

A. Viswanathan

Vs

State Transport Appellate Tribunal, Pondicherry and Another

Civil Appeal No. 1522 of 1986

(M. M. Dutt, G. L. Oza, E. S. Vankataramiah JJ)

06.02.1987

JUDGMENT

E. S. VENKATARAMIAH, J. -

1. This appeal by special leave is filed against the order dated April 3, 1986 passed by the State Transport Appellate Tribunal, Pondicherry (hereinafter referred to as 'the Tribunal') setting aside a temporary permit to ply a stage carriage issued in favour of the appellant in respect of the route Pondicherry to Madras via Thirukanur, Vikaravandi, Tindivanam and Chingleput under Section 62 of the Motor Vehicles Act, 1939 (hereinafter referred to as 'the Act') and granting it in favour of respondent 2A, Balasundaram for the remaining period of the temporary permit, i.e., up to May 31, 1986. The period of the temporary permit having come to an end no further orders are necessary as regards the person who could operate a stage carriage under that permit. This appeal could have been disposed of with this observation but we are compelled to pronounce a detailed order in this case having regard to the slackness that is creeping into the manner in which the provisions of the Act are being administered by some transport authorities.

2. Chapter IV of the Act deals with the control of transport vehicles. Section 42 of the Act lays down that no owner of a transport vehicle shall use or permit the use of the vehicle in any public place whether or not such vehicle is actually carrying any passenger or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or the Commission authorising the use of the vehicle in that place in the manner in which the vehicle is being used. Section 44 of the Act provides for the constitution of the State Transport Authority and the Regional Transport Authorities to exercise and discharge the respective powers assigned to them under the Act. The said chapter contains the provisions under which permits may be issued by the Regional Transport Authority for running a stage carriage, a contract carriage, a private carrier and a public carrier. It also provides for the issue of permits valid for the whole or any part of India for running tourist vehicles. Chapter IV contains the provisions regarding the manner in which the applications have to be made for different kinds of permits and the procedure that has to be followed in each case for granting such permits. Section 47 of the Act which is in Chapter IV deals with the procedure to be followed by a Regional Transport Authority. In considering an application for a stage carriage permit the Regional Transport Authority should have due regard to the following matters, namely : (a) the interest of the public generally; (b) the advantages to the public of the service to be provided, including the saving of time likely to be effected thereby and any convenience arising from journeys not being broken; (c) the adequacy of other passenger transport services operating or likely to operate in the near future, whether by road or other means, between the places to be served; (d) the benefit to any particular locality or localities likely to be afforded by the service; (e) the operation by the applicant of other transport

services, including those in respect of which applications from him for permits are pending; and (f) the condition of the roads included in the proposed route area. It should also take into consideration any representations made by persons already providing passenger transport facilities by any means along or near the proposed route or area, or by any association representing persons interested in the provision of road transport facilities recognised in this behalf by the State Government, or by any local authority or police authority within whose jurisdiction any part of the proposed route or area lies. A reading of the aforesaid provisions shows that the paramount consideration that should govern the decision of a Regional Transport Authority in issuing a permit to run a stage carriage is the interest of the general public.

3. Since it was felt that the permits for playing stage carriages issued by the several Regional Transport Authorities in India were being cornered by persons belonging to richer and more advanced classes in society and persons belonging to the Scheduled Castes, Scheduled Tribes and other economically weaker sections of the community were not able to compete with people who were rich and more advanced, Parliament amended Section 47 of the Act by Act 47 of 1978 by introducing provisions for making reservation of certain percentage of stage carriage permits to persons belonging to Scheduled Castes, Scheduled Tribes and economically weaker sections of the community. After the above amendment Section 47(1-A) of the Act provides that the government of a State shall reserve in that State certain percentage of stage carriage permits for the Scheduled Castes and the Scheduled Tribes and the reservation of permits under the said provision is directed to be made in the same ratio as in the case of appointments made by direct recruitment by public services of the State. Such reservation appears to be mandatory. Sub-section (1-C) of Section 47 of the Act provides that the government of a State may, having regard to the extent to which persons belonging to economically weaker sections of the community have been granted stage carriage permits in that State - (a) reserve in that State such percentage of stage carriage permits as may be prescribed, for persons belonging to economically weaker sections of the community; or (b) notwithstanding anything contained in the proviso to sub-section (1) of Section 47 give preference, in such manner as may be prescribed, to applications for stage carriage permits from such persons. Sub-section (1-D) of Section 47 of the Act provides that the number of permits reserved under sub-section (1-B) and clause (a) of sub-section (1-C) of Section 47 shall not exceed 50 per cent of the total number of stage carriage permits granted during a calendar year. The reservation made in favour of the Scheduled Castes and the Scheduled Tribes is protected by clause (4) of Article 15 of the Constitution of India which provides that nothing in Article 15 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. Such special provision would, therefore, be out of the mischief of clause (1) of Article 15 which provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. It is also in consonance with Article 46 of the Constitution. Such special provision is necessary to assist the members belonging to the Scheduled Castes and Scheduled Tribes and to the economically weaker sections of society as they cannot otherwise compete with the other sections of society. After the introduction of sub-sections (1-A) to (1-H) into Section 47 of the Act the Government of India sent a communication to all the State Governments and Union Territories to implement the reservations for members belonging to Scheduled Castes and Scheduled Tribes provided therein without delay. It reads thus :

GOVERNMENT OF INDIA Ministry of Shipping and Transport No. TGM(70)
New Delhi, dated August 24, 1979 To All the State Governments/Union Territory
Administrations Sub : Reservation of permits for Scheduled Castes/Scheduled Tribes
as provided in the Motor Vehicles (Amendment) Act, 1978.##

Sir,

I am directed to refer to this Ministry's letter of even number dated January 31, 1979 on the above subject and to say that so far as reservation in favour of Scheduled Castes and Scheduled Tribes is concerned, the provisions of the Motor Vehicles (Amendment) Act, 1978 can be implemented straightway. The implementation of this provision need not wait for the framing of any rules, since the rules are required to be framed only in respect of circumstances under which, the manner in which, and the extent to which the reservation may be carried forward. Since the question of carrying forward will arise only after the expiry of the current year, rules in this respect can be finalised during the course of the year. The State Governments/Union Territories are requested to kindly have the provisions of the Act in regard to reservation for Scheduled Castes and Scheduled Tribes in respect of stage carriage permits, public carrier permits and national permits implemented without further delay.

2. The State Governments/Union Territory Administrations are also requested to indicate the number of permits of various categories granted, after the provisions of the Motor Vehicles (Amendment) Act, 1978 was brought into force; the number reserved for Scheduled Castes/Scheduled Tribes and the number of permits actually granted to Scheduled Castes and Scheduled Tribes with reasons for shortfall, if any.

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Yours faithfully,

Sd/- B. R. Chavan Deputy Secretary To The Government of India

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4. The Union Territory of Pondicherry after the lapse of nearly seven years from the date of the amendment of Section 47 of the Act issued rules regarding reservations to be made in favour of persons belonging to Scheduled Castes and Scheduled Tribes under Section 47(1-A) of the Act on June 12, 1985. On the issue of said rules a number of writ petitions were filed by persons not belonging to Scheduled Castes and Scheduled Tribes questioning the validity of sub-section (1-A) of Section 47 of the Act and the said petitions are still pending. We shall not say anything more on the merits of those petitions.

5. It is regrettable that for some reason or other the State Transport Authority of Pondicherry has not taken steps to issue regular permits on about 18 routes in respect of which it has entered into inter-State agreements with the State of Tamil Nadu even though the need for issuing those permits is beyond dispute. But, on the other hand for nearly six years, it is stated, that the State Transport Authority of Pondicherry is issuing temporary permits under Section 62 of the Act repeatedly in respect of the routes. The disadvantages suffered by the persons belonging to the Scheduled Castes, Scheduled Tribes and the economically weaker sections of the community by the procedure adopted by the State Transport Authority are obvious. If stage carriage permits are to be issued then in compliance with sub-section (1-A) of Section 47 of the Act certain percentage of the said permits would have to be reserved for the persons belonging to Scheduled Castes, Scheduled Tribes and if the government so desires to the economically weaker sections of the community. If the issue of such permits is postponed for any reason and only temporary permits are issued then the persons belonging to Scheduled Castes, Scheduled Tribes and the weaker sections would not be able to

enjoy the benefit of the reservation. It is unfortunate that even though Parliament had enacted the amendments nearly nine years ago the benefit of those provisions has not been availed of by those for whose benefit they were enacted. We are informed that the appellant and some others belonging to Scheduled Castes or Scheduled Tribes have made applications for grant of regular permits and those applications have remained undisposed of on account of the litigiousness of others.

6. The action taken by the State Transport Authority in issuing temporary permits repeatedly for a long number of years is clearly in violation of the letter and spirit of Section 62 of the Act under which such temporary permits are issued. Section 62 of the Act reads thus :

62. Temporary permits. - (1) A Regional Transport Authority may without following the procedure laid down in Section 57, grant permits, to be effective for a limited period not in any case to exceed four months, to authorise the use of a transport vehicle temporarily -

(a) for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or

(b) for the purposes of a seasonal business, or

(c) to meet a particular temporary need, or

(d) pending decision on an application for the renewal of a permit, and may attach to any such permit any condition it thinks fit :

Provided that a temporary permit under this section shall, in no case, be granted in respect of any route or area specified in an application for the grant of a new permit under Section 46 or Section 54 during the pendency of the application :

Provided further that a temporary permit under this section shall, in no case, be granted more than once in respect of any route or area specified in an application for the renewal of a permit during the pendency of such application for renewal.

(2). Notwithstanding anything contained in sub-section (1), temporary permit may be granted thereunder in respect of any route or area where -

(i) no permit could be issued under Section 48 or Section 51 or Section 54 in respect of that route or area by reason of an order of a court or, other competent authority restraining the issue of the same, for a period not exceeding the period for which the issue of the permit has been so restrained; or

(ii) as a result of the suspension by a court or other competent authority of the permit of any vehicle in respect of that route or area, there is no transport vehicle of the same class with a valid permit, in respect of that route or area, or there is no adequate number of such vehicles in respect of that route or area, for a period not exceeding the period of such suspension :

Provided that the number of transport vehicles in respect of which the temporary permit is so granted shall not exceed the number of vehicles in respect of which the issue of a permit has been restrained or as the case may be, the permit has been

suspended.

7. Under Section 62 of the Act it is permissible to a Regional Transport Authority to issue temporary permits to be effective for a limited period not exceeding four months without following the procedure laid down in Section 57 of the Act. Such temporary permits can be issued only for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings or for the purposes of a seasonal business or to meet a particular temporary need or pending decision on an application for the renewal of a permit. The Regional Transport Authority cannot grant a temporary permit for a route or area specified in an application for grant of a new permit under Section 46 or Section 54 of the Act during the pendency of the application. That section further provides that a temporary permit issued under that section shall in no case be granted more than once in respect of any route or area specified in an application for the renewal of a permit during the pendency of such application for renewal. A temporary permit can thus be granted only if the permit is required for the purposes or reasons mentioned in clauses (a) to (d) of Section 62(1) of the Act which are mentioned above or in the circumstances referred to in sub-section (2) thereof. This is clear from the decision of this Court in *APSRTC v. K. Venkataramireddy*. ((1971) 3 SCC 803) In that decision this Court held that a temporary permit could be issued only for the purposes or reasons mentioned in clauses (a) to (d) of Section 62 of the Act as it stood then. Subsequent to the amendment of Section 62 of the Act a temporary permit can also be issued under the circumstances mentioned in sub-section (2) of Section 62 of the Act. These cannot be also a renewal or revalidation of a temporary permit as held by this Court in *Gandhara Transport Co. Ltd. v. State of Punjab*. ((1963) Supp 1 SCR 800 : AIR 1964 SC 1245) The revalidation or renewal of a temporary permit or extension of the period for which a temporary permit is issued is not by law. The issue of temporary permits by the State Transport Authority in the instant case continuously for a number of years is clearly in violation of the statute. The Regional Transport Authority which is charged with the duty of issuing permits for transport vehicles under the Act in the public interest should wherever it finds that the need for issuing such stage carriage permit is established take immediate steps to invite applications from persons who are willing to run the stage carriage on the route or in the area in question and proceed to grant the permit in favour of a deserving applicant. If any person on his own makes application for the grant of a stage carriage permit, the Regional Transport Authority should consider such application in accordance with law and proceed to grant a permit if it finds that it is necessary to do so. It may also be noted that if a regular permit is issued, it would be in force for a period not less than three years and not more than five years as may be determined by the Regional Transport Authority and such permit is capable of being renewed under Section 58 of the Act. But, if the Regional Transport Authority proceeds to issue a temporary permit then at the end of every four months it will have to spend time over the consideration of fresh applications for the issue of such permits and it is needless to say that the necessity for making applications at the end of every four months would entail many undesirable consequences which should be avoided. With these observations we dispose of the appeal.

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