
(1963) 08 MAD CK 0015
In the Madras High Court

T.M. Vythilingam Pillai Sri Ambiga Bus Service	APPELLANT
Vs	
R. Lakshminarayanan and Another	RESPONDENT

Date of Decision : 28-08-1963

Acts Referred:

Motor Vehicles Act, 1988 — Section 57(4)

Citation : (1964) 1 MLJ 131

Hon'ble Judges : Srinivasan, J;M. Anantanarayanan, J

Bench : Full Bench

Judgement

M. Anantanarayanan, J.—The appellant before us (T.M. Vythilingam Pillai) was the grantee in respect of a stage carriage permit for the route Cuddalore to Vridachalam before the State Transport Appellate Tribunal, Madras. The Regional Transport Authority awarded the permit to one R. Lakshminarayanan, who, aggrieved by the judgment of the State Transport Appellate Tribunal, filed W.P. No. 637 of 1960 for the issue of a writ of certiorari quashing, the order of the Tribunal. This was heard by Srinivasan. J., who held that the basis of the order of the Tribunal was vitiated both by error of law apparent on the record, and by an assumption by the Tribunal, of a jurisdiction in excess of the restraint imposed u/s 57(4) of the Motor Vehicles Act. The order was quashed and as we stated earlier, the grantee before the Tribunal appeals.

2. Before the Regional Transport Authority there were as many as 38 applicants but six of them were absent at the hearing, and the rest were heard; the proceedings resulted in the grant of the permit to R. Lakshminarayanan the present first respondent. There were sixteen appellants before the State Transport Appellate-Tribunal, and their respective claims have been discussed by that Tribunal in. a judgment that runs to 75

paragraphs. Both statutory bodies adopted the system of marks under the relevant Government Orders, and the revised tabulation of the Tribunal will be found set forth in paragraph 51 of its judgment. We are not now concerned with the claims of the others, except the present appellant and the present first respondent. Both of them equally obtained 1 1/2 marks, and it is important to scrutinise and set forth, with some care, the grounds upon which the Tribunal preferred T.M. Vythilingam Pillai (appellant) and made him the grantee. For, the vital aspect of the appeal is, whether the learned Judge (Srinivasan, J.) was justified in issuing the writ quashing the order, when those grounds are distinct, and one of them could validate the preference exercised, though another ground might be a misdirection in law, or, the assumption of a jurisdiction in excess of the inhibition of Section 57(4) of the Act. The facts of this matter are quite simple, but, and this is all the more essential because of the length of the judgment of the Tribunal, the separable grounds of justification for grant have to be distinctly set forth, and not regarded as compounded together.

3. Both the appellant and the first respondent qualified as small operators, to the exclusion of other applicants who obtained equal marks, or even greater marks, but who had to be disqualified as large operators and fleet owners ; their cases, as earlier stated by us, are not now in the controversy. The appellant had one permit in addition to the grant, and the first respondent (Lakshminarayanan) had four. We must reiterate that, before the Tribunal, each of them obtained the same marks upon qualifications (1 1/2). In addition to the four permits, the first respondent had succeeded in obtaining a permit for the, route Pondicherry to Kalapet, of which four miles is in Pondicherry territory and four miles is in Madras State. The circumstances under which that permit was obtained by the first respondent are as follows.

4. The meeting before the Regional Transport Authority was held on 29th June, 1959. The Motor Vehicles Act seems to have been extended to Pondicherry State with effect from 19th June, 1959, by a notification of the Central Government. Prior to that, certain Regulations of Pondicherry governed the issue of permits within that State whether the permits related to routes exclusively within that State, or to routes which included any extent in Madras State as well. Under the law then prevalent, the concerned authorities in Pondicherry passed a Resolution on 25th February,

1958, approving the grant of this permit in favour of R. Lakshminarayanan. But this was subject to the concurrence of the Regional Transport

Authority, South Arcot, as four miles of the route lay within the South Arcot District. The Administrative concurrence of the Regional Transport

Authority, South Arcot, was obtained on 19th February, 1959. The concurrence was recorded by the Pondicherry authorities on 1st March,

1959, and on 7th April, 1959 those authorities passed a formal order granting the permit to the first respondent.

5. These facts are not in dispute, but, throughout the proceedings before the Tribunal, it appears to have been strenuously contended on behalf of

the first respondent that, though the permit itself was authorised on 7th April, 1959, the formal issue was on 2nd July, 1959, and the

communication to the grantee was only in the first week of July, 1959. With regard to the distance of four miles which is part of the route lying in

South Arcot District, the first respondent was granted a permit by the relevant Regional Transport Authority on 8th August, 1959. We may here

note that the argument regarding the date of receipt of formal orders relating to the permit by the first respondent is not of much significance, for

the Tribunal specifically finds that the Pondichery State proceedings (Motor No. 805, dated 7th April, 1959) were communicated to the first

respondent on 13th April, 1959. In other words, the first respondent undoubtedly had adequate knowledge of this grant in his favour, which he

could have disclosed before the Regional Transport Authority, if he had been so minded.

6. Upon these facts, the Appellate Tribunal proceeded to consider two relevant aspects. The first was, whether the first respondent was not guilty

of making false representations, when he claimed that till the first week of July, 1959, he had no certain knowledge of the grant of the Pondichery

permits in his favour. It was urged per contra, before the Tribunal that the statements made by the first respondent or by learned Counsel on his

behalf, amount to fraud and misrepresentations and that the permit should not be granted upon this ground, having reference to Section 60(d) of

the Act. But this argument did not find favour with the State Transport Appellate Tribunal. The Tribunal observed that these were false statements

made, only in the course of the appeal, the falsity of which could well have been exposed by other counsel. Actually, the conclusion was as follows:

I feel, therefore, that the permit cannot be set aside on the sole ground of the falsity of the statements of the respondent (Lakshminarayanan) and of his counsel on his behalf. But I also feel that the falsity of the statements can be taken into account for refusing to grant him any privilege or indulgence....But I do not wish to rest my decision in the present case on this ground of denial of the privilege on the ground of falsity of statements, because, in my opinion, the permit has got to be set aside even apart from the falsity of the statements on the ground that the Pondi.-Kalapet permit must be taken into account....

7. In other words though the Tribunal did express itself somewhat hesitantly, to the effect that the falsity of the representations could well be considered for denying any indulgence or privilege to the first respondent, the actual decision did not rest on this basis. The actual decision rested on certain other alternative grounds. The first was that the Pondichery-Kalapet permit could be taken into-account, in addition to the four permits already possessed by the first respondent. This actually would have made the 1st respondent a fleet owner, technically, and would have thus constituted a sufficing and a complete ground of disqualification, at least as against the claims of the appellant, who was a single bus owner with equal marks. But, even here, the Tribunal was not prepared to adopt such a clear and definite course, while it was prepared to regard the possession of the permit on the Pondichery-Kalapet route by the first respondent as tilting the scales in favour of this appellant, the actual grantee. For, upon this aspect the Tribunal states:

... I am assuming... that the Pondichery-Kalapet permit need not account as the 5th permit, so as to take the respondent out of the category of small operators and disentitle him to the preference in the case G.O.

The Tribunal also observed that there was one circumstance in favour of the first respondent as against the appellant, the grantee before it. The workshop of the appellant was not fully equipped, whereas the workshop possessed by the first respondent at Cuddalore was fully equipped, and he had also other workshops and a Branch Office at Neiveli. But, according to the Tribunal, these facilities possessed by the first respondent would not avail him to obtain the permit, as against the appellant grantee. There were two distinct grounds for this perspective of approach The

first was, as we have stated earlier, that, in addition to the four permits, the first respondent had the Pondichery-Kalapet permit, which would tilt

the scales in favour of the appellant grantee. The second was that, in any event, the grantee, . Vythilingam Pillai was only an one-bus operator:

and generally speaking it will not be unreasonable to encourage a one-bus operator by allowing him to become a two-bus operator, particularly as

against a person like the respondent who, besides that four permits, has also the Pondy-Kalapet permit.

In other words, since the grantee had one other permit, and the first respondent had four other permits at least, the preference of the grantee could

be validated on this basis even if both were regarded as small operators. (G.O. No. 1298 admittedly not being relied on in the present case.) It is

unfortunate that the language of the judgment of the Tribunal is somewhat lacking both in lucidity and definiteness, in their appropriate contexts; that

largely springs from the hesitancy and care with which the rival claims of these two persons have been assessed. But it would be quite an unfair

interpretation of the judgment of the Tribunal, to assume that at least one distinct ground of preference was not the fact that, as between these

"rivals, who had equal marks and possessed approximately equal facilities, the grantee before the Tribunal was only an one-bus operator, while the

first respondent had four other permits. In the view of the Tribunal, this outweighed any advantage the first respondent could claim by the

possession of better workshop facilities.

8. Srinivasan, J., issued the writ upon two quite simple grounds. The first was that the Tribunal acted in excess of jurisdiction by taking into account

the facts of the Pondichery-Kalapet route ; there was no representation u/s 57(3) of the Act by any of the parties, and the matter was not adverted

to even in the grounds of appeal before the Tribunal. In a passage in the judgment of the ""Tribunal the Tribunal concedes this position but observes

that the judicial conscience of the Tribunal must be satisfied on the facts and circumstances, and hence that the Tribunal had jurisdiction itself to

proceed into the question, as the preference indicated in the Government Order was a kind of "" equitable privilege and not a matter of right."" The

learned Judge (Srinivasan, J.) did not agree with this view. He considered that the fact relating to the Pondichery-Kalapet permit essentially

constituted a matter which should come within the scope of a representation u/s 57(3) of the Act. He pointed out that the situation might be

otherwise in cases where representations affecting public interests had to be canvassed. But this was not such a case, and all the applicants must

have been fully aware of the fact of the Pondichery-Kalapet permit, and, in the absence of a relevant representation, the Tribunal could not make

this a ground of preference. The learned Judge further observed that though the Motor Vehicles Act was extended to the Pondichery "State with

effect from 19th June, 1959, the legal entity was different; "it cannot be regarded that the same Act is in force in the two territories." Owing to

certain complications arising from Treaty Rights with regard to Pondichery State between France and the Government of India, and in respect of

the exercise of jurisdiction under the Foreign Jurisdiction Act by the Government of India, that State could still be regarded technically outside the

India Union, and the mere extension of the Motor Vehicles Act to the area, would not thereby ipso facto render the two Acts identical. On this

aspect certain arguments have been addressed before us by the learned Advocate-General on behalf of the appellant. He has cited the

observations of Balakrishna Ayyar, J., in *B. Radhakrishnan Vs. State of Madras and Others*, upon the legal consequences of the Pondichery

enclave, with regard to movements to and from India and that foreign territory. He has also cited the judgment of the Privy Council in *Papiah*

Naidu v. Raja of Ramnad (1931) 61 M.L.J. 408 : L.R. 58 IndAp 333 : ILR 59 Cal. 439 concerning the extension of the Transfer of Property Act

to the Civil and Military Station of Bangalore under the Indian (Foreign Jurisdiction) Order, 1902. But we think it is quite superfluous to proceed

into this technical and debatable aspect of the situation. It is sufficient for us to point out that the learned Judge (Srinivasan, J.) though he was of the

view that the entire permit must be regarded as integral and liable to be excluded from consideration because it related to a foreign territory, was

also prepared to concede that there was a distinct permit granted by the Regional Transport Authority, South Arcot, for the four miles in Madras

State. That permit, at least, could be taken into consideration in assessing the rival claims of the parties. The learned Judge really rested his decision

upon the excess of jurisdiction of the Tribunal in considering the question at all, in spite of the absence of any representation u/s 57(3) of the Act.

His view was that the taking into account of this foreign permit, treating it integrally, was an error of law and that, in any event, when the Tribunal made the matter at all a basis of preference, it both exceeded jurisdiction in respect of a statutory inhibition (Section 57(3)) and committed an error of law apparent on the face of the record. Those are the grounds stated, justifying the issue of the writ.

9. But the learned Judge appears to have entirely Overlooked the other distinct ground of preference, namely, the fact that as one of these two

small operators (appellant) is a one-bus operator, he was clearly entitled to be preferentially considered as against the first respondent, a four-bus

operator. We have already extracted the passage from the judgment of the Tribunal, where this ground of preference is unambiguously stated. It

may be that the mind of the Tribunal with regard to its decision, was also influenced by the fact of the Pondichery-Kalapet permit. But where there

are distinct and separable grounds of preference, and one of them is indisputably valid, this Court would not be justified in interfering, in writ

jurisdiction, merely because another ground is opposed to law. Even here, we are unable to hold that, in taking the Pondichery-Kalapet perm it

into consideration, or at least in taking into consideration a part of it which relates to the four miles in Madras territory, covered by the

concurrence, the Tribunal committed an error of law apparent on the face of the record. The issue is at least debatable and it is not every error of

law which will be rectified by this Court in the exercise of its jurisdiction under Article 226 of the Constitution. It is true that the preponderance of

authority appears to favour the view that, at least with regard to a matter which does not directly impinge on public interests or the wider issues of

such interest, there should be a representation u/s 57(3) of the. Act, before notice could be taken of a ground of preference or disqualification. But.

it has to be carefully noted that the decision of the Tribunal did not rest upon this alone or upon this even in a primary sense ; it equally rested upon

the preference with regard to the permits admittedly possessed by the parties prior to this grant."" Sri Kumaramangalam for the first respondent is

unable to show how this ground of preference could be impugned or exorcized away in any manner ; it is there in the judgment of the Tribunal,

though the statement of it might be less than nappy. In order to justify interference in writ jurisdiction, the error of law must be apparent on the face

of the record, and must have directly led to the result caused it. Other wise, if the result can be justified on a distinct ground, it may be proper for

this Court to point out and correct the error of law in its judgment, for the guidance of the concerned statutory body, but it will not be proper to

make that a basis for interference by quashing the order. We are, hence, constrained to allow the appeal and to set aside the writ issued by the

learned Judge, thus restoring the grant of the permit to the appellant. There will be no order as to costs.