

(1959) 03 KL CK 0036

In the High Court Of Kerala

Case No : O.P. No"s. 803 of 1958 and 47 of 1959

Gangadhara Menon

APPELLANT

Vs

P.S.N. Motors Ltd., Trichur

RESPONDENT

Date of Decision : 23-03-1959

Acts Referred:

Motor Vehicles Act, 1939 — Section 47

Citation : AIR 1960 Ker 83 : (1959) 3 KLJ 853

Hon'ble Judges : N. Varadaraja Iyengar, J

Bench : Single Bench

Advocate : S. Narayanan Potti, in O.P. No. 803 of 53 and K. Kuttikrishna Menon and M.B. Kurup, in O.P. No. 47/59, for the Appellant; Govt. Pleader for 2nd Respondent and P. Balagangadhara Menon, A. Hariharasubramonian and V. Viswanatha Menon for 1st Respondent, for the Respondent

Judgement

N. Varadaraja Iyengar, J.—These two petitions under Article 226 of the Constitution arise out of the grant of a Stage Carriage permit for the route Chalakudy Malayattur via Kalady by the 2nd respondent State Transport Appellate Tribunal in favour of the 1st Respondent P. S. N. Motors (Private) Ltd. The petitioner in O. P. 803/58 is one of the rival applicants, viz. Gangadhara Menon and the petitioner in O. P. 47 of 1959 is another rival applicant Messrs. Anamallais Bus Transports (Private) Ltd.

2. The notification calling for applications for the route was dated 9-11-1955 and there were 10 applicants inclusive of the petitioners and the 1st respondent in O. P. 803 who is the 1st respondent in O. P. 47. On 5-5-1956 the R. T. A. preferred Gangadhara Menon as against all others. Vide Ex. R 1 order. The order was set aside by the Appellate Authority by Ex R 2 order dated 14-8-1956 on the ground that no reason was disclosed in Ex. R. 1. The RTA. passed fresh order Ex. R 3 on 31-1-57 again in favour of Gangadhara Menon. This order also was set aside by the Appellate Authority by Ex. R. 4 order 23-7-57. Still again the R. T A. chose Gangadhara Menon vide Ex. R 5 -- P 1 order dated 24-8-1957. The State

Transport Appellate Tribunal on this revision not only set aside Ex. R 5 but granted permit in favour of P. S. N. Motors by its order Ex. P2 dated 22-11-1958. This had led to the O. Ps. herein.

3. Now Gangadhara Menon is only a small operator as contrasted with his rivals herein Messrs. P. S. N. Motors and the Anamallais. But he has been successively operating the Chowara Malayattur route via Kalady. He had also without complaint been operating a temporary permit on the route under consideration Chalakudy -- Malayattur granted to him in 1957 until the Pukka Permit was issued to him under Ex. R 5 order on 24-8-1957. And since Ex. R 5 date he has been on the lines without causing difficulty to the travelling public. It would appear further that he had established garage at Chalakudy and Kalady though after Ex. R 1 date. He has also his residence on the route. It is these various qualifications that recommended Gangadhara Menon to the R. T. A. The Appellate Authority thought that the principle of supporting a small operator as against big ones, if other conditions were equal referred to and applied by the R. T. A. when it passed the final order Rule 5 was unobjectionable. But it thought that the other condition -- viz. as to operational efficiency should not have been later acquired by the small operator as here.

According to the Appellate Authority, the position as on 5-5-1956 when the first order was passed by the R. T. A. should alone apply. But why it belated that date and not more consistently the notification date or at least the date when the rival application for permit was respectively made is not clear. It is no doubt true that the applications refer to qualifications and necessarily refer to subsisting ones and not to be acquired in the future. But even so there is no principle that subsequent development should not be taken into consideration. For instance there could have been a decrease in operational efficiency in particular case during the interval between the making of the application and its disposal. It will be ill-serving the travelling public to ignore that situation. Indeed the touchstone in this matter should be the needs of the travelling public and whatever conduces to the promotion thereof may be taken note of. Reference in this connection be made to a case in *Hukum Chand Gupta v. State Transport Authority, Lucknow* AIR 1955 (All) 3589 To my judgment the R. T. A. had applied the legitimate tests and adjudged the matter in favour of Gangadhara Menon. In such circumstances the cancellation of that order and the Interpretation of an order in favour of the P. S. N. Motors was altogether unnecessary and uncalled for.

4. It is unnecessary in the view I have taken for me to consider the general question of preferring a small operator as against a big operator from the point of view of enabling the former to build up a viable unit on the service of the traveling public or still another question as to whether when y a talk of the public on those matters, you must confine yourself to the travelling public and not take in public generally.

5. The conclusion I have arrived at involves necessarily the dismissal of O. P. 47 of 1959.

6. In the result O. P. 803 of 1958 will stand allowed. Ex. P2 order of the 2nd respondent is quashed so as to restore to effect Ex P1 order of the R. T. A. O. P. 47 of 1959 will stand dismissed. In the circumstances there will be no order for costs in either of the O. Ps.