is entitled to submit that the principles underlying the G.O, should not have been followed on the facts of this case. It is, no doubt, desirable, as has been mentioned by the Division Bench Ruling in the Judgment, the relevant part of which I have extracted above, that a uniform principle should be applied. But the petitioner had not challenged the application of the principles contained in that G.O. It is not as though the principles stated therein are irrelevant or extraneous to the questions arising for determination. It is stated in paragraph 4 of Ext. P-3:.

"It was not contended before me by any of the appellants that the R.T.A. acted without jurisdiction or was wrong to have followed the principles of the said G.O."

4. In the light of the above, the petitioner cannot be heard to say that the State Transport Appellate Tribunal or for that matter the Regional Transport Authority erred in following the principles laid down in the G.O.

5. Even so, it was contended that the following of the principles in the above

G.O. has fettered the discretion vested in the Transport Authorities. It was suggested that the petitioner's longer experience and his alleged experience in town bus service have not been given their due weight because the authorities felt themselves bound by the marking system adopted in the G.O. already referred to. Reference was made to the decision in *Merchandise Transport Ltd. v. British Transport Commission* (1961) 3 WLR 1358. At p. 1368 of the above decision it is said:

"Where discretion lies it should not be hidebound by authority."

And at p. 1377 of the above decision there is the following passage:

"a tribunal must not pursue consistency at the expense of the merits of individual cases. If the discretion is to be narrowed, that must be done by statute; the tribunal has no power to give its decisions the force of statute,"

6. It was also pointed out that para 2-A (4) of the very G.O. relied on has provided that

"In cases where this system works unfairly the Regional Transport Authority may ignore the marks obtained for reasons to be stated."

7. It is clear from the facts of this case that both the Regional Transport Authority and the State Transport Appellate Tribunal found that applying the principles of the G.O. the second respondent is the most qualified person to whom the permit should be granted. The Regional Transport Authority, notwithstanding this, declined to grant the permit to the second respondent for the reason mentioned in the order which I have extracted above that "it is considered that in the interest of maintaining healthy competition his claims to this route should be rejected." I do not think this is a valid ground for ignoring the claims of a person who had obtained nearly double the marks obtained by the petitioner. The first respondent, the State Transport Appellate Tribunal, understood this remark as amounting to a finding that the second respondent has monopoly on the route. So understanding the remarks may be right or wrong. Those facts alone cannot create monopoly and this Court had held in the decision reported in *Annamalais Bus Transport (Pt.) Ltd. v. Kunhippalu* 1961 Ker LJ 1135 that monopoly will be a ground for excluding an applicant only when the grant of a further permit to him would be against public interests. Neither the State Transport Appellate Tribunal nor the Regional Transport Authority has come to any conclusion, nor is there material for reaching such a conclusion, that the grant of the permit to the second respondent would be against public interests, (8) The first respondent has considered the various aspects and the facilities available to the different applicants and has come to the conclusion that the second respondent is the person most deserving. I do not think that the approach of the first respondent is wrong. Neither do I think that he has violated any of the principles on which counsel for the petitioner relied. I do not think that the petitioner is a person who can be said to have had greater experience with greater facilities which should over-ride other considerations. By and large, the

assessment of the rival claims of tie different applicants must be left to the authorities under the statute. It is only in cases where they deviated from well-established principles or took into consideration extraneous matters or had bound them selves by rigid rules which have affected the exercise of the free discretion vested in them will this Court be entitled to interfere. I am unable to dis cern any such infirmity in Ext. P2 order or in the approach made by the first respondent. I dismiss this writ application. There will be no order as to costs.