

(2002) 05 KL CK 0010

In the High Court Of Kerala

Case No : O.P. No's. 34977, 36312 and 37836 of 2001

Babu

APPELLANT

Vs

Regional Transport Authority

RESPONDENT

Date of Decision : 27-05-2002

Acts Referred:

Kerala Motor Vehicles Rules, 1989 — Rule 179(2)
Motor Vehicles Act, 1988 — Section 80(3), 89

Citation : (2003) 2 KLT 216

Hon'ble Judges : R. Rajendra Babu, J

Bench : Single Bench

Advocate : P. Deepak, for the Appellant; John Joseph Vettikkad, Government Pleader, K.V. Gopinathan Nair and Joby Jose Kondody, for the Respondent

Final Decision : Allowed

Judgement

R. Rajendra Babu, J.—One K.P. Babu, a resident of Periyankavala, filed O.P. 34977/01 to quash Exts.P4 and P5 orders passed by the STAT in MVAA 863/01 and 865/01 respectively. The 5th respondent therein, Smt. Rani George, was operating a stage carriage on the route Kuzhitholu-Changanacherry as ordinary service. She filed an application for conversion of its as LSOS and the RTA, Idukki, rejected the application holding that the above conversion shall affect the facilities enjoyed by the students and short distance passengers. Aggrieved by the above order, Smt. Rani George filed an appeal before the STAT as MVAA 863/01. The STAT allowed the appeal and directed the RTA to grant conversion as LSOS by ExLP4 order.

2. The 4th respondent Sri. George Thomas was operating his stage carriage on the route Champakappara-Changanacherry as ordinary service. His application for conversion as LSOS was rejected by the RTA, Idukki, holding that it shall affect the facilities enjoyed by the students and short distance passengers. Sri. George Thomas challenged the above order by preferring appeal before the STAT as MVAA 865/01. By Ext.P5 order the STAT allowed the appeal and directed the

RTA to grant the conversion as LSOS. The above orders passed by the STAT viz. Exts.P4 and P5 are under challenge at the instance of a passenger in O.P. 34977/01.

3. Sri. Anthrayose who is a stage carriage operator filed O.P. 36312/01 to quash Ext.P3 order passed by the STAT in MVAA 689/01. One K.T.Jose (the 4th respondent) was operating his stage carriage on the route Balan Pillai City Changanacheny as ordinary service. He applied for conversion of services as LSOS. The RTA, Idukki, (1st respondent) rejected the above application holding that it would prejudice the short distance passengers as well as the students, by Ext.P1 order. The 4th respondent filed an appeal before the STAT as MVAA 689/01. By Ext.P3 order the STAT allowed the appeal and directed the RTA to grant the conversion as LSOS. The above order is under challenge in O.P. 36312/01 at the instance of another stage carriage operator.

4. One P.G. Mathew, a stage carriage operator, filed O.P. 37836/01 to quash Ext.P1 order passed by the STAT in MVAA 716/01. The 4th respondent therein, Philip Varghese, was operating his stage carriage on the route Changanacherry Ramakalmedu as ordinary service. His application for conversion as LSOS was rejected by the RTA holding that the conversion shall adversely affect the short distance passengers and the students. The above order was challenged in appeal before the STAT in MVAA 716/01. The STAT allowed the appeal and directed the RTA to grant conversion as LSOS. The above order is under challenge at the instance of an operator in O.P. 37836/01.

5. Heard the learned counsel for the petitioners learned counsel for the respondents and also the learned Government Pleader.

6. The main argument advanced by the learned counsel for the petitioners was that the order rejecting the prayer for conversion as LSOS was not an appealable order and as such the STAT, the appellate court, had no jurisdiction to entertain the appeals and to pass the impugned orders. It was further argued that the conversion prayed for was a variation of a condition of the permit not contemplated u/s 80(3) of the Motor Vehicles Act, but was one envisaged under Rule 179 of the Kerala Motor Vehicles Rules, hereinafter referred to as the Rules. Rule 179(2) reads:

"Upon receipt of an application made by the holder of the permit to vary any one or more of the conditions thereof other than those referred to in Sub-section (3) of Section 80 of the Act, the Transport Authority which granted the permit may allow the application or for reasons to be recorded in writing disallow the same."

R. 179(2) specifically excludes applications for variations u/s 80(3) of the Act and the applications for conversion as LSOS was not within the ambit of Section 80(3) of the Act. Section 89 of the Motor Vehicles Act deals with appeals. It was submitted by the learned counsel for the petitioner that though Clauses (a) to (g) of Sub-section (1) of Section 89 enumerate the orders which are appealable before the STAT, the order refusing the variations of the conditions of the permit

is not at all included in the above provisions. It would be relevant to consider Clause (b) of Sub-section (1) of Section 89. Clause (b) reads:

"Appeal - (1) Any person

XX XX X X XX (b) Aggrieved by the revocation or suspension of the permit or by any variation of the conditions thereof."

The learned counsel for the petitioners submitted that though the grant of variation of conditions of the permit are appealable under Clause (b) of Sub-section (1) of Section 89, a refusal to grant variation of the conditions thereof is not made an appealable order u/s 89 of the Act. Clause (b) contemplates an appeal from an order of revocation or suspension of permit or any variation of the conditions thereof, but it does not contemplate an order refusing the variation of the condition of the permit. Reliance was placed on the decision of a Division Bench of the Madhya Pradesh High Court in Hazarilal Gupta Vs. State Transport Appellate Authority, M.P. and Others, wherein it was held-

"There is no provision for filing an appeal against a refusal to vary the conditions of a permit. CI.(b) quoted above makes the matter further clear, for it expressly provides for appeals in cases where the conditions of a permit are varied. Clause (b) also provides for 2 kinds of cases. The first part deals with revocation or suspension of a permit and the second part with any variation of the conditions of the permit. When the Legislature has expressly provided for appeals in the case of variations of the conditions of a permit, it is unjustifiable to infer that an appeal would be competent under some other clause which does not deal with appeals against refusal of variations at all".

The Allahabad High Court also has taken the same approach in Bhan Singh Vs. Regional Transport Authority and Others, . There it was held:

"If an order is made varying the conditions, it is very clear that an appeal would lie u/s 64(b) which specifically grants a right of appeal to a person aggrieved by the variations of the conditions of a permit. On the other hand, if an order does not vary any of the conditions of the permit, Clause (b) of Section 64 would not apply and no appeal under that provision would lie."

I respectfully agree with the above view taken by the above courts.

7. The learned counsel for the petitioners further submitted that the Tribunal had gone wrong in disposing the all the appeals without calling for the records from the R.T.A. and without calling for a report as contemplated under Rule 11 of the S.T.A.T. Rules, 1988. It was further submitted that as per Rule 11, the Tribunal should have called for the records from the RTA and the appeals should have been disposed of in accordance with law, though an appeal itself was not maintainable. Reliance was placed on the decision of the Division Bench of this Court in Vidyasagar v. R.T.A. 1998 (2) KLT 383 wherein it was held:

"As per the above provisions the S.T.A.T. shall call for the records and remarks

from the authority or authorities who passed the impugned order for the purpose of proper adjudication of the appeal. The decision in appeal u/s 89 of the Motor Vehicles Act is final. Therefore, it is the duty of the Appellate Tribunal to call for the records and remarks by issuing notice in Form D. Under Rule 11 of the S.T.A.T. Rules, it is the duty of the S .T. AT. to call for the records in Form D which was not a discretionary function of the S.T.A.T. "

The impugned orders would disclose that the orders were passed without calling for the records. Hence the order passed by the Tribunal without calling for the records from the R.T.A. was in violation of Rule 11 of the S.T.A.T. Rules.

8. Learned counsel for the respondents submitted that an appeal u/s 89 as well as a revision u/s 90 of the Motor Vehicles Act had to be filed before the S.T.A.T. and even if the order impugned was not appealable, the appeals could have been treated as revisions u/s 90 of the Act. Reliance was placed on the decision of this Court in *Shahul Hameed v. R.T.A., Palakkad* 1987 (2) KLT 620. There it was held:

"The revisional power of the Tribunal u/s 64-A is of wide amplitude and could be exercised either on its own motion or on an application made to it. The Tribunal was competent to deal with the order Ext.P1 in exercise of its powers u/s 64-A, even if the appeal was not maintainable."

Even if the appeals filed by the respondents before the S.T.A.T. are to be treated as revision u/s 90 of the Motor Vehicles Act, the procedure contemplated by Rule 11 of the State Transport Appellate Tribunal Rules was not at all complied with and as such the Tribunal had committed a grave irregularity in the disposal of the appeals.

9. The learned counsel for the respondents submitted that a variation of the conditions of permit as LSOS from ordinary service was allowable under law and as such the order passed by the Tribunal was legal and was not liable to be interfered. Reliance was placed on the decision of this Court in *Balan v. S.T.A.T. Ernakulam* 1992 (1) KLT 733. There it was held:

"Under Rule 206 of the Kerala Motor Vehicles Rules, 1989 (for short "the Rules") the State or Regional Transport Authority has power to fix stopping places for a stage carriage service. Such power can as well be exercised for refixing stopping places. One of the requirements of the Rules is that while fixing the stopping places, the Transport Authorities shall consult such other authority as it deems necessary. This again indicates that fixation of stopping places has to be done in the interest of the travelling public. It may be true that travelling public would be benefited if there are intermittent stopping places at short distances as passengers can alight from the vehicle and board it whenever they choose. But it would inflict great strain and tediousness to those passengers who have to cover long distances if the bus stops too frequently. Long distance passengers, in such buses, would be compelled to suffer loss of much time in journey. In long distance services "limited stop services" is adopted to lessen the strain, tediousness and waste of time to such passengers. If "limited stop" facility can

be provided for bus services covered by permits issued the old Act, the same can be extended to services covered by permits issued under the new Act as well. What is sauce for the goose is sauce for the gander also."

The above decision itself would indicate that while granting limited stop service, the interest of the travelling public was the prime factor to be considered while deciding the issue. The learned Counsel for the petitioners placed reliance on the decision of a Division Bench of this Court in *Paulose K.K. v. State of Kerala* ILR 1997 (2) 821. There it was held:

"The permits were issued to the appellants on the basis of the then existing need. The stops were determined after taking into consideration the needs of the commuters. The convenience of the students was also taken into consideration while granting the permits. Now, if the appellants are allowed to convert the permits as fast passenger services, the number of stops will be reduced, the fare will be higher, the students who are entitled for concession when they travel by ordinary service will be deprived of the benefit. The only advantage that may accrue as a result of the conversion will be a little relief to the long distance passengers, in that they will be able to reach their destination quickly. The R.T. A. analysed these aspects and found that the common man will be affected if the conversion applied for is granted. The services are intended for the public. The public depend on the ordinary service for their travel. If the number of ordinary services is reduced and fare is also hiked, the common man will be deprived of the benefit that has accrued to him when the buses are being operated as ordinary services. As the learned Single Judge correctly put it, the R.T. A. is aware of the local conditions and his opinion is supported by good reasons. If that be so, there is nothing to interfere with the judgment."

The facts of the above case have much similarity with the facts of the present case. The public were enjoying the facility of the ordinary service and by the variation of the conditions of the permit by conversion as a LSOS, the facility enjoyed by the travelling public will be lost. The learned counsel for the petitioners submitted that most of the vehicles are now being operated as LSOS and if all the other vehicles operated as ordinary service on the above route are allowed to be converted as LSOS, the travelling public, especially the passengers travelling short distance and the students, would be put to much hardship and they may lose the existing travelling facility. It was further submitted that Idukki District is a place where sufficient number of vehicles are not being operated and most of the routes are ghat routes and the ordinary services are to be maintained without any conversion. In 1992 (1) KLT 733 (*supra*) this Court had considered the convenience of the long distance passengers and had taken the approach that there was no bar in converting an ordinary service to LSOS. The Tribunal allowed all the appeals placing reliance on the above decision and holding that the routes were long distance routes. The R.T.A. had considered the inconvenience that would be caused to the long distance passengers and also the students at large and rejected the prayer for conversion as LSOS. The above

aspect was not at all considered by the Tribunal, but it considered only the convenience of the passengers travelling long distance. In fact, the R.T.A. passed the orders taking into consideration all the aspects of the case whereas the S.T.A.T. reversed the order without considering all the aspects of the case. Hence the order of the Tribunal are liable to be quashed on merits also.

10. An argument was advanced by the learned counsel for the respondents that an original petition under Article 226 of the Constitution of India was not maintainable. Learned counsel for the petitioner placed reliance on the decision of the Supreme Court in *Jayaraj v. Commissioner of Excise* (2000 (3) KLT 820) wherein it was held that it would be improper to allow illegal orders to remain alive and operative on the sole ground that the person who filed the Writ Petition has strictly no locus standi. In view of the above decision I do not think that the O.Ps. have to be dismissed on the ground of the locus standi.

In the result all the O.Ps. are allowed. The order passed by the Tribunal in M.V.A.A. Nos. 863, 865, 689 and 716 of 2001 shall stand quashed and the order passed by the R.T.A. shall stand restored.