

(1985) 04 BOM CK 0001

In the Bombay High Court

Case No : Writ Petition No. 194 of 1984 and Miscellaneous Civil Application No. 37 of 1985

Theodosio Luciano Fernandes

APPELLANT

Vs

Jagdisb Sagar and Others

RESPONDENT

Date of Decision : 23-04-1985

Acts Referred:

Motor Vehicles Act, 1939 — Section 63(7)

Citation : AIR 1985 Bom 397

Hon'ble Judges : Masodkar, J; Couto, J

Bench : Division Bench

Advocate : S.K. Kakodkar and A.F. Diniz, in W.P. No. 194 of 1984, for the Appellant; S.K. Kakodkar and A.F. Diniz, in Misc. Civil Appln. No. 37 of 1985, for the Respondent

Judgement

Masodkar, J.—This petition questions the order made by the State Transport Appellate Tribunal, Panaji, partly allowing the appeal filed by the Director of Tourism of the Government of Goa, Daman and Diu with regard to tourist vehicle No. G DT 9858. That order has been made holding that the approach of S. 63(7) of the Motor Vehicles Act had been erroneous and further that separate consideration of the application by the Director of Tourism was necessary by reason of preference. In that view the matter has been remitted to the State Transport Authority for consideration of the application before it filed by the Director of Tourism with regard to the permit for the vehicle.

2. In this Court in support of the petition Mr. Kakodkar urged that the provisions of S. 63(7) of the Act have been erroneously interpreted and thus there is an error ex facie amenable to the jurisdiction of this Court. In his submission unless everything was equal the proviso enacted by sub-sec. (7) does not have application. The counsel submits that although the provision of sub-sec. (7) deals with specific kinds of permits still all the other provisions including the provisions of sub-sec. (7) would throw light with regard to the process of grant of such

permits. In other words even under sub-sec (7) there had to be a competition between all the applicants as contemplated by other sections concerning grant of permits and only if all other conditions were equal after such competition preference would be given to a Tourism Corporation which may fall within the proviso for the purpose of grant. Mr. Kakodkar contends that the principle or the ratio of the judgment of the Supreme Court in *Sher Singh Vs. Union of India (UOI) and Others*, , would be attracted and the preference under the proviso would mean that other things generally appearing to be qualitatively and quantitatively equal amongst all the applicants the same would apply. In every other case all those who are even within the proviso would have to stand on the same footing notwithstanding the said proviso. In his submission the appellate authority was wrong in interpreting the provisions otherwise.

3. The provisions of S. 63(7) of the Act if taken into account along with the proviso which is a part of that sub-section leaves no manner of doubt that such submission cannot be accepted. It is clear that the provisions of sub-sec. (7) deal with the permits of special type for the purpose of promoting tourism and the proviso carves out a preferred class of the applicants by a device of nominating the categories mentioned in cls. (i) to (iv). It is ample to observe that cls. (i) to (iii) deal with Governmental or State Operators or the Corporations established by the Government for the purpose of promoting tourism. Cl. (iv) permits besides all those who have been recognized or approved by the Ministry of the Central Government dealing with tourism and that includes any operator of tourist cars as well as travel agents. In other words the proviso defines statutorily a preferential category of applicants who are engaged in, promoting tourism. In the light of this proviso it is obvious that what is enacted by the proviso is a general exception to the main class of applicants and as such a distinct preferential category of applications for permits. Under sub-sec. (7) the State Transport Authority is enabled to grant permit to any applicant for the purpose of promoting tourism subject to the satisfaction and compliance of the provisions as are mentioned in the body of that section. Having done so with regard to the applications of the four nominated classes, the proviso has been enacted with a direction that the applications of those who are within the proviso shall have the preference. That class consists of State Agencies as well as the approved private operators who are operating the transport activity for the purpose of promoting tourism.

4. That being the plain position of the section itself, it is not possible to accept the submission that notwithstanding the enactment of the proviso, even the preferential classes which are nominated by the Statute will have to stand along with those who do not form part of the class covered by the proviso. The very purpose of this type of permit is to provide the facility for the purpose of promoting tourism and the proviso is enacted to further that statutory scheme. These provisions clearly have three-fold specific scheme. It is not the general class of permit with which sub-sec. (7) of S.63 is concerned. It is firstly and foremostly specific permits for the purpose of encouraging tourism that is the subject

matter. No doubt under it everyone is entitled to seek such a permit subject to satisfaction of other conditions. Secondly for the purpose of seeking such permit, the applicants are required to comply with the provisions as far as may be of several sections viz. Ss. 49, 50, 51, 57, 58, 59, 59-A, 60, 61 and 64 as are enumerated in the body of the Section itself. Thus having made available the opportunity or facility for seeking such a permit the third factor is enacted by proviso in that, preferential class of applicants are recognized. Those are such who have known objective to further tourism. All those who are within the terms of this category thus constitute a special class having statutory preference over others. Once the application is within that class, it will have to be preferentially considered as compared to those which are out of that class. No doubt even those which are within the class will have to satisfy the other conditions which are the part of main sub-section. But nonetheless they would form a special class for consideration by reason of statutory preference carved out by the proviso appended to the sub-section.

5. It is an admitted position that the petitioner is not within the proviso while respondent No. 3 is within the proviso being governed by cI. (iii) of the proviso. In case the respondent No. 3 fails to satisfy the State Transport Authority, which is otherwise bound to process the applications in the light of the other provisions of the Act as may be applicable, then the claim of the other applicants who are not covered by the proviso would at all arise. We do not think that the ratio of the Supreme Court judgment, on which Mr. Kakodkar has relied, has any application to the present controversy. Firstly in that case the provisions of S. 63(7) were not in issue. On the other hand the entire judgment was in regard to the validity of the provisions of S. 47(I)(H) and the Court after considering the scheme of the Act repelled that challenge. That holding is of no assistance to come to the conclusion that the applicants who are within the nominated class cannot be treated with preference when the applications under S. 63(7) are taken into account for grant of special permit.

6. It is clear that the State Transport Authority will have to scrutinize the applications even of those under the preferential class in the light of the provisions and the notifications issued from time to time including the one dated 19th May 1976, if operative.

7. In this view we find no reason to interfere. Rule discharged with costs

8. In this petition there is an application being Miscellaneous Civil Application No. 37 of 1985 which appears to have been filed by the Goa, Daman and Diu Tourism Development Corporation Ltd., upon the allegation that they are the Government Corporation and all the property has been transferred to them from the Department of Tourism. At the hearing of the petition none appeared to support that application. However, it will not be proper for us to make an order rejecting that application in default particularly when the allegations appear to be that the transfer of property was notified in the official gazette of the Government. In view of that we make no order in that application and give liberty to the said

Government Corporation to prosecute to the proceedings by impleading themselves before the State Transport Authority. With this liberty rule in the application is discharged.

9. Order accordingly.