

(1963) 07 MAD CK 0019

In the Madras High Court

Case No : Writ Appeal No"s. 30 and 100 of 1961

K.M. Krishnan

APPELLANT

Vs

M. Venkatesan and Others

RESPONDENT

Date of Decision : 24-07-1963

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 47

Citation : AIR 1964 Mad 401 : (1964) 77 LW 284

Hon'ble Judges : Ramakrishnan, J;Anantanarayanan, J

Bench : Division Bench

Advocate : Addl. Govt. Pleader, T.V. Balakrishnan, W.A. No. 30 of 1961, The A.G. for N.K. Kamaswami and N.K. Lakshminarasimhan, in W.A. No. 100 of 1961, for the Appellant; T.V. Balakrishnan, in W.A. No. 100 of 1961 and K.K. Venugopal for Respondent No. 1 in W.A. No. 30 of 1961, for the Respondent

Final Decision : Dismissed

Judgement

Ramakrishnan, J.—These appeals are filed under the Letters Patent against the decision of Ramachandra Iyer J. (as he then was) in two

connected W. P. Nos. 651 and 1035 of 1958. These two petitions formed two out of a larger batch, all of which were filed for the issue of a writ

of certiorari calling for the appropriate records and quashing the order of the State Transport Appellate Tribunal, Madras, dated 13-8-1958 and

made in R. No. 3314/A. 3/58. The learned Judge dismissed the writ petitions, and the two petitioners in the petitions abovementioned have filed

these two letters patent appeals.

2. The relevant circumstances necessary for a consideration of these appeals are briefly the following. The Regional Transport Authority, South

Arcot, acting u/s 57 (2) of the Motor Vehicles Act, called for applications for the

grant of stage carriage permit for a particular route in the South

Arcot Dt. There were 36 applications. The Regional Transport authority adopted the marking system prescribed in Government Order 1298

Home dated 28-4-1956. Krishnan, the appellant in W. A. 30 of 1961, got the highest marks, and therefore, was given the permit by the Regional

Transport authority. Twelve of the disappointed applicants appealed to the State Transport Appellate Tribunal, who revised the marks and recast

them, with the result that Krishnan, who got from the R. T. A. a total of 4 1/4; marks under Cols. (2) to (5) of the Government Order, got only 2

1/4 marks, and Chelliah, the appellant in W. A. 100 of 1961, got 4 1/2 marks. Under this revised marking, Chelliah would be entitled to the

permit. Upto this stage, only columns 2 to 5 of the Government Order had been filled in, for the purpose of awarding marks. The State Transport

Appellate Tribunal then proceeded to award marks under Column 1, which relate to building strength to viab 1 units. The direction in the

Government Order for this purpose, is couched in the following language:-

1. Building strength to viable units :-After considering the statistics available and the reasons adduced, the Government have decided that

efficiency of service and economy in cost can be secured by fixing viable units of five buses. It is accordingly necessary that, other things being

equal, preference should be given to existing owners of four buses and less to build up to a fleet of buses. These owners will have preference over

other applicants, in the | ascending order. In the marking system therefore applicants of four buses and less will be given one mark for each vehicle

already licensed to them. Thus the owner of one bus will get one mark and the owner of two buses will get two marks and so on to a total of four.

This will enable the existing permit holders to build up their buses to viable units in preference to others who have more buses or none."""

The procedure adopted by the State Transport Appellate Tribunal for giving marks under column 1, as stated in the order of the learned judge,

now under appeal, is this:

... as amongst the applicants, six out of the 13 who were before the Tribunal, were small operators. Chelliah was himself a small operator owning

two buses. The Tribunal first eliminated the fleet owners on the ground that a small operator had secured the highest number of marks. It then.

proceeded to decide the matter amongst the small operators owning less than five buses by taking into account the marks obtained by them under

column 1 as well-By so doing, Chelliah (appellant in W. A. 100 of 1961) having previously only two bases, got 6 1/2 marks, while Venkatesami

who had four buses got 8 1/4 marks (total increased from 4 1/4 to 8 1/4). The Tribunal granted the permit to Venkatesan ,

Against this decision of the State Transport Appellate Tribunal, writ petitions were filed by a number of defeated claimants, of whom, as mentioned

already, Krishnan's petition, is W. P. 651 of 1958 and Chelliah's petition is W. P. 1035 of 1958. The learned Solicitor-General appeared for

Chelliah. His first contention was that the State Transport Appellate Tribunal committed an error, in applying the Government Order At that time,

the decision of the Supreme Court in Rama Reddiar v. State Transport Appellate Tribunal, C. A. 783 of 1957 (SC) had been given: and a Bench

of this court consisting of the learned Chief Justice (Rajamannar) and Ganapatia Pillai J. in W. A, 50 and 51 of 1958 (Mad.) had an occasion to

apply the principles laid down in the aforesaid Supreme Court's decision for the purpose of interpreting the Government Order. The learned Judge

(Ramachandra Iyer J.) referred to the Bench decision above mentioned for the correct application of the principles laid down in the Government

Order for adopting the marking system for viable units of buses, and came to the conclusion that the tribunal committed an error in the application

of the Government Order. But the Seamed Judge, following several well-recognised decisions of the Supreme Court, came also to the conclusion

that the Government issued the Government Older only as an administrative direction u/s 43-A of the Act, that the Government Order had not the

significance of a statutory order, and that any error in its application would not even if patent, give rise to a writ of certiorari under Article 226 of

the Constitution. Before the Learned Judge, the learned Solicitor-General, after fairly conceding that another decision of the Supreme Court in

Abdullah Rowther v. State Transport Appellate Tribunal AIR 1959 S.C. 896 was decisive on the question that no writ of certiorari could issue,

where there had been only a mis-construction of a direction issued by the Government u/s 43-A of the Act, urged that the case was a proper one

for the issue of a writ of mandamus, to compel the Transport Authority to act in conformity with the directions contained in the Government Order,

but this contention was repelled by the learned Judge, on the ground, that the Government order did not cast an obligatory duty on the Transport

Authority to act under its terms and further before a writ of mandamus could issue, the applicant should show that he had a legal right, to the

performance of a legal duty by the party against whom the writ was sought, but no such legal right inhered in the petitioners and that therefore no

writ of mandamus could issue. The petitions were therefore dismissed.

3. The learned Advocate General, who appeared for the appellants, did not seriously dispute before us, the conclusion reached by Ramachandra

Iyer J. that the State Transport Appellate Tribunal misapplied the provisions of the Government order, in the matter of apportioning marks under

column 1 for "viable units." But as pointed out by the Bench of this court in W. A. 50 and 51 of 1958 (Mad.) several interpretations are possible

as to the way and the circumstances in which marks should be given under this column No. 1, and it would appear as if any of the interpretations

was reasonable. The learned Judges of the Bench pointed out that even after the interpretation placed by the Supreme Court in its decision in C.

A. 783 of 1957 (S. C.) the matter did not appear to be free from doubt and difficulty in particular cases, and that it was desirable that the

Government, who were aware of the conflicting views taken, of this part of the order, should clarify their intention and give clear directions to the

transport authorities in the matter. With these observations, we respectfully agree. But, as the decisions stand at the present moment, we are bound

to follow the interpretation given to the rule for filling up column 1 of the Government Order by the decision of the Supreme Court, and, as further

explained by the Bench of this Court in W. A. 50 and 51 of 1958 (Mad.) This would show that this is a case, where the Government Order had

been wrongly interpreted and applied by the State Transport Appellate Tribunal.

4. The learned Advocate General appearing for the appellant, Chelliah, took his stand on a different ground for pressing for relief, and we may

point out that this ground was not taken before the learned Judge (Ramachandra Iyer J.) by the learned Solicitor-General who appeared for one of

the petitioners, Chelliah. According to the learned Advocate General columns 2 to 5 alone in the Government Order, prescribed the basic and

relevant considerations, which should weigh with the transport authorities for

making selection out of the applicants, as per the directions comprised in Section 47 of the Motor Vehicles Act. Judged by the marks thus apportioned under columns 2 to 5, Chelliah, the appellant in W. A. 100 of 1961 gets the highest marks and he should be preferred. According to the learned Advocate General, marking under column 1, for giving preference to one who can reach the minimum of a viable unit more quickly than the others can be used only to tilt the scale when as between two applicants, their qualifications, as evaluated under columns 2 to 5 are exactly equal, and further that marking under column 1 is not entitled to be taken into consideration, to assess the basic qualification falling within the scope of Section 47, but it is only a reasonable method suggested, to tilt the scales, which the odds are even between rival applicants. Therefore when the odds are not found to be even, as in this case, when marks are assigned on the basis of columns 2 to 5, the State Transport Appellate Tribunal must be deemed to have taken into account an irrelevant consideration, totally foreign to the scope of Section 47, when it added up also the marks under column 1, to decide against Chelliah.

The learned Advocate General supported his argument by certain principles laid down by Subba Rao J. in a recent decision of the Supreme Court in K.M. Shanmugam Vs. The S.R.V.S. (P) Ltd. and Others, . Briefly stated, in the case that came up before Subba Rao J. the unsuccessful applicant before the State Transport Appellate Tribunal had a place of business at Mannargudi one of the two terminal points of the route for which the permit was applied for. But the State Transport Appellate Tribunal accepted the contention that the unsuccessful applicant who had a branch office at Kumbakonam away from the route, would not be entitled to any credit for marks, under the column ""Residence or place of business"" in the Government Order, and consequently he lost before the State Transport Appellate Tribunal. When the matter came up before Ramachandra Iyer J. in a writ petition, the learned judge held that the Appellate Tribunal erred, in refusing to take into consideration the existence of a workshop at Mannargudi, that this was a relevant factor u/s 47 (1) (a) and (c) of the Motor Vehicles Act, and that the omission to consider it amounted to an error apparent on the face of the record. His Lordship Subba Rao J. who gave the decision of the Supreme Court, upheld the

view of Ramachandra Iyer J. and dismissed the appeal with the following observation :

It will be seen from the aforesaid decisions that this court only laid down that the instructions given u/s 43-A of the Motor Vehicles Act were only

administrative directions and that the infringement of those instructions by the tribunal did not confer any right on a party to apply to a High Court

for a writ under Article 226 of the Constitution. In all these cases, the tribunal either ignored the instructions or misconstrued them but nonetheless

decided the question of issue of permits on considerations relevant u/s 47 of the Act. They are not authorities on the question whether a writ of

certiorari would lie where a tribunal had on an obviously wrong view of the law refused to decide or wrongly decided on a consideration relevant

u/s 47 of the Act, whether or not it was covered by the instructions given u/s 43-A. For if on the basis of such an error of law, it refused to decide

a relevant question, the fact that the Government also issued instructions to the Tribunal to apply some objective standards in deciding such a

question, does not make the said question anytheless a relevant consideration u/s 47 of the Act.

5. According to the learned Advocate General, on the analogy of the decision above mentioned, allotting marks for the purpose of attaining a

viable unit, is not a relevant consideration u/s 47 of the Act, that it has to be used only for the purpose of tilting the scales when the totals of the

marks under columns 2 to 5 are equal, and that therefore, the State Transport Appellate Tribunal in taking the marks under column 1 into

consideration for evaluating the qualifications of the rival candidates, took into account an irrelevant consideration and therefore a writ should issue.

But, with due respect to the learned Advocate General, we are unable to accept his argument that the marking under column 1 to attain a viable

unit, is a factor totally foreign to the scope of Section 47 of the Act and is therefore an irrelevant consideration, when qualifications of competing

operators have to be evaluated for giving preference. Nor can we agree with his argument that it is only a marginal factor, one among several

possible alternatives, which could be used merely for the purpose of tilting the scales when the marks earned on other respects are equal, just like

casting a lot, or using some other factor of chance to make the final selection, as between equals. The very fact that in column 1 a range of marks

from zero to four, is indicated for the purpose of apportionment, shows that what is included in column 1, is a method of assessing the grades of

qualification and not to provide merely for a deciding factor, when odds are otherwise even. This system of graded marks ranging from zero to

four, would show that the marking under column J, was intended to be used as a factor in assessing the qualification itself.

The marking in column 1 is no doubt brought into play, only at a particular stage as indicated in the G. O., but from that stage onwards, it plays an

essential part in assessing the qualifications, for the purpose of Section 47 of the Act. The stage when it is brought into play is when "other things

are equal". How this term should be interpreted, has come up for consideration in several decisions of this court, as well as of the Supreme court.

But in none of these decisions was it urged that the qualification laid down in column 1 is an irrelevant one, or one foreign to the scope of Section

47. Now the Government Order itself, has given the reason for introducing the principle of marking in column 1 : -

After considering the statistics available and the reasons adduced, the Government have decided that efficiency of service and economy in cost

can be secured by fixing viable units of five buses.

Efficiency in service" thus aimed at, will certainly conduce to the interest of the public and will fall within Section 47 (1) (a) of the Act. In *Raman*

and *Raman Ltd. Vs. The State of Madras and Others*, , the Supreme Court accepted this view of the Government Order, and remarked that the

G. O. was issued "to achieve the object of inducing the operators to amalgamate wherever possible into big viable units, to enable them to achieve

better returns and maintain better standards of operation (italics ours)". No doubt, the Supreme Court had in view at that time. the. Government

Order that preceded G. O. No. 1298, namely, G. O. 3353, which laid down ten buses as a viable unit, but the same principle would apply to G.

O. 1298. Therefore, if instead of applying the marking under column 1 at the stage indicated in the G.O. the Tribunal misconstrues the Government

Order and applies it at a different stage, it could not be held that in doing so, the Tribunal had taken into account a consideration irrelevant for the

purpose of Section 47 of the Act. A parallel cannot be drawn between this, and the situation that was considered by His Lordship Subba Rao J. in

the Supreme Court decision abovementioned, where the Tribunal omitted to take into account a relevant consideration, for the purpose of Section 47 of the Act.

6. We are therefore of the opinion that the decision of the learned Judge (Ramachandra Iyer J.) is right and wells for no interference. The appeals are dismissed; but in the circumstances there will be no order as to costs.