
(2010) 09 BOM CK 0003
In the Bombay High Court
Case No : Writ Petition No. 815 of 2010

Durgashankar Ghanshyam Agrawal	APPELLANT
Vs	
State of Maharashtra and State Transport Authority	RESPONDENT

Date of Decision : 21-09-2010

Acts Referred:

Citation : (2011) 1 ALLMR 125 : (2011) 4 BomCR 758 : (2011) 2 MhLj 48

Hon'ble Judges : S.A. Bobde, J;A.B. Chaudhari, J

Bench : Division Bench

Advocate : R.L. Khapre, for the Appellant; Bharti Dangre, A.G.P., for the Respondent

Judgement

A.B. Chaudhari, J.—By the present petitions, the petitioners have put to challenge Resolution No. 45 of 2009 dated 1.12.2009 (Annexure-9) being illegal and without jurisdiction.

2. In support of the writ petition, Mr. Khapre learned Counsel for the petitioner in both these writ petitions, argued that the decision taken by the Commissioner for Transport and the State Transport Authority to adopt the method of lottery system in the matter of grant of permit for inter state stage carriage permit by the aforesaid resolution is illegal, arbitrary and contrary to the provisions of The Motor Vehicles Act. The counsel relied on the following decisions

- (i) Patiala Bus (Sirhind) Pvt. Ltd. Vs. State Transport Appellate Tribunal, Punjab and Others, .
- (ii) Ajantha Transports (P) Ltd., Coimbatore Vs. T.V.K. Transports, Pulampatti, Coimbatore District, .
- (iii) Smt. K. Kamalam Vs. R. Ponnuswamy and Others, .
- (iv) Rajanibala Das Vs. Regional Transport Authority and Others, .

3. Mrs. Dangre, learned Additional Govt. Pleader, argued that the said system of

granting permits by lottery system was adopted by the resolutions since large number of applicants had applied for such permits and it became impossible for the authorities to allow every applicant permits for inter state stage transport. No fault therefore could be found out with the said system. She prayed for dismissal of the petition.

4. We have heard learned Counsel for the parties at length and also perused the relevant resolutions. We do not propose to reproduce the submissions made by the learned Counsel for rival parties in our judgment and suffice it to say that we choose to follow the Division Bench judgment of Orissa High Court in the case of Rajni Bala Das, supra. We quote below para 5, 6 and 7 therefrom -

There is no dispute that the R. T. A is a quasi judicial functionary and is required to consider and deal with the applications in accordance with law. It is required to decide the lis between or amongst the competing applicants. In considering the merits of the applications, it has to keep in view the interest of the public generally. Competition amongst the intending operators is a competition for efficiency. This being the legal position, the R.T.A. Cuttack has clearly fallen into error in abdicating the quasi judicial power vested in it to the facts of the outcome of lottery system. Such a procedure adopted by it is wholly foreign to the scheme of the Act.

It is an undisputed fact that in a lottery method, element of chance or luck is inherent and is within the boundaries of gambling. Its consequences are pernicious because by sheer luck an intending applicant whose financial stability is in the doldrums, or whose performance as a stage carriage operator is unsatisfactory or who is in arrears in the matter of payment of tax might come out as a successful applicant in the lottery process.

For the reasons aforesaid, we have no hesitation to hold that the decision of the R. T. A. communicated in the impugned notice No. 2910 dated 13.8.2002 (Annexure 1) and the subsequent notice No. 2907 dated 13.8.2002 (Annexure 2) to consider all the applications through lottery process" is illegal and unauthorised.

5. We agree with the aforesaid judgment and consequently hold that the impugned resolution is illegal. Consequently, we make the following Order.

6. Rule is made absolute in terms of prayer Clause (1) and (1-A). No Order as to costs.

7. At this stage, the learned Counsel for the petitioner prays that the temporary permit, which was granted to him, may be continued till the regular allotment is made. However, in the circumstances of the case, we direct that if the petitioner is otherwise entitled he shall be entitled to renewal of the permit until regular permits are granted.