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**(1967) 02 KL CK 0005**  
**In the High Court Of Kerala**  
**Case No : O.P. No. 1582 of 1965**

Devadas

APPELLANT

Vs

Regional Transport Authority, Calicut

RESPONDENT

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**Date of Decision :** 08-02-1967

**Acts Referred:**

Kerala Motor Vehicles Rules, 1989 — Rule 153

**Citation :** (1967) KLJ 445

**Hon'ble Judges :** V.P. Gopalan Nambiyar, J;P. Govindan Nair, J

**Bench :** Division Bench

**Advocate :** V.R. Krishna Iyer, V. Sivaraman Nair and A. Inoes, for the Appellant;  
V.M.B. Menon, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Gopalan Nambiyar, J.—This writ petition challenges the validity of the proceedings of the Regional Transport Authority dated 22-12-1964 by which it granted a stage carriage permit in respect of the route Calicut-Eranhikal Bazaar (via) Pudiyangadi to the 3rd respondent. A copy of the Authority's order is Ex. P-I. Its validity has been attacked on the only ground that the District Collector who is to be the Chairman of the Regional Transport Authority did not participate in the deliberations or the decision of the Authority which resulted in the order. Section 44 (1) of the Motor Vehicles Act provides for the constitution of Regional Transport Authorities to exercise and discharge the powers and functions conferred by or under Chapter IV of the Act on such Authorities. Section 44 (2) of the Act provides:

44(2). A State Transport Authority or a Regional Transport Authority shall consist of a chairman who has had judicial experience and such other officials and non-officials, not being less than two, as the State Government may think fit to appoint; but no person who has any financial interest whether as proprietor, employee or otherwise in any transport undertaking shall be appointed as or continue as a member of a State or Regional Transport Authority, and, if any

person being a member of any such authority acquires a financial interest in any transport undertaking, he shall, within four weeks of so doing, give notice in writing to the State Government of the acquisition of such interest and shall vacate office:

Provided that nothing in this sub-section shall be construed as debarring an official (other than an official connected directly with the management or operation of a transport undertaking) from being appointed as or continuing as a member of any such authority merely by reason of the fact that the Government employing the official has, or acquires, any financial interest in transport undertaking.

Section 68 of the Act is the rule-framing section. It is enough to notice that subclause (a) of clause (2) of the section enables rules to be framed with respect to the conduct of business of the Regional Transport Authority. Rule 153 of the Kerala Motor Vehicles Rules is one of the rules so framed. It reads as follows:

153 QUORUM-No business shall be transacted at a meeting of the Regional Transport Authority unless there be present at such meeting at least two members and also unless one of the members so present is the Chairman or an Official.

2. The petitioner's contention is that by reason of section 44 (1) of the Motor Vehicles Act the powers and functions conferred on the Regional Transport Authority are the joint responsibility of the Chairman and the other official and non-official members, and that in the absence of the Chairman, at any rate, the decision taken by the Authority cannot be said to be valid or proper. Reliance is placed in support of this proposition on the decision of the Supreme Court in *The United Commercial Bank Ltd. Vs. Their Workmen*, and on the decision of the Madras High Court following the same in *Isa Ammal v. Rama Kudumban* ( A.I. R. Mad. 129). The principle of these decisions supports the contention of the learned counsel for the petitioner.

3. But, for the respondent, two objections have been urged. First that the petitioner participated without demur, in the proceedings of the Authority which resulted in Ex. P-I Order and took the chance of a decision by that Authority and therefore should be precluded from urging the objection in these proceedings. We would reserve our final opinion on this objection which was based on the two recent judgments of the Supreme Court referred to in *G. Ranga Reddi and Others Vs. State of Andhra Pradesh and Others*, , to the effect that an inherent want of jurisdiction will not be cured by acquiescence or by failure to object. Neither of the judgments of the Supreme Court is available in full, and without the benefit of the full judgments we do not wish to pronounce on this aspect of the matter.

4. But the second of the objections urged by the counsel for the respondents appears to us to be formidable, and should prevail. It is based on rule 153 of the Kerala Motor Vehicles Rules, 1961 which we have extracted earlier. It was urged that the said rule permitted a transaction of business when at least two members

of the Regional Transport Authority is present and one of them is either the Chairman or an official. On the basis of the above rule, Vaidialingam J., in O.P. No. 1 of 1962 took the view that the non-participation of the Chairman in the deliberations of the Regional Transport Authority was not fatal to the validity of its decision. The present case was referred to a Division Bench, as it was felt that the said decision might require re-consideration. The difficulty that we feel is that the petitioner in the present case has not attacked the vires of rule 153. Nor is it possible for him to do so, as the State Government which framed the rule, is not a party to the present writ petition. So long as the vires of the rule has not been attacked, we cannot say that the proceedings of the Regional Transport Authority transacted in accordance with the rule are illegal. On this ground we dismiss the writ petition, but make no order as to costs.