

(1971) 02 MAD CK 0031

In the Madras High Court

Case No : Writ Petition No's. 4861 of 1968 and 845, 1211, 1378, 1663, 3280 and 3629 of 1969

The Erode Co-operativfe Motor Transport Society (for Harijans) Ltd. Erode and Others

APPELLANT

Vs

The State Transport Appellate Tribunal, Madras I and Others

RESPONDENT

Date of Decision : 17-02-1971

Acts Referred:

Constitution of India, 1950 — Article 226

Motor Vehicles Act, 1988 — Section 46, 47(1), 48(1), 68, 68(1)

Tamil Nadu Motor Vehicles Rules, 1940 — Rule 155

Citation : AIR 1972 Mad 93

Hon'ble Judges : K. Veeraswami, C.J.;Raghavan, J

Bench : Division Bench

Judgement

K. Veeraswami, C.J.—In this batch of petitions under Art 226 of the Constitution for certiorari the main and common question argued

before us is as to the validity of Rule 155-A of the Madras Motor Vehicles Rules 1940. The rule was introduced by G.O. Ms. No. 1427. Home

dated May 13, 1968. The object of the rule as stated in the preamble is to provide certain guiding principles for the grant of stage carriage permits.

The rule has six clauses of which the first classified the routes as short, medium and long. The second clause provides for screening of applicants

for stae carriage permits on certain grounds of disqualification. After eliminating the applicants as unsuitable. the following clause specifies how the

merits of the rival applicants are to be assessed on the basis of marks to be awarded as for residence, branch office, experience on the route,

business or technical experience in the field of motor vehicles operation, repair and maintenance facilities and viable unit. In allotting marks, there is

a proviso to Cl. (3) which is to the effect that if a new entrant had made an application for a short route other than a town service route, no marks

should be awarded to any applicant for branch office, experience on the route, repair and maintenance facilities and viable unit. Under Cl. (4), after

the marks have been awarded under the preceding clause, the applicants should be ranked according to the total marks obtained by them and the

application should be disposed of in accordance with the provisions of sub-section (1) of S. 47. And then the next clause says that subject to sub-

rules (1) to (4) and 5 (ii) preference shall, other things being equal, be given in the disposal of applications in respect of short routes other than

town service routes to persons who have not held any permit for a stage carriage. Clause (5)(ii) contains another ground of preference and that is

notwithstanding anything contained in Cl. (5)(i), but subject to the other provisions of that rule, preference shall, other things being equal, be given

to a person who being the holder of a stage carriage permit has during the period of three years immediately preceding fifteen days prior to the

date on which the application is considered, not been punished under the Act or the Motor Vehicles Taxation Acts mentioned in the sub-clause.

The proviso to the sub-clause provides that any such punishment should not be taken into account for the purpose of the sub-rule if such

punishment had on or before the date on which the application was considered been stayed by a competent authority. The last clause of the rule

requires a tabular statement of the marks awarded to each applicant to be appended to an order made u/s 48. It may be remembered that there

was a somewhat similar marking system in vogue earlier to this rule, but that scheme was struck down in *B. Rajagopala Naidu Vs. State Transport*

Appellate Tribunal and Others, on the ground that it was not made in exercise making of the scheme. *C.S.S. Motor Service, Tenkasi and Others*

Vs. The State of Madras and Another, drew attention to the desirability of framing rules containing the policies relating to public interest and to

make the practice in the matter of selection among rival applicants uniform. Evidently in this background the impugned rule has been made in

purported exercise of the power u/s 68 as we see from the Government Order promulgating it.

2. The validity of the rule is canvassed on four grounds: (1) Section 68 does not provide the power to make the rule so as to fetter the quasi-

judicial function u/s 48 (1) read with Section 47 (1). (2) While Section 47 (1) entrusts the discretion to the authorities specified, in the matter of

selection of an applicant, the rule takes away or fetters that discretion; (3) The rule, inasmuch as it is inconsistent with the proviso to Section 47

(1), is ultra vires (4) The rule also offends Arts. 19(1)(g) and 14.. We shall deal with these points seriatim.

3. A peculiar feature of the Motor Vehicles Act is that practically at the end of every Chapter there is a rule making power and a few of the

sections refer to the procedure of manner of exercising the power as prescribed. Section 68 is in Chapter IV of the Act. It has two sub-sections

and the first provides that the State Government, may make rules for the purpose of carrying into effect the provisions of that Chapter. Without

prejudice to the generality of the power, sub-section (2) specifies certain matter with reference to which the State Government is authorised to

make rules. It may be granted that Rule 155-A is not within the purview of any of those specified matters. The rule can therefore, be justified only

if it comes within the purview of sub-section (1) of S. 68. The phraseology conferring the rule making power is wide and the State Government will

be competent to make any rule in exercise of this power, the only limitation being that the rule so made should be for the purpose of carrying into

effect the provisions of the Chapter,. The purpose of Rule 155-A is to lay down guiding principles for grant of stage carriage permits. That subject

is covered by Section 48(1), which authorises the Regional Transport Authority to grant a stage carriage permit on an application made to it u/s

46. But the power is to be exercised subject to Section 47. Section 47(1) directs that in considering an application for stage carriage permit, the

Regional Transport Authority should have regard to the matters specified in Cls. (a) to (f) and also to the representations made by the specified

persons and the authorities. Clause (a) of sub-sec. (1) of S. 47 is ""the interests of the public of the service to be provided, the adequacy of other

passenger transport services, the benefit to any particular locality or localities likely to be afforded by a particular service, the operation by the

applicant of other transport services and the condition of the roads are the matters specifically provided which ought to be taken into account by

the Regional Transport Authority in considering an application among other things. The purpose of the Chapter as provided in S. 48 (1) and

Section 47 (1) is the selection or rejection of an applicant for grant or refusal of a permit as the case may be and one of the criteria with reference

to which this purpose is to be achieved is by taking into account the interests of the public generally. What that means very much concerns and in

fact is basic for the purpose. Laying down principles for guidance in the matter of grant of stage carriage permit, more especially in indicating in

broad outlines what public interest generally in the context may take in is within the rule making power of Section 68 (1). It cannot be said that

merely because certain matters are specifically mentioned in sub-section (2) it follows, therefore, that the generality of the power should in any way

be put down. Provided the rule made u/s 68 is for the purpose of carrying out the provisions of the Chapter IV. the rule cannot be invalidated on

the ground of want of power. We are satisfied that the Rule is within the power of the State Government u/s 68(1).

4. But then it is contended that since there are sections in the Chapter which contemplate prescription and prescription under the Act means,

through making rules and since there is no section which specifically provides for prescription as to laying down the principles of selection, it should

not be assumed that Section 68 (1) by itself authorises the rule to be made. The answer to this is that when Section 68 (1) by itself authorises the

rule to be made. The answer to this is that when section 68 (1) itself directly provides for the power to make the rule,. there is no need for any

other section to provide for prescription as to the laying down of guiding principles for grant or refusal of permit of rival applicants. We are also

told that the grant or refusal of a permit being a quasi-judicial power and the discretion being vested in the Regional Transport Authority by a rule,

no fetter can be laid on it. The only authority cited in support of that is B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others, .

We do not think that it dealt with the matter at all. In a passing observation it has been stated that the quasi-judicial discretion can be restrained or

fettered by a statute. In the context the court in that case did not mean to lay down that a rule validly made, which is equally law, could not operate

in the same way as a statute and control quasi-judicial jurisdiction. That case was concerned with the administrative direction issued u/s 43-A and

it was held that such direction could not in any way validly affect the judicial discretion. Also we are of opinion that Rule 155-A does not operate

to fetter the quasi-judicial discretion in its exercise. All that it does is to lay down certain guides in the matter of selection. It does not prevent the Regional Transport Authority or the Tribunal in taking its own view in the light of the particular facts and of the guidelines in the rule. As a matter of fact, the criteria mentioned in Section 47 (1) themselves are not exhaustive and it cannot be said that the Regional Transport Authority or the Tribunal are necessarily confined only to the principles indicated in Rule 155-A. There is therefore, no force in the first ground of the petitioners.

5. The observations we have just made answer the second contention for them as well to a certain extent. It was pointed out in *Satya Narayan Transport Co. Ltd. Vs. Secretary, State Transport Authority, West Bengal and Others*, that when a statute says that an authority must have regard to certain specified matters, it means that the authority should take into account those matters. The contention is that the rule making authority should not go further and make a rule which will have the effect of directing the authority to decide a matter in any particular way. If the proposition is put in that manner, there can be no objection to it. But there is nothing in Cl. (2) of Rule 155-A or Cl. (3) which compels the authority to decide in a particular way as to whether a grant should be made or not. All that it says is certain circumstances were present, the applicants were liable to be screened or eliminated as being unsuitable. No doubt when the sub-rule speaks of financial instability, it speaks of insolvency or decrees remaining unsatisfied as on a certain date. But that does not mean that any rule of evidence is laid down. All that it means is that if there is insolvency or if decree remain unsatisfied, the applicant should be disqualified. There may be cases where even when decrees are unsatisfied, the person concerned may financially sound and stable. The point which the Regional Transport Authority is called upon to consider is as to the financial instability of the applicant and that is the governing consideration. We do not understand Cl. (2) of the rule to lay down that wherever there is a decree unsatisfied as on the stated date the person concerned should be regarded as a person financially not stable, even though the authority is convinced by other facts that he is financially sound. It is said that under Cl. (2) of the Rule certain matters have been specified for screening but not others which may even be graver circumstances. But there is nothing in this provision to rule out the possibility of the authority

taking other circumstances into account for the purpose of screening an applicant. We do not think that the grounds mentioned in this provision are

the only grounds on which the applicant can be regarded as unsuitable and, therefore, is liable to be screened. It is no doubt true that sub-r. (2)

says ""the applicants shall first be screened."" But that is merely a direction that in the process of selection the first step should be to eliminate some

of the applicants on the grounds of disqualifications of the type mentioned. The Regional Transport Authority is not prevented from taking others as

well which have not been specified but which the Regional Transport Authority may consider should legitimately weigh with it.

6. The third ground is that sub-rules (5)(I) and (ii) lay down grounds of preference, but do not incorporate the effect of the proviso to Section 47

(1) and thus these provisions are inconsistent with that proviso. We think that this is not a correct understanding of the effect of sub-rules (5)(I) and

(ii). Sub-rule (4) itself makes it clear that after marks have been awarded under sub-rule (3), the applicants should be ranked according to the total

marks obtained by them and then the application should be disposed of in accordance with the provisions of sub-section (1) of S. 47 and that

means including the proviso to that sub-section.

7. It is then said that Item (F) of sub-rule (3) gives excessive weightage to new entrants., Apparently the reference is to the proviso, which is that if

a new entrant has made an application for a short route other than a town service route, no marks shall be awarded to any applicant under Cls.

(B) (C)(E) and (F). That in our opinion, means that it will have application only where a new entrant is one of the rival applicants. It does not

follow from this that if for any reason the new entrant goes out of the contest, the rest of the applicants, who may not be new entrants but fleet

owners or medium operators, as between operators, as between them marks should not be allotted under Items (B). (C). (E) and (F).

8. The last ground is based on Art. 19(1)(g) and Art. 14. The rule is attacked on the basis that it is unreasonable. For instance, it is said that it is

unreasonable to say that a person will be financially unstable, if a decree against him financially unstable, if a decree against him remains unsatisfied

as on a particular date. We have dealt with this aspect earlier and pointed out how this provision should be understood. In that light no question of

unreasonableness can arise. The Regional Transport Authority or the Tribunal is not compelled to hold that a person is financially unstable when a decree against him remains unsatisfied as on a specified date. If on other facts, it is satisfied as to the financial soundness of the person. So too, in the matter of screening, while if the matters specified in Cl. (2) are present, the Regional Transport Authority may screen a person, those matters are not exhaustive. It may also be pointed out that if any of these circumstances which may otherwise render a person liable to screening is sufficiently explained away, the Tribunal is still bound to screen a person. We are of opinion that the provisions we have referred to are not shown to be unreasonable or arbitrary. We hold, therefore, that Rule 155-A is not violative of Articles 19(1)(g) and 14.

9. The view we have taken as to the validity of the Rule receives support from *M/s. Ghose Miah v. Regional Transport Authority, Cuddapah*,

AIR 1963 A P. The State of Andhra Pradesh has framed a similar rule the validity of which has been upheld on identical reasons which have

prevailed with us. We may also refer to *Banta Singh Vs. State of Madhya Pradesh and Others*, and *Gopal Chandra De Vs. State of West Bengal*

and Others, where a rule giving preference to viable unit, other things being equal, was held to be valid.

10. In the light of this judgment, we will proceed to consider each of the petitions on its merits.

W.P. No. 3629 of 1969:--

The petitioner herein was the grantee at the hands of the Regional Transport Authority. The authority preferred the petitioner on the ground that it is

cooperative society for Harijans having only one bus, fully equipped workshop, principal place of business at Erode. one of the termini of the

route, which as Erode bus Stand to Kunnankattuvalasu (Via P.S. Park, Railway Station etc., a small sectoral qualification and 2.1/2 years"

experience as well. The authority observed:--

In preference to the big fleet owners (of whom the 2nd respondent was one) namely applicants Nos. 5, 3 and 2 and also applicant No. 8 who has

been granted permit recently. I would prefer the Co-operative Society and that is of the Harijans, who have all the qualifications, even though

scores a little less because of its being a one bus operator and the need to make

the Co-operative Society viable in the name of social justice.

The 2nd respondent's appeal to the Tribunal was allowed. The reason that prevailed with the Tribunal was two-fold. It pointed out that the 2nd

respondent having scored 7.50 marks as against the 5.70 marks obtained by the petitioner, the difference in the marks itself was sufficient to show

that for the purpose of the proviso to Section 47 (1), other things were not equal. It also said that the question of size,, though relevant was not

disposed of by the Regional Transport Authority properly. In the view of the Tribunal, the petitioner having been awarded a mark for having a

viable unit, it could not again press the fact into service and get a double advantage.

11. It is urged before us that the Tribunal misdirected itself because it proceeded on the basis that elimination of a fleet owner on its size was not a

relevant factor and that in any case it failed to see that the marks given under R. 155-A did not cover the entire area of the matter that could or

should be taken into account u/s 47 (1). In the abstract the two grounds urged do not appear to be unreasonable or unsound. This Court in S.A.

No. 154 of 1970 V.M. Palaniswami Nadar and Sons v. S.V.R. Transports, Madurai observed:

It is not in dispute that classification for the purpose of selection as medium operator and fleet owner is relevant. It may, in particular cases, be

desirable to prefer medium operators to fleet owners. The Tribunal was definitely of opinion that fleet owners should not be preferred for the

route. If that ground stands, no further comparison could at all arise between Madurai Devakottai Transports (P) Ltd., and the successful appellant

before the Tribunal.

But that is not what the Tribunal in this case has observed. It did not say that having regard to the circumstances relating to the particular route it

was necessary to select a new or medium operator in preference to a fleet operator. But it said the marking system which now prevails itself gives

weightage to a small operator who has not got a viable unit, and that being the case, there is no reason why a similar weightage should be given

over again. That reasoning is to be found in the following remarks of the Tribunal:

After having obtained marks for having a viable unit, the same point cannot be urged to give preference over the 2nd appellant. If weight is to be

given for the smaller unit of respondent as against the larger unit of the 2nd appellant, it would amount to giving weight twice for the same point.

We see nothing wrong in that approach of the Tribunal,. The Tribunal did not misdirect itself that the size of an operator was not a relevant factor

which could be taken into account. On the other hand, it has pointed out that it has been taken into account while assessing the marks of the rival

applicants. But then the Tribunal went on to say:--

The difference in the marks itself is sufficient to show that other conditions are not equal.

Apparently this has reference to the proviso to Section 47 (1). As to that matter, the Tribunal again in its order has applied its mind. After noticing

Tamil Nadu Transport, Coimbatore (P) Ltd. Vs. Coimbatore Motor Transport Cooperative Society for Ex-Servicemen Ltd. and Another, it

concluded:--

The marks obtained by the 2nd appellant and 2nd respondent would show that they are not equal or even approximately equal so as to give

preference to the Co-operative Society relying under proviso to Section 47 (1)".

12. It may be pointed out, as we have in a way done earlier, that in determining whether other things are equal for the purpose of application of the

proviso to Section 47 (1), the marks alone should not be the basis. This is because sub-section (1) of S. 47 mentions matters some of which do

not get into the marking system. Also the matters mentioned in sub-section (1) of that section are not exhaustive. In determining therefore, in the

context of the proviso to Sec, 47 (1) whether the applicants are of equal merits, not only the marks but also other relevant circumstances will have

to be taken into account.

13. But in this case it does not appear to have been urged before the Tribunal that any other circumstances existed and that it was called upon to

consider them. It was for the petitioner to have placed the facts and circumstances which would bring about equality which would entitle it to

invoke the preference embodied in the proviso.

14. On that view, the petition is dismissed with costs of the 2nd respondent. Counsel's fee Rs. 100/- W.P. Nos. 4861 of 68 and 1378, 1663 and

3280/69. The petitioner in W.P. No. 4861 of 1968 was the grantee in the first instance. There were four appeals against the grant. The Tribunal

dismissed the appeals, but at the same time set aside also the permit granted to the petitioner in W.P. No. 4861 of 1968. the ground for dismissal

of the appeals was that the appellants had not produced tax clearance certificates under Sub-rule (2) of R. 155-A. The permit was set aside on the view that the grantee was a fleet owner and a further grant would make him a monopolist on the route.

15. The rule was made by G.O. Ms. No. 1427, Home, dated May 13, 1968. It was published in Part V. page 512 of the Fort St. George

Gazette, dated may 15, 1968, the hearing before the Regional Transport Authority was on May 31, 1968. This question of production of the tax

clearance certificates arose for the first time under the new rule. There was a broad sheet as it is called which exhibited that in some cases at least

taxes had been paid. But the Tribunal thought that because tax clearance certificates were not produced in respect of all the buses the appellants

before it were screened.

16. We think that the disposal in that manner is not in accordance with law. sufficient opportunity should have been given to the appellants for

producing the tax clearance certificates. After all the question that the Tribunal was called upon to consider was about the financial instability of the

appellants. To get tax clearance certificate, it would take some time. We think that justice demands that the order of the Tribunal should be set

aside and the appeals remitted to its file for fresh disposal. Actually, in one of these cases, the tax clearance certificate was produced on June 1` ,

1968. But this does not appear to have been taken into account, though the order was dated June 3, 1968. So far as the petitioner in W.P. No.

4861 of 1968 is concerned, we satisfied that as the order of the Tribunal screening the appellants before it is set aside, the petitioner should also be

given a fresh opportunity to defend himself.

17. the petitions are therefore allowed. The appeals will now go back to the Tribunal for fresh disposal. No costs.

W.P. Nos. 845 and 1211 of 1969.

18. Just as in W.P. Nos. 4861 of 1968 and the connected petitions, in these cases too, the Tribunal set aside the grant made to the petitioner in

W.P. No. 845 of 1969. But the Tribunal also pointed out that the appellant before it was rightly screened as he had not produced the tax

clearance certificate. But having regard to the fact that the Rule relating to the screening has just then come into existence. We think that further

opportunity should have been given to the appellant before it for producing proper clearance certificate. On that view, the order of the Tribunal is

set aside and it is directed to restore the appeal on file for fresh disposal. We also set aside the order reversing the grant to the petitioner in W.P.

No. 845 of 1969 with a direction that the Tribunal will hear him over again and the entire matter will be disposed of on the merits.

19. The petitioners are allowed on these terms. No costs.

20. Petitions allowed.