

(2005) 07 KL CK 0034

In the High Court Of Kerala

Case No : Writ Petition (C) No. 279 of 2005 (G)

CAM Transports

APPELLANT

Vs

C. Saidalavi and Others

RESPONDENT

Date of Decision : 11-07-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 89

Citation : (2005) 2 KLJ 618 : (2005) 3 KLT 679

Hon'ble Judges : K. Balakrishnan Nair, J

Bench : Single Bench

Advocate : M. Ajith, for the Appellant; Dinesh Menon, for the Respondent

Final Decision : Dismissed

Judgement

K. Balakrishnan Nair

1. The point that arises for decision in this case is whether the State Transport Appellate Tribunal can direct the Regional Transport Authorities to grant a permit. The brief facts of the case are the following: The petitioner is operating stage carriages on the route Valancherry-Pattambi and Pattambi-Valancherry. The 1st respondent applied for a regular permit on the route Valancherry-Cherplassery, which overlaps the route Valancherry-Pattambi. The R.T.A., by Ext. P1 proceedings, rejected the application on the ground that the vehicle offered is not registered in the name of the applicant therein. The first respondent applicant appealed and the appeal was allowed by Ext. P2 Judgment. The operative portion of the said Judgment reads as follows:-

In the result, the appeal is allowed and the order under appeal is set aside and the RTA is directed to grant regular permit to the appellant on the aforesaid route for the stage carriage provided he is in lawful possession of the vehicle concerned. Till the time of grant of permit, the appellant may be provided with temporary permit.

This Writ petition is filed, challenging the above direction in Ext. P2 Judgment, on

the ground that the STAT should not have ordered to grant the permit and it should have remitted the matter to the RTA, for taking a fresh decision in the matter. By ordering to grant the permit, the STAT usurped the power of the RTA, it is submitted. In support of the above ground of attack, the learned counsel for the petitioner relied on the decision of this Court in Joy Vs. Regional Transport Authority, , wherein it was held that the STAT has no power to grant permits or direct to grant permits, in view of the judgments of this Court in OP Nos. 12492 and 12490 of 1998.

2. The 1st respondent has filed a counter affidavit, supporting the impugned order. The learned counsel for the 1st respondent produced the common Judgment of the Division Bench of this Court in WA Nos. 1493 and 1494/98, filed, challenging the common Judgment of this Court in OP Nos. 12492 and 12490 of 1998. In the said Judgment, it has been held as follows:-

No doubt, the Tribunal could not have granted permits by itself, rather the Tribunal should have directed the Regional Transport Authority to grant the permits to the appellants in view of its findings.

It has been specifically held by the Division Bench of this Court in the Judgment quoted above that the STAT was competent to direct the RTA to grant permit. Thus, the judgment relied on in Joy's case mentioned above, has been reversed by the Division Bench. So, in view of the said Division Bench Judgment, the decision in Joy's case does not lay down the correct principle of law. Further, the appellate power is normally co-terminus with the original power, unless the statute restricts the power of the appellate authority. But, Section 89 of the Motor Vehicles Act provides a regular right of appeal to a person, aggrieved by certain orders passed by the State or Regional Transport Authorities. There is no restriction on the appellate power conferred on the STAT, by Section 89 of the Act. Therefore, the appellate Authority can definitely order the RTA to grant permits. The petitioner does not have any case that the permit could not have been granted for some other ground such as violation of any nationalisation scheme etc. In the absence of any such ground, there is no point in remanding the matter to the RTA. Accordingly, the contention of the petitioner that the STAT should have remitted the matter to the RTA and it should not have ordered to grant permit, cannot be accepted. No other grounds were urged. In the result, the Writ Petition fails and it is dismissed.