
(1956) 09 MAD CK 0035
In the Madras High Court
Case No : Writ Appeal No. 86 of 1956

S. Venkatachalam Iyer	Vs	APPELLANT
State of Madras and Others		RESPONDENT

Date of Decision : 27-09-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 2
Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 64

Citation : AIR 1957 Mad 623 : (1957) 70 LW 623

Hon'ble Judges : Rajamannar, C.J.; Ramaswami, J

Bench : Division Bench

Advocate : M.K. Nambiar, for S. Mohankumaramangalam, for the Appellant; K.V. Venkatasubramania Aiyer, Parveen Amruddin, N.G. Krishna Aiyangar and Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Rajamannar, C.J.—This is an appeal against the Judgment of Rajagopala Aiyangar J., in W. P. No. 1 of 1956, and relates to the grant of a

stage carriage permit for a bus to ply on the route Kollegal to Saggiam in Coimbatore District. Several transport operators made applications for

the grant of this permit, among whom it is sufficient to mention the appellant S. Venkatachalam Aiyar, proprietor, Janaki Motor Service,

Satyamangalam and P. N. Ramaswami Gounder, Proprietor, Sri Ram Transports, Satyamangalam, hereinafter referred to as the respondent.

The Regional Transport Authority, Coimbatore on a consideration of the several applications to them, granted a permit to the appellant before us

by their order dated 27th June 1955. The material portion of this order relating to the relative merits of the appellant and the respondent is as

follows :

Applicant No. 8 (respondent) has not direct interest in this line and his headquarters is at a distance of 69 miles from Kollegal. His application is

rejected. The Board is therefore compelled to consider the case of applicant No. 6 (appellant) who has four permits but has obtained the orders of

the Government dated 14-6-1955 to transfer two permits to Gobald Motor Service Ltd. The Government has laid down that such a transfer is no

bar and should not be penalised. Even though he has transferred his permits to another person it was contended before us that he could only have

four permits without transfer & as such not eligible for consideration.

It was also urged before us that his act of transfer was motivated by his desire to serve the Kollegal area exclusively. In view of this and in view of

the fact that the Board does not find any other operator suitable for running the service without increasing the monopoly of applicant No. 2, the

Board decide to award this permit to applicant No. 6.""

2. Four months" time was given to the appellant for producing the registration certificate of the bus which he intended to put on the road. On 5-9-

1955, within the time allowed, the appellant produced a vehicle and requested the Regional Transport Officer, Coimbatore, to issue a permit in his

name in accordance with the order of the Regional Transport Authority. But he was informed by the Regional Transport Officer that the

Government had stayed the operation of the order of the Regional Transport Authority by their order dated 1st September 1955. It was admitted

that this order of stay was made by the Government at the instance of the respondent.

Against the order of the Regional Transport authority, appeals were filed to the Central Road Traffic Board by some of the aggrieved applicants

including the respondent. The Central Road Traffic Board, by its order dated 16-9-1955, confirmed the order of the Regional Transport authority.

The reasoning of the order of the Regional Transport authority was substantially adopted by the Central Road Traffic Board. Dealing with the case

of the respondent. The Central Road Traffic Board stated :

Coming to the merits of the order it is seen that the first appellant's (respondent's) claims were rejected on the ground that he has no direct

interest in this line & that his headquarters is at a distance of 69 miles from

Kollegal. His lack of interest is clear as all his routes are in the area south of Satyamangalam which is his headquarters and which is far away from Kollegal. The rejection of his claims is quite proper.

After the disposal of the appeals by the Central Road Traffic Board, the appellant again applied to the Regional Transport Officer, Coimbatore, for

the issue of a permit to him; but he was informed that the Government, by their memo dated 6-10-1955, had once more stayed the operation of

the order of the Regional Transport authority granting the permit to him. On the same day, the Government issued another memorandum directing

the Regional Transport authority to consider the question of granting a temporary permit on the route. Thereafter, both the appellant and the

respondent applied for the grant of a temporary permit.

On 17th October 1955, the Regional Transport authority granted a temporary permit to the appellant. The respondent filed a petition to the

Government purporting to be u/s 64-A of the Motor Vehicles Act, to revise the order of the Regional Transport authority granting the temporary

permit to the appellant. But that petition was dismissed on the ground that an appeal lay. Then the Government suo motu issued notice to the

applicant informing him that the Government proposed to examine the legality, regularity, and propriety of the order of the Regional Transport

authority granting the temporary permit to the appellant.

At this stage the appellant approached this Court with a Writ Petition No. 938 of 1955, praying for the issue of a writ of prohibition restraining the

Government from taking further action pursuant to the aforesaid notice. On 1-12-1955, this Court ordered rule nisi. Before the disposal of this

application, the Government disposed of the main revision petition which had been preferred to them by the respondent against the order of the

Central Road Traffic Board. By, their order dated 27-12-1955, they set aside both the orders of the Regional Transport authority and the Central

Road Traffic Board and granted the permit to the respondent. The Government dealt with the relative claims of the appellant and the respondent

thus:

In its order confirming the grant made by the Regional Transport authority, the Central Road Traffic Board has observed that "as regards the

respondent (appellant herein) even though his headquarters also is at

Satyamangalam along with the first and third appellants, it is seen that he has direct connection with Kollegal by one of his routes and is also operating another stage carriage from Kollegal to Alahalli, that he has Kollegal as his place of business and has a good history sheet for the usual period of three years and that it has also been held earlier in this order that the transfer of his permit does not bring him within the disability laid down in G. O. No. 2524 Home dated 26-6-1951, as Government had prohibited preference being shown only to those operators who had transferred permits with a view to become smaller operators."

The interpretation given by the Central Road Traffic Board to the above Government order is not correct. The concession that bona fide transfer of bus permits should not be penalised is not intended to be extended to all the transferors in general because such an indiscriminate treatment of the transferees on a par with the transferors in all cases would result in the retardation of the process of creating economic or viable units fixed in the interests of the public from time to time, in that a small operator as the present respondent can always remain a small operator by transferring permits on one hand and getting new permits on the other.

On this sole consideration the grant of this permit to the respondent (appellant herein) has to be held as improper and set aside. It is also observed that the respondent has transferred two of his permits since he was finding it difficult to maintain routes far away from each other. Government consider that this itself is an evidence of his inability to maintain efficient service & it will not therefore be in public interest to grant the permit to such an operator. His history sheet also is not satisfactory.

The Government consider that it will be more in the interest of the public to grant the permit to the petitioner (respondent herein) Sri P. N.

Ramaswami Gounder, since with seven permits and with a comparatively good history sheet he will be able to give an efficient service to the

public. The Governor of Madras therefore directs that the order of the Central Road Traffic Board, Madras, R. No. 30787-A. 1/55 dated 16-9-

1955 confirming the order of the Regional Transport authority Coimbatore. granting a permit on the route Kollegal to Seggiam to Sri S.

Venkatar(sic) Iyer be set aside as improper and the (sic) be granted to Sri P. N. Ramaswami Gounde(sic) proprietor, Sri Ram Transport,

Satyamanga(sic)

3. It is to quash this order of the Government that the appellant filed W. P. No. 1 of 1956.

4. The main ground on which the order of the Government was attacked was that it was not a honest, impartial and judicial order but that it was

actuated by mala fides. The appellant also attacked the reasoning of the Government which formed the basis for their decision as not being

supported by the facts of the case and the policy of the Government as enunciated in orders issued by them from time to time.

5. The petition was heard by Rajagopala Aiyangar J., who held that no member of the Government who passed the order impugned, had any

personal interest in that decision and that the appellant had not established that the order of the Government was vitiated by lack of bona fides. As

regards the merits, the learned Judge observed that it was not the province of this Court to pronounce upon the correctness of the view of the

Government on the facts. He therefore dismissed the application.

6. Before us Mr. M. K. Nambiar, learned counsel for the appellant, pressed again both the grounds. Taking mala fides first, the allegations in the

affidavit filed by the appellant in support of his application, which relate to this ground are the following:

The petitioner respectfully submits further that the action of the Government in directing the issue of a temporary permit, since the public would

suffer from the absence of any bus on the route, clearly demonstrates that the Government recognised the need for a bus on the route. Having

recognised this, to direct the issue of a temporary permit and stay the operation of grant of a permit to the petitioner, instead of permitting the

petitioner to operate his bus on a route for which both the Regional Transport authority and the Central Road Traffic Board had granted him the

permit conclusively demonstrates that the Government was actuated by hostility and prejudice to the petitioner.....

The petitioner on 20-10-1955 submitted his representations against the revision petition filed by Sri P. N. Ramaswami Gounder. In that

representation he brought to the notice of the Government that Sri P. N. Ramaswami Gounder was openly boasting that he was the favoured child

of the Government and could get any order from it.....

The petitioner submits that the above facts clearly demonstrate that the Government in passing final orders, taking away the permit from the petitioner and granting it to the second respondent, was actuated by mala fides, being anxious to help Sri P. N. Ramaswami Gounder, the second respondent herein and to harm the petitioner.

The petitioner further submits that the flimsy reasons given by the Government in its order Ex. F. as described in paragraphs 30 to 36 above for depriving the petitioner of the permit only shows all the more conclusively that the Government failed to consider the issue in an impartial and judicial manner but was only seeking out some way of helping Sri P. N. Ramaswami Gounder.....

7. In paragraph 39 there is a reference to the Government's "anxiety to benefit Sri P. N. Ramaswami Gounder." It will be seen that from the above allegations that there was no specific charge of bias on any member of the Government. The Government means, according to the Constitution, the Governor acting with the ministers. It is obvious that there is no allegation that this entire body of individuals is interested in any manner in the respondent. During the pendency of the writ petition the appellant filed an application C.M.P. No. 357 of 1956, praying that this Court may be pleased to call for the notes of the Honourable Minister in charge of transport as well as of the department, including those of the Secretary to the department, in this matter.

In the affidavit filed in support of this application, for the first time, one of the ministers was mentioned. In paragraph 2, the deponent, the appellant's son, stated that he had been given to understand that the orders passed by the Government had been passed "on the personal intervention of the Honourable Minister for Transport who thereby has shown undue interest in the matter, obviously in order to assist the second respondent herein.

8. Paragraph 4 of that affidavit runs thus : "I further state that a perusal of the notes of the Department concerned as well as of the Honourable Minister of Transport in respect of this matter would clearly prove that the Honourable Minister in Charge of Transport himself intervened in the matter in the interests of the second respondent herein and hence has acted mala fide.

As pointed out in the counter-affidavit filed on behalf of the State, the charge of ""personal intervention"" is meaningless because it is not necessary

for the Minister to intervene in the matter as he is entitled to pass orders in the matter. What, however, is important to notice is that even here it is

not made clear how the Minister was ""interested"" in the respondent. Throughout, the attempt of the appellant has been to infer ""interest"" from the

orders passed by the Government; whereas it was incumbent on him to allege and prove the ""interest"" of the concerned authority in the respondent

and on that ground to impeach the validity of the order passed by the authority.

We have not come across any case in which, without alleging how a tribunal, or authority, is interested in one of the parties, a petitioner in an

application for certiorari has been permitted to raise the ground of bias or mala fides.

9. It is now well established that an order of an inferior tribunal can be quashed on the ground that it is vitiated by bias. As Lord Haldane observed

in *Local Govt. Board v. Arlidge*, (1915) AC 120 (A), an administrative tribunal ""must deal with the question referred to them without bias."" On this

topic it is sufficient to refer to the well-known passage in the speech of Viscount Cave L.C., in *Frome United Breweries Co., Ltd v. Bath Justices*,

1926 AC 586 (B) :

My Lords, it has been held over and over again that if a member of a body engaged in a judicial proceeding is subject to a bias (whether financial

or other) in favour of or against either party to the dispute, or is in such a position that a bias must be assumed, he ought not to take part in the

decision or even to sit upon the tribunal. This rule has been asserted not only in the case of Courts of Justice and other judicial tribunals, but in the

case of authorities which though in no sense to be called Courts, have to act, as judges of the rights of others.

10. ""Bias"" may be of three kinds: pecuniary, personal and official. Once it is proved that a member of a tribunal has a pecuniary Interest in the

subject-matter of the decision, the order passed by the tribunal will be forthwith quashed. Personal bias may be proved in several ways; e.g., by

the existence of close relationship between a member of the Tribunal and one of the parties. An obvious case is where a member of the tribunal has

already taken any part in the proceeding earlier and presumably would be

prejudiced in favour of, or against, one of the parties.

In the case of official bias, there may be no personal ill-will; but there may be evidence of an abnormal desire to uphold a particular departmental

policy, which would prevent an impartial adjudication of the dispute. It is clear that in the present case no pecuniary, or official, bias has been even

suggested. There remains only personal bias. Now, it is not sufficient to merely allege facts which may throw more or less suspicion on the motives

of a tribunal and ask the Court to infer personal bias. As Lord Goddard C. J. pointed out in a recent case *R. v. Nailsworth Licensing JJ.*, 1953 2

All ER 652 at page 654 (C) :

Objection cannot be taken to everything which might raise a suspicion in somebody's mind -- as Day J. said in *R v. Taylor, etc., JJ. and Laidler*

ex p. Vogwill, (1898) 14 TLR 185 (D), "anything at any time which could make fools suspect." It is not something which raises doubt in

somebody's mind that is enough to cause an order or a judgment of justices to be set aside. There must be something in the nature of real bias.

(10a) Mr. Nambiar relied on the decision in *Cottle v. Cottle*, 1939 2 All ER 535 (E), but that has no bearing on the facts of this case. In that case,

a petition by a wife against her husband for desertion and neglect to maintain came up before a Bench of Justices, the Chairman of which was a

friend of the wife's mother. Even at the commencement of the hearing, the husband took-objection to the case being tried before a Court presided

over by that Chairman. It was held that there were sufficient evidence upon which the husband might reasonably have formed the impression that

this justice could not give the case an unbiassed hearing, and the proceedings were set aside on the ground of bias. In the case before us it was

nowhere alleged that the concerned Minister was a friend of the respondent or was otherwise, interested in him for some specified reason or other.

11. In the present case all that the appellant is able to do is to refer to certain orders passed by the Government which, according to Mm, are

unprecedented and ask the Court to infer therefrom personal bias. Even the nature or the bias is not clear. In one place it is bias against the

appellant; in another place it is bias in favour of the respondent. In one place it is alleged that the orders of the Government are intended to help Sri

Ramaswami Gounder. In another place it is said that the orders were actuated by

hostility and prejudice to the appellant. Different facts would be necessary to prove these two charges.

If it is hostility to the appellant, then it must be specifically alleged and proved why a particular member of the Government is inimically disposed to

the appellant. If it is interest in the respondent, then it must be alleged and proved why, and in what way, the member of the Government is

interested in the respondent. The appellant has totally failed to allege, still less to prove, any real bias on the part of the Minister who passed the

impugned order. We agree with Rajagopala Aiyangar J., that fraud mala fides, and corruption are extrinsic factors which vitiate orders of a

tribunal; but they have to be pleaded and proved to the hilt and no Court can, acting merely on suspicion, find these invalidating circumstances, and

on such suspicion alone set aside orders of such bodies. This is exactly what Harries C. J., said in *Sudhmdranath v. Sailendranath*, AIR 1952 Cal

65 at p. 68 (F) :

Before a Court can hold that orders of Government are "mala fide", facts must be established upon which the Court can hold affirmatively that an

order was not honestly made or not made under a peculiar provision. It is not sufficient to place facts which raise a suspicion that the order might

not have been made honestly." Vide *Radha Films Ltd. Vs. West Bengal Board of Censors*, , per Bose J. Though we heard arguments at length on

the merits, we are convinced that there is no legitimate ground for interference with the impugned order of the Government. There is no question of

lack of jurisdiction. The Government certainly had the power to examine the concerned records and arrive at a conclusion whether the orders of

the Regional Transport authority and the Central Road Traffic Board are in any manner illegal, irregular or improper. The scope of the power or

interference with an order of the State Government passed under S. "64-A of the Motor Vehicles Act has been authoritatively laid down by the

Supreme Court in their recent decision in *Raman and Raman Ltd. Vs. The State of Madras and Another*, In that case their Lordships observed:

Before Section 64-A was inserted into the Act-by an Act of the legislature of the State of Madras, it might have been possible to contend that the

order of a Regional Transport Authority which had not been appealed against and the order of the appropriate authority u/s 64, where an appeal

had been made, were incapable of interference by the State Government for lack of statutory authority.

By enacting Section 64-A the legislature clearly intended that that should not be so and that the State Government should have the powers to

intervene, if it was satisfied that the order in question was either illegal irregular or improper. In clothing the State Government with such power, the

legislature clearly intended the State Government to decide the issue as to whether any order in question was illegal, irregular or improper.

It would not be open to a Court exercising the power of certiorari to intervene merely because it might be of the opinion that the view taken by the

State Government was erroneous.

12. It cannot be said that there was no material before the State Government on which they could pass their order. Some time was spent by

counsel to construe a prior order of the Government, G. O. No. 2524 dated 26-6-1951 regarding transferors of bus permits and how far transfers

of permits should be a ground of disqualification in the matter of obtaining fresh permits. It is not to province of this Court to say whether the

Government properly construed their earlier order in applying the principles laid down therein to the present case. Whether the fact that the

appellant had transferred has permits--may be with the permission of the Government--should be taken as a circumstance against him, is not a

matter for us to decide.

It is a matter for the State transport authorities, including the Government. On that question, the Government was entitled to differ from the

subordinate transport authorities, who thought that the transfer need not go against the appellant; but the Government took a contrary view and

they were entitled to do so. On this point also we agree with Rajagopala Aiyangar J., that it is not for the Courts to pronounce upon the

correctness of the Government's view.

13. Mr. Nambiar, learned counsel for the appellant, laid emphasis on the omission of the Government to deal with the reason given by the

subordinate transport authorities to reject the claim of the respondent, viz., that he had no direct interest in the concerned route. Even assuming that

this charge is justified, we fail to see how it can advance the appellant's case. If the Government's order is right, that the application of the

appellant should be rejected, it is unnecessary to go into the question whether the respondent should have been granted the permit or some other

applicant should have been. It was also said by appellant's learned counsel that there was interference by the Government with the findings of fact

arrived at by the subordinate tribunals.

The only material fact was the fact of transfer of permits by the appellant and that was not a fact in dispute. On that fact it was open to the

Government to hold that the claim of the appellant should be rejected.

14. Rajagopala Aiyangar J., was right in dismissing the appellant's petition. This appeal fails and is dismissed but we make no order as to costs.