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P. KUMARASWAMY

v.

STATE TRANSPORT APPELLATE TRIBUNAL, MADRAS AND ANR.

October 8, 1975

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[V. R. KRISHNA IYER AND A. C. GUPTA, JJ.]

Motor Vehicles Act 1939, *Sec.* 47(1) *Sec.* 68*A*(*a*)—*Rules framed by Tamil Nadu government under Motor Vehicles Act—Whether rules can be discarded in the name of Public interest in Sec.* 47(1)—*Whether rules to be supplemented by public interest—Order of the Tribunal excluding a relevant factor whether liable to be quashed.*

C

Many applicants for one permit for a short route pressed their claims before the Regional Transport Authority under the Motor Vehicles Act, 1939. The Transport Authority evaluated the relevant merits and awarded the permit to the appellant. The system of marks under the Rules framed under the Act by the Tamil Nadu Government, prescribes various qualifications for applicants for permits for passenger transport under the Act. The rule emphasises that the paramount consideration of the interest of the public as enshrined in section 47(1) must be given full weight while awarding permits. One of the rules provides that preference shall, other things being equal, be given in respect

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of the routes to persons who have not held any permit for stage carriage. One of the considerations which must weigh with the authorities is the business of technical experience in the field of motor operation. The appellant secured 4 marks as against 3.1 marks secured by respondent No. 1. In addition, the appellant was entitled to a preference for being a new entrant since the route was a short one. The Appellate Tribunal reversed the order of the Transport Authorities and granted the permit to respondent No. 2 and set aside the permit granted in favour of the appellant on the ground of public interest in the matter of passenger transport service and held that the appellant's ex-

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perience as lorry operator cannot be equated with respondent No. 2's experience in Bus operation. This view was taken by the Tribunal following section 47(1).

The appellant filed a Writ Petition in the High Court which was rejected.

On appeal by Special Leave,

HELD : (1) The rules or guidelines could not be discarded in the name

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of section 47(1). The Rules made are really in implementation of section 47(1) but is not exhaustive of all the considerations that would prevail in a given situation. The jurisdiction is given to the Tribunal to take note of other considerations in public interest flowing out of section 47(1). The Rules, are, however, not to be discarded but they can be supplemented or outweighed. In the name of public interest something opposed to the Rules cannot be done. The Appellate Tribunal has actually contravened rule 155(3) which accords 2 marks for applicants who have a certain experience in road trans-

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port service. Road Transport Service is defined by secton 68A(a) and it makes no distinction between the type of transport vehicles in which experience has been gained whether it be of passenger transport or a lorry transport. The distinction made between passenger transport and lorry service experience by the Tribunal is illegal. A relevant factor has thus been wrongly excluded. The order of the Appellate Tribunal is liable to be quashed on the well-worn ground that material consideration if ignored makes the order vulnerable. Moreover, there is an apparent mis-construction of the relevant rule. The respon-

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dent No. 1 stated that there were many other grounds which he could have urged before the Tribunal but which have not been adverted to by the Tribunal because he could have urged before the Tribunal but which have not been adverted to by the Tribunal because respondent No. 2 succeeded on one ground. It is, therefore, fair that the case should be remanded to the Appellate Tribunal for being heard *de novo*. [216-E-H, 217A-E]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1266 of 1975.

Appeal by special leave from the Judgment and Order dated 3rd March, 1971 of the Madras High Court in Writ Petition No. 583 of 1971.

K. S. Ramamurthi, A. T. M. Sampath and *E. C. Agarwala,* for the Appellant. B

B. Sen and *Vineet Kumar* for Respondent No. 2.

The Judgment of the Court was delivered by

KRISHNA IYER, J. A single fundamental flaw in the order of the Appellate Tribunal (under the Motor Vehicles Act, 1939), constrains us to allow this Appeal challenging the High Court's refusal to interfere with the grant of the permit in favour of Respondent No. 2. C

Many applicants for one permit for a "short route" pressed their claims before the Regional Transport Authority which evaluated the relevant merits and awarded the permit to Applicant No. 6, who is the Appellant before us. On appeal, Applicant No. 3, who is respondent No. 2 before us, succeeded. Whereupon, a Writ Petition was filed without succees and the disappointed appellant has come to this Court by special leave. D

The system of marks, under the Rules framed under the Act by the Tamil Nadu Government, prescribes the various qualifications for applicants for permits for passenger transport under the Motor Vehicles Act, Rule 155-A crystallises these considerations and describes them as *guiding principles* for the grant of stage carriage permits. The rule itself emphasizes what is obvious, that the paramount consideration of the interest of the public, as enshrined in Section 47 (1), must be given full weight while awarding permits. That means to say that the various factors set out in rule 155-A are subject to Section 47(1). This is clarified by sub-rule (4) of Rule 155-A, which runs thus : E

> "After marks have been awarded under sub-rule (3), the applicants shall be ranked according to the total marks obtained by them and the application shall be disposed of in accordance with the provisions of sub-section (1) of Section 47". F

There is no doubt that bus transport is calculated to benefit the public and it is in the fitness of things that the interest of the travelling public is highlighted while evaluating the relevant worth of the various claimants. G

There are two circumstances which require to be stressed because they have been overlooked by the appellate tribunal in its disposal of the comparative merits of the rival claimants. Sub-rule (5)(i) of Rule 155-A states that preference shall, other things being equal, be given in the disposal of applications in respect of short routes ..... to persons who have not held any permit for a stage carriage. Among the considerations which must weigh with the authorities entrusted with the power to grant permits, is business or technical experience in the H

A field of motor vehicles operation. Rule 155-A in Item (D), sub-rule (3) specifically states "two marks shall be awarded to the applicants who have business or technical experience in the road transport service as defined in clause (a) of Section 68-A of any class of transport vehicles for a period of ten years or more".

B Having regard to the marking system as adumbarated in rule 155-A, a broad sheet was apparently prepared and the appellant before us (Applicant No. 6) secured 4 marks as against the second respondent (Applicant No. 3) who got 3.10 marks. Ordinarily, therefore, the applicant who got higher marks should have won the battle. Moreover, in a *short route,* as in this case, the rule contemplates preference being given to a new entrant, of course, other things being equal. In this C case, therefore, the appellant before us, being admittedly a new entrant, was entitled to preference, the route being a short one, other things being equal. The short question that, therefore, fell before the Appellate Authority was as to whether other things were equal. This aspect attracted the attention of the Appellate Authority, but its consideration unfortunately was unsatisfactory. The Appellate Tribunal observed that though the Applicant No. 6 had secured higher marks than Applicant D No. 3 : "I am inclined, having regard to the public interest in the matter of passenger transport service, to agree with the appellant's contention that the respondent's experience as lorry operator cannot be equated with the appellant's experience in bus operation." This view, according to him, is tenable under Section 47(1) since this matter involves grant of bus permit. "The fact that the appellants are bus operators, must *necessarily* over-ride the fact of the respondent being a lorry operator. E Though the route in question is a short route and there is a new entrant like the respondent, the respondent cannot automatically be preferred in the absence of other things being equal, in accordance with clause 5(1) of Rule 155-A".

The error that has crept into the order of the Appellate Tribunal consists in thinking that the rules or guidelines could be discarded in F the name of Section 47(1). Actually, Rule 155-A is in implementation of Section 47(1), but is not exhaustive of all the considerations that will prevail in a given situation. Therefore, it is that there is jurisdiction given to the Tribunal to take note of other considerations in public interest flowing out of Section 47(1). Not that the sub-rules of Rule 155-A can be discarded, but that they may be supplemented or outweighed. Not that, in the name of public interest, something opposed G to the sub-rules of Rule 155-A can be done but that, within the combined framework of Section 47(1) and rule 155-A, there is scope for play of the jurisdiction of the Tribunal to promote public interest. Viewed in this perspective the Appellate Tribunal has actually contravened Rule 155(3)(D). That provision expressly accords two marks for applicants who have a certain experience in road transport service. 'Road transport service' is defined in clause (a) of Section 68-A and H this definition is specifically incorporated in Rule 155-A (3) (D). It follows that the rule makes no distinction between the type of transport vehicle in which experience has been gained whether it be a passenger transport or a lorry transport. The view taken by the appellate tribunal

that because the permit is for passenger transport, lorry service experience, even if it falls under Rule 155-A (3) (D), can be ignored, is therefore, illegal. A relevant factor has thus been wrongly excluded. A

Connected with the same flaw is what we have earlier indicated namely, that the Appellate Tribunal has held that the new entrant (Applicant No. 6) need not be given the preference he is eligible for under Rule 155-A (5) because other things are not equal. According to him, other things not equal because Applicant No. 6 has lorry transport experience while Applicant No. 3 has bus transport experience. We have already explained that this is a fallacy. In this view, the preference that flows in favour of applicant No. 6 under Rule 155-A (5) should not have been denied to him for the reasons set out by the Tribunal. B C

For these reasons, the order of the Appellate Tribunal is liable to be quashed. The well-worn ground that mat material consideration, if ignored, makes the order vulnerable, applied. Moreover, these is an apparent mis-construction of the relevant rule by the Appellate Tribunal, as we have explained above.

This does not mean that this Court will award the permit to one party or the other. That is the function of the statutory body created under the Motor Vehicles Act. Moreover, as Mr. Sen, appearing for the second respondent, has rightly pointed out, his client had many other grounds to urge before the Appellate Tribunal to establish his superiority, which have not been adverted to by the Appellate Tribunal because on one ground he succeeded. It is only fair, therefore, that the case is remanded to the Appellate Tribunal for being heard *de novo* wherein both sides (no other applicant will be heard), will be entitled to urge their respective claims, for the single permit that is available to be awarded. D E

The only point that remains to be decided is as to what is to happen for bus operation during the period the Appeal is to be heard and the further proceedings which may follow. We direct that the second respondent be allowed to ply the bus as he is doing it now until disposal of the appeal by the Appellate Tribunal. It is represented by Mr. Ramamurthy, appearing for the Appellant, that his client had been plying the bus on the route on an earlier occasion till the High Court dismissed the Writ Petition. If there had been any period when both operators had been plying their buses on the route during the course of this litigation, especially at the time the Writ Petition was pending in the High Court, it will be open to the Appellate Tribunal to allow the Appellant before us (Applicant No. 6) also to ply his bus on the same route. With these directions, we allow the Appeal and direct the Appellate Tribunal to dispose of the motor vehicles Appeal No. 542 of 1970. Parties will bear their own costs throughout. F G

P.H.P. *case remanded.*