Supreme Court of India
P. Venkaiah vs G. Krishna Rao & Others on 25 August, 1981
Equivalent citations: 1981 AIR 1910, 1982 SCR (1) 380
Author: A Koshal
Bench: Koshal, A.D.

PETITIONER:
P. VENKAIAH

Vs.

RESPONDENT:
G. KRISHNA RAO & OTHERS.

DATE OF JUDGMENT25/08/1981

BENCH:
KOSHAL, A.D.
BENCH:
KOSHAL, A.D.
DESAI, D.A.
MISRA, R.B. (J)

CITATION:
1981 AIR 1910 1982 SCR (1) 380
1981 SCC (4) 105 1981 SCALE (3)1263

ACT:
Andhra Pradesh Motor Vehicles Rules 1964 Rule 212(ii) (a) proviso-Scope of-Whether hit by article 19 of the Constitution- new entrant meaning of.

HEADNOTE:
For evaluating the merit of various applicants for a stage carriage permit, rule 212 of the Andhra Pradesh Motor Vehicles Rules 1964 classifies routes as short, medium and long routes. In the matter of Grant of permit for short routes clause (ii) envisages preference being given to those applicants who are "new entrants". Clause (iii) provides criteria for weeding out undesirable applicants, while clause (iv) provides for marks being awarded for sector or residential qualifications. If an applicant possesses both residential and sector qualifications the proviso to sub clause (a) to clause (iv) requires that he shall be awarded marks only for one of them so that he is given credit for the qualification more advantageous to him marks-wise.

With the nationalisation of road transport in the State, the appellant, respondent no. I and respondent no. S were deprived of the stage carriage permits which they were holding before nationalisation.

Subsequently the Regional Transport Authority granted one permit to the appellant and another to respondent no. S. In appeal, the State Transport Authority, holding that respondent no. 1 was a "new entrant" within the meaning of the rule 212(ii)(a) granted one permit to him and the other to respondent no. 5 who was held to have an edge over the appellant for another reason.

In revision, the State Government held that the appellant and respondent no. 5 were entitled to preference over respondent no. 1 by reason of their longer experience in the field of motor transport, in spite of the fact that respondent no. 1 was a "new entrant".

A single Judge of the High Court held that respondent no. 1 who was a new entrant" was entitled to preference over the others by reason of rule 212(ii)(a). The second route was granted to respondent no. 5.

On further appeal it was contended before a Division Bench of the High Court that (1) the proviso to clause (iv)(a) of rule 212 imposed an unreasonable restriction on the right of citizens to carry on business and was hit by article 19
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Of the Constitution; (2) that the expression "new entrant" covered only persons A who took up the business of motor transport for the first time and (3) that even if contention (2) is not accepted, a "new entrant" would not mean a person not having a permit at the time when the question of granting a permit arose but would apply only to a person who never held any stage carriage permit.

All the contentions, rejected by the Division Bench, were again raised before this Court.

Dismissing the appeal,

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HELD: The proviso to sub clause (a) of clause (iv) of rule 212 is not hit by the provisions of article 19 of the Constitution. It merely states that if an applicant possesses both residential and sector qualifications he is to be given credit only for the one which is more advantageous to him. The rule is salutary and is meant to avoid monopolies. It is reasonable that an applicant is given an option of choosing either the residential or the sector qualification for the award of marks inasmuch as the merit accruing to the applicant by reason of being clothed with one of them would overlap that for which he might get credit by reason of the other. [389 C-D]

(2) From the context in which the term "new entrant" is used the rule making authority clearly intended that a "new entrant" to the stage carriage business must have preference over the existing operators in respect of short routes. The fact that respondent No. I had a public carrier permit was wholly irrelevant. Ho was undoubtedly a "new entrant" to the stage carriage business. [390 B]

S. Chinna Narasa Reddy v. D. Jagadeeshwara Rao and

others, [1972] 4 SCC 734= AIR 1972 SC 1536 followed.

(3) A set of things which is different from that immediately preceding it may well be called new. A situation which once existed and then ceased to exist may properly attract the word 'new' on re-appearance. The adjective 'new' would be applicable to a person who was once in the line of operators of stage carriages but who had long ceased to be so and who sought entry into that line afresh. [391 D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1625 of 1970.

Appeal by Special Leave from the judgment and order dated the 28th October, 1969 of the Andhra Pradesh High Court in Writ Appeal No. 412 of 1969.

TVR Tatachari and AVV Nair for the Appellant. KR Chowdhary for Respondent No. l.

G. Narayana Rao for Respondent Nos. 2 to 4.

The Judgment of the Court was delivered by KOSHAL, J. The bone of contention in this appeal by special leave consists of two stage carriage permits granted under the Motor Vehicles Act (hereinafter called the Act) in relation to the route Chirala Railway Station to Vetapalem, the claimants to which now are Venkaiah (the appellant), Krishna Rao (respondent No. I) and Nagendrudu (respondent No. S). By the impugned judgment a Division Bench of the High Court of Andhra Pradesh has dismissed an appeal under clause 15 of the Letters Patent and has upheld the judgment of a Single Judge of that Court by which the order of the State Government was reversed and the permits were granted to respondents Nos. 1 and 5.

2. Before we proceed to lay down the facts leading to the present contest we may refer with advantage to rule 212 of the Andhra Pradesh Motor Vehicles Rules, 1964 which have been framed under the Act and are hereinafter referred to as the Rules. The marginal note to that rule reads:

> "Grant, Variation, Suspension or Cancellation of stage carriage permit-Guiding principles"

The rule is divided into six clauses out of which we are concerned only with clauses (i), (ii), (iii) and (iv) and the same, in so far as they are relevant for the purposes of this appeal, are reproduced below:

> "(i) Routes shall be classified as:-
>
> (a) Short routes including shuttle services-This class of route will cover a distance of up to 50 kilo meters.

(b) Medium routes-This class of route will cover a distance varying from 50 kilometers to 120 kilo meters.

(c) Long routes-This class of route will cover a distance of more than 120 kilometers.

(ii) Other things being equal, preference shall be given to applicants as follows:

(a) for short routes including shuttle services to new entrants,

(b) for medium routes to applicants with I to 4 stage carriages (excluding spare buses).

(iii) The Transport authorities shall, in deciding whether to grant or refuse to grant a stage carriage permit, have regard to the following matters in addition to those specified in sub- section (1) of section 47.

The applicants shall first be screened and those who are found to be unsuitable on one or more of the following principles shall be disqualified, reasons being given for the decision of the transport authority when ever an applicant is disqualified.

(1) Financial instability..... (2) If the history sheet is not clean..... (3) If there is evidence that the applicant has been trafficking in permits, either benami or otherwise.

(4) If the applicant has no workshop facilities or other arrangement to attend to repairs efficiently:

. . . . . .
. . . . . .

(5) If the applicant has no main office or branch office on the route or resides beyond 8 kilometers from the route applied for to control the service.

(6) If the application is on behalf of others in order to evade rules.

(iv) After eliminating the applicants in the manner laid down in clause (iii) above, marks shall be assigned as follows for assessing the different qualifications of the applicants for the grant of permits-

(a) Sector or residential qualifications-

(1) Four marks may be awarded to the applicant who has his place of business or residence at either terminus of the route applied for, and two marks may be awarded to the applicant who resides on the route (but not at either terminus) or within 8 kilometers from the route (2) Marks may be awarded to the applicant who has sector

qualification on the route applied for, as follows :-

(i) where the sector qualification is between I per cent and 25 per cent of the total distance of the route applied for-one mark;

(ii) where the sector qualification is between 26 per cent and 50 per cent of the total distance of the route applied for-Two marks;

(iii) where the sector qualification is between 51 per cent and 75 percent of the total distance of the route applied for-Three marks; and

(iv) where the sector qualification is above 75 per cent of the total distance of the route applied for-

Four marks:

Provided that if the applicant has both residential and sector qualifications, he may be given marks either for residential qualification or for sector qualification, whichever is more advantageous to him.

(b) ... ...
(c) ... ...

It will be seen that the rule lays down a scheme for the evaluation of the merit of various applicants for a stage carriage permit and for that purpose classifies routes as short routes, medium routes and long routes. According to clause (ii) preference has to be given to those applicants in the matter of grant of permit for short routes who are "new entrants". Clause (iii) provides criteria for weeding out undesirable applicants. After the elimination process is over, the evaluation of the merit of the remaining applicants starts under A clause (iv) which provides for marks being awarded for sector or residential qualifications as laid down in paragraphs (1) and (2) of sub-clause (a) thereof. To sub-clause (a) has been added a proviso which states that if an applicant is possessed of both residential and sector qualifications he shall be awarded marks only for one of them so, however, that he is given credit for the qualification more advantageous to him mark-wise.

3. We may now state the relevant facts. In the year 1957 road transport was nationalised in the State of Andhra Pradesh. Just before that the appellant, respondent No. I and respondent No. 5 held 1, 3 and 1 stage carriage permits respectively, but on nationalisation they were deprived thereof. Subsequently the appellant and respondent No. S granted one such permit each while none was issued in favour of respondent No. 1.

For the two routes in question the Regional Transport Authority (hereinafter referred to as the RTA) considered the claims of 20 applicants out of which 16 appear to have been eliminated in pursuance of the provisions of clause

(iii) of rule 212. The case was then taken up for consideration under clause (iv) and out of the remaining four applicants, each one of the three present contestants was awarded S marks, i.e., one mark for business or technical experience and 4 for residential sector qualification. On further consideration of the case the RTA granted one permit to the appellant and the other to respondent No 5. In appeal the State Transport Authority hereinafter referred to as the STA) noted the fact that respondent No. I did not hold any stage carriage permit at the time of the consideration of the respective claims of the parties and was, therefore, a new entrant within the meaning of that expression as used in sub-clause (a) of clause (ii) of rule 212, while the appellant and the respondent No. S did not have that qualification as each one of them was holding one such permit at the relevant point-of time. One permit was, therefore, granted by him to respondent No. 1 and the other to respondent No. 5 who was held to have an edge over the appellant for the reason that although each of them had to his discredit a conviction for an offence under the Act, the offence brought home to the appellant was more serious than that of which respondent No. S was found guilty.

The third round of litigation took place before the State Government in revision under section 64A of the Act. The State Government held that the appellant and respondent No. 5 were entitled to preference over respondent No. 1 because of their longer experience in the field of motor transport (in addition to full sector qualification possessed by each of them) in spite of the fact that respondent No. 1 was a "new entrant".

The matter was then agitated by the rival claimants in two petitions under article 226 of the Constitution of India filed before the High Court, a learned Single Judge of which held that respondent No. 1 was a new entrant who was entitled to preference over the other contestants by reason of the provisions of sub-clause (a) of clause (ii) of rule

212. The other route was granted by the learned Single Judge to respondent No. 5 on the same ground as had weighed with the STA in that behalf.

As already stated the judgment of the learned Single Judge was upheld in the Letters Patent Appeal.

4. Before the Letters Patent Bench three contentions were raised:

> A. The proviso to sub-clause (a) of clause (iv) of rule 212 imposes an unreasonable restriction on the right of citizens to carry on business and is, therefore, hit by article 19 of the Constitution. It has thus to be disregarded as being null and void. Consequently the appellant and respondent No. 5 must be awarded 9 marks each as each of them had residential as well as full sector qualification.
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> B. The expression "new entrant" above mentioned covers only persons who take up the business of motor transport for the first time and is not restricted to persons who seek entry to the stage carriage business.
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> C. Even if contention is not accepted a "new entrant" would not mean a person not having a permit at the time when the question of granting one arises but would apply

only to a person who never held any stage carriage Permit.

Contention A was repelled by the Division Bench with the following observations:

> "The Rule-making Authority must have thought that as both the residential and common sector qualifications will serve the same purpose it is not necessary to award marks for both the qualifications and if marks were to be awarded for both the qualifications it would be putting unnecessary premium on the applicants having both the qualifications as against the applicants having only one of those two qualifications and thus putting unnecessary restric- tion on equality of opportunity. We do not think the policy of the Rule-making Authority in adopting that rule for awarding marks for one or the other of the two qualifications, whichever is more advantageous to the applicant, can be questioned.
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> . . . .
> . . . .
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> We are satisfied that the provision contained in clause (iv) (a) of rule 212 read with the proviso thereunder providing for awarding of marks either for common sector qualification or for residential qualification whichever is more advantageous to the applicant is made in order to achieve the objects of both efficiency of service and equality of opportunity both of which are needed in the best interests of the public. It incidentally discourages tendency towards monopoly. Therefore, it is not possible to hold that the proviso in question works out in any way to be an unreasonable restriction. We hold that it cannot be struck down on the ground of unreasonable restriction."

In turning down contentions and the High Court observed:

> "The expression "new entrant" is not defined either in the Act or in the Rules. It must be understood in the con text of clause (ii) of rule 212 where it appears. As provided therein for short routes preference should be given to "new entrants" and with regard to medium routes preference be given to applicants with I to 4 stage carriages. Thus with regard to medium routes to have preference the appli- cants must be having some stage carriages. Viewed in this context, it appears that when it is said that for short routes preference should be given to the "new entrants" it means preference should be given to the applicants not having any stage carriages at that time If the argument of Sri Babul Reddy that "new entrants" means an appli cant who is for the first time entering into the field of transport business is to be accepted the applicant who is not having any stage carriage permit at that time on account of his having some stage carriages previously will be placed in a disadvantageous position so as not to get medium routes as also short routes. It would practically amount to ousting that class of applicants getting either the short route permits or medium route permits which could not have been the intention of the Rule-making Authority. If the provi- sion made in sub-rule (ii) of rule 212 is read as a whole the intention appears to be

clear. namely, that for short routes the applicants having no stage carriages are to be preferred and for medium routes applicants having some stage carriages up to four are to be preferred. Sri Babul Reddy has also argued that if a person who had a stage carriage previously but whose permit was cancelled for gross violation of the conditions of the permit would still be entitled to preference for short routes on the ground of his being a "new entrant" merely because he possessed no permit at the time when the applications were considered. It might be so. But we fail to understand how that would be a startling result as contended by Sri Babul Reddy. If a permit is cancelled for any gross violation of the conditions of a permit if it is so required it may be considered as a disqualification and so long as it is treated as a disqualification whether that applicant is having a stage carriage permit or not his application will not be considered at all on account of that disqualification. As a matter of fact it is provided under clause (iii) of rule 212 that if the history sheet is not clean and contains more than six entries relating to the offences mentioned therein within twenty four months preceding the date of grant of the permit such applicants shall be first screened and they should be disqualified whatever the other merits of those applicants may be. They do not come up for consideration at all on account of such exclusion. Therefore, this argument of Sri Babul Reddy does not appear to be of much substance. It is clear to our minds that the expression "new entrant" in the rule means an applicant who possessed no stage carriage at the time when the applications are considered and not necessarily an applicant who is entering the business of transport for the first time. Accordingly this point also goes against the appellant."

5. The contentions raised before the High Court have been reiterated before us and we also find ourselves unable to accept any of them for more or less the same reasons as weighed with the Division Bench.

6. We do not see how the proviso occurring in sub- clause (a) of clause (iv) of rule 212 is hit by the provisions of article 19 of the Constitution. It merely states that if an applicant possesses both residential and sector qualifications he is to be given credit only for that one of them which is more advantageous to him. As pointed out by the High Court the rule contained, in the proviso is salutary and is obviously meant to avoid monopolies. It appears to us to be eminently reasonable that an applicant is given the option of choosing either the residential or the sector qualification for the award of marks inasmuch as the merit accruing to the applicant by reason of being clothed with one of them would overlap that for which he might get credit by reason of the other We need not pursue the matter further as we find ourselves in full agreement with the views of the Division Bench on the point.

7. In relation to contentions and again we agree fully with the opinion expressed in the impugned judgment, which we may add, finds full support from the dictum of this Court in S. Chinna Narasa Reddy v. D. Jagdeeshwara Rao and others (1), wherein Hegde, J. speaking for the Court observed thus while interpreting the expression "new entrant" occurring in the relevant part of rule 212 :

'In our opinion, the Appellate Bench erred in coming to the conclusion that the expression "a new entrant" in the rule in question means new entrant to the motor transport field. The marginal note to Rule 2

(l) (ii) says; "Grant, variation, suspension or cancellation of stage carriage permit-guiding principles". This note indicates that the rule making authority was only considering the grant of stage carriage permits. Sub-clause(a) of clause (ii) of rule 212 (i) does not refer to motor transport business. When it comes to business or technical experience the rule specifically speaks of business or technical experience in motor transport. But when it speaks of "a new entrant", it does not refer to motor transport business. From the context it is clear that the rule- making authority intended that a R new entrant to the stage carriage business must have a preference over the existing operators in respect of short routes. The fact that the appellant had a public carrier permit was wholly irrelevant. He is undoubtedly a new entrant to the stage carriage business.

In our opinion the policy behind rule 212 is that in the matter of short routes preference should be given to new entrants so that more persons may have employment and there may be better competition. But when it comes to routes of longer distance the rule provides for viable units. If we consider the policy behind rule 212 it becomes obvious that the rule-making authority had in view new entrants to stage carriage business. Further, in our opinion the language of the rule, if considered in the context in which it is used, clearly indicates that the new entrants referred to therein are new entrants to the stage carriage business.

Mr. Natesan, learned counsel for the first respondent, contended that if we read the rule regarding new entrants as well as the rule relating to business or technical experience together then it would be clear that "new entrant" referred to in rule 212 (1)

(ii) (a) is a new entrant to the motor transport business. We are unable to accept that contention as correct. If Mr Natesan's contention is correct then even an operator of a scooter rickshaw would be deprived of the benefit of the rule. This could never have been the intention of the rule-making authority.

With respect we fully endorse this view and that disposes of contention B.

8. In relation to contention learned counsel for the appellant has drawn our attention to the dictionary meaning of the word "new." The oxford English Dictionary lists the following, amongst others, against that word:

"not existing before, now made, or brought into existence, for the first time... not previously known; now known for the first time."

If these were the only meanings of the word, the contention might have considerable force. But the word 'new' is also stated in the same dictionary to mean:

> "Coming as a resumption or repetition of some previous act or thing; starting afresh ... restored after demolition, decay, disappearance, etc..... other than the former, or old, different from that previously existing, known, or used,"

Thus a set of things which is different from that immediately preceding it may well be called new. Furthermore, a situation which once existed and then ceased to exist (disappeared) may properly attract the word 'new' on reappearance. Seen in this light the adjective 'new' would certainly be applicable to a person who was once in the line of operators of stage carriages but who has long ceased to be so and who seeks entry into that line afresh; and in our opinion this connotation of the word is not excluded by the context in which the word has been used in rule 212. We have, therefore, no reason to depart from or qualify the observations made by the Division Bench on the point.

In the result the appeal fails and is dismissed but with no order as to costs.

P.B.R. Appeal dismissed.