
(1970) 04 AP CK 0006

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5268 of 1968

S.A. Sattar

APPELLANT

Vs

Government of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 23-04-1970

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 64

Citation : AIR 1971 AP 349

Hon'ble Judges : Kondaiah, J

Bench : Single Bench

Advocate : K. Amareswari and A.S.C. Bose, for the Appellant; Govt. Pleader, P. Kondandaramaiah and M. Krishnan Raju, for the Respondent

Judgement

1. This application by the petitioner, under Article 226 of the Constitution, is to quash the orders of the State Government setting aside the order of the Appellate Authority and remanding the matter to the Regional Transport Authority, Cuddapah for disposal.

2. The material facts leading to this writ petition may briefly be stated; The petitioner, the 4th respondent herein and 14 others applied for the grant of state carriage permits on the route Cuddapah to Ahobilam. Though the petitioner had applied for one permit on the route, the 4th respondent was the applicant for two permits. The Regional Transport Authority awarded four marks to the petitioner as well as the 4th respondent but granted both the permits to the 4th respondent on 20-2-1963. it was also found that the applicants 2 and 3 are the sons of applicant No. 4 and all of them are living jointly having joint business and they owned five permits and the route being a medium one, the 4th respondent was preferred to applicants 2 and 3.

On appeal, the Appellate Authority awarded five marks to the petitioner and four to the 4th respondent and granted one permit to the petitioner on 18-9-1964. It was observed that it was not satisfactorily proved that the petitioner and his

brother remembers of a joint family and hence, their claims could be separately considered. The revision petition filed by the 4th respondent against the grant of one permit to the petitioner by the Appellate Authority was allowed by the State Government by its order dated 14-6-1965, setting aside the grant of the permit by the Appellate Authority to the petitioner herein. Thereupon the Writ Petition No. 15/66 filed by the petitioner was allowed by this Court on April 5, 1968 quashing the order of the State Government. It was observed in the judgment that the State Government has neither affirmed the view of the Appellate Authority nor agreed with the Regional Transport Authority in awarding marks to the petitioner. It was further observed that "the Government has not categorically found whether the petitioner, his brother and father have a joint business and they can therefore be considered as fleet owners. All these points have not been considered by the Government at all." The matter was, therefore, remitted to the State Government to reconsider the Revision Petition afresh in the light of what was said by this Court.

The State Government passed the impugned order in accordance to the decision of this Court in the aforesaid revision petition. It reads:-

"2. In pursuance of the above remand order of the High Court the revision petition of the Manager of Sri Lakshminarasimhaswamy Devasthanam, Ahobilam, has been examined with references to the connected records of the lower authorities and the representation of the respondent keeping in view the observations of the High Court in its Judgment in Writ Petition No. 15 of 1966.

3. The revision petitioner has mainly contended that the Appellate Authority failed to consider that the Regional Transport Authority Cuddapah granted him both the permits in the interests of the public and the pilgrims traveling between Cuddapah and Ahobilam, and also considering that the entire profits of this transport business would go to the public charities like schools and the like; and that the said authority failed to understand and construe the order of the Government regarding quick succession; and that the respondent Sri S.A. Sattar was having joint business with his brother and father, owning a fleet of buses, but depleted the strength of their fleet to enable them to get some more permits. The petitioner has therefore requested to set aside the orders of the Appellate Authority reversing the order of the Regional Transport Authority reversing him the second permit also, and to confirm the orders of the Regional Transport Authority, Cuddapah.

4. From the connected records, it is seen that the evaluation of the individual merits by the Regional Transport Authority, Cuddapah especially awarding of marks, was not done in accordance with the rules. The awarding of 4 marks to Sri Lakshminarasimha Swamy Devasthanam, Ahobilam for the Common sector without taking into consideration the aspects of the residential and business place, is obviously wrong. It is also not clear how the Appellate Authority was satisfied that the respondent Sri S. A. Sattar was not a member of the joint family of Sri Mohd. Husain, who, according to the Regional Transport Authority,

Cuddapah, for fresh disposal according to law.

5. The Government accordingly set aside the orders of the lower authorities and remand the case back to the Regional Transport Authority, Cuddapah for fresh disposal according to law."

Aggrieved by that decision, the petitioner has filed this Writ Petition.

3. Smt. Amareshwari, for the petitioner, contends that the awarding of five and four marks to the petitioner and the 4th respondent respective by the Appellate Authority is valid and justified and the State Government has no jurisdiction to set aside the orders of grant of permit to her client made by the Appellate Authority and remand the case to the Regional Transport Authority for fresh disposal according to law. This claim of the petitioner is opposed by the Government Pleader and Sri Kodanading inter alia that the petitioner is only be benamidar for the benefit of the members of the family having joint transport business and owning a fleet of buses and is not entitled for the grant of the permit in preference to the claims of the 4th respondent and there is no merit in this Writ Petition.

4. The question for decision is whether the impugned order of the State Government is without Jurisdiction and is liable to be quashed.

5. For a proper appreciation of the contention raised by the petitioner. it is necessary to consider the scope of the revision poer. Section 64-A of the Motor Vehicles Act, 1939 as amended by Madras Amendment Act No. 20 of 1948 which is made applicable to the State of Andhra Pradesh (hereinafter called the Act) empowers the State Governemnt to revise any order or proceeding of any authoirty or person subordinate to it if it is illegal, irregular or improper and pass such order thereon "as it thinks fit". The expression "propriety" is of wide import empowering Revision Authority to interfere where the impugned order is improper either on facts or in law. There is no hard and fast rule or any rule of thumb having universal application to determine the property or otherwise of any order. Whether a particular order or proceedings or is not proper, is a question of act depending upon the fact and circumstances of each case. It is for the State Government, the Revision Authority, to prescribe the principles or rules of selection for the candidates for the grant of permits and it is for the State to decide which of the principles would best serve and suit the interest of the general public and it is not for the High Court under Article 226 of the Constitution to substitute its own judgment for that of the Revision Authority constituted under a Statute. However, the Tribunals under the Act are not empowered to apply two different and opposing principles in the same case without any justification for such a course. The High Court will not normally interfere under Article 226 of the Constitution with the manner of exercise of revision power if it is found to have been exercised bona fide and within its jurisdiction.

6. The expression "may pass such order in reference thereto as it thinks fit".

occurring in Section 64-A of the Act manifests that the Revisional Authority is vested with a very wide discretion to pass appropriate orders if it is satisfied that the impugned order is illegal irregular or improper. The power of revision under the Act appears to be analogous to the power entrusted to the Appellate Authority. There is no restriction or limitation imposed on the State Government with regards to the mode of disposal of the revisions under the Act. the revision petitions may be allowed or dismissed. The Revision Authority is also competent wither to finally dispose of the case or set aside the impugned order and remand the case wither to the Appellate Authority or Regional Transport Authority, if, in its opinion the justice of the case requires such a course. No provision under the Act or any rule made thereunder prohibit the Revision Authority from remanding the case to the Regional Transport Authority for disposal of the case afresh, has been brought to my notice. The contention of Smt. Amareshwari that the State Government is not competent to remand the case to the Regional Transport Authority for disposal of the case afresh, cannot be given effect to.

On a close reading of the provisions of Section 64-A, I am satisfied that the Revisional Authority is having ample jurisdiction to set aside the orders of the Appellate Authority and remand the case either to the Appellate Authority or to the Regional Transport Authority with a direction to dispose of the case afresh according to law. The Regional Authority is also competent to call for justice. There is no bar in the Act or the Rules made thereunder against the Regional Authority considering additional evidence if it though such evidence is necessary to be brought on record to do justice to the parties.

7. I shall now turn to the case law on the subject. I Arbind Kumar Singh Vs. Nand Kishore Prasad and Others, the Supreme Court had to consider the scope of the Revisional jurisdiction u/s 64-A of the Act. Shah, J., who spoke for the Court, observed thus:

"Section 64-A of the Motor Vehicles Act, 1939, as amended by Bihar Act 17 of 1959 authorises the State Government to call for in the court of any proceedings taken under the Chapter from any authority or officer subordinate to it the records of such proceedings. and after examining such records pass such order as it thinks fit. The expression "pass such order as it thinks fit" is not restricted to the passing of orders which are final in character. If for the purpose of doing complete justice between the parties, the authority who hears the revision petition, is satisfied that it is necessary to call for additional evidence, he may call for such evidence. There is no bar in the Act or the rules against an appellate or the revising authority taking into consideration additional evidence requires additional evidence to be brought on the record or allows it to be brought on record to do complete justice between the parties. The evidence must undoubtedly be disclosed to the parties and they must be given an opportunity to meet the inference that may arise from such additional evidence."

See also Cumbum Roadways (P) Ltd., Madurai Vs. Somu Transports (P.) Ltd., Madurai and Another, .

8. In *Kanchana Kesva Rae v. Kosuri Subbaraju* (1965) 2 AWR 85 : (AIR 1957 AP 55) a Bench of the Andhra High Court has held that this court, while exercising its power under Article 226 of the Constitution, cannot Article 226 of the Constitution cannot substitute its options on which the State Government acted if it is found that it has exercised its power u/s 64-A bona fide and for the purpose for which it has been conferred. Viswanatha Sastri, J. who spoke for the Court. while considering the scope of the provisions of Section 64-A observed thus:

" " Legality" and "regularity" are well-understood terms and well-recognised grounds of judicial interference on an appeal or revision. An order is illegal if it is opposed to any enactment or any rule having the force of law. It is irregular if the procedure followed is in violation of the principles of natural justice and fair play. The term "propriety" is, however, of wide import and there might be honest difference of opinion about the "propriety" of an order even though it is in conformity with law and within the powers of the authority making the order.

XX XX XXIn such matters, it is for the State to decide which among the competing principles would best serve the interests of the public. If after due consideration the Government has taken a decision on this matter, it is not for us to investigate the relative merits or soundness of one point of view as against the other."

(at page 88) ".....we consider that it is not proper for us to substitute our own judgment for the judgment of the Tribunal appointed by the Legislature especially in a case when there is no right of appeal to this court and where interference is sought under Article 226 of the Constitution.

.....XXXX. It is no doubt open to the Government from time to time if as a result of experience, it discovers that they require alteration in the interests of the public. It is however not proper for the Government to apply two different and opposing principles at the same time, one to one applicant and the other to another, without assigning proper and convincing reasons for such differentiation. We therefore hold that it is not for us to say whether the reasons given by the Government are adequate or compelling so long as those reasons were not improper or irrelevant reasons."

The same view has been reiterated by a Division Bench of this Court in *P. Swarajyalakshmi Vs. The State of Andhra Pradesh and Others*, . Hence I have no hesitation to hold that the State Government is competent to remand the case to the Regional Transport Authority to dispose of the case afresh according to law.

9. I shall now proceed to examine the plea of the petitioner's counsel that the State Government is not justified to entertain the allegation that the petitioner, his brother and father were living jointly having joint business and the allegations were made merely for the benefit of the members of the family, In the Counter-affidavit filed by the 4th respondent in this Court it is specifically alleged that the Appellate Authority has not decided the question whether the petitioner is carrying on the business with his brothers and his father and the Revisional Authority felt it necessary to remand the case to the Regional Transport Authority

for more satisfactory factorial investigation and disposal and that it is necessary to find out whether the petitioner is doing business with other members of the joint business of a Muslim family carried on benami without disclosing the identity is a ground of disqualification. It is urged before me by the respondents that the petitioner, his brother and father have only filed applications in their individual names benami for the benefit of their family having joint transport business as the family with five permits would be dissented for the grant of the present permit which is a medium, one . In other words, it is argued that with a view to get over that difficulty, the petitioner as well as his brother and father have benami applied in their individual names and in fact, all the permits standing in the names of the members of his family really belong to their family as a unit having joint transport business.

The State Government in the light of the observations made by this Court in Writ Petition No. 15-66 and also in the light of the material and the conflicting views expressed by the Regional Transport Authority and the Appellate Authority, though fit to have the matter investigated afresh by the Regional Transport Authority after affording reasonable opportunity to all the parties concerned. As pointed out earlier, the Revisional Authority is competent to remand the case to the Appellate authority as well as the Regional Transport Authority and there is no error of jurisdiction or illegality in the impugned order in that regard. The transport authorities are also empowered to receive any further material made available to them but before using such material, they have to afford reasonable opportunity to the person against whom such material would be used. If the submission of the respondents that the petitioner is only benamidar for his family which owned five buses is on investigation of the facts, found to be true, the petitioner cannot be preferred to the 4th respondent. The Revisional Authority though that it is an important factor to be taken into consideration and ass the material on record was not sufficient to decide that aspect one way or the other considered it fit and proper to remand the case to the Regional Transport Authority for afresh disposal according to law after affording reasonable opportunity to the "petitioner and the 4th respondent. As referred to earlier, the expression "propriety" occurring in Section 64-A of the Act is of very wide import and the Revisional Authority has ample jurisdiction to reamed the case to the Regional Transport Authority when it though that the questions relating to the awarding of marks as well ass the allegation relating to the true nature of the transport business of the petitioner have to be decided.

10. Its now well settled that this Court under Article 226 of the Constitution, will not interfere with the manner of exercises of jurisdiction by the Revisional Authority if the orders are found to be not improper or mall fide. Nor can it be said that the orders are without jurisdiction. On a consideration of the entire facts and circumstances, I am satisfied that the impugned order is a bona fide on and it does not suffer from any infirmities. justifying the interference of this Court under Article 226 of the Constitution.

11. The Regional Transport Authority has to consider, after affording reasonable opportunity to the petitioner and the 4th respondent. only the claims of these two persons on merits for the grant of the second permit on the route in question. It is precluded from taking into consideration the claims of and other applications With this direction the writ petition is dismissed with costs. Advocate's fee RSV. 100/-.

12. Petition dismissed.