
(1997) 06 KL CK 0022
In the High Court Of Kerala
Case No : O.P. No. 10144 of 1997-G

Firoz, K.K.

APPELLANT

Vs

Secretary, Regional Transport Authority and Others

RESPONDENT

Date of Decision : 13-06-1997

Acts Referred:

Constitution of India, 1950 — Article 226 , 227
Motor Vehicles Act, 1988 — Section 58 , 58(2), 66 , 70, 71

Citation : (1997) 06 KL CK 0022

Hon'ble Judges : J.B. Koshy, J

Bench : Single Bench

Advocate : Sumathi Dandapani, for the Appellant; M.S. Radhakrishnan Nair, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Koshy, J.—Petitioner is holder of a pucca permit on the route Kannur-Guruvayur via Vadakara. The permit was to run the bus as a fast passenger service. When the original permit expired, Petitioner applied for renewal of the same. Pending consideration of renewal of permit, application for temporary permits were called for. His application for issuing temporary permit was rejected by Ext. P-2 order. Petitioner filed appeal before the State Transport Appellate Tribunal. By Ext. P-3 judgment in M.V.A.A. No. 453/97 Petitioner's appeal was partly allowed. Petitioner was allowed temporary permit as limited stop ordinary service instead of fast passenger service. Petitioner challenges this. According to the Petitioner, since original permit was for a fast passenger service its renewal as well as issue of temporary permit also should be as a fast passenger service.

2. Petitioner relies on the decision of the Supreme Court in Gajraj Singh etc. Vs. The State Transport Appellate Tribunal and others etc., . This decision only says that permit will lapse after expiry of the period for which it was initially granted unless application for renewal is made and renewal of permit amounts to fresh grant and it has to be exercised on the basis of rules of reason and justice and

not arbitrarily. Hence grant of renewal is a mere privilege and not an accrued or a vested right. The Supreme Court also held that u/s 81 when a new stage carriage permit is granted, it is not automatic and discretion is conferred by the statute on the authorities. Therefore, I am unable to accept the contention that when renewal of permit is applied for of a fast passenger service its renewal can only be as fast passenger service and automatically the authority should renew the same without applying the rules therein.

3. The Honourable Supreme Court in the same decision held that when there is delay in granting renewal of pucca permit, temporary permits can be granted. In fact, temporary permit was granted. But, there is no absolute right for the Petitioner to insist that the temporary permit should be for a fast passenger service. Section 81 of the Motor Vehicles Act, 1988 deals with renewal of permits which reads as follows:

81. Duration and renewal of permits:

(1) A permit other than a temporary permit issued u/s 87 or a special permit issued under Sub-section (8) of Section 88 shall be effective from the date of issuance or renewal thereof for a period of five years:

Provided that where the permit is countersigned under Sub-section (1) of Section 88, such countersignature shall remain effective from the date of issuance or renewal thereof for such period so as to synchronise with the validity of the primary permit.

(2) A permit may be renewed on an application made not less than fifteen days before the date of its expiry.

(3) Notwithstanding anything contained in Sub-section (2), the Regional Transport Authority or the State Transport Authority as the case may be entertain an application for the renewal of a permit after the last date specified in that Sub-section if it is satisfied that the applicant was prevented by good and sufficient cause from making an application within the time specified.

(4) The Regional Transport Authority or the State Transport Authority, as the case may be, may reject an application for the renewal of a permit on one or more of the following grounds, namely:

(a) the financial condition of the applicant as evidenced by insolvency, or decrees for payment of debts remaining unsatisfied for a period of thirty days, prior to the date of consideration of the application;

(b) the applicant had been punished twice or more for any of the following offences within twelve months reckoned from fifteen days prior to the date of consideration of the application committed as a result of the operation of a stage carriage service by the applicant, namely:

(i) plying any vehicle-

- (1) without payment of tax due on such vehicle;
- (2) without payment of tax during the grace period allowed for payment of such tax and then stop the plying of such vehicle;
- (3) on any unauthorised route:
- (ii) making unauthorised trips:

Provided that in computing the number of punishments for the purpose of Clause (b), any punishment stayed by the order of an appellate authority shall not be taken into account:

Provided further that no application under this Sub-section shall be rejected unless an opportunity of being heard is given to the applicant.

(5) Where a permit has been renewed under this section after the expiry of the period thereof, such renewal shall have effect from the date of such expiry irrespective of whether or not a temporary permit has been granted under Clause (d) of Section 87, and where a temporary permit has been granted, the fee paid in respect of such temporary permit shall be refunded.

This section is interpreted by the Supreme Court in para 12 of the Gajraj Singh etc. Vs. The State Transport Appellate Tribunal and others etc., referred earlier as follows:

Section 81 regulates renewal of permits and duration thereof. Sub-section (1) visualises that a permit, other than a temporary permit issued u/s 87 or special permit issued u/s 88(8), shall be effective from the date of issuance or renewal thereof for a period of five years. Under the proviso, the period of countersigned permit is coterminous with the validity of the primary permit. Sub-section (2) prescribes the limitation within which an application for renewal should be made before expiry of original grant or renewal. Sub-section (3) gives discretion to condone the delay in making the application for the grounds mentioned thereunder. Sub-section (4) enumerates grounds for refusal or renewal of a permit for one or more of the grounds enumerated thereunder. The terms and conditions subject to which stage carriage permit is required to be renewed are different from those of Section 58 of the Repealed Act except the procedural part. Sub-section (2) of Section 58 of the Repealed Act gives preferential treatment for renewal of a permit in favour of the holder of the permit, while Section 81 of the Act does not give such preferential right to renewal. On the other hand, if the permits granted u/s 72 exceed the limit prescribed by the State Government for town service, there would be danger of refusal of renewal subject to giving reasons in support thereof. Equally, in relation to other routes, discretion is given to reject renewal of a permit for reasons to be recorded in the order.

After considering various cases regarding "renewal", Apex Court held in para 38 of the same judgment as follows:

It is settled law that grant of renewal is a fresh grant though it breathes life into the operation of the previous lease or licence granted as per existing appropriate provisions of the Act, rules or orders or acts intra vires or as per the law in operation as on the date of renewal. The right to get renewal of a permit under the Act is not a vested right but a privilege subject to fulfilment of the conditions precedent enumerated under the Act. u/s 58 of the Repealed Act, renewal of a permit is a preferential right and refusal thereof is an exception. But the Act expresses different intention; Sections 66, 70, 71 and 80 prescribe procedure for making application and compliance of the conditions mentioned therein. Existence of the provisions of the Act consistent with the Repealed Act is a precondition. Grant of renewal u/s 81 is a discretion given to the authority (S.T.A. or R.T.A.) subject to the conditions and the requirement of law. Discretion given by a statute connotes making a choice between competing considerations according to rules of reason and justice and not arbitrary or whim but legal and regular. Sections 70 and 71 read with Section 81 do indicate that grant of permit or renewal thereof is not a matter of right or course. It is subject of rejection for reasons to be recorded in support thereof. Therefore, right to renewal of a permit u/s 81 is not a vested or accrued right but a privilege to get renewal according to law in operation and after compliance with the preconditions and abiding the law.

4. This Court in *State of Kerala v. Sebastian* observed as follows:

...Therefore, we direct the Government to come out with appropriate rules fixing the standard to be maintained by vehicles which are to be granted permits as Fast Passenger, Super Fast, Express, etc. The absence of such rule leads to arbitrary grant of such permits. Therefore, we think it proper to direct State Transport Authority, Regional Transport Authorities and the State Transport Appellate Tribunal not to grant permits for Fast Passenger, Super Fast, Express, Super Express, Deluxe or Super Deluxe till the Government lay down the standard and requirements of the vehicle which can be put in use as Fast Passenger, Super Fast, Express, Super Express, Deluxe or Super Deluxe.

It is submitted that no rules were framed so far. 3rd Respondent has considered the above decision and passed Ext. P-3 order in accordance with law and I see no reason to interfere with the same.

5. Ext. P-3 order challenged is passed by State Transport Appellate Tribunal constituted under the Act for taking final decision. So long as such orders are not perverse or patently illegal so as to cause manifest injustice, this Court will not interfere under Articles 226 or 227 of the Constitution of India. By Ext. P-3 S.T.A.T. allowed Petitioner's appeal and granted temporary permit and set aside Ext. P-2 order rejecting his application for temporary permit. The only complaint is that instead of granting permit as L.S.F.S. as applied it was granted as L.S.O.S. No manifest injustice is caused so as to attract the jurisdiction of this Court by the above order even if another view was possible. Hence the Original Petition is dismissed.