(2014) 01 P&H CK 0151

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 9823 of 2007

The Shankar Bhagwan Bus Service		APPELLANT
	Vs	
The State Transport Appellate Tribunal		RESPONDENT

Date of Decision: Jan. 16, 2014

Acts Referred:

- Limitation Act, 1963 - Section 5
- Motor Vehicles Act, 1988 - Section 43, 47(1)(a), 48, 89

Citation: (2014) 175 PLR 673

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: H.S. Sawhney, Senior Advocate and B.S. Giri, Advocate for the Appellant; Rajinder Sharma and P.S. Bawa, Advocate for the Respondent

Final Decision: Allowed

Judgement

K. Kannan, J.

The writ petition challenges the order dismissing an appeal filed by a delay of 6 days before the State Transport Appellate Tribunal. The contention by the respondent is that the Limitation Act is not applicable and the counsel would refer to me to the decisions of the Supreme Court in Consolidated Engg. Enterprises Vs. Principal Secy. Irrigation Deptt. and Others, I do not find this judgment as governing this case, since the Arbitration Act itself contains a particular provision u/s 43 setting out specifically as to how the delay could be condoned and the inapplicability of the Limitation Act. The Motor Vehicles Act also prescribes the period of limitation and this according to the counsel must be taken as specific enactment which will render inapplicability of the Limitation Act. So long as there is no specific prohibition against the applicability of the Limitation Act, I will apply the same as possible for an authority to condone the delay. The Division Bench of Karnataka High Court in Sree

Gajanana Motor Transport Co. Ltd. Vs. The Karnataka State Transport Appellate Tribunal and Others, has held making reference to appeal u/s 89 to hold that Section 5 of the Limitation Act is applicable. The Court has referred to a judgment of the Supreme Court in Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker, . I am in respectful agreement with the proposition as formulated and accepted by the Karnataka High Court. The delay is condoned and the appeal is taken up on merits.

2. The core objection taken to the denial of permit to the appellant is raised on a plea that for three permits which were available for being granted amongst the private operators there were 23 applicants in fray and respondent No. 4 has been preferred as a new operator and respondent Nos. 5 and 6 are the existing operators to each of whom one permit was granted. The appellant would point out to the fact that the 5th respondent has already 49 permits and 53 buses and has a daily run of 13,000 plus K.Ms. through various route permits. Yet another existing operator who has been preferred is 6th respondent who has 13 permits 17 buses and has a daily coverage of 3,000 K.Ms. The appellant is a person who has 4 permits and 4 buses and has a daily coverage of 1002 K.Ms Still the appellant will not have an objection to the relative preference given to a new operator and would not seriously question the grant of permit to the 4th respondent, a serious objection to the grant of permit to respondent Nos. 5 and 6 to his exclusion by making reliance on a judgment of the Supreme Court in Sri Rama Vilas Service (P) Ltd. Vs. C. Chandrasekaran and Others, that considered public interest to be applied in the grant of permit by examination u/s 48 of the Motor Vehicles Act 1938. Even in liberal regime under the Motor Vehicles Act, 1989 the State has a power to draw up a policy and it is an admitted fact that in a State High way, the distribution amongst the State and private operators is 60:40 and for the 40% allocation the State is still to examine the relative merits amongst the existing categories. Counsel for respondent Nos. 5 and 6 would argue that the appellant did not have a case against the policy itself and the preference to new entrant and if amongst the existing operators the authority had preferred an operator that was well entrenched in business and who had a large fleet of buses, public interest would best be served only by preferring such an operator.

3. I reject the contention of the respondent, for, the argument betrays the loftier purposes of how to ensure the public interest. In para. 7 in the judgment of Sri Rama Vilas''s caw (supra). The Supreme Court has held as follows:-

"There can be no doubt that in granting a permit, the appropriate authorities under the Motor Vehicles Act are required to consider the interests of the public generally u/s 47(1)(a) and in assessing the merits of an individual applicant for a permit on any route, it would be open to the appropriate authority to enquire whether the service which the individual applicant would render to the public if he is given a permit would be efficient and satisfactory or not. In dealing with this aspect of the matter, it would not be irrelevant for the appropriate authority to hold if any applicant is or

would be in the position of a monoplist if a permit was granted to him, he would be liable to neglect the interests of the public and may not be very keen on taking all steps to keep his service in good and efficient order. Absence of any competition from another bus operator on the route is likely to develop a feeling of complacence in the monoplist and that is a factor which the appropriate authority can certainly take into account the fact that the appellant was a monoplist on a part of the route, the Appellate Tribunal has been influenced by any irrelevant fact, vide R.K. Ayyaswami Gounder v. Soudambigai Motor Service, Dharampura, C.A. No. 198 of 1962. D/17-9-1962(SC).

4. It is a global experience that competition is the best guarantee for ensuring public interest and monoply is an antithesis to competition. A monoplist dictates the market to his own whim for his personal aggrandizement and subvert public interest. A plea that he has more buses to operate would secure better interest is a plea that has to be rejected as not sub-serving public interest. We need more players in the market and encourage healthy and stiff competition. A big shark invariably gobbles up a smaller one. It is a market with smaller operators whose economic competence is not in doubt that ought to be preferred. So long as no objection is brought against the appellant''s financial stability nor is there any blot on his performance for running the existing permits, there cannot be a rejection of claim in preference to the claim of the 5th respondent. The order of State Transport Appellate Tribunal is set aside in so far as a preference to the 5th respondent is made and I direct the permit to be issued to the appellant. The appropriate orders shall be issued within a period of four weeks from the date of receipt of copy of this order. The writ petition is allowed on the above terms. Needless to state that the existing operator will continue till the new permit is issued as directed by this Court within the time stipulated above.