

(1966) 09 KL CK 0014

In the High Court Of Kerala

Case No : O.P. No's. 625, 644, 645, 648, 656, 657, 660, 663, 673 to 677, 717, 719, 728 to 732, 743, 822, 852, 860, 1073, 1082 and 1846 of 1965

K. Thankachan and Others

APPELLANT

Vs

Regional Transport Authority, Alleppev and Others

RESPONDENT

Date of Decision : 28-09-1966

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 44(2), 58

Citation : (1966) 09 KL CK 0014

Hon'ble Judges : P. Govindan Nair, J

Bench : Single Bench

Advocate : V.R. Krishna Iyer and V. Sivaraman Nair in O.P. Nos. 625, 717, 719, 728, 729, 730, 731, 732, 852 and 860, K.C. John in O.P. Nos. 644, 645 and 648, K.C. Sankaran in O.P. No. 656, N. Narayana Pillai and K.C. Sankaran in O.P. Nos. 660, 673, 675 and 822, N. Narayana Pillai, V. Sivaraman Nair, K.C. Sankaraman Nair and A. Inees in O.P. Nos. 674, 676 and 677, V.R. Krishna Iyer, V. Sivaraman Nair and K. Prabhakaran in O.P. No. 743 and V. Sivaraman Nair, in O.P. Nos. 1073 and 1082, for the Appellant; Govt. Pleader and C.M. Kuruvila in O.P. Nos. 625, 644, 645, 648, 656, 657, 660, 663, 673 to 677, 717, 719, 728, 729 to 732, 743, 822, 852, 860, 1073 and 1082 and 1848/65, P. Subramaniam Potti and S.A. Nagendran, for the Respondent

Final Decision : Allowed

Judgement

P. Govindan Nair, J.—A common question has been raised in these writ applications and they arise out of an order passed by the Regional Transport Authority, Alleppey, at its proceeding dated 22-2-1965. On that day various applications filed by the petitioners before me in these writ applications for renewal of their permits were heard and a decision was taken not to renew those applications without cur-tailing the permits. So the applications were allowed only in part. These are by orders which have been produced along with these writ applications. It is unnecessary to refer to those in detail for they stem from the same decision and are in effect and scope only this that the permits cannot

be renewed in their entirety because the permits were for operating on routes parts of which fell within the routes regarding which a scheme has been published u/s 68D(3) of the Motor Vehicles Act.

The scheme that has been published u/s 88(c) of the Act is Ext P-1, which is the proposal and as finally approved and required by Section 68(d) of the Act, is Ext. P-2 Here again it is unnecessary to go into greater details for, in all these cases, it is admitted on all hands that the scheme published impinged in some manner or other on the routes for which permits were held by the petitioners and that all the petitioners had to run along the road pertaining to routes relating to which the scheme has been published at least for some distance.

2. The three contentions raised in these writ applications on behalf of the petitioners are (1) that the decision of the Regional Transport Authority was taken by only three of its five members though all the five members heard the matter at its proceedings on 22-2-1965. This according to the petitioners is not a decision of the Regional Transport Authority and is therefore invalid and even void. (2) the decision itself was taken pursuant to a direction from the Govt which amounted to an unwarranted interference with the exercise of a quasi judicial function and which interference had influenced the decision. The decision must therefore be set aside on that ground; and (5) the scheme published at best can only be said to be a scheme in partial exclusion of existing operators on the route and the curtailment of the permit is unwarranted.

3. I do not think that I should deal with either point No. 2 or 3 in these writ applications because I feel that the case can be disposed of on the 1st point. Before elaborating on this I shall refer to the section of the Motor Vehicles Act, 1939, under which the Regional Transport Authority is constituted. This is section 44(2) which runs thus:

"A State Transport Authority or a Regional Transport Authority shall consist of a chairman who has had judicial experience and such other officials and non-officials not being less than two as the State Government may think fit to appoint; but no person who has any financial interest whether as proprietor, employee or otherwise in any transport undertaking shall be appointed as or continue as a member of a State or Regional Transport Authority, and if any person being a member of any such Authority acquires a financial interest in any transport undertaking he shall, within four weeks of so doing, give notice in writing to the State Government of the acquisition of such interest and shall vacate office."

The proviso to the sub-section is left out as it is immaterial for the purpose of deciding the question.

4. The interpretation to be placed on this sub-section has been the subject matter of at least two decisions of the Supreme Court. The first of these is in *B. Rajagopala Naidu v. Govt. of A. P.* reported in 1964 S. C. 205 and the second is in *T. N. Raghu-natha Reddy v. M. Akbar Sahib* reported in 1965 S C 63. In the

first of these it has been laid down that there cannot be a constitution of a Regional Transport Authority, without a chairman with judicial experience and in the second it was ruled that the other members of the Tribunal must consist of Officials and non-officials and that a constitution of the Regional Transport Authority without there being any non-officials is not a constitution as envisaged by the section and is therefore invalid. No doubt these decisions dealt with the constitution of the Regional Transport Authority and not with its functioning But these decisions throw some light as to the intention of the legislature which appears to be that the body must consist of official as well as non-official opinions and approaches which are likely to be divergent. It also insists that its membership must consist of a member with judicial experience and all these aspects are considered as not only necessary but as essential. It is in this background that the question arising for decision in these writ applications must be considered.

5. The facts relating to the meeting of the Regional Transport Authority that was held on 22-2-1965 will have to be stated.

6. This meeting was attended admittedly by the chairman, by the two non-official members and by the two official members. After the hearing it appears there had been difference of opinion between the official and the non-official members The non-official members wanted a postponement of the decision. This was apparently not agreed to by the official members including the chairman. The non-official members thereafter, it appears, left after leaving a note with the chairman and did not participate in the decision. The decision as is evidenced in the various orders produced before me was taken by the chairman and the two official members.

7. In these circumstances counsel appearing for the petitioners contend that the principle of the decision of the Calcutta High Court in *Balurghat Kaliagunge Assn. and Others Vs. S.T.A. and Others*, must apply. Therein it has been ruled:

"Where the Appellate Committee constituted by an order of Government consist of three members and all the three members hear the appeal but only two sign it the order is entirely invalid."

The Committee there was the Committee constituted by the Government for hearing ap-peals from the decision of the Regional Transport Authority and the question decided there is the one arising for determination here. The decision of the Regional Transport Authority, Alleppey having been taken only by some of the members who heard the matter cannot stand if the principle laid down by the Calcutta decision is applied.

8. And it appears to me that the principle of the Calcutta decision is accepted by the Supreme Court as well in an earlier decision in *The United Commercial Bank Ltd. Vs. Their Workmen*, . I may extract passages from that judgment, at pages 234 and 237.

"Proceeding with the adjudication, in the absence of one, undermines the basic principle of the joint work and responsibility of the Tribunal and of all its members to make the award."

In paragraph 14 of the judgment it is said:

"It is obvious that for making the award all the three persons work together and are jointly responsible for the resultant award " And in Paragraph 16 the view is expressed:

"In our opinion that position here clearly is that the responsibility to work and decidt being the joint responsibility of all the three members If proceedings are conducted and discussions on several general issues took place in the presence of only two followed by an award made by three, the question goes to the root of the jurisdiction of the Tribunal and is not a matter of irregularity in the conduct of those proceedings. The absence of a condition necessary to found the jurisdiction to make the award or give a decision deprives the award or decisions of any conclusive effect."

9. The orders impugned in these writ applications are without any conclusive effect. They have to be set aside I do so. I therefore quash Exts. P-6 and P-7 in O. P. 625. Exts. P-2 and P-3 in O P. 644. Exts. P-3 and P-4 in O.P. 645, Exts. P-2 and P-S in O. P. 648. Exts. P-4 and P-5 in O. P. 650. Exts. P-4 and P-5 in O. P. 657. Ext. P-4 in O. P. 660, Exts. P-4 and P-5 in O. P 663, Exts. P-4 and P-4 (a) in O. P. 673, Exts. P6 (a), P-6 (b), P-6 (c), P-7 (b) and P-7 (c), in O P. 674, Ext. P-2 in O. P. 676, Exts. P-6, P-7 and P-7 (a) in O. P. 676, Exts P-6, P-6 (a) P-6 (b). P-7, P-7 (a) and P-7 (b) in O. P. 677, Exts. P-5 and P-6 in O. P. 717, Exts. P-5 and P-6 in O. P. 719. Exts. P-5 and P-6 in O P. 728, Exts. P-5 and P-6 in O. P. 729, Exts. P-5, P-6 and P-6 (a) in O P. 730, Ext. P-5 in O. P. 731, Exts. P-5, P-6 (a), P-6 and P-6 (a) in O. P. 732, Exts. P-6 P-6 (a), P-7 and P-7 (a) in O. P. 743, Exts. P-4, P-4 (a). P-5 and P-6 (a) in O. P. 822, Ext. P-4 in O. P. 862, Exts. P-6, P-7, P-7 (a) and P-7 (b) in O. P. 860, Ext. P-3 in O. P. 1073, Exts. P-4 and P-4 (a) in O. P. 1082, and Exts. P-3 and the order of the Regional Transport Authority, Alleppey, dated 22-2-1966 in O. P. 1846 of 1965. I make no order as to costs.