

S. Chinna Narasa Reddy

Vs

D. Jagadeeswara Rao and Others

Civil Appeal No. 2521 of 1969

(K.S. Hegde, A.N. Grover JJ)

10.11.1971

JUDGMENT

HEGDE, J. -

1. The Regional Transport Authority of Guntur called for applications for two routes between Pattabhipuram and Loyola Public School, distance of about 7 miles. Thirty-eight persons applied for the routes in question. After eliminating some of the applicants as being disqualified the R.T.A. considered the case of others. He granted one route to the fourth respondent and another to the first respondent in this appeal. Aggrieved by that order the appellant and another appealed to the Appellate Authority. The Appellate Authority sustained the grant made in favour of the fourth respondent but set aside grant in favour of the first respondent and granted that route to the appellant. As against that order the first respondent went up in revision to the Government. The Government reversed the order of the Appellate Authority and restored that of the R.T.A. The appellant challenged that order by means of a writ petition under Article 226 of the Constitution before the High Court of Andhra Pradesh. The writ petition came up for hearing before a single judge. The learned single Judge allowed the petition and quashed the order of the Government. As against the order of the learned single Judge an appeal was taken to the Letters Patent Bench. The Appellate Bench reversed the order of the learned single Judge and restored that of the Government. Thereafter this appeal has been brought.

2. The Appellate Authority came to the conclusion that both the appellant as well as the first respondent have equal qualifications as regards residence and business experience. But it preferred the appellant on the ground that he is a "new entrant" to the field of stage carriage business. It was not contested before the Appellate Authority that the appellant was not "a new entrant" within the meaning of the word in Rule 212(1)(ii)(a) of the Andhra Pradesh Motor Vehicles Rules. The Government also proceeded on the basis that the appellant is a "new entrant" within the meaning of that rule. But yet it preferred the first respondent on the ground that he had sector qualifications etc.

3. The learned single Judge came to the conclusion that the qualifications of the appellant as well as the first respondent as regards residence as well as business experience are similar and therefore the Appellate Authority had rightly granted to them 5 marks each but he quashed the order of the Government on the ground that the Government failed to give the appellant the benefit of the rule mentioned earlier. In his opinion, the technical knowledge, business experience as well as sector qualification referred to by the Government had been taken into consideration by the R.T.A. as well as the Appellate Authority in awarding marks to the appellant as well as the respondent. That being so, the same qualifications could not be taken into consideration over again.

4. Before the Appellate Bench the only point canvassed was to the meaning of the words "a new entrant" in Rule 212(1) (ii)(a) referred to earlier. The other points considered by the Government were evidently not put in issue. The Appellate Bench came to the conclusion that the words "a new entrant" in the rule in question mean new entrant to the motor transport field. On that basis it came to the conclusion that the appellant is not a "new entrant".

5. 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(1)(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 (1) 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 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.

6. 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 therein are new entrants to the stage carriage business.

7. 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.

8. Mr. Ram Reddy appearing for the Government contended that the Government's order cannot be assailed even if we come to the conclusion that the rule regarding new entrants applies only to new entrants to stage carriage business because the Government based its order on other grounds, namely, financial stability of the operators, their technical knowledge and other qualifications. We are unable to entertain this contention because this contention does not appear to have been canvassed before the Appellate Bench. Hence, we see no justification for going into that contention.

9. In the result this appeal is allowed. The order of the Appellate Bench is set aside and that of the learned single Judge restored. No costs

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