
(1964) 11 KL CK 0013
In the High Court Of Kerala
Case No : O. P. No. 601 of 1963

Chandran

APPELLANT

Vs

S. T. A. T. and Others

RESPONDENT

Date of Decision : 13-11-1964

Acts Referred:

Motor Vehicles Act, 1988 — Section 43, 43A, 47

Citation : (1965) KLJ 294

Hon'ble Judges : M.S. Menon, C.J;M. Madhavan Nair, J

Bench : Division Bench

Advocate : T.N. Subramonia Iyer and K.S. Paripoornan, for the Appellant; V. M. B. Menon for 3rd Respondent and P.A. Mohammed for 4th Respondent, for the Respondent

Final Decision : Allowed

Judgement

M.S. Menon, C. J.

1. The controversy in this petition relates to the grant of a stage carriage permit on the Kozhikode-Chemmancherry route by the Regional Transport Authority, Kozhikode. There were 17 applicants for the permit. The petitioner was applicant No. 14, the 3rd respondent was applicant No. 1, and the 4th respondent was applicant No. 12. The Regional Transport Authority granted the permit to the 4th respondent by Ext. P. 1, dated 31st January 1962. The petitioner, the 3rd respondent, and some of the other applicants, filed appeals against the said grant before the State Transport Appellate Tribunal, Ernakulam. The appeals were heard together. The State Transport Appellate Tribunal dismissed the appeal of the petitioner, allowed the appeal of the 3rd respondent and granted the permit to the 3rd respondent by Ext. P. 2, dated 28th January 1963.

2. The 4th respondent challenged the correctness of Ext. P. 2 before this Court by O. P. No. 202 of 1963. Vaidialingam J. set aside the grant in favour of the 3rd respondent by the State Transport Appellate Tribunal and restored the grant in

favour of the 4th respondent by the Regional Transport Authority. Writ Appeal No. 16 of 1964 which was heard along with this petition is an appeal by the 3rd respondent against that decision.

3. The route concerned is in the Malabar area of this State. That area was part of the State of Madras before the formation of the State of Kerala in pursuance of the States Reorganisation Act, 1956, on 1st November 1956. It is not possible to say that in dealing with the grant, the Regional Transport Authority and the State Transport Appellate Tribunal were not obsessed by the directives in G. O. (M. S.) 1298/Home, dated 28th April 1956 issued by the Government of Madras u/s 43A of the Motor Vehicles Act, 1939.

4. Section 43A was introduced into the Motor Vehicles Act, 1939, by the Motor Vehicles (Madras Amendment) Act, 1948. That section reads as follows:

The State 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 or a Regional Transport Authority; and such Transport Authority shall give effect to all such orders and directions.

5. The validity of G. O. (MS) 1298/Home, dated 28th April 1956 came up for consideration before the Supreme Court in B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others, . The Supreme Court said that:

The impugned order is outside the purview of section 43A inasmuch as it purports to give directions in respect of matters which have been entrusted to the Tribunals constituted under the Act and which have to be dealt with by these Tribunals in a quasi-judicial manner.

6. The validity of section 43A itself had been upheld by the High Court of Madras in C.S.S. Motor Service, Tenkasi and Others Vs. The State of Madras and Another, . In dealing with that decision the Supreme Court said:

In regard to Section 43A, the High Court came to the conclusion that the said section was valid though it took the precaution of adding that the orders passed thereunder might be open to challenge as unconstitutional. If is, however, necessary to emphasise that the main reason which weighed with the High Court in upholding the validity of this section was that the High Court was satisfied that the said section was "intended to clothe the Government with authority to issue directions of an administrative character." Thus, section 43A was held to be valid in this case and the correctness of this conclusion is not disputed before us. In other words, we are dealing with the appellant's challenge against the validity of the impugned order on the basis that section 43A itself is valid. (Paragraph 7 of B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others,).

7. The history of the G. O. in this State has been different. Some two years after the formation of the State of Kerala, the G. O. was cancelled by the Government of Kerala by G. O. (MS) 938/58/PW, dated 14th November 1958. The cancellation was followed by a request from the Malabar Bus Owners' Association that the

principles embodied in the G. O. for the grant of permits should be directed to be followed by the authorities concerned. The request was granted, and demi-official instructions were issued on 23rd January 1959 to the District Collectors of Palghat, Kozhikode and Cannanore to follow, as far as possible, the directions contained in the G. O. while considering the applications for stage carriage permits.

8. Then came a memorandum, No. 49331/TB1/61-2/PW, dated 25th October 1961, which reads as follows:

It is reported that the Regional Transport Authorities of the Malabar area are following the directions of the Madras Government contained in their G. O. (MS) 1298/Home, dated 28th April 1956 regarding selection of applicants for the grant of stage carriage permits. These directions have been issued by the Government of Madras u/s 43A of the Motor Vehicles Act. Government of India have made it clear that the old section 43 gave only restricted powers to the State Government in respect of matters of detail which seemed best left to the State Transport Authority, that the procedure prescribed was also cumbersome, that the amended section 43 empowers the State Government to give directions and that after it has specified the matters in respect of which such directions can be issued, there is indeed no scope for section 43A to co-exist with section 43 as amended. Thus the Government of India have held that section 43A is repugnant to the provision of section 43 and therefore void. In the circumstances the directions issued by the Madras Government in their G. O. cited will be treated as non-existent. The Regional Transport Authorities of Kozhikode, Palghat and Cannanore will take necessary action in the matter.

The memorandum has apparently received no publicity and counsel appearing in this case and other similar cases were quite unaware of its existence. The normal procedure seems to have been to proceed on the basis of the G. O. and hear and decide arguments as if it had continued to exist. At any rate the ghost of the G. O. in Lord Atkin's expressive phraseology has stood in the path of the Tribunals, clanking its chains, and thus preventing an undaunted and independent approach to the factors to be considered.

9. As already indicated it is not possible to say that Exts P. 1 and P. 2 have not been influenced by the mandates of the G. O. And in these circumstances we cannot but set aside the orders passed and direct the Regional Transport Authority, Kozhikode, to deal with the matter afresh in accordance with the law.

10. The Regional Transport Authority will dispose of the matter within six weeks from this date and till the disposal of the applications the position as at present will continue. The only applications that need be considered are those of the parties before us, namely, applicant Nos. 1,12 and 14.

11. The matters to be considered by the Regional Transport Authority are embodied in section 47 of the Motor Vehicles Act, 1939. It may be that a Tribunal may think that some marking system is necessary for the proper evaluation of

comparative merit. But that system the items for which marks should be given, and the number of marks that should be allotted to each item should be the product of the Regional Transport Authority's own judicial appraisal, and not something imposed upon it by any extraneous source.

12. Paragraph 23 of *B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others*, is instructive. And the Government will do well to undertake a review of the whole [matter afresh with the least possible amount of delay. The relevant portion of that paragraph reads as follows:

If the State Government thinks that the application of some kind of marking system is essential for a fair administration of the Act, it may adopt such course as may be permissible under the law. S. 47(1)(a) requires inter alia that the interests of the public generally have to be borne in mind by the Regional Transport Authority in considering applications for stage carriage permits. The said section refers to other matters which have to be borne in mind; it is unnecessary to indicate them for our present purposes. The Legislature may amend S. 47 by indicating additional considerations which the Transport Authority may have to bear in mind; or the Legislature may amend S. 47 by conferring on the State Government expressly and specifically a power to make rules in that behalf or the State Government may proceed to make rules under S. 68 without amending S. 47. These are all possible steps which may be taken if it is thought that some directions in the nature of the provisions made by the impugned order must be issued. That, however, is a matter with which we are not concerned and on which we wish to express no opinion. As this Court has often emphasised, in constitutional matters it is of utmost importance that the court should not make any obiter observations on points not directly raised before it for its decision. Therefore, in indicating the possible alternatives which may be adopted if the State Government thinks that the marking system helps the administration of the Act, we should not be taken to have expressed any opinion on the validity of any of the courses specified.

The petition is allowed as above. No costs.