

(1971) 07 KL CK 0001
In the High Court Of Kerala
Case No : O.P. No. 5740 of 1991

Quilon D.P.B. Operators Assn.

APPELLANT

Vs

Stat and Others

RESPONDENT

Date of Decision : 30-07-1971

Acts Referred:

Constitution of India, 1950 — Article 12
Co-operative Societies Act, 1912 — Section 2(42), 9
Penal Code, 1860 (IPC) — Section 197, 21
Road Transport Corporations Act, 1950 — Section 3

Citation : (1991) 2 KLJ 545

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : M.K. Chandramohan Das and K.K. Raziya, for the Appellant; P. Ravindran and Govt. Pleader (M.G. Gopal), for the Respondent

Final Decision : Allowed

Judgement

K. Sreedharan, J.—An important question on the interpretation of Clause (4) of section 71 of the Motor Vehicles Act 1988, hereinafter referred to as the Act arises for consideration. As per that clause a Regional Transport Authority shall not grant more than five stage carriage permits to any individual or more than ten stage carriage permits to any company, not being a State Transport Undertaking. Clause (5) of that section further states that in "computing the number of permits to be granted under sub-section 4, permits held by an applicant in the name of another person and the permits held by any company of which such applicant is a Director shall also be taken into account. Clause (5) has got an explanation added to it. As per that explanation "company" means any body corporate and includes a firm or other association of individuals. It further states that Director in relation to a firm means a partner in the turn. On a plain reading of the above provision makes it clear that an individual cannot have more than five stage carriage permit(c). Likewise a company which is a body corporate, a firm or other association of individuals cannot have more than ten

stage carriage permits. This restriction is not applicable to State Transport Undertaking. The question raised here is whether a co-operative society is entitled to have more than ten stage carriage permits. Regional Transport Authority, Kollam notified the route Keralapuram Chavara u/s 57 (2) of the Motor Vehicles Act 1939, hereinafter referred to as 1939 Act. In pursuance to that notification, the fourth respondent, a co-operative society and three others applied for the permit. Those applications were published under - section 57 (3) of the 1939 Act, inviting objection from interest operators. By the time it became ripe for consideration, the 1939 Act ceased to be in force. Applications came up for consideration before the authority at its meeting held on 7-4-1990. Fourth respondent's application was rejected. Fourth respondent challenged that decision of the second respondent before the first respondent, tribunal by moving M. V. A. A. 619/90. First respondent by Ext. P4 judgment dated 2-1-1991 took the view that the restriction regarding the number of permits contained in section 71 (4) does not apply to Co-operative Societies. In this view the decision of the Transport Authority was set aside and the authority was directed to consider the fourth respondent's application afresh. When the matter came up before the second respondent at its meeting held on 6-5-1991, application put in by the fourth respondent was sanctioned as directed by the first respondent subject to settlement of timings by the third respondent. Petitioner challenges this grant.

2. Fourth respondent filed a detailed counter affidavit. The contentions taken therein are that the petitioner has no locus standi to challenge the impugned grant and that the restriction imposed by section 71 (4) will not apply to Co-operative Societies. It is also contended that Co-operative Societies are Transport undertakings for the purpose of the Motor Vehicles Act, 1988 and so is outside the purview of the restrictions contained in section 71 (4). I shall proceed to deal with these arguments in detail.

3. Petitioner claims to be a registered association of private bus operation in Kollam district and is affiliated to the Kerala State Bus Operators Federation. Ext. P1 is a representation submitted by the petitioner to the Chairman of the second respondent. It is in the letter head of the petitioners-association. That letter head shows that the association is registered under the Societies Act with registration No. 161/14. From this it is seen that the Petitioner is a society registered under the Societies Registration Act. This fact is not disputed by the fourth respondent in the counter affidavit or at the time of the argument. In *D. S. Nakara v. Union of India*, AIR 1983 SC 330 the question whether a society registered under the Societies Registration Act 1860 has the locus standi to maintain the petition before the Supreme Court was considered. Dealing with that issue their Lordships observed:

Locus standi of third petitioner was questioned. Petitioner No. 3 is a Society registered under the Societies Registration Act of 1860. It is a non-political non-profit and voluntary organisation. Its members consist of public spirited citizens

who have taken up the cause of ventilating legitimate public problems. This "Society received a large large number of representations from old pensioners, individually unable to undertake the journey through labyrinths of legal judicial process, costly and protected, and, therefore approach id petitioner No. 3 which espoused their cause. Objects for which the third petitioner-Society was formed were not questioned. The majority decision of this Court in S.P. Gupta Vs. President of India and Others, , rules that any member of the public having sufficient interest can maintain an action for judicial redress for public injury, arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision. Third petitioner seeks to enforce rights that may be available to a large number of old infirm retiree. Therefore, its locus standi is unquestionable.

Petitioner approached this court not to protect any particular interest of the members of the Society. It has come to this court to highlight the illegality committed by the second respondent in granting permit, in violation of the statutory provision. The petitioner is, according to counsel interested in protecting the interests of the stage carriage operators. It wants to see that the provisions of the Act are strictly implemented. Since the second respondent granted the permit in violation of the statutory mandate, it be contended that petitioner is entitled to move this court. This argument appears to be well founded. According to the learned counsel representing the fourth respondent, petitioner did not file an objection in pursuance to the notification issued u/s 57 (3) of the 1939 Act. So he was debarred from raising any contention against the claim for the permit put forward by the fourth respondent. This argument would have had some force, had the application of the fourth respondent been considered under the 1939 Act. It is common case that the application which was filed under the 1939 Act was disposed of under the Act of 1988 and that the provisions of the 1988 Act controls the matter. So the absence of objection in pursuance to the notification u/s 57 (3) of the 1939 Act cannot go to disentitle the petitioner from raising the objection based on the, statutory prohibition.

4. It was then contended by the learned counsel for the fourth respondent that the petitioner did not raise any objection before the second respondent when Ext. F5 grant was made. This statement cannot be accepted because of the following circumstance. The files now made available to court by the learned Government Pleader shows that the petitioner appeared before the second respondent while it considered the fourth respondent's application for the permit by engaging the counsel. The vakalat filed by the advocate is in the files. No written objection was filed. According to the learned counsel representing the petitioner the grant was objected to. Since petitioner appeared before the second respondent through counsel whose vakalth is seen among the files, I take the view that petitioner objected to the grant. Therefore he is entitled to challenge the grant. In the above circumstances I hold that the petitioner Is having locos standi to maintain this Original Petition.

5. As stated earlier a Regional Transport Authority should not grant more than ten stage carriage permits to any company other than a stage transport undertaking. Admittedly fourth, respondent holds more than twenty permits. Fourth respondent can sustain Ext. P3 grant only if It succeeds in showing that it Is a state transport undertaking. Otherwise the grant evidenced by Ext. P5 will be against the statutory prohibition contained in section 71 (4) of the Act. Learned counsel attempted to establish that a co-operative society Is a state transport undertaking for the purpose of the Act. He argued: A co-operative society Is a body corporate. A body corporate is a Corporation. If that corporation Is controlled by the Government, then it will be a state transport undertaking as defined In section 2 (42) of the Act. Co-operative societies registered under the Kerala Co-operative Societies Act are controlled by the State Government. So fourth respondent is a state transport undertaking. In this view of the matter, the argument proceeded, the prohibition contained in section 71 (4) cannot apply to the fourth respondent.

6. In S.S. Dhanoa Vs. Municipal Corporation, Delhi and Others, Their Lordships had to consider whether a member of the Indian Administrative Service, whose services were placed at the disposal of a Co-operative Society registered under the Bombay Co-operative Societies Act, can be considered as a public servant within the meaning of CI. (12) of section 21 of the Penal Code for purposes of section 197 of the Code. There, while dealing with that issue. Their Lordships took the view that a co-operative society registered under the Co-operative Societies Act is not a statutory body because It Is not created by a statute. It is a body created by an act of a group of individuals in accordance with the provisions of a statute. In the light of this decision, it was contended, a co-operative society Is held to be not a corporation established by or under an Act. But this view has not been, according to counsel followed in a later decision. Their Lordships in Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others, after considering the above decision took the view that there Is no distinction between a body corporate and a corporation. Hence it was argued that if co-operative Societies are body corporates they are corporation. S. 9 of the Co-operative Societies Act provides that the registration of a society shall render it a body corporate. Thus it is contended that a Co-operative Society is a corporation.

7 Section 2(42) of the Act defined state transport undertaking in the following terms;

State transport undertaking mean any undertaking providing road transport service, where such undertaking is carried on by,

- (i) the Central Government or a State Government;
- (ii) any Road Transport Corporation established u/s 3 of the Road Transport Corporations Act, 1950 (64 of 1950);
- (iii) any municipality or any corporation or company owned or controlled by the Central Government or one or more State Governments, or by the Central

Government and one or more State Governments.

Sub-clause (iii) of the above clause makes a corporation controlled by Central Government or State Government a state transport undertaking. According to counsel, all Co-operative Societies registered under the Co-operative Societies Act are controlled by the State Government. Various provisions contained in Co-operative Societies Act show that" the Governmental control is all pervasive. In this view learned counsel wants this court to hold that Co-operative. Societies doing business In transport are state transport undertaking for the purpose of the Act.

7. The Governmental control over the Co-operative societies was considered by a Full Bench of this court in Bhaskaran v. Addl. Secretary, 1987 (2) K L.T. 903. This court observed:

The Co-operative societies are not created by the Co-operative Societies Act and they are not statutory bodies. They are only functioning in accordance with the provisions of the Act. These institutions would have legal existence even if the Co-operative Societies Act was not in force. Moreover, the Government have no shares in the Co-operative Societies. There is no deep and pervasive State Control. The management of the societies does not vest in the Government or in the representatives of the Government. The management is under the effective control of a committee directed by the members of the societies. The statutory regulation or restriction in the functioning of the societies is not an imprint of State under Article 12

From this authoritative statement of law, I have no hesitation in holding that co-operative societies are not corporations controlled by the State Government. Consequently they are not state transport undertaking.

8. Clause (3) of section 71 gives power to Central Government to limit number of stage carriages generally or of any specified type operating in city route in towns with a population of not less than five lakhs by fining notification, If such a limit It fixed sub-clause (b) of that clause states that the Government of the State shall reserve in the State certain percentage of stage carriage permits for scheduled castes and the scheduled tribes. Sub-clause (c) allows the Regional Transport Authorities to reserve such number of permits for scheduled castes and the scheduled tribes, from out of the number reserved by the State under sub-clause (b). Sub-clause (d) further states that the Regional Transport Authority after reserving such number of permits for scheduled castes and scheduled tribes as provided by sub-clause (c) shall in considering an application for the permit, have regard to the following matters, namely, financial stability of the applicant, satisfactory performance as a stage carriage operator including payment of tax if the applicant is or has been an operator of stage carriage service and such, other mailers as may be prescribed by the State Government That sub-clause contains a proviso. As per that proviso when other conditions being equal, preference shall be given to applications for permits from stage carriage undertakings and

then to co-operative societies registered or deemed to have been registered under any enactment in force. From this provision it is abundantly clear that the legislature was aware of the existence of the co-operative societies in contradiction to state transport undertaking. If co-operative societies are by themselves state transport undertaking, the above proviso will be meaningless. Legislature cannot be presumed to have used the language without knowing its meaning. Therefore I have no hesitation in holding that co-operative societies registered under the Kerala Co-operative Societies Act 1969, by no stretch of imagination can be treated as state transport undertakings as defined in the Act. The distinction between state transport undertaking and co-operative society is recognised by the legislature in the very same section, namely section 71. So the co-operative societies are outside the definition of state transport undertaking. Co-operative societies can be considered as association, of individuals only. Such associations of individuals come within the mischief of section 71 (4) of the Act. The contrary view taken by the first respondent in Ext. P4 judgment is unsustainable. If that approach is adopted, this court will be re-writing the section. This court is not to resort to such a course. Therefore, I quash Ext. P4 judgment: The grant of the permit in pursuance to that judgment should also be set at naught because it is conceded before me that the fourth respondent is having more than ten stage carriage permits fixed u/s 71 (4) of the Act. Therefore Ext. P5 grant is also set aside.

Original Petition is allowed in the above terms.