

(2006) 06 KL CK 0057

In the High Court Of Kerala

Case No : Writ Petition No's. 35305 of 2005 and 7008 of 2006

All Kerala Tourist Taxi Operators Association

APPELLANT

Vs

State Transport Authority

RESPONDENT

Date of Decision : 12-06-2006

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 82, 83, 84, 85, 85A

Kerala Motor Vehicles Rules, 1989 — Rule 132, 138, 82

Motor Vehicles Act, 1988 — Section 88(11), 88(14), 88(9)

Citation : AIR 2006 Ker 341 : (2006) 3 KLT 242

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : Benoy Vasudevan, K. Jaju Babu and M.U. Vijayalakshmi, for the Appellant; M.A. Fayaz, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Thottathil B. Radhakrishnan, J.—These Writ Petitions are filed by certain associations of tourist taxi operators. The State Transport Authority, hereinafter referred to as "the-STA", a statutory authority under the Motor Vehicles Act, 1988, "the Act", for short, decided to delegate under Rule 138 of the Kerala Motor Vehicles Rules, hereinafter as "the Kerala Rules", among other things, the power u/s 88(9) of the Act to grant permits in respect of tourist vehicles, to the Regional Transport Authorities, hereinafter as "the RTAs". That decision found its Waterloo in the judgment of this Court in WA. No. 21 53/2003 rendered holding that Section 88(9) of the Act makes it clear that the Parliament, in its wisdom, wanted that the power to grant permits to tourist vehicles be exercised by the STA. It was held that Section 88(9) of the Act enjoins that the authority empowered to grant permits in respect of tourist vehicles, valid for the whole of India or in such contiguous States not being less than three in number, including the State in which the permit is issued, is the STA. It was specifically held that the said provision does not authorise delegation of such power to any other authority. Accordingly, the aforesaid decision was found ultra vires the Act and it

was accordingly quashed.

2. The exercise of power u/s 88(9) is subject to Rules that may be made by the Central Government under Sub-section (14) of Section 88. In exercise of such and other powers referable to the Act, the Central Government made the Central Motor Vehicles Rules, 1989 (hereinafter, "the Central Rules", for short). Among them, Rules 82 to 85A regulate tourist permits. Rule 82(1) provides that the application for grant of permit in respect of tourist vehicle shall be made in Form 45 to the State Transport Authority. By a conjoined reading of Rule 82 of the Central Rules and Sub-section (9) of Section 88 of the Act, the Division Bench, in the aforesaid judgment, categorically concluded that the jurisdiction to grant permits for tourist vehicles exclusively vests in the STA.

3. The issue raised in these Writ Petitions is as to the sustainability of a decision taken by the STA on Departmental Item No. 4 with Decision No. C5/2070/STA/2003 issued as per proceedings dated 8-9-2005, by which the STA has ordered to the following effect:

(1) Applications for tourist permit shall be received in the Regional Transport Offices and the Sub Regional Transport Offices.

(2) The details of the application received shall be forwarded to the State Transport Authority in the prescribed format.

(3) The State Transport Authority will consider the applications on merits and the decisions to grant or to refuse tourist permit and authorisation will be communicated to the Regional Transport Offices/Sub Regional Transport Offices.

(4) The Regional Transport Officers and the Sub Regional Transport Officers are authorised to authenticate the tourist permit under Rule 132 of the KMV Rules.

(5) The records relating to applications received, permits issued etc. shall be maintained as before.

(6) The above order shall come into effect with immediate effect.

4. The aforesaid decision ,is issued by the STA after the State unsuccessfully challenged the decision of the Division Bench of this Court in W.A. No. 2153/2003 before the Apex Court in SLP. No. 7459/2005.

5. The challenge against the aforesaid order of the STA is based on the contention that the exercise authorised thereby is an affront to the judgment of this Court in W.A. No. 2153/2003 and also in gross violation of the statutory provisions. It is further urged that the said procedure, as ordered by the STA, contradicts the procedure prescribed by the statute and that affects the operators when vehicles move out of the State of Kerala into other States through the check posts. To demonstrate the situation succinctly, Ext.P7 in WP(C). No. 7008/06 is produced. It can be seen therefrom that the permit is issued under the signature of the Secretary, RTA and on the face of it, it does not apparently reflect any decision by the STA as is provided for by the statute, The

learned Counsel for the petitioners have strenuously urged that when tourist taxi operators move on the basis of such All India permits or regional permits, they face the consequences while they leave the territory of the State of Kerala in as much as the officials of the other States would not, obviously, recognise such permits being issued by and under the signature of the Secretary, RTA, while it is the statutory requirement that such permits be granted by the STA. This, according to the petitioners, is a very alarming and serious situation that adversely affects the commercial activities of tour operators and thereby, it impinges on the rights of the operators. It is further urged on behalf of the petitioners that the process that is being now adopted on the basis of the impugned decision of the STA results in a time consuming process whereby applications for permits are not decided upon and permits are issued after a month or two of application.

6. Per contra, relying on the statement filed in WP(C). No. 7008/2006, the learned Government Pleader urged that the occasion that led to the issuance of a document in the nature of Ext.P7 in the said Writ Petition was an error in the computer and that the decision-making process is as demonstrated with reference to Ext.R2(b) in WP(C). No. 7008/2006. It is contended on behalf of the STA that since the seat of the STA is in Thiruvananthapuram, the Regional Transport Officers, who are the Secretaries to the concerned RTAs, receive the applications from each district and forward the same to the STA, in terms of the impugned decision of the STA, a copy of which is exhibited as Ext.R2 (a) along with the statement filed in WP(C). No. 7008/2006 (same as Ext.P4 in the other Writ Petition). According to the STA, the applications for grant/ renewal/transfer/ surrender of permit/grant of authorisation are decided upon by the STA and communications are issued by the Secretary, STA to the concerned RTOs in each district in a manner similar to that exhibited as Annexure-R2(b) along with the statement in WP(C).No. 7008/2006 and following such communication, the RTOs issue the permits as enjoined by the impugned order of the STA. The learned Government Pleader attempted to point out that this excludes the requirement of applicants from the length and breadth of the State to travel to Thiruvananthapuram, to have the applications filed, processed and permit issued.

7. The content of Section 88(9) of the Act read with Rule 82 of the Central Rules is couched in such terms as would explicitly establish that the legislative intention behind the said provision in the Act as well as the Rules is that the STA shall be the authority to whom the application shall be made and it is that authority which shall decide upon the application. Section 88(9) clearly provides that the grant of permit shall be only by the STA. The legislative object appears to be that such power or even the issuance of the permit cannot be delegated to any authority, except in accordance with any prescription in that regard in the Act or the Central Rules. This is all the more so, because the power to make rules under Sub-section (9), (11) and (14) of Section 88 are conferred exclusively on the Central Government. The power to frame Rules and prescribe conditions for the All India tourist permit is exclusively vested in the Central

Government and the State Government would have no jurisdiction either to frame Rules or prescribe conditions for All India tourist permits. Such permits would be exclusively governed by the Rules framed by the Central Government or the conditions prescribed by the Central Government (See *State of Andhra Pradesh and Others etc. Vs. B. Noorulla Khan and Another etc.*, .

8. In the backdrop of the law as understood above, the primary intention of the Parliament in enacting Sub-section (9) of Section 88 in the manner in which it is and the conferment of exclusive power on the Central Government to frame Rules in that regard, is to obtain uniformity in the process of issuing tourist permits and national permits throughout the Nation. Such uniformity, including as to the identity of the authority Issuing such permits, is abundantly necessary because the point of enforcement or scrutiny of a permit would not always be within the State from which it has been issued. If Rule 82 of the Central Rules read with Section 88(9) of the Act provides for granting of permits by the STA, it does not require much of a deliberation to foresee the situation in which an operator will be placed, if his permit is not issued by the STA and in the name of, or under the authority of, the STA. The petitioners cannot be found fault with for asserting that their members face a very grave situation while plying outside the State of Kerala on the basis of permits which are issued under the signature of the RTOs (Secretaries, RTAs). One can well imagine the disruption of commercial activity that would result out of such a situation, the inconvenience that will be caused to a bona fide and innocent passenger, who is hiring such a tourist taxi, as also the long standing blemish that would get attached to the tourism industry, which is the prime purpose for issuance of tourist permits, going by the prescription in Section 88(9) of the Act itself that the intention is the purpose of promoting tourism.

9. Now, going by the impugned order, the modality prescribed by the STA is that the applications are to be received in the offices of the RTOs and details of the applications to be forwarded to the STA in the prescribed form. This is plainly opposed to the statutory prescription in Rule 82 of the Central Rules which prescribes not only that the application shall be in Form 45 of the Central Rules but also that it shall be made to the STA. This means that the application for the grant of permit has to be made by the applicant to the STA. The insertion of the RTOs as the conduit for collecting the applications cannot be imposed by a decision of the STA. The impugned order of the STA further states that the decisions to grant or to refuse the tourist permits and the authorisation will be communicated and the RTOs and the Sub RTOs are authorised to authenticate the tourist permits under Rule 132 of the Kerala Rules. Rule 132 of the Kerala Rules cannot be pressed into service to authorise or appoint the RTO or the Sub RTO to authenticate the documents in relation to a permit governed by Section 88(9). This is because, Rule 132 of the Kerala Rules is not one framed by the Central Government, which alone has got the authority to make Rules for the purpose of Section 88(9), as held by the Apex Court in *Noorulla Khan (supra)*. That apart, the authorisation for tourist permit and national permit has to be

issued, in terms of Rules 83(2) and 87(2) of the Central Rules, in Form 47 of the said Rules. The said authorisation has to be under the signature and seal of the Transport Authority in Form 47 which shall be security printed in water mark paper and shall carry a hologram emblem specified by the State Government. This means that the form and the issuing authority have to be in conformity with the said Rules and Form and all that the State Government can specify is the hologram emblem that is to be affixed on the authorisation.

10. The contention of the petitioners that there is an enormous delay in the matter of issuing the tourist permits and national permits, also requires to be considered. Even in cases where the statutes or the subordinate rules do not prescribe a time limit for consideration and issuance of permits etc., the situational requirement has always to be judged, having regard to the nature of the permit sought for. The Division Bench of this Court had occasion to consider the cases where the Department of Legal Metrology were required to deal with petroleum outlets. In W.A. No. 3666/01, the Division Bench noticed that even if a period is not prescribed, a reasonable period has to be applied for such purposes. It is beyond dispute that huge investments are made to purchase motor vehicles for being utilised in the tourism industry. The investments are obviously, made with commercial interests. Right to freedom of trade and commerce and movement for such purpose anywhere in India, is a fundamental right guaranteed by the Constitution. The reasonable restrictions imposed on the movement of vehicles in the course of such commercial activity by regulatory terms, would work meaningfully only if applications for permits are considered and decisions taken within a reasonable time.

In the aforesaid circumstances, the impugned decision of the STA in so far as it authorises the RTOs and the Sub RTOs to authenticate tourist permits and national permits is set aside and it is declared that any application in terms of Section 88(9) of the Act and Rule 82 of the Central Rules in Form 45 can be filed directly before the STA without following the procedure imposed by the STA as per the impugned order and such applications shall be considered and decisions taken by the STA without delay, at any rate, within a period of three weeks of the filing of such applications. The grant of permit shall be by the STA and it shall be issued in such statutory form as is prescribed either under the signature of the STA or the Secretary, STA.

The Writ Petitions are allowed with the aforesaid directions. No costs.