

SUPREME COURT OF INDIA

R. Abdulla Rowther

Vs.

State Transport Appellate Tribunal, Madras

C.A.No.2 of 1959

(P. B. Gajendragadkar, A. K. Sarkar and K. Subba Rao, JJ.)

18.02.1959

JUDGEMENT

GAJENDRAGADKAR J.

(On behalf of himself and **K: SUBBA RAO J.**)

1. This appeal by special leave is directed against the order passed by the High Court of Madras dismissing the appellants application for a writ of certiorari. The appellant is an operator of state carriages in the District of Ramnad in Madras state. It appears that the Regional Transport Authority, Ramnad, granted one permit to the appellant and another to S. Gopalan Nair - who has also preferred an appeal by special leave before this Court (Civil Appeal No. 20 of 1959); both the appellant and the said Gopalan Nair owned less than five buses each; and by the permit each one of them was authorised to run one bus from Ramanathapuram to Devakottai. This order was passed on 17-6-1957, in Proceeding No. R. 1220/A1/56.

2. Respondents 3 and 4 whose applications for permits had been rejected by the Regional Transport Authority preferred appeals to the State Transport Appellate Tribunal. Each of them owned more than five buses. The Appellate Tribunal by its order passed on 22-3-1958, allowed the appeals, set aside the order granting permits to the appellant and the said Gopalan Nair and directed that permits should be issued in favour of the said respondents 3 and 4.

3. Both the Regional Transport Authority and the Appellate Tribunal proceeded to deal with the respective claims of the parties on the basis of G. O. No, 1298 issue by the Government of Madras on 28-4-1956, Under this G. O., several directions had been issued, one of which dealt with the allotment of marks to the applicants for permits under several heads indicated therein, The, Regional Transport Authority had allotted 6 1/2 marks each to the appellant and the said Gopalan Nair. These included four marks allotted to each of them under col. I which dealt with the building strength to viable units, According to the authority, respondents 3 and 4 who are fleet owners were not entitled to any marks under the said column. In the result the total marks allotted to the said respondents 3 and 4 were, respectively 6 and 4. That is why the appellant and the said Gopalan Nair who had obtained the highest marks were granted permits.

4. The Appellate Tribunal, however, held that the appellant and the said Gopalan Nair were not entitled to claim the benefit of the marks under col. 1 since the marks obtained by them under cols. 2 to 5 were less than the marks obtained by respondents 3 and 4 each under the same columns. The

Appellate Tribunal held that, on a fair construction of the relevant G. O., it is only when the marks obtained by applicants under cols. 2 to 5 are equal that recourse can be had to col. 1 and marks can be allotted and counted thereunder.

5. Before the Appellate , Tribunal the decision of this Court in R. Rama Reddiar v. State Transport Appellate Tribunal, Civil Appeal No. 783 of 1957 - Judgment delivered on 6-2-1958, was cited. In that case the rival claimants in appeal owned 3 and 4 buses respectively. This Court held that the marks obtained by the said claimants in all the five columns should be totalled up and since the total number of marks obtained by the appellant on this calculation was less than that of the respondent the appeal was dismissed. Thus the competition with which this Court was directly concerned was between persons who owned less than 5 buses each. In dealing with this question, however, this Court construed the relevant Government Order and indicated what according to it was the true purport and effect of the said order. The Appellate Tribunal in the present case thought that according to the decision of this Court in the case of R. Rama Reddiar, Civil Appeal No. 783 of 1957, D/- 6-2-1958 (supra), the marks obtained by the appellant and the said Gopalan Nair under col. 1 could not be considered, because other things were not equal between them and respondents 3 and 4; that is to say, the marks obtained by them in Cols. 2 to 5 were not equal to the marks similarly obtained by the said respondents. It is on this construction of the G. O. and this Court's judgment in the case of R. Rama Reddiar, Civil Appeal No. 783 of 1957, D/6-2-1958 (supra), that the Appellate Tribunal set aside the order of the Regional Transport Authority and granted permits to respondents 3 and 4.

6. This order was challenged by the appellant by an application for writ in the High Court of Madras (Writ Petition No. 257 of 1958). Rajagopalan J., who heard the petition, held that the construction put by the Appellate Tribunal on the decision of this Court in the case of R. Rama Reddiar, Civil Appeal No. 783 of 1957, D/- 6-2-1958 (SC) (Supra), was not -shown to be erroneous and he also found that the G. O. which according to the appellant had been misconstrued amounted only to an executive or administrative direction and even if it was shown to have been misconstrued, that would not justify the issue of a writ of certiorari. The application for writ was accordingly dismissed on 1-7-1958.

7. Against this decision the appellant preferred an appeal before the Court of Appeal in the High Court of Madras; and the Court of Appeal agreed with both the conclusions of Rajagopalan J. It observed that the Government Order was not very happily worded and was capable of more than one construction; and it held that it was not shown that the construction placed by the Appellate Tribunal on the decision of this Court in the case of R. Rama Reddiar, Civil Appeal No. 783 of 1957, D/- 6-2-1958 (SC) (supra), was erroneous. The Court of Appeal has also held that, even assuming that the Appellate Tribunal had wrongly applied the rules laid down in the Government Order on a wrong interpretation of the observations of this Court, that would not afford any ground for the issue of a writ of certiorari under Art. 226 of the Constitution. It appears that the High Court of Madras has consistently held that the relevant Government Order contains merely executive and administrative directions and that the breach of the said directions cannot in law justify the issue of a writ of certiorari. In the result the appeal preferred by the appellant was dismissed on 22-8-1958.

8. An application made by the appellant for a certificate before the High Court was rejected on September 5, 1958 mainly on the ground that the Government Order, the alleged misconstruction and misapplication of which was the sole basis for the appellant's prayer for a writ of certiorari, was an executive and administrative direction and its breach cannot sustain a claim for the writ. The appellant then applied for, and obtained, special leave to appeal from this court on 12-9-1958. That

is how the appeal has come to this court.

9. Along with this appeal we have also heard Civil Appeal No. 20 of 1959 filed by S. Gopalan Nair against the same judgment by special leave from this Court. The petition for a writ of certiorari filed by this appellant was tried along with the petition filed by the appellant in civil Appeal No. 2 of 1952 and has throughout been treated as a companion matter. The facts relevant for the purpose of this appeal are the same as those in Civil Appeal No. 2 of 1959; and the points raised for decision in both the appeals are the same. That is why it is unnecessary to repeat the facts in respect of Civil Appeal No. 20 of 1959.

10. Three questions have been argued before us in both these appeals: (1) Are the directions contained in the Government Order executive or administrative orders, or, are they statutory rules having the force of law?; (2) If the said orders are statutory rules having the force of law, has the relevant part of the rule dealing with the question of allotment of marks been misconstrued and misapplied?; the decision of this question would naturally depend on another point, and that is what is the effect of the decision of this Court in the case of R. Rama Reddiar, Civil Appeal No. 783 of 1957, D/6-2-1958 (SC) (*supra*)?; and (3) If the decision of this court has been misinterpreted and the relevant rule misconstrued, is it such an error of law apparent on the face of the record as to justify the issue of a writ of certiorari?

11. It would be noticed that the questions 2 and 3 would fall for consideration only if the first question is answered in favour of the appellant. It is not and cannot be seriously disputed that if the Government Order contains merely executive or administrative directions, their breach, even if patent, would not justify the issue of a writ 'of certiorari. The executive orders properly so-called do not confer any legal enforceable rights on any persons and impose no legal obligations on the subordinate authorities for whose guidance they are issued; that is not to say that the directions are not valid and should not be followed by the said authorities; the said authorities are undoubtedly expected to follow the said directions and their breach may expose them to disciplinary or other appropriate action. If the present Government Order is held to be an executive order it would confer no legal and enforceable rights on any applicant for permits; so that, even if any of the directions contained in the order is found to have been ignored or misapplied, the applicant for a permit cannot claim any relief by way of a writ of certiorari. The direction itself, though valid, and in a sense binding on the subordinate authorities is not a statutory rule and has not the force of law and so its misconstruction cannot be said to be an error of law. The distinction between statutory rules having the force of law and administrative or executive directions has been recently emphasised in the decision of this Court in *Nagendra Nath Bora v. Commr. of Hills Division and Appeals, Assam*, AIR 1958 SC 398 at pp. 412, 413. In that case it was urged before this Court that the appellate authority had not carried out the instructions issued for its guidance by the State Government; for instance, the appellate authority did not observe the specific instructions that tribal people had to be given certain preference, or that persons on the debarred lists like smugglers should be kept out. But it was held that

"all these are only executive instructions which have no statutory force. Hence even assuming, though it is by no means clear, that those instructions have been disregarded, the non-observance of those instructions cannot affect the appellate authority to make its own selections or affect the validity of the order passed by it".

This is precisely the view which the High Court of Madras has consistently taken in regard to the Government Order before us: and so the first question which calls for our decision is whether the

view of the High Court in regard to the nature and character of the directions issued in the Government Order is correct.

12. Before dealing with this question it is necessary to set out the broad features of the Government Order. This Order has been issued under S. 48A (1) of the Motor vehicles Act, 1939. The preamble to the order shows that it was issued as a result of the decision of the High Court of Madras in *C. S. S. Motor Service, Tenkasi v. State of Madras*, Writ Petitions Nos. 333 and 334 of 1951: (AIR 1953 Mad 279), where the High Court had held that Government should lay down principles on which the selection from among the applicants for stage carriage permits should be made and that such rules must be reasonable and in the interest of the public as required by Art. 19 (6) of the Constitution. Government, therefore decided to lay down the principles that should be observed by all the transport authorities

"in the matter of grant of stage carriage permits, variations or extensions, and award of punishments for breach of rules and permits conditions."

The Government Order consists of four parts. Part A deals with the grant of stage carriage permits; B with the grant of variations or extension of routes; C with the revision of timings; and D with the suspension or cancellation of permits. Part A of the Order makes it clear that in deciding whether to grant or refuse a stage carriage permit, the transport authorities shall have regard to the following matters in addition to those mentioned in S. 47 (1). S. 47 (1), it may be added, prescribes by sub-cl. (a) to (f) the relevant matters which the transport authority has to determine in dealing with the applications for stage carriage permits; and the Government Order seeks to set forth some additional considerations.

13. It is significant that Part A begin by saying that applicants 'may' be screened and disqualified on one or more of the principles mentioned in paragraphs 1 to 4. One has merely to read these four paragraphs to be satisfied that they include nothing more than executive instructions for guidance. Paragraph 1 refers to financial instability as evidenced by or undischarged decrees; and it says that it is important that those who run public services are not subject to financial pressure. It, however, adds that borrowing for purchase of vehicles will not by itself be a disqualification. Paragraph 2 suggests that an adverse record in respect of efficiency and integrity should be kept and says that ordinarily the history-sheet of the previous one year alone may be considered in this respect. It is clear that the authority can, if it so desires, consider the history-sheet for more than one year. Paragraph 3 discourages trafficking in permits as evidenced by transfer without adequate reasons of permits previously held and it adds that it is obviously necessary to discourage trade in permits. Then paragraph 4 refers to applications for permits on behalf of others in order to evade the rules particularly in respect of viable units. Having regard to the manner in which these paragraphs are worded, the topics covered by them and the purpose they are intended to serve, there can be little doubt that these paragraphs contain administrative directions and cannot be treated as statutory rules. It is impossible to hold that these paragraphs create legal rights or impose legal obligations in the sense that any alleged breach of the directions contained in them would give rise to a petition for a writ of certiorari. Can any applicant be allowed to say that the financial condition of his opponent was not properly considered or that his history-sheet had not been correctly kept or examined, and so the permit granted to him shall be cancelled? In our opinion, there is no doubt that such a plea cannot be raised for the simple reason that the directions in question are merely executive instructions.

14. After giving four directions in regard to the screening of the applicants the Government Order

proceeded to lay down principles in order to ensure efficiency of service and equality of opportunity. It says

"to secure precision and to enable quick consideration, a system of marking according to the principles involved may be followed. In cases where this system works unfairly the Regional Transport Authority may ignore the marks obtained for reasons stated."

It is thus clear that though a system of marking has been indicated in the subsequent directions, full discretion is left to the authority to ignore the marks if it thinks that the adoption of the marking method may work unfairly. This itself emphasises that full discretion was intended to be left to the authority which had to decide whether marking method should be employed or not. Then follow five paragraphs for assigning marks under five different heads. These heads are building strength to viable units, possession of repair and maintenance facilities, location of residence or places of business of the applicants on the road or at the terminal, technical or business experience or transport of the applicant, and special circumstances specified. The marks awardable under heads 2 to 5 are 2, 1, 1 and 2 respectively, that is to say 6 in all; and the maximum number of marks awardable under the first head are 4 and they can be obtained by a person owning four buses. Thus the maximum number of marks which an applicant can obtain is 10. It is not denied that the allotment of marks under heads 2 to 5 is wholly in the discretion of the authority, whereas the allotment of marks under head (1) is governed by the principles laid down in paragraph (1). This paragraph says that Government have decided that the efficiency of service and economy in cost can be secured by fixing viable units of five buses, It is accordingly necessary that, other things being equal, preference should be given to existing owners of four buses and less who build up a fleet of five buses. These owners will have preference over other applicants in the ascending order. In the marking system, therefore, applicants of four buses and less will be given one mark for each vehicle already licensed to them. Thus the owner of one bus will get one mark and the owner of two buses will get two marks and so on to a total of four. This will enable the existing permit owners to build up their buses to viable units in preference to others who have more buses or none. It is the construction of this paragraph which has given rise to the present controversy.

15. Having set out the five paragraphs under which marks may be assigned the Government Order observes that by assigning marks the transport authority would be assisted in making allowances for imponderable factors. It is also stated in the Government Order that the sheets on which marks are finalised can be made part of the order which will also reduce the work in appeals. It seems to us that the directions contained in these paragraphs for assigning marks under different heads are no more than executive orders issued for the guidance of transport authorities, They, may be compared with the circulars issued by High Courts in their General Power of Superintendence for the guidance of subordinate courts. Unlike the circulars thus issued by the High Courts, the rules which they make under statutory powers are made and published as required by law and have the force of law. Indeed the task of assigning marks under heads 2 to 5 is clearly of such a discretionary character that it is difficult to read the relevant paragraphs as creating any legal rights in the applicants for permits, The directions contained in paragraphs B, C and D are like directions contained in the first four paragraphs of A purely administrative or executive in character.

16. These directions issued under section 43A are not required to be published and may not even be known to the several persons applying for permits. They have been issued not for the information of the applicants, but for the information and guidance of the authorities; and that is not surprising

because the public-at-large would be entitled to know these directions only if they confer any legal enforceable rights on the applicants for permits. Therefore, reading the Government Order as a whole, we feel no difficulty in agreeing with the view of the High Court that by this Order the State Government has issued executive instructions for the guidance of the transport authorities and that the said instructions are not in the nature of statutory rules having the force of law.

17. Incidentally we would like to add that the view we have taken about the character of the relevant Government Order is in conformity with the decision of this Court in the case of Raman and Raman v. State of Madras, Civil Appeal No. 37 of 1958: (AIR 1959 SC 694), judgment in which has just been delivered. In that case this Court has held that S. 43A of the Act has been enacted to enable the state Govt., to issue administrative or executive orders or directions; and so, the Government Order in the present appeal which has been issued under the said section would necessarily be an administrative or executive order.

18. Since we hold that the directions issued by the relevant Government Order are no more than executive or administrative instructions, we must confirm the finding of the High Court that, even if the rule as to the assignment of marks has been infringed, it is not an error of law at all; and so an application for the issue of a writ of certiorari based on the alleged infringement, of the rule must fail.

19. We would like to add that, if we had felt inclined to take a contrary view about the character of the rules, we would have considered the question as to whether it would not be more appropriate to place this matter before the learned judges who decided the case of R. Rama Reddiar, Civil Appeal No. 783 of 1957, D/- 6-2-1958 (supra), to deal with the question as to whether their decision has been properly interpreted in the present proceedings or not. However, on the view we take about the character of the relevant order, no other question really survives.

20. The result is both the appeals fail and must be dismissed with costs, one set in each.

SARKAR J. :

21. In view of the judgment of this Court in Civil Appeal No. 37 of 1958: (AIR 1959 SC 694), I agree with the judgment of my learned Brother Gajendragadkar J.

Appeals dismissed.

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