

(1962) 06 KL CK 0010

In the High Court Of Kerala

Case No : Writ Appeal No's. 8 and 9 of 1961

Cannanore District Motor Transport Employees Cooperative
Society Ltd.

APPELLANT

Vs

Malabar Public Conveyance, Tellicherry and Others

RESPONDENT

Date of Decision : 12-06-1962

Acts Referred:

Motor Vehicles Act, 1939 — Section 47, 64

Citation : AIR 1962 Ker 341

Hon'ble Judges : M.S. Menon, C.J;T.K. Joseph, J;S. Velu Pillai, J

Bench : Full Bench

Advocate : K. Velayudhan Nair and V.S. Moothathu, in W.A. No. 8 of 1961 and V.R. Krishna Iyer, V. Sivaraman Nair, M.M. Abdulkhadir and V.M. Nayanar, in W.A. No. 9 of 1961, for the Appellant; V.K.K. Menon, C.S. Padmanabha Iyer and M. Ramachandran for 1st Respondent, T. Karunakaran Nambiar, for 2nd Respondent, Government Pleader in W.A. No. 8 of 1961, Govt. Pleader for Respondents Nos. 1 and 2, V.K.K. Menon, C.S. Padmanabha Iyer and M. Ramachandran for Respondent Nos. 3, T. Karunakaran Nambiar, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner in O. P. No. 1477 of 1960 is the appellant in Writ Appeal No. 8 of 1961 and the petitioner in O. P. No. 1476 of 1960 is the appellant in Writ Appeal No. 9 of 1961. The two petitions were dismissed by Vaidialingam, J., by a common judgment dated the 4th January 1961.

2. In paragraphs 1 to 22 of the judgment the learned Judge considered every aspect of the case presented before him and held :

"The appellate tribunal has come to the conclusion that one permit each has to be granted to applicants Nos. 4 and 13. I am not satisfied that there is any error in law or any illegality committed by the appellate tribunal when it differed from the conclusion arrived at by the R. T. A. and granted permits in favour of applicants Nos. 4 and 13 and therefore, in my view, the applications will have to

fail".

We entertain no doubt that O. P. Nos. 1476 and 14/7 of 1960 were rightly dismissed, and we consider it unnecessary to cover afresh the grounds covered in paragraphs 1 to 22.

3. The contention which induced the reference to a Full Bench is the contention dealt with in paragraphs 23 to 25 of the judgment under appeal. That contention was to the effect that if a permit was granted by a Regional Transport Authority and in pursuance of that permit the grantee gained some experience, that experience also should be taken into account by the State Transport Appellate Tribunal when dealing with the appeal against the grant concerned and deciding whether the permit should be sustained or not. The learned Judge said that the contention had no basis in law and that P.S.N. Motors Ltd. Vs. Gangadhara Menon, did not support it.

4. The use and character of the experience gained on the basis of an impugned permit subsequently set aside by an appellate tribunal has come up for consideration before the High Court of Madras. That Court held that such a permit should be treated as non est in law and that

"the factual experience of operating a bus traceable to such a permit is a benefit which disappears as a relevant factor when the grant of the permit is set aside."

(Thondamuthur Trading Co. v. State Transport Appellate Tribunal 69 Mad LW (SN) 95). .

5. It is a larger question that is submitted for our decision : What is the point of time with reference to which the qualifications for a permit should be evaluated by the State Transport Appellate Tribunal? Is it the date at the application to the Regional Transport Authority? or is it the date on which the Regional Transport Authority renders its decision? Or is it the date on which the State Transport Appellate Tribunal decides the appeal?

6. We have come to the conclusion that 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 Motor Vehicles Act, 1939, 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.

7. In Stepney Borough Council v. Joffe (1949) 1 All E R. 256 Lord Goddard, C. J., had to deal with the appellate powers conferred on a Metropolitan Magistrate in the matter of the grant, refusal, renewal, revocation or variation of street trading licences by a borough council. His Lordship said :

"There is given here an unrestricted right of appeal, and, if there is an unrestricted right of appeal, it is for the court of appeal, in this case the

metropolitan magistrate, to substitute its opinion for the opinion of the borough council. That does not mean to say that the court of appeal ought not to pay great attention to the fact that the duly constituted and elected local authority have come to an opinion on the matter and ought not lightly to reverse their opinion. It is constantly said (although I am not sure that it is always sufficiently remembered) that the function of a court of appeal is to exercise its powers where it is satisfied that the judgment below is wrong, not merely because it is not satisfied that the Judgment was right".

If the duty of the State Transport Appellate Tribunal is to decide--as we think it is--whether the Regional Transport Authority was wrong or not, 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.

8. An appeal, no doubt, is in the nature of a rehearing. But that does not mean that it is in the nature of a fresh trial, with freedom to the parties to press into service every event that has occurred since the decision under appeal. All that an appellate power spells is a power to consider on the merits the decision of a lower court or tribunal.

9. There is of course a type of subsequent event which a court of appeal has to take into account in moulding the relief to be granted : the death of a party, a change of law, AIR 1941 5 (Federal Court) , a judgment in Surinder Kumar and Others Vs. Gian Chand and Others, . This is a restricted category, and all that we need say is that neither a qualification obtained on the basis of a permit subsequently set aside in appeal nor one acquired by an applicant's endeavours during the interval between the decision of the Regional Transport Authority and the hearing before the State Transport Appellate Tribunal should be taken into account as a subsequent event which is material for the disposal of an appeal.

10. In the light of what is stated above we must hold--as already indicated--that the Original Petitions were rightly dismissed by the learned Judge, that the dismissal has to be affirmed, and that these appeals should fail. The appeals are hereby dismissed. In the circumstances of the case, however, there will be no order as to costs.