

(1964) 09 MAD CK 0043
In the Madras High Court
Case No : Writ Appeal No. 127 of 1963

Rahim Transport (Pvt.) Ltd., Periyakulam	APPELLANT
Vs	
The State Transport Appellate Tribunal, Madras and Another	RESPONDENT

Date of Decision : 14-09-1964

Acts Referred:

Motor Vehicles Act, 1988 — Section 47(1), 57, 57(2), 57(3), 57(4)

Citation : AIR 1966 Mad 360 : (1965) ILR (Mad) 256

Hon'ble Judges : Natesan, J;Anantanarayanan, J

Bench : Division Bench

Judgement

Anantanarayanan, J.—The appeal is instituted by Madras Rahim Transport (P) Ltd. from the judgment of Veeraswami J, in W.P. 607 of

1961, a proceeding dealt with by the learned Judge in conjunction with two other related proceedings; as far as W.P. 607 of 1961 is concerned,

the issue in controversy was the grant of a stage carriage permit in favour of Messrs Southern and Rajamani Transport (P) Ltd, (Second

respondent) for the route Dindigul to Gumbum, via Sembatty, Batlagundu, Perikulam, Theni etc. As the appeal has been argued and pressed

before us, two grounds are involved. The first is, does the impugned order of the State Transport Appellate Tribunal, granting the permit to the

second respondent, suffer from the constraining influence of G.O. Ms. 1298 (Home) dated 28-4-1956, or the later G.O. No. 2265 (Home) dated

9-8-1958, upon any aspect of the actual decision?

If it does, the judgment of the State Transport Appellate Tribunal is certainly vitiated, in the light of the recent judgment of the Supreme Court in B.

Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others, and two Bench decisions of this court in WA 74 of 1964: (AIR 1965 Mad

473), Natesan Transport (P) Ltd v. Tanjore Motor Trade (P) Ltd. Tanjore, and W.A. No. 6 of 1963, S. Venugopal Chettiar v. Syed Usman

Bros, Jupiter Motor Service, Tindivanam (Mad); a writ of certiorari quashing the order of grant will, therefore, have to issue upon this single

sufficing ground, and the matter will have to be released for fresh determination by the Tribunal, unhampered by the compulsive force of the

administrative instructions in question. The second ground is peculiar to the present proceeding, and of some importance. It is argued before us

that, even if the constraining influence of the Government orders be conceded, upon one aspect of the decision, such a ground itself will be

available to the appellant, only if the appellant can establish that he is not merely an applicant for the permit, aggrieved by the refusal of the Tribunal

to grant the permit in his favour under S. 64(1)(a) of the Motor Vehicles Act, but is also a party who objected to the grant of the permit to the

second respondent, and hence entitled to agitate that matter within the scope of S. 64(1)(f) of the Act.

In other words, it is conceded that the appellant might come within the scope of S. 64(1)(a) is a rival applicant, but it is disputed that the appellant

can raise any ground of objection to the grant of the permit to the second respondent within the scope of S. 64(1)(f) which, according to the

contention of the learned counsel for the second respondent (Sri Kumaramangalam) does not apply to the case of the appellant, on the facts. The

distinction between these two sub-sections of S. 64 has been the subject of certain decisions. Those decisions have also been canvassed, and it is

necessary to elucidate this problem, as it is the central point involved in the appeal.

(2) When we peruse the order of the State Transport Appellate Tribunal it becomes at once manifest that that Tribunal, first addressed itself to the

question whether the appellant (Messrs. Rahim Transport (P) Ltd.), ought to be excluded, or otherwise, upon the criterion of equality of

opportunity. The facts here are not particularly in dispute, and we need not set them forth at any length here. But, after making a passing reference

to both G.O. 1298 (Home) dated 28-4-1956 and G.O. Ms. 2265 dated 9-8-1958, the Tribunal proceeds to discuss the principles governing

equality of opportunity, as enunciated in Raman and Raman Ltd. Vs. The State of Madras and Others, and then the Tribunal proceeds to exclude

Messrs. Rahim Transports (P) Ltd, (appellant), because of another permit given for an almost equally lengthy route, at the same sitting of the

Regional Transport authority. The Tribunal further proceeds to consider the cases of the other applicants, including the second respondent, the

ultimate grantee. On this earlier or first part of the order, that is, the exclusion, it is impossible to contend that the constraining influence of two

Government Orders, or either of them, is anywhere evident.

There is the citation of the Government Orders, but a bare citation, as we have laid it down elsewhere, cannot be tantamount to proof of a

constraining or compelling influence. We are not now proceeding into the merits of the exclusion of the appellant firm, on an application of the

criterion of equality of opportunity. It is sufficient for us to observe that, since the constraining influence of the Government Orders is not to be

detected in this part of the judgment, and actually the exclusion proceeds upon a different ground altogether, which is relevant to S. 47(1) of the

Act, we are passing on to the second aspect argued, namely, whether the preference of the second respondent as the grantee is vitiated by the

constraining influence of the Government Orders.

(3) On this aspect, it is sufficient for us to observe that the system of marks adumbrated in the Government Order was applied and that the permit

was ultimately granted to Messrs. Southern and Rajamani Transport (P) Ltd, the second respondent, on an application of the system of marks.

That is exclusively derived from the Government Orders, and there can be no doubt that the constraining influence of the orders contributed

directly to the actual grant. That being the case, it would follow that a writ will have to issue, quashing the grant of the permit, and releasing the

proceedings for further determination, as we earlier pointed out.

(4) Ordinarily, that would be the end of the matter. But learned counsel for the second respondent (Sri Kumaramangalam) has strenuously urged

that, when it is not the exclusion of the appellant as an applicant under S. 64(1) (a), which is in question, the appellant can raise any ground of

objection to the grant of the permit to the second respondent, only if he is entitled to do so under S. 64(1)(f) of the Act. According to the second

respondent, the appellant is not a person "who, having opposed the grant of a permit, is aggrieved by the grant thereof", Sec. 64(1)(f) does not

apply to his case, and he cannot rely upon the constraining influence of the Government Orders as affecting this aspect of the decision of the Tribunal.

(5) This question necessarily involves the further question, what is the true relation between S. 64(1)(a) and S. 64(1)(f) in the context of the procedure enacted in S. 57 of the Act? As Sec. 57(2) states, where the Regional Transport Authority decides upon the grant of a stage carriage permit for the route, he will appoint a date within which such applications are to be received, and this is different from the procedure under which the parties themselves apply, not less than six weeks before the date on which the permit is to take effect, under the earlier part of Sec.57(2) of the Act. After this, under S.57(3) of the Act, the applications are to be made available for inspection, and to be published in such manner that representations in connection with them may be received by the authority. Obviously, the representation may either be by a fellow applicant objecting to the grant of the stage carriage permit to a particular applicant, or may equally be by a person already providing transport facilities, who is himself not an applicant, but who objects to the grant of the permit altogether, vide S. 64(1)(f).

Under Sec. 57(4) the representation is to be in writing made before the appointed date, and a copy has to be furnished to the party concerned. On the facts of the present case, the matter is within a very narrow compass. Messrs Rahim Transport (P) Ltd, not merely applied, but also later filed a representation, copy of which was duly served upon the ultimate grantee (second respondent). The question is not this; but whether that representation contained an objection to the grant of the permit to the second respondent, thus entitling the appellant to raise the issue now. That part of the representation, which has been relied upon as constituting that objection, is in the following terms:

Periyakulam which is almost in the middle of the said route is our headquarters and we have a full-fledged and well-staffed office (Phone No. 2 and 2-A) at this place. We are the only applicant who is having this special advantage of having his headquarters in the middle of the route and hence, we are in a better position to attend to this service on either side.

(6) The matter is, of course, not bare of authority, and it appears to us to be

evidence from the decisions that the following three positions, all of them, are equally possible. Firstly a party might be an applicant, who made no representation of any kind, which could be substantially held to amount to an objection to the grant of the permit to another. A party might have filed no representation at all, under S. 57(3) and (4) of the Act, and might have contended himself with applying, in the first instance, depending on his own merits. Such a party, obviously, would come within the scope of S. 64(1)(a) of the Act, if the authority declines to grant the permit to him, by making the grant, instead, to another. Sec 64(1)(f) of the Act will not apply to his case. On the contrary, the party might be a local authority or association or a person providing transport facilities, who did not himself apply for the permit at all, but who merely filed a representation opposing the grant of the permit to another, or to others. Conceivably, the party might have objected to the grant of the permit to any one, in the absolute sense. Such a party would come within the scope of Sec. 64(1)(f) of the Act, but not under S. 64(1)(a). Thirdly, a party might both have applied, and filed a representation objecting to the grant of permit to another, or to others. Such a party would be entitled to agitate his grievance both under Sec. 64(1)(a) and under S. 64(1)(f) of the Act.

(7) That this is the true-position, and that the two sub-sections are really disjunctive and apply to different situations, appears to be irrefutable upon the available decisions. The first that may be referred to is *S. Gopala Reddi Vs. Regional Transport Authority, North Arcot and Others*, , a judgment of Rajamannar C. J. and Rajagopala Aiyangar J. which was later approved by the Supreme Court. The point on which the appeal filed by the objector had been dismissed, was that no appeal lay against an order merely granting the renewal of a permit. The learned Judge observed:

The appeal by the appellant was against what we have referred to above as a combined order which disposed of simultaneously the application by the fourth respondent for a renewal of the permit in his favour and the application by the appellant for the grant of a permit. The applications were in effect applications for the grant of a permit, and on that route, only one permit could be granted. The grant of a permit to one would automatically mean the refusal of a permit to the other. The appeal was, in our opinion, perfectly competent as an appeal against the order of the

Regional Transport Authority, refusing to grant a permit. The fact that such an appeal involved an attack on the order granting a renewal of a permit to the fourth respondent would not prevent the appeal being what it was, viz, an appeal against the refusal to grant a permit to the appellant.

(8) The next important decision is Nadar Transports Tiruchirapalli Vs. The State of Madras and Others, . In this Bench decision of Satyanarayana

Rao and Rajagopalan JJ. there are certain pertinent observations on the respective spheres of S. 64(1)(a) and S. 64(1)(f) of the Act. The learned

Judges observed:--

Sec. 64, sub-sec. (a) and (f) are intended, in our opinion, to apply to different situations. Sub-sec. (a) is confined only to cases where a person is

aggrieved by the refusal of the Regional Transport Authority to grant a permit to him or is aggrieved by any condition attached to a permit granted

to him. There may be a person who, while applying for the grant of a permit for himself has objected to the grant of a permit to the other. In such a

case, if the permit is refused to him, he would fulfil the conditions of both sub-secs. (a) and (f). There may be a person, who, thought he had not

applied for a permit to himself, was a person who provided transport facilities and opposed the grant of a permit to another, and if the permit is

granted to the other, notwithstanding that he did not apply for a permit, he would be entitled to prefer an appeal against the order under sub-sec.

(f), though he would not answer the description in sub-sec. (a) as a person aggrieved by the refusal of the Regional Transport Authority to grant a

permit.....A person without filing any written representation objecting to the grant of a permit to another, might formally object to the grant of a

permit, and even such a person, if he satisfies the other requirements that he is a person providing transport facilities, might possibly have a right of

appeal". The matter has been finally clarified by the Supreme Court in Ram Gopal Vs. Anant Prasad and Another, . It is not necessary to set forth

the facts of that case here, for, we rely upon that authority, in the present context, for the following propositions appearing in paragraph 12 (page

854) which will be sufficient:

We are unable to agree that in an appeal which is competent under Clause (a) of the section, the order renewing or granting a permit cannot be

set aside unless the case was such that an appeal under Clause (f) would have been also competent. So to hold would result in making the right of appeal given by Clause (a) wholly infructuous in those cases where no relief can be given in the appeal except by setting aside the order granting or renewing a permit, for example, where there was only one permit to grant as in the present cases. Such an interpretation has to be rejected. It is based on Clause (f). But this clause cannot be construed in a manner so as to render infructuous another clause in the same section. Nor do we find anything in Clause (f) to justify such a construction. The different clauses in the section deal with different situations. Each is independent of the others. Clause (f) deals with a case, where an objection had been filed against the fresh grant or the renewal of a permit but the permit had nonetheless been granted or renewed. The clause gives the objector a right of appeal against the result of the rejection of his objection if he is one of the persons mentioned in it. The clause gives him that right irrespective of the fact whether he has a right of appeal under any of the other clauses or not.

(9) Those observations, we think, render it crystal clear that, a person seeking to avail himself of the right under S. 64(1)(f), might either be an objector within the scope of that sub-clause alone, who has not applied for the permit at all, or be an objector who also himself applied, and thus has a dual redress both under Sec. 64(1)(a) and under Sec. 64(1)(f) of the Act. Of course, if he is merely an applicant who never made any representation and has not urged his objection, his rights would have to be limited to Sec. 64(1)(a); even here, in order to render him redress, it may be necessary to set aside the grant of a stage carriage permit to another, for that grant itself implies that his application for the permit has been declined. In the present case, the argument is that there has been no objection to grant of permit to another by the appellant in his representation. According to Sri Kumaramangalam, such an objection must relate to some inherent defect in the application of the other, which would amount to a disqualification, or a ground that the permit for the stage carriage route itself need not be granted. But, on a careful consideration of the principle, we are unable to agree.

To agree to any such restrictive interpretation would, in our opinion, reduce the

right under Sec. 64(1)(f) to a matter of mere semantics; that is to say; where a written representation has been filed, the question would be whether the phraseology of a particular item of representation is an objection, or is merely a ground of preference. The true test, we think, is, whether the concerned item of representation substantially involves an objection to the grant of the permit to any other applicant, or to the others; if it does, the right under Sec. 64(1)(f) could be invoked, and it can never be a matter of mere form which decides the issue. In the present case, it has to be noted that, in his written representation, the appellant did urge that all the other applicants lacked one particular disqualification which, according to him, was essential for the proper discharge of the responsibilities of the possession of this permit, namely, a headquarters office in the middle of the route. The question is not whether this is really a sine qua non for the grant of the permit, or otherwise. The point is that the appellant contended that no other applicant had this facility, and that the lack of it amounted to a relative disqualification.

In substance, that was an objection levelled against the grant of the permit to any of the other applicants. We, therefore, hold that the appellant was entitled to urge his ground within the ambit of S. 64(1)(f) of the Act. There can be no dispute that the grant in favour of the second respondent was vitiated by the constraining influence of the impugned Government Orders. It follows that the appellant is entitled to contend that a writ of certiorari should issue quashing that grant and that the matter should be released for fresh determination by the State Transport Appellate Tribunal. We direct accordingly.

(10) We may briefly note that another point has been urged by the learned counsel for the second respondent (Sri Kumaramangalam). This is that, in any event, the exclusion of the appellant cannot be affected, with the consequence that this part of the order of the State Transport Appellate Tribunal must be considered to have become final. Learned counsel cites, in this context, the judgment of the Supreme Court in T.C. Basappa Vs.

T. Nagappa and Another, on the true scope of a writ of certiorari; he also relies on the judgment of Ramachandra Iyer, J (as he then was) in

Issardas Somamal Lulla Vs. The Collector of Madras and Additional Custodian of Evacuee Property, Madras, . Reliance is also placed upon an

unreported decision of Rajagopala Aiyangar, J in W.P. 274 and 523 of 1957 (W.P. 274 of 1957 Challah v. Kannappa. W.P. 523 of 1957

Kannappa v. S.T.A.T.) and in particular, upon a passage therein emphasising that where the issue of the writ of certiorari is based on the error of

law apparent in one finding, and the proceeding is released for fresh determination by the Tribunal, the Tribunal might not be at liberty to review its findings on other points, which this court had not held to be open to objection.

But we do not think it is necessary, in the light of the facts of the case, to proceed further into the argument, and to give any decision thereon.

There is only a single grant of permit before us, and that has necessarily to be quashed by the issue of a writ of certiorari and the matter released

for fresh determination. When the matter is thus reheard, freed from the constraining influence of the Government Orders, which, according to the

decision of the learned Chief Justice and Srinivasan J. in WA 74 of 1964: (AIR 1965 Mad 473), renders the judgment of the Tribunal not a

judicial disposal at all, the parties will be at liberty to agitate all contentions that are open to them, including any such plea or res judicata, actual or

constructive. With these observations, the writ appeal is allowed. The parties will bear their own costs.

CJ/VRB/D.V.C.

(11) Appeal allowed.