K. Balasubramania Chetty

Vs

N. M. Sambandamoorthy Chetty

Civil Appeal No. 1672 of 1973

(K. K. Mathew, P. N. Bhagwati, N. L. Untwalia JJ)

20.12.1974

JUDGMENT

BHAGWATI, J. -

1. There were fifteen applicants before the Regional Transport Authority, Chingleput for grant of a stage carriage permit to ply a bus on the route Red Hills to Kancheepuram. This route covers a distance of 50 1/2 miles or 81.27 kilometers and is a 'long route' within the meaning of that expression as used in Rule 155A of the Motor Vehicles Rules, 1940. Out of fifteen applicants, only two are before us, namely, the appellant and the respondent. The appellant was applicant No. 7, while the respondent was applicant No. 6. The Regional Transport Authority, after considering the application, made an order dated June 19, 1971 granting the permit to the respondent, though on marking according to the provisions contained in clause (3) of Rule 155A, the respondent obtained only 7.40 marks as against 9.00 marks obtained by the appellant. The main ground on which the Regional Transport Authority preferred the respondent to the appellant was that the respondent was a single bus operator, while the appellant was a multi-bus operator having four stage carriage permits including a stage carriage permit recently granted to him.

2. The appellant and seven other applicants, who were aggrieved by the decision of the Regional Transport Authority, granting a permit to the respondent, preferred appeals before the State Transport Appellate Tribunal impleading the respondent as the opposite party in the appeals. The State Transport Appellate Tribunal took the view that at the date of the consideration of the applications the Regional Transport Authority, the respondent had a workshop but it was housed only in a thatched shed and not in a pucca fire proof building and the respondent was, therefore, not entitled to two marks under clause (3)(E) of the Rule 155A and his total marks should, therefore, have been 5.40 and not 7.40. The Regional Transport Authority had refused to grant two marks to the appellant on account of sector qualification on the ground that he had been plying only on temporary permits but this view did not find favour with the State Transport Appellate Tribunal which held that under clause (3)(C) of Rule 155A it was immaterial whether sector experience was derived by an applicant under a temporary permit or a permanent permit and the appellant was, therefore, entitled to two marks under that clause on account of sector experience even though gained by operation on temporary permits. So far as the past record was concerned, the State Transport Appellate Tribunal relied heavily on the fact that the history sheet of the appellant was clean without any adverse entry while the respondent had one adverse entry in the history sheet relating to his single stage carriage and four adverse entries in the history sheet relating to his lorry operation. The State Transport Appellate Tribunal also pointed out that a portion of the route fell within the interior roads and it was, therefore, desirable in public interest to prefer "an experienced operator instead of single bus operator". Having regard to these considerations the State Transport

Appellate Tribunal set aside the order of the Regional Transport Authority granting permit to the respondent. The State Transport Appellate Tribunal then proceeded to consider who amongst the appellants before it deserved to be granted permit. After considering the claims of the appellants before it, the State Transport Appellate Tribunal took the view that since the appellant had higher marks which reflected his superior qualifications and was an experienced operator with a clean history sheet, he was entitled to be preferred to the other appellants and in this view, the State Transport Appellate Tribunal, by an order dated September 23, 1972, granted permit to the appellant.

3. The respondent thereupon preferred a revision application to the High Court under Section 64B of the Madras Vehicles Act, 1939. The learned Single Judge, who heard the revision application, held that the State Transport Appellate Tribunal had acted with material irregularity in exercise of its jurisdiction in preferring the appellant to the respondent for the grant of permit. There were in the main five reasons which prevailed with the learned Single Judge in taking this view in favour of the respondent. First, the learned Single Judge held that though according to the provisions for marking contained in clause clause (3) of Rule 155A the appellant had admittedly more marks than the respondent, that was not a determinative factor because Rule 155A was itself subject to the overriding consideration of public interest emphasised in Section 47(1) of the Act and public interest required that in the socialist pattern of society which we had adopted monopoly should as far as possible be avoided and a smaller operator with one stage carriage permit should be preferred to a bigger operator having three or more stage carriage permits. This important consideration was ignored by the State Transport Appellate Tribunal in preferring the appellant to the respondent. Secondly, the State Transport Appellate Tribunal had overlooked the fact that the appellant was a recent grantee of a stage carriage permit though it was a relevant circumstance which weighed against the appellant in the process of comparison with the respondent. Thirdly, a proper standard of comparison was not applied in considering the rival claims of the appellant and the respondent. Though the history sheet of the respondent in regard to his performance as a lorry operator was scanned by the State Transport Appellate Tribunal over a period of ten years, no such scrutiny was made in the case of the appellant of the history sheet relating to his stage carriage operation for the past ten years and this vitiated the order of the State Transport Appellate Tribunal. Fourthly, the respondent was entitled to two marks on account of workshop under clause (3)(E) of Rule 155A and these had been wrongly denied by the State Transport Appellate Tribunal, and lastly, the appellant was not entitled to two marks on account of sector experience under clause (3)(C) of Rule 155A since the sector experience claimed by him was on the basis of operation on temporary permits. The learned Single Judge accordingly allowed the revision application and set aside the order of the State Transport Appellate Tribunal granting permit to the appellant. The result was that the order of the Regional Transport Authority granting permit to the respondent was restored. The appellant was obviously aggrieved by this order made by the learned Single Judge and he accordingly preferred the present appeal with special leave obtained from this Court.

4. We will first dispose of the last two reasons which prevailed with the learned Single Judge in interfering with the order of the State Transport Appellate Tribunal. So far as the claim of the respondent for two marks in respect of workshop under clause (3)(E) of Rule 155A is concerned, we agree with the learned Single Judge that the State Transport Appellate Tribunal was in error in refusing that claim. The Regional Transport Officer under instruction from the Regional Transport Authority inspected the workshop of the respondent and found that it was in a pucca fire proof building and the respondent was accordingly entitled to two marks under clause (3)(E) of Rule 155A. But that would not make any difference because even with these two marks the total number of marks of the respondent would not exceed 7.40 as against 9 marks of the appellant. Moreover,

these 9 marks do not include two marks on account of sector experience under clause (3)(C) of Rule 155A. The State Transport Appellate Tribunal gave two marks to the appellant on account of sector experience but the learned Single Judge took a different view. We do not think the learned Judge was right in refusing two marks to the appellant on this count. Clause (3)(C) of Rule 155A provides that two marks shall be awarded to the applicant who on the date of consideration of the application by the Regional Transport Authority has been plying a stage carriage on the entire route. It does not contain any restriction that in order to be entitled to these two marks the applicant should have been plying on the route on the basis of a permanent permit. It is immaterial whether the applicant has been plying on the route on a temporary permit or a permanent permit. What is material is that the applicant should have experience of plying on the route and this experience would be there whether plying is done on a temporary permit or on a permanent permit. The appellant was, therefore, entitled to two marks on account of sector experience under clause (3)(C) of Rule 155A and that would raise his total number of marks to 11. The position, therefore, was that the appellant was entitled to 11 marks as against 7.40 of the respondent.

5. But that by itself would not be determinative of the controversy. The paramount consideration to be taken into account in determining as to which of the applicants should be selected for grant of permit always is public interest. Section 47(1) provides in so many words that the Regional Transport Authority shall, in considering an application for a stage carriage permit have regard inter alia to "the interest of the public generally", and this is a consideration which must necessarily outweigh all others. It is ultimately on the touchstone of public interest that selection of an applicant for grant of permit must be justified Clause (3) of Rule 155A undoubtedly provides for giving of marks to the rival applicants but the number of marks obtained by each applicant can only provide a guiding principle for the grant of permit. It can never override the consideration of public interest which must dominate the selection in all cases. In fact clause (4) of Rule 155A concedes that after the applicants are ranked according to the total marks obtained by them the applications shall be disposed of in accordance with the provisions of Section 47(1). The fact that the appellant had 11 marks as against 7.40 of the respondent would certainly be a factor in favour of the appellant, but notwithstanding his higher marks, if public interest so requires, he may have to yield place to the respondent in the matter of selection for grant of permit.

6. Now, two circumstances were relied upon by the learned Single Judge for outweighing the higher marks obtained by the appellant and justifying the grant of permit to the respondent in public interest. The first was that the respondent was a single bus operator while the appellant was a multi-bus operator having four stage carriage permits and the second was that one of the stage carriage permits was recently granted to the respondent and hence he was in terms of the motor vehicle jurisprudence a "recent grantee". Both these circumstances by themselves are not sufficient to constitute such requirement of public interest as to outweigh the higher marks obtained by the appellant. This Court had occasion to consider in Ajantha Transports (P) Ltd., Coimbatore v. M/s. T. V. K. Transports, Pulampatti, Coimbatore Distt ((1975) 1 SCC 55, 66) the relevance of possession of more than one permit as also recent grant in selecting an applicant for grant of permit and Beg. J., speaking on behalf of the Court, stated the law on the subject in the following words : (p. 66)

It should be clear, when the main object, to which other considerations yield in cases of conflict, of the permit issuing powers under Section 47 of the Act is the service of interests of the public generally, that any particular fact or circumstance, such as a previous recent grant in favour of an applicant or the holding of other permits by an operator, cannot by itself, indicate how it is related to this object. Unless, there are other facts and circumstance which link it with this object the nexus will not be established. For instance, an applicant may be a recent grantee whose capacity to operate

a transport service efficiently remains to be tested so that a fresh grant to him may be premature. In such a case, another applicant of tested efficiency may be preferred. On the other hand, a fresh grantee may have within a short period, disclosed such superiority or efficiency or offer such amenities to passengers that a recent grant in his favour may be no obstacle in his way at all. Again, the fact that an applicant is operating other motor vehicles on other permits may, in one case, indicate that he had exceeded the optimum, or, has a position comparable to a monopolist, but, in another case, it may enable the applicant to achieve better efficiency by moving towards the optimum which seems to be described as a "viable unit" in the rules framed in Madras in 1968. Thus, it will be seen that, by itself, a recent grant or the possession of other permits is neither a qualification nor a disqualification divorced from other circumstances which could indicate how such a fact is related to the interests of the public generally. It is only if there are other facts establishing the co-relationship and indicate its advantages or disadvantages to the public generally that it will become a relevant circumstance. But, in cases where everything else is absolutely equal as between two applicants, which will rarely be the case, it could be said that an application of principle of equality of opportunity, which could be covered by Article 14, may enable a person who is not a fresh grantee to obtain a preference.

It would, therefore, be seen that the mere fact that an applicant has more than one permit or he is a recent grantee cannot by itself be regarded as a factor against him in the comparative scale. It would all depend on the facts and circumstances of each case. As pointed out by Beg, J., in the case just cited, (SCC p. 66)

an applicant may be a recent grantee whose capacity to operate a transport service efficiently remains to be tested so that a fresh grant to him may be premature - on the other hand, a fresh grantee may have within a short period disclosed such superiority or efficiency or offer such amenities to passengers that a recent grant in his favour may be no obstacle in his way at all - a recent grant could not, considered by itself and singly, be converted into a demerit.

Similarly, possession of more than one permit also cannot by itself, divorced from other circumstances, be regarded as a disqualification. It may in a given case show that the applicant has already reached the viable unit of five stage carriages contemplated under clause (3)(F) of Rule 155A or that the effect of granting permit to him would be to make him a monopolist on the route - a result disfavoured by the decision of this Court in Sri Rama Vilas Service (P) Ltd. v. C. Chandrasekaran ((1964) 5 SCR 869 : AIR 1965 SC 107) as being inconsistent with the interest of the general public - or, on the other hand, it may be a circumstance in his favour enabling him to achieve greater efficiency by moving towards the optimum of viable unit. The learned Single Judge was, therefore, in error in rejecting the claim of the appellant to the grant of permit by mechanically relying on the circumstance that the appellant was a multi-bus operator having four stage carriage permits, including a recent grant, without considering how in the light of the other facts and circumstances, it was correlated to the question of public interest. There was nothing to show that his circumstance would have any prejudicial or adverse impact on public interest, if permit was granted to the appellant notwithstanding it. The four stage carriage permits which the appellant had were not on the same route and there was no question of any monopoly being created in his favour if the permit applied for by him were granted. In fact possession of more than one permit by the appellant was a circumstance in his favour because according to clause (3)(F) of Rule 155A an appellant operating not more than four stage carriages would be entitled to one mark for each stage carriage in order to have a viable unit of five carriages. The guiding principle laid down in clause (3)(F) of Rule 155A proceeds on the hypothesis that an applicant would be able to achieve greater efficiency if he has a larger number of stage carriages, but it sets a limit of five stage carriages as it

was thought that that would be sufficient to constitute a viable unit which could legitimately be permitted to an applicant consistently with the requirement of a socialistic pattern of society that there should be distributive or social justice and no undue economic disparities. So long, therefore, as an applicant has not more than four stage carriages, it cannot by itself be regarded as a factor against him and, as pointed out by Beg, J., in the case cited above, the rule in clause (3)(F) of Rule 155A providing for giving of one mark to the applicant for each stage carriage operated by him should be taken into account unless there is good enough reason to depart from it. "Every additional stage carriage upto four would give an applicant an additional mark so as to help him to make up a viable unit of five." The State Transport Appellate Tribunal was, therefore, right in the circumstances of the case, in not regarding possession of four stage carriage permits by the appellant, including a recent grant, as a circumstance against him, but treating it as a circumstance in his favour by adding four marks under clause (3)(F) or Rule 155A, and the learned Single Judge acted erroneously in upsetting this view taken by the State Transport Appellate Tribunal.

7. The learned Single Judge was also in error in holding that the same standard was not applied by the State Transport Appellate Tribunal in comparing the history sheets of the appellant and the respondent. The history sheet of the appellant related only to his performance as stage carriage operator and the entire history sheet was before the State Transport Appellate Tribunal and it showed that the appellant had a clean record. On the other hand, the respondent had two history sheets, one relating to his performance as stage carriage operator and the other relating to his performance as lorry operator and both the history sheets showed adverse entries. It can hardly be disputed that this comparison with reference to the past performance of the appellant and the respondent was relevant to the question as to who between the two should be selected for grant of permit. It may be that the history sheet of the respondent as lorry operator related to a period of ten years while that of the respondent as a stage carriage operator covered a shorter period, but that cannot be helped. The comparison has to be made on the basis of available material and if the history sheet of the respondent, which may be for a longer period, shows that the past performance of the respondent was not satisfactory while the history sheet of the appellant, though for a shorter period, shows that he has had a clean record of performance, that would certainly be a relevant circumstance to be taken into account. The State Transport Appellate Tribunal was plainly right in relying on this circumstance, amongst others, for the purpose of preferring the appellant to the respondent.

8. Before we part with this case we may point out that the learned Single Judge overstepped the limits of his revisional jurisdiction and treated the revision application before him as if it were an appeal. That was clearly impermissible as the revisional jurisdiction of the High Court under Section 64B is as severely restricted as that under Section 115 of the Code of Civil Procedure and it is only where there is a jurisdictional error or illegality or material irregularity in the exercise of jurisdiction that the High Court can interfere under Section 64B with an order made by the State Transport Appellate Tribunal.

9. We must, therefore, set aside the judgment of the learned Single Judge and restore the order made by the State Transport Appellate Tribunal grunting permit to the appellant. The appeal is accordingly allowed. The respondent will pay the costs to the appellant.

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