(1960) 05 KL CK 0010

High Court Of Kerala

Case No: A. S. No. 60 of 1959

Scoria		APPELLANT
	Vs	
Poulose and Others		RESPONDENT

Date of Decision: May 24, 1960

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (1960) KLJ 1266

Hon'ble Judges: M. A. Ansari, C.J; Anna Chandy, J

Bench: Division Bench

Advocate: K. S. Sebastian, for the Appellant; V. Rama Shenoi, K. Neelakanta Menon and C.M. Kuruvilla Government Pleader for Respondents 2 and 3, for the Appearing Parties

Final Decision: Allowed

Judgement

Ansari, C.J.

This appeal is against the judgment of the learned Judge, granting a petition under Article 226 and vacating the permit given to the appellant. The facts culminating in this appeal can be shortly stated, which are that the appellant as well as other persons had asked for a stage carriage permit on Neduvakad-Moovatupuzha route via Paingattoor and Kalampoor. The Road Traffic Authority, Kottayam, had, by order of May 1, 1956 granted the appellant the permit on the following grounds:--

Sri P. I. Scaria is residing near the above route and hence he can manage the service efficiently. His Services are not remunerative and hence the permit....is sanctioned to Sri. P. I. Scaria, Government Contractor.....to make his other Services remunerative.

The other applicants appealed; and among these was the proprietor of A. K. Motor Service. The Tribunal sustained the permit in favour of the appellant, and against that order O. P. 465/57 was filed in this court. The learned Judge hearing the petition allowed it and passed the following order :--

It is agreed that the order of the Tribunal be set aside and the Tribunal directed to hear and dispose of the case afresh after considering the following points as well :--

(1) Is the Tribunal entitled to base its conclusions on any report from the R. T. A. and

(2) Even if it is entitled to do so, can it do so without affording the party affected by the statements in the report, an opportunity to obtain a certified copy of the report and adduce his evidence and contention in rebuttal.

2. After the remand the Appellate Tribunal has again dismissed the appeal affirming the permit in favour of the appellant, and there against O. P. 416/58 was filed in this Court by the proprietor of A. K. P. Motor Service, Kothamangalam, impleading the State of Kerala, the Road Transport Authority, and the appellant as the three respondents. The learned Judge hearing the petition has held part of the grounds, on which the permit been granted to be irrelevant, the basis of the permit to have been vitiated due to the irrelevant being intrinsically mixed with the relevant, and that the permit should be set aside. The present appeal is against the aforesaid order, and the appellant''s Advocate has taken these three grounds against the order vacating the permit:--

(1) The powers under Article 226 can be exercised on limited grounds which do not exist in the case; and this Court cannot sit as appellate authority over those exercising powers under the Motor Vehicles Act.

(2) The learned Judge has overlooked that the permit been sustained by the new appellate order only on one of the two grounds on which it was granted, and the ground on which it has been sustained has not been held to be irrelevant.

(3) If a party has several buses he would be having several services and the learned Judge is not correct in holding that a person can be having several services only where he be running several routes.

3. We think the proposition that power under Article 226 is available only on limited grounds is well-established, and therefore the series of the Supreme Court pronouncements relied by the appellant''s Advocate need not be enumerated here. We would merely summarise what in our opinion are the arounds according to those decisions, on which writ of certiorari can be issued. One is error of jurisdiction, (i.e., where the authority, whose order is challenged, acts without or in excess of jurisdiction. The next is where the error of law be apparent on the face of the record, and the last is where the order is made in violation of fundamental principles of natural justice. The argument of the appellant''s Advocate is that there is no error of jurisdiction, as the authority granting the permit and the appellate authority have passed orders in exercise of powers vested in them by law and that in making the order, no violation of principles of natural justice has taken place. Therefore the Advocate argues that two of the main grounds on which certiorari is issued are not available to the writ petition, and that so far as the ground of error of law apparent

on the face of the record is concerned, that also does not exist, because the ground held irrelevant for the purposes of granting the permit is the appellant''s not having other services, which is a conclusion of facts and to be adjudicated by the authority having appellate powers. We think this appeal should succeed on the second argument enumerated earlier, for should we reach the conclusion of the appellate order having sustained the permit only on the ground, any decision concerning what the appellate authority has not upheld as being irrelevant would not justify the writ petition being allowed. It therefore becomes important to analyse the appellate order that was challenged. The opening part states why appeal is being re-heard and paragraph 2 deals with the two points mentioned in the remand order for the consideration of the Tribunal. Paragraph 3 states the opinion of the Tribunal for non-interference with the decision of the R. T. A. and it refers for reasons to the earlier judgment by the Tribunal which has been set aside. The words of the Tribunal for this purpose are these:--

For the sake of convenience a copy of my original judgment dated 5th October 1957, will be appended to this judgment and will be considered as part of this.

The Tribunal has then dealt with the argument that the present appellant had not stated in his representations about operating unremunerative services in conjunction with remunerative services, and therefore that ground could not be considered in granting him the permit. It found the contention to be acceptable, but at the same time the Tribunal was clear that the grant should be allowed to stand because in disposing of the appeals much importance has not been attached to the aspect of the case. The concluding part of the order deals with yet another contention about the appellant''s financial position not being free from doubt, which the Tribunal thought not to be a disqualification.

4. It is clear that though the earlier judgment for purposes of convenience has been made part of the later judgment, yet all the reasons of the former have not been incorporated in the latter. The respondent''s Advocate has, however, argued that the statutory ground, on which a person could claim the permit and which ground was sustained in the earlier judgment, cannot be treated as having been given up particularly when the Tribunal treats the reasons of the earlier as part of the later order. We feel that the Appellate Tribunal''s new order in view of the clear statement in it cannot be taken as having sustained the second ground on which the permit has been given by the R. T. O. The words are clear and reads as follows:

But at the same time I am clear that the grant should be allowed to stand, because in disposing of the appeals much importance has not been attached to this aspect of the case.

A fair reading of the entire judgment leaves no doubt in our mind that the appellants having services, which were not remunerative, has not been treated by the Appellate Tribunal as a reason on which the permit should be sustained. It

follows that the appellate order in the case, which is the final order concerning the permit, is not vitiated by the mingling of relevant with irrelevant grounds and the permit cannot be cancelled on the aforesaid reasons. The order may be bad because it upholds something in the earlier part which it treats in the later to be unnecessary and therefore to be contradictory, yet it cannot be vacated as having sustained both the grounds in the face of clear statement to the contrary. It follows that the reasoning on which the writ petition has been allowed, should not be sustained; but it is equally clear that the appellate order is vitiated by legal error apparent on the face of the record and should be vacated. The first respondent to this appeal has not only challenged the grounds, on which the permit has been granted to the appellant, but has also taken the grounds on which he claims its having been incorrectly refused. In the earlier judgment all the grounds, on which the appeal was filed before the Tribunal, had been dealt with; but in the later judgment the Tribunal has not dealt with the grounds urged for permit being granted to the first respondent. The position taken by the appellant''s Advocate is that though the later order does not deal with all the grounds, yet those have been already dealt with in the earlier judgment which has been made part of the later, and the Tribunal must be deemed to have considered the entire complaint. He has urged that in the absence of rules as to how judgments should be given, the appellate order is not vitiated in this case. We think the present order by the Appellate Tribunal to be vitiated not only on the technical grounds of making a judgment that has been reversed part of a fresh judgment, but also on the ground that in disposing of the appeal it has not considered, as it was directed to do afresh, the entire case of the appellant before it. That case covers both why the permit should not be given to the appellant and why it should be given to the respondent, and the Tribunal in deciding the appeal has dealt only with the former, without weighing what part of the earlier order can stand consistently with the conclusions reached in the later. After all a party having the statutory right of appeal is entitled to claim from the authority vested with the appellate jurisdiction a fair and comprehensive adjudication of his grievances and not piecemeal decisions, that are contradictory. We feel such an approach amounts to substantial error of law which can be corrected in exercise of powers under Article 226. Therefore the appeal should be allowed by reversing the cancellation of the permit, but it should again direct the Tribunal to adjudicate afresh in a consolidated and comprehensive form all the grounds taken by the first respondent in his memorandum of appeal. The appellant has filed an application saying that the permit impounded by the authority in consequence of this Court''s order should be returned. As we have disagreed with the view held by the Judge allowing the writ petition and have directed the Tribunal to adjudicate the correctness or otherwise of the respondent''s case, it follows that the order of the Road Transport Authority would stand, and the appellant would be entitled to the permit subject to such orders as the Appellate Tribunal may pass in exercise of its appellate jurisdiction. Therefore we would not prejudice the discretion by making any final order on C. M.P. 1689 and the parties may seek appropriate order from the

Tribunal. As the matter is old, we hope that the Tribunal will dispose of the appeal within two months. The appeal is accordingly allowed, parties will bear their own costs of this Court and the Judgment will govern both the appeal and the C. M. Ps.