

(1985) 01 KL CK 0008
In the High Court Of Kerala
Case No : O.P. No. 218 of 1985-N

Managing Partner, Nallappa Transport	APPELLANT
Vs	
R.T.A., Palghat and Others	RESPONDENT

Date of Decision : 23-01-1985

Acts Referred:

Kerala Motor Vehicles Rules, 1989 — Rule 177A, 177A(3)
Motor Vehicles Act, 1939 — Section 47(1)

Citation : AIR 1986 Ker 18

Hon'ble Judges : U.L. Bhat, J

Bench : Single Bench

Advocate : V.M. Nayanar, for the Appellant; A. Inees, for the Respondent

Final Decision : Dismissed

Judgement

U.L. Bhat, J.—Under Ext. P1 first respondent, R. T. A., Palghat, preferred petitioner for grant of regular permit on the route dealt with therein. There were 11 applicants for the permit including fourth respondent. Fourth respondent and one of the other applicants filed appeals before third respondent, S. T. A. T., Ernakulam challenging Ext. P1 order. By a common Judgment, Ext. P 4, the Tribunal set aside the decision of the R. T. A. and held that fourth respondent should have been granted permit. His appeal was allowed and the other appeal was dismissed. Decision of the Tribunal preferring fourth respondent is now challenged under Article 226 of the Constitution.

2. We need only consider the case of petitioner and fourth respondent. Each of them secured five marks. Petitioner secured four marks on the ground of place of business or residence, four marks on the ground of sector qualification and one mark on the ground of business or technical experience. Fourth respondent secured four marks on the ground of place of business or residence, three marks on the ground of sector qualification and one mark on the ground of business or technical experience. Though they secured equal number of marks, R. T. A. preferred petitioner on the ground that he has maximum sector qualification. It

is said that petitioner operates along 64 kilometres as against fourth respondent's 46 kilometres on the notified route. The Tribunal found that the R. T. A. was not justified in preferring petitioner on the ground of higher sector qualification. The Tribunal preferred fourth respondent on the basis of rule of preference in favour of a medium operator in the case of a medium route. Admittedly, the route in question is a medium route. In the words of the Tribunal "Two fleet operators are pitted against a medium operator. He is sought to be denied the preference that was due to him for permit over a medium route. There is nothing to show that he is disentitled to the permit in question. He has experience, operational facilities and the necessary expertise for effective operation. He offered a vehicle with maximum seating capacity. There is no reason why he should be denied the permit. The R. T. A. in my view should not have permitted the third respondent a fleet operator to entrench upon a medium route in respect of which a medium operator like appellant.....

who is well qualified is entitled to the permit. It would be in public interest in these circumstances to prefer him".

3. Rule 177A (3) of the Kerala Motor Vehicles Rules (for short "the Rules") states that subject to Sub-rule (2), other things being equal preference in the case of medium routes may be given to applicants with 1 to 4 stage carriages. The Tribunal evidently acted on this rule of preference while the R.T. A. ignored it. The only contention urged by learned counsel for petitioner is that this is not a case where other things are equal. According to learned counsel, higher sector qualification possessed by petitioner as against fourth respondent would show that petitioner's qualification is superior and therefore this is not a case where other things are equal. Learned counsel also submitted that question of equality is not to be decided only on the basis of marks awarded. This argument has been advanced since markwise the rivals are equal. Learned counsel for fourth respondent would submit that going by marks, the rival claimants have to be treated as equals and therefore the Tribunal was justified in preferring fourth respondent. According to learned counsel, the statutory body was not justified in going behind the marks to discover superiority or inferiority of a claimant.

4. The question is dealt with in Sub-section (1) of Section 47 of the Motor Vehicles Act (for short "the Act") and Rule 177 A of the Rules. Section 47(1) of the Act states that a R.T. A. shall, in considering an application for a stage carriage permit, have regard to the matters enumerated therein namely, interest of the public generally, advantages to the public of the service to be provided, the adequacy of other passenger transport services operating or likely to operate in the near future, publication of the scheme u/s 68(1), the benefit to any particular locality or localities likely to be afforded by the service, operation by the applicant of other transport services and the condition of the roads included in the proposed route or area. R, 177 A of the Rules lays down the guiding principles in the matter of grant, variation, suspension or cancellation of such stage carriage permits. Routes are classified as short routes, medium routes and

long routes depending on the distance covered being not more than 40 Kms., more than 40 Kms. but not more than 80 Kms. and more than 80 Kms. respectively. Sub-rule (2) contains a rule of preference in favour of Kerala State Road Transport Corporation, a co-operative society and a displaced operator. Sub-rule (3) lays down rule of preference, other things being equal, in favour of new entrants regarding short routes and in favour of medium operators (with 1 to 4 stage carriages) in regard to medium routes. Procedure is also laid down in the rules. The applicants must first be screened and those who are found to be unsuitable on the basis of principles laid down therein have to be disqualified. Unsuitability may be on account of financial instability, the past history of the applicant not being clean, trafficking in permits and lack of workshop facilities or arrangements to attend to repairs efficiently in a properly equipped workshop and lack of main office or branch office on the route to control the service. After such elimination, marks have to be assigned as laid down in the rules for assessing the difference in qualifications of the applicants. Marks have to be awarded for sector or residential qualification under A, business or technical experience in the field of stage carriage operation under B. Sub-r. (5) states that after finalising the marks, applications shall be disposed of in accordance with Sub-section (1) of Section 47 of the Act.

5. The Supreme Court had on several occasions considered the broad approach which should govern the grant of permit. One of the earlier cases is Sri Rama Vilas Service (P) Ltd. Vs. C. Chandrasekaran and Others, . The question which arose for consideration in that case related to claim put forward by a monopolist operator. Gajendragadkar J. (as he then was) observed :

"(7) There can be no doubt that in granting a permit, the appropriate authorities under the M. V. Act are required to consider the interests of the public generally u/s 47(1)(a), and in assessing the merits of an individual applicant for a permit on any route, it would be open to the appropriate authority to enquire whether the service which the individual applicant would render to the public if he is given a permit would be efficient and satisfactory or not. In dealing with this aspect of the matter, it would not be irrelevant for the appropriate authority to hold that if any applicant is or would be in the position of a monopolist if a permit was granted to him, he would be liable to neglect the interests of the public and may not be very keen on taking all steps" to keep his service in good and efficient order. Absence of any competition from another bus-operator on the route is likely to develop a feeling of complacency in the monopolist and that is a factor which the appropriate authority can certainly take into account..... (10)..... Speaking generally and in a broad way, we do not think it could be seriously denied that encouraging bus-operators who do not own a fleet of buses and discouraging monopoly on the route is consistent with the interests of the general public which is of paramount importance u/s 47(1)(a) of the Motor Vehicles Act."

6. In P. Kumaraswamy Vs. State Transport Appellate Tribunal, Madras and

Another, , the Court was dealing with applications for permit for a short route, in the context of Section 47(1) of the Act and R. 155A of the Tamil Nadu Motor Vehicles Rules, the latter being on par with R. 177A of the Rules. Dealing with the system of marks adopted by the Rules, Krishna Iyer J. observed :

"3. The system of marks under the Rules framed under the Act by the Tamil Nadu" Government prescribes the various qualifications for applicants for permits for passenger transport under the M, V. Act, Rule 155-A crystallises these considerations and describes them as guiding principles for the grant of stage carriage permits. The rule itself emphasizes what is obvious that the paramount consideration of the interest of the public, as enshrined in Section 47(1), must be given full weight while awarding permits. That means to say that the various factors set out in rule 155-A are subject to Section 47(1).....

4. There is no doubt that bus transport is calculated to benefit the public and it is in the fitness of things that the interest of the travelling public is highlighted while evaluating the relevant worth of the various claimants.

5..... Sub-rule (5)(i) of Rule 155-A states that preference shall, other things being equal, be given in the disposal of applications in respect of short routes to persons who have not held any permit for a stage carriage. Among the considerations which must weigh with the authorities entrusted with the power to grant permits, is business or technical experience in the field of motor vehicles operation. Rule 155A in Item (D), Sub-rule.(3) specifically states "two marks shall be awarded to the applicants who have business or technical experience in the road transport service as defined in Clause (a) of Section 68-A of any class of transport vehicles for a period of ten years or more".

6. The short question that, therefore, fell before the Appellate Authority was as to whether other things were equal.....

7. ..The error that has crept into the order of the Appellate Tribunal consists in thinking that the rules or guidelines could be discarded in the name of Section 47(1). Actually, Rule 155-A is in implementation of Section 47(1), but is not exhaustive of all the considerations that will prevail in a given situation. Therefore, it is that there is jurisdiction given to the Tribunal to take note of other considerations in public interest flowing out of Section 47(1). Not that the sub-rules of Rule 155-A can be discarded, but that they may be supplemented or out weighed. No(that in the name of public interest, something opposed to the Sub-rules of Rule 155 A can be done but that, within the combined. framework of Section 47(1) and Rule 155-A, there is scope for play of the jurisdiction of the Tribunal to promote public interest."

The Court came to the conclusion that "other things" are not unequal merely because one of the applicants had experience by operating lorry transport and the other had experience by operating bus transport.

7. In D.R. Venkatachalam and Others Vs. Dy. Transport Commissioner and

Others, , the Court had to consider the weightage and preference shown in the Tamil Nadu Motor Vehicles Rules to State Transport Undertakings. The Rules were held to be valid and consistent with the provisions in Section 47(1) of the Act. Krishna Iyer J. observed :

"5. The "interest of the public generally", is often times too vague and, generally, the exercise, of discretion deserves to be canalised to guide the statutory bodies and to facilitate better appreciation by the applicants of the claims that may ordinarily be considered by transport tribunals. From this angle, the Tamil Nadu State has framed rules, expressly subordinated to the paramount factor of public interest which shall weigh with tribunals when adjudging among competing claimants....."

Dealing with the role which marks have to play in the scheme of things, the Court observed :

"Marks shall guide, not govern the award. Full discretion, to some extent, canalised by the marking procedure, still vests in the Transport Authority. For, the marks, these authorities will remember, sway the exercise of judgment, not supersede it. It is conceivable that the peculiarities of a route, the calamitous performance in an area of a State transport system, the outstanding special facilities of a particular private operator or other like feature may outweigh the mechanics of marks. After all, many qualifications, advantageous to the travelling public, may be thought of, untouched by the rigid marking moulds. They are not irrelevant and may still be regarded by the tribunals. All this leads to the conclusion that marks shape but do not clinch the ultimate selection. The public is the consumer, its plenary service is the final test. Therefore, there is nothing in Rule 155A deprivatory of the discretion vested by Section 47(1)..... Moreover, the marking formula lacks flexibility.There is equity in Rule 155A, making up, as it does, for the present shortfalls in the marking system vis-a-vis a government transport service."

8. In *Sher Singh Vs. Union of India (UOI) and Others*, , the Court having upheld the validity of Section 47(1-H) of the M. V. Act which incorporates the rule of preference in favour of State transport undertakings in inter-State routes, took the view that rule of preference applies where "other things" are equal. The process has been explained thus:

"When an application for a stage carriage permit is being processed as required by Section 47, the application of the Undertaking for an inter-State route shall be examined as application oi any other private operator. Their merits and demerits must be ascertained keeping in view the requirements of (a) to (f) of Section 47(1) and after comparing the merits and demerits of both, not with the yardstick of mathematical accuracy, but other things being equal, the application of the Undertaking will have preference over others. Qualitative" and quantitative comparison on broad features of passenger transport facility such as fleet, facilities to travelling public and other relevant consideration may be undertaken

and after balancing these factors other things being equal, the application of the Undertaking shall be given preference over other applicants. Preference in this context would mean that other things generally appearing to be qualitatively and quantitatively equal though not with mathematical accuracy, statutory provision will tilt the balance in favour of the Undertaking."

9. One of the controversies in the case relates to the question whether once marks are awarded, the statutory body could go behind the marks for any purpose. A Division Bench of this Court had occasion to consider this question in *Chandramathy v. Kasaragod Bus Transport Co.* 1984 Ker LT 220. After referring to the decisions of the Supreme Court in *P. Kumaraswamy Vs. State Transport Appellate Tribunal, Madras and Another*,) and *D.R. Venkatachalam and Others Vs. Dy. Transport Commissioner and Others*, the Division Bench observed :

"The award of marks under Rule 177A does not deprive the authorities of the power to look into the factors on which the marks have been based as part of its duty u/s 47(1) to make the best choice in the interest of the public. We must however add that authorities should not normally or ordinarily go behind the marks and that such a course should be reserved for cases where other qualifications are equal. In such a situation it would be permissible for the authorities, consistent with their power and duty in the interests of the public to go behind the marks and choose the applicant who is best qualified even on the factors on which the marks are based."

10. Section 47(1) of the Act repeatedly emphasizes that the basis of the grant of a permit is interest of the public generally. The grantee must be one who is capable of providing service to the public efficiently and satisfactorily. Public interest is the guiding factor. The question is who among the applicants would be in a position to serve the public better. Considerations which should govern selection in every case are laid down in Section 47(1) of the Act. These considerations have been crystalised in the form of guiding principles in Rule 177A of the Rules. The Rule follows the provision in Section 47(1) of the Act and is in implementation of the provisions though it may not be exhaustive of all considerations that should weigh in a given situation. Every case has to be judged within the combined framework of these provisions, the statutory body having considerable discretion in making the choice. The rule lays down a system of marks and a system of preferences, both conceived with the object of working out the underlying object of Section 47(1). Both these provisions are only means to an end namely to pick out the operator who will serve the needs of the public better. Marks shall guide and not govern the grant. The rule of preference comes into play only when "other things" are equal. In matters like this, "other things" cannot be mathematically equal, they can only be more or less equal. What could be mathematically equal are only marks and not other qualifications. In regard to various qualifications, there is, in the very nature of things, bound to be some differences. It is not every data which makes qualifications or "other things" unequal. While the statutory body has jurisdiction in a given case to go behind

marks, it cannot go behind the rule of preference once the objective conditions giving rise to the rule are shown to exist.

11. The rule concedes preference for new entrants in regard to short routes and for medium operators in regard to medium routes. The need to avoid or curb monopoly is a cardinal principle subserving public interest. Monopoly, as explained by the Supreme Court in the above decisions may tend to neglect interests of the travelling public by the operator. A fleet operator may be in a better position to operate on a long route. This is not to say that a medium operator does not have the capacity to operate on a long route. Public interest requires encouragement not only to new entrants but also to medium operators. A medium operator has grown to some extent but not to the full extent, possibly. Retention of the transport system as a competitive one is necessary in public interest. Competition could be maintained and promoted only by encouraging new entrants and medium operators. In certain areas, new entrants and medium operators may not be as highly qualified as fleet owners. A meticulous examination of such qualifications would destroy the rule of preference and consequently the concept of public interest. Therefore, when the statutory body examines the question whether "other things" are equal, a meticulous examination would be contra-indicated. Marks, of course, do not govern but only guide. But marks cannot be ignored when a medium operator and a fleet operator are awarded equal marks; in the ordinary course, the rule of preference should work in favour of the medium operator. Of course, if in regard to any significant and important qualification, superiority of the fleet owner over the medium operator is of such magnitude as to make a significant difference in regard to public interest, that may make a difference. But a small difference in sector qualification or the like should not render the rule of preference inapplicable. It cannot be said that the service which a fleet owner with 64 kilometres sector qualification can render to the travelling public and the efficiency and effectiveness he can maintain in regard to the operation is so superior to the service which a medium operator with 46 kilometres sector qualification can offer and the efficiency and effectiveness which he can maintain as to lead to the conclusion that "other things" are not equal. In this situation, it can safely be said that "other things" are more or less equal. The question of equality cannot be looked at from the point of view of mathematical accuracy. If "other things" are more or less equal, that has to be accepted and the rule of preference given full play.

I find that the R.T. A. has not even adverted to the rule of preference, nor applied its mind to the relevant considerations. On the other hand, the Tribunal has adverted to all the relevant considerations and come to a conclusion. I find no ground to interfere under Article 226 of the Constitution with the decision taken by the Tribunal. O. P. is therefore dismissed but in the circumstances without costs.