
(1985) 07 KL CK 0031
In the High Court Of Kerala
Case No : W.A. No. 273 of 1985

M.P. Manikanda Kumar

APPELLANT

Vs

K. Ramakrishnan and Others

RESPONDENT

Date of Decision : 11-07-1985

Acts Referred:

Motor Vehicles Act, 1939 — Section 47, 64

Citation : AIR 1986 Ker 191

Hon'ble Judges : K. Bhaskaran, C.J.;V. Bhaskaran Nambiar, J

Bench : Division Bench

Advocate : P. Ravindran, for the Appellant;

Judgement

1. By Ext. P6 judgment dt. 26-4-1985, the 4th respondent, the State Transport Appellate Tribunal (STAT) set aside Ext. P1 proceedings of the 2nd respondent, the Regional Transport Authority (RTA) dt. 31-1-1985 granting a regular stage carriage permit to Vehicle KLL 3036 of the 1st respondent (petitioner in the O.P.) and remitted the applications of the appellant (1st respondent in the O.P.) and the 1st respondent to the 2nd respondent "for consideration afresh in accordance with law and in the light of the above observations" the reason for the remand stated being : (1) the appellant appeared to have been denied a proper hearing; and (2) his qualifications did not appear to have been properly compared with those of the 1st respondent. This order, Ext. P6, was challenged in O.P. 4965/1985 at the instance of the 1st respondent. The learned Judge by judgment dt. 31-5-1985, disposed Of the Writ Petition in the following terms :

"xxx xxx xxx xxx 3. In view of the various decisions of this Court particularly the one reported in E.I. Narayanan and Others Vs. The Regional Transport Authority, Trichur and Others, I am of the view that the said apprehension is baseless. The RTA in matters like this, cannot take into account the qualifications, the applicants acquired subsequent to the passing of the original order.

4. The RTA therefore is directed to consider and dispose of the applications for

the pucca permit (pursuance to the directions contained in Ext. P6) taking into account only the qualifications, the appellant had acquired as on the date on which the 1st respondent (sic? 2nd respondent) passed the order which was set aside and remanded by the STAT as per Ext. P6 order for a de novo consideration".

The apprehension of the 1st respondent (petitioner) to which reference is seen to have been made in para 2 of the judgment under appeal was that the RTA might take into account the qualifications acquired by the applicant after the date on which the RTA first considered the application i.e. the date on which Ext. PI was passed. .

2. Sri P. Raveendran, the counsel for the appellant, contended before us that the direction in the judgment appealed against to the RTA to consider and dispose of the application taking into account only the qualifications the applicants had acquired as on the date on which the 2nd respondent passed Ext. P1 order ran counter to the spirit of the provisions of Section 47 of the Motor Vehicles Act (M. V. Act) which emphasised the need for taking into account "the interest of the public generally, and the advantage to the public of the service to be provided" while considering the application for stage carriage permits, and the ruling of a Division Bench of this Court in P.S.N. Motors Ltd. Vs. Gangadhara Menon, laying down that there was no principle that subsequent developments should not be taken into consideration; and that events including the legislations that came to be subsequent to the institution of the proceedings had to be taken into consideration in moulding the conclusion in the case.

3. Our attention has also been drawn by Sri. Raveendran to the Full Bench decision of this Court in P.S.N. Motors Ltd. Vs. Gangadhara Menon, and to the decision of the Supreme Court in Maharashtra State Board Transport Corporation Vs. Mangrulpir Jt. Motor Service (P) Ltd., and Others, . In para 2 of the Judgments appealed against reference has been made to the Full Bench decision of this Court in E.I. Narayanan and Others Vs. The Regional Transport Authority, Trichur and Others, .

4. Now, the point for consideration is, on remand from STAT, when the RTA takes up for fresh disposal, applications for grant of regular stage carriage permits, whether the qualifications as they existed on the date on which those applications came up for consideration before the RTA originally alone, or those acquired subsequently also, would be relevant. No doubt, in appeal, in P.S.N. Motors Ltd. Vs. Gangadhara Menon, the Division Bench approved the observations of the single Bench that there was no principle that subsequent development should not be taken into consideration; and further stated that facts and events including legislations that came to be subsequent to the institution of the proceedings had to be taken into account. The Division-Bench also wondered why the qualifications-should be taken as on the date of the first order of the R.T. A, granting the permit. In our view the conclusion reached by the Division Bench in P.S.N. Motors Ltd. Vs. Gangadhara Menon, virtually stands

overruled by the decision of the Full Bench of this Court in the P.S.N. Motors Ltd. Vs. Gangadhara Menon, . In para 9 at page 448 (of Ker LT):

(at p. 342 of AIR) of the report the Full Bench has stated as follows :

"There is of course a type of subsequent event which a court of appeal has to take into account in moulding the relief to be granted: the death of a party, a change of law, AIR 1941 5 (Federal Court) , a judgment in Surinder Kumar and Others Vs. Gian Chand and Others, . This is a restricted category, and all that we need say is that neither a qualification obtained on the basis of a permit subsequently set aside in appeal nor one acquired by an applicant's endeavours during the interval between the decision of the Regional Transport Authority and the hearing before the State Transport Appellate Tribunal should be taken into account as a subsequent event which is material for the disposal of an appeal".

This indicates the types of subsequent events which could be taken account of by Courts or quasi-judicial bodies, and the types of subsequent events which they would not be justified in taking into account in moulding the relief to be granted, and qualification obtained on the basis of a permit subsequently set aside in appeal or one acquired by the applicant's endeavour during the interval between the decision of the RTA and that of the STAT, falls in the latter category, which should not be taken into account as a subsequent even which is material for the disposal of the appeal.

5. It might be argued that what was stated by the Full Bench in P.S.N. Motors Ltd. Vs. Gangadhara Menon, concerned only with the hearing of the appeal by the STAT, not to the consideration of the applications by the RTA. The case of the appellant himself is that the qualifications for determining the relative merits of the competing applicants are those they were having on the date on which the Regional Transport Authority took up the matter for consideration. The only other question is whether it makes any difference in regard to the qualifications to be taken into account where an appeal to and a remand by the S.T.A.T. had intervened. It might be said that whatever was stated by the Full Bench in the P.S.N. Motors Ltd. Vs. Gangadhara Menon, , was with reference to qualifications to be taken into account while the S.T.A.T. heard the appeal; and it was in that context it was stated that the qualifications obtained on the basis of a permit subsequently set aside in appeal or one acquired by the applicant's endeavours during the interval between the decision of the R.T.A. and the hearing before the S.T.A.T. should not be taken into account as a subsequent event which was material for the disposal of the appeal. There is no case for the appellant, nor could there be any in law, that the power of the S.T.A.T. hearing the appeal u/s 64(1)(e) of the M.V. Act in accordance with the procedure prescribed in Rules 170 and 171 of the Kerala Motor Vehicles Rules, 1961 is less than that of the original authority whose decision is challenged in the appeal. Both for the R.T.A. and the S.T.A.T. the guideline for the grant of permit is as contained in Rule 177A of the Rules. There could be no doubt that proceedings before the RTA and the STAT for the issue of permit are quasi-judicial in character. The STAT has the

power to call for or take additional evidence appearing necessary to decide the question before it, justly and correctly (Nanoo v. Pasupalan 1965 Ker LT 336; the STAT has all powers to give relief to which the appellant is found entitled C. Balakrishna Panicker Vs. State Transport Appellate Tribunal, Ernakulam and Others, and while dealing with an appeal the S.T.A.T. has the power to vary the figures fixed by the RTA u/s 47(3) (C. Balakrishna Panicker Vs. State Transport Appellate Tribunal, Ernakulam and Others, . The argument would have had force if the power to be exercised by the S.T.A.T. was with reference to the provision under S. 64A of the Act and in accordance with the provisions contained in Rule 172 of the Rules. The Full Bench of this Court in E.I. Narayanan and Others Vs. The Regional Transport Authority, Trichur and Others, at p. 119 : 1980 Ker LT 249 at p. 252 in para 6 has observed as follows:--

"It is now veil settled that the relevant point of time, with reference to which the qualifications of rival applicants for a permit should be evaluated, is the date on which the Regional/State Transport Authority takes up the subject for final consideration and not any anterior or subsequent date."

6. The decision of the Supreme Court in Maharashtra State Board Transport Corporation Vs. Mangrulpir Jt. Motor Service (P) Ltd., and Others, does not deal with the position after remand by STAT, and, therefore, does not in any way advance the argument of the appellant. The importance of this observation E.I. Narayanan and Others Vs. The Regional Transport Authority, Trichur and Others, lies in the fact that it makes it explicit that the S.T. A.T. has the same power as that of the RTA in granting or refusing permits or determining the relative merits of the application. As has been pointed out in Vypeen Transport Corporation (P) Ltd. and Others Vs. State Transport Appellate Tribunal, Trichur and Others, , the S.T.A.T. is a quasi-judicial tribunal which has to consider the applications for the stage carriages in accordance with the provisions of the Motor Vehicles Act and the rules framed under it. It is therefore difficult to appreciate the logic behind the reasoning that what was stated in Co-operative Society's case 1962 Ker LT 446 : AIR 1961 Ker 341, applies to the hearing of the appeal by the S.T.A.T., not to the considerations of the applications by the R.T.A. If, as pointed out by the Full Bench in P.S.N. Motors Ltd. Vs. Gangadhara Menon, , the qualification obtained on the basis of a permit subsequently set aside in appeal or one acquired by the applicant's endeavours during the interval between the decision of the R.T. A. and the hearing before the S.T.A.T. should not be taken into account as a subsequent event, which is material for the disposal of the appeal, how does any one of them become relevant when the R.T. A. disposes of the matter afresh after remand? The observation in para 7 of the decision in the P.S.N. Motors Ltd. Vs. Gangadhara Menon, is:--

"If the duty of the State Transport Appellate Tribunal is to decide -- as we think it is -- whether the Regional Transport Authority was wrong or not, it must naturally follow that the appellate decision must be on the basis of the facts and circumstances which formed the foundation of the order under appeal."

The foundation of the decision of the appellate order lies in the facts and circumstances available at the time of the consideration of the applications by the R.T.A. We must bear in mind that the order of the R.T.A. was set aside and the matter remanded to it by the S.T.A.T. not for the reason that the R.T.A. did not take into consideration the events subsequent to its passing of the order impugned (which was impossible also) but for not having properly considered the relative qualifications of the contesting parties as on the date on which it took up the matter for consideration. So the purpose of the remand is to enable the R.T.A. to reconsider and re-evaluate the relative qualifications of the parties as on the date on which it took up the matter earlier in which duty, in the opinion of the S.T.A.T., it had failed while passing the order which was subsequently challenged and set aside. If there was a bar for the S.T.A.T. to take into account events subsequent to the passing of the order appealed against, that bar is equally applicable to the R.T.A. while disposing of the applications pursuant to the directions contained in the remand order. Broadly speaking, this is the position in civil proceedings; and there is no valid reason for not applying this statutory principle to proceedings before the R.T.A.

7. To give the R.T.A. a wider power, to take into consideration such qualifications as are acquired after the date on which the matter was taken up for consideration by the R.T.A. at the first instance, would not only run counter to the well-accepted principles of law, but also would tend to open a flood-gate of malpractices, speculative ventures and unhealthy competitions to be indulged in by too clever and resourceful operators which should not be encouraged. The subsequent qualification would become relevant, and would be taken note of by the R.T.A. when his next turn comes in due course.

For the foregoing reasons we are of the view that the learned Judge's decision does not call for any interference; and as such, the appeal is dismissed without being admitted to file.