
(1959) 03 MAD CK 0037

In the Madras High Court

Case No : Writ Appeal No's. 55 and 101 of 1958

Sri Rama Vilas Service (Private) Ltd.

APPELLANT

Vs

Raman and Raman (Private) Ltd., Kumbakonam and Another

RESPONDENT

Date of Decision : 06-03-1959

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(1)
Motor Vehicles Act, 1939 — Section 47(1)

Citation : AIR 1959 Mad 492 : (1959) ILR (Mad) 641 : (1959) 72 LW 474

Hon'ble Judges : P.V. Rajamannar, C.J; Ganapatia Pillai, J

Bench : Division Bench

Advocate : M.K. Nambiar, for G.R. Jagadisan and K.K. Venugopal, for the Appellant; S. Mohan Kumaramangalam, R.M. Seshadri and V. Ramaswami for Addl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Rajamannar, C.J.—These two appeals were heard together because they raise a common question of law. One of them is from the judgment of Balakrishna Aiyar J., and the other from the judgment of Rajagopalan J. Before we deal with the several contentions raised at the Bar, it will be useful to set out the facts in each of the two cases. Writ Ap. No. 101 of 1958 from W. P. No. 650 of 1958 arises out of applications for the grant of a permit to ply stage carriage between Mayuram and Thiruchitrambalam. There were five applicants. The Regional Transport Authority followed the system of marking prescribed in G. O. No. 129S Horne, dated 28-4-1956 and on the basis of the marks secured by the respective applicants, granted the permit to Veerappa Pillai, proprietor of Sri Sathi .Vilas Bus Service who had obtained 41/4 marks.

The Sales Services and Transports (Private) Ltd Mayuram, another applicant to whom the Regional Transport Authority had awarded 1 mark, filed an appeal to the State Transport Appellate Tribunal. The Appellate Tribunal differing from the Regional Transport Authority awarded 31/4 marks to Veerappa Pillai and 3 marks

to the Sales Services and Transport (Private) Ltd. Nevertheless the Tribunal allowed the appeal and directed the issue of the permit to the Sales, Services and Transport (Private) Ltd, on the ground that Veerappa Pillai was admittedly the only operator plying three buses on the route for twelve out of sixteen miles, two furlongs and so had a monopoly over a major portion of the route and that the grant of another permit to him would further strengthen the monopoly and this would be against public interests. He concluded as follows:

"I am of opinion that in order that healthy competition may be provided in the interest of the traveling public, the permit should be granted to a third person. I accordingly hold that the mark system works unfairly in the present case, and that ignoring the marks obtained by the respondent (Veerappa Pillai), the permit be granted to the appellant (Sales, Services and Transports (Private) Ltd.)"

It is against this order that Veerappa Pillai filed W. P. No, 650 of 1958 praying that the order of the State Transport Appellate Tribunal may be quashed.

2. Writ Ap No. 55 of 1958 from W. P. No. 223 of 1958 arises out of applications for the grant of a stage carriage permit on the route from Nagapattinam to Tiruthuraipoondi. There were two applicants, Sri Rama Vilas Service (P) Ltd. and Raman and Raman (P) Ltd. The Regional Transport Authority in accordance with G. O. No. 1298 Home, dated 28th April 1956, awarded Sri Rama Vilas Service (P) Ltd, 6 marks and Raman and Raman (P) Ltd 2 1/2 marks. Sri Rama Vilas (P) Ltd. was granted the permit. There was an appeal by the other applicant to the State Transport Appellate Tribunal who made a different valuation. He awarded Sri Rama Vilas Service (P) Ltd, 4/2 marks and Raman and Raman (P) Ltd 1 3/4 marks.

The Tribunal, however, allowed the appeal, set aside the grant of the permit to Sri Rama Vilas Service (P) Ltd. and directed the grant to Raman and Raman (P) Ltd. on the ground that Sri Rama Vilas Service (P) Ltd. was having a monopoly on the route as they were already running four buses on the same route and four more of their buses were plying from Nagapattinam to Pattukottai via Thiruthuraipoondi, and for healthy competition and in the interest of the public the permit should be granted to Raman and Raman (P) Ltd. It was contended that though Sri Rama Vilas Service (P) Ltd were having a monopoly on the route, there was no evidence that they had abused such monopoly and so there was no reason to refuse the permit to them. This contention the Tribunal did not accept. He said,

"I do not agree that it is only if an operator who is having a monopoly on a route has abused it, a fresh permit can be refused to him. The danger of the monopoly being abused always is there and when, that is so it is certainly not in the public interest in the present case to grant the fifth permit also to the respondent (Sri Rama Vilas Service (P) Ltd.) and to further strengthen the monopoly which the respondent is already having over the route. The introduction of a new operator on the route in order to promote healthy competitive service will be more in the

interests of the public. For these reasons I hold that this is a case where the marks obtained have to be ignored and the permit should be granted to the applicant (Raman and Raman (P.) Ltd.)" To quash this order of the Appellate Tribunal, Rama Vilas Service (P.) Ltd., filed W. P. No. 223 of 1956.

3. Balakrishna Aiyar J. who heard W. P. No. 650 of 1958, and Rajagopalan J. who dealt with W. P. No. 223 of 1958 both dismissed the respective petitions before them. The learned Judges held that the respective orders of the Appellate Tribunal were not vitiated by any excess of jurisdiction or manifest error of law inasmuch as the Appellate Tribunal was entitled to refuse the grant of a permit to an applicant on the ground that such a grant would give him a monopoly of transport facilities on a particular route and in the interests of the public it was desirable to grant the new permit applied for to a different operator to encourage healthy competition. The two writ appeals before us are from the judgments of the two learned Judges. We have had the benefit of the very able arguments of several learned counsel who appeared before us for the several parties.

4. Section 47(1) of that Motor Vehicles Act says that the Regional Transport Authority in deciding whether to grant or refuse a stage carriage permit shall have regard to the following matters:

- (a) the interest of the public generally;
- (b) the advantage to the public of the service to be provided including the saving of time likely to be effected thereby and any convenience arising from journeys not being broken;
- (c) the adequacy of existing road passenger transport service between the places to be served the fares charged by those services and the effect from those services of the service proposed;
- (d) the benefit to any particular locality or localities likely to be afforded by the service;
- (e) the operation by the applicant of other transport services and in particular of unremunerative services in conjunction with remunerative services; and
- (f) the condition of the roads included in the proposed route or routes.

Section 43-A confers powers on the State Government to issue orders and directions of a general character in respect of any matter relating to road transport to the subordinate transport authorities, the said authorities are bound to give effect to. In exercise of these powers the Government have been issuing general directions to the transport authorities to be observed in considering applications for stage carriage permits. The first of such orders material for the purpose of these appeals is G. O. Ms. No. 432 Home dated 6-2-1953. It runs as follows:

"It has been brought to the notice of Government that permits for stage carriages are granted by Regional Transport Authorities sometimes to operators

who though claiming to be new to the business or to be carrying on business independently are really benami operators working under the control and management or influence of big operators, who already hold a large number of bus permits. The grant of permits to such persons is not conducive to the efficient and sound working and administration of the transport system as it would result in the concentration of passenger transport in the hands of a few big operators which is not in the public interests.

2. The Governor of Madras therefore in exercise of the powers conferred by Section 43-A of the Motor Vehicles Act, 1939 hereby directs all Transport Authorities to ensure when considering applicants for stage carriage permits that no permits are granted to applicants who though purporting to be new entrants in the business of road transport or to be independent operators are really benami operators working under the control and management or influence of big operators who already hold a large number of the permits or hold substantial interest in existing passenger transport concern."

In G. O. Ms. No. 1037, Home, dated 28-3-1953, the Government directed that additional buses should not be permitted to ply on existing routes unless there was clear need for increase in the number of buses plying on the particular route, and laid down as a general policy that "wasteful competition should be discouraged but the healthy competition where there is room should be encouraged." Then we come to G. O. Ms. No. 1298 Home dated 28-4-1956. which has been the subject matter of consideration in several decisions of this court as well as of the Supreme Court. In and by that G. O., Government laid down the principles that should be observed by all the transport authorities in the matter of granting of stage carriage permits, variations or extensions of routes etc.

It is not necessary to quote this G. O. in full. It is sufficient to refer to the general scheme of G. O. and briefly indicate the directions given. At the outset the Government make it clear that the transport authorities should have regard to the matters mentioned in the G. O. in addition to those mentioned in Section 47(1) of the Motor Vehicles Act. First certain principles for screening and disqualifying applicants are set out. They are (1) financial instability, (2) adverse record in respect of efficiency and integrity, (3) trafficking in permits and (4) benami applicants, The G.O. then proceeds to formulate a system of marking but with the proviso,

"In case where this system works unfairly the Regional Transport Authority may ignore the marks obtained for reasons to be stated." Marks are to be given on the following grounds:

- "1. to build up the strength of the fleet to viable units;
2. possession of repair and maintenance facilities;
3. location of residence or place of business of the applicant on the route or at

the terminal;

4. technical or business experience of transport and

5. special circumstances like being a cooperative enterprise, etc."

5. There is a further G. O. Ms. No. 2265 Home dated 9-8-1958, but this is subsequent to the proceedings which formed the subject matter of the writ petitions.

6. In the orders of the State Transport Appellate Tribunal as well as during (the arguments before us there was constant mention of the term "monopoly." To avoid any confusion and to clear the ground of any possible misconception it is better to explain the sense in which that term has been used. A literal meaning of the word "monopoly" is "exclusive possession of a trade in some commodity" and this is generally conferred as a privilege by the State. In Vol. 36, American Jurisprudence, the restricted and extended sense in which the word "monopoly" is used are clearly brought out in the following passage:

"In its broadest meaning "monopoly" signifies the sole power of dealing in an article or doing a specified thing, either generally or in a particular place. A legally authorised monopoly is an exclusive right or privilege. In its original and strict sense the word meant an allowance by the King to a particular person or persons of the sole buying, selling, making, working, or using of anything whereby the subject in general, was restrained from the freedom of manufacturing or trading which he had before. However, the idea of monopoly is not now confined to a grant of privileges; it is understood to include a condition produced by the acts of mere individuals, and its dominant thought is the suppression of competition by the unification of interest or management or through agreement and concert of action.

It is considered that a monopoly exists whenever all or so nearly all of an article of trade or commerce within a community or district is brought within the hands of one man or set of men as practically to bring the handling or production of the commodity or thing within such single control, to the exclusion of competition or free traffic therein. Strictly speaking anything less than this is not a monopoly. It has been said that a monopoly of trade embraces two essential elements, (1) the acquisition of an exclusive right to, or the exclusive control of, that trade, (2) the exclusion of all others from the right and control..... ."

7. It is obvious that in one sense the scheme of grant of permits under the Motor Vehicles Act involves a monopoly to a certain extent. On a particular route only the person who has obtained a permit from the transport authorities can ply a stage carriage. Others cannot. But at the same time, it cannot be denied that it is open to the transport authorities to grant another permit to another person to ply on the same route. The person who had been enjoying so to say a monopoly on that route cannot complain of any legal injury to his right. In that sense there is no question of monopoly. Vide C.S.S. Motor Service, Tenkasi and Others Vs.

The State of Madras and Another, .

It appears to us that when the word "monopoly" is used in the orders of the State Transport Appellate Tribunal and the arguments before us, what is meant is that factually a particular operator is the sole operator running several buses on a particular route without there being any competitor. The operator enjoys this favourable position not because he has an indefeasible right to such enjoyment but because it happens that he holds all the permits on that particular route, for a particular period. It may be that at the end of the period when he applies for renewal of the permit he may not be able to secure a renewal because there are other applicants more qualified who may be granted the permit. We need not embark on a discussion of the merits and defects of monopoly from the point of view of economic development.

In certain circumstances monopoly in a particular kind of trade or business may be in the interest of the public but in other circumstances, it may have a contrary effect and may be destructive of individual enterprise, and free competition is the life of business. Having regard to the present system in vogue relating to the grant of stage carriage permits, if monopoly in the strict sense should be avoided, then there should not be grant of a single permit to one operator on any particular route, for that would mean that the State has conferred on such operator a monopoly in the carrying on of the business on that route. Monopoly, therefore, should be understood as undue concentration of a number of permits in the hands of a single operator on any route, excluding competition from other operators. We are therefore of opinion, there is no scope for the argument of Mr. Nambiar that monopoly is a vice only when there is monopoly in law, that is, in the strict sense when the person enjoying the monopoly is entitled to exclude all possible competition, in which case only if may be injurious to the public interests.

8. It was contended on behalf of the appellants- that G. O. No. 1298 dated 28-4-1956 together with Section 47(1) of the Motor Vehicles Act forms a complete code as it were in the sense that the factors mentioned therein are exhaustive in a consideration of the comparative merits of applicants for the grant of stage carriage permits. Neither in the G. O. nor in the section is there any specific mention of monopoly as a ground of disqualification. The Tribunal, therefore, manifestly erred in disqualifying the appellants on that ground. But it has been held by this court that neither Section. 47(1) nor the aforesaid G. O. excludes from consideration other matters which are germane to the question to be decided, namely, who among the applicants is best fitted to be granted a permit. As observed by Rajagopalan J. in W. P. No. 233 of 1958:

"It has been repeatedly laid down by this court that the factors listed in Section 47(1) of the Act as those to be taken into account in deciding whether a permit should be granted or not to an applicant are not exhaustive Neither in express terms nor by necessary implication does G. O. No. 1298 make the factors enumerated therein as exhaustive."

But, in our opinion, there is another short way of meeting this, contention of the appellants. That is by referring to Section 47(l)(a) of the Act, namely, "the interest of the public generally," That heading will cover any ground which might not have been expressly mentioned in Section 47 or G. O. No. 1298. It is neither possible, nor is it desirable, to restrict the discretion of the Regional Transport Authority to grant or refuse a stage carriage permit on considerations of public interests. Which applicant is likely to serve the interest of the public best is ultimately for the transport authorities to decide. G. O. No. 1298 refers to certain factors which were considered to be in the interests of the public. For instance, it would be obviously undesirable in the interests of the public to grant a permit to an applicant with an adverse record or who is a trafficker in permits.

Likewise it would be desirable to grant a permit to an applicant who can command repair and maintenance facilities and has technical and business experience of transport. But there may be other factors operating in a positive or negative way in a consideration of the relative claims of applicants. G. O. No. 1298 itself recognises this fact when it provides for the award of two marks for special circumstances all of which cannot be expressly mentioned. The G. O. uses the significant phrase . "imponderable factors" in this connection. The Tribunal would be strictly acting within the scope of Section 47(l)(a) if it holds that an applicant is not entitled to the grant of a stage carriage permit on a particular route if it considers that as the applicant has already the monopoly on the route, in the sense that he already holds all the permits on that route or a major part of that route, it would be in the interests of the public to grant the permit to another applicant on the ground that there was likelihood of abuse of the monopoly. It is not only when there is actual proof of abuse that monopoly would be a relevant ground. Likelihood of abuse would be equally relevant. We realise that a hard and fast rule cannot be laid down as to when an applicant can be said to enjoy monopoly on a particular route. If there are ten buses plying on a route and the permits for all the buses are held by one operator the Tribunal would not have much difficulty in holding that he has a monopoly. At the other end, if an operator has got only one permit on the route, the Tribunal would be justified in holding that there is no question of monopoly. In the very nature of the matter, it must be left entirely to the transport authorities to decide on the facts and circumstances of each particular case, whether an applicant can be refused a stage carriage permit on the ground that he enjoys a monopoly on that route. This court cannot substitute its own discretion in such a matter though this court would be ready to interfere with an obviously perverse exercise of such discretion. As observed by Lord Porter in *Commonwealth of Australia v. Bank of New South Wales*, (1950) AC 235, dealing with a case of monopoly. "Every case must be judged on its own facts and in its own setting of time and circumstances."

9. The appellant in W. A. No. 101 of 1958 was the only operator plying three buses on a section of 12 miles on the route of 16 miles. The appellant in W. A. No. 55 of 1955 had already permits for four buses on the route and on a part of

the route four more buses plying. We are unable to say that the Appellate Tribunal made a manifest error of law in holding that it is not desirable to grant further permits to the two appellants on the two routes in question respectively, on the ground that monopoly, should be avoided in public Interest.

10. Before leaving this point we may also advert to two of the G. Os. earlier to G. O. No. "1298 in which the Government Indicate that it Is desirable in the public interests to prevent monopoly and to encourage healthy competition. In G. O. No. 432 D/-6-2-1953, the Government declared that the concentration of passenger transport in the hands of a few big operators is not in the public interest. In G. O. No. 1037 dated 28-3-1953 the Government says that, "wasteful competition should be discouraged but healthy competition where there is room should be encouraged."

11. We are unable to accept the rather ingenious argument of Mr. M. K. Nambiar that there is no scope for healthy competition under the system of regulation of motor transport under the Motor Vehicles Act. In support of his argument he relied on the fixing of different timings for different buses and other similar rules relating to the scale of fees chargeable etc. In spite of all these restrictive regulations, there is certainly room for healthy competition in the manner of serving the traveling public by provision for better amenities, comfort and attention. This, however, is only one aspect of the matter. There is the other important aspect, that if all the buses running on a particular route belong to only one operator, then the traveling public will be practically at the mercy of that operator.

12. It was said that any consideration of monopoly and likelihood of its abuse is in conflict with Section 47(I)(e) which is in the following terms:

"The operation by the applicant of other transport services and in particular of unremunerative services in conjunction with remunerative services."

In the first place, this court has held that Section 47(I)(e) is wholly void; C.S.S. Motor Service, Tenkasi and Others Vs. The State of Madras and Another, . Even if it is not, the subject matter of that clause has nothing to do with monopoly. It really relates to the economic aspect from the point of view of the individual applicant.

13. There only remains the contentions raised by learned counsel for the appellants based on the provisions of the Constitution. First Article 19(1)(g) read with Article 19(6). It is contended that the elimination of the appellants on the ground of alleged monopoly would not be a reasonable restriction in the interests of the public within the meaning of Article 19(6) of the Constitution. Reference was made to passages in the judgment of the Supreme Court in Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others, and Rottschaefers on "Constitutional law." In our opinion they do not materially assist the appellants. In Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others, , Mahajan C. J. in

repelling the contention that some of the" provisions of the Excise Regulation 1 of 1915 of Bihar enabled the Government to confer monopoly rights on one or more persons to the exclusion of others and that a creation of such monopoly rights would not be sustained by Article 19(6) observed:

"Elimination and exclusion from business is inherent in the nature of liquor business and it will hardly be proper to apply to such a business principles applicable to trades which all could carry. The provisions of the regulation cannot be attacked merely on the ground that they create a monopoly. Properly speaking, there can be a monopoly only when a trade which could be carried on by all persons is entrusted by law to one or more persons to the exclusion of the general public, Such, however, is not the case with the business of liquor."

14. The same considerations apply to the business of public transport. In C.S.S. Motor Service, Tenkasi and Others Vs. The State of Madras and Another, to which one of us was a party, similar observations occur. Venkatarama Aiyar J. said:

"The nature of the business is, therefore, an important element in deciding on the reasonableness of the restrictions. It has been already mentioned that while a citizen has a right to carry on the business of motor transport on public pathways, the latter, however, are owned and held by the State as trustees on behalf of the public; that the rights of a citizen to use the streets are limited by similar rights possessed by the other citizens and that it would be within the power of the State as such trustees to limit the number of transports that could run on the road and to even totally prohibit its running. Elimination and exclusion are inherent in the nature of this business and it would hardly be proper to apply to such a business principles applicable to trades which all could carry. Nor can the provisions of the Act be attacked on the ground that they create a monopoly. Properly speaking there can be a monopoly only when a trade which could be carried on by all persons is entrusted by law to one or more persons to the exclusion of the general public. Such, however, is not the case with the business of motor transport."

15. The statement in Rottschaefer's book only goes to show that in certain circumstances the grant of a monopoly of a class of business to a private corporation would not violate any rights guaranteed to those excluded from such business by the due process clause of the 14th Amendment. In the present case the question is not whether the grant of a monopoly is valid but whether excluding an applicant on the ground that the grant of another permit to him has the effect of giving him a monopoly would be an unreasonable restriction. We have already held that such exclusion would be in the interests of the public. The restriction is certainly not unreasonable because the appellants have not been completely precluded from carrying on the business of motor transport. The Constitution does not guarantee to any person the exclusive right to operate all the buses that are allowed to ply on any particular route.

16. It was next contended that the principle of Article 14 had been violated

because the Tribunal had not been consistent in the application of the principle that monopoly would be a ground for excluding an applicant. Our attention was drawn to certain prior orders of the Transport authorities in which it was alleged that this principle was not applied. In the first place, we are not convinced that there has been such inconsistency between different orders in fact. In one case the State Transport Tribunal refused to exclude an applicant on the ground of monopoly; but in that case the applicant had only one permit at the time of the application for the second permit. In another case the Appellate Tribunal similarly refused to exclude an applicant on the ground that he already had one permit. This is what he said,

"It is no doubt an accepted policy of the Government that monopoly should not be granted and that healthy competition should be encouraged. But the question is can the grant of two permits on the same route to one operator be said to amount to grant of a monopoly. In W. A. No. 65 of 1955, their Lordships have observed that they cannot say that the grant of two permits to one party amounts to grant of a monopoly."

In another case cited to us the Appellate Tribunal held that there was no monopoly, in fact, as other buses belonging to other operators were also running on the route. Even assuming that there are such inconsistent orders of the Appellate Tribunal, we are of opinion that Article 14 will have no application. We reiterate what was said in the decision of a Bench of this court to which one of us was a party in W. A. Nos. 31 and 32 of 1954 (Mad), namely,

"The fact that there are several inconsistent orders of a Tribunal does not mean that all the orders are wrong, as contravening Article 14 of the Constitution. One order cannot be attacked as invalid solely on the ground that it is inconsistent on principle with an earlier or later order. It may be that the order impugned may be the right order and the other inconsistent order may be wrong. Each order, when it comes up before this court, has to be examined on the merits, having regard to the facts and circumstances of that particular case."

There is no substance in any of the contentions based on the Constitution.

17. Mr. M. K. Nambiar and Mr. Jagadisa Aiyar cited authorities for the position that if irrelevant considerations are taken into account by an inferior tribunal in disposing of the question before it, this court would have jurisdiction to interfere under Article 226. We have no quarrel with the proposition; but in the cases before us no irrelevant consideration has been taken into account.

18. In the result the appeals fail and are dismissed with costs of the contesting respondents. Advocate's fee Rs. 200/-.