
(1994) 10 MAD CK 0102
In the Madras High Court
Case No : W.A. No. 413 of 1994

M. Chellaswamy

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 19-10-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 117, 3

Citation : (1994) 10 MAD CK 0102

Hon'ble Judges : K.A. Swami, C.J;K. Ramamoorthy, J

Bench : Division Bench

Advocate : N.G.R. Prasad, for M/s. Row and Reddy, for the Appellant; P. Sathasivam, Special Government Pleader, for Respondent 1 to 4, Mr. K.V. Subramaniam, for 5th Respondent Mrs. Bhagirathi Narayanan, for 6th Respondent, Mr. F.B. Benjamin George, for 7th Respondent. Mr. S. James, for 8th Respondent, Mr. A.L. Somayaji, for Mr. Babu Manohar, for 9th Respondent, for the Respondent

Judgement

K.A. Swami, C.J.—This appeal is preferred against the order dated 21.2.1994 passed by the learned single Judge in W.P. No. 16367 of 1993. As the learned single Judge has rejected the writ petition, petitioner therein has come up in appeal. In the writ petition, the petitioner sought for quashing the order dated 7.5.1993 passed by the Regional Transport Authority, Kanyakumari, directing the location of the Kuzhithurai bus stand in the place referred to as cattle shandy. It may be pointed out here that the subject relating to location of bus stand at Kuzhithurai has been unfortunately pending for more than 8 years. On an earlier occasion, the State Government passed an order dated 16.5.1990 directing that the land intended for constructing police quarters be handed over to the Municipality for locating the bus stand and the land referred to as cattle shandy be used for construction of police quarters. The above Government Order was challenged before this Court and a learned single judge or this Court by the order dated 8.3.1991 in W.P. Nos. 5343 and 7218 of 1990 held that the said

Government Order was recommendatory in nature and the Regional Transport Authority, being a statutory authority, was required to decide the matter in accordance with R.245 of the Motor Vehicle Rules. Accordingly, the Regional Transport Authority, after consulting the Municipal Council and other authorities and on inspecting the site known as cattle shandy and also the site intended for constructing police quarters, has by the impugned order dated 7.5.1993 held that the place known as cattle shandy is more suitable than the place intended for construction of police quarters. The relevant portion of the order of the Regional Transport Authority reads thus:

I inspected the two sites which are being considered for construction of Bus Stand for Kuzhithurai Municipality on 28.4.1993. Thiru S.K. Dogra, I.P.S. Superintendent of Police, Kanniyakumari also accompanied me to render his advice regarding the suitability of the site from the traffic point of view. Further reports have already been received from various departments such as Nesamony Transport Corporation, Kuzhithurai Municipality, etc. in this regard. Various organisations had also given their representations. All these were taken into consideration at the time of the inspection of the two sites, viz. The Cattle Shandy under the control of the Kuzhithurai Municipality and the Police Quarters Poromboke under the control of the Police Department. At the time of the inspection, it was obvious that both the sites had certain disadvantages, particularly with regard to the approach. However, the balance of favour clearly lies with the cattle shandy site because of its proximity to the railway station and also because of the potential for future development. Further, if any attempt is made to construct bus stand in the land which was acquired for construction of police quarters, then it would lead to unnecessary litigation which will delay the project. The Superintendent of Police also agreed that the cattle shandy will be a better site for locating the bus stand.

2. As per R. 245 of the Motor Vehicles Act, the Regional Transport Authority has to decide the location of the bus stand in consultation with such other authorities as it deems desirable and also it must have regard to the interest of the public generally and approve the scheme for locating the bus stand with or without modification or refuse to approve the scheme, as placed by the Municipal Council. S. 117 of the Motor Vehicles Act also provides that the State Government or any authority authorised in this behalf by the State Government may in consultation with the local authority having jurisdiction in the area concerned, determine places at which motor vehicles may stand either indefinitely or for a specified period of time, and may determine the places at which public service vehicles may stop for a longer time than is necessary for taking up and letting down of the passengers. So in either case, consultation of the Municipal Council and other concerned authorities is necessary. Accordingly, it is clear from the order of the Regional Transport Authority that it has consulted the Kuzhithurai Municipal Council and also Nesamony Transport Corporation and various other organisations, who had forwarded their views on the subject. Learned single judge also has held that the order passed by the Regional

Transport Authority has taken into consideration all the relevant aspects in arriving at a decision that the location of the bus stand at the cattle shandy is appropriate, having regard to the fact that the area available in the cattle shandy is larger than the area available in the place reserved for police quarters and other material facts referred to in the order of the Regional Transport Authority.

3. Sri N.G.R. Prasad, Learned Counsel appearing for the appellant, very strenuously contended that the Municipal Council in the resolutions dated 16.9.1986 and 17.10.1987 has given several reasons for locating the bus stand in the place reserved for police quarters and those reasons are not referred to by the Regional Transport Authority, therefore, the decision of the Regional Transport Authority is arbitrary. It is also contended that even the State Government, on an earlier occasion, resolved that the place reserved for police quarters is appropriate for locating the bus stand and thus the two important authorities, viz. Municipal Council and State Government, have taken the view that the appropriate place for locating the bus stand is the one intended for construction of police quarters. Further, the road leading to the place reserved for police quarters is wider than the road which leads to cattle shandy. It is further contended that the cattle shandy is far away from the National Highway, therefore, it would cause great hardship and inconvenience to the public, who travel by bus. For all these factors, the Regional Transport Authority ought to have chosen the land reserved for police quarters and since those relevant factors are not taken into account the order is liable to be interfered with.

4. We may first point out here that the decision of the Regional Transport Authority as to location of the bus-stand is neither judicial nor quasi-judicial. It is an administrative decision. The power or the jurisdiction to take a decision as to location of the bus stand is vested in the Regional Transport Authority. That being so, it is not possible to expect an order having the trappings of a quasi-judicial order. As long as the decision of the Regional Transport Authority, which is purely administrative in nature, broadly takes into consideration all the relevant aspects, it is not possible to hold that such an order is arbitrary. It is not the case of the petitioner that the decision is taken with an ulterior motive or that the decision is actuated by mala fides. In the absence of any such contention, the administrative decision should be judged on the basis viz. whether it is the one passed with authority, and if so, whether it is bonafide and whether it is arbitrary. Judging the decision from these angles, the order cannot be held to be either arbitrary or without jurisdiction or wanting in bona fides. In this connection we may also refer to a decision of the Supreme Court in J.R. Raghupathy and Others Vs. State of A.P. and Others, . The case related to location of Mandal headquarters. The Supreme Court has held that such a discretion squarely lies within the power of the State Government and as long as such discretion is exercised bona fide and not actuated by mala fides, there should not be any interference under Art. 226 of the Constitution. The relevant portion found at paragraph 9 of the said decision is as follows:-

It will serve no useful purpose to delineate the facts in all the cases which follow more or less on the same lines. We are of the opinion that the High Court had no jurisdiction to sit in appeal over the decision of the State Government to locate the Mandal Headquarters at a particular place. The decision to locate such Headquarters at a particular village is dependent upon various factors. The High Court obviously could not evaluate for itself the comparative merits of a particular place as against the other for location of the Mandal Headquarters. In some of the cases the High Court declined to interfere saying that the Government was the best judge of the situation in the matter of location of Mandal Headquarters. However, in a few cases, the High Court while quashing the impugned notifications for location of Mandal Headquarters issued under Sub-s. (5) of S. 3 of the Act on the ground that there was a breach of the guidelines, directed the Government to reconsider the question after hearing the parties.

Similarly in B.N. Shankarappa Vs. Uthanur Srinivas and others, which also related to location of Mandal Headquarters, the Supreme Court following the decision in J.R. Raghupathy's case held specifically as follows:

...this Court observed that the ultimate decision as to the place or location of Mandal headquarter is left to the Government to decide and conferment of discretion upon the concerned authority in that behalf must necessarily leave the choice to the discretion of the said authority and it would not be proper for the Courts to interfere with the discretion so exercised. This is not to say that the discretion can be exercised in an arbitrary or whimsical manner without proper application of mind or for ulterior or mala fide purpose. If it is shown that the discretion was so exercised it would certainly be open to the Courts to interfere with the discretion but not otherwise.

5. As far as the order of the State Government dated 16.5.1990 is concerned, as already pointed out, it was the subject matter of earlier writ petitions wherein this Court held that the said Government order was only recommendatory. Therefore, the Regional Transport Authority was not bound to act in accordance with the said order. Of course, it was to take into consideration of the same and accordingly the R.T.A. has taken into consideration the said Government Order. Further, we may also point out here that the Kuzhithurai Municipality, which initially objected to the location of the bus stand at cattle shandy, later on has approved the location of the bus stand at the place where cattle shandy is located. The State Government also has approved the decision of the Regional Transport Authority for locating the bus stand at the land known as cattle shandy. Accordingly, the bus stand has been located, as stated in the counter affidavit filed by the Joint Secretary to Government, Municipal Administration and Water Supply Department. It is relevant to refer to the portions, in paragraphs 7, 14 and 15 of the counter affidavit of the Joint Secretary. They are:

...Accordingly, the bus stand has been located at the cattle shandy land and it is functioning there from 10.9.93. This arrangement is functioning normally and to the satisfaction of all concerned. Now one Thiru M. Chellasamy has filed the

above writ petition challenging the orders of third respondent dated 7.5.93.

With reference to the averments made in paragraph 11 of the affidavit I submit that the then Municipal Council proposed construction of the bus stand in a land which does not belong to it. Therefore, in exercise of the powers vested in 245(b) and in the light of the observations of the Honourable High Court in W.P. Nos. 5343 and 7218 of 1990 dated 8.3.91, the Regional Transport Authority selected and approved the site at cattle shandy. Any resolution of the Municipal Council on a land which has not been alienated to it and which does not belong to it is illegal. R. 245 (b) of the Motor Vehicles Rules clearly empowers the Regional Transport Authority to approve any proposal of scheme with modification.

With reference to the averments made in paragraph 12 of the affidavit I submit that the Regional Transport Authority is fully justified in relying the order of this Honourable Court dated 8.5.91 and passing order exercising the powers vested under R. 245(b) of the Motor Vehicles Rules to modify the proposal. The order has been passed only keeping in view the orders of this Honourable Court and R. 245 (b).

It is also necessary to refer the relevant portion (paragraph 10) of the counter affidavit of the Commissioner of Kuzhithurai Municipality, which is at page 135 of the typed set of records. It reads as follows:

With reference to the averments made in para 11 of the affidavit I submit that during the District Development Council Meeting held on 8.9.1992 the people's representatives requested the Collector to locate the bus stand at cattle shandy site. The Collector in consultation with the Superintendent of Police, Commissioner of Kuzhithurai Municipality and Transport Corporation Authorities informed in the meeting that the bus stand will be opened at the cattle shandy within fifteen days. As per the decision taken in the District Development Council Meeting, the bus stand was opened in the cattle shandy with effect from 10.9.1993 and it was put into use from 10.9.1993. This Municipality applied for temporary approval for the bus stand at Cattle Shandy. The 3rd respondent herein has given approval as "D" class bus stand for cattle shandy site vide his proceedings No. 37008/C1/93 date 8.10.1993. Subsequently, the 4th respondent Municipality has submitted a scheme for construction of "B" class bus stand at cattle shandy site to the Regional Transport Authority, The 3rd respondent herein has given approval for the said scheme in his proceedings No. 30568/C1/93 dated 19.10.1993 subject to the result of the above writ petition.

For the reasons stated above, we see no ground to interfere with the order of the learned single judge. Accordingly, the writ appeal fails and is dismissed. There will be no order as to costs.