
(1965) 08 KL CK 0028
In the High Court Of Kerala
Case No : O.P. No. 1189 of 1964

Pangalan

APPELLANT

Vs

The Regional Transport Authority, Trichur and two others

RESPONDENT

Date of Decision : 06-08-1965

Acts Referred:

Citation : (1966) KLJ 837

Hon'ble Judges : P. Govindan Nair, J

Bench : Single Bench

Advocate : V. Sivaraman Nair and Inoes, for the Appellant; V.K.K. Menon, M. Ramachandran and P.A. Mohammed for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

P. Govindan Nair, J.—The writ applicant was the first applicant before the Regional Transport Authority, Trichur, for a permanent permit for a stage carriage on the route Varavoor--Chiyayaram, a distance of 23 miles. The intermediary stages of this route are Kundanoor, Wadakkancherry, Trichur and Koorkancherry. The 2nd respondent was the second applicant. The Regional Transport Authority after consideration of the claims of the various applicants--there were others also--granted the permit to the writ petitioner. This is the relevant part of the order of the Regional Transport Authority. He--(applicant No.(2)--has got residence and workshop on the route. Applicant No. (1) has got residence and workshop on the route. He has got sector qualification over 12 miles of the route. The sector qualification of applicant No. (2) is superior to that of applicant No. (1). But applicant No. (1) is a bus operator who deserves to be encouraged to become a viable unit. Moreover, at present between Kundannur and Varavoor covering a distance of 4 miles in the sector, applicant No. (2) is having a monopoly. The grant of another permit will further add to this monopoly. It was therefore decided to grant the permit to M/s Bharath Motors and to reject the applications of all the other applicants.

The State Transport Appellate Tribunal negatived these two grants. Regarding the

first the Tribunal said that an applicant should be encouraged to build up a viable unit only if he has otherwise qualifications equal to that of the other applicants. If this rule is not applied it is said, the interests of the public will suffer and regarding monopoly the State Transport Appellate Tribunal expressed the view:-- As regards the question of monopoly, this vice is attributed to the appellant by reason of his being the sole operator on a portion of the route extending to 4 miles between Kundannur and Varavoor. As I mentioned already, the entire route is 23 miles long, a sketch thereof is seen at page 115 of the file. It may be conveniently split up into four sections. The first is Varavoor--Kundannur (4 miles), the second is Kundannur--Wadakkancherry (a distance of 3 miles); the third is Wadakkancherry--Trichur (about 12 miles in length); and the last is Trichur--Chiyaram (extending to 4 miles). On the last mentioned section, namely Chiyaram--Trichur via Koorkencherry neither the appellant nor the second respondent operates any bus. So that the question of monopoly or concentration thereof does not arise between Trichur and Wadakkancherry, a large number of services operate including the State Transport undertaking. It is not shown that the appellant has got any undue concentration on this route. The second respondent too does not have pre-dominance thereon even though all the three permits held by him on the date of the present grant ply along it. The second section between Wadakkancherry and Kundannur is part of the Kunnamkulam--Wadakkancherry road operated by several transport operators including the appellant. It is not shown that the appellant occupies a pre-dominant position on this sector. It is on the remaining sector, namely, Kundannur--Varavoor that monopolistic position is attributed to the appellant. No doubt, he is the only transport operator plying on this section of the route. But it has to be noted that the two services that he operates on this sector do not run on this section exclusively, but only covers this portion as part of two route permits extending beyond both Kundannur and Varavoor. This circumstance coupled with the fact that the length of the sector comes only to four miles make it difficult to hold that the appellants otherwise superior claims to the permit for this 24 mile route could properly be overlooked on the ground of monopoly

2. Counsel on behalf of the petitioner has mainly urged three grounds before me. The first of these is that in insisting that there should be parity in qualifications before preference can be given to an applicant to enable him to build up a viable unit, reliance has been placed on the provision in a G.O. issued by the Madras Government which it had repeatedly been held had no statutory force and later struck down by the Supreme Court. This insistence according to counsel is therefore unwarranted and even illegal. Further it is said this insistence has resulted in the decision being patently erroneous. Counsel is well-founded in his contention that there is a provision in the G.O. that preference should be given only if qualifications are otherwise equal. But I am not prepared to say that the reliance on the principle is erroneous or the principle by itself is erroneous. The State Transport Appellate Tribunal does not purport to act in terms of the G.O. The Supreme Court itself has ruled and has relied on in certain cases on the

principles enunciated in the G.O. If the principles embodied in the G.O. have been relied on by the Transport Authorities, I do not think that this Court will be justified in saying that they have acted illegally or improperly or allowed themselves to have their discretion fettered by any executive direction.

3. As far as the second point urged is concerned, viz., that the obvious monopoly of the second respondent has been wrongly negated by the State Transport Appellate Tribunal, it is a well accepted principle that in these proceedings this Court will not consider either the sufficiency or adequacy of the material from which the Tribunal has drawn a certain inference. Perhaps the manner in which the question has been dealt with by the State Transport Appellate Tribunal is not very happily worded. It is quite possible that what the State Transport Appellate Tribunal wanted to say was that considering the number of passengers likely to use the vehicles of the 2nd respondent, it cannot be said that any substantial portion of them will be using only his vehicle. Such cannot be the case for it is only those who wish to travel from any point on the route Chiyaram to Wadakkancherry and wanting to go to any place between Kundannur and Varavoor, that will prefer the vehicles of the 2nd respondent. Considering the shortness of the route between Kundannur and Varavoor and the fact that a portion of the route is not on the high way, only very few passengers are likely to prefer the 2nd respondent's vehicle. I do not know whether I am justified in saying these things but there is a definite finding made by the State Transport Appellate Tribunal that it was not satisfied that there was a monopoly and I should not set aside that finding unless it is unsupportable by the materials. That is why I have ventured to state the views that I have expressed.

4. Counsel on behalf of the petitioner thirdly contended that a very material factor viz., that the writ applicant applied for the permit for a specific vehicle has not been taken into account by the State Transport Appellate Tribunal, nor was this taken into account by the Regional Transport Authority in granting the permit to the writ applicant. The 2nd respondent stated in the affidavit filed before the State Transport Appellate Tribunal that he had obtained permission to substitute the vehicle which he had mentioned in his application for permit by another vehicle, a new motor vehicle, and that has been permitted by the Regional Transport Authority. In such circumstances in this regard also the writ applicant and the second respondent, it seems to me, stood on the same footing. This being so no preference could possibly have been given to the writ applicant. So the decision in *K.M. Shanmugam, Proprietor, K.M.S. Transport, Tanjore, Madras State v. The S.R.V.S. (P) Ltd. and Others* reported in 1963 S.C. 1626, relied on by counsel on behalf of the petitioner, I think, has no application, nor am I satisfied that what the State Transport Appellate Tribunal has done is against the terms of the decision of the Supreme Court in *Sri Rama Vilas Service (P) Ltd. Vs. C. Chandrasekaran and Others*, . I dismiss this writ application but make no order as to costs.