M. Naina Mohammed

Vs

K. A. Natarajan and Others

Civil Appeal No. 98 of 1975

(CJI A. N. Ray, K. K. Mathew, Syed Fazal Ali, V. R. Krishna Iyer JJ)

23.07.1975

JUDGMENT

KRISHNA IYER, J. –

1. A spiral of reversals is the fate of this litigative battle between the appellant and the first respondent over a permit to ply a bus on the route between Madurai and Paramakkudi, in Tamil Nadu. While its admission into this Court was by special leave, the first round of the contest was fought before the RTA (Regional Transport Authority) which, on an evaluation of the relative merits and demerits of the rivals, granted the permit to the present appellant, but this victory was short-lived because, at the second stage of the legal bout, the STAT (State Transport Appellate Tribunal) held that the respondent before us had better claims. The worsted appellant invoked the writ jurisdiction of the High Court under Article 226 and the learned Single Judge, who heard the petition, re-judged the relevance and weight of the points, pro and con, and as a result of this adjudicatory exercise on facts, demolished the order of the STAT. The learned Judge disagreed with the conclusion of the STAT but, instead of sending the case back for a fresh look at the merits of the matter, set aside the permit granted to the respondent and affirmed the award in favour of the appellant. Thereupon, the respondent moved a Division Bench of that Court which felt that a fullscale reappraisal of the points for and against each claimant was in excess of the jurisdiction of the Single Judge under Article 226, although it noticed that certain factors not relevant to the adjudication had been taken into consideration by the STAT. Consequently, the order of the learned Judge was set aside, the result being that the respondent's permit was restored. The appellant urged that the decision of the Division Bench of the High Court was utterly wrong and somewhat casual, while that of the learned Single Judge was careful, elaborate and correct. Of course, this view of the matter was hotly controverted by Counsel for the first respondent but, after having heard both Shri K. S. Ramamurthy, for the appellant, and Shri M. K. Ramamurthy, for the respondent, we are satisfied that the reluctant course of remitting the whole case of the STAT for a de novo disposal is called for as matter of law and in the interests of justice.

2. The boundaries of the High Court's jurisdiction under Article 226 are clearly and strongly built and cannot be breached without risking jurisprudential confusion [Sri Rama Vilas Service (P) Ltd. v. C. Chandrasekaran ((1964) 5 SCR 869 : AIR 1965 SC 107)]. The power is supervisory in nature, although the Judges at both the tiers, in the instant case, have unwittingly slipped into the subtle, but fatal, error of exercising a kind of appellate review.

3. Sri M. K. Ramamurthy, for the respondent, was right in pointing out that the learned Single Judge went into the factum and weight of the claims which could be put in the scales in choosing the better of the two applicants for the permit. However, the Court rightly pointed out the some relevant

factors had been ignored by the STAT (for example, 'that the first respondent's history sheet was not clean') and included in the judicial verdict factors which were extraneous, such as 'that the bus of the petitioner did not, in fact, ply from September 2, 1965 to December 4, 1965, this being attributable to non-payment of surchagre rather than operational inefficiency. A reading of the learned Single Judge's judgment leaves us in no doubt that he had undertaken an evaluation of the merits on his own. This, undoubtedly, was beyond the jurisdiction of the High Court. Nor is it possible to support the direction that if there were errors of law vitiating the STAT's finding, the case need not go back for fresh consideration but could be finally decided by the High Court itself.

4. In writ appeal, the learned Chief Justice, speaking for the Division Bench of the High Court disposed of the case in a short paragraph which hardly did justice to the order appealed against. Maybe that order was wrong and unsustainable, but while reversing it valid reasons had to be added. All that we find in the appellate judgment is a partial admission that extraneous considerations were inputs of the order of the STAT and a brief disposal of the whole matter in a single sentence as it were - "Even so, there is nothing in the order of the Tribunal to support it". While the Division Bench was perhaps justified in observing that while sitting on the writ side, judicial review should have been more restricted than while sitting on the appellate side, its own judgment was vulnerable because of the plain finding that what was not pertinent was taken into consideration by the STAT. For instance, the learned Chief Justice observed :

> It is no doubt true that the non-performance of service after the grant was made cannot go into the computation and the reference relating to night-halt might well have been avoided in its discussion.
>
> 'The non-performance of service', which is slightly obscure, but we read it in the context as meaning the failure to ply the bus on the route in question subsequent to the grant of the permit. We express no opinion on the soundness of the observation but it is clear that the Division Bench itself has plainly accepted the position that what was not, according to it relevant had gone into the appellant. In this view, this judgment cannot also be sustained.

5. The fair course would, therefore, be to set aside the judgment under appeal and send the whole case back to the STAT to hear the case afresh, consider relevant factors bearing upon 'public interest' as high-lighted in Section 47 of the Motor Vehicles Act and dispose of the appeal before it in accordance with law, guided by the decisions of this Court and untrammelled by any observations made either by the Single Judge or by the Division Bench.

6. Currently, the respondent is plying his bus on the route and we direct that the status quo be maintained and he will continue to operate on the route until the appeal is disposed of by the STAT. Of course, the RTA passed its orders as early as 1966 November and if it thinks that public interest demands the need for an extra bus to ply on the route to cope with the traffic, it will be open to the RTA to grant a permit, pending disposal of the appeal, to the present appellant.

7. The fluctuating fortunes of the combatants for the permit have been such that it is appropriate to direct both parties to bear their costs throughout.

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