

**(1963) 08 MAD CK 0033**

**In the Madras High Court**

**Case No : Writ Appeals No"s. 88 and 89 of 1962**

R. Varadarajan

APPELLANT

Vs

R.B. Sundaram and Others

RESPONDENT

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**Date of Decision :** 01-08-1963

**Acts Referred:**

**Citation :** (1964) ILR (Mad) 699

**Hon'ble Judges :** S. Ramachandra Ayyar, C.J; Ramamurti, J

**Bench :** Division Bench

**Advocate :** T. Chengalvaroyan, for the Appellant; V. Ramaswami, Additional Government Pleader, M.N. Rangachari, S. Palaniswami and K. Thirumalai, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

S. Ramachandra Ayyar, C.J.—These appeals arise from the judgment of Srinivasan J., quashing the order of the State Transport Appellate Tribunal in a matter concerning the grant of stage carriage permit between Vazhavachanur and Tiruvannamalai, a distance of about fourteen miles. Although there were forty applicants for the permit before the Regional Transport Authority, the route being a short one, it was decided to grant the permit to new entrants. The application of that rule, and the elimination of those who did not produce income tax clearance certificate and those otherwise found unfit, resulted in the choice being restricted to four persons, viz., Natarajan, Sundaram, Krishna Pillai and Varadarajan. Marks were then allotted. The Regional Transport Authority, after taking into account certain further matters, finally granted the permit to Sundaram. A number of appeals were filed against that order. The State Transport Appellate Tribunal, with its usual care, analysed meticulously the qualifications of the various operators for the grant of the permit, and ultimately came to the conclusion that the final choice should be between Krishna Pillai and Varadarajan, both of them having secured equal number of marks. It then proceeded to observe:

It will now be seen from the above review that, among the new entrants, the two persons who have secured half a mark for experience are the fourth Appellant, Krishna Pillai, and the sixth Appellant, Sri R. Varadarajan. In addition, Sri Varadarajan has experience as lorry owner. of the two persons, I feel that he has better claims, particularly as he has been very earnest in trying for a permit for a number of times, according to his Counsel, he has been trying thirteen times. Any day, his claims are superior to the claims of the Respondent on the question of experience.... But the question of experience in any day more important and among the new entrants the best available is Sri R. Varadarajan.... I have compared the claims of Sri R. Varadarajan and the claims of the existing operators, and, on the principles indicated in prior cases, I feel that the permit in this case should go to the new entrant Sri R. Varadarajan.

The permit was accordingly granted to that operator. This order of the State Transport Appellate Tribunal has been quashed by Srinivasan, J., when he was moved to do so by Natarajan and Sundaram.

2. There can be little doubt that the choice of Varadarajan by the Appellate Tribunal was on the basis of his additional experience in having run a mechanised transport services, viz., a lorry, a qualification which his rival did not possess. This will be clear from the portions of the order which we have *Italicised*. The Tribunal, has, no doubt, also observed that it felt that Varadarajan had a better claim, for the particular reason that he had been very earnest in securing a stage carriage permit and had met with disappointment thirteen times. But, in our opinion, that observation can amount to nothing more than the expression of satisfaction by a judicial authority that its conclusion otherwise reached conformed to equity and justice. Indeed, the conclusion that followed shows beyond doubt that the superiority of Varadarajan was because of his qualifications, and not because he had failed previously to secure a permit for himself. Srinivasan, J., took the view that one of the main considerations which induced the Tribunal to grant the permit was his inability to secure one on previous occasions, and, that being an irrelevant consideration, to decide the matter in issue, the entire order should be held to be vitiated. We are unable with respect to share that opinion. As we said, that consideration could not be said to have entered the mind of the Tribunal as a factor in the choice of Varadarajan as to it expressly relies on the principles laid down in other cases. It is an expression of satisfaction, and nothing more though it might be that it has not been very happily expressed. Further we are by no means convinced that, where other things are equal, a consideration that a deserving applicant, for no fault of his own, failed to get a permit on previous occasions should be regarded as wholly irrelevant. Tribunals are human institutions and a choice made on principles of equity and justice, so long as they do not run counter to any statutory direction or rules of evidence or propriety, is to be welcomed rather than deprecated. We are, therefore, of opinion that there is no justification for the learned Judge to set aside the order of the State Transport Appellate Tribunal, which was completely within its jurisdiction and which had the added

merit of doing justice between the parties. The appeals succeed and will be allowed with costs both here and before the learned Judge.