

(1954) 07 MAD CK 0003
In the Madras High Court

K. Marappa Gounder, K.M.S. Bus Service	APPELLANT
Vs	
The Central Road Traffic Board and Others	RESPONDENT

Date of Decision : 14-07-1954

Acts Referred:

Motor Vehicles Act, 1988 — Section 47(1)

Citation : (1956) 69 LW 58 : (1956) 1 MLJ 324

Hon'ble Judges : Rajagopalan, J

Bench : Division Bench

Judgement

Rajagopalan, J.—The petitioner and the fourth respondent were rival applicants for a stage carriage permit to ply buses on the Coimbatore-

Thathamangalam route. The Regional Transport Authority granted a permit to the fourth respondent on 18th February, 1952. The appeal by the

petitioner against that grant preferred to the Central Road Traffic Board was rejected on 2nd June, 1952. The petitioner unsuccessfully invoked the

revisional powers of the Government, who rejected his petition on 9th September, 1952. To set aside these orders the petitioner presented this

application under Article 226 of the Constitution. The application was presented on 11th December, 1952.

2. A portion of the Coimbatore-Thathamangalam route lay within the limits of the Madras State and the rest was in Travancore-Cochin. Each

State had to grant a permit for the portion of the route that lay in that State, and unless the same person was given permits by both the States, a

continuous service without subjecting the travelling public to the inconveniences of transshipment, could not be maintained.

3. The petitioner's case was that on the date the Regional Transport Authority, Coimbatore, granted the permit to the fourth respondent, preferring

him to the petitioner, only the petitioner had a permit for the Cochin section of the Coimbatore-Thathamangalam route, and that the fourth

respondent had no such permit. Two of the several factors to be taken into account by the Regional Transport Authority in deciding to whom a

permit should be granted were specified in Section 47(1) of the Motor Vehicles Act;

(a) the interest of the public generally; and

(b) the advantage to the public of the service to be provided, including the saving of time likely to be effected thereby and any convenience arising

from journeys not being broken.

4. Though it was Section 47(1)(a) that was specifically referred to in the affidavit by the petitioner, I am taking both Section 47(1)(a) and (1)(b)

into account. The petitioner's contention was that, if the interest of the public were to be the criterion, only the petitioner should have been granted

the permit and not the fourth respondent. The further contention of the petitioner was that the Regional Transport Authority, the Appellate

Authority and the Revisional Authority, in ignoring that the interest of the public lay in the granting the permit to the petitioner, acted without

jurisdiction and also that the error was apparent on the face of the record.

5. Learned Counsel for the fourth respondent contended that the rule nisi that had been granted to the petitioner ought to be discharged without

any enquiry into the merits of the case pleaded by the petitioner, because the petitioner had obtained the rule ex parte without a full disclosure of

the relevant facts. Learned Counsel for the fourth respondent charged the petitioner with suppressing material and relevant facts in the affidavit on

the basis of which the petitioner obtained the rule nisi.

6. That the obligation of a person invoking the special writ jurisdiction of a Court is to make a full and true disclosure of all relevant facts is a well

settled proposition of law. In *Rex v. Kensington Income Tax Commissioners, Princess Edmond De Polignac, Ex Parte* L.R. (1917) I K.B. 486,

Reading C.J., laid down,

Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in

support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true

facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit.

These principles were approved of by the Court of appeal. At page 505 of the report Lord Cozens-Hardy. M.R., after referring to the rule laid

down in *Dalglish V. Jarvie* (1850) 2 Mac. & G. 231, summed up the position:

Then it is said that rule may be true in cases of injunctions where there is an immediate order granted, which order can be discharged, but that it

has no reference at all to a case like a rule nisi for a writ of prohibition, which is nothing more than a notice to the other side that they may attend

and explain the matters to the Court. To so hold would, I think, be to narrow the general rule, which is certainly not limited to cases where an

injunction has been granted. It has been applied by this Court, and certainly by the Courts below, to an application for leave to serve a writ out of

the jurisdiction. If you make a statement which is false or conceal something which is relevant from the Court, the Court will discharge the order

and say you can come again if you like, but we will discharge this order, and we will apply the general rule of the Court to applications like this "...

the prerogative writ is not a matter of course. The applicant must come in the manner prescribed and must be perfectly frank and open with the

Court.

7. Scrutton, L.J., after referring to *Dalglish v. Jarvie* (1850) 2 Mac. & G. 231, and after distinguishing *Farquharson v. Morgan* L.R. (1894) 1 Q.B.

552, concurred with the views expressed by the learned Master of the Rolls. Scrutton, L.J., observed at page 519:

Such a writ is an extraordinary remedy, and persons seeking it may very

reasonably be required not to apply for it unless they have sufficient cause for doing so. They must come prepared with full and sufficient materials to support their application, and if those materials are incomplete, I think it is quite right that they should not be allowed to come again.

8. These principles were followed by a Full Bench of the Allahabad High Court in *Asiatic Engineering Co. Vs. Achhru Ram and Others*, , and by a

Bench of the Calcutta High Court in *Calcutta Electric Supply Corpn. Ltd. Vs. Commr. of Income Tax*, , as also by a Bench of the Nagpur High

Court in *Zikar v. M.P. State Government* ILR (1951) Nag. 64 : AIR 1951 Nag. 16, where the learned Judges, after quoting with approval the

principles laid down by Reading C.J., in *Rex v. Kensington Income Tax Commissioners, Princess Edmond de Polignac Ex parte* (1917) 1 K.B.

486, observed:

It may be as well to add that the reason for the adoption of the rule is not to arm an applicant's opponent with a weapon of technicality against the

former but to provide an essential safeguard against abuse of the process of the Court.

9. Whether it is the preliminary objection put forward by the learned Counsel for the fourth respondent to the hearing of the petition on its merits or

the question of convenience to the public that has to be decided, the basic finding on which the decision of either issue should rest is with reference

to the question, is the contention of the petitioner true; that he had a permit to run and did run buses on the Cochin section of the route while the

fourth respondent did not have and could not have obtained a permit for that section from the authorities in the Travancore-Cochin State.

10. From the documents produced by the fourth respondent it should be clear that, while he got a permit from the Regional Transport Authority,

Coimbatore, on 18th February, 1952, he got a temporary permit for the Cochin section from the authorities of the Travancore-Cochin State on

8th July, 1952, which was apparently renewed from time to time till he was granted regular permit on 1st June, 1953. The contention of the learned

Counsel for the fourth respondent was that both when the petitioner moved the Government in revision and when the petitioner applied to this

Court and obtained a rule nisi, the fourth respondent had the necessary permit to maintain continuous service and that he did maintain it. In view of

the evidence placed now before me that contention must be accepted.

11. Learned Counsel for the fourth respondent listed four instances of alleged suppression of facts in the petitioner's affidavit, which, the learned

Counsel urged were calculated to mislead the Court into ordering the issue of the rule nisi on the application of the petitioner.

12. Learned Counsel referred to the allegation in paragraph 13 of the petitioner's affidavit that the petitioner's buses were running on the section in

the Travancore Cochin State and contended that it was false to the knowledge of the petitioner. The petitioner had no doubt a permit, but, on the

date he made the application, and swore to the affidavit in support of that application, his buses were not running on that route. The basis for this

contention was the averment in the affidavit filed by the fourth respondent. Learned Counsel for the fourth respondent pointed out that was not

controverted by any reply affidavit by the petitioner. Nor was any material placed before me by this petitioner to show that on the date the

petitioner applied to this Court the petitioner's buses actually plied over that section of the route which lay within the limits of the Cochin State.

13. The second and the fourth instances referred to by the learned Counsel for the fourth respondent may be taken together. The allegation in

paragraph 14 of the petitioner's affidavit was that the fourth respondent ""had no facilities for maintaining a continuous service. The basis of the

allegation was that the fourth respondent had no permit to run a bus service on the section of the route that lay within the Cochin State. I have

already referred to the evidence on record which, showed that, though on the date the Regional Transport Authority, Coimbatore, granted a permit

to the fourth respondent he had no such permit, the fourth respondent subsequently obtained a permit and he did run buses. He maintained a

service throughout thereafter, and, to say that he had no facilities for maintaining a continuous service in the interest of the public was, to say the

least, calculated to mislead this Court.

14. In paragraph 21 of the petitioner's affidavit reference was made by the petitioner to the order of the Travancore-Cochin Government, dated

16th January, 1952. Learned Counsel for the fourth respondent pointed out while paragraph 4 of the order of that Government was extracted,

which conveyed the impression that no permits would be granted at all, the

petitioner suppressed in the affidavit all reference to paragraph 6 of that very order itself, wherein special provision was made that, should the fourth respondent succeed in getting a permit for the section in Coimbatore district, the fourth respondent could renew his application for the grant of a permit for the Cochin section of that route. Here again, whether the suppression of all reference to paragraph 6 of the Government order was deliberate or not, the suppression was there, and the result of that suppression was to mislead the Court into accepting the petitioner's affidavit, wherein the main plea that was put forward was that the fourth respondent had no facilities for maintaining a continuous bus service on the Coimbatore-Thatharnangalam route.

15. The last of the points raised by the learned Counsel for the fourth respondent was with reference to the allegation in paragraph 19 of the petitioner's affidavit wherein a reference to the order of the Travancore-Cochin Government, dated 24th July, 1951, was made. But, the ban imposed by that order was subsequently removed by that Government itself by the order, dated 20th June 1952, published in the Gazette of that State on 1st July, 1952. This point was not specifically raised in the counter-statement filed by the fourth respondent. Nor was there any evidence placed before me that the petitioner was actually aware of the subsequent notification in the Gazette, dated 1st July, 1952. Therefore, I do not propose to take this into account at all at this stage.

16. But what I have stated above should make it clear that in three instances, at least the petitioner suppressed facts, facts material and relevant, which facts, if brought to the notice of the Court when applying for the rule nisi, should certainly have influenced the Court in deciding one way or the other. It is not enough to say that even had those facts been placed before the Court the Court might just as well have issued the rule nisi pending a final investigation; but, if the facts are relevant, it is the duty of the petitioner to have placed them before the Court leaving it to the Court to decide whether it was a case where the rule nisi that was asked for should issue in the circumstances of those facts. In this case, the suppression of facts was certainly calculated to deceive the Court into granting the order of rule nisi. On that short ground alone the petition ought to be dismissed.

17. But, as I have said above, whether it is on the ground that there was a suppression of material facts, or whether it is on the ground that the petitioner failed to make out that the fourth respondent had no facilities, the result should be the same; this Court should decline to interfere in the exercise of its jurisdiction under Article 226 of the Constitution with the order of the Government declining to set aside the order of the Regional Transport Authority granting a permit to the fourth respondent. No doubt, on the date of the grant by the Regional Transport Authority, 18th December 1952, the fourth respondent had not a permit for plying buses on the Cochin section of the route. Whether the Regional Transport Authority was wrong in ignoring that factor was primarily a point for the decision of the Appellate Authority and subsequently of the Revisional Authority. When the Revisional Authority, the Government, was moved, the fourth respondent certainly had a permit. Whether the Revisional Authority, the Government, should or should not have taken note of an event which transpired subsequent to the granting of the permit on 18th February, 1952, really does not affect the question at issue before me. With a finding of fact that the grant of the permit to the fourth respondent was in the interest of the public which was in substance the decision of the Government, this Court should be reluctant to interfere in the exercise of its jurisdiction, unless the circumstances gathered from the material placed before me, principally the orders complained against, conclusively established that no reasonably-minded tribunal could have reached that conclusion. In any event, at this stage, it cannot be said that the petitioner has made out the case he set out to prove that even on the date the petitioner applied to this Court the fourth respondent could not and did not maintain a continuous bus service. He could; he obtained a permit. He did; he ran the bus service continuously.

18. On the merits I am convinced that on the date the Government issued their orders there was no question of jeopardy to public interest that could arise from the grant of the permit to the fourth respondent. The petition fails and is dismissed with costs. Counsel's fee Rs. 100 one set to be apportioned between respondents 1 to 3 on the one hand and the fourth respondent on the other.