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C.M. Chandramathy Vs. Kasaragod Bus Transport Co. and ors.

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Court : Kerala

Decided On : Sep-05-1983

Reported in : AIR1983Ker273

Judge : K.S. Paripoornan, J.

Acts : Consitution of India - Article 226; Motor Vehicles Act, 1939 - Sections 47A; Kerala Motor Vehicles Rules - Rule 177A(4), 177A(5)

Appeal No. : O.P. No. 4116 of 1983-L

Appellant : C.M. Chandramathy

Respondent : Kasaragod Bus Transport Co. and ors.

Advocate for Def. : K.C. Sankaran, Adv. General,; P.V. Baby and; Thampan Tho

Advocate for Pet/Ap. : K.P. Dandapani and; Sumathi Dandapani, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

K.S. Paripoornan, J.

1. The petitioner is a stagecarriage operator. In this O. P. she seeksto quash Ext. P-10 judgment passed bythe 5th respondent, the State TransportAppellate Tribunal, Eruakulam dated19-5-1983. The 4th respondent-RegionalTransport Authority, Cannanore-considered the grant of two regular permitsto operate on the route -- CannanoreNew Bus Stand - Talappedy S. B. Via:Teliparamba, Payyanur, Karivallur,Kanhangad, Bekal Bridge, Kalnad Paravandukkom, Chattanchal, Kasaragod and Kumbala -- for a period of three yearsfrom the date of issue. By Ext. P-1 orderdated 4-4-1983, the 4th respondent granted one permit to the petitioner herein and another permit to the 2ndrespondent herein. The 1st respondent herein and anotherapplicant (applicant No. 4 before theR. T. A.) filed appeals as M. V. A. A.Nos. 102 of 1983 and 145 of 1983. Thepetitioner figured as common 4th respondent in both the appeals. The 5threspondent-Appellate Tribunal by a common judgment, Ext. P-10, affirmedExt. P-1 order to the extent of the grantof one permit in favour of applicantNo. 1, who figured as common 3rd respondent before the Appellate Authority.But in the appeal filed by applicantNo. 3, the 5th respondent set aside thegrant of permit in favour of the common 4th respondent therein (the petitioner) and granted the permit to theappellant in M. V. A. A. No. 102 of 1983(1st respondent

in the O. P.) with reference to his vehicle, KLN 9229 or still a later model vehicle. Applicant No. 2before the R. T. A. and the common 4threspondent in both appeals -- M.V.A.A,102 and 145 of 1983 -- is the petitionerherein. In this O. P. the petitioner impugns Ext. P-10, appellate order, to the extent, the appellate authority set asidethe order of the 4th respondent grantingthe permit to the petitioner and ingranting the permit to the 1st respondent in the O. P.

2. Five persons applied for the grant of permits to operate in the above route, Cannanore Bus Stand -- Kumbla. They were (1) T. K. Kunhikrishnan, (2) Smt. M. Chandramathi, (3) Kasargod Bus Transport Co., (4) Sri T. T. Narayanan, and (5) Mg. Partner, Bharath Motor Service. The matter was considered as item No. 1 by the 4th respondent on 4-4-1983. The decision of the 4th respondent to grant the two permits to applicants Nos. 1 and 2 (T. K. Kunhikrishnan and Smt. M. Chandramathi) is to the following effect:

'Heard the applicants 1 to 5. This is a long_route. Marks are awarded -- All get five marks each no. 3 is having a pucca permit on the almost identical route. No. 4 has already 4 pucca permits. Applicant No. 2 has offered a 1983 model vehicle of (if)? the permit is granted. No. 5 has not produced any permit less certificate for the vehicle offered by him, which is already included in Mangalore District (CNG 4767) and it is 1981 model vehicle also. No. 1 has offered KRC 1069 a 1982 model vehicle. Hence applicants 1 and 2 are preferred in public interest; and one permit is granted to each. The other applications are rejected.'

3. From the aforesaid order, Ext. P-1, applicants Nos. 3 and 4 filed M.V.A.A. 102 and 145 of 1983 respectively before the 5th respondent. The 5th respondent, State Transport Appellate Tribunal, held as follows in para 3 of Ext. P-10 :

'The route in question is admittedly a long route covering a distance of 154 Kms. Marks appear to have been awarded to the various applicants for the respective qualifications claimed by them as seen from the mark list appended to the impugned order. It can be seen that both the appellants as well as respondents 3 and 4 could claim five marks In all. But for sector qualification, the 4th respondent as well as the appellant in M.V.A.A. 145 of 1983 could score only three marks, while the appellant in M.V.A.A. 102/83 and the third respondent could claim 4 marks for sector. The correctness of award of marks in favour of the various applicants as shown in the mark list attached in the impugned order was not challenged before me. A perusal of the mark list will clearly show that by reason of their full sector qualifications, the appellant in M.V.A.A. 102/83 and the common third respondent in both these appeals were better qualified than the other applicants who sought the permit before the RTA. It is also further seen that on the date on which the impugned order was passed the appellant in MVAA 1(12/83 and the third respondent were operating temporary service on the identical route on the strength of temporary permits issued to them. In fact for the grant of the said permits, they competed with other rival applicants before the RTA, Cannanore and a temporary permit each was granted to them as per the proceedings of the RTA dated 21-12-1982 wherein it was held that they held superior qualifications compared to the rival applicants. In the impugned order apart from stating that the appellant in MVAA 102/83 is having a pucca permit on the almost identical route, nothing else is stated which could justify the said appellant being disqualified for the grant. Pucca sector qualification can hardly be a disqualification. It can thus be seen that the grant of the permit in favour of the common 4th respondent in preference to the appellant in MVAA No. 102/83 was in

any way not justified. The grant of the permit appears to have been made in favour of the 4th respondent only because she offered a 1983 model vehicle. The model of the vehicle offered by the third respondent could have assumed significance only if she was equally qualified in respect of other relevant qualifications as the other rival applicants and since that is not so, the preference given to her only on the basis of the 1983 model vehicle offered by her cannot be supported. The appellant in MVAA 102/83 also offered a vehicle KLN 9229 even in his application for the grant of the permit and also in his representation. None of the parties has got any case that the vehicle offered by him was in any way unfit or unsuitable for operating the service, and in fact it was with the said vehicle that it was operating temporary service on the identical route on the date on which the impugned order was passed.' (Emphasis supplied).

Again in para 4 the Appellate Tribunal held:

'.........The appellant in MVAA 102/83 and 'the common third respondent in both the appeals had ready vehicles to be offered. Both of them besides, score 5 marks in all and could unlike the other rival applicants further claim full four marks for sector qualification. This evidently gave them an edge over the other rival applicants justifying the grant of the permit in their favour to the exclusion of others. They too like the other applicants had their office on the route and also workshop facilities on the routes. Upon the materials available on record, it can definitely be said that the two permits in question ought to have been granted in favour of the appellant in MVAA 102/83 and the common third respondent in these appeals.'

The Appellate Tribunal concluded as follows:.

'6. I am therefore of the view that of the two permits in question, one ought to have been granted in favour of the appellant in MVAA 102/83 and the other permit ought to have been granted in favour of the common third respondent in these appeals as already done by the RTA. It follows that the grant of one permit in favour of the common third respondent in these appeals has to be confirmed and the grant of the other permit in favour of the common 4th respondent has to be set aside and the said permit granted to the appellant in MVAA 102/83.'

4. Mrs. Sumathi Dandapani attacked Ext. P-10 order on various grounds:

The State Transport Appellate Tribunal was not justified in setting aside Ext. P-1 order of the R.T.A. granting the permit to the petitioner and in granting the permit to the 1st respondent. The reasoning to do so is vitiated. In a case, where marks have been awarded in conformity with Rule 177-A (4) of the Kerala Motor Vehicles Rules, reckoning sector and/or residential qualifications, and in the event of a 'tie', a preference given to the 1st respondent on a further probe and evaluation, on the ground of lull sector qualification is unjustified. In other words, in a case where the marks awarded to the contesting applicants are equal, a microscopic examination or a further mini qualification regarding 'sector qualification' is not permissible. The 5th respondent has done so in stating that the 1st respondent has a full sector qualification and so better qualified than the ether applicants. This wrong approach has vitiated the conclusion reached in Ext. P-16. The 5th respondent has failed to advert to Exts. P-5 and P-6, The 1st respondent had a permit to run an Express Service in the route Gannanore Railway Station-Kumbla. He applied to the 4th respondent for permission to ply the same as an ordinary stage carriage service since

it was found to be uneconomical to ply the bus as Express Service (Ext. P-5). This was granted by Ext. P-6. This will show that the 1st respondent was not a fit and proper person who will operate on the route efficiently. This aspect has been omitted to be noticed. On the other hand Mr. Thampan Thomas, learned counsel appearing for the 1st respondent, contended that the R.T.A, committed a serious error in granting the permit to the petitioner solely on the ground that the petitioner offered a latter model vehicle, which itself has no factual foundation, that the 1st respondent has been found to be a most qualified person as a stage carriage operator in a contest between the petitioner, the 1st respondent and others when temporary permit was granted, that at any rate the 1st respondent had superior qualifications including the qualification acquired as a result of operating a temporary permit and though the petitioner and the 1st respondent were awarded equal marks on the basis of materials before the R.T.A. and the S.T.A.T., the qualifications of the 1st respondent were superior and that in the grant of stage carriage permit, the guidelines contained in Section 47 of the Motor Vehicles Act, should be the deciding factor and so viewed, in any event, the 1st respondent is entitled to the permit because of the superior qualifications and the authorities should 'choose' such a person in 'public interest' and 10 interference of Ext. P-10, judgment, is called for in these proceedings under Article 226 of the Constitution.

5. The relevant statutory provisions, which would guide the grant of a permit and which were stressed during arguments, are contained in Section 47(1)(a) to (f) of the Motor Vehicles Act and Rule 177-A (4) (A) and (B) and Rule 177-A (5) of the Kerala Motor Vehicles Rules. They are as follows:

'47: Procedure of Regional Transport Authority in considering application for stage carriage permit (1) A Regional Transport Authority shall in considering an application for a stage carriage permit, have regard to the following matters, namely --

(a) the interests 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;

(cc) the publication of a scheme under Section 68C in respect of service of stage carriages;

(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;

(f) the condition of the roads included in the proposed route or area;'

'Rule 177A (4) A. SECTOR OR RESIDENTIAL QUALIFICATION.

(i) Four marks may be awarded to the applicant who has his place of business or

residence on, or at either terminus of the route applied for, and two marks may be awarded to the applicant who resides not on the route, but within 8 kilometers from the route applied for.

(ii) Marks may be awarded to the applicant who has sector qualification on the route applied for, as follows:--

(a) Where the sector qualification is between 1 per cent and 25 per cent of the total distance of the route applied for -- one mark;

(b) Where the sector qualification is between 26 per cent and 50 per cent of the total distance of the route applied for -- Two marks;

(c) Where the sector qualification is between 51 per cent and 75 per cent of the total distance of the route applied for-- Three marks;

(d) Where the sector qualification is above 75 per cent of the total distance of the route applied for--- Four marks;

Provided that Clauses (i) and (ii) shall not apply to an application for permit for a short route;

Provided further that if the applicant has both residential and sector qualifications, he may be given marks either for residential qualification or for sector qualification, whichever is more advantageous to him.

B. Business of Technical Experience in the Field of Stage Carriage Operation.

(i) Three marks may be awarded to an applicant operating stage carriages throughout the State in such a manner as to provide an efficient, adequate, economical and co-ordinated system of road transport services in the State.

(ii) One mark may be awarded to other applicants who have experience of more than one year in the operation of stage carriages :

Provided that Clauses (i) and (ii) shall not apply to ah application for permit for a short route.'

'177A (5). Applications finalised under sub-rule (4) shall then be disposed of in accordance with Sub-section (i) of Section 47 of the Act.'

6. Counsel for the petitioner Smt. Sumatra Dandapani, counsel appearing for the 1st respondent Mr. Thampan Thomas and Mr. V. C. James, Government pleader, appearing for the Statutory Authorities addressed before me various facts, some of them are of minor importance, and cited a number of derisions to substantiate their rival contentions. I do not think that in this proceeding under Article 226 of the Constitution of India a minute or microscopic investigation into various facts wherein some of them are disputed is possible in ordinary circumstances, in these proceedings, this Court is concerned with the question as to whether the Tribunal has committed any error of jurisdiction or other illegality or has contravened the principles of natural justice or fair play in passing the impugned order. As stated by the Supreme Court in Veerappa Pillai v. Raman & Raman Ltd. (AIR 1952 SC 192) (at

p. 195) :

'Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice, However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decisions impugned and decide what is the proper view to be taken, or the order to be made,' In a later decision, Sri Rama Vilas Service (P) Ltd. v. C. Chandrasekaran (AIR 1965 SC 107), Gajendragadkar, J. held (at p. 110):

'In dealing with applications for writs of certiorari under Article 226 in cases of this kind, it is necessary to bear in mind that the High Court is not exercising the jurisdiction of an Appellate Court in the matter. There is no doubt that in granting or refusing permits to applicants, the appropriate authorities are discharging a very important and a very onerous quasi-judicial function. Large stakes are generally involved in these applications, and so, it is of utmost importance that the appropriate authority should consider all the relevant facts carefully and in its order should set out concisely and clearly the reasons in support of its conclusions. It is hardly necessary to emphasise that applicants for permits whose applications are rejected should be satisfied that all points urged by them in support of their respective claims have been duly considered before the matter was decided. Even so, it would, we think, be inappropriate for the High Court to issue a writ of certiorari mainly or solely on the ground that all reasons have not been set out in the judgment of the appropriate authority. In entertaining writ petitions, the High Court must not lose sight of the fact that decisions of questions of fact under the Motor Vehicles Act have been left to the appropriate authorities which have been constituted into quasi-judicial Tribunals in that behalf, and so, decisions rendered by them on all questions of fact should not be interfered with under the special jurisdiction conferred on the High Courts under Article 226, unless the well-recognised tests in that behalf are satisfied.'

(Page 110 para 9)Observations in Syed Yakoob's case (AIR 1964 SC 477) to the effect that the failure of the Appellate Tribunal to give a reason for its finding or to refer specifically to the evidence adduced by one of the applicants, will not be an error to justify interference under Article 226 of the Constitution are also relevant.

7. On a perusal of Section 47(1) of the Motor Vehicles Act, Rule 177A (4) and (5) of the Kerala Motor Vehicles Rules and the relevant decisions of courts, the following aspects amongst others, seem to be fairly clear:

(A) In the matter of grant of a permit, the statutory authority, the R.T.A., should have regard to the matters enumerated in Section 47(1)(a) to (f) and the matters enumerated are not necessarily exhaustive in detail and other allied matters can be considered.

(B) Rule 177A enjoins that in assessing the qualifications of the various applicants, the sector or residential qualification and business of technical experience in the field of stage carriage operation should be assessed by awarding marks as specified in the

Rules;

(C) Rule 177A (5) enjoins that after the award of marks, the applications shall be disposed of in accordance with a 47 (1) of the Act. 'This means that the marks awarded shall weigh but not govern the award'........,

ey will shape but will not clinch in the ultimate selection'. The number of marks obtained by each applicant can only provide a guiding principle for the grant of the permit. It can never override the consideration of public interest which must dominate the selection. Under Section 47(1) it is ultimately on the touch-stone of public interest that selection of an applicant for grant of permit must be justified. Briefly, the marks awarded will only guide but not govern the matter. The guidelines in the lines may be supplemented or outweighed, by reference to matters which are relevant and related to the main object 'the interest of the public generally.'

A combined reading of Section 47(1) and Rule 177A (4) and (5) will show that after assessing the qualifications by the award of marks, the Regional Transport Authority should dispose of the applications by applying its mind to the various enumerated matters in Section 47(1) of the Act. The decisions of the Supreme Court reported in Balasubra-monia v. Sambandamoorthy (AIR 1975 SC 818) at pp. 822 and 82.3, Kumaraswamy v. S.T.A.T. (AIR 1976 SC 2202), and D. R. Venkitachalam v. Dy. Transport Commr. (AIR 1977 SC 842) are relevant in this context. The main object specified in Section 47 of the Act is the 'service of interests of the public generally' and other considerations must yield to it. Such other relevant considerations should be related to the above main object and such facts and circumstances should be related to or should have link with the main object. (Ajantha Transports v. T. V. K. Transports (AIR 1975 SC 123 at p. 131).

(D) The main considerations required to be taken into account granting a permit under Section 47 of the Act are the interest of the public in general, the advantages to the public of the service to be provided and these would include inter alia consideration of factors such as experience of the rival claimants, their past performance, the availability of stand by vehicles with them (reserve vehicles), their financial resources, facility of a well-equipped workshop possessed by the applicant, etc. The grant of stage carriage permits is not grant of a 'largesse'. -- P.B. Pvt. Ltd. v. S.T.A. Tribunal (AIR 1974 SC 1174). These factors are only illustrative and not exhauative in considering the application under Section 47(1) of the Act. Operation on the route on a temporary permit by an operator would be a qualification for a pucka permit. Joseph v. Senapathy (1970 Ker LT 1102) at page 1106. This may fall under Section 47(1) (a) of the Act. The availability of a later model bus with an applicant is relevant consideration under Section 47(1)(a) and (b). Ikram Khan v. S.T.A.T. (AIR 1976 SC 2333).

(E) The point of time with reference to which the qualifications for permit should be evaluated is the date on which the Regional Transport Authority deals with the application.-Cannanore District Motor Transport Employees Cooperative Society Ltd. v. M. P. C. (1962 Ker LT 446) : (AIR 1962 Ker 341) (FB) and Narayanan v. R.T.A. Trichur (1980 Ker LT 249) : (AIR 1980 Ker 115) (FB).

(F) If other qualifications are equal, the candidate who offers a later model vehicle and of better quality (better vehicle) can be preferred by the R.T.A. But the availability of the offering of the latest model (better vehicle) should be done at least

when the matter was taken up for consideration by the Regional Transport Authority to justify the authority to take tha matter into account at the time of consideration of the matter.-- Vide Narayanan v. R.T.A. Trichur (1980 Ker LT 249) at p. 253 : (AIR 1980 Ker 115 at p. 120).

(G) The crucial words 'the interest of the public 'generally' under Section 47(1)(a) and the matters mentioned in Section 47(1)(a) to (f) are not necessarily exhaustive in deciding the matter. They cover ail aspects regarding both men and machinery, and the focus is not confined to the interest of the travelling public.-- Section 47(1)(a) is comprehensive enough to cover the interest of the public generally besides the interest of the travelling public.-- M. K. Padmanabhan v. State (AIR 1956 Mad 349), Surajdeo Singh v. S.T.A.T. (AIR 1977 Pat 7) and Sarju Bala v. State of Bihar (AIR 1972 Pat 62) etc.

8. It is common ground that the 1st respondent (applicant No. 3) is an experienced fleet operator. It is also in evidence that the petitioner, applicant No. 2, is also a fleet operator. It will be seen from the details furnished by the petitioner and 1st respondent in their applications praying for the issue of a permit that the 1st respondent has given the following details as against columns 12, 13, 14 and 16 as follows:

'12 Particulars of any stage carriage permit held by the applicant.... 7 pucca route buses 2 pucca spare (Reserve) buses.13. N umber of vehicles intended to be kept in reserve to maintain the service.... 2 Temporary route buses and 1 idle bus.14. Arrangements intended to bemade

(a) for the housing and repair of the vehicle.... Having fully equipped garage registered under Factories Act and repairing facilities at Cannanore and Talapady.(b) for the comfort and convenienceof passengers.Having booking offices on the route.(c) for the storage and safe custody of luggage of Treasury.do.16. I/We have come to possession of the vehicle on I/We have not yet obtained possession of the vehicles and I/we understand that the permit will not be issued until I/we have done and have produced the certificate of registration.Now having a vehicle KLN 9229 or will arrange later model suitable vehicle within the prescribed period.'

The details furnished by the petitioiner for the same column 12, 13, 14 and 16 in Ext. R1-C are as follows:

'12.Particulars of any stage carriage permit held by the applicant....6 pucca permits.13.Number of vehicles intended to be kept in reserve to maintain the service....not required.14.Arrangements intended to be made.

(a) for the housing and repair of the vehicle:...own workshop.(b) for the comfort and convenience of passengers....--(c) for the storage and safe custody of luggage....--16.16. I/we have come to possession of the vehicle on I/we have not yet obtained possession of the vehicle and I/we understand that the permit will not be issued until I/we have done and have produced the certificate of registration.'(Blank)

It is evident from the above that on the date of the application the petitioner had not stated in the application regarding the possession of the vehicle nor has furnished any particulars regarding that, in column 16 in Ext. R1 (c). The 1st respondent has given specific details regarding the bus possessed by him and has also specified that

he will arrange a later model suitable vehicle, within the prescribed period. It could also be seen from Col. No. (13) that the 1st respondent had two temporary route buses and one idle bus, as reserve; whereas the petitioner had none. It is also seen from Ext. P8 produced by the petitioner that the vehicle was delivered to the petitioner on 30-3-1983 but was registered only on 2-5-1983 long after the grant was made by the R.T.A. on 4-4-1983 (KRC 1566 --year of manufacture-1983). Who made the endorsement in Ext. p. 8, regarding delivery on 30-3-1983 and when? The initials in Ext. P. 8 is dated 2-5-1983. This assumes importance in view of the contra averments in the counter of the 1st respondent dt. 3-5-1983 -- pages 3 & 5, that the vehicle was not produced before respondent No. 4 even at the time of consideration. In the application filed before the R.T.A., the vehicle was not specified. It is not seen from the files as to whether, when the R.T.A. considered the matter on 4-4-1983, the petitioner had intimated or brought to its notice the availability and possession of the 1983 model vehicle; there is no record to substantiate this fact except the entry in Ext. P8 that the vehicle was delivered to the petitioner on 30-3-1983. But the initials are dt. 2-5-1983. As could be seen from Ext. P1, the petitioner was granted a permit only on the ground that she offered a 1983 model vehicle, if the permit is granted. There is no record or entry in the files of R.T.A. to show that this availability of the vehicle was intimated at least on the date when the R.T.A. considered the matter on 4-4-1983. How the R.T.A. mentioned in the order that 'Applicant No. 2 has offered a 1983 model vehicle it the permit is grantee is not clear. This is not borne out by any record. I questioned the counsel for the petitioner and the Government Pleader who had the original records with him. They were not able to point out to any record, as available with R.T.A. at least when Ext. P1 was passed. On going through the original files placed before me later. I find at page 295, there is a communication from the petitioner dt. 5-2-1983 (initialled by some authority on 5-3-1983) offering a ready vehicle KLN 8535, 1982 model Tata to be put on this road. Did the R.T.A. apply its mind at all properly in the matter, in the circumstances? This is doubtful. On the other hand the only material available is Ext. P8 filed by the petitioner herself which shows that the vehicle bearing Reg. No. 1566 (1983 model) was registered only on 2-5-1983. Be that as it may reading the order of the State Transport Appellate Tribunal as a whole, it could be found that two factors were adverted to, to come to the conclusion that the 1st respondent should be preferred. They are:

(1) Full sector qualification; and

(2) Operation of a temporary service on an identical route on the strength of a temporary permit.

(In Ext. P10 the 5th respondent has proceeded on the basis that the petitioner offered a '1983' model vehicle and has discussed the matter on that basis. So, the assumption by R. T. A. about the vehicle is not of any consequence). It cannot be denied, that even assuming that a further evaluation based on sector qualification cannot be made after the award of marks, in a case where the rival applicants secure equal marks, the operation on the route of a temporary permit would certainly be an (additional) qualification. That was an additional qualification, the 1st respondent had, though the petitioner and the 1st respondent got equal marks. Such a factor is a relevant consideration, which could be taken into account by the 5th respondent in preferring the 1st respon-dent. The petitioner had no such qualification. An additional factor, that the 1st respondent had full sector qualification was also stated. In the circumstances, the 5th respondent stated that the petitioner and the 1st respondent though secured equal marks, are not equally qualified. In this context, the reference

by the R.T.A. granting the permit to the petitioner, on the sole ground that she has offered a 1983 model vehicle, should be borne in mind. Firstly the petitioner has not even offered a ready vehicle at the time of application nor is it clear whether it was so done at the time of consideration of the matter by the R.T.A. There is no record to substantiate the statement of R.T.A. to the above effect. Moreover offering a 1983 model vehicle by itself cannot overweigh other considerations. Reading Ext. P10 order as a whole, I have no doubt in my mind that the 5th respondent took into account only relevant matters in holding that the grant of the permit to the petitioner was not justified and that the 1st respondent should be given the permit on the route. There is no error of law or error of jurisdiction in the reasoning and conclusion arrived at by the 5th respondent in Ext P10 order. At any rate, there is no infirmity or vitiating element in Ext. P10 judgment, as laid down by the Supreme Court in the various decisions referred to in para 6 above, to justify interference in the matter under the discretionary jurisdiction vested in this court under Article 226 of the Constitution of India. Whether the scope of Exts. P5 and P6 was argued at all before the 5th respondent is in doubt. It is not, discernible from Ext. P10. Moreover, if what has been permitted by Ext. P6 is permissible, changing 'express' service into 'ordinary service', it passes one's comprehension as to how or why it is said, that such alteration will be any disqualification, if at all, the operator was honest in that if 'Express' service was uneconomical, instead of stopping, the service, he had continued to run it, though as 'ordinary service'. There is no infirmity or error -- much less any prejudice caused by non-advertence to Exts. P5 and P6. The attack on Ext. P10 on this score also has no force.

9. Counsel for the petitioner, Smt. Sumathi Dandapani contended that is so far as the 5th respondent has in Ext. P10 re-evaluated the sector qualification also, after the award of marks and has held that the 1st respondent by reason of the full sector qualification is better qualified, (para 3) there is an error of law, which vitiates the order. According to counsel when, once marks are awarded under Rule 177A (4), the 5th respondent erred in law in making a further probe or appraisal regarding 'full sector qualification' of the 1st respondent and in holding that he is better Qualified than the petitioner. Counsel placed reliance on the judgment of this court, in O. P. No. 2363 of 1983 dt. 30-6-1983 and contended that when once marks are awarded (taking into account 'sector' qualification) a further reference to sector qualification could not be made at all. For one thing, reading Ext. P10 order as a while, it could be found that the 1st respondent was held to be better qualified on two grounds: (1) full sector qualification (superior qualification) and (2) operation of a vehicle on the basis of a temporary permit on the identical route. Counsel for the 1st respondent sought to counter this attack stating that the interpretation placed on Ext. P10 judgment and also the scope of the judgment rendered in O. P. No. 2363 of 1983, by petitioner's counsel is unwarranted and unsustainable. In my opinion, the counsel for the 1st respondent is right in stating so. Ext. P10 should be read as a 'whole' and so read, on a 'total view', the 5th respondent has given just and reasonable grounds, which will be germane, focussing on the interests of the general public, to justify the grant of permit to the 1st respondent, one of them being the operation of the identical route on a temporary permit. So also the judgment rendered in O. P. No. 2363 of 1983 should be read in the light of the facts in that case and in the light of the Supreme Court decisions referred to therein. I do not understand the scope of Section 47(1) of the Act and Rule 177A (4) and (5) as laid down by the decisions of Supreme Court and other courts to warrant the submission that once the sector qualification has been taken into account for the award of marks, a further assessment or probe or evaluation of the relative merits of the applicants, based on sector qualification, is

totally interdicted or is absolutely tabooed under all circumstances. The award of marks is based only on Rule 177A (4). Rule 177A (5) and Section 47(1) of the Act envisaged that the R. T. A. shall have regard to the matters enumerated in (a) to (f) of the Section. In my opinion, the paramount consideration should be the various matters enumerated in Section 47(1)(a) to (i) and every factor that will further the interest of the public generally -should prevail in the grant of the permit. It should be noted that Section 47(1)(a) envisages to take into account, 'the interest of the public generally', and it is not confined 'to the interests of the travelling public alone.' The word 'interest of the public generally' is of very wide import and every factor or material, which will be conducive to the efficient and proper and smooth working, should be considered by the R.T.A. and a fortiori by the appellate authority hearing the appeal. To quote the words of the Division Bench of T. C. High Court in the decision reported in C. M. Chacko v. Korah Punnen (AIR 1954 Trav.-Co. 542). 'Maximum facilities for efficient and speedy transport throughout the State must be the goal in a fast moving age' and it cannot be said that if an operator with a better or full sector qualification is chosen in preference to another, who does not possess it, there is anything wrong or illegal. So understood, I do not think that in cases where the rival applicants have secured equal marks, even such of those factors which were taken into account in the first instance for the award of marks, can again be probed into or evaluated in greater detail to find out further, who amongst the applicants have got better qualifications, out of the persons who have secured equal marks. This is all the more so, when there are no other factors to clinch the issue. The decision in O. P. 2363 of 1983 is distinguishable. As stated in para 13 of the judgment, that was a case wherein the petitioner and the 1st respondent having obtained equal marks on assessment of their relative merits under Rule 177A, in the absence of any other material fact in favour of the petitioner to override the effect of such assessment, the State Transport Appellate Tribunal granted the permit to the 1st respondent who (had a valid licence for driving transport vehicles) was entitled to a statutory preference in terms of first proviso to Rule 177A (4) (Proviso to Section 47(1) of the Act? -- see judgment, earlier para No. (11)). The crux of the matter was stated by my learned brother, Bhas-karan, J. in para 7 of the judgment to the following effect:

'Normally, therefore, the R. T. A. would not go behind the marks awarded in terms of Rule 177A (4) in assessing the relative merits of the applicants, particularly when there are other factors to be taken note of to clinch the issue while taking a decision according to the mandates of Section 47(1) of the Act.'

10. Reading the decision as a whole, I understand the decision to be, that in cases where there are other factors to be taken note of, in normal circumstances, the R.T.A. would not go behind the marks awarded in terms of Rule 177A (4). But, when there are other factors to be taken note of, which will conclude the issue, those should be adverted to. In the absence of such other factors clinching the issue or in any other special or exceptional cases there is no bar in the R.T.A. going behind the marks awarded in Rule 177A (4), in assessing the relative merits of the applicants. In O. P. 2363 of 1983, the 1st respondent had a valid licence for driving transport vehicles and it was a 'factor' which could he relied on. In this case, counsel for the petitioner has no case that there are other factors which could be taken note of and which will clinch the issue, unlike the situation in O. P. No, 2363 of 1983. I think, the above legal position is in accordance with Section 47(1) of the Act and R. 177A (4) and (5) of the Rules and also the decisions of the Supreme Court reported in Balasubramonia v. Sambanda Moorthy (AIR 1975 SC 818), Kumaraswamy's case (AIR 1976 SC 2202) and D. R. Venkatachalam's case (AIR 1977 SC 842).

11. The telling passages in the last mentioned of the decisions, Venkatachalam's case (AIR 1977 SC 842) to the following effect, deserve to be highlighted in this connection. At page 848 of the report. Justice Sri V. R. Krishna Iyer observed:

'Marks shall guide, not govern the award. Full discretion, to some extent, canalised by the marking procedure, still vests in the Transport Authority. For the marks, those authorities will re- not supersede it..........All this leads to the conclusion that marks shape but do not clinch the ultimate selection. The public is the consumer, its plenary service is the final test.' In the same case, in a concurring judgment, Beg, J., said at page 852.'

'Rule 155A gives only guidance, but the totality of factors mentioned in Section 47(1) really decide.' I am of the view that the decision in O. P. No. 2363 of 1983 will not help the case of the petitioner.

12. In the result, the attack against Ext. P10 fails. There is no error of law or error of jurisdiction or any other infirmity in setting aside Ext. P1 to the extent, the 5th respondent granted the permit to the 1st respondent setting aside the grant made in favour of the petitioner. The O. P. is devoid of force and it is dismissed with costs, including counsel's fee Rs. 500/-.

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