

Smt. K. Kamalam

Vs

R. Ponnuswamy and Others

Civil Appeals Nos. 688 and 689 of 1976

(P. N. Shinghal, P. S. Kailasam JJ)

12.01.1978

JUDGMENT

SHINGHAL, J. -

1. These two appeals by special leave are directed against a common judgment of the Madras High Court dated April 20, 1976, in civil revision petitions which were filed by R. Ponnuswamy, R. Pachamuthu Udayar and H. Ramaswami.
2. There were fifteen applicants for the grant of a stage carriage permit on the Rasipuram-Pallipalayam route, in Salem district. The Regional Transport Authority granted a permit to R. Ponnuswamy, and rejected the other applications, by his order dated October 4, 1974. Several appeals were filed before the State Transport Appellate Tribunal, Madras. The Tribunal took the view that a person having the maximum sector qualification was to be preferred if he possessed the other necessary qualifications. It accordingly held that as "sector qualification" was a vital factor, the qualifications of the appellants had to be considered "only in that background". It allowed Smt. Kamalam's appeal by its judgment dated January 5, 1976, on the ground that she had a superior claim for the grant of the permit because of her sector qualification on the unserved portion of the route, and dismissed the other appeals.
3. R. Ponnuswamy (to whom permit was granted by the Regional Transport Authority), R. Pachamuthu Udayar and M. Ramaswami felt aggrieved and filed revision petitions before the High Court under Section 64B of the Motor Vehicles Act, hereinafter referred to as the Act. As the High Court has ordered a "fresh consideration" of the claims of R. Ponnuswamy, R. Pachamuthu Udayar and of Smt. Kamalam by the Tribunal, these two appeals have been filed by Smt. Kamalam.
4. We shall first deal with Civil Appeal 689 of 1976 which relates to R. Pachamuthu Udayar's application for the grant of permit, for if we find that the High Court's order of remand is justified in the facts and circumstances of his case, it will not really be necessary to examine the other appeal separately.
5. We find from the order of the Regional Transport Authority that the parties before us secured a total of eight marks each on the basis of their residence (or principal place of business), technical qualification, workshop facilities and viability of units. The Regional Transport Authority rejected R. Pachamuthu Udayar's application on the ground that his performance was not satisfactory as he had "given room for complaints". The State Transport Appellate Tribunal however found that there was no material to justify that conclusion, and did not give any weight to the "so-called complaint against him" so as to justify the rejection of his claim on that basis. All the same, R. Pachamuthu

Udayar's appeal was dismissed on the ground that Smt. Kamalam had "greater sector qualifications".

6. When the matter came up before the High Court in revision, the decision of the Tribunal to give preference to Smt. Kamalam merely on the basis of higher sector qualification, was examined and, while doing so, the High Court categorically arrived at the conclusion that R. Pachamuthu Udayar's claim that he had far greater experience than Smt. Kamalam had not been taken into consideration. The High Court found that R. Pachamuthu Udayar had more experience than Smt. Kamalam, and took note of the fact that the Tribunal had not stated that, in its opinion, such experience should give way to the sector qualification. While doing so the High Court took into consideration the decision of this Court in *Ajantha Transports (P) Ltd., Coimbatore v. M/s. T.V.K. Transports, Pulampatti, Coimbatore District* and, after examining the revision petition of R. Pachamuthu Udayar, it made the following observations :

The Tribunal should have without reference to the preferential claims of a person having a sector qualifications, considered the qualifications of each of the competing claimants and if it finds that such qualifications are more or less equal then the sector qualification can be taken as a tilting factor to select the person having that qualification. The Tribunal has, in this case, proceeded to assume that the person having sector qualification will have a preferential claim so it cannot be taken to have considered properly the other qualifications, for its consideration was on the basis of the preferential claim of the person having a sector qualification.

It was for that reason that the High Court allowed the revision petitions of R. Ponnuswamy and R. Pachamuthu Udayar and ordered a "fresh consideration" of their claims and the claim of Smt. Kamalam in the light of its observations.

7. Counsel for the appellant has not been able to urge any satisfactory argument against the impugned order of the High Court. He no doubt invited our attention to *K. Balasubramania Chetty v. N. M. Sambandamoorthy Chetty* ((1975) 3 SCR 91 : (1975) 1 SCC 242), but he was unable to show how, in view of the aforesaid conclusion of the High Court, it could be said that there was any jurisdictional error or illegality or material irregularity in the exercise of the jurisdiction of the High Court under Section 64B of the Act when it had found that R. Pachamuthu Udayar's greater experience was ignored without any justification.

8. As we find no merit in these appeals, they are hereby dismissed with costs, one set.

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