
(2013) 03 KL CK 0139
In the High Court Of Kerala
Case No : W.A. No. 501 of 2013

Abdul Kareem

APPELLANT

Vs

Regional Transport Authority

RESPONDENT

Date of Decision : 25-03-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 113, 113(1)

Citation : (2013) 2 KLT 551

Hon'ble Judges : Manjula Chellur, C.J;K. Vinod Chandran, J

Bench : Division Bench

Advocate : Sumathi Dandapani and Millu Dandapani, for the Appellant; P.I. Davis, Sr. Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K. Vinod Chandran, J.—The impugned judgment in the above appeal upheld the Government Order, Exhibit P5, wherein it was decided not to issue stage carriage permit to vehicles having four wheels as distinguished from those having six wheels. In fact, as early as in the year 2003, the Regional Transport Authority, Malappuram; within whose jurisdiction the appellant's bus plies, issued order dated 18.2.2003 of a similar nature considering the topography of the area and the winding roads with sharp curves and steep gradients. This was issued in public interest, more specifically considering the fact that major share of the road accidents in the district was caused by stage carriages having only four wheels. The stage carriage operators were up in arms, before this Court in a Writ Petition and then a Writ Appeal, wherein both the learned Single Judge and the Division Bench concurred with the view that S. 113(1) of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") gives ample power to the State Government to prescribe conditions and issue orders of general application throughout the State or for specified areas. However, the Division Bench, noticing the fact that the operators were not heard before taking such a decision and that no enquiry was conducted before the passing of the said order, felt that the State

Government has to look into the matter rather than the Regional Transport Authority.

2. While directing the State Government to look into the matter by Exhibit P3 judgment dated 21.10.2004, considering the seriousness of the issue as also the expediency required, the Division Bench had directed that the Government should consider the entire matter and pass appropriate orders within a period of three months from the date of receipt of a copy of that judgment. It was also directed that the order to replace four wheel vehicles with six wheel vehicles shall be kept in abeyance for a period of three months.

3. It is a matter of dismay that the Government slept over the matter for long. Only in 2011, the Government came out with Exhibit P5 order with directions as stated above. The batch of Writ Petitions was disposed of by the learned Single Judge and the appellant before us alone is in appeal.

4. The appellant contends that his vehicle is entitled to be operated for 15 years, i.e., till 2016, and the regular permit issued in the route Padaparamba - Malappuram is valid upto 11.7.2012. The appellant also contends that the State Government does not have power to prescribe such condition for the entire State under S. 113(1) of the Act.

5. We have to notice that, in the earlier round of litigation the various persons operating stage carriages as also the Association representing such operators had conceded the power of the State Government under S. 113(1) of the Act. There, however, the order was issued by the Regional Transport Authority and without hearing the Bus Operators' Association; which consideration alone weighed with the Division Bench when directing the appropriate Government to consider the matter afresh. Nevertheless, we look at S. 113(1), which is extracted hereunder:

Section 113. Limits of weight and limitations on use.-- (1) The State Government may prescribe the conditions for the issue of permits for (Transport Vehicles) by the State or Regional Transport Authorities and may prohibit or restrict the use of such vehicles in any area or route.

(2) xxxx

(3) xxxx

(4) xxxx

Obviously, the statute has conferred powers on the State Government to prescribe the conditions for the issue of permits for transport vehicles by the State or Regional Transport Authorities and further conferred powers to prohibit or restrict the use of such vehicles in any area or route. There is no mandate that only a particular area or route should be imposed with such restriction or that the conditions of all the routes in the State should be gone into before imposing such conditions. By the specific power conferred on the State Government, we are of

the opinion that it is perfectly competent on the State Government to issue executive orders in the nature of Exhibit P5.

6. There is also absolutely no infirmity in imposing such condition for the whole of the State of Kerala. The Government, through its Motor Vehicles Department, is the best judge of the quality and nature of the vehicles to be used as transport vehicles/stage carriages within the State. We also notice that the Government has, by Exhibit P5, considered the grievance of the Bus Owners' Association as also the technical aspect regarding stability and risk of toppling of vehicles with reference to the centre of gravity of a vehicle. Taking into account the load of passengers carried in public stage carriages and the topography unique to the State coupled with the other considerations referred above, the State arrived at a decision to decline stage carriage permits for four wheel vehicles and confine them to six wheel vehicles. We are conscious of the public interest of the said decision and it is not for this Court to superimpose its thinking on a valid, thought out and reasoned order of the State Government; which has the expertise through its Motor Vehicles Department and access to the statistics and technical standards for arriving at such a finding. We also notice that the learned Single Judge has elaborately considered the issue and found that the Government Order prohibiting the grant of stage carriage permits to four wheel buses is issued with the laudable object of curbing road accidents in the State.

7. The contention raised based on R. 126 of the Central Motor Vehicles Rules, 1989 (hereinafter referred to as "the CMV Rules") as to the State Government being disabled from placing a restriction in granting stage carriage permits to four wheel buses certified under the said rule was also negated by the learned Single Judge. In view of the specific finding rendered by us regarding S. 113(1) of the Act and the powers available to the Government under the statute, we perfectly agree with the learned Single Judge on both counts, i.e., the power of the State Government to make restrictions as evidenced from Exhibit P5 and the same not running contrary to the prototype certification under R. 126 of the CMV Rules. R.126 prototype certification does not at all mandate that the State Government shall issue permits to the vehicles; the prototype of which has been certified under R. 126 of the CMV Rules. We are convinced that there is no good ground to interfere with the judgment of the learned Single Judge.

8. The learned Senior Counsel Smt. Sumathi Dandapani, however, contends that there was a stay in the Writ Petition and that the appellant has only time till 31.3.2013 to replace the vehicle and the manufacturer, by Annexure-A, has informed the appellant that it would take at least four months to deliver a six wheel vehicle. Hence, it is the prayer that we may direct sufficient time for replacement. We are not convinced that any ease is made out for such a direction also, looking at the history of the litigation. As we have noticed above, in October 2004, by Exhibit P3, it was directed that the Government will take a decision after hearing the affected parties within a period of three months. Exhibit P5 order, which refers to Exhibit P3 judgment, has been passed in 2011,

after more than eight years. We can only express our deep anguish in the lethargy exhibited by the Government; which the permit holders of four wheel vehicles found to be very profitable. We also notice that Exhibit P3 decision contained a specific direction that:

...if any other operators apply for renewal or fresh grant of permit, they will have to give an undertaking that they would replace the vehicles with six wheel vehicles, within a period of three months of the grant or renewal, failing which they cannot operate the vehicles.

This discloses the anxiety of the Division Bench in concluding the issue expeditiously, evidently for the reason that it involved safety of human lives. Financial viability and hardship in replacement of vehicles should take a back seat when human life is in peril. The appellant too had obtained a transfer of the registration, as is evident from Exhibit P1 dated 25.11.2005. When the transfer of the permit was made by Exhibit P1, it had a validity between 2002 and 2007, as is evident from Exhibit P2. The appellant had applied for and obtained a renewal on 12.7.2007 with date of expiry on 11.7.2012. The renewal having been made after Exhibit P3 judgment, necessarily there would have been an undertaking given by the appellant, if the authorities were vigilant enough to comply with Exhibit P3 judgment. The laxity of the Government or its officers cannot enure to the claim of equity for and on behalf of the appellant. We notice that the appellant had been granted sufficient time to replace the vehicle, which he had not availed of. After Exhibit P5 order was passed, true there was a stay till the disposal of the Writ Petitions by the impugned judgment. It is normally for the Government to consider how much time can be granted for replacement of the vehicle. However, we express a word of caution that such decision cannot be extended and kept in limbo as was done after Exhibit P3 judgment. The fear and apprehension of accidents and loss of human lives expressed by the Regional Transport Authority in 2003 is more glaring after a decade; today considering the alarming rise in population as also the number of vehicles registered and plied on the roads.

With the above observation, we dismiss the appeal, without costs.