

(1960) 06 KL CK 0007
In the High Court Of Kerala
Case No : O.P. No. 415 of 1960

Palghat District Motor Transport Co-operative Society

APPELLANT

Vs

K.M.S. Bus Service and Others

RESPONDENT

Date of Decision : 30-06-1960

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1960) KLJ 1050

Hon'ble Judges : S. Velu Pillai, J

Bench : Single Bench

Advocate : K.P. Abraham, E.M. Jacob and K.K. Poulose, for the Appellant; V.K.K. Menon, C.S. Padmanabha Iyer and M. Ramachandran for 1st Respondent and Government Pleader For Respondents 2 to 4, for the Respondent

Final Decision : Dismissed

Judgement

Velu Pillai, J.—This is a petition under Article 226 of the Constitution, to quash the order of the State Transport Appellate Tribunal, Ernakulam, by which it cancelled on appeal, the stage carriage permit ordered in favour of the petitioner by the Regional Transport Authority, Palghat, and granted it to the first respondent. In assessing the qualifications of the several applicants for permits, the Regional Transport Authority adopted the system of marking prescribed by G.O. No. 1298 dated April 23, 1956, issued by the Government of Madras. It may be noted, that by virtue of the order of this Court in O.P. 685 of 1959, Ext. R1, the Regional Transport Authority, Palghat, was to be guided by the direction in the aforesaid Government Order. Accordingly, the Regional Transport Authority gave a total of five marks to the first respondent, which was made up of two marks for "possession of repair and maintenance facilities," one mark for "location of residence," one mark for "technical or business experience of transport of the applicant" and one mark for "special circumstances," while the petitioner was awarded a total of four and three-fourth marks, made up of one mark, one mark, three-fourth marks and two marks, for the aforesaid

qualifications respectively. Although the petitioner thus secured one-fourth of a mark less on the aggregate than the first respondent, the Regional Transport Authority in granting the permit preferred the petitioner, which is a Co-operative Society, on the strength of the proviso to Section 47(1) of the Motor Vehicles Act, 1939, which is in these terms: Provided that other conditions being equal, an application for a stage carriage permit from a co-operative society registered or deemed to have been registered under any enactment in force for the time being shall, so far as may be, be given preference over applications from individual owners.

On appeal, the Tribunal held, that under the Government Order the petitioner is not entitled to any mark for "possession of repair and maintenance facilities," because it possessed no workshop of its own, which is a necessary condition for any mark being awarded under this head of qualification; it doubted the propriety of awarding any mark to the petitioner under the heading "technical or business experience of transport of the applicant" for the reason, that the petitioner, as a Co-operative Society, has in fact no claim to such qualification, although some of its members may have it. The Tribunal further held, that the preference in favour of a Co-operative Society under the proviso to Section 47(1) had already been shown to the petitioner by awarding two marks to it, which is the maximum, under the head "special circumstances," while one mark alone was awarded to the first respondent under the same head of qualification, for other reasons. It may be observed, that "being co-operative enterprise" is treated as a "special circumstance" under that heading in the Government Order. If so, the Regional Transport Authority was not justified in showing a further preference on the same ground, that is, by preferring the petitioner, in spite of the total marks secured by it being deficient by one-fourth mark. The petitioner's learned counsel, however, contended, that the petitioner is a Co-operative Society of motor transport workers and that this additional feature is sufficient to attract the preference under the proviso to section 47(1). The proviso itself does not make any such distinction between Co-operative Societies of motor transport workers and other Co-operative Societies. In this view, the Tribunal cannot be held to have committed an error of law, much less an error apparent on the face of the record, in coming to the conclusion, that the petitioner is not entitled to a further preference by the application of the proviso in question. 2. As regards the Government Order, it has been held in *R, Abdulla Rowther v The State Transport Appellate Tribunal, Madras* AIR 1959 S.C. 896 that even if any of the directions contained in the order (Government order aforesaid) is found to have been ignored or misapplied, the applicant for a permit cannot claim any relief by way of a writ of certiorari.

It has also been held in *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*, that writs under Article 226 are

obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or

in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice,

and dealing specifically with the grant of permits under the Motor Vehicles Act, the judgment proceeded to observe, that

no one is entitled to a permit as of right even if he satisfies all the prescribed conditions. The grant of a permit is entirely within the discretion of the transport authorities and naturally depends on several circumstances which have to be taken into account..... There is.....the regular hierarchy of Administrative bodies established to deal with the regulation of Transport by means of Motor Vehicles.

The learned counsel for the petitioner attempted to bring its case within the scope of the above dictum contending, that u/s 134(2) of the Motor Vehicles Act, the Tribunal had no jurisdiction to reverse the finding of the Regional Transport Authority, and therefore it acted in excess of its jurisdiction. There is no force in this contention, for the grounds on which the Tribunal differed from the Regional Transport Authority were matters of substance, which affected the merits of the grant of permit, and did not partake of the character of mere error, omission, or irregularity in the proceedings, which Section 134(2) is intended to provide for. To accept the contention advanced on behalf of the petitioner would be, in effect, to deprive the Tribunal of the corrective jurisdiction which inheres in it, as an appellate body, and I therefore repeal the same.

I am therefore satisfied, that this is not a fit case for interference under Article 226. This petition is dismissed, no costs.