

(1996) 11 OHC CK 0024

In the Orissa High Court

Case No : Original Jurisdiction Case No. 11339 of 1996

The Executive Officer, Shree Baldev Jew Endowments

APPELLANT

Vs

State Transport Authority and Others

RESPONDENT

Date of Decision : 04-11-1996

Acts Referred:

Orissa Motor Vehicles Rules, 1993 — Rule 88A

Citation : (1997) 1 OLR 41

Hon'ble Judges : S.C. Datta, J; R.K. Patra, J

Bench : Division Bench

Advocate : G. Rath, B.B. Dash and M.S.N. Rao, for the Appellant; R.C. Parija, for O.P. 3, for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—Is the result of litigation always unpredictable? The petitioner may reply to this question in affirmative.

2. By order dated 3-7-1996 at Annexure - 4, the Chairman, State Transport Authority, Orissa, Cuttack (hereinafter referred to as "S. T. A")-opp. party No. 2 in comparison of comparative merits granted temporary permit of stage carriage to the petitioner for vehicle bearing registration number OR-05-D.5781 on the route Pattamundai-Calcutta, but in the second round of litigation, the petitioner has been deprived of the fruit of the said order and now as per the impugned order dated 3-10-1996 temporary permit has been granted to opp. party No. 3 for vehicle bearing registration number OR-05-D-552S on the self-same route. This order at Annexure-10 of the S. T. A. is the subject matter of challenge in this writ petition under Articles 226 and 227 of the Constitution.

3. A brief resume of facts leading to filing of the present petition is necessary.

Petitioner and opp. party No. 3 applied for grant of temporary permit for their respective vehicles on the route Pattamundai to Calcutta. On consideration of both the applications, the S. T. A. as per order dated 3-7-1996 (Annexure-4)

granted temporary permit to the petitioner after rejecting the application of opp. party No. 3. The relevant portion of the said order reads as follows :"

"Coming to the experience of both the operators, it is found that while Sri Birendra Kumar Sahu has no previous experience for operating a bus on this particular route the Executive Officer, Baladev Jew Endowment is operating such long distance buses from Aul to Calcutta and from Pattamundai to Calcutta for nearly 10 years. Besides, the Executive Officer, Shri Baldevjew Endowment has got existing facilities for passengers both at Calcutta as well as at the starting point which Sri Birendra Kumar Sahu does not have.

So taking into account the comparative experience of two operators, it is hereby decided that the temporary permit for 119 days shall be given in favour of the Executive Officer, Baldevjew Endowment. Kendrapara for vehicle No. OR-05-D-6781 on the route Pattamundai to Calcutta. Consequently the application of Sri B. K. Sahu is rejected."

Being aggrieved by the order, opp. party No. 3 filed M, V. Appeal No. 18 of 1996 before the State Transport Appellate Tribunal, Orissa, Cuttack. After hearing, the Tribunal by Us judgment and order dated 6-9-1996 (Annexure-7) remitted the matter to the Chairman, S. T. A. for fresh consideration of the applications. In its judgment, the Tribunal by referring- to a decision of this Court in Jadumani Pradhan Vs. Srinibash Sahu and Others, observed that as per the said judgment although ownership or possession of stage carriage is not a condition precedent for grant of permit, it is a relevant factor for consideration of merits of rival applicants. The petitioner thereafter filed a writ petition, i. e., OJC No. 9693 of 1996 challenging the said decision of the Tribunal. This Court did not admit the writ petition because of the fact that the matter had gone on remand and disposed of the matter by observing that the Chairman, S. T. A. while considering the applications "will not be influenced by any observation made by the appellate authority with regard to the merit of the claim of the respective parties." After the matter came on remand, the Chairman, S.T. A. by the impugned order dated 3-10-1996 (Annexure-10) rejected the application of the petitioner and granted temporary permit to opp. party No. 3 for his vehicle. Since all the reasons given by the Chairman while allowing the application of opp. party No. 3 are challenged it would be profitable to extract the relevant part of the order :

From the vehicle inspection , report mentioned above, it is found that OR-05-D-6781 is provided with (i) Emergency door which is belted by fixed nut-bolts; without provision of any lacking arrangement so that the door can be opened easily in times of emergency, whereas the vehicle bearing No. OR-05-D-5525 has been provided with an emergency door which can be opened easily in times of emergency and not bolted by fixed nut-bolts, (ii) Upholstery of seats provided in vehicle No. OR-05-D-6781 is found to be better than the same provided in OR-05.D-6781. (iii) The vehicle OR-05-D-6781 is found to be fitted with dazzling lights which . are not safe for the road users and therefore prohibited.

It is also brought to my notice that their Lordships in the Hon'ble High Court of Orissa in OJC No. 742 of 1972 Jadumani Pradhan Vs. Srinibash Sahu and Others, have observed that though ownership or possession of a stage carriage is not a condition precedent, but it is a relevant consideration in considering merits of rival applicants. In the present case, it is admitted that OR-05-D-6781 is a vehicle hired by the applicant whereas OR-05-D-5525 is owned by the applicant : himself and the present status of the vehicle is idle. So induction of the vehicle in route applied for i. e., Pattamundai to Calcutta will not cause any inconvenience which would have been in the case had it been plying on any existing routes.

Taking all these factors into consideration it is hereby ordered that the temporary permit be given in favour of the vehicle OR-05-D-5525 owned by Sri Birendra Kumar Sahu for a period of 119 days..."

4. Shri G. Rath, learned senior counsel, seriously contended that this Court in Jadumani Pradhan v. Srinibash Sahu (supra) has not at all held that although ownership or possession of stage carriage is not a condition precedent, " it is a relevant factor in considering the merits of rival applicants. He referred to the second sub-paragraph of paragraph 5 of the judgment. Learned counsel also placed reliance on paragraph 14 of the judgment of the Constitution Bench of the Supreme Court in Veerappa Pillai Vs. Raman and Raman Ltd. and Others, .

Shri Parija, learned counsel for opp. party No 3. on the other hand, referred to paragraph 16 of the aforesaid judgment of the Supreme Court in support of his contention that issue of permit in a given case may depend on ownership of the vehicle. According to him, opp. party No. 3 is the owner of vehicle having purchased it after taking huge amount of loan and if permit is not granted, he (opp party No. 3) would be running the risk of loss whereas the petitioner will not be at loss because he has got his vehicle on hire from a registered owner.

5. In view of the contention on behalf of the petitioner that ownership or possession of stage carriage is not at all a factor to be taken into consideration for judging the merit of rival applicants and this Court in Judumani Pradhan (supra) has not stated so, it is necessary to examine the legal position. In this connection, we may quote the relevant portion of paragraphs 14 and 16 of the judgment of the Supreme Court in Veerappa Pillai (supra) :

" An examination of the relevant sections of the Motor Vehicles Act does not support the view that the issue of a permit for a bus-which falls within the definition of a stage carriage-is necessarily dependent on the ownership of the vehicle. All that is required for obtaining a permit is possession of the bus. As ownership is not a condition precedent for the grant of permits and as a person can get a permit provided he is in possession of a vehicle which satisfies the requirements of the statute or the rules framed thereunder, we have to hold that the parties and the authorities were labouring under a misconception if they entertained a contrary view.

XX XX XX "" ".....If it were the law that the question of possession based on

ownership was decisive as regards grant of permits, and if no other circumstances were available to be taken into account when the question of the issue of permanent permits again came up for consideration, it would have been easy to hold that Messrs Raman and Raman Ltd. had at least a preferential claim. But unfortunately for them, both these requirements are not satisfied. It has been pointed out already that nowhere do we find in the Act anything to indicate that the issue of permits depends on ownership".

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6. Sri Rath submitted that this Court in *Jadumani (Pradhan (supra))* has not ruled for grant of permit although ownership or possession of a stage carriage is not a condition precedent, it is a relevant factor in considering the merits of the rival applicants. No doubt in the head-note (C) of report, it has been summarised as follows :

"Grant of permit-Ownership or possession of a state carriage is not a condition precedent but is a relevant consideration in considering merits of rival applicants."

In paragraph 5 of the judgment, it was observed as follows :

"Under the Act and the Rules made thereunder ownership or possession of a stage carriage is not a condition precedent to making an application for the grant of a permit. "The applicant is entitled to say that if granted a permit, he would procure a vehicle to use under it. The Mysore High Court in the decision relied upon by the appellate authority has re-stated that position of law....."

In that case, the State Transport Authority rejected the application of one Srinibash Sahu on the ground that he had no spare bus ready with him and the existing bus was of 1953 model. The State Transport Authority accordingly granted permit to *Jadumani Pradhan* considering his experience and also the fact that he had a bus of 1973 model and a spare bus of 1955, model. The order of the Transport Authority-granting permit to *Jadumani Pradhan* was reversed by the Tribunal without upsetting the reasoning of the Transport Authority referred to above. This approach of the Tribunal in reversing the conclusion of the Transport Authority was found by this Court to be faulty in law, The Court observed as follows :

"It is open to a Transport Authority in preferring one applicant to the other to take into consideration the fact that the applicant preferred has a ready vehicle of an acceptable mode as also a spare vehicle to work as a stand-by. It cannot be forgotten that the paramount consideration under the Act is the convenience of the traveling public and the business of the operator is only the means."

On careful perusal of the judgment in *Jadumani Pradhan's* case (*supra*), it appears that this Court has not held that for grant of permit, ownership or possession of a stage carriage is a relevant factor in considering the merits of the rival claims. The head-note of the report as abridged thus does not reflect the correct position.

7. At this stage, we may refer to Rule 88 of the Orissa Motor Vehicles Rules, 1993, which has bearing on the point at issue Sub-Section (1) thereof states that a temporary permit may, if the State or the Regional Transport Authority thinks fit, be granted to any person whether he is the registered owner of the vehicle or vehicles to be used thereunder or not. Similarly Sub-rule (2) further provides that the applicant at the time of making application for temporary permit is not in possession of the vehicle or vehicles or has not entered into a contract to hire the vehicle or vehicles, the concerned authority if for good and sufficient reason is satisfied, may also issue temporary permit in which registration mark of the vehicle is not set out.

8. In view of the aforesaid legal position, we are inclined to hold that the aspect regarding ownership or possession of stage carriage cannot be held to be germane for consideration of merits of rival claims for grant of permit. The S. T. A. has thus committed error of law apparent on the face of the record by taking into account the ownership of the vehicle as a relevant factor while considering the merits of the rival claims of the parties Shri Parija's submission that opp. party No. 3 having purchased the vehicle by taking loan runs the risk of losing the business has no relevancy for grant of permit. We reiterate that grant of permit is to be made primarily with- reference to the object of serving the interest of general public. As pithily put by B, N.Misra, J. (as he then was) in Jadumant Pradhan's case (supra) "it cannot be forgotten that the paramount consideration under the Act is the convenience of the traveling public and the business of the operator is only the means."

9. The S. T. A. in the impugned order has compared both the vehicles and has noticed three defects in the petitioner's vehicle. With regard to defect Nos. 2 and 3, Shri Parija learned counsel for opp. party No. 3, fairly concedes that they are not of very serious type. With regard to defect No. 1, he points out that since the emergency door of the vehicle of the petitioner cannot be easily pressed into service at the time of emergency, it is a serious lacuna. Shri Rath, on the other hand, states that since it was a question of fixing (non-fixing) of nuts and bolts, the defect is remediable.

10. As already noted, the S. T. A. in its previous order dated 3-7-1995 has taken into consideration several other factors in allowing the application of the petitioner. These reasons given in the order dated 3-7-1996 are relevant for consideration of the rival merits of the cases of the applicants. In the impugned order, however, the S. T. A. has not considered these aspects. On account of non-consideration of relevant factors and for the reasons stated above, the impugned order at Annexure-10 is vitiated which cannot be sustained in law and is hereby quashed. The matter is remitted to opp. party No. 2 for reconsideration.

11. The writ petition is accordingly allowed. There would be no order as to costs.

S.C. Datta, J.

12. I agree.