

A

R. M. SUBBARAJ

v.

KODAIKANAL MOTOR UNION (P) LTD.

August 29, 1972

B

[A. N. RAY, I. D. DUA AND K. K. MATHEW, JJ.]

State Transport Appellate Tribunal, Madras—In deciding appeal in respect of competing claims for stage carriage permits Tribunal taking into account directions in Government Order—Tribunal's decision is vitiated.

C

D

The appellant and the respondent applied to the Regional Transport Authority for the grant of six stage carriage permits. The Authority directed the grant of one permit each on two out of six routes to the respondent. The appellant filed an appeal to the State Transport Appellate Tribunal. Taking into account *inter alia* Government Order No. 2265 dated 9th August, 1958 the Tribunal set aside the grant of two permits to the respondent and directed the grant of one permit to the appellant and the other to another appellant before the Tribunal. The respondent filed a writ petition in the High Court of Madras. The writ petition was dismissed by the Single Judge but the respondent's appeal was allowed by the Division Bench on the ground that the Government Order entered into the decision of the Tribunal. In this Court it was urged on behalf of the appellant that the Tribunal made reference to other grounds for the grant of permit to the appellant and therefore the order of the Tribunal could be sustained as valid. The Government Order in question was itself struck down by this Court as invalid in *R. Lakshminarayanan's* case.

E

Dismissing the appeal,

F

HELD : It is manifest that the State Transport Appellate Tribunal not only referred to the Government Order as indicating the basis for giving preference for the grant of permits but also applied "the Government Order in assessing the competing claims of the contenders for permits. Once it is found that a Tribunal which under the statute had to deal with the applications for permits in a judicial manner is directed by the Government to adopt any specified method for assessing the merits of the applicants and the Tribunal takes into consideration such direction of the executive, the judicial determination by the Tribunal is polluted. The High Court was right in directing that the applications must be dealt with and disposed of "outside the ambit of the impugned Government Orders of their constraining interference." [1107H]

G

R. Lakshminarayanan v. T. H. Vythilingam Pillai & Anr. (Civil Appeal No. 1792 of 1966 decided on 27 August, 1969.

CIVIL APPELLATE JURISDICTION : C.A. No. 1057 of 1967.

Appeal by certificate from the order dated August 11, 1964 of the Madras High Court in Writ No. 126 of 1963.

H

G. L. Sanghi, D. N. Misra, for the appellant.

M. K. Ramamurthy and Saroja Gopalakrishnan, for the respondent.

The Judgment of the Court was delivered by

Ray, J. This appeal is by certificate from the judgment dated 11 August, 1964 of the High Court of Madras reversing the decision of the learned Single Judge. The High Court issued a writ quashing the order of the State Transport Appellate Tribunal, Madras and directed the Appellate Tribunal to determine the question of grant of permit "outside the ambit of the impugned Government Order No. 2265 dated 9 August, 1958".

The appellant and the respondent applied to the Regional Transport Authority for the grant of six stage carriage permits. The respondent alleged to have maximum operational communication. The Regional Transport Authority directed the grant of one permit each on two out of six routes to the respondent.

The appellant filed an appeal to the State Transport Appellate Tribunal. The State Transport Appellate Tribunal considered the appellant to be the only qualified medium route operation. The State Transport Appellate Tribunal set aside the grant of two permits to the respondent and directed the grant of one to the appellant and the other to another appellant before the State Transport Appellate Tribunal.

The respondent filed a writ petition in the High Court of Madras. Among the various grounds on which the respondent impeached the order of the State Transport Appellate Tribunal it was said that the Tribunal overlooked the superior claims of the appellant by treating the preference mentioned in the Government Order as an absolute preference.

The learned Single Judge held that though the State Transport Appellate Tribunal gave preference to the appellant because he was a medium operator the Tribunal gave certain additional reasons for the grant of permit to the appellant. The learned Single Judge held that a mere reference to the Government Order could not be "magnified reasonably into a principal ground on the basis of which the Tribunal reached the conclusion" in favour of the appellant.

The respondent took up the matter on appeal. The High Court accepted the appeal. The reason given by the High Court was that the Government Order entered into the decision of the State Transport Appellate Tribunal as a major factor in the decision. It was observed that one of the substantial grounds for the grant was that the respondent was the most qualified medium route operator

A The order of the State Transport Appellate Tribunal specifically mentions the Government Order No. 2265 dated 9 August, 1958 and incorporates the same as a part of the speaking order in the determination of the controversy. The Government direction was that preference will be given for short routes to new entrants and for medium routes to applicants with one or more buses. The State Transport Appellate Tribunal referred to the fact that the appellant was a four permit holder and on that basis the State Transport Appellate Tribunal gave the appellant one mark and said that the appellant was the only qualified medium route operator. The High Court quashed the order of the State Transport Appellate Tribunal because the Government Order entered into the decision of the Tribunal.

C Counsel for the appellant repeated the submission made before the High Court that the State Transport Appellate Tribunal made reference to other grounds for the grant of permit to the appellant, and, therefore, the order of the Appellate Tribunal could be sustained as valid.

D This Court has in several decisions held that the Regional Transport Authority discharges quasi judicial function in dealing with application for permits and evaluating the rival claims of the parties for the grant of permit. Section 43A of the Motor Vehicles Act, 1939 as inserted by the Madras Amending Act 20 of 1948 confers power on the State Government to issue orders and directions to the State Transport Authority only in relation to administrative functions. It is also held by this Court that the decision of the Regional Transport Authority "must be absolutely unfettered by any extraneous guidance by the executive or administrative wing of the State".

E The relevant Government Order No. 2265 dated 9 August, 1958 was held invalid by this Court in *R. Lakshminarayanan v. T. H. Vythilingam Pillai & Anr.* (Civil Appeal No. 1792 of 1966 decided on 27 August, 1969).

G It is manifest that the State Transport Appellate Tribunal not only referred to the Government Order as indicating the basis for giving preference for the grant of permits but also applied the Government Order in assessing the competing claims of the contenders for permits. Once it is found that a Tribunal which under the statute has to deal with applications for permits in a judicial manner is directed by the Government to adopt any specified method for assessing the merits of the applicants and the Tribunal takes into consideration such direction of the executive, the judicial determination by the Tribunal is polluted.

A The High Court was right in directing that the applications must be dealt with and disposed of "outside the ambit of the impugned Government Orders or their constraining interference"

B For these reasons, the appeal is dismissed. There will be no order as to costs.

G.C.

Appeal dismissed.