Supreme Court of India
D. Nataraja Mudallar vs State Transport Authority, ... on 6 September, 1978
Equivalent citations: 1979 AIR 114, 1979 SCR (1) 552
Author: V Krishnaiyer
Bench: Krishnaiyer, V.R.

PETITIONER:
D. NATARAJA MUDALLAR

Vs.

RESPONDENT:
STATE TRANSPORT AUTHORITY, MADRAS

DATE OF JUDGMENT06/09/1978

BENCH:
KRISHNAIYER, V.R.
BENCH:
KRISHNAIYER, V.R.
DESAI, D.A.

CITATION:
1979 AIR 114 1979 SCR (1) 552
1978 SCC (4) 290
CITATOR INFO :
R 1992 SC 180 (4)

ACT:
Constitution of India, Article 136, application, scope.
Motor Vehicles Act, 1939, 5. 50, unjustified refusal to renew permit, a breach of fundamental right.

HEADNOTE:
The appellant plied a luxury coach for public benefit under a permit o 1971 for five years, in the Tamil Nadu State. He applied for a renewal of the permit two months prior to its expiry, but was refused the same by the State Transport Authority, on the ground that the facilities provided by tho public sector undertakings were adequate, and the renewal of the applicant's permit would be redundant in the circumstances and also result in unhealthy competition. Applications for more permits were invited and some granted since the impugned refusal. On appeal u/s 64 of the Motor Vehicles Act. the State Transport Appellate Tribunal affirmed the rejection, using the same reasoning. Thereafter the High Court rejected the appellant's revision application, refusing to go into questions of fact.
Allowing the appeal, the Court,
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HELD: 1. If a small man, whose heavy investment in ll tourist coach is to be sterilised altogether, it is a social trauma, and if fundamental rights are disposed of as if by executive fiats, this Court must intervene under Art. 136, to uphold the credibility in the rule of law and prevent its derailment. The touchstone is not the little man and his little lis. but the large issue and the deep portent. [554 G-H]

2. The Authority must remember that a permit holder 1st has an ordinary right of renewal unless it is shown that outweighing reasons of public interest lead to a contrary result. The bare ipse dixit that the S.T.A. considers the facilities provided by public sector undertakings are adequate is not intelligible, without some basis. Some objective assessment to exclude the petitioner, based on tangible data is the minimum for a judicial negation of a fundamental right. Another circumstance effectively negating the story of supernumerary vehicles is the admitted fact that applications for more permits have been invited and some granted. The basic reason for quashing the order of refusal is the untenable reason assigned to support the order. [555 A, H, 556 A, D, F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1083 of 1978.

Appeal by Special Leave from the Judgment dated 23-2-77 of the Madras High Court in C.R.P. No. 356 of 1977 Y. S. Chitale, Vineet Kumar and A. K. Srivastava for the Appellant.

A. V. Rangam for the Respondent.

The Judgment of the Court was delivered by A KRISHNA IYER, J. Arbitrary orders and mystical directions have poor mileage in this Court when irrelevance and unreason are writ on their face even though the sanctity of concurrent error may give them some shelter.

To ply a contract carriage is a fundamental right hut it can be restricted reasonably as has been done by the Motor Vehicles Act, 1939. The perspective is that what is fundamental is the right, not the restriction . Here , one Mudaliar. the appellant, owner a luxury coach, plied it for public benefit under a permit of 1971 for five years. The statutory criteria for grant of such permits is set out in S. 50 and renewals of permits must be governed by the same considerations, the procedure being regulated by S. 58. There is no grievance made that procedure violations are involved here. All that we know is that the permit was to expire in March 1976 and so a renewal application was made two months earlier. The State Transport Authority (for short, S.T.A.) rejected the request for renewal on the score that the 'ITDC has expanded its activities' and has in the field many tourist vehicles. Then the Authority added: 'lt is said that the utilization of these vehicles is in the range of 90 to 100 per cent during the tourist season only (November to February) and that it is just 60 to 70%" during"

other periods'. The Tamil Nadu State's transport system also has vehicles on the road and some spare buses. All told, a few hundred motor vehicles, some of which arc stage carriages and some contract carriages, serve the travelling, public on these statements, the conclusion was reached: 'The State Transport Authority therefore considers that the facilities provided by these public sector undertakings are adequate. Renewal of the applicants permit will not only be redundant in the circumstances but also result in healthy competition'. The order does not indicate that anyone appeared and objected.

The State Transport Appellate Tribunal (S.T.A.T., to use an acronym). On appeal under S. 64 affirmed the rejection, using the same reasoning. About the abundant transport facilities developed since 1971 the Tribunal said: 'The learned counsel for the appellant has no doubt stated that there is no material to hold the details (occurring at para 2 of the order) to be correct. The State Transport Authority is dealing with the provision of transport in the State level and he is expected to be in touch with the details of the availability of service from different sources and those particulars furnished by the S.T.A, could not also be said to be in anyway strange. As the authority is having these details readily available it was open to the authority, to rely upon those details before coming to conclusion bout the need for renewal as asked for by appellant. It is not therefore proper to comment on the details made available in para 2 of the order'. He obscurely encored, without any facts, that there would be 'unhealthy competition. What is truly occult is the casual dismissal of unanswerable factor: 'The appellant has stated in his affidavit that in as much as applications have been called for, for the grant of 100 tourist cabs, 15 omni buses and 10 omni tourist buses for the State of Tamil Nadu, the comment about the absence of need for renewing the permit as made by the State Transport Authority is not proper-.

The Departmental Representative has filed a Memo. Of objection stating that application ave been called for the sinner of permits valid to ply throughout India and the same is not relevant material, as the applicant's permit is in respect of the State of Tamil Nadu alone. The learned counsel for the appellant would contend that for the limited purpose of making out that there is need for additional service, this factor may also be considered'. No doubt, it is admitted that applications have been called for, for the issue of permits to be effective all over India. The appellant's permit is having a restricted application within the State. As such as fact that applications have been called for the grant of All India Permits does not in any way become relevant or important and the same can be ignored'. The STAT has countered the appellants claim of meritorious service by reference to past infirmities not adverted to anywhere in the order of the STA The High Court, in revision, washed its hands off the case by the observation: 'It is not for this court to traverse into these questions of fact And find out whether there is any need for adequacy under the revisional jurisdiction. How many permits the India Tourism Development Corporation should have been granted is not the subject matter of this revision petition. This concerns merely with the refusal to renew the permit which, in my view, has been done on very valid and tenable reasons'.

The whole issue has been made more fishy by the STA granting two contract carriage permits in 1978 after rejecting the renewal application holding there were already too many vehicles.

Should the court interfere under Art. 136 ? ordinarily, no. But if' a small man, whose heavy investment in a tourist coach is to be sterilised altogether it is a social trauma; 'and if fundamental rights are disposed of as if by executive fiats, this Court must intervene to uphold the credibility hl the rule of law and prevent its derailment. The touch stone is not the little man and his little lis but the Large issue and the deep portent.

S.50 specifies the guidelines. The transport tribunals function quasi-judicially and this imports some imperatives. You must tell the men whose fundamental right you propose to negative the materials you may use in your decision. You must act on relevant considerations, properly before you, not on rumour or hearsay, ex cathedra assertions or inscrutable hunch.

The Authority must, remember that a permit holder has an ordinary right of renewal unless it is shown that outweighing reasons of public interest lead to a contrary result. Permits are not bounty but right, restricted reasonably by the Motor Vehicles Act.

The key criterion when a contract carriage permit is sought, is to ask oneself whether an extra vehicle is unnecessary or undesirable in the public interest, and whether, further, the permits already granted are sufficient for or in excess of the needs of the region. After all, a few hundred vehicles admittedly ply- and one contract carriage operator is asking for a single permit. What makes it unnecessary or undesirable in the public interest ? ordinarily, having regard to the explosive increase in traffic in our country, more vehicles are needed. Of course if the roads are in a precarious condition or competitive racing or reckless driving on the roads make for hazards or if the operator is otherwise disqualified one may reduce the number of vehicles and refuse permit or renewal. Nothing of the sort is mentioned in any of the orders rejecting the permit. Assuming there are around 300 or 400 motor vehicles, how does one more become too many ? It is a preposterous proposition to say so, in the absence of some evidence. If there is no evidence to warrant such a conclusion. the right to the permit must prevail.

Is there any evidence in this case ? The Authority asserts that the utilisation of existing vehicles is of the order of '90 to 100 per cent' during the tourist season. This indicates that at least during the tourist season one more tourist coach will be welcome to relieve congestion. The Authority further states that it is said .... "just 60 to 70 per cent" Is utilised during the other period. "It is said"-by whom, to whom, when, how, and was it put to the applicant ? All this is shrouded in mystery. Whatever is said by someone, somewhere, is not material here. It must be on the record. While the STA may know the total number of vehicles on the road it must have made a study of specific materials to ascertain whether there is unused vehicular potential. Merely to rely on 'it is said' 'in the passive voice is not judicial. Moreover, not to put it to the applicant before rejecting his renewal is not fair. The bare ipse dixit that the 'State Transport Authority considers the facilities provided by public sector undertakings are adequate', is not intelligible, without some basis. Nor does 'public sector' and 'private sector' enter the picture. Some objective assessment to exclude the petitioner based on tangible data is the minimum for a judicial negation of a fundamental right. The reference to 'unhealthy competition' is baffling. If there are 300 or more buses and one more is sought to be added, what is the ill-health in the traffic system that will be injected by this addition ? We must remember that the tourist coach of the petitioner is to travel all round Tamil Nadu and so the image

of a particular route overcrowded with too many buses making for cut-throat competition and imperilling passenger's lives does not arise.

The STA has no research staff to investigate the untapped transport or traffic potential and if it has any, such report must be put to the applicant.

Moreover., it is obvious that the State Transport Authority should have granted one permit less to the ITDC, if its case of redundancy were true. For, the appellant had a current permit then Another circumstance effectively negating the story of super- numerary vehicles is the admitted fact that applications for more permits have been invited and some granted. And before us two orders granting permits for contract carriages since the impugned refusal have been filed. And yet Mudaliar goes to the wall, on a cavalier `no' to his application for renewal.

Fair consideration of his claim has been denied to the appellant; his huge investment has gone to waste because of non-renewal.

We see no relevant ground justifying the order; there is breach of natural justice; there is importation of non- materials; there is unawareness of the fact that a fundamental right is involved and that a costly coach is condemned to non-use. The basic reason for quashing the order of refusal is the untenable reason assigned to support the order. We allow the appeal, set aside the refusal of renewal and having regard to the 'long delay and absence of disqualifications direct the State Transport Authority to reconsider the grant or renewal within two weeks of receipt of this order.

We repeat for emphasis that ordinarily this Court is loath to reinvestigate questions relating to motor vehicle permits; but every rule has an exception even as every case has a martyr.

M.R. Appeal allowed.