

Madhavamani Transport (P) Ltd.

Vs

M/S. Vasavi Transport Co., Madukkur and Others

Madhavamani Transport (P) Ltd.

Vs

N. Sundaresa Thevar and Another

Civil Appeal Nos. 1681 and 1682 of 1968

(CJI A.N. Ray, M.H. Beg, P.N. Shinghal JJ)

19.10.1976

JUDGMENT

SHINGHAL, J. -

1. These two appeals by certificates arise out of judgments of the Madras High Court in writ appeals 64 of 1964 dated October 9, 1964 and 38 of 1963 dated August 5, 1964, in these circumstances.

2. The Regional Transport Authority, Thanjavur, granted a permit to N. Sundaresa Thevar to ply a stage carriage on Pattukottai-Simalkudi route. Madhavamani Transport (P) Ltd. and Vasavi Transport Company felt aggrieved and filed their appeals. The State transport Appellate Tribunal heard those and the other appeals together, and disposed them off by a common judgment dated December 30, 1960. It set aside the order in favour of N. Sundaresa Thevar and granted the permit to Madhavamani Transport (P) Ltd. N. Sundaresa Thevar thereupon filed a writ petition (106 of 1961) in the Madras High Court. Vasavi Transport Company also filed a writ petition (314 of 1962). The High Court allowed N. Sundaresa Thevar's writ petition by its judgment dated February 11, 1964, quashed the tribunal's order and directed it to dispose of the appeals afresh in accordance with its order. The writ petition of Vasavi Transport Company was however dismissed in limine on March 1, 1962. That led to writ appeals 64 of 1964 by M/s. Madhavamani Transport (P) Ltd. and 38 of 1963 by Vasavi Transport Company. As appeal 64 of 1964 has been dismissed by the judgment dated October 9, 1964, and appeal 38 of 1963 has been allowed by the judgment dated August 5, 1964, the present two appeals have been filed on certificates granted by the High Court.

3. It cannot be doubted that Home Department G.O. No. 2265 dated August 9, 1958, formed the basis of consideration of the competing claims before the authorities concerned. In its impugned judgment dated October 9, 1964 (in Writ Appeal 64 of 1964), the High Court has taken the view that as the tribunal "felt the constraining influence" of the G.O. No. 2265 which was entirely outside the purview of Section 43-A of the Motor Vehicles Act, hereinafter referred to as the Act, it was needless to go into the merits of the contentions of the parties. It therefore upheld the direction that the tribunal should dispose of the matter afresh "freed from the constraining influence of the G.O. issued under Section 43-A of the Act". The other appeal (38 of 1963) has been disposed of by the High Court by its judgment dated August 5, 1964, in accordance with this Court's decision in B.

Rajagopala Naidu v. State Transport Appellate Tribunal ((1964) 7 SCR 1 : AIR 1964 SC 1573) holding that as the impugned government orders have thus entered into the decision of the tribunal as a major factor of that decision, that vitiates it and constitutes an error of law apparent on the face of the record.

That is the reason why the High Court has ordered a rehearing and determination of the matter by the tribunal.

4. After the decision in Naidu's case, the matter has been examined again by this Court with specific reference to the aforesaid government order number 2265 dated August 9, 1958 in P. Palaniswami v. Shri Ram Popular Service (P) Ltd. ((1974) 1 SCC 197) and Southern Rajamani Transports (P) Ltd. v. Rahim Transport (P) Ltd. ((1974) 2 SCC 590) and it has been reiterated that an order for the grant of a permit under the constraining influence of the impugned government order would be improper and that there is nothing wrong in quashing it and in directing the tribunal to make a fresh order in accordance with the law.

5. We have made a reference to the finding of the High Court that the order of the tribunal has been vitiated by the constraining influence of the directions contained in the government order No. 2265. There is therefore nothing wrong if the High Court has followed the above mentioned decisions of this Court, quashed the decision of the tribunal and directed it to dispose of the matter afresh.

6. There is thus no force in these appeals and they are dismissed with costs.

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