(1997) 11 AP CK 0001

Andhra Pradesh High Court

Case No: Writ Petition No. 14798 of 1994

G.Lakshmi		APPELLANT
	Vs	
State Transport Appellate Tribunal A.P., Hyd. and Others		RESPONDENT

Date of Decision: Nov. 28, 1997

Acts Referred:

- Constitution of India, 1950 - Article 19(1)(g)
- Motor Vehicles Act, 1939 - Section 47, 47(1), 57, 71(1), 71(3)
- Motor Vehicles Act, 1988 - Section 80

Citation: (1998) 1 ALD 1 : (1997) 6 ALT 511

Hon'ble Judges: Y.Bhaskar Rao, J; K.B. Siddappa, J

Bench: Division Bench

Advocate: Mr. E.P.K. Sikhamani, for the Appellant; Government Pleader, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

V. Bhaskar Rao, J.

1. This is a writ petition filed assailing the order of the first respondent/State Transport Appellate Tribunal dismissing the appeal filed by the petitioner.

2. The facts of the case are : The petitioner filed application for grant of pucca permit for plying the bus on the route Siddipet town to Marpadga via Ponnala. The 2nd respondent/Regional Transport Authority rejected the application of the petitioner on the ground that the petitioner was already granted two permits of town service routes in the district of Medak and she was running the services on the said route and opportunity should be given to unemployed person instead of giving another permit to the petitioner. The 2nd respondent accordingly granted permit to one

Janga Reddy. Against that order, the petitioner filed appeal before the first respondent and the first respondent rejected the appeal on the same grounds. Against the same, the present writ petition is filed.

3. The learned Counsel for the petitioner contended that there is no bar for granting any number of permits u/s 80 of the amended Motor Vehicles Act (59 of 1988) (for short ''the Act''). Further, there is no bar for grant of permit to a person who is already holding permits. Therefore, the rejection of the application of the petitioner amounts to infringement of the right guaranteed to the petitioner under Article 19(1)(g) of the Constitution of India and it is also contrary to the provisions of Section 80 of the Act.

4. The learned Government Pleader contended that as the petitioner was already holding two permits, to avoid monopoly, the application of the petitioner was rejected and permit was granted to a new entrant and that therefore, there is no illegality or irregularity in the order and the writ petition is liable to be dismissed.

5. Tn view of the above said contentions, the important questions that arises for consideration is whether holding of permits to run the town services is a bar for granting another permit.

6. The Motor Vehicles Act, 1939 (4 of 1939) was imposing a bar for granting of permits as provided in Section 47(3) restricting grant of number of permits and Section 57 of the Act prescribed procedure for applying for the permits. The new Act, i.e., Act 59 of 1988 which came into force on 1-7-1989 has done away with the said provisions and incorporated Section 80. Section 80 provides for granting of permits very liberally and there is no restriction for granting of any number of permits. The same question came up for consideration before the Supreme Court in Mithilesh Garg, Vs. Union of India and others etc. etc., . The Supreme Court has interpreted the scope of granting of permits to new entrants and held as follows :

"A comparative reading of the provisions of the Act and the old Act makes it clear that the procedure for grant of permits under the Act has been liberalised to such an extent that an intended operator can get a permit for asking irrespective of the number of operators already in the field. u/s 57 read with Section 47(1) of the old Act an application for a stage carriage permit was to be published and kept for inspection in the office of the Regional Transport Authority so that the existing operators could file representations/ objections against the said application. The application, along with objections, was required to be decided in a quasi-judicial manner. Section 47(3) of the old Act further permitted the imposition of limit on the grant of permits in any region, area or on a particular route. It is thus obvious that the main features of Chapter IV "control of transport vehicles" under old Act woe as under :

1. The applications for grant of permits were published and were made available in the office of the Regional Transport Authority so that the existing operators could

file representations;

2. The applications for grant of permits along with the representations were to be decided in quasijudicial manner; and

3. The Regional Transport Authority was to decide the applications for grant of permits keeping in view the criteria laid down in Section 47(1) and also keeping in view the limit fixed u/s 47(3) of the Act. An application for grant of permit beyond the limited number fixed u/s 47(3) was to be rejected summarily.

6. The Parliament in its wisdom has completely effaced the above features. The scheme envisaged under Sections 47 and 57 of the old Act has been completely done away with by the Act. The right of existing-operators to file objections and the provision to impose limit on the number of permits have been taken away. There is no similar provision to that of Section 47 and Section 57 under the Act. The Statement of Objects and Reasons of the Act shows that the purpose of bringing in the Act was to liberalise the grant of permits. Section 71(3) of the Act provides that while considering an application for a stage carriage permit the Regional Transport Authority shall have regard to the objects of the Act. Section 80(2), which is the harbinger of Liberalisation, provides that a Regional Transport Authority shall not ordinarily refuse to grant an application for permit of any kind made at any time under the Act. There is no provision under the Act like that of Section 47(3) of the old Act and as such limit for the grant of permits can be fixed under the Act. There is, however, a provision u/s 71(3) of the Act under which a limit can be fixed for the grant of permits in respect of the routes which are within a town having population of more than five lakhs."

7. By the principle laid down in the above decision of the Supreme Court it is made clear that there is no restriction for grant of any number of permits to a person. If the permit holder is not able to run the bus due to economic inability, it is for him to withdraw the operation. The new provision Section 80 of the Act provides for grant of permits liberally and refusal is exception. This proposition and the provisions of Section 80 were upheld by the Supreme Court. Therefore, rejection of permit on the ground that one operator was plying bus on the route or number of operators plying buses on the route is not proper.

8. The second question is whether a permit holder who has got already more than one permit can be granted a new permit or not.

9. Section 80 of the Act does not impose any restriction for grant of permits and no other provision imposing restriction on grant of permits to a person holding permits is not brought to our notice. When there is no restriction for grant of a permit to an operator who is already holding permits, the same cannot be read into statute; otherwise, it amounts to amending the statute which is not within the purview of the Court as the same has to be done by the Parliament and the Legislature. When there is no bar or restriction, refusing to grant permit to the petitioner on the

ground that the petitioner is already holding two permits cannot be sustained as it is not only against the provisions of the Act but it also infringes the right of the petitioner guaranteed under Article 19(1)(g) of the Constitution.

10. Therefore, the impugned orders are liable to be set aside and they are accordingly set aside and the respondents arc directed to grant permit to the petitioner if she satisfies all other required conditions.

11. The writ petition is allowed accordingly. No order as to costs.