(1989) 03 KL CK 0004

In the High Court Of Kerala

Case No : O.P. No. 2151 of 1989

Mg. Partner, Mis Balakrishna Transport — APPELLANT

Vs

R.T.A. Malappuram and Others — RESPONDENT

Date of Decision : 21-03-1989

Acts Referred:

Kerala Motor Vehicles Rules, 1989 — Rule 177A
Motor Vehicles Act, 1988 — Section 47

Citation : (1989) 1 KLJ 650

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : P. Ravindran and Anil Sivaraman, for the Appellant; A.N. Rajan Babu, Government Pleader and Smt. V.P. Seemanthini, for the Respondent

Final Decision : Dismissed

Judgement

K. Sreedharan, J.—First respondent, the Regional Transport Authority, invited applications for introduction of a stage carriage service on the route Milappuram-Guruvayoor at its meeting held on 20-2-1988. At that meeting the first respondent granted temporary permit for 20 days to third respondent co-operative society in respect of their vehicle, K.R.M. 688 to operate on the route. In pursuance to the notification inviting applications, the petitioner and third respondent applied for the permit. The route has a length of 87.5 Kms. The petitioner is a fleet operator having full sector qualification. It has office and place of business as also a fully equipped workshop at Guruvayoor on the route. The petitioner has experience for more than 40 years in the business. The petitioner offered a 1987 model vehicle with registration No. K.E.R. 781. According to the petitioner, third respondent society had lesser qualifications. It is only a medium operator with less than 2 years experience in the business. It has office at Malappuram. On account of the lesser qualification of third respondent, the petitioner contended that the permit should be granted to him. First respondent at its meeting held on 9-11-1988 granted the permit to third respondent preferring it on account of it being a co-operative society. That grant evidenced by Ext. P3 was challenged by the petitioner before 4th respondent, the State Transport Appellate Tribunal by filing M.V.A.A. No. 752/88. The Tribunal by Ext. P5 judgment dated 27-2-1989 dismissed the appeal. Hence this Original Petition. Learned counsel appearing for the petitioner challenges Ext. P5 judgment of the Tribunal on the ground that the preference shown to third respondent on account of it being a co-operative society is not tenable and that the third respondent should have been screened since it failed to produce income tax clearance certificate along with its application for the permit.

2. Learned Government Pleader appeared on behalf of respondents 1 and 2. Smt. Seemanthini appeared on behalf of third respondent society. They were also heard.

3. The short question that arises for consideration in this petition is whether the R.T.A. and the Tribunal were justified in preferring third respondent co-operative society to the, petitioner for grant of permit on the route Malappuram - Guruvayoor. Section 47 of the Motor Vehicles Act, hereinafter referred to as ''the Act, while dealing with the procedure in considering application for stage carriage permits mandates that other conditions being equal, application for a stage carriage permit from a co-operative society shall be given preference over applications from individual owners. The same principle is incorporated in clause (2) of Rule 177-A of the Rules framed under the Act. According to it, in granting permits, other conditions being equal an application for permit from a co-operative society shall be given preference. Thus, as per the Act and the Rules, as between a co-operative society and an individual owner, other conditions being equal, a co-operative society has to be preferred. According to the learned counsel representing the petitioner, for ascertaining whether ''other conditions are equal resort should not only be taken to the method of awarding marks as contemplated by Rule 177-A of the Rules but also to other relevant facts to find out more suitable among them. When two individual owners contest for permit and if they secure the same marks, for finding out the more suitable among them, their qualifications have to be scrutinised. That is, if they secure five marks each and one has sector qualification as well as residence place of business person having sector qualification will be preferred. If both of them are having sector qualifications as well, then model of the vehicles, offered by them will be a relevant factor. If both are offering the same model of vehicles then seating capacity may gain importance. In such a manner according to counsel, the qualification of a co-operative society vis-?-vis an individual owner will have to be examined and only thereafter, according to counsel, the provisions contained in sec. 47 of the Act and Rule 177A of the Rules can Be pressed into service for preferring co-operative society. I find it difficult to agree with this argument. If such a procedure is resorted to, it will go to nullify the provisions of the Act and the Rules referred to earlier. The scrutiny as suggested by the learned counsel if resorted to, there may not arise a situation contemplated by proviso to Section 17 (1) of the Act and Rule 177A of the Rules For finding out whether ''other conditions are equal'', the Regional Transport Authority has to

refer to the guiding principles contained in Rules 177A, viz., the method of awarding marks. It is true that the award of marks is not to govern the issue but it is only to guide the authorities It is to guide them for finding whether ''other conditions are equal''. If an individual owner and a co-operative society secure same marks as per the principles contained in Rule 177-A then the authorities entrusted with the duty to grant permit have to stop there and prefer co-operative society. They need not further make any probe as to whether individual owner or co-operative society is more qualified than the other. In the instant case, third respondent has got its place of business on the route. On account of that, they are entitled to 4 marks. They have experience for more than one year in the operation of stage carriages. Consequently, they are entitled to one more mark. This means that third respondent gets 5 marks. The petitioner has got its place of business on the route. So, they get 4 marks. They are having experience of more than one year in the operation of stage carriages. Consequently, they get another one mark. Thus, the total marks obtained by the petitioner is also 5. As between the petitioner and third respondent the former has got full sector qualification. But, according to the provisions contained in Rule 177-A they can have only either residential qualification or sector qualification which is more advantageous to them. Thus, while awarding marks they secure the same marks like third respondent. Consequently, it can safely be held that as between the petitioner and third respondent, ''other conditions being equal'' third respondent has to be preferred to the petitioner. This has been done by respondents 1 and 4. Consequently, I find no ground to interfere with their conclusions.

4. The other contention raised by the learned counsel appearing for the petitioner is that third respondent did not produce income tax clearance certificate along with the application and so their application should not have been considered by the authorities below. Third respondent in fact produced a certificate from the income tax officer. That certificate was treated as a proper certificate by the authorities below. Sufficiency of that certificate was not questioned by the petitioner. If such a challenge was made third respondent could have rectified that defect. Since, no opportunity was available to the third respondent to cure that defect, I do not find any ground to-interfere with the permit granted to them. In the circumstances detailed above. I find no ground to interfere with the permit granted to third respondent. The Original Petition fails. It is accordingly dismissed.

