S. V. Sivaswami Servai

Vs

Hafez Motor Transport (Firm) and Others

Civil Appeal No. 11407 of 1983

(J. S. Verma, L. M. Sharma JJ)

17.08.1990

JUDGMENT

L. M. VERMA, J. -

1. Application were invited by the Regional Transport Authority, Pudukkottai (in short 'the RTA') for grant of one stage carriage permit on the route, Pudukkottai - Kottaipattinam, the total length of the route being 70 kms. There were in all 15 applicants including the appellant, S. V. Sivaswami Servai, and respondent 1, Hafez Motor Transport (firm). On October 26, 1976, the RTA took up the case of all the applicants for consideration. The RTA rejected the application of respondent 1 and some other applicants on the only ground that each of them had been granted one other permit in the same sitting and, therefore, the RTA did not deem it fit to consider their claim for grant of the permit. Out of the remaining applicants who were allotted quail marks, the RTA found the appellant more suitable for the grant. Accordingly, the RTA granted the permit to the appellant for a period of three years on October 26, 1979. Respondent 1 and some others, feeling aggrieved by the RTA's order in appellant's favour, preferred the appeals to the State Transport Appellate Tribunal, Madras (in short 'the STAT'). By the order dated September 5, 1981, the STAT set aside the RTA's order granting the permit to the appellant and granted the permit in favour of respondent 1. This led to two civil revision petitions in the High Court of Madras (hereinafter referred to as 'the High Court'), one by appellant and the other by another unsuccessful applicant. The High Court, by an interim order dated September 22, 1981, stayed operation of the STAT's order and directed that the appellant as well as respondent 1 be allowed to operate on the route. Ultimately, the High Court dismissed both the revision petitions by its order dated December 1, 1983. The applicant filed a petition for grant of special leave on December 7, 1983 which was allowed giving rise to this appeal. By virtue of the interim order of this Court, the situation existing during pendency of the revision in the High Court has been continued with the result that the appellant as well as respondent 1 have been continuing to operate on the route throughout obviously on account of renewal being granted to them from time to time because of this Court's interim order. The result is that the permit granted in October 1979 for three years expired long back and yet not merely one of theses claimants for the permit, but both of them have been operating on the route all these years.

2. It is obvious that the grant of permit by the RTA to the appellant refusing to consider the claim of respondent 1 and some other applicants on merits solely on the ground that they had been granted one other permit in the same sitting is clearly untenable. The grant of a permit for another route to the respondent 1 and some others could only be a relevant circumstance while assessing the comparative merits of all the applicants, but by itself it could not be decisive or sufficient to refuse consideration of their claim. The STAT would have been justified in interfering with the RTA's order on this ground and either remanding the matter to the RTA or considering the same itself on

merits. The STAT missed this aspect, even though it made a comparison of the merits of all the applicants. Shri G. Ramaswamy, learned counsel for the appellant showed that the STAT has committed several errors in making the comparison which include a misreading of the past operational record described as 'history sheet' of the rival claimants. The High Court, while deciding the revision petitions, has also not recorded on the correct basis. Shri A. T. M. Sampath, learned counsel for respondent 1 made an attempt initially to support the STAT's order granting the permit to respondent 1 which was upheld by the High Court. However, after some arguments, both counsel made a common request to remand the matter to the RTA for a fresh decision on merits taking into account the comparative merits of all the applicants. They also requested that in view of the remand to the RTA for a fresh decision on merits, no observations need be made herein on the comparative merits of the claimants or the merits of the rival contentions initially advanced to us. We are of the opinion that in the circumstances of this case, this would be the appropriate course to adopt. We have, however, some difficulty in accepting the other common request made by both the learned counsel. Both sides agreed that there is necessity for two permits on the route and, therefore, we may direct that both parties, who have been operating on the route by orders of the High Court or this Court, should be allowed to ply their stage carriages on the route. Reliance is placed by them on M. Chinnaswamy v. M/s. Dhandayuthanpani Roadways (p) Ltd. ((1977) 2 SCC 629) wherein a similar order was made on the basis of an agreement of both the sides. The order made in this case is a brief order based entirely on the agreement of the parties, the relevant portion of which is as under :

> "It is represented by Shri M. K. Ramamurthi appearing for the appellant that from about 1960, for the last 16 years, both the parties had been plying their stage carriages on the said route. Although the permit to be granted was only one, but by orders of court or other authority both the parties had been allowed to ply their buses. It seems to be so obvious that in public interest if two stage carriages have been plying on the route for the last 16 years there is no reason to confine it to one. Both sides agree that there is necessity for two permits on the route. In that view we consider the dispute to be academic. We direct that the status quo of both parties being allowed to ply their stage carriages on the route taking appropriate permits from the authorities concerned will continue. With this direction, the appeal is dismissed."

It was stated at the bar that this decision was followed in Civil Appeal No. 1133 of 1970 decided on December 9, 1981 wherein the order made is as under :

> "We have heard learned counsel for the parties and it seems to us that having regard to the particular circumstances of this case, the order should be that which was passed by this Court in M. Chinnaswamy v. M/s. Dhandayuthanpani Roadways (p) Ltd. ((1977) 2 SCC 629). During the pendency of the appeal in this Court, this Court made an order on April 21, 1970, directing that the appellant and respondent 1 should be permitted to ply their stage carriages on the route, and ever since the order of 1970 these two stage carriages have been plying continuously under permits which have been renewed from time to time under the Motor Vehicles Act. There is every justification for permitting the present situation to continue. In the circumstances, we direct that the status quo shall continue and both the parties will be allowed to ply their stage carriages in accordance with law under appropriate permits issued in their favour pursuant to the interim order dated April 21, 1970".

Recently, a similar order has been passed in Civil Appeal No. 136 of 1980 decided on July 13, 1990 which reads as under :

> "The authorities concerned will consider the case of the parties herein for grant of permit in accordance with law and also in accordance with the directions in the decisions of this Court in M. Chinnaswamy v. M/s. Dhandayuthanpani Roadways (p) Ltd. ((1977) 2 SCC 629). In the meantime, status quo as on today will continue. Both the parties will ply their vehicles on the route in question.
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> Counsel for both the parties are present here and they have no objection to the order passed above. The appeal is disposed of in the above terms. No costs".

3. With respect, we are unable to accept this common request made to us in the present case. It is obvious from the above quoted orders on which the common request is based that in none of them, any point of law was considered or decided and the order permitting both the claimants to operate on the route, even though the permit to be granted was only one, was made without adverting to the legal implications of such an order. In the first place, grant of a permit is to be made primarily with reference to the object of serving the interests of the general public and it cannot be treated as a dispute relating to grant of a permit between the rival claimants only. It is not in the nature of a lis for adjudication of conflicting interests of private individuals alone. It is, therefore, not a matter which can be decided merely on the basis of an agreement between the two rival claimants who alone out of several claimants remain in the lis at this stage. The question of grant of permit is to be decided primarily by the RTA having regard primarily to the interests of the general public and other prescribed relevant factors. That apart, under Section 47 (3) of the Motor Vehicles Act, 1939, the RTA is first required to determine the number of stage carriages for the route and then to grant permits according to that determination made earlier. Grant of any permit in excess thereof was not permissible without first making a fresh determination and increasing the number, if necessary. It is, therefore, obvious that an order of this kind cannot be made unless the grant of a permit to both the rival claimants would be within the limit fixed by the RTA at the relevant time. There is nothing in any of these above quoted orders to indicate that this aspect was even adverted to or that there was material to indicate that the consent order so made was within the limit fixed by the RTA. If at all the indication is to the contrary that a permit which could be granted was for plying only one stage carriage on the route whereas the consent order made had the effect of permitting two stage carriages instead of one. Moreover, if the claimants had the benefit of plying their stage carriages for several years on the basis of interim orders of the court or other authorities long after the period of the permit had expired, that does not appear to us to be a valid reason for perpetuating that act and confining the grant only to the litigants before us when claimants for the permit were many and are likely to be many in case the question of grant at this point of time is decided afresh. With respect, we are, therefore, unable to accede to this common request and to confine the operation of this route only to the two claimants before us in a lis between them which commenced more than a decade earlier. Admittedly, the applicants for permit before the RTA were many more and when the matter is to be considered afresh by the RTA, every one of them is entitled to a fresh consideration of his claim on merits. As already stated, our inability to pass a consent order in terms of the above quoted orders is for some of the reasons already indicated. For the reasons given by us, the above quoted consent orders cannot be treated as precedents for such a situation.

4. Consequently, the appeal is allowed, the impugned orders of the RTA, the STAT and the High Court are set aside and the matter is remanded to the RTA, Pudukkottai, for a fresh consideration and decision of the claim of all the applicants for grant of the permit on merits in accordance with

law. The interim orders, permitting the appellant and respondent 1 to ply their stage carriages on the route, stand vacated. However, it would be expedient that the RTA decides the matter afresh at an early date and it also makes arrangement for operation of the route during the intervening period in accordance with law to avoid any inconvenience to the travelling public. No costs.

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