

Southern Rajamani Transports (P) Ltd.

Vs

Rahim Transport (P) Ltd., and Others

Civil Appeal No. 1818 of 1967

(K. K. Mathew, A. Alagiriswami JJ)

27.02.1974

JUDGMENT

MATHEW, J. -

1. In this appeal filed in pursuance to a certificate under Article 133(1)(a) of the Constitution, the question for consideration is whether the Division Bench of the High Court of Madras was right in setting aside the order passed by the learned Single Judge dismissing the petition filed by the respondent here for issue of a writ of certiorari to quash an order passed by the State - Transport Appellate Tribunal granting a stage carriage permit to the appellant in the route in question.
2. The appellant and the first respondent made application for a permit for a stage carriage on the Dindigul to Cumbam. There were 21 other applicants for the permit. The Regional Transport Authority granted the permit to the first respondent on the basis that the first respondent was better qualified to get the permit than the appellant as it got more marks than the appellant in accordance with G.O. Ms. No. 1298 (Home) dated April 28, 1956 and the Government Order No. 2265 (Home) dated August 9, 1958.
3. The appellant filed an appeal against the order before the State Transport Appellate Tribunal. The Tribunal came to the conclusion that although the first respondent got more marks than the appellant, since another permit had been granted to the first respondent at the same sitting of the State Transport Authority, it will be denial of equal opportunity to the appellant and will not be in the interest of the public if the first respondent were granted another permit. It, therefore, set aside the order of the State Transport Authority and granted the permit to the appellant.
4. Aggrieved by the order of the Tribunal, the first respondent filed the writ petition before the High Court and learned Single Judge dismissed the petition. The first respondent filed an appeal before the Division Bench against this order.
5. The Division Bench came to the conclusion that the merit of the refusal to grant the permit to the first respondent on the ground that there will be a denial of equality of opportunity to the appellant if he is not granted the permit need not to be gone into as the order was liable to be quashed on the ground that the State Transport Appellate Tribunal was acting under "the constraining influence" of the G.Os. referred to above which had been struck down by this Court in *B. Rajagopala Naidu v. The State Transport Appellate Tribunal and Others* ((1964) 7 SCR 1 : AIR 1964 SC 1573 : (1964) 2 SCJ 570) The Division Bench, therefore, held that as the grant of the permit to the appellant was under "the constraining influence" of these two G.Os., a writ of certiorari must issue quashing the order granting the permit to the appellant and directing the

Tribunal to proceed in accordance with law.

6. Counsel for the appellant submitted that the order of the High Court proceeded on an entire misconception. She said that the High Court did not go into the merits of the question whether the refusal of the permit to the first respondent on the ground that it would be a denial of equality of opportunity to the, appellant and therefore it would not be in the interest of the public was valid, but quashed the order of the State Transport Appellate Tribunal granting the permit to the appellant for the reason that the Tribunal was acting under the "constraining influence" of the G.Os. above referred. Counsel contended that was wrong as the appellant alone was wrong as the appellant alone was in the field since no other applicant had challenged the grant in favour of the appellant and when the High Court refused to go into the validity of the reason for refusing the permit to the first respondent, it was an empty formality to have set aside the permit granted to the appellant and directed the State Transport Appellate Tribunal to consider the matter afresh on the score that it was acting under the "constraining influence" of the G.Os. as there were no other applicants in the field.

7. We do not think that there is any substance in this contention. The concluding portion of the order of the High Court is clear that it set aside the entire order including the finding that the first respondent should not be granted permit for the reason that it would be a denial of equality of opportunity to the appellant as the first respondent had already got a permit in the same sitting of the State Transport Authority. We think that the High Court not only set aside the granting the permit to the appellant but also set aside that part of the order in which the State Transport Appellate Tribunal held that to grant the permit to the first respondent would amount to a denial of equal opportunity to the appellant and would not be in the interest of the public and left the entire matter for a fresh decision by the State Transport Appellate Tribunal. We see no reason to interfere with the order of the High Court.

8. We, therefore, dismiss the appeal and make no order as to costs. Both the parties are running their services in the route in pursuance to an order of the High Court. We think that the status quo should be maintained until the disposal of the appeal by the State Transport Appellate Tribunal and we do so.

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