SUPREME COURT OF INDIA

Good Luck Tpt.Pvt.Ltd.

Vs.

Lakshmipati Service Pvt.Ltd.

C.A.Nos.907 of 1964

(P. B. Gajendragadkar, C.J.I., K. N. Wanchoo, M. Hidayatullah, V. Ramaswami and P. Satyanarayana Raju, JJ.)

10.12.1965

JUDGEMENT

WANCHOO, J.:

1. These appeals by special leave raise common questions and will be dealt with together. We shall set out the facts in C. A. 363 to understand the questions raised in these appeals. The Regional Transport Authority, South Arcot granted a stage carriage permit on the route Kumbakonam to Neiveli to the first respondent out of a large number of applicants. This led to seven appeals against the grant of the permit before the State Transport Appellate Tribunal. Those seven appeals were heard together by the Appellate Tribunal and it set aside the order of the Transport Authority granting the permit to the first respondent and instead granted the permit to the appellant. This was on August 7, 1962. Thereupon the first respondent filed a writ petition in the High Court at Madras challenging the order of the Appellate Tribunal. This writ petition came up for hearing on March 5, 1964 before a learned Single Judge. On the same date, this Court decided in B. Rajagopala Naidu v. State Transport Appellate Tribunal, 1964-7 SCR 1: (AIR 1964 SC 1573) that Government Order No. 1298 issued by the Government of Madras under S. 43-A as introduced by the Madras Amending Act No. XX of 1948 in the Motor Vehicles Act, No. IV of 1939, could not be issued

under that section inasmuch as it purported to give directions in respect of matters which had been entrusted to tribunals constituted under the Act and which had to be dealt with by them in quasi-judicial manner. In consequence this Court set aside the order of the Appellate Tribunal in that case as it was based on the provisions of the impugned Government Order. The decision of this Court, it seems, was brought to the notice of the learned Single Judge, and following that decision, he allowed the writ petition on March 10, 1964 and quashed the order of the Appellate Tribunal leaving it free to dispose of the appeal afresh if it could do so or remit the matter in its turn to the Transport Authority for fresh disposal. This led to a Letters Patent Appeal by the present appellant which was disposed of by a Division Bench of the High Court on April 22, 1964. The principal argument before the Appeal Court was that every order of the transport authority or the appellate tribunal need not be quashed in view of the decision of this Court in Rajagopala Naidu's case, 1964-7 SCR 1 : (AIR 1964 SC 1573), but only those orders should be quashed which had proceeded on the basis of the Government Order referred to above. It was further contended that the present order of the Appellate Tribunal had not proceeded on the basis of the Government Order referred to above and therefore need not be quashed. The Appeal Court did not accept the contention that the order of the Appellate Tribunal in the present case was not vitiated by being based on the Government Order in question. It consequently dismissed the appeal. It then considered the question as to what order should be passed in the circumstances, and whether the matter should be remanded to the Transport Authority or to the Appellate Tribunal for disposal. It took the view that if in every case the remand was made to the Transport Authority it would lead to serious public inconvenience, for the consequence of the quashing of orders of the Transport Authority would be that stage carriages on many routes would stop plying. The Appeal Court therefore thought that unless there were exceptional reasons it would be sufficient if the order of the Appellate Tribunal alone was quashed and the matter remitted to it for consideration untrammelled by the Government Order in question. Finally the Appeal Court considered the question as to which parties should be heard again by the Appellate Tribunal on remand. It was contended before the Appeal Court that only the parties which came to the High Court by way of writ proceedings should be heard by the Appellate Tribunal and not others who might have preferred appeals to the Appellate Tribunal but had not proceeded further by way of writ proceedings to the High Court. The Appeal Court was unable to accept this contention and was of the view that in the peculiar situation that had arisen all the appeals that had been disposed of by a single appellate order should be reconsidered by the Appellate Tribunal as the taint affected the entire appellate order which must be considered as one. The Appeal Court therefore ordered that the Appellate Tribunal should consider all the seven appeals that had been filed before it, even though only one of the appellants before the Appellate Tribunal had come to the High Court by way of writ proceedings. The Appeal Court having refused to grant leave, the appellant got special leave from this Court; and that is how the matter has come up before us.

2. Three points have been urged before us on behalf of the appellant, namely-

(i) The Appeal Court was not right in coming to the conclusion that the order of the Appellate Tribunal had been influenced by the Government Order in question;

(ii) The respondent could not be heard to say that the Government Order in question was bad as it

had relied on the said Government Order before the Transport Authority; and

(iii) The Appeal Court was not right in holding that all the appeals which had been disposed of by one order by the Appellate Tribunal should be revived and re-heard when only one of the appellants had come to the High Court by way of writ proceedings, and that when the Appeal Court sent the matter back to the Appellate Tribunal it should have directed the Appellate Tribunal to consider the respective cases of only two parties before the High Court, i.e., the present appellant and the present respondent.

3. We are of opinion that there is no force in the first two contentions raised on behalf of the appellant. We agree with the Appeal Court that the Appellate Tribunal was plainly influenced by the Government Order when it dealt with the appeals before it and this cannot be said to be a case where the decision of the Appellate Tribunal was not influenced by the Government Order in question. A perusal of the order of the Appellate Tribunal shows that it considered the various aspects which were mentioned in the Government Order in question. It had even referred in some of the appeals to the marks obtained by various operators. In these circumstances it cannot be said that the Appellate Tribunal was not influenced by the Government Order in question. We also see no force in the contention that as the respondent had relied on the Government Order it was not open to it to urge in the High Court that the Government Order was bad. Before the decision of this Court, referred to above, the Government Order had always been relied upon by applicants for permits. That is no reason for holding that the respondent was barred from raising the question that the Government Order was bade after the decision of this Court.

4. This brings us to the last question, namely, whether the Appeal Court was right in remitting the matter to the Appellate Tribunal and in ordering that all the appeals before it should be re-heard. It is true that in Rajagopala Naidu's case, 1964-7 SCR 1: (AIR 1964 SC 1573), this Court had ordered that the matter be remanded to the Transport Authority and not to the Appellate Tribunal. That however does not mean that in every case where there has to be a remand it must be to the original authority which has the power to grant the permit. As the Appeal Court has pointed out there may be serious public inconvenience specially in the matter of new routes if the order of the Transport Authority is also set aside with the result that such new routes would be without any transport facility. It is therefore always a question to be decided in each case whether the remand should be to the Appellate Tribunal or the Transport Authority. We agree with the Appeal Court that in most cases it would be proper if the remand is made to the Appellate Tribunal to consider the appeals before it without being influenced by the Government Order in question.

5. The appellant then contends that even so the Appellate Tribunal should have been asked to consider the cases of the appellant and the respondent only on remand and the Appeal Court was not right in ordering the Appellate Tribunal to consider all the appeals afresh. It is true that generally the Appellate Tribunal deals with all appeals relating to one route by one order. It is also true that before the decision of this Court the Appellate Tribunals were generally influenced by the Government

Order in question. There is therefore some force in the observation of the Appeal Court that where the disposal of appeals has been found to have departed from known principles of judicial procedure all the appeals disposed of by one order should be revived. But there is one serious difficulty in accepting this view of the Appeal Court. Even though all the appeals with respect to one route may have been disposed of by a single appellate order in form, in reality the appellate order consists of as many orders as there are appeals disposed of thereby. In this very case there were seven appeals before the Appellate Tribunal and the order says that the appeal of the appellant alone was allowed while the other appeals were dismissed. Now if none of the parties concerned in the seven appeals had come to the High Court in writ proceedings within a reasonable time, the order of the Appellate Tribunal would have become final, even though it might have been influenced by the Government Order in question. Therefore there seems to be no reason why when only one party brought the matter before the High Court by way of writ proceedings against another party, and the appellants in the other six appeals were content with the order passed by the Appellate Tribunal, the High Court should interfere in favour of those persons also who had not thought fit to challenge the order of the Appellate Tribunal. On principle therefore it does not appear right that the High Court should set aside orders in appeal passed by the Appellate Tribunal when the parties to those appeals do not bring up the matter before the High Court, simply because as a matter of convenience the Appellate Tribunal deals with all the appeals relating to one route by a consolidated order. Therefore, we are of opinion that the remand should only be confined to those parties which came to the High Court and not extend to others, as the High Court would have no jurisdiction to interfere with the orders of the Appellate Tribunal either in favour of or against the parties which have not come to it. In the circumstances the order of the Appeal Court will have to be modified and the remand confined to a reconsideration of the appeal of the present appellant alone as against the claims of the respondent, and the Appellate Tribunal should decide between these two only who should be granted the permit for the route in question.

6. Turning now to appeal No. 907, we find that the permit was granted by the Transport Authority to respondent No. 1 out of 32 applicants. Ten of the applicants appealed before the Appellate Tribunal. Of these, the appeal of the present appellant was allowed and the order of the Transport Authority granting the permit to the respondent was set aside and the permit was granted to the appellant instead. The respondent filed a writ petition before the High Court against the order of the Appellate Tribunal. The learned Single Judge quashed the order of the Appellate Tribunal and remanded the matter for disposal of the appeal in question afresh. This order of the learned Single Judge was taken in appeal by the present appellant and the appeal was heard by a Full Bench. It appears that a new ground was urged before the Appellate Tribunal with respect to the respondent being a benamidar of Aruppukottai Sri Jaya Vilas (P) Limited, and that was taken into consideration by the Appellate Tribunal. The Appeal Court set aside the view of the learned Single Judge with respect to this. But it remitted the matter to the Appellate Tribunal for fresh disposal in view of the decision of this Court in Rajagopala Naidu's case. It is not clear whether the Appeal Court intended by its order that all the appeals before the Appellate Tribunal should be revived and re-heard; but this is how apparently the order has been interpreted. In view of our decision in C. A. 363 we order that when the matter is re-heard by the Appellate Tribunal, it shall confine itself to the case of the appellant and respondent No. 1 before us and not consider the cases of other appellants before it who had not gone to the High Court against the Appellate Tribunal's order. We however express no opinion on the new ground which was raised before the Appellate Tribunal as to the question of benami and that matter may have to be considered after the fresh decision of the Appellate Tribunal.

7. We now come to appeal No. 150. It appears that there were two writ petitions before the High Court. They grave rise to two appeals. The appeal before us is only from one of the appeals, in which the present appellant was the appellant and the present respondent No. 1 was respondent No. 1. The appeals failed before the Appeal Court in view of the decision of this Court in Rajagopala Naidu's case, 1964-7 SCR 1: (AIR 1964 SC 1573). The only point raised before us is whether the order of the High Court reviving other appeals before the Appellate Tribunal besides the two between the parties which went to the High Court is correct. In view of our decision in appeal No. 363 the reconsideration before the Appellate Tribunal will only be confined to the parties which went to the High Court in writ proceedings and the respondents therein.

8. We therefore partially allow all the appeals and vary the order of the Appeal Court in the manner indicated above. In the circumstances we pass no order as to costs in all the appeals.

Appeals partly allowed.