

(1975) 01 KL CK 0004
In the High Court Of Kerala
Case No : O.P. No. 4591 of 1974

C. Ramanunni Nair

APPELLANT

Vs

State Transport Appellate Tribunal Ernakulam and Others

RESPONDENT

Date of Decision : 22-01-1975

Acts Referred:

Motor Vehicles Act, 1939 — Section 47, 57(2), 57(5)

Citation : AIR 1975 Ker 104

Hon'ble Judges : K.K. Narendran, J

Bench : Single Bench

Advocate : Govt. Pleader, K. Neelakandha Menon, for the Appellant; V. Sivaraman Nair and M. Krishnakumar, for the Respondent

Final Decision : Allowed

Judgement

K.K. Narendran, J.—The question that arises for consideration in this Original Petition is whether a Regional Transport Authority can refuse a request to club together two suo motu applications for a stage carriage permit filed u/s 57(2) of the Motor Vehicles Act, 1939 (hereinafter referred to as the Act) in passing orders u/s 57(5) of the Act granting the permit, The petitioner in this Original Petition is a stage carriage operator operating services in the Palghat Malappuram and Trichur districts. He filed two applications under the first part of Section 57(2) of the Act before the 2nd respondent-Regional Transport Authority, Pal-ghat for two pucca stage carriage permits on the route Ponnani-Palghat and Thavanoor-Palghat. The above applications which were items Nos. 44 and 45 in the Agenda of the meeting of the 2nd respondent held on 27-2-1974 were rejected on the ground that an application has already been entertained. Against the above orders of the 2nd respondent, the petitioner filed appeals before the 1st respondent-State Transport Appellate Tribunal, Ernakulam. The 1st respondent though allowed the above appeals, rejected the petitioner's request to direct the 2nd respondent to club his applications along with that of the 5th respondent Mayil Vahanam Motor Service, Palghat.

2. The petitioner claims 23 years of standing in operating stage carriages and also experience along a major portion of the two routes in question which are two long distant routes in the Palghat district. Both the above routes are routes where Messrs. Murugan Transports were operating. But the vacancies arose because they defaulted their services. The 2nd respondent at its meeting held on 21-1-1974 decided to notify two suo motu applications filed by the 5th respondent, Mayil Vahanam Motor Service, for the grant of two pucca stage carriage permits; one on the Ponnani-Palghat route and the other on the Thavanoor-Palghat route. The petitioner, an existing operator on the routes in question, when he came to know that the above applications were posted as items 15 and 19 respectively for consideration at the meeting held on 21-1-1974, entered appearance and requested that in the interests of the travelling public the necessity for the two routes may be determined and the number of permits fixed and the applications for the grant of permits invited. But the case of the petitioner is that without considering the petitioner's request the 2nd respondent decided to notify the applications of the 5th respondent by Exts. P-1 and P-2 decisions respectively. The petitioner then filed two suo motu application u/s 57(2) of the Act for the above two routes and these applications came up for consideration in the next meeting of the 2nd respondent on 27-2-1974. The petitioner requested the 2nd respondent that his applications also may be entertained and notified u/s 57(3) of the Act so that they can also be disposed of together with the two applications of the 5th respondent. But the 2nd respondent rejected the petitioner's applications and Exts. P-3 and P-4 are the decisions of the 2nd respondent on the two applications of the petitioner.

3. Against Exts. P-3 and P-4 the petitioner filed Exts. P-5 and P-6 appeals respectively before the 1st respondent. Along with the above appeals the petitioner also moved two petitions for stay of the grant of two pucca permits on the two routes in question. As the 1st respondent was not functioning, the petitioner questioned Exts P-1, P-2, P-3 & P-4 by Ext. P-7 Original Petition (O. P. No. 1697 of 1974) before this Court. When Exts. P-5 and P-6 appeals and the above Original Petition were pending, the petitioner came to know in the first week of April that the two applications of the 5th respondent were notified in the Kerala Gazette dated 19-2-1974. Immediately he filed a representation before the 3rd respondent-Secretary, Regional Transport Authority, Palghat.

4. By that time, the 1st respondent had begun to function and hence Ext. P-7 Original Petition was dismissed by this Court on that ground. The 1st respondent heard Exts. P-5 and P-6 appeals and Ext. P-8 is the judgment in those appeals. Though the above two appeals were allowed by the 1st respondent, it rejected the petitioner's prayer to consider his applications after publication along with the 5th respondent's applications pending before the 2nd respondent. It is under the above circumstances that the petitioner has approached this court by this Original Petition. The petitioner seeks to quash Ext. P-8 to the extent that it disallows the petitioner's request to direct the 2nd respondent to consider the petitioner's applications also along with that of the 5th respondent in respect of

the two pucca permits for the routes in question. The main contention in the Original Petition is that as the 1st respondent has set aside Exts. P-3 and P-4 orders of the 2nd respondent refusing to entertain the suo motu applications of the petitioner, the 1st respondent ought to have also given a direction to the 2nd respondent to club together the petitioner's applications with those of the 5th respondent as both the 5th respondent and the petitioner have applied for the same two permits. It is also contended that the provisions of the Act do not prohibit such a clubbing together. The 5th respondent has filed a counter-affidavit stating in detail the circumstances under which the 5th respondent submitted two suo motu applications u/s 57(2) of the Act which led to Exts. P-1 and P-2 orders. The averment in the counter-affidavit is that the petitioner in the Original Petition though was an objector did not file any appeal or revision against Exts. P-1 and P-2 orders which he could have filed under the provisions of the Act. The 1st respondent rightly refused to grant the petitioner's prayer to direct the 2nd respondent to club his applications with that of the 5th respondent to dispose of both the applications together especially in the light of the decision of this Court in *Antony v. State of Kerala* 1962 KLT 193. The petitioner has filed a reply affidavit to answer the averments and contentions raised in the counter-affidavit of the 5th respondent. Exts. P-9 and P-10, the representations filed by the petitioner u/s 57(3) of the Act on the applications of the 5th respondent are produced along with the reply affidavit. It is also stated in the reply affidavit that the decision of this Court in 1962 KLT 193 has no application to the facts of this case.

5. Shri K. Neelakanta Menon, the learned counsel for the petitioner, contends that the interest of the public is the prime factor in the grant of stage carriage permits and hence for a proper choice a particular operator should not be in a commanding position. The State Transport Appellate Tribunal has all powers to see that its order is an effective order. Hence the State Transport Appellate Tribunal has gone wrong in rejecting the petitioner's request to club his two applications with the two applications of the 5th respondent for the same routes. In support of his contentions, counsel for the petitioner relies on *Patiala Bus (Sirhind) Pvt. Ltd. Vs. State Transport Appellate Tribunal, Punjab and Others*, ; *Maharashtra State Board Transport Corporation Vs. Mangrulpur Jt. Motor Service (P) Ltd., and Others*, ; *R. Obliswami Naidu Vs. The Additional State Transport Appellate Tribunal, Madras and Others*, ; *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*, ; *Ram Gopal Vs. Anant Prasad and Another*, ; *N.K. Dharmadas Vs. State Transport Appellate Tribunal of Kerala and Others*, ; *Lakshmi Narain Sahu and Others Vs. State Transport Appellate Authority and Others*, and *Cannanore District Motor Transport Employees Cooperative Society Ltd. Vs. Malabar Public Conveyance, Tellicherry and Others*, . In *Patiala Bus (Sirhind) Pvt. Ltd. Vs. State Transport Appellate Tribunal, Punjab and Others*, the Supreme Court has held as follows :

"The main considerations required to be taken into account in granting permit u/s 47 are the interest of the public in general and the advantages to the public of

the service to be provided. These would include inter alia consideration of factors such as the experience of the rival claimants, their past performance, the availability of standby vehicles with them, their financial resources, the facility of well equipped workshop possessed by them etc. Failure to take into account any of these considerations and proceeding as if the stage carriage permits were a largesse to be divided fairly and equitably amongst the rival claimants is a wholly erroneous approach suffering from an infirmity."

In Maharashtra State Board Transport Corporation Vs. Mangrulpir Jt. Motor Service (P) Ltd., and Others, A N. Ray, J. (as he then was) has said :

"In deciding the question of power of the Regional Transport Authority to call for further information it has to be borne in mind that the Regional Transport Authority shall, in considering an application for permit, have regard among other matters to the interests of the public generally, the advantages to the public of the services to be provided, the adequacy of other passenger transport services, the operation by the applicant of other transport services including those in respect of which applications from him for permits are pending, the benefit to any particular locality or localities likely to be afforded by the service. Therefore in considering public interest if the Regional Transport Authority would find that the answers furnished by any applicant are not full and complete, it will be constricting the exercise of power of the Regional Transport Authority by denying it authority to ask for additional information for full and detailed consideration of the applications in the interest of the public."

In R. Obliswami Naidu Vs. The Additional State Transport Appellate Tribunal, Madras and Others, the Supreme Court has stressed the necessity of an opportunity for a proper choice in the following words :

"Sub-section (3) of Section 47 of the Act if read by itself does not throw any light on the controversy before us but if Sections 47 and 57 of the Act are read together it appears to us to be clear that the view taken by the Appellate Tribunal and the High Court is the correct view. If contrary view is taken it will throw open the door for manipulations and nepotism. There may be possibility of the personality of the applicant influencing the decision of the R. T. A. on the question of need for a stage carriage permit in the route and thereby public interest which should be the main consideration while taking a decision u/s 47(3) may suffer. If we accept the view taken by the R. T. A. as correct, an operator who happens to apply for the route first will be in a commanding position, The R. T. A. will have no opportunity to choose between competing operators and hence public interest might suffer."

In Veerappa Pillai Vs. Raman and Raman Ltd. and Others, the Supreme Court has held :

"The Motor Vehicles Act is a statute which creates new rights and liabilities and prescribes an elaborate procedure for their regulation. No one is entitled to a permit as of right even if he satisfies all the prescribed conditions. The grant of a

permit is entirely within the discretion of the transport authorities and naturally depends on several circumstances which have to be taken into account."

Regarding the powers of the appellate authority u/s 64 of the Act, in Ram Gopal Vs. Anant Prasad and Another, the Supreme Court has held :

"If an appeal lies under any of the other clauses, that of course must be an effective appeal and the appellate authority must therefore have all powers to give the relief to which the appellant is found entitled." The above decision of the Supreme Court was followed by a Full Bench of this Court in N.K. Dharmadas Vs. State Transport Appellate Tribunal of Kerala and Others, . The above decision of the Supreme Court was also followed by the High Court of Patna in Lakshmi Narain Sahu and Others Vs. State Transport Appellate Authority and Others, . On the question of the point of time with reference to which qualifications for permit should be evaluated, a Full Bench of this Court has held in Cannanore District Motor Transport Employees Cooperative Society Ltd. Vs. Malabar Public Conveyance, Tellicherry and Others, as follows :

"The date that is material is the date on which the Regional Transport Authority deals with the application. The earlier date--the date of the application--may not be in the public interest which as is evident from Section 47 of the Act, is the important and paramount consideration in these matters. The later date--the date on which the State Transport Appellate Tribunal decides the appeal--will mean an unwarranted extension of the appellate power. The duty of the State Transport Appellate Tribunal is to decide whether the Regional Transport Authority was wrong or not and it must naturally follow that the appellate decision must be on the basis of the facts and circumstances which formed the foundation of the order under appeal." Counsel for the petitioner also points out that there is nothing in the Act which prohibits the clubbing of the applications and considering them together u/s 57(5) of the Act. This is all the more necessary since the 5th respondent's applications were not ripe for hearing when the two applications of the petitioner for the very same route were wrongly rejected by the Regional Transport Authority u/s 57(3) of the Act on the ground that two applications of the 5th respondent are already entertained. Counsel for the petitioner contends that the Act does not insist that the order u/s 57(3) of the Act should be passed within any particular time limit.

6. Shri V. Sivaraman Nair, learned counsel for the 5th respondent, contends that the clubbing of suo motu applications submitted u/s 57(2) of the Act is not contemplated by the Act and if such applications entertained by the Regional Transport Authority on more than one occasion are allowed to be clubbed together that may turn out to be an unending chain. Counsel further contends that there is no provision in the Act which insists that the Regional Transport Authority should wait till the petitioner's applications also become ripe for consideration. Counsel for the 5th respondent also justified the stand taken by the State Transport Appellate Tribunal in not granting the petitioner's request for direction to club together the applications on another ground also. Exts. P-1 and

P-2 orders of the Regional Transport Authority entertaining the 5th respondent's applications have become final. In an appeal against Exts. P-3 and P-4 orders refusing to entertain the petitioner's applications if the direction sought by the petitioner is given that will amount to interference with Exts. P-1 and P-2 which have become final. In support of his contentions, counsel for the 5th respondent relied on the decision of this Court in 1962 KLT 193 and the decision of the Supreme Court in R. Obliswami Naidu Vs. The Additional State Transport Appellate Tribunal, Madras and Others, In 1962 KLT 193 Vaidialingam, J. has held :

"When a party makes an application under the first part of Section 57(2) it is also open to the authority before publishing that application inviting objections, to itself also consider and take a decision as to whether a notification should be issued calling for permits under the latter part of Section 57(2). If the authority so decides there is nothing illegal in calling for applications and publishing the application received under the first part of Section 57(2) and the applications that may be received under the second part of Section 57(2) and give it a common disposal under the other provisions of the Act. In this case there was absolutely no justification for the R. T. A. keeping quiet for nearly four years. If there was no road, the earliest thing for the authority would have been to take up the application of the petitioner immediately after receipt of the objections and dispose it of on the ground that there was no road over which a permit could be granted. Violation of justice has no bearing in considering the question whether the petitioner's application should have been considered quite independent and apart from other applications that were received in 1959 and in response to the notification, issued calling for applications, in the circumstances of this case at any rate. After considering the application made by the petitioner on 30-8-1955 for grant of two permits along with the objections, if any, received in response to the notification and giving a disposal one way or other to the claim made by him for the grant of permits, it is open to the R. T. A. to take up and consider the application filed in response to the notification issued on 24-2-1959."

Shri K. Neelakanta Menon, learned counsel for the petitioner, contends that the above decision is not applicable to the facts of this case. In the above case, a suo motu application u/s 57(2) of the Act filed on 30-8-1955 was entertained by the Regional Transport Authority and the same was notified on 29-11-1955. The Regional Transport Authority on 24-2-1959 without disposing of the above application which became ripe for hearing at least by January 1956, notified the route and invited applications for the grant of three permits on the same route. The suo motu application dated 30-8-1955 and the application received as per notification dated 24-2-1959 were considered together Vaidialingam, J, was satisfied that there was absolutely no justification for the Regional Transport Authority for keeping quiet for nearly four years and directed it to take up the suo motu application dated 30-8-1955 and dispose the same first and then consider the applications received as per notification dated 24-2-1959. The inaction on the part of the Regional Transport Authority which resulted in the

inordinate delay in disposing of the application dated 30-8-1955 is the fact which weighed with the learned Judge. In this case, the petitioner entered appearance before the Regional Transport Authority on 24-1-1974, the date on which it took the decision to entertain the 5th respondent's applications. The petitioner also filed suo motu applications for permit for the very same route immediately thereafter on 24-1-1974. These applications also came up for hearing at the next meeting on 27-2-1974. This was long before the 5th respondent's applications entertained on 24-1-1974 became ripe for disposal u/s 57(5) of the Act. They were published only in the Kerala Gazette dated 19-2-1974 as required u/s 57(3) of the Act. In the other case, the Regional Transport Authority kept pending a suo motu application which was ripe for disposal u/s 57(5) of the Act for nearly 4 years, notified the route and disposed it along with the fresh applications received as per the notification. There is considerable force in the contention of the petitioner's counsel that the above decision is not applicable to the facts of this case and I accept that contention. In fact, Vaidialingam, J. was not against clubbing a suo motu application and an application received under the latter part of section 57(2) of the Act and giving them a common disposal. This is clear from the following observations in para 8 of the decision in 1962 KLT 193 :

"The position that I was having in mind when I made those observations, is that when a party makes an application under the first part of Section 57(2) it is also open to the authority, before publishing that application inviting objections, to itself also consider and take a decision as to whether ? notification should be issued calling for permits under the latter part of Section 57(2). If the authority so decides there is nothing illegal in calling for applications and publishing the application received under the first part of Section 57(2) and the applications that may be received under the second part of Section 57(2) and for objections and give it a common disposal under the other provisions of the Act."

Relying on the decision of the Supreme Court in R. Obliswami Naidu Vs. The Additional State Transport Appellate Tribunal, Madras and Others, the 5th respondent's counsel contends that if suo motu applications entertained on different dates are to be given a common disposal that will be impossible because there will be an unending chain of those applications. In the above case, Mr. Narasaraju appearing for the appellant, contended that Sub-section (3) of Section 57 of the Act is wide enough to allow the competing operators to apply for the route in question when the first applicant's application is published and representations called for. Dealing with the above contention, the Court said :

"Extending the logic of Mr. Narasaraju's argument as we ought to, at the time of making representations to those applications, further applications can be made. This may turn out to be an unending chain."

I think I need only leave it there.

7. Section 57 of the Act reads :

"57. Procedure in applying for and granting permits -- (1) An application for a

contract carriage permit or a private carrier's permit may be made at any time.

(2) An application for a stage carriage permit or a public carrier's permit shall be made not less than six weeks before the date on which it is desired that the permit shall take effect, or if the Regional Transport Authority appoints dates for the receipt of such applications, on such dates.

(3) On receipt of an application for stage carriage permit or a public carrier's permit, the Regional Transport Authority shall make the application available for inspection at the office of the authority and shall publish the application or the substance thereof in the prescribed manner together with a notice of the date before which representations in connection therewith may be submitted and the date, not being less than thirty days from such publication, on which, and the time and place at which, the application and any representations received will be considered :

(Provided that, if the grant of any permit in accordance with the application or with modification would have the effect of increasing the number of vehicles operating in the region, or in any area or on any route within the region, under the class of permits to which the application relates, beyond the limit fixed in that behalf under Sub-section (3) of Section 47 or Sub-section (2) of Section 55, as the case may be, the Regional Transport Authority may summarily refuse the application without following the procedure laid down in this sub-section.)

(4) No representation in connection with an application referred to in Sub-section (3) shall be considered by the Regional Transport Authority unless it is made in writing before the appointed date and unless a copy thereof is furnished simultaneously to the applicant by the person making such representation.

(5) When any representation such as is referred to in Sub-section (3) is made, the Regional Transport Authority shall dispose of the application at a public hearing at which the applicant and the person making the representation shall have an opportunity of being heard either in person or by a duly authorised representative.

(6)

(7)

(8)

(9)

(10)

(Clauses (6) to (10) are not relevant for the purposes of this case and hence omitted). 8. On a consideration of Section 57 and the other relevant provisions of the Act in the light of the decisions cited above, I come to the following conclusions: Though the procedure in applying for and granting permits is contained in Section 57 of the Act, the power to the grant of stage carriage

permits is u/s 48 which in turn is subject to the provisions of Section 47. The main consideration u/s 47 is the interest of the public generally. In that case the Regional Transport Authority should have an opportunity to choose the best operator from among the applicants. If the operator who happens to apply for the permit first is in a commanding position, the Regional Transport Authority will not get that opportunity and hence the interest of the public generally will suffer. No one is entitled to a stage carriage permit as of right even if he has got all the qualifications. So the refusal of the Regional Transport Authority to entertain the petitioner's applications, on the ground that two applications of the 5th respondent in respect of the same route have already been entertained, was not proper. Moreover, the applications of the 5th respondent were not then ripe for disposal u/s 57(5) of the Act. There is nothing in the Act which prohibits the clubbing of two suo motu applications and giving them a common disposal. This is all the more necessary for choosing the best operator. If the applications of the 5th respondent and the petitioner are considered separately as and when they become ripe for disposal u/s 57(5), there will be no room for choice because the applications of the 5th respondent will come up for disposal first and the grant of the two permits will have to be made to the 5th respondent as the 5th respondent and the petitioners are both qualified. Not only that there will be no room for any choice, also no purpose will be served in considering the petitioner's applications at a later date because there will be no vacancy on the routes. As the State Transport Appellate Tribunal has found that the Regional Transport Authority ought to have entertained the petitioner's applications and allowed the petitioner's appeal, it must have also granted the petitioner's request for a direction to the Regional Transport Authority to deal with the applications of the petitioner with those of the 5th respondent for the very same routes and give them a common disposal u/s 57(5) of the Act. An appellate authority has got all the powers to see that the remedy given in the appeal is effective. For the reasons stated above, I hold that the petitioner was entitled for a direction from the first respondent-State Transport Appellate Tribunal to club his applications with those of the 5th respondent for giving them a common disposal u/s 57(5) of the Act by the 2nd respondent-Regional Transport Authority. Ext. P-8 to the extent it relates to the rejection of the petitioner's request to give a direction to the 2nd respondent-Regional Transport Authority to club the petitioner's applications in question with those of the 5th respondent and give them a common disposal is quashed. The 2nd respondent-Regional Transport Authority is directed to consider the petitioner's applications when they become ripe for disposal u/s 57(5) of the Act along with the applications of the 5th respondent and give them a common disposal.

9. The Original Petition is allowed. There will be no order as to costs.