P. Palaniswami vs Shri Ram Popular Service (P) Ltd. And ... on 3 December, 1973

Equivalent citations: AIR1974SC1117, (1974)1SCC197, 1974(6)UJ21(SC), AIR 1974 SUPREME COURT 1117, 1974 (1) SCC 197 1974 2 SCJ 322, 1974 2 SCJ 322, 1974 2 SCJ 322 1974 (1) SCC 197, 1974 (1) SCC 197

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Bench: D.G. Palekar, V.R. Krishna Iyer

JUDGMENT

D.G. Palekar, J.

1. This is an appeal by certificate from the Judgment and Order dated 5-8-1964 in Writ Petition No. 4 of 1963 of the High Court of Madras.

2. The facts giving rise to the present appeal are as follows :

3. The secretary, Regional Transport Authority, Tirunelvelli, invited applications for the grant of a stage carriage permit on the route Tuticorin to Tiruchendur via Mikkani. The distance was about 24 miles. It was a medium route as mentioned in Government Order No. 2265 Home dated February 9, 1958. Several persons applied for the giant. The Regional Transport Authority considered the claims in the light of the directions issued by the State Government under Section 43A of the Motor Vehicles Act, 1939 in G.O.M.S. No. 2265 Home dated August 9, 1958 as amended by G.O. No. 3547 Home dated December 1, 1958, and since, in its opinion, the respondents Shri Ram Popular service (P) Ltd. had obtained the highest number of marks namely, 3 the respondents were entitled to the grant. Six others including the present appellant, who were aggrieved by that order, went in appeal to the Transport Appellate Tribunal, Madras. By a process of elimination the only important contesters before the Tribunal were the appellant and the respondents. The Tribunal found that so far as the marks were concerned, respondents had scored more marks and would therefore, be entitled to serious consideration. But in the view of the Tribunal the respondents were a fleet owner with 32 permits while the appellant was a small operator with only two or three permits, and since in all respects the appellant was quite, eligible, he was entitled to be preferred on the ground that, in the interest of the public, small operators require encouragement as against the bigger operatOrs. For this, the Tribunal relied on a clause of the G.O. referred to above which said that small and medium operators must be preferred to the bigger operators on the smaller and medium routes, The Tribunal, therefore, reversed the order of the Regional Transport Authority and made the grant in favour of the appellant.

4. The respondents, thereupon, filed the writ Petition in the High Court for setting aside the order of the Tribunal. The learned single Judge of the court, who heard the writ Petition, was of the view that there was no error in the order passed by the Tribunal because preference based on classification of operators as fleet owners and medium operators was germane to Section 47 of the Motor Vehicles Act which prescribed the matters which had to be considered by the authority for the purposes of a grant of a stage carriage permit. The writ Petition was, therefore, dismissed.

5. The respondent then filed a letters patent appeal. By this time the decision of this Court in B. Rajagopala Naidu v. State Transport Appellate Tribunal and Ors. had been rendered and by that decision G.O. No. 1298 dated April 28, 1956, which was the previous direction issued by the State Government under Section 43A of the Motor Vehicles Act, was set aside. It was held that it was legitimate to assume that the legislature intended to respect the basic and elementary postulate of the rule of law that in exercising their authority and discharging their quasi-judicial functions, the tribunals constituted under the Act must be left absolutely free to deal with the matter according to their best judgment guided only by the statutory light. It was pointed out that it was of the essence of fair and objective administration of law that the decision of judges or tribunals must be absolutely unfettered by any extraneous guidance by the executive or administrative wing of the State. It was true that Section 43A empowered the State Government to issue directions to the Regional Transport Authority and the authority was bound under that section to give effect to all such directions. But since the Government order purported to give directions in respect of matters which had been entrusted to the authorities constituted under the Act and which have to be dealt with in quasi-judicial manner the Government order to that extent was outside the purview of Section 43A. The result was that the decisions of the Transport Authorities which were based upon the Government order and not on an independent assessment of the matters referred to in Section 47 of the Motor Vehicles Act were liable to be set aside. This decision was available to the Division Bench of the High Court when the appeal filed by the respondents came for hearing. The Bench took the view that though the Supreme Court had dealt with G.O. No. 1298 of 1956 and in the case before it they were dealing with its substitute, namely, G.O. No. 2265 of 1958, it made no difference in principle because the substitute G.O. also gave directions as to how the applications for stage carriage permits had to be disposed of and if the authorities felt themselves bound by the directions given, then their orders deserves to be set aside for the same reasons which prevailed in the Supreme Court in B. Rajagopala Naidu's case. That view of the High Court is unexceptionable because this Court in a later decision in R. Laxmi Narayan v. Vythilingam Civil Appeal No. 1792 of 1966 decided on 27-8-1969 held that the Government Order No. 2265 of 1958 was also invalid.

6. Therefore, the only question which remained before the High Court for consideration was whether the Tribunal applied its mind independently to the matters referred to in Section 47 of the Motor Vehicles Act or felt itself constrained by the Government Order No. 2265 of 1958 referred to above. After referring to observations made by the Tribunal itself in its order the High Court thought that the Tribunal was obviously fettered by the compulsive force of the Government order in coming to its decision and therefore, its order was vitiated. Accordingly, the appeal was allowed, the grant was quashed and the matter was sent down for re-hearing by the Tribunal in the light of the observations made in the judgment. It is from this order that the present appeal is filed.

7. It is contended by Mr. Ramamurthy on behalf of the appellant that though there are certain observations in the judgment of the Tribunal to show that it was following the Government order the judgment itself went to show that the Government order was shown scant respect. According to the Govt. order, he contended, the marks obtained by an operator were determinative of the grant. But in the present case although the appellant had received less marks than the respondents, the Tribunal had considered matters which were germane under Section 47 and made the grant in favour of the appellant. The Government order, according to him, undoubtedly covered certain areas which are covered by Section 47 also and, if the Tribunal referred to such matters it would not be correct to say that the Government order prevailed in the ultimate decision. For example, in the present case the Tribunal took the view that small operators were to be favoured as against fleet owners on shorter routes and this was a consideration very relevant under Sub-clause (a) of Sub-section (1) of Section 47 which required the authority to consider the interest of the public generally. The fleet owners were likely to become monopolistic if even shorter routes were given to them and in course of time, if they monopolised both the shorter routes and the longer routes there would be no effective competition which is, undoubtedly, necessary in the interest of the public generally. The small operators being encouraged to successfully ply the shorter routes would in course of time be ready to take over the longer routes and that would generate healthy competition between the longer route operators and help in promoting passenger interest. In other words, such a consideration was germane to Section 47 and merely because the Government order said that they should be preferred, it cannot be construed as having been compulsive in the actual decision taken. There is undoubtedly some force in this approach. Still we think that the High Court was right in coming to the conclusion that the Tribunal appeared to have been influenced by the G.O. and, hence, its decision was liable to be set aside.

8. It must be noted that when the tribunal decided the case in 1960 the validity of the Government order issued under Section 43A had not come under challenge and grants of permits under Section 47 of the Motor Vehicles Act were disposed of on the lines given in those Government orders. The Tribunal in the present case obviously felt bound by Government Order No. 2265 of 1958 because it said in two places as follows:

> ...but when the Government have laid down their policy, the Regional Transport Authorities and the Tribunal should honestly endeavour to follow it.
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> ...The right of appeal cannot be made illusory, and interests of justice and consistency and the need for honestly applying the Government order compel me to set aside the grant made in favour of the respondent, though otherwise they (respondent) may be deserving of the grant and to grant the permit to the third appellant.
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> We have gone through the judgment of the Tribunal and it must be said that it has taken into consideration factors which are germane under Section 47. The Tribunal noticed that the appellant was entitled to 1/4 mark more than what was given to the appellant by the Regional Transport Authority. But this addition did not make any difference because even with this addition to the appellant's marks the respondents' score would be still higher. It also considered the period of experience of the

appellant in the line and noticed that he had two or three permits on shorter routes. Recently he had shifted to Tuticorin which was one of the terminii of the route and had also a well-fitted workshop at Tuticorin. Then again for 3 years preceding the date of the application the appellant had got a very clean record. All these were matters which the Tribunal was entitled to take into consideration under Section 47 and merely because they also find a place in the Government order it would not be enough to show that the Government order was decisive in the final order passed by the Tribunal. But this ignores a very vital aspect of the case. When there is a Government order in existence and parties applying for permits come to know that the authorities under the Motor Vehicles Act, were disposing of their applications for permits in accordance with the Government order, matters not referred to in the Government order but which may be very germane for consideration under Section 47 get automatically excluded during the hearings. The Government order, instead of Section 47, becomes the last word on the subject. That is the real vice of such Government instructions. The authorities feel bound by these instructions and the parties before them feel equally bound by them. They, naturally exclude from the controversy other matters which though relevant under Section 47 do not find a place in the Government order. As pointed out by this Court in R.M. Subhraj v. K.M. Union (P) Ltd. and Ors. . "Once it is found that a Tribunal which under the statute has to deal with applications for permits in a judicial manner is directed by the Government to adopt any specified method for assessing the merits of the applicants and the Tribunal takes into consideration such direction of the executive, the judicial determination by the Tribunal is polluted." It is polluted not merely because those instructions have a tendency to interpret Section 47 in their own way but also because considerations other than those in the instructions get automatically excluded although they are quite relevant for the purpose of Section 47. We are, therefore, of the opinion that the High Court was right in remanding the case to the Tribunal for a re hearing without the constraint of the Government order.

9. Mr. Ramamurthy then contended that in any case the respondent would not be entitled to a grant because by Act No. 16 of 1971 the Motor Vehicles Act, 1939 has been amended in its application to the State of Tamil Nadu and under those amendments the respondents who are the owners of 32 permits will not be entitled to consideration for grant of permit. It is, however, contended on behalf of the respondents that it is impossible for their learned Counsel to meet the contention here because several other considerations may arise including the willingness of the respondents to surrender some of his permits in order to come within the permissible limit. We do not think we should deal with the matter, here. The Tribunal will now be considering the matter afresh and if it is open to the appellant to put forward this contention, he is welcome to do it before the Tribunal.

10. The appeal is, therefore, dismissed. But this order shall not affect the carrying on of the business by the appellant and the respondents on the basis of permits granted as a result of stay orders till the Tribunal decides about the grant in accordance with law. There shall be no order as to costs.