

(1996) 09 KL CK 0006
In the High Court Of Kerala

Devee Motors

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 12-09-1996

Acts Referred:

Kerala Motor Vehicles Rules, 1989 — Rule 267
Motor Vehicles Act, 1988 — Section 72(2)(xxii)

Citation : (1997) 1 ACC 546 : (1997) 1 ILR (Ker) 599

Hon'ble Judges : P.A. Mohammed, J

Bench : Single Bench

Judgement

P.A. Mohammed, J.—The petitioners are the inter-State stage carriage operators. The challenge in these Writ Petitions is directed against an order passed by the State Transport Authority, Trivandrum dated 20.6.1994 directing the Regional Transport Officers to fix the number of standing passengers the vehicle may be required to carry in the vehicle. The above order was issued by the State Transport Authority under Rule 267 of the Kerala Motor Vehicles Rules, 1989 which deals with the passenger capacity of the vehicles. Sub-Rule (2) of the said rules deals with the standing capacity which runs as follows:

Standing capacity ; The State or Regional Transport Authority may, in respect of any public service vehicle other than a motor cab, fix the number of standing passengers the vehicle may be permitted to carry or the permit holder may be required to carry in the vehicle.

Provided that:

(a) such standing passengers may be permitted to be carried only in case of vehicles wherein the internal height or head room is not less than one hundred and sixty seven centimetres and five millimetres, and (b) the number of standing passengers so fixed shall not exceed twenty-five percent of the number of passengers for whom there is seating accommodations as specified in Sub-rule (1).

Provided further that fifty per cent standing passengers may be allowed in "City Services" or "Town Services".

The State or Regional Transport Authority shall determine which are the City or Town Services for the purpose of this rule.

2. The main complaint raised by the petitioners is that before taking Ext. P1 decision by the State Transport Authority no notice was issued to the petitioners. Their further case is that pursuant to the said direction, the Regional Transport Officers are taking steps to fix the number of standing passengers in the Registration Certificate and thereby to enhance the tax payable by them in relation to the respective vehicle. On the other hand, the Government Pleader on behalf of the respondents submits that Sub-rule (2) of Rule 267 which authorises the State Transport Authority to fix the standing capacity of a vehicle, does not provide any notice to its registered owner before taking a decision to fix the number of standing passengers permitted to carry in the vehicle. It is no doubt true that Rule 267(2) does not in terms provide for a notice to the registered owner of the vehicles before fixing the number of standing passengers.

3. The learned Counsel for the petitioners pointed out that Clause (xxii) of Sub-section (2) of Section 72 prescribes that the Regional Transport Authority may vary the conditions of permit or attach to the permit further conditions only after giving notice of less than one month. The plea is what is involved is a variation of the conditions of permit and hence the owners of the vehicle are entitled to notice of not less than one month. The said clause is as follows:

72. Grant of stage carriage permits--

(1).....

(2) The Regional Transport Authority, if it decides to grant carriage permit, may grant the permit for a stage carriage of a specified description and may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely:

(xxii) that the Regional Transport Authority may, after giving notice of not less than one month,

(a) vary the conditions of permit;

(b) attach to the permit further conditions;

Provided that the conditions specified in pursuance of Clause (i) shall not be varied so as to alter the distance covered by the original route by more than 24 kilometres, and any variation within such limits shall be made only after the Regional Transport Authority is satisfied that such variation will serve the convenience of the public and that it is not expedient to grant a separate permit in respect of the original route as so varied or any part thereof.

Sub-section (2) of Section 72 applies only when the Regional Transport Authority

initially decides to grant a stage carriage permit and it does not apply to a subsequent variation of permit. In order the said provision to apply to a subsequent variation, the owners of the stage carriage must establish that the permit already issued in their favour contains a condition as prescribed in Clause (xxii) of Sub-section (2) of Section 72 . Only when it is so established the owners can rely on the said provision and maintain that they are entitled to notice before any variation is made in the permit or attach further conditions thereof. Of course, Clause (vii) provides a condition as to the maximum number of passengers and maximum weight of luggage that may be carried on the stage carriage; but that does not mean the said condition is always there in every permit because Subsection (2) only prescribes that one or more of the conditions specified in Clause (i) to (xxiv) may be attached to a permit. Therefore, it is crystalline that the notice contemplated in Clause (xxii) shall be given when it is established that the conditions provided in Clauses (vii) and (xxii) were attached to the permit when it was initially granted. The petitioners who have failed to establish the aforesaid requirement cannot plead for notice by virtue of the provisions contained in Clause (xxii). This Court also cannot agree with the contention that Clause (xxii) is a general provision which can be applied in all situations without having regard to the other provisions contained in the Act or Rules.

4. The only question now remains to be considered is whether the petitioners are entitled to any other relief within the framework of Rule 267(2). Counsel for the petitioners submits that since the petitioner's vehicles are operating inter-State, the fixation of the standing capacity by State Transport Authority would adversely affect their operations. They also point out that the accommodation of standing passengers in a stage carriage operating on a long distance inter-State route would cause undue hardship and inconvenience. The fixation of standing capacity under Sub-rule (2) of Rule 267 would no doubt result in the demand of higher rate of tax. Therefore, it cannot be said that rights of the petitioners would not be affected adversely in case Ext. P1 decision is implemented by the State Transport Authority. In this connection, it would be apt to note that Clause (a) of Sub-Rule (2) restricts the fixation of numbers of standing passengers only in case of vehicles wherein the internal height or head-room is not less than one hundred and sixty seven centimetres and five millimetres. Clause (b) further restricts that the number of passengers so fixed shall not exceed twenty five per cent of the number of passengers for whom there is seating accommodations as specified in Sub-rule (1) of Rule 267 which deals with requirements for seating room of the passengers. The said Sub-rule, among other things, provides that each passenger shall be provided a reasonably comfortable seating space of thirty eight centimetres square measured on straight lines along and at right angles to the front of each seat. What the provisions of these rules indicate is that before fixing the standing capacity the State or Regional Transport Authority must determine various facts with regard to the passenger capacity of a vehicle. In this process of determination, the owners of the stage carriages must also

participate in which case there will be a proper and reasonable determination. In view of the aforesaid situation, the petitioner's claim for a personal hearing by the State Transport Authority is reasonable. However, I do not feel it essential to set aside Ext. P1 in view of the nature of the order I propose to pass as hereunder.

5. Ext. P1 order was passed as early as on 20.6.1994 and its implementation was kept in abeyance in view of the interim orders passed by this Court in the case of the petitioners. In view of the discussion herein before, I direct the State Transport Authority to afford a personal hearing to the petitioners before Ext. P1 order is implemented against them. The petitioners are consequently directed to file representations before the State Transport Authority within a period of one month from today setting out their grievances. If such representations are filed within the time stipulated, the State Transport Authority is directed to consider and dispose them of on merits and in accordance with law after affording a reasonable opportunity of being heard to the petitioner, at any rate, within a period of three months from the date of receipt of the representations. After hearing the petitioners, if any amendment is found to be necessary, the State Transport Authority is directed to make consequential amendments in the order impugned or pass fresh orders as deemed fit and proper. The interim order staying the implementation of Ext. P1 is kept in force till such decision is taken by the State Transport Authority, in the case of the petitioners in these original petitions.

The original petitions are disposed of as above.