

R. Srihari Naidu vs Govt. Of Andhra Pradesh & Ors on 6 February, 1985

Equivalent citations: 1985 AIR 864, 1985 SCR (2) 804, AIR 1985 SUPREME COURT 864, 1985 UJ (SC) 709, (1985) IJR 197 (SC), 1985 (2) SCC 337

Author: V.D. Tulzapurkar

Bench: V.D. Tulzapurkar, V. Khalid

PETITIONER:

R. SRIHARI NAIDU

Vs.

RESPONDENT:

GOVT. OF ANDHRA PRADESH & ORS.

DATE OF JUDGMENT 06/02/1985

BENCH:

TULZAPURKAR, V.D.

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TULZAPURKAR, V.D.

KHALID, V. (J)

CITATION:

1985 AIR 864

1985 SCR (2) 804

1985 SCC (2) 337

1985 SCALE (1) 405

ACT:

Motor Vehicles Act, 1939, s. 57 (2)-Permits granted by Regional Transport Authority invalidated on the ground of improper constitution of the RTA-RTA reconstituted-No Notification issued for inviting fresh applications-Grant of permits on the basis of applications received in pursuance of the earlier Notification -Whether invalid-

HEADNOTE:

An order granting two stage carriage permits by the Regional Transport Authority was set aside in appeal on the ground that the RTA had not been properly constituted. Thereafter, the Regional Transport Authority, on its proper constitution, did not issue a fresh Notification u/s. 57 (2) of the Motor Vehicles Act, 1939 inviting fresh applications but granted a stage carriage permit to the appellant on the

basis of applications received in pursuance of the earlier Notification. On appeal by the aggrieved applicants the Appellate Authority set aside the said order and instead granted the permit to respondent No. 4. The appellant's revision application before the State Government having been failed, he filed a writ petition in the High Court against the order of the State Government on the grounds, (i) that at the time when the earlier Notification was issued u/s. 57(2), the delegation of power by the invalidly constituted Authority to its Secretary to issue such Notification would be invalid and therefore the further proceedings adopted for consideration of such applications and grant of permits pursuant to such consideration was invalid; and (ii) that on merits the Appellate Authority ought not to have interfered with the five marks that had been granted to the appellant by the Regional Transport Authority and reduced the same to three and further that the Appellate Authority ought not to have relied upon the only solitary adverse entry in the appellant's record to reject his application while preferring that of respondent No. 4. The High Court also dismissed the writ petition. The appellant advanced the same contentions before the Supreme Court,

Dismissing the appeal,

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HELD: (1) The first contention is liable to be rejected on three grounds, namely, (i) It was not disputed that applications under s. 57 (2) of the Act for the grant of stage carriage permits could be filed voluntarily and without any Notification being issued in that behalf. If that be so, the question whether a fresh Notification inviting fresh applications by the properly constituted Regional

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Transport Authority ought to have been issued or not or whether the properly constituted Regional Transport Authority could proceed to act on the earlier Notification issued by the Secretary would be immaterial and of no consequence and the ultimate decision not to grant stage carriage permit to the appellant cannot be disturbed on this ground; (ii) The non-issuance of a fresh Notification by the properly constituted Regional Transport Authority could, if at all, be made a ground of attack by those persons who were unable to make applications because of such non-issuance and not by the appellant who had made an application in that behalf and who took his chance to obtain the permit on the basis of his application which was in fact considered by the Regional Transport Authority and thereafter by the Appellate Authority; and (iii) The initial order granting the permit to the appellant was passed by a properly constituted Regional Transport Authority and the appellate order was also passed by State Transport Appellate Tribunal which was the properly constituted Appellate Authority and both these

authorities had passed their orders on a consideration of the entire material placed before each of them and after giving a full hearing to the appellant and as such no failure of justice had occasioned. [807C-F; H; 8U8A]

(2) This Court will not be justified in interfering in the matter on merits, since the High Court has rightly taken the view, (i) that the second contention really pertained to the merits of the claim of the appellant to the stage carriage permit and it could not interfere with the finding of fact recorded against the appellant in that behalf in exercise of its extra-ordinary jurisdiction under Art. 226 of the Constitution; and (ii) that the grounds on which the marks of the appellant were reduced and the reasons for ultimate rejection of the appellant's application were justified. [808C-D]

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 874 of On appeal by Special Leave from the Judgment and Order dated 25-2-71 of the Andhra Pradesh High Court of Judicature at Hyderabad in Writ Petition No. 975/1969.

M. K. Ramamurthy and J. Ramamurthy for the Appellant. T. V. S. N. Chari, B. Parthasarthy, A S-Nambiar, Attar Singh and G. N. Rao for the Respondents.

The Judgment of the Court was delivered by TULZAPURKAR, J. In April 1960 the Regional Transport Authority, Chittoor, acting under s. 47 (3) of the Motor Vehicles Act, 1939 decided to open a new long distance route called Tada to Tada (ring route) and fixed the number of vehicles for which stage carriage permits would be issued at two on that route. In August 1960 a Notification was published under s. 57 (2) of the Act inviting applications for the grant of two such stage carriage permits. Several applications received in pursuance of such Notification were notified under s. 57 (3) on 18th October, 1960 for submission of representations in connection therewith. Two permits-one to K. Ramachandra naidu and the other to M/s Associated Transports (Madras) Private Limited, were granted by the Regional Transport Authority in November 1960, The unsuccessful applicants filed appeals to the Appellate Authority (STAT) who s t aside the order granting the two permits on the ground that the Regional Transport Authority itself had not been properly constituted inasmuch as it did not comprise a non-official member as required by s. 44 of the Act and the matter was remanded. Thereafter the Regional Transport Authority was properly constituted by including within it a non-official member. However, after it was so properly constituted the Regional Transport Authority did not issued a fresh Notification under s. 57 (2) inviting fresh applications but proceeded to consider the several applications that had been received in pursuance of the earlier Notification issued under s. 57 (2) and after re- affirming the necessity for the grant of two permits only on that route granted two stage carriage permits one to the appellant (R. Srihari Naidu) and the other to respondent No. 5 (M/s Navyandhra Labour Transport). In appeals preferred by the aggrieved applicants the Appellate Authority (STAT) confirmed the grant of the state carriage

permit to respondent No. 5 but set aside the permit granted to the appellant and instead granted it to respondent No.4 (V. Janakirami Reddy). The appellant went in revision to the State Government against the order of the Appellate Authority but the same was rejected by the State Government; in other words the grant of the permit to respondent No. 4 in place of the appellant was confirmed. The appellant moved the High Court by means of a writ petition under Art. 226 of the Constitution and challenged the order of the State Government passed in revision on 18th March, 1969.

Two grounds were urged in support of the Writ Petition: (a) that after the Regional transport Authority had been properly constituted no Notification inviting fresh applications was issued by that Authority but the authority only considered those applications which had been received by the Secretary of the earlier Body-the Regional transport Authority invalidly constituted in breach of s. 44 under the authority that had been delegated by that body to the Secretary the contention being that at the time when such earlier Notification was issued under s.57(2) the delegation of power by such invalidly constituted Authority to its Secretary to issue such Notification would be invalid and therefore, the further proceedings adopted for consideration of such applications and grant of permits pursuant to such consideration was invalid, and (b) that on merits the Appellate Authority ought not to have interfered with the five marks that had been granted to the appellant by the Regional Transport Authority and reduced the same to three and further that the Appellate Authority ought not to have relied upon the only solitary adverse entry in the appellant's record to reject his application while preferring that of respondent No. 4. The High Court rejected both the contentions and dismissed the Writ Petition. It is this decision of the High Court that has been challenged by the appellant before us in this appeal.

In support of the appeal counsel for the appellant pressed before us the self-same two contentions that were urged before the High Court. In our view the first contention is liable to be rejected on three grounds. In the first place it was not disputed that applications under s. 57 (2) of the Act for the grant of stage carriage permits could be filed voluntarily and without any Notification being issued in that behalf. If that be so the question whether a fresh Notification inviting fresh applications by the properly constituted Regional Transport Authority ought to have been issued or not or whether the properly constituted Regional Transport Authority could proceed to act on the earlier Notification issued by the Secretary would be immaterial and of no consequence and the ultimate decision not to grant stage carriage permit to the appellant cannot be disturbed on this ground. Secondly in our view the non-issuance of a fresh Notification by the properly constituted Regional Transport Authority could, if at all, be made a ground of attack by those persons who were unable to make applications because of such non-issuance and not by the appellant who had made an application in that behalf and who took his chance to obtain the permit on the basis of his application which was in fact considered by the Regional Transport Authority and thereafter by the Appellate Authority. Thirdly sub-s.(2) of s. 134 of the Act provides:

"No order made by a competent authority under this Act shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the proceedings, unless it appears to the prescribed appellate authority or revisional authority, as the case may be that such error omission or irregularity has, in fact, occasioned a failure of justice."

If was not disputed that the initial order granting the permit to the appellant was passed by a properly constituted Regional Transport Authority and the appellate order was also passed by State Transport Appellate Tribunal which was the properly constituted Appellate Authority and both these Authorities had passed their orders on a consideration of the entire material placed before each of them and after giving a full hearing to the appellant and as such no failure of justice had occasioned; therefore, in our view the error or omission that is said to have taken place in the instant case [of there being no proper Notification issued inviting applications for permits under s.57 (2)¹ can not be made a ground to upset the final order that has been passed in the case. On these grounds the first contention must be rejected.

As regards the second contention it must be observed that the High Court has taken the view that the contention really pertained to the merits of the claim of the stage carriage permit and it could not interfere with the finding of fact recorded against the appellant in that behalf in exercise of its extra-ordinary jurisdiction under Art. 226 of the Constitution and alternatively the High Court has also taken the view that the grounds on which the marks of the appellant were reduced and the reasons for ultimate rejection of the appellant's application were justified. Having regard to this view of the High Court we do not feel that we should interfere in the matter on merits.

The appeal is, therefore. dismissed with no order as to costs.

M. L. A.

Appeal dismissed.