

(1990) 06 KL CK 0065
In the High Court Of Kerala
Case No : O.P. No. 2484 of 1990

The Managing Partner M/s. Shornur Road Transport	APPELLANT
Vs	
R.T.A. and Others	RESPONDENT

Date of Decision : 19-06-1990

Acts Referred:

Citation : (1990) 2 KLJ 161

Hon'ble Judges : K.A. Nayar, J

Bench : Single Bench

Advocate : P. Ravindran, for the Appellant; A.N. Rajan Babu (Sr. Govt. Pleader)
P. Gopalakrishnan Nair, G. Prabhakaran and K. Radhakrishnan, for the Respondent

Final Decision : Allowed

Judgement

K.A. Nayar, J.—The Original Petition is for quashing Ext P3 judgment of the 3rd respondent, the State Transport Appellate Tribunal. The petitioner is a stage carriage operator conducting service on the route Thrissur-Palakkad with her stage carriage KRP 7863. There is another stage carriage of the petitioner operating on the route Iringattiri-Palakkad. Respondents 5 and 6 submitted applications for regular permit on the route Thavanoor-Palakkad. The petitioner's service operating on the route Thrissur-Palakkad has a common sector of 45 kms. from Kulappulli to Palakkad and her service operated on the route Iringattiri-Palakkad overlaps 60 Kms from Pattambi to Palakkad on the route Palakkad-Thavanur applied by respondents 5 and 6. Therefore the petitioner objected to the grant in favour of respondents 5 and 6. When the applications were taken up for consideration the petitioner as well as the various other operators objected. Respondents 5 and 6 submitted the same set of timing for the grant of permits. Therefore the first respondent passed, after hearing the petitioner and other persons objected, Exts. P1 and P2 orders rejecting the application for permit. The relevant portion of Ext. P1 reads as under:

Since both applicants have given the same set of time " schedule the RTA rejected the applications. However they are at liberty to apply afresh with

separate set of timings.

Ext. P2 order is also in identical terms. The petitioner was an objector and she opposed the grant. She also opposed the timings. Aggrieved by Exts. P1 and P2 orders respondents 5 and 6 filed appeals and in the appeals the petitioner was not made a party. The 3rd respondent passed Ext. P3 judgment. It is stated in Ext. P3 judgment that respondents 5 and 6 have come to an understanding regarding time schedule. Since respondents 5 and 6 agreed on different timings, the appeals were allowed and permits were directed to be granted to them with timings agreed upon by (hem. The 5th respondent was given the time mentioned in page 93 of R.T.A's file and 6th respondent was given the time schedule impugned in the order. Therefore by Ext. P3 the 5th and 6th respondents were given permit with the time mentioned at page 93 of the R.T. A's file and in the application of the 6th respondent respectively. The petitioner is aggrieved by this order. Hence she filed the Original Petition. Heard Shri. Ravindran counsel for the petitioner, Shri Prabhakaran, counsel appearing on behalf of the 5th respondent, Shri. Radhakrishnan, counsel appearing on behalf of the 6th respondent and the Government " Pleader on behalf of respondents 1 to 4.

2. Admittedly the route applied for by respondents 5 and 6 has a common sector 45 Kms. in one case and 60 Kms. in the other with the route operated by the petitioner. The petitioner, among others, opposed the grant as well as the timings. Exts. P1 and P2 are the orders of the R.T.A. refusing the grant. R.T.A. rejected the grant as it was satisfied from the time schedule furnished that the provisions of the Act relating to the speed at which the vehicle can be driven are likely to be contravened. But it was made clear in the order that respondents 5 and 6 are at liberty to file separate set of timings. If the matter rested there when fresh applications filed the petitioner and others would have obtained an opportunity to attend the meeting of the R.T.A. and make representation, for R. 123 (2) provides for adequate notice of meeting of the R.T.A. and of the business to be transacted thereat to be given to persons who, in the opinion of the Regional Transport Authority or of its secretary, may reasonably have a claim to be permitted to attend the meeting for the purpose of making representations. Such notice had already been given pursuant to which the petitioner and others have made representation and were heard before Exts. P1 and P2 were passed. If similar applications have to be considered again the petitioner has a legitimate expectation that such a notice would be given to the petitioner and others under R. 123(2). R. 123 and 128 of the Kerala Motor Vehicles Rules 1989 are extracted hereunder:

123. Meetings of Regional Transport Authority:- (I) A Regional Transport Authority may meet once a month on such date, time and place as may be fixed by the Chairman, and also on "such other necessary occasions as may be determined by the Chairman for the despatch of business.

(2) Adequate notice of such meetings and of the business to be transacted thereat shall be given for the information of such persons who, in the opinion of

the Regional Transport Authority or of its Secretary, may reasonably have a claim to be permitted to attend the meeting for the purpose of making representations.

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28. Hearing of representations by the Regional Transport Authority:- In any case in which a person has a right to be heard according to the provisions of the Act or of these rules he may appear either in person or by an authorised representative when his personal appearance is specifically required.

Under Rules 123 and 128 there is an opportunity for the petitioner to make representation and to be heard. R.T.A. has, by Exts P1 and P2, directed respondents 5 and 6 to apply afresh with separate set of timings, another opportunity under R. 123 and 128 will be there for the petitioner and other parties. The question is whether this right can be taken away by filing an appeal without making the petitioner a party. Ext P3 is admittedly a judgment passed without making the petitioner a party. The petitioner was a person who could make a representation and who actually made a representation before the R.T.A. When an appeal is filed against that order she should get an opportunity to be heard as otherwise there is violation of principles of natural justice. The petitioner's right of being heard cannot be deprived of by respondents 5 and 6 agreeing among themselves about the timings and approaching the appellate authority to pass order on that basis. The appellate authority has to consider the case of the petitioner as well who was an objector before the first respondent.

3. Counsel on behalf of respondents 5 and 6 submitted that in the new Act there is no provision for objecting to existing operators. But under Rr. 123 and 128 the R.T.A. found that the petitioner is a person to be heard and after hearing the objections of the petitioner and others the applications of respondents 5 and 6 have been rejected with freedom reserved to file fresh applications. If the petitioner, therefore, thought that another application will be made when she will get opportunity under Rr. 123 and 128 to object, it cannot be said her expectation is erroneous. After Ext. P1 and P2 order she has a legitimate expectation to get another notice under R. 123(2) and 128 and another opportunity to make representation against the grant and against the timing. In public law such legitimate expectation gives sufficient interest to challenge the legality of the adverse decision. The principle of legitimate expectation is closely connected with the right to be heard. Such an expectation may take many forms and one is an expectation of being allowed time to make representation. A person is entitled to a fair hearing before a decision adversely affecting his interest was made if he had a reasonable or legitimate expectation of being accorded such hearing. This is the cumulative effect of the decisions reported in *O'Reilly v. Mackman*, (1982)3 All. E. R. 1124. *C.C.S.U. v. Minister for the Civil Service*, (1984) 3 All. E.R. 935 and *Attorney-General of Hong Kong v. Ng Yuen Shin*, (1983) 2 All. E.R. 346. In *Ranjit Thakur Vs. Union of India (UOI) and Others*, their Lordships of the Supreme Court observed that judicial review, generally speaking, is not directed against a decision, but is directed against the

"decision making process". In C.C.S. Ur v. Minister for the Civil Service. (H.L.E), 1984 (3) W.L.R. 1174 Lord Diplock classified the grounds upon which judicial review is granted as illegality, irrationality and procedural impropriety and these grounds have been approvingly referred to by the Supreme Court in the above said decision. In the exercise of power of judicial review of the decision of S.T.A.T. I am concerned only with the legality of the procedure followed and not with the validity of the order In the light of Exts P1 and P2 the petitioner had a legitimate expectation of getting another opportunity like the one the petitioner already obtained when respondents 5 and 6 made fresh applications as directed. But instead of making fresh applications respondents 5 and 6 filed appeals and obtained an agreed order from the 3rd respondent without making the petitioner a party in the appeal. The decision adversely affects the petitioner. The legitimate expectation of the petitioner of getting an opportunity of being heard is shattered. Therefore, I am of the view that Ext. P3 is vitiated by procedural impropriety.

4. There is another vitiating circumstance, namely, violation of the principles of natural justice. Justice is a psychological yearning in which man seeks acceptance of his view point by having an opportunity of vindicating his view point before the forum or authority enjoined or obliged to take decision about his right (See Charan Lal Sahu Vs. Union of India, . The rules of natural justice are not statutory rules. They are not cast in a rigid mould nor can they be put in a legal strait-jacket. Different judges have defined it in varying terms as universal justice, substantial justice natural sense of right and wrong, fundamental justice, duty to act fairly, fair crack of the whip, common fairness and fairplay in action, a phrase favoured by Bhagwati J. in the decision in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, and Sabyasachi Mukharji J. as he then was, in Sawai Singh Vs. State of Rajasthan, . The requirements of natural justice depend upon facts and circumstances of the case, the nature of the enquiry, the rules under which the Tribunal is acting, the subject-matter to be dealt with and so on. The concept of fairplay in action which is the basis of natural justice must depend upon the particular lis between the parties. Rules and practices are constantly developing to ensure fairness in the making of decision which affects people in their daily lives and livelihood. Beyond all rules and procedures such fairness is the sine qua non. (See Sawai Singh Vs. State of Rajasthan, and Union of India and Another Vs. Tulsiram Patel and Others, . The denial of natural justice is not in consonance with the scheme of rule of law governing our society. The principles of natural justice must read into every statute unless there is a clear mandate to the contrary for breach of natural justice vitiates and nullifies the order made in breach. This has been made clear by the decisions in Ridge v. Baldwin (1964) A.C. 40, R.B. Shreeram Durga Prasad & F. Nursing Das v. Settlement Commission, (1989)1 S.C. 234 and Shridhar Vs. Nagar Palika, Jaunpur and Others, .

5. When a decision was arrived at against respondents 5 and 6 at the R.T.A's level with petitioner vehemently opposing the grant, it cannot be said that the

principles of fair play has been met when respondents 5 and 6 are granted permit without making the petitioner a party. Ext. P3 is therefore vitiated on the aforesaid two grounds, namely, violation of principles of natural justice and also on the ground of procedural impropriety in that the legitimate expectation of the petitioner for getting an opportunity to present her case has been defeated. On these two grounds Ext. P3 is vitiated. If respondents 5 and 6 agreed on a timing it was open for them to approach the R.T.A. with that timing as directed in Ext. P1 and P2. According to counsel for respondents 5 and 6 the set of timings agreed upon by them before the R.T.A. But nevertheless R.T.A. has chosen not to grant the permit with that set of timings and directed them to apply with another set of timings. The petitioner's objections were against the grant because it overlaps on the routes she is operating and against timings because it clashes with her timings. Therefore the petitioner has a right to be heard. Justice must not only be done but also seen to be done. That the admitted facts the undisputed facts would have led to the same conclusion, whether the principles of natural justice is observed or not is absolutely no ground for its exclusion. A separate showing of prejudice caused is not necessary. The non-observance of natural justice is in itself a prejudice caused for it is a prejudice to any man to be denied justice (See *Juwarsingh and Others Vs. State of Madhya Pradesh*,). The third respondent seems to have lacked the advantage of learned arguments of the mature counsel on both sides advanced before me and therefore he passed Ext. P3 order directing the grant of permit to respondents 5 and 6 on the basis of the agreement regarding timings between them. I have already held that Ext. P3 is vitiated. I therefore, quash Ext. P3 and I do so without prejudice to the rights of respondents 5 and 6 to adopt the procedure reserved to them in Exts. P1 and P2.

The original petition is allowed. There will be no order as to costs.