Supreme Court of India

Jagannatham & Bros vs Sowdambigai Motors Service on 8 May, 1963

PETITIONER:
JAGANNATHAM & BROS.

Vs.

RESPONDENT:
SOWDAMBIGAI MOTORS SERVICE

DATE OF JUDGMENT:
08/05/1963

BENCH:

ACT:
Motor Vehicles-Application for stage carriage permit--Regional Transport Authority granted permit-Grant set aside by Transport Appellate Tribunal without giving reasons for preference-Vilidity of the order-Duty of Appellate Tribunal-Motor Vehicles Act, 1939 (IV of 1939).

HEADNOTE:
The appellant, as well as respondents 1 and 2 and others, had applied for the grant of stage carriage permit. The Regional Transport Authority granted a permit to each of the two respondents. The appellant aggrieved by this order preferred an appeal before the State Transport Appellate Tribunal. The Appellate Tribunal held that the appellant should be preferred to the Respondent No. 1. Against this order the respondent No. 1 preferred a writ petition before the High Court. The High Court set aside the order of the Appellate Tribunal on the ground that the Appellate Tribunal did riot state the reason for preferring the appellant to the Respondent No. 1.
Held that the High Court was justified in setting aside the order of the State Transport Appellate Tribunal. In fact the State Transport Appellate Tribunal did not determine the only question which required to be determined and that was why one operator should be preferred to another.
Raman & Raman Ltd.v. The State of Madras [1959] Supp. 2 S.C.R. 227, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 179 of 1963.

Appeal by special leave from the judgment and order dated October 23, 1962 of the Madras High Court in Writ Appeal No. 207 of 1962.

B. Sen, J. B. Dadachanji, O. C. Mathur and Ravinder Narain, for the appellant.

A. V. Viswanatha Sastri and R. Ganapathy Iyer, for respondent No. 1.

A. V. V. Nair and P. Ram Reddy, for respondent No. 2. 1963. May 8. The judgment of the Court was delivered by MUDHOLKAR J.-A single judge of the Madras High Court set aside the order of the State Transport Appellate Tribunal, Madras, allowing the appellant company's appeal granting them a permit to ply a bus on route No. 5 in Erode Town. An appeal preferred against his decision by the appellant company under cl. 15 of the Letters Patent was dismissed in limine. Against that decision the appellant has come up before this Court by special leave. The Regional Transport Authority, Coimbatore invited applications for the grant of six permits for stage carriage buses for running Erode Town service. On route No. 5 two stage carriage buses were sought to be introduced. The appellantas well as respondents 1 and 2 and some others, had applied for the grant of all the six permits, including two on route No. 5. The Regional Transport Authority at its meeting held on March 16, 1961 considered the applications, granted four permits out of six to four existing operators and on route No. 5, which was a new route, it granted a permit to each of the two respondents. Aggrieved by this order the appellant preferred an appeal before the State Transport Appellate Tribunal which held that the appellant should be proffered to the respondent No. 1. The Tribunal thus did not interfere with the order of the Regional Transport Authority in so far as the permit granted to the respondent No. 2 was concerned but set aside its order granting a permit to the respondent No. 1. Against this order the respondent No. 1 preferred a writ petition before the High Court. That petition was heard by a single judge of the High Court and, as already stated, the learned judge set aside the order of the Tribunal in so far as the appellant was concerned. The ground on which the learned judge set aside the order of the Tribunal was that the Tribunal did not state why the appellant should be preferred to the respondent No. 1 in the matter of being given a permit. The learned judges who heard the Letters Patent Appeal preferred by the appellant observed, while dismissing the appeal:

> "The first respondent had this advantage, viz : that he was given the permit by the Regional Transport Authority. Before that permit could be set aside it was the duty of the Appellate Tribunal to have considered the superior merit of the appellant. In considering such superior merit, it was bound to consider the pros and cons of the experience alleged to be possessed by the first respondent as against the claim of the appellant who puts his case only as a new entrant. The Tribunal appears to have taken as a rule of law that new entrants should invariably be preferred as that would give them an enthusiasm and also surcharge the atmosphere with a healthy competition. But it forgot that in all these matters, the paramount question, to be considered was the interest of the public, and, in considering the question, it had a duty to evaluate the rival claims of the two operators.", Thus both the learned single judge and the appeal court interfered with the order of the Tribunal on the ground that it had failed to determine a material issue and had thus not performed its duty.

It is an admitted fact that though the appellant has experience of running buses on certain routes in the State it has no recent experience of running buses in a town. The appellant could, therefore, be properly regarded as a new entrant in so far as town service is concerned. This fact has never been in dispute. The Regional Transport Authority considered this circumstance against the appellant while granting permits to the respondents 1 and 2. The Tribunal, however, adverting to Government Order No. 2265 dated August 9, 1958 and certain , observations of this Court in Raman & Raman Ltd. v. The State of Madras (1), came to the conclusion that new entrants ought to be preferred in the matter of granting permits even on town routes. The Regional Transport Authority on the other hand felt that bearing in mind the fact that there is considerable traffic in towns and the roads are narrow, it is desirable to prefer existing operators to a new one. The Regional Transport Authority also appears to have had in mind a circular dated October 14, 1960 issued by the Transport Commissioner in coming to this conclusion. In that circular the Transport Commis- sioner appears to have placed his interpretation on the Government Order already referred to in which routes have been placed in three categories : "short routes". "'medium routes" and "long routes". In that circular the Transport Commissioner has observed :..... the Government are of opinion that the town service routes should be excluded from the-scope of short routes and they should be treated as a separate category". Apparently, this is nothing more than the opinion of the Transport Commissioner and not a Government Order which requires to be given effect to wherever possible by the Regional Transport Authority. Thus one of the reasons given by the Regional Transport Authority may not be correct. However, we wish to make no pronouncement one way or the other on this question because in our view the Tribunal has not addressed itself specifically to the question as to why the appellant should be preferred to respondent No. 1. No doubt, the (1) [1953] Supp. 2 S.C. R. 227, 244.

Tribunal has set out the qualifications possessed by the appellant. But it has not considered whether the respondent No. I does or does not possess similar qualifications. In the circumstances we agree with the High Court that there has been no proper determination of the only question which requires to be determined and that is why one operator should be preferred to another.

Mr. B. Sen who appears for the appellant contended that the learned single judge ought to have remanded the matter to the Tribunal after setting aside its order and that it could not confirm the order of the Regional Transport Authority at any rate without going into the merits of the rival claims. It is true that the order of the learned judge is not very clearly worded. But it seems to us that what he really meant was that the appeal should be rehear by the Tribunal and decided in the light of his observations. This we think should be sufficient to remove such grievance as the appellants may have. The appeal is dismissed but there will be no order as to costs in this Court.

Appeal dismissed.