

(1983) 12 KL CK 0026
In the High Court Of Kerala
Case No : W.A. No. 564 of 1983

C. M. Chandramathy

APPELLANT

Vs

M/s. Kasargod Bus Transport Company and Others

RESPONDENT

Date of Decision : 16-12-1983

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1983) KLJ 765

Hon'ble Judges : T. Chandrasekhara Menon, J;G. Balagangadharan Nair, J

Bench : Division Bench

Advocate : K.P. Dandapani, Sumathi Dandapani, Sebastian Paul and K. Jaju Babu, for the Appellant; Thampan Thomas, P.V. Baby and K.C. Sankaran, for the Respondent

Final Decision : Dismissed

Judgement

Balagangadharan Nair, J.—The appeal arises from the judgment of a learned Judge dismissing the Original Petition filed by the appellant to quash Ext. P10, the order of the 5th respondent, the State Transport Appellate Tribunal ("S.T.A.T."), allowing M.V. A.A. No. 102 of 1983 and reversing the decision Ext. P1 of the 4th respondent, the Regional Transport Authority, Cannanore ("R.T.A.") granting a stage carriage permit to the appellant. By Ext. P10 the S.T.A.T. set aside the permit obtained by the appellant and granted it to the 1st respondent. Pursuant to the invitation for the grant of 2 stage carriage permits on the route Cannanore New Bus Stand-Talapady S.B. (Via) Taliparamba, Payyannur, Karivellur, Kanhanagd, Bakel Bridge, Kalnad, Paravandukkunnu, Chattanchal, Kasargod and Kumbalam 5 operators including the appellant, and respondents 1 and 2 made applications to the R.T.A. They were -numbered as applicant Nos. 2, 3 and 1 respectively. (We are leaving out the other two applicants as they do not figure in the controversy). The R.T.A. awarded marks to those applicants under Rule 177A, Motor Vehicles Rules. All got 5 marks each. The material split up figures are: the appellant was awarded 3 marks for sector and 4 marks for

residence in effect 4 marks as that is more advantageous to her-and the 1st respondent got the full 4 marks each both for sector and residence. The 2nd respondent was on the same footing as the 1st respondent. In the course of its proceedings dated 4-4-1983 the R.T.A. noted that they had obtained 5 marks each and that the 1st respondent has a pucca permit on the identical route. It also noted that while the appellant has offered a 1983 model vehicle if the permit was granted to her, the 2nd respondent had offered a 1982 model vehicle. On this reasoning the R.T.A. preferred the appellant and respondent 2 in public interest and granted one permit to each. From this decision the first respondent and applicant No. 4 preferred Appeal Nos. 102 of 1983 and 145 of 1983 respectively before the S.T.A.T. These appeals were disposed of by Ext. P10. While dismissing Appeal No. 145 the S.T.A.T. allowed Appeal No. 102 granting the 1st respondent one permit, setting aside the decision of the R.T.A. in favor of the appellant. The appellant challenged this part of the order in the Original Petition which has given rise to the appeal. We have already noted the grounds on which the R.T.A. granted one permit to the appellant. Before the S.T.A.T. the marks awarded to the various applicants were not challenged. The reasoning of the S. T. A. T. in granting the permit to the 1st respondent can be summarized as follows: By reason of their full sector qualification respondents 1 and 2 were better qualified than the others and they were also operating temporary services on the identical route and these temporary permits were, granted to them on 21-12-1982 in a contest with rival applicants on the ground that they had superior qualifications. Except stating that the first respondent had a pucca permit on the almost identical route the R.T.A. had assigned no reason to disqualify him for the permit. Pucca sector qualification is no disqualification. The grant of the permit to the appellant in preference to the 1st respondent, only because she offered a 1983 model vehicle was in no way justified. The model of the vehicle offered by the appellant could have assumed significance only if she was equally qualified on the other points as the remaining applicants and as this was not so, the preference given to her on this ground could not be supported. The 1st respondent had offered a vehicle KLN 9229 in his application and representation and none of the parties had disputed that this vehicle was in any way unfit or unsuitable for the service and it was with this vehicle that the temporary permit was being operated on the route. After holding that the two permits ought to have been given to respondents 1 and 2 the S.T.A.T. proceeded to note the appellant's contention that neither of them could claim any further superior qualifications with reference to their full sector. On this the S.T.A.T. held that where marks had already been awarded to two applicants in accordance with Rule 177A and both have secured the maximum marks a further enquiry as to who is better qualified among them with reference to their sector or residential qualifications is not impermissible as marks are only guides and do not govern the R.T.A.'s decision. If one among two rival applicants has got only residential qualification while the other has both residential as well as sector qualifications and other things being equal between them, it is only in public interest that the applicant who has both sector as well as residential qualification

is preferred for the grant of the permit as such a course is permissible u/s 47(1) of the Motor Vehicles Act. It was on this substantial reasoning that the S.T.A.T. allowed Appeal No. 102. While granting one permit to the 1st respondent for its bus KLN 9229 or a still later model vehicle, the S.T.A.T directed that it should produce the current records of the vehicle within 3 weeks.

2. In the judgment under appeal the learned judge considered the appellant's contentions at length but found no ground to upset the S.T.A.T.'s decision.

3. The R.T.A. awarded marks to the various applicants in accordance with Rule 177A. The appellant got 3 out of 4 marks for sector and the full 4 marks for residence. As it was more advantageous to her the appellant could claim credit for the 4 marks given for residence under the second proviso to Rule 177A(4). The 1st respondent obtained full 4 marks both for residence and sector. The S.T.A.T. observed that if one of the two rival applicants has to his credit only residential qualification while the other has residential and sector qualifications, other things being equal, it is open to the R.T.A. in the public interest to prefer the latter. The S.T.A.T. also found that the 1st respondent had experience of having operated a temporary permit on the entire route and that he was therefore better qualified in that respect than the appellant. The appellant strongly contested this reasoning before the learned judge on the ground that after awarding marks under Rule 177A it is not open to the authorities to re-evaluate the head of claim on which marks have been awarded and give preference to any applicant who scores better in the revaluation. In support of this contention the appellant had relied on the decision of another learned single judge in O.P. No. 2363 of 1983. This contention involves a consideration of the scope and effect of the relevant provisions of Rule 177A as also Section 47, Motor Vehicles Act. Rule 177A is entitled "Grant, variation, suspension or cancellation of stage carriage permits-Guiding principles." Skipping sub-rules (1) to (3) as they are not relevant, sub-rule (4) provides "After eliminating the applicants in the manner laid down in sub-rule (3) marks" shall be assigned as follows for assessing the different qualifications of the applicants for the grant of permits." Paragraph A of sub-rule (4) deals with sector or residential qualification and specifies the marks to be awarded for these qualifications. Clause (1) provides that four marks may be awarded to the applicant who has his place of business or residence on or at either terminus of the route. Sub-clause (c) of Clause (ii) provides for three marks where the sector qualification is between 51 per cent and 75 per cent of the total distance of the route and sub-clause (d) provides for four marks where the sector qualification is above 75 per cent of the route. The second proviso to this clause enacts that if the applicant has both residential and sector qualifications, he may be given marks either for residential qualification or for sector qualification, which is more advantageous to him. Paragraph B deals with business or technical experience in the field of stage carriage operation. Sub-rule (5) provides that applications finalized under sub-rule (4) shall be disposed of in accordance with sub-section (1) of Section 47 of the Act.

4. Section 47(1) provides for the matters to which the Regional Transport Authority shall have regard in considering an application for stage carriage permit. Clause (a) specifies the interests of the public generally.

5. The paramount consideration that should weigh with the Regional Transport Authority in considering an application for stage carriage permit is the interests of the public generally as specified in Section 47(1) (a). While this position is clear from the terms of the section, the decisions have established it beyond challenge. In *D.R. Venkatachalam and Others Vs. Dy. Transport Commissioner and Others*, , the Supreme Court has observed thus (paragraph 4):

It is common ground, and decisions are legion in support thereof, that the interest of the public generally is the super-consideration decisive of the award of permits when there is a plurality of applicants. He who can serve the public best gets the permit to ply the stage carriage from the quasi-judicial authority charged with the responsibility for choice.

The matters dealt with in Rule 177A are only guidelines as clearly indicated in the title itself. Sub-rule (5) expressly provides that after sieving the applications under sub-rule (4) they should be disposed of in accordance with subsection (1) of Section 47, thus emphasizing the supremacy of the matters u/s 47(1). Yet again Rule 177A which is only a piece of subordinate legislation must in the very nature of things be subordinate to the statutory provisions in Section 47(1). This subordination has been highlighted in *P. Kumaraswamy Vs. State Transport Appellate Tribunal, Madras and Another*, , with reference to the corresponding provision-Rule 155A-framed by the Tamil Nadu Government:

The rule itself emphasizes what is obvious, that the paramount consideration of the interest of the public, as enshrined in Section 47(1), must be given full weight while awarding permits. That means to say that the various factors set out in Rule 155A are subject to Section 47 (1).

This decision has been followed in *D.R. Venkatachalam and Others Vs. Dy. Transport Commissioner and Others*, . *V. R. Krishna Iyer, J.*'s observations in *Venkatachalam*'s case with reference to the Tamil Nadu rule are relevant:

Marks shall guide, not govern the award. Full discretion, to some extent, canalized by the marking procedure, still vests in the Transport Authority. For, the marks, these authorities will remember, sway the exercise of judgment, not supersede it. All this leads to the conclusion that marks shape but do not clinch the ultimate selection. The public is the consumer; its plenary service is the final test. Therefore, there is nothing in Rule 155A derogatory of the discretion vested by Section 47(1).

In the same judgment *Beg, J.* observed:

Rule 155A gives only guidance, but the totality of factors mentioned in Section 47(1) really decide.

There is therefore nothing in Rule 177A or the marks awarded thereunder that precludes consideration of the factors relevant u/s 47(1); indeed even after the award of marks the R.T.A. should have regard to these factors like the "interests of the public generally". In Kumaraswamy's case, AIR 1976 S.C. 2202, it was observed that while the sub-rules of Rule 155 A cannot be discarded they may be supplemented or outweighed and that while in the name of public interest something opposed to the sub-rules cannot be done there is scope for play of the jurisdiction of the Tribunal to promote public interest within the combined framework of Section 47(1) and Rule 155A. The award of marks under Rule 177A does not deprive the authorities of the power to look into the factors on which the marks have been based as part of its duty u/s 47 (1) to make the best choice in the interest of the public. Under paragraph A the same marks are to be awarded for sector qualifications in a particular range, as when it is between 1 per cent and 25 per cent or 26 per cent and 50 per cent, 31 per cent and 75 per cent and when it is above 75 per cent. Thus applicants with 76 per cent and total sector qualification would get the same marks-Four. On the appellant's contention if the other qualifications are equal or substantially equal, the R.T.A. is without power to look into the relative sector qualifications of the applicants and give preference to an applicant with full sector qualification over another applicant with inferior sector qualification. The same consideration would apply to other factors for which marks have been prescribed under the rule. The position is not far different from choosing a candidate for a post for which first class in the minimum prescribed qualification if two or more, first class candidates apply. It would be impossible to contend that the person with 99 or 100 per cent marks should not be Chosen over another with 61 marks merely because both hold first class degrees. As pointed out by the S.T.A.T. if one of two applicants has only residential qualification while the other has both residential and sector qualification, other things being equal, it is only in public interest if the latter is chosen in preference to the former, even though under the second proviso to sub-rule (4) of Rule 177A if the applicant has both residential qualification and sector qualification, he may be given marks either for residential qualification or sector qualification, whichever is more advantageous to him. We must however add that the authorities should not normally or ordinarily go behind the marks and that such a course should be reserved for cases where other qualifications are equal. In such a situation it would be permissible for the authorities, consistent with their power and duty in the interests of the public, to go behind the marks and choose the applicant who is best qualified even on the factors on which the marks are based.

6. In support of her contentions counsel for the appellant relied upon the unreported judgment of a learned single Judge in O.P. No. 2363 of 1983. In that case the R.T.A. granted the petitioner a temporary permit for a period of 4 months. The S.T.A.T. on appeal reversed this decision and granted the permit to the first respondent. The petitioner thereupon filed O.P. No. 2363 of 1983. The R.T.A. had awarded 5 marks each to 3 applicants including the petitioner and the

first respondent. The R.T.A. however noted that the petitioner alone had full sector qualification and selected him for the permit. This decision was set aside by the S.T.A.T. The learned Judge found on a scrutiny of the records that the assumption of the R.T.A. that the petitioner had full sector qualification was wrong and therefore the S.T.A.T. was justified in setting aside its decision. The learned Judge then proceeded to consider the question whether assuming that the petitioner had full sector qualification he could not have been chosen by the R.T.A. for preferential treatment on the ground of longer sector qualification alone after having obtained the full four marks which is the maximum admissible for that qualification under Rule 177A. In the course of discussion the learned Judge observed:

When the framers of the Rules, for the purpose of awarding marks, classified those who had 75 to 100 percent sector qualification into one group, and two applicants had obtained this maximum number of marks that could be awarded under that head, to draw a further microscopic distinction and to have a further mini classification do not appear to be justified or warranted, as the intendment of the rule was to ignore such marginal difference while assessing the relative merits of the applicants before the R.T.A. Even if we accept the position that in extreme cases where all the contenders for the permit obtain equal, marks under Rule 177A(4), and while disposing of the matter u/s 47(1) no applicant is found to have any particular qualification to claim an edge over the others, it might be possible to clinch the issue by further probing into actual sector or technical experience each applicant was having going behind the marks awarded, for want of any other means by which the choice could be made, such a procedure could be quite unwarranted, as in the present case, where there are other factors to be reckoned while assessing the relative merits of the applicants u/s 47(1) of the Act,

The learned Judge then referred to the passages from Venkatachalam's case extracted by us and proceeded to observe:

Normally, therefore, the R.T.A. would not go behind the marks awarded in terms of Rule 177A(4) in assessing the relative merits of the applicants, particularly when there are other factors to be taken note of to clinch the issue while taking a decision according to the mandates of Section 47(1) of the Act.

Counsel for the appellant relied on the following passage also:

However, that does not mean that for assessing that qualification, the marks awarded under the very same head by the application of the principle laid down in Rule 177-A of the Rules, have to be ignored and a fresh assessment on the basis of the exact proportion of the sector qualification or technical experience the parties at contest were having, has to be made.

7. The above passages were more in the nature of obiter as the learned Judge had even otherwise held that the R.T.A.'s decision was liable to be reversed-as it proceeded upon an erroneous assumption. Even if it is not so we find it difficult,

with great respect, to agree as counsel for the appellant tried to make out that the learned Judge thought of totally excluding advertence to the details of the qualifications on which marks were awarded. We have our doubt that the learned Judge had decreed such an exclusion because of the passage quoted above which starts with "Normally, therefore, the R.T.A. " If and to the extent the decision tends to lay down such a proposition We must express our respectful dissent. We have already stated above the scope of Rule 177A and the award of marks and their relationship to Section 47(1) and do not repeat it. We reject the appellant's contention.

8. It remains only to consider the controversy about the offer of a bus by the appellant. The R.T.A. had noted that the appellant offered a 1983 model vehicle if the permit was granted to her. In its judgment the S.T.A.T. noted that the permit Was granted to the appellant only because she offered a 1983 model vehicle and observed that the model of the vehicle could have assumed significance only if she was equally qualified on the other points among the applicants and that as this was not so the preference given to her on this ground was unsupportable. It also noted that the first respondent had offered a vehicle in his application and in his representation and that none of the parties had objected that this vehicle was in any way unfit or unsuitable for the service. The learned Judge considered this controversy about the bus in some detail and remarked that while the first respondent had stated in his application that he had a reserve bus the petitioner had only stated that it was not required and that likewise while the former had offered a named bus in the application with the offer to arrange a later model suitable vehicle within the prescribed period the petitioner had left the appropriate column blank. It was further found that the first respondent had an idle reserve bus also. The learned Judge looked into the records and noted that a vehicle was obtained by the petitioner on 30-3-1983 and it was registered only on 2-5-1983 long after the R.T.A.'s decision on 4-4-1983. He remarked that it was not clear who made the endorsement about the delivery on 30-3-1983 and that the appellant's possession of a vehicle was not borne out by any record. Counsel for the appellant complained that the learned Judge had delved into these matters, exceeding his jurisdiction as there was no finding by the S.T.A.T. or the R.T.A. on this matter, Counsel contended that the appellant was aggrieved by the approach made by the learned Judge as he had not even called for her explanation before making the unfavorable observations. This contention is not quite correct for the judgment states that the learned Judge questioned the appellant's counsel and the Government Pleader and they were not able to point out any record about the bus when the R.T.A. passed its order. The R.T.A. had also only stated that the appellant had offered a 1983 model bus, obviously if the permit was granted to her. All that apart there is no valid basis for the appellant's grievance as the learned Judge had not grounded his decision on this circumstance. He has further observed that this was not even the major ground of the S.T.A.T.'s decision. In this state of the record, there is no cause for the appellant's complaint.

9. The argument that the S.T.A.T.'s order is vitiated by the omission to take note of the first respondents conduct in getting the express service on the same route converted into an ordinary service as indicating his inefficiency and lack of interest has no merit. For one thing it is not clear whether the complaint, was articulated before the S.T.A.T. For another the conversion has no such consequence; if the first respondent found the express service uneconomical he did well in applying for a conversion rather than causing public inconvenience and suffering personal ruin. This alleged omission provides no ground to upset the S.T.A.T.'s order and as a corollary the judgment of the learned Judge. The learned Judge has found that the S.T.A.T.'s decision is based on relevant grounds and that it is not vitiated by any error of law or jurisdiction or other circumstances to justify interference under Article 226. We are in agreement with the learned Judge.

We dismiss the appeal but in the circumstances without costs.