
(1982) 07 MAD CK 0024
In the Madras High Court
Case No : W.A. No. 700 of 1979

R. Indira

APPELLANT

Vs

Regional Transport Authority and Another

RESPONDENT

Date of Decision : 28-07-1982

Acts Referred:

Motor Vehicles Act, 1939 — Section 47(3), 57(2), 64(1)

Citation : AIR 1983 Mad 380 : (1983) ILR (Mad) 217

Hon'ble Judges : Sengottuvelan, J;Ramanujam, J

Bench : Division Bench

Advocate : V.P. Raman, for V.T. Gopalan and Radhagopalan, for the Appellant; A. Sivaraj, for Govt. Pleader, V. Manivannan and M.N. Rangachari, for the Respondent

Judgement

Ramanujam, J.—The appellant herein is a stage carriage operator in South Arcot District. The Regional Transport Authority, South Arcot at Cuddalore, the first respondent hearing invited applications, under S. 57 (2) of the Motor Vehicles Act (hereinafter referred to as the Act) for the grant of a stage carriage permit in respect of one bus to ply on the town service route Panrutti to Arasur (via) Gandhi Road, Padupettai and Anathur with independent shuttle trips between Panrutti and Akkadavalli (via) Gandhi Road, Pudupet, Chinnapet and Thiruthuraiyur. The appellant and respondents 2 and 3 herein and five others applied for the grant of the permit. All the applications were notified under S. 57 (3) of the Act, and they were taken up for hearing on 26-4-1979. After hearing, orders were served. The orders were passed on 28-8-1979, granting two permits on the route instead of one as notified by the 1st respondent as set out in his Order is as follows:-

"Now, I find that traffic potentiality has increased. The traffic survey conducted by the Government has revealed that one bus is required to serve Akkadavalli which is at present unserved. As such I feel that by the introduction of one town service alone on this route which links both Akkadavalli and Arasur to Panrutti

was not possible to manage the traffic offering on this route.

Accordingly two applicants have to be selected among the above said 8 applicants for awarding these two permits." As against the grant of the said two permits, the appellant, who is one of the unsuccessful applicants, filed W. P. No. 4646 of 1979 mainly contending that the order of the 1st respondent dated 28-8-1979 is illegal in that, the 1st respondent who should have decided about the increase in the number of stage carriages before calling for applications u/s 57(2) has actually done so after calling 57 (2) and the notification u/s 57 (3) and after the actual hearing had been completed.

2. The writ Petition was resisted by the respondents contending that it is not incumbent on the 1st respondent to decide about the number of buses before calling for applications u/s 57 (2), that having regard to the time lag between the inviting of the applications and the hearing u/s 57 (2), the public interest may warrant the increase of a stage carriage on a particular route, and therefore, the 1st respondent can decide about the number of stage carriages u/s 47 (3) even after the hearing of these applications had been notified under S. 57 (3) and also after the hearing of these applications and that it is not necessary that before the notification under S. 57 (3), the actual number of stage carriages must be fixed. It was contended by the respondents that in any event the appellant is not an aggrieved person as she is not likely to be affected by the increase in the number of stage carriages from one to two, and that the affidavit in support of the writ petition also does not show any justifiable grievance, and therefore, even assuming that the grant of two permits when the hearing was in relation to the grant of one permit is illegal, the illegality cannot be questioned by the appellant who cannot be said to be a person aggrieved.

3. Two questions arose for consideration in the writ petition, namely, (1) what is the stage at which the Regional Transport Authority, the 1st respondent, has to fix the limit relating to the number of stage carriages? and (2) whether the appellant is an aggrieved person at whose instance the grants made in favour of respondents 2 and 3 could be interfered with?

4. Mohan J. before whom the writ petition came up for final hearing. after referring to the decision of the Supreme Court in Mohd. Ibrahim, etc. Vs. The State Transport Appellate Tribunal, Madras, etc., held that it is obligatory on the part of the Regional Transport Authority to fix the number of buses before the notification under S. 57 (2). On the second question, it was held that the appellant is not an aggrieved person Consequently, the writ petition came to be dismissed on the ground that the illegality cannot be interfered with at the instance of a person who cannot in any manner be considered as an aggrieved person. The above writ appeal is directed against the said decision of Mohan. J.

5. Before us, the learned counsel for the appellant contends that the decision of the Supreme Court referred to above is a clear authority for the proposition that it is obligatory on the part of the Regional Transport Authority to fix the number

of buses before the notification is issued under S. 57 (2) of the Act calling matter. The learned counsel for the appellant would however strongly question the finding of the learned Judge that the appellant is not an aggrieved person and submits that the decision of the same learned Judge in Writ Petition Nos. 2154 and 2168 to 2171 of 1979 batch is directly in point and it runs counter to the view taken by him in this case.

6. The learned counsel for the respondents seek to question the view taken by the learned Judge that it is obligatory on the part of the Regional Transport Authority to fix the number of the buses under S. 47 (3) before the applications are called for under S. 57 (2). However, after hearing the counsel of both sides as to the stage at which the Regional Transport Authority has to fix the number of buses u/s 47 (3) we feel that the decision of the Supreme Court in Mohd. Ibrahim, etc. Vs. The State Transport Appellate Tribunal, Madras, etc., referred to above clearly indicates that the fixation of number of buses under S. 47 (3) should be before application are called for under S. 57 (2) as had been held by the learned single Judge After referring to its own decision in Abdul Mateen's case (1963) 3 SCR 532 AIR 1963 SC 64: M/s. Jaya Ram Motor Services case (Civil Appeal No. 95 of 1965 decided on 27-10-1967) and R. Obliswami Naidu Vs. The Additional State Transport Appellate Tribunal, Madras and Others, , the Supreme Court called out two propositions therefrom which are as follows (at pp. 1549-50):-

"(1) the Regional Transport Authority should fix the limit of number of stage carriage permits under S. 47 (3) of the Act and after having done so the Regional Transport Authority will consider the applications for grant and representations in connection therewith in accordance with the procedure laid down in S. 57 of the Act."

"(2) When a new route is opened for the first. time and an advertisement is issued calling for applications for such a new route specifying the number of vacancies for it, it would be reasonable to hold that the number of vehicles is specified as the limit decided upon by the Regional Transport Authority." And proceeded o state

"We are of opinion that if from the records of the Regional Transport Authority it could be spelt out that the Regional Transport Authority fixed the limit of number of permits for stage carriages before the Regional Transport Authority considered the applications and representations for grant of permit, the Regional Transport Authority then complied with the provision of the statute." The Supreme Court was of the view that the limit could not be fixed at the time of consideration of applications because thereby public interest might not gain the dominant consideration and on the contrary the decision of the Regional Transport Authority might be influenced by personal consideration of or predilection for the applicants, and therefore there should not be any room for elasticity of the number of permits at the time of consideration of applications for the grant that in cases where applications are notified under S. 57 (2) the decision upon the

limit of number of buses should be taken before the applications are called for but in other cases, before applications for grant of permits are published under S. 57 (3) to enable persons to make representation and that the central idea is that applications and those who will make representations should all know the limit of number of permits to be granted in order to ensure free and fair competition. Having regard to the above decision of the Supreme Court, we are in entire agreement with the view taken by the learned single Judge that as the fixation of limit of buses in this case was long after the hearing of the applications notified under S. 57 (3), the impugned order could not be legally sustained.

6-A. However, the learned single Judge has chosen to dismiss the appellant's writ petition on the ground that she is not an aggrieved person. After a due consideration of the matter, we are not inclined to agree that the appellant is not an aggrieved person. The said learned Judge, while disposing of W. P. No. 2154 of 1979 of batch (Sri Ranganathan Chettiar Motor Service Usilampatti Madurai represented by Partner S. Bose v. R. M. Kanniathal Achi Proprietrix Kanniathal Transports Periyakulam) has in fact held that person like the appellant are aggrieved persons and the said decision has been strongly relied on by the learned counsel for the appellant. In that case, the Regional Transport Authority had called for applications for the grant of one permit on the route Periyakulam to Varuseinadu (via) Vaigai Dam and Andipatti. The writ petitioners who was operating three stage carriages and one spare bus on the route Madurai to Varussinadu did not file any application nor did he file any representations. The hearing of the applications took place on 21-4-1979 and at that time all the applications proceeded on the basis that the applications were called for in respect of one permit. But ultimately the Regional Transport Authority passed an order granting five permits. That order was challenged by the writ petitioner even though he neither filed any application nor made any representation in answer to the notifications u/s 57 (3). A question arose whether he could challenge the validity of the grants made Mohan J. having held that the grant was without jurisdiction relying on the decision of the Supreme Court in Mohd. Ibrahim, etc. Vs. The State Transport Appellate Tribunal, Madras, etc., proceeded to hold that the writ petitioner was an aggrieved person, because if there was an earlier notification increasing the number of permits to be granted he would have put forward his objections u/s 47 (1) (A). (B). (D). (E). and (F) which the Regional Transport Authority is bound to consider at the time of hearing of the applications. When the appellant relied on the said decision of his Mohan J. felt that the said decision does not decide the issue as to whether the petitioner is an aggrieved person or not. We are of the view that the decision of Mohan. J. in W. P. No. 2154 of 1979 batch (Sri Ranganathan Chettiar Motor Service Usilampatti Madurai represented by partner S. Bose v. R. M. Kanniathal Achi Proprietrix Kanniathal Transport Periyakulam) covers this case. We are in entire agreement with the said decision of Mohan. J. in W. P. No. 2154 of 1979 batch holding that person. It is not in dispute in this case that even at the time of hearing of the

applications called for u/s 57 (2) or notified under S. 57 (3), the applicants or other objection had not been informed that the limit of buses is going to be fixed at 2 instead of 1. It is not in dispute that the petitioner is one of the applicants for the one permit notified. If she had known that two permits are going to be issued she would have applied for two. As pointed out by Supreme Court, the central idea is that applicants and those who will make representations, should all know the limit of number of permits to be granted in order to ensure free and fair competition. As a matter of fact, if the limit of number of permits had been fixed at 2 even before the applications were notified u/s 57 (3), not only the appellant but also other persons might have applied for the other permit. In so far as two permits came to be granted when applications were called for in respect of only one permit. the appellant who is an applicant is really aggrieved, in that, if she had known that two permits are to be granted, she would have applied for the additional permit or filed her objections to the same. Therefore, we hold that the appellant was an aggrieved person and he is entitled to challenge the grant made in this case.

7. In view of our finding that the grant of two permits as against the one notified would constitute a statutory violation, the grant of two permits in favour of respondents 2 and 3 should be set aside. The writ appeal and the writ petition are therefore, allowed and the impugned order of the 1st respondent dated 28-8-1979 is quashed. There will, however, be no order as to costs.

8. Till the first respondent takes steps to reconsider the question of grant of permits for the route in question, it is open to him to maintain the transport service on the said route by issuing temporary permits so as to see that public interest does not suffer.

9. Petition allowed.