Sri Rama Vilas Service (P) Ltd vs C. Chandrasekaran & Ors on 9 December, 1963

Equivalent citations: 1965 AIR 107, 1964 SCR (5) 869, AIR 1965 SUPREME COURT 107, 1965 (1) SCJ 195, 1964 5 SCR 869, 1964 (1) SCWR 212

Author: P.B. Gajendragadkar

Bench: P.B. Gajendragadkar, K.C. Das Gupta

PETITIONER:
SRI RAMA VILAS SERVICE (P) LTD.

Vs.

RESPONDENT:
C. CHANDRASEKARAN & ORS.

DATE OF JUDGMENT:
09/12/1963

BENCH:
GAJENDRAGADKAR, P.B.
BENCH:
GAJENDRAGADKAR, P.B.
GUPTA, K.C. DAS

CITATION:
1965 AIR 107 1964 SCR (5) 869
CITATOR INFO :
RF 1968 SC1461 (4,7)
RF 1975 SC 818 (6)
F 1975 SC1867 (2)
F 1978 SC 949 (5)

ACT:
Motor Vehicles Act, 1939 (4 of 1939) s. 47(1) (a) and Constitution of India, Art. 226.-Consideration in granting permit Meaning of Public interest-If writ of certiorari can be issued on questions of fact.

HEADNOTE:
The Regional Transport Authority granted one stage carriage permit to the appellant. On appeal, the State Transport Appel-
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late Tribunal took the view that the appellant was a monopolist over a distance of 18 miles which was a part of the route in question and so, it rejected the application for a permit made by the appellant and granted the permit to respondent no. 1 over the route in question. It is against this order of the Appellate Tribunal that the appellant preferred a writ petition before the High Court. The single Judge, who heard the writ petition, quashed the order of the Appellate Tribunal. This order was challenged by respondent no. 1 by preferring an appeal under the Letters Patent before a Division Bench of the said High Court. The Division Bench affirmed the order of the Appellate Tribunal and set aside the order of the single Judge on the ground that the single Judge was not justified in issuing a writ of certiorari under Art. 226 of the Constitution of India. Hence this appeal.

Held: (i) In granting a permit, the appropriate authorities under the Motor Vehicles Act are required to consider the interests of the public generally under s. 47(1)(a) of the Act. In dealing with this aspect of the matter, it would not be irrelevant for the appropriate authority to hold that if any applicant is or would be in the position of a monopolist if a permit was granted to him, he would be liable to neglect the interests of the public and may not be very keen on taking all steps to keep his service in good and efficient order. Therefore, it cannot be said that in taking into account the fact that the appellant was a monopolist on a part of the route, the Appellate Tribunal has been influenced by any irrelevant fact.

R.K. Ayyaswami Gounder v. M/s. Sundambigai Motor Service, Dharampura. C.A. No. 198 of 1962 decided on 17th September, 1962 relied on.

(ii) It is true that the administrative directions issued by the Government under s. 43(a) have no force of statutory rules and are, therefore, not binding; but that does not mean that the consideration that the granting of a monopoly to a bus-operator may be prejudicial to public interest, becomes irrelevant only because it has been included or is implied in the administrative instructions. The said consideration has to be taken into account not because it has been included in the administrative instructions, but because, by itself, it is a relevant consideration under s. 47(1) (a) of the Act.

M/s. Raman & Raman Ltd. v. The State of Madras, [1959] Suppl. 2 S.C.R. 227, relied on.

(iii) In dealing with the applications under Art. 226 in cases of this kind, it is necessary to bear in mind that the High Court is not exercising the jurisdiction of an Appellate court in the matter. In entertaining writ petitions, the High Court must not lose sight of the fact that decisions of questions of fact under the Motor Vehicles Act have been left to the appropriate authorities which

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have been constituted into quasi judicial Tribunals in that behalf, and so, decisions rendered by them on all questions of fact should not be interfered with under the special jurisdiction conferred on the High Courts under Art. 226 , unless the well recognised tests in that behalf are satisfied. If the order passed by the Appellate Tribunal which is challenged in writ proceedings suffers from infirmities which would justify the issue of a writ under the well recognised principles laid down by judicial decisions in that behalf, the High Court should and ought to interfere but the writs of certiorari should not be issued merely on the ground that all relevant reasons have not been set out in the judgment of the Appellate Tribunal or that the High Court would have taken a different view on the evidence adduced in the proceedings.

(iv) There can be little doubt that if a decision of a quasi-. judicial Tribunal is challenged before the High Court under Art. 226 and it is shown that the said decision is based on irrelevant considerations or on considerations which are invalid in law, a writ will undoubtedly be issued under Art. 226. But the order passed by the Appellate Tribunal in the case does not suffer from any such infirmity. In the present case, the Division Bench was right in holding that the Single Judge should not have issued a writ in favour of the appellant.

R.v. Agricultural Land Tribunal for the Eastern Province of England, Ex parte Grant, relied on.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1015 of 1963.

Appeal by special leave from the judgment and order dated September 26, 1963, of the Madras High Court in Writ Appeal No. 20 of 1962.

G.S. Pathak, K.K. Venugopal and R. Gopalakrishnan, for the appellant.

M.C. Setalvad, J.B. Dadachanji, O.C. Mathur and Ravinder Narain, for the respondent No. 1.

December 9, 1963. The Judgment of the Court was delivered by GAJENDRAGADKAR J.-This appeal has been brought to this Court by special leave and it has been filed against the decision of the Division Bench of the Madras High Court by which the order passed by a learned single Judge of the said High Court directing the issue of a writ of certiorari in favour of the appellant Sri Rama Vilas Service (P) Ltd.

has been reversed. It appears that the Regional Transport Authority, Thanjavur called for applications for the grant of one stage carriage permit between Mannargudi and Nagapattinam. The

distance between these two places is 34 miles. Four applicants applied for a permit on this route. They were the appellant, Raman & Raman (P) Ltd., Balasu- brahmanya Udayar, and respondent No. 1 C. Chandrasekaran. The Regional Transport Authority considered the merits of these four applicants and assigned them marks as a result of which a permit was granted to the appellant on the ground that it got the highest number of marks.

This order was challenged by the three applicants whose applications for permit had been rejected by the Regional Transport Authority. The State Transport Appellate Tribunal, Madras (hereinafter called the 'Appellate Tribunal') considered the merits of the four applicants for itself, assigned them marks and ultimately came to the conclusion that the appellant was not entitled to a permit. The judgment of the Appellate Tribunal shows that though as a result of the marks assigned by it to the respective applicants, the appellant and Raman and Raman (P) Ltd. secured 4 marks each and the two other competitors 31/2 and 3 1/4 marks respectively, the Appellate Tribunal took the view that the appellant was a monopolist over a distance of 18 miles which was a part of the route in question, whereas Raman & Raman (P) Ltd. had a near monopoly or predominant influence over the remaining part of the distance which was 16 miles, and so, it rejected the application for a permit made by the appellant and Raman & Raman (P) Ltd. and granted the permit to respondent No. 1 over the route in question. It is against this order of the Appellate Tribunal that the appellant preferred a writ petition before the Madras High Court (No. 25 of 1959). Srinivasan J. who heard the writ petition came to the conclusion that the Appellate Tribunal had signally failed to consider the relevant evidence, and so, this order needed to be corrected by a writ of certiorari. Accordingly, a writ of certiorari was ordered to be issued as prayed for by the appellant. This order was challenged by respondent No.1 by preferring on appeal under the Letters Patent before a Division Bench of the said High Court. The Division Bench has taken the view that having regard to the reasons given by the Appellate Tribunal in support of its conclusion that the appellant was not entitled to a permit, Srinivasan J. was not justified in issuing a writ of certiorari under Art. 226 of the Constitution. In the result, the order passed by Srinivasan J. was reversed and the writ petition filed by the appellant was dismissed. It is against this order that the appellant has come to this Court in appeal. Respondents 2 and 3 are State Transport Appellate Tribunal, and the Regional Transport Authority respectively and they have been impleaded because the order passed by respondent No. 2 was questioned in the writ proceedings and is the subject-matter of the present appeal.

It is common ground that over a distance of 18 miles in the first sector of the route in question, the appellant runs seven buses and no other bus runs on that sector of the route, so that in respect of this sector, the appellant is a monopolist. It is also common ground that over the second sector of the route consisting of 16 miles Raman & Raman (P) Ltd. runs nine buses, whereas two buses are run by two other permit-holders; and that means that Raman & Raman (P) Ltd. can be described as a near monopolist on that part of the route. It is in the light of these two admitted facts that the Appellate Tribunal took the view that the monopolist and the near monopolist should not be given permits, because granting them permits would not be in the interests of the public. That is how respondent No.1 came to be given a permit by the Appellate Tribunal.

Before dealing with the points raised by Mr. Pathak in this Court on behalf of the appellant, it is necessary to indicate briefly the findings recorded by Srinivasan J. and the Division Bench which

heard the appeal against his decision. Srinivasan J. agreed with the contention of respondent No. 1 that the question as to whether any applicant for a permit is a monopolist is not irrelevant having regard to the provisions of s. 47(1)(a) of the Motor Vehicles Act (No. 4 of 1939). He, however, took the view that in assessing the value of the said consideration, the Appellate Tribunal had failed to consider the fact that between the monopolist appellant and the near monopolist Raman & Raman (P) Ltd. there would be keen competition on the route in question, and so, the argument that a monopolist would tend to ignore the public interest for want of competition with anybody else was not valid in the present case. In the opinion of the learned Judge, the Appellate Tribunal had also failed to take into account the fact that between Tiruvarur and Nagapattinam there is a parallel railway which also offers some competition to the bus-operators. In the result, the learned Judge was satisfied that in rejecting the application for a permit made by the appellant, the Appellate Tribunal had been influenced mainly by the abstract concept of monopoly and its adverse effect on public interest. That, in brief, is the basis of the order passed by the learned Judge quashing the decision of the Appellate Tribunal.

On the other hand, when the matter went before the Division Bench in the Letters Patent Appeal, the Division Bench took the view that the Appellate Tribunal had referred to the existence of the amenity of the railway service parallel to the route and it observed that merely because the Appellate Tribunal had not marshalled all the reasons in support of its conclusion, it would not be appropriate for the High Court to exercise its special jurisdiction under Art.226.It noticed the fact that in support of the view taken by the Appellate Tribunal there were other valid reasons which the judgment indicated, and so, it was held that the learned Judge was in error in issuing a writ of certiorari in the present case.

Mr. Pathak contends that the Division Bench was in error in reversing the conclusion of the learned single Judge. There can be no doubt that in granting a permit, the appropriate authorities under the Motor Vehicles Act are required to consider the interests of the public generally under s. 47(1) (a), and in assessing the merits of an individual applicant for a permit on any route, it would be open to the appropriate authority to enquire whether the service which the individual applicant would render to the public if he is given a permit would be efficient and satisfactory or not. In dealing with this aspect of the matter, it would not be irrelevant for the appropriate authority to hold that if any applicant is or would be in the position of a monopolist if a permit was granted to him, he would be liable to neglect the interests of the public and may not be very keen on taking all steps to keep his service in good and efficient order. Absence of any competition from another bus-operator on the route is likely to develop a feeling of complacence in the monopolist and that is a factor which the appropriate authority can certainly take into account. Therefore, it cannot be urged that in taking into account the fact that the appellant was a monopolist on a part of the route, the Appellate Tribunal has been influenced by any irrelevant fact, vide R.K. Ayyaswami Gounder v. M/s. Soudambigai Motor Service, Dharampura & Others(1).

In this connection, Mr. Pathak has invited our attention to the fact that the Madras Government has issued certain administrative directions under s. 43(a) of the Motor Vehicles Act and it has been held by this Court in M/s. Raman & Raman Ltd. v. The State of Madras & Ors. (2) that the said administrative directions have no legal force and cannot be said to be binding on the appropriate

authorities. The argument is that in the relevant administrative orders in regard to the assignment of marks in respect (1) A. No. 198 of 1962 decided on 17.9.1962.

(2) [1959] Suppl. 2 S.C.R. 227.

of the merits of the several applicants for permit, it seems to have been assumed that a person owning in re than five buses may not get more marks though up to five buses owned by a single applicant appropriate marks are assigned; and Mr. Pathak urges that the policy underlying this administrative rule appears to be to discourage monopoly in road transport; but this policy is enunciated by an administrative rule which has no legal or binding force, and so, it is urged that the Appellate Tribunal was in error in referring to the consideration that the appellant was a monopolist on a part of the route. This argument is entirely misconceived. It is true that the administrative directions issued by the Government under s. 43(a) have no force of statutory rules and are, therefore, not binding; but that does not mean that the consideration that the granting of a monopoly to a bus-operator may be prejudicial to public interest, becomes irrelevant only because it has been included or is implied, in the administrative instructions. If on the merits, the said consideration is relevant, and we have already held that it is relevant, we do not see how the fact that the said consideration has also been included in the administrative directions would make it irrelevant. The said consideration has to be taken into account not because it has been included in the administrative instructions, but because, by itself, it is a relevant consideration under s. 47 (1) (a).

In dealing with applications for writs of certiorari under Art. 226 in cases of this kind, it is necessary to bear in mind that the High Court is not exercising the jurisdiction of art Appellate Court in the matter. There is no doubt that in granting or refusing permits to applicants, the appropriate authorities are discharging a very important and a very onerous quasi-judicial function. Large stakes are generally involved in these applications, and so, it is of utmost importance that the appropriate authority should consider all the relevant facts carefully and in its order should set out concisely and clearly the reasons in support of its conclusions. It is hardly necessary to emphasise that applicants for permits whose applications are rejected should be satisfied that all points urged by them in support of their respective claims have been duly considered before the matter was decided. Even so, it would, we think, be inappropriate for the High Court to issue a writ of certiorari mainly or solely on the ground that all reasons have not been set out in the judgment of the appropriate authority. In entertaining writ petitions, the High Court must not lose sight of the fact that decisions of questions of fact under the Motor Vehicles Act have been left to the appropriate authorities which have been constituted into quasi-judicial Tribunals in that behalf, and so, decisions rendered by them on all questions of fact should not be interfered with under the special jurisdiction conferred on the High Courts under Art. 226, unless the well-recognised tests in that behalf are satisfied. In the present case, we have no doubt that the Division Bench was right in holding that Srinivasan J. should not have issued a writ in favour of the appellant.

We have carefully considered the order delivered by the Appellate Tribunal and we see no justification for the criticism made against that order that the decision of the Appellate Tribunal proceeded solely on the ground of the abstract concept of the evil effects of monopoly. The order has

referred to the railway which runs parallel to the route and the order has taken into account the fact that the appellant is a monopolist on a part of the route and Raman & Raman (P) Ltd. is a near monopolist on the remaining part of the route. Srinivasan J. thought that in dealing with the matter, the Appellate Tribunal ignored the fact that there was bound to be some kind of competition between the monopolist and the near monopolist. On the merits, we find some difficulty in acceding that a theoretically possible competition between the monopolist and the near monopolist can have any relevance or validity in the present case. A passenger who wants to travel more than 18 miles of the route which is covered by the monopoly of the appellant would naturally prefer to go by the appellant's bus all the way, because in trying to take advantage of the near monopolist's service on the second sector of the route he would have to face the risk of not having a continuous journey. A competition between the monopolist on the first sector of the route who would have run his buses on the whole distance if he was granted the permit, and the near monopolist so far as the second sector of the route is concerned, is itself a matter of a purely theoretical character. There would be obvious difficulties and causes of inconvenience for through passengers to take advantage of this hypothetical competition. If the argument as to the competition between the two powerful operators has to be factual and effective, it must mean that permits should have been granted to both of them over the whole route, and that clearly would mean that smaller operators would be excluded. We are not suggesting that this consideration itself is decisive we are only pointing out that the ultimate decision of the Appellate Tribunal must have been the result of a proper assessment of all the relevant factors, and so, it would not be safe to issue a writ of certiorari against its decision because some reasons which were urged before the High Court had not been expressly considered by the Appellate Tribunal. Speaking generally and in a broad way, we do not think it could be seriously denied that encourag- ing bus-operators who do not own a fleet of buses and discouraging monopoly on the route is consistent with the interests of the general public which is of paramount importance under s. 47(1)(a), of the Motor Vehicles Act. Besides, the Division Bench has also referred to some other aspects of the matter which would indicate that the Appellate Tribunal was right in not granting a permit to the appellant. In cases of this kind, the High Court should naturally be slow in exercising its jurisdiction under Art.

226. If the order passed by the Appellate Tribunal which is challenged in writ proceedings suffers from infirmities which would justify the issue of a writ under the well-recognised principles laid down by judicial decisions in that behalf, the High Court should and ought to interfere but the writs of certiorari should not be issued merely on the ground that all relevant reasons have not been set out in the judgment of the Appellate Tribunal or that the High Court would have taken a different view on the evidence adduced in the proceedings.

In support of his case that the impugned order was properly set aside by Srinivasan J., Mr. Pathak has relied upon the decision of the Court of Appeal in R. v. Agricultural Land Tribunal for the Eastern Province of England, Ex parte Grant. (1) In that case the Court of Appeal was called upon to consider whether the discretion vested in the Tribunal under s. 25(1) (a) of the Agricultural Holdings Act, 1948, had been validly exercised. The test prescribed by s. 25(1)(a) was that the landlord should show that the carrying out of the purpose for which he proposed to terminate the tenancy in question is desirable in the interests of efficient farming, whether as respects good estate management or good husbandry or otherwise. In coming to the conclusion that the said

requirement had not been satisfied, the Tribunal appears to have relied substantially on the fact that the tenants sought to be dispossessed had been in possession of the lands for many years. It appears that the Court of Appeal took the view that the real grounds for the Tribunal's decision on the section 25 point which appeared from paragraphs 5 and 6 of the statement were ambiguous and to some extent in conflict with each other. Besides, the effect which would result if the landlord's request was granted on the tenants' other land which had influenced the Tribunal was, in the opinion of the Court of Appeal, irrelevant in considering the applicability of s. 25(1)(a). In other words, the Court of Appeal held that the decision of the Tribunal was vitiated by the fact that it rested at least on some invalid and irrelevant grounds, and that is why a writ of certiorari was ordered to be (1) [1956] 3 All E.R. 321.

issued. There can be little doubt that if a decision of a quasi-judicial Tribunal is challenged before the High Court under Art. 226 and it is shown that the said decision is based on irrelevant considerations or on considerations which are invalid in law, a writ will undoubtedly be issued under Art. 226. But the order passed by the Appellate Tribunal in the present case does not suffer from any such infirmity. Therefore, we are satisfied that the decision in the case of ex parts Grant on which Mr. Pathak relies, does not assist his case.

The result is, the appeal fails and is dismissed with costs. Appeal dismissed.