ANDHRA PRADESH HIGH COURT

A. Annamalai

Vs.

State of Madras

W.P. No. 818 of 1952

(Umamaheswaram, J.)

10.08.1955

JUDGMENT

Umamaheswaram, J.

1. This is an application for the issue of a writ of certiorari calling for the records relating to the order of the Regional Transport Authority, Chittoor regarding the route Chittoor to Nagari, passed at its meeting held on 5th April, 1951 at Madanapalle; the order of the Central Road Traffic Board in R. No. 18268-A2-51 dated 11th July, 1951 and the order of the Government in G. O. Rt. No. 2763 dated 4th October, 1951 and quash the said G. O. and the orders passed by the Regional Transport Authority and Central Road Traffic Board. The case of the petitioner was that the Regional Transport Authority Chittoor, by its notification R. No. 654-B1-49 dated 4th June, 1949, called for applications for the route Chittoor to Nagari and that one N. P. Chengalvaraya Naidu put in an application in the name of Chittoor Express Service, of which he was the sole proprietor. The Regional Transport Authority, Chittoor, at its meeting held on 12th September, 1950, granted the permit for the said route to Chittoor Express Service. But, on appeal, the Central Road Traffic Board set aside the order of the Regional Transport Authority. Fresh applications were called for by the Regional Transport Authority under Section 57 (2) of the Motor Vehicles Act by its notification R. No. 9984-A 2-50 dated 29th November, 1950. No fresh application was made by N. P. Chengalvaraya Naidu. The petitioner however applied for a permit after applications were called for by the notification dated 29th November, 1950. When the matter came up before the meeting of the Regional Transport Authority on 5th April, 1951, one permit was granted to Chittoor Express Service, of which Neerajhakshmi Naidu became the proprietor by reason of a transfer effected by Chengalvaraya Naidu before 5th April, 1951. The Regional Transport Authority rejected the application of the petitioner on the ground that he was a new entrant. The permit was granted to Chittoor Express Service in the following words
:

> "No. 7 was granted the route by this Regional Transport Authority at the last meeting. He has two buses remaining idle now on routes temporarily, one of the buses ran for six months between Madras and Chittoor and the other between Chittoor and Kalahasti for 18 months. By the cancellation of the permit he has been hard hit. He has also been applying

for a route for long. Even at the last meeting of the Regional Transport Authority his claims for a route were considered but was deferred to complete the quota of three buses to others. Hence he is considered to have the best claim for a route and he is given one bus."

2. On appeal, the claim of the petitioner herein was dismissed on the same ground, viz., that he was a new entrant. The claim of the fourth respondent herein, i.e., Chittoor Express Service was confirmed on the ground that he had three buses and that he also operated on this route on a temporary permit. A Revision Petition was filed to the Government of Madras arid it was rejected on 4th October, 1951, in the following words :

"The Government see no reason to interfere."

3. The petitioner herein filed the writ application on 15th September, 1952, i.e., 11 months after the passing of the order by the Government of Madras.

4. The petitioner contends that the permit granted to the fourth respondent Chittoor Express Service is invalid on the ground (i) that Chengalvaraya Naidu who applied for the permit as the proprietor of Chittoor Express Service was one of the members of the Regional Transport Authority which granted the permit; (ii) that if Neerajhakshmi Naidu was the proprietor of Chittoor Express Service by reason of the transfer effected by Chengalvaraya Naidu, there was no valid application made by him for the issue of a permit; (iii) that he was also a new entrant and there was no reason to choose him in preference to the petitioner herein and (iv) that the order of the Government was invalid as no reasons whatsoever were stated for confirming the decision of the Central Road Traffic Board and the Regional Transport Authority.

5. It is conceded that Chittoor Express Service is not a legal entity. The proprietor of Chittoor Express Service was Chengalvaraya Naidu. He filed the application in pursuance of the notification dated 4th June, 1949. His application continued on record and it was considered by the Regional Transport Authority, Chittoor, at its meeting held on 5th April, 1951. Neerajhakshmi Naidu, brother-in-law of Chengalvaraya Naidu, to whom the rights in Chittoor Express Service are alleged to have been transferred did not file any fresh application subsequent to the notification dated 29th November 1950. He did not file an application to come on record and continue the original application made by Chengalvaraya Naidu on behalf of Chittoor Express Service. When a similar question came for consideration in Writ Petition No. 85 of ,1952 (Mad) (A1), Mr. Justice Subba Rao (as he then was), held as follows :-

"Mr. Bhujanga Rao, the learned counsel for the petitioner, contended that the Chittoor Express Service was the applicant and the mere fact that the original proprietor of the service transferred his bus to the petitioner would not preclude the Central Road Traffic Board from issuing the permit to the present proprietor of the service. But it is conceded that the service is not a legal entity. There is also no provision in the Motor Vehicles Act or in the rules framed thereunder which enables an assignee of the buses to come on record and to prosecute the application filed by the owner before the transfer. In the circumstances, the application must be deemed to have been filed by Chengalvaraya

> Naidu who happened to be the proprietor of a particular service. Obviously he did not press his application and even now the petitioner who is not an applicant for a permit, cannot rely upon an application filed by Chengalvaraya Naidu. The fact that the petitioner purchased the same bus would not in law entitle him to prosecute an application filed by his vendor."

6. So, in the circumstances, it must be held that Chengalvaraya Naidu who filed the application, continued on record as the applicant when the permit was granted by the Regional Transport Authority on 5th April 1951. It appears from para. 9 of the affidavit that Chengalvaraya Naidu became the District Board President, of Chittoor, and consequently a non-official member of the Regional Transport Authority, Chittoor. It is stated in para. 9 as follows :-

> "It will also be seen that by this time, the said N. P. Chengalvaraya Naidu had become the non-official of that Regional Transport Authority and that he actually participated at the said meeting held on 5th April 1951, when the grant was made in his favor. In effect, the grant of the permit has been made to the Regional Transport Authority member himself, which is highly irregular, improper and illegal and in contravention of the provisions of the Motor Vehicles Act."

7. In the counter-affidavit that was filed on behalf of Chittoor Express Service by Neerajhakshmi Naidu, the brother-in-law of Chengalvaraya Naidu, it is not denied that Chengalvaraya Naidu took part in the meeting held on 5th April 1951. In para 2 of the counter-affidavit it is stated as follows :-

> "The Regional Transport Authority dealt with the matter on remand on 5th April 1951. By that time, N. P. Chengalvaraya Naidu had assigned for consideration all his interests in the Chittoor Express Service to me, and I was its sole proprietor. N. P. Chengalvaraya Naidu was by then elected President of Chittoor District Board and was an ex-officio member of the Regional Transport Authority, Chittoor, in his official capacity. But he had no interest in the Chittoor Express Service by 5th April 1951, and the allegations in para 9 that the grant made on that date is in favor of N. P. Chengalvaraya Naidu by the Regional Transport Authority of which he was a member is not correct in view of what is stated above."

8. So, what appears from the counter-affidavit is that Neerajhakshmi Naidu became the proprietor and that the grant was made to him and not to Chengalvaraya Naidu but not that Chengalvaraya Naidu did not participate in the meeting as a member of the Regional Transport Authority. Therefore, I have no doubt that he was one of the members of the Regional Transport Authority which granted the permit to Chittoor Express Service of which he was the proprietor and on whose behalf he made the application. When I called upon the Government to state who were the members of the Regional Transport Authority on 5th April 1951, they produced a letter stating that N. P. Chengalvaraya Naidu was one of the four members who were present at the meeting of the Regional Transport Authority, Chittoor, on 5th April 1951.

9. Therefore, the first question that arises for determination is whether Chengalvaraya Naidu,

sitting as a member of the Regional Transport Authority, was entitled to issue a permit in his own favor. The question is concluded by a direct decision of the Madras High Court reported in *Visakhapatnam Motor Transport v. Bangaru Raju*[1], In that case, the Collector was the President of a Co-operative Society, which applied for a permit. The Collector was also the Chairman of the Regional Transport Authority. He took part in the proceedings of the Regional Transport Authority and granted a permit to the Co-operative Society. It was contended that the order of the Regional Transport Authority was contrary to the principles of natural justice because the Collector, who was a member of the Regional Transport Authority, was also the President of the Co-operative Society. In dealing with this argument, Rajamannar, Chief Justice, observed that one of the great principles of civilised jurisprudence which is a part of law in Britain and which has been adopted in this country is that no man shall be a judge in his own cause.' Reference was made to Halsbury's 'Laws of England', Vol. 9, p. 883. It was, therefore, held that the order granting a permit to the Co-operative Society was liable to be quashed. I follow this decision and hold that it was not open to Chengalvaraya Naidu to participate in the meeting and to grant a permit in his own favor. As pointed out by the learned Chief Justice, there is also another principle which is of equal importance 'that justice should not only be done but manifestly and undoubtedly seem to be done.' As pointed out by Lord Hewart, Chief Justice, in *Rex v. Sussex Justices, Ex-parte Mecarthy*[2],

> "that nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice."

10. Lord Hardwick also stated that 'in a matter of so tender a nature even the appearance of evil is to be avoided.' So, I hold that the permit granted on the application of Chengalvaraya Naidu by the Regional Transport Authority of which he was a member is absolutely illegal and void.

11. Even assuming that the case of the fourth respondent is true that he had transferred his interest in favor of his brother-in-law Neerajhakshmi Naidu, still, the grant of a permit to the transferee, viz., his brother-in-law is equally open to attack. It was suggested during the course of the argument that there was nothing improper in Chengalvaraya Naidu participating in the meeting and granting a permit to his brother-in-law. But no authority was cited in support of such a proposition. I am inclined to hold that even assuming he had no pecuniary interest in the concern as alleged by him, his interest in the transferee, i.e., his brother-in-law was substantial and of such a character as is likely to give rise to a reasonable suspicion of bias. He ought not to have, therefore, participated in the meeting and granted the permit to his close relation. Even in that view, I am inclined to hold that the grant of the permit to Neerajhakshmi Naidu as the proprietor of Chittoor Express Service is illegal and void.

12. As I have already pointed out, there was no fresh application by Neerajhakshmi Naidu. If it was to be regarded as an application made by him, he was also as much a new entrant as the petitioner herein. The entire reasoning of the Regional Transport

[1] ILR (1954) Mad 36

[2](1924) 1 KB 256 at p. 259

Authority proceeded only on the footing that Chengalvaraya Naidu was the proprietor and that he owned three buses. There is no reference made in the order that Neerajhakshmi Naidu became the owner and that he had any preferential rights over the petitioner. The orders passed by the Regional Transport Authority and confirmed by the Central Road Traffic Board and the

Government are liable to be quashed.

13. The State Government also had not given any reasons whatsoever for declining to interfere with the order passed by the Central Road Traffic Board. As pointed out by me in Writ Petition No. 814 of 1951 (B1), it is necessary that, when judicial orders are passed, they must disclose on their face that the mind of the authority was directed to the facts and law bearing on the case and was properly applied. It was contended by the learned advocate for the respondent that it is only if the order is reversed, it is necessary to give any reasons. The decision of Subba Rao, J. (as he then was), in *A. Vedachala Mudaliar v. State of Madras*[3], was referred to in this connection. In the particular case, the learned Judge no doubt held that when the order is reversed, it is necessary to give reasons and stated as follows at p. 417 (of Mad LJ) :-

> "From the standpoint of fair name of the tribunals and also in the interest of the public they should be expected to give reasons when they set aside an order of an inferior tribunal. If tribunals could set aside the considered orders of subordinate tribunals without any reasons such a power may, in the hands of unscrupulous and dishonest persons - I do not say that there are any such people in the tribunals we are now concerned with - turn out to be a potent weapon for corruption, manipulation and jobbery. Further if reasons for an order are given there will be less scope for abitrary or partial exercise of powers and the order ex facie will indicate whether extraneous circumstances were taken into consideration by the tribunal in passing the order. The public should not be deprived of this only safeguard unless the Legislature expressed otherwise. I would therefore hold that the order of a tribunal exercising judicial functions should ex facie show reasons in a succinct form for setting aside the orders of the subordinate tribunals."

14. With great respect to the learned Judge, I would add to his observations that even in the case of confirming orders, the same safeguard should be adopted. The judicial order must ex facie show that the judicial body applied its mind to the facts and law bearing on the question and confirmed the decision of the subordinate authority.

15. Sri Bhujanga Rao, learned advocate for the respondent, strenuously and forcibly contended that the writ ought not to be entertained as the petitioner had filed the application more than 11 months after the order was passed by the Government. He stated that the petitioner had conceived the idea of filing the writ only after Sri Subba Rao, J. (as he then was), dismissed the Writ Petition No. 85 of 1952 on 15th July 1952 (A1). The main question that arises is whether I should dismiss the writ application on the ground of delay or laches or acquiescence. It is conceded by the learned advocate for the petitioner that there is no period of limitation fixed by the Limitation Act for filing writs. In England, the period fixed for filing a writ of certiorari is six months. But under Order 64, Rule 7, R. S. G., there is a power vested in the Court to extend the time and excuse the delay in filing a writ of certiorari. That

[3]1951-2 Mad LJ 411

is set out in Halsbury's 'Laws of England, Vol. 9 (2nd Edn), para. 1515. It is contended on the strength if the decision in *Nathamooni Chetti v. Viswanatha Sastri*[4], that I should dismiss this writ application on the sole ground of delay, even though the order passed by the Regonal Transport Authority granting the permit to Chengalvaraya Naidu leads to a grave miscarriage of justice and flagrant violation of law calling for the intervention of this Court. What is stated in 1950-2 Mad

LJ 448 , is that the Courts ought not to generally exercise the extraordinary power conferred by Article 226 and issue prerogative writs when there has been a long delay since the passing of the order sought to be quashed. There is no rigid or inflexible rule holding that a writ should not be entertained after a period of 11 months. As a matter of fact, in *Muthiah Chettiar v. Commissioner of Income-tax, Madras*[5], and in *Y. Venkateswarlu v. State of Madras*[6], the writs were entertained even though there was a long delay. In those cases, there was no doubt an adequate explanation given that the petitioner was seeking his remedy in another forum. But I am referring to those decisions only for the purpose of showing that there is no rigid rule fettering my discretion to interfere in a gross case of this description. The learned advocate for the petitioner referred me to the decisions of other High Courts in *Chamba Valley Transport Ltd. v. State of Himachal Pradesh*[7], *S. Mahadeva Iyer v. State*[8], and in *Raj Kishore v. District Board of Seharanpur*[9], where writ applications were entertained in spite of long delay. As stated supra, having regard to the fact that the grant of the permit to Chittoor Express Service violates in the language of Chief Justice Raja-mannar 'one of the great principles of civilized jurisprudence that no man shall be a judga in his own cause', I feel that the case is an eminently fit one to interfere and quash the permit granted to the fourth respondent.

16. Sri Bhujanga Rao sought to raise a new contention for the first time in this Court that no fresh applications ought to have been called for by the Regional Transport Authority after the notification dated 29th November 1950, and that the petitioner had no right to apply for a permit and that he was not a party aggrieved by the issue of the permit to the fourth respondent and that consequently the appeal to the Central Road Traffic Board and the Revision Petition to the Government of Madras were incompetent. This point was not raised before the Regional Transport Authority or the Central Road Traffic Board or the Government of Madras. It was not even raised in the counter-affidavit before this Court. I, therefore, refuse to permit the respondent to raise this question for the first time before this Court and sustain the grant of the permit to his client.

17. Even assuming that it is not open to me to issue a writ of certiorari under Article 226 of the Constitution by reason of the delay, I think it is eminently a fit case for the exercise of my jurisdiction under Article 227 of the Constitution. I heard elaborate arguments on the question as to the scope of Articles 226 and 227 of the Constitution. Sri Bhujanga Rao contended that the High Court has no right of superintendence over the Government of Madras acting under Section 64-A of the Motor Vehicles Act inasmuch as it is neither a Court nor a Tribunal. So, the question to be determined is,
as to what exactly a Tribunal' means in Article 227. The Government Pleader referred

[4] 1950-2 Mad LJ 448 [6] 1954-1 Mad LJ 244 [8] AIR 1954 Tran Coc 469 (FB)
[5] 1951-1 Mad LJ 417 [7] AIR 1953 Him Pra 8 [9] AIR 1954 All 675

me to the definition in the Oxford Dictionary wherein it is defined as 'Judgment Seat' and 'Judicial Authority'. In *Haripada Dutta v. Ananta Mandal,*[10] Chakravartti, J., gave the following definition of a tribunal :-

> "In my view, the word 'Tribunal' in Article 227 means, as Mr. Gupta suggested, a person or a body, other than a Court, set up by the State for deciding rights between contending parties in accordance with rules having the force of law, and I would add, doing so, not by way of taking executive action but of determining a question."

He approved the decision in *Sabitri Motor Service, Ltd. v. Asansol Bus Association*[11], wherein it was held that a Commissioner of a Division, acting as the Appellate Authority under the Motor Vehicles Act, was a tribunal within the meaning of Article 227. In 1951-2 Mad LJ 411 , Mr. Justice Subba Rao (as he then was), held that the Regional Transport Authority and the Central Road Traffic Board in issuing permits or refusing them were performing quasi-judicial functions. I followed that decision in Writ No. 547 of 1953. The Calcutta decisions were followed by Mr. Justice Ramaswamy in Annamalai Mudaliar, In re, AIR 1953 Madras 362. The learned Judge also exhaustively dealt with the case-law bearing on the interpretation of Article 227. In a recent case in Gangala Kurthi Pattisam, In re, 1954-1 Mad LJ 165 , Chief Justice Rajamannar adopted the definition of 'Tribunal' given by Chakravartti, J., in *Haripada Dutta v. Ananda Mandal*[12], The further question that remains to be considered is whether even assuming that the Regional Transport Authority and the Central Road Traffic Board are tribunals within the meaning of Article 227, the Government of Madras exercising functions under Section 64-A of the Motor Vehicles Act, is a Tribunal' under the superintendence of the High Court. There is no direct decision on this question. Adopting the definition of a 'tribunal' given in the above decisions I see no reason why the Government of Madras in exercising judicial powers under Section 64 of the Motor Vehicles Act is not a tribunal and why the High Court is not entitled to exercise its powers of superintendence under Article 227 of the Constitution. The only decisions that were referred to by the advocate for the respondent and also by the Government Pleader in this connection are the decisions in *Krishnamoorthy v. State of Madras*[13], and in Union of Workmen of R. S. N. and I. G. N. and *Railway Co. Ltd. v. River Steam Navigation Co. Ltd*[14]., In *Krishnamoorthy v. State of Madras*[15], the question that arose for consideration was whether the Government and the disciplinary proceedings tribunal would fall within Article 227. The passage relied on is in the following terms :-

> "The learned counsel for the petitioner attempted to bring the case under Article 227 of the Constitution under which this Court is given superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. We have no hesitation whatever in holding that neither the Government nor the Disciplinary Proceedings Tribunal would fall within Article 227."

18. No reasons are given by the learned Judges in support of their conclusions.

[10] AIR 1952 Cal 526 [12] AIR 1952 Cal 526 [14] AIR 1951 Ass 96
[11] AIR 1951 Cal 255 [13]1951-1 Mad LJ 709 [15]1951-1 Mad LJ 709

Possibly having regard to the particular nature of the proceedings they held that the Government and the disciplinary proceedings tribunal do not fall under Article 227. As the present case arises under the Motor Vehicles Act and as it is clear, that the powers exercised by the Regional Transport Authority, the Central Road Traffic Board and the Government are judicial in character, that decision cannot have any application to the facts of this case. The next case that was relied on was the decision in Union of Workmen of R. S. N. and I. G. N. and *Railway Co. Ltd. v. River Steam Navigation Co. Ltd*[16]., That decision also has no bearing on the facts of this case. What was held therein was that the Provincial Government acting under Sections 7 and 8 of the Industrial Disputes Act is not a tribunal within the meaning of Article 227. That again turns upon the particular language of Sections 7 and 8 and the powers conferred on the Government thereunder.

19. Sri Bhujanga Rao tried to found an argument based on the inclusion of the words 'Any Government' in Article 226 and the omission thereof in Article 227. I do not think that there is any force in that contention. In Article 226, the Constitution makers wanted to make it clear that the expression 'any Authority' included in appropriate cases 'Any Government'. It would not be necessary to use that expression 'Any Government' in Article 227 as the word 'Tribunal' is sufficiently wide enough to cover even the Government when it exercises judicial functions. The only point for decision in the case is whether the Government exercising powers under Section 64-A acts judicially or not. As I am clearly of the opinion that it exercises judicial powers, it is a tribunal within the meaning of Article 227. As stated supra, I would in the peculiar circumstances of the case be prepared to exercise my powers under Article 227 and set aside the order of the Regional Transport Authority granting the permit to Chittoor Express Service, if for any reason it is held that I cannot issue a writ of certiorari under Article 226 by reason of the delay of the petitioner.

20. It transpires that the period for which the permit was applied for by the petitioner has expired long ago. The permit in favor of the 4th respondent was renewed by reason of his having been granted a permit by the Regional Transport Authority on 5th April 1951. In *Muthuvadivelu v. R. T. Officer*[17], it was held by a Division Bench of the Madras High Court of which I was a member, that the validity of the renewed permit depends on the validity of the original permit and that consequently a Court is entitled to decide the question whether the permit was rightly granted or not even after the expiry of the period of the permit. It is in view of that decision, I have decided the question as to the validity of the permit granted by the Regional Transport Authority to the 4th respondent even though it was only for one year.

21. To the writ application the petitioner impleaded A. Kuppuswami Naidu as the 5th respondent. No reasons were given in the affidavit as to why the permit granted in his favor should be set aside. No arguments were addressed before me by Sri Dwarakanath on behalf of the petitioner. So the writ application as against the 5th respondent has to be dismissed with costs. Advocate's fee Rs. 100. In the result a writ will be issued quashing the permit given in favor of the 4th respondent. But in the circumstances, I hold that the petitioner as well as the 4th respondent should bear

[16] AIR 1951 Ass 96

[17] W. P. No. 893 of 1953

their own costs. There will be no order for costs in favor of the Government as they were instructed not to take any part in the dispute between the competing parties.

Writ issued.