

ESSKEY ROADWAYS (FIRM)

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v.

ANANDHAKRISHNAN BUS SERVICE

AUGUST 17, 1994

[K. RAMASWAMY AND S.C. AGRAWAL, JJ.]

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Motor Vehicles Act, 1939—Section 46—Grant of Stage Carriage permit—Claims of candidates for award of marks—Relevant date for considering respective claims—It is date of consideration and not date of application.

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The appellant along with the contesting respondent had applied for grant of stage carriage permit. On consideration of the respective the R.T.A. granted permit to the appellant awarding him 10 marks and 8 marks to the respondent. The R.T.A. held that the date of application was the relevant date for considering the respective claims of the candidates for awarding marks. On appeal, the S.T.A.T. set aside the order of the RTA and granted the permit to the respondent taking the date of consideration as the relevant date for the purpose of considering the eligibility to grant the required marks. In revision, the High Court upheld the order of the Appellate Authority. This appeal by special leave was filed against the judgment of the High Court.

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The only question raised in this appeal was whether the RTA should consider the respective claims as on the date of consideration or as on the date of the application.

Dismissing the appeal, this Court

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HELD : 1.1 The date of consideration is the relevant date for the purpose of considering the eligibility to grant the required marks for grant of permits u/s 46 of the Motor Vehicles Act, 1939. This declaration of law is confined to and peculiar of the statutory operation u/s 46 of Act 5 of 1958. [707-G, H, 708-A]

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Maharashtra State Road Transport Corporation v. Manqulpur Jt. Motor Service (P) Ltd. & Ors., [1971] Supp. SCR 561; Dhani Devi v. Sant Bihari & Ors, [1969] 2 SCR 507 and A.S. Jalaluddin v. Balasubramaniam Bus Service Pvt. Ltd. & Anr. C.A. No. 161 of 1965, decided on 31- 10-1967

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A (Supreme Court), relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 570 of 1980.

B From the Judgment and Order dated 5.3.80 of the Madras High Court in C.R.P. No. 88 of 1978.

C.S. Vaidyanathan, K. Vishwanathan and K.V. Venkataraman for the Appellant.

S. Srinivasan and Mrs. N. Annapoorani for the Respondent.

C The following Order of the Court was delivered :

D The appellant along with the contesting respondent had applied for grant of stage carriage permit on the route from Truchirapalli to Jayankondam on or before October 10, 1975. Objections have been called for on October 22, 1975 and the last date to file the objection was November 10, 1975. On consideration of the respective claims the R.T.A., Truchirappalli awarded to the appellant 10 marks and 8 marks to the respondent. On that premise RTA granted permit to the appellant. The respondent carried the matter in appeal to the S.T.A.T. Which by its Order dated November 14, 1977 set aside the order of R.T.A. and grated the permit to the respondent. In C.R.P. No. 88/78 by Order dated March 5, 1980 the learned Single Judge upheld the Order of S.T.A.T. thus, this appeal by Special leave.

E The only question that arises for consideration in this appeal is whether the RTA should consider the respective claims as on the date of the consideration or as on the date of the application. The RTA held that the date of application was the relevant date. But the Appellate Authority and the High Court found that the date of the consideration was the relevant date. Admittedly, the respondent-partnership firm was reconstituted on April 1, 1976 taking one Easwaran as a managing partner and it was registered on May 21, 1975 under Section 69 of the Partnership Act. Admittedly, the managing partner had the technical qualification as on the date of consideration. The managing partner being the technically qualified man, the respondents are entitled to the award of two more marks on the ground of qualifications. The Appellate Tribunal taking that fact into consideration awarded 10 marks and on comparative evaluation, since

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the respondent by then had three permits, granted the permit to the respondent. The question whether the date of consideration is the relevant date is no longer *res integra*. This Court in *Maharashtra State Road Transport Corporation v. Mangrupir Jt. Motor Service (P) Ltd. & Ors.*, [1971] Suppl. SCR 561 at 571 held that :

"The High Court was in error on the second question in holding that the Regional Transport Authority would have to consider the respective qualifications of the applicants as on the date of their applications and not as on the date of the actual consideration by the Regional Transport Authority of the applications for the grant of permit."

This Court considered diverse circumstances in support of that conclusion this Court said that as on the date of the application if insolvency petition is pending against one of the applicants, but on the date of consideration if he is declared to be an insolvent, he becomes disentitled to the grant of permit by operation of law. As on the date of the application if there is no conviction, but as on the date of consideration, if an applicant is convicted, he also becomes ineligible for consideration.

Another circumstance arose *Dhani Devi v. Sant Bahari & Ors.*, [1969] 2 SCR 507 case was that when one of the applicants before the consideration died and his L.Rs. were brought on record. When It was questioned, this Court held that the L.Rs. are entitled to be considered as inheriting the estate of the deceased applicant for grant of permit. In *A.S. Jalaluddin v. Balasubramaniam Bus Service (P) Ltd. and Anr.*, C.A. NO. 161 of (1965) decided on 31.10.1967) the question arose that whether the applicant who secured the residential qualification by establishing a branch office at one of the terminus of the route would be considered eligible as on the date of the consideration. This Court held that he is entitled to. In view of these considerations, it must be held that the date of consideration is the relevant date for the purpose of considering the eligibility to grant the required marks under Section 46 of Act IV of 1939. This law being in operation from 1970, we do not think that it requires any reconsideration by this Court by a larger bench. Accordingly, we hold that the date of consideration is the relevant date on which the respective claims of the candidate have to be considered for award of the marks for grant of permit. It is made clear that this declaration of law is confined to and peculiar of the statutory operation

A under Section 46 of Act 5 of 1958.

It is then contended that the appellant has been carrying on the service by orders of stay and that therefore, at the distance of time it requires interference. We are afraid that we cannot give countenance to such contention, as a person who was ineligible for grant of permit cannot get legitimacy to a grant by order of Court. He should have only statutory

B get the right which alone could be protected by judicial review.

It is next contended that in the application made by the respondent in this Court, the respondent-firm admitted that they are not a position to carry on the stage carriage service to the public and they wanted to dispose of one of the permits granted to it with the permission of the Court. That would show that the respondent is not in a position to carry on the operation of the service catering to the travelling needs of the public and that, therefore, it is a case for interference. We cannot accede to the contention. Several grounds have been give in support of the permission for alienation of one of the permits, but the permit in question is not the one in respect of which the permission was sought for. Under these circumstances, we do not find any justification warranting interference with the order of the High Court and the Appellate Tribunal.

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It is then contended that in view of the change in law by operation of Motor Vehicles Act of 1988 and the Special Law made by the State of Tamil Nadu in Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992 (Act 41 of 1992) validating the renewals of all the permits granted, since the appellant has been carrying on the permit by obtaining the renewals, it may be permitted to carry on the permit. We cannot given any direction it may be open to the appellant to approach the appropriate authority in accordance with law with would be considered and disposed of.

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The appeal is accordingly dismissed, but in the circumstances, without costs.

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Appeal dismissed.