
(1959) 07 KL CK 0032
In the High Court Of Kerala
Case No : O.P. No. 648 of 1959

G.B. Transports, Guruvayur

APPELLANT

Vs

R.T.A. Trichur and Others

RESPONDENT

Date of Decision : 16-07-1959

Acts Referred:

Motor Vehicles Act, 1939 — Section 57, 57(2), 62

Citation : AIR 1960 Ker 239 : (1959) 3 KLJ 1247

Hon'ble Judges : T.K. Joseph, J

Bench : Single Bench

Advocate : V.K.K. Menon, V. Subramonian Nair and C.S. Padmanabha Iyer, for the Appellant; Govt. Pleader (for No. 1), T.N. Subramonia Iyer and A. Hariharsubramonian, (for No. 2), M.B. Kurup, (for No. 3) and P.A. Muhammed, (for Nos. 4 and 5), for the Respondent

Final Decision : Allowed

Judgement

T.K. Joseph, J.—This is an application under Article 226 of the Constitution praying for the issue of a writ of certiorari or other appropriate writ, direction or order quashing the order passed by the first respondent, the Regional Transport Authority, Trichur granting a temporary permit to the second respondent varying the route of stage carriage KLR. 1051 from Chittur to Trichur to Chittur to Guruvayoor via Trichur. The petitioner is an operator having five stage carriages plying between Trichur and Guruvayoor. Respondents 3 to 5 are other operators who are affected by the grant of the permit. The second respondent who was operating a stage carriage KLR. 1251 from Chittur to Trichur applied So the first respondent for variation of the route of this vehicle to Chittur to Guruvayoor via Trichur and after notifying the same and hearing objections, the first respondent granted the same on 5-11-1958. The petitioner took up the matter in revision before the State Transport Authority. The revision was allowed and the order of the first respondent was quashed by order (Ex. PI) dated 11-3-1959.

Thereupon the second respondent moved this court for quashing the order of the

State Transport Authority, in O. P. No. 370 of, 1959 which is now pending decision. After the filing of O. P. No. 370 the first respondent passed an order (Ex. P2) dated 21-4-1959 granting a temporary permit to the second respondent varying the route of the stage carriage K L R 1051 to Chittur-Guruvayoor via Trichur. This order which is stated to have been passed under Sections 62 of the Motor Vehicles Act is now sought to be quashed in this petition.

The main grounds urged on behalf of the petitioner are (1) that the first respondent had no "jurisdiction to pass an order allowing temporary variation of the route, (2) that even if the order is confirmed as one under Sections 62, it is illegal as the need, if any, is not a temporary one, and (3) that the action of the first respondent is mala fide. The petition is opposed by the second respondent who contends that the order is valid and passed with jurisdiction under Sections 62 of the Motor Vehicles Act. Respondents 3 to 5 support the petitioner.

The impugned order reads as follows :

"Heard arguments. The R.T.A.'s decision to give a permanent variation of the route to Guruvayoor could not be implemented due to the orders of the State Transport Authority, The Hon"ble High Court has ordered that the "status quo" should be maintained. The order of the R. T. A. regarding the pucca variation will be kept pending till the final orders of the High Court. However, in view of the public need already established and "to meet it temporarily till the question is finally decided by the High Court, a temporary permit under Sections 62 of M. V. Act, for variation of the route as "Chittur-Guruvayoor (via) Trichur" is sanctioned, This will be operative for a period of 4 months or till orders of the High Court, whichever is earlier."

2. Ex. P2 cannot be supported either as one allowing temporary variation of the route or as an order granting a temporary permit under Sections 62 of the Act. There is provision in the Motor Vehicles Act for allowing variation of the route of a stage carriage for which a permit has already been granted, and Sections 57(8) provides that an application to vary the conditions of any permit shall be treated as an application for the grant of a new permit. The procedure to be adopted by the Regional Transport Authority on receipt of an application for grant of a permit is contained in Sections 57 of the Act.

The Regional Transport Authority should make such an application available for inspection at the office of the authority and should publish the application or the substance thereof with a notice of the date before which representations in connection therewith may be submitted and the date, time and place at which the application and representations if any would be considered. This procedure admittedly has not been followed in granting the temporary variation of the route under Ex. P2. It may also be mentioned that there is no provision in the Act for allowing temporary variation of a permit. Viewed as an order allowing variation of an existing permit, Ext. P2 is clearly illegal.

3. Sri T. N. Subramonia Iyer, learned counsel for the second respondent

contended that even, though Ext. P2 refers to the temporary permit as one for variation of the route it is really an order passed u/s 62 of the Act granting a temporary permit. A temporary permit can be granted under the Act only on the specific grounds mentioned in Sections 62 of the Act. These are :

"(a) for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or

(b) for the purposes of a seasonal business, or

(c) to meet a particular temporary need, or

(d) pending decision on an application for the renewal of a permit".

By no stretch of imagination can it be said that Ext. P2 order was passed to meet a particular temporary need. The order passed by the first respondent on 5-11-1958 which was quashed by the State Transport Authority shows that the need, if at all, was a permanent one. A permanent need cannot become a temporary one merely because an order granting a permit has been set aside or its operation stayed in other proceedings. This view has been accepted by this court in K. Balagangadharan Vs. Regional Transport Board, Quilon, . The order cannot therefore be supported under Sections 62 of the Act either.

4. In view of the above conclusion it is unnecessary to express any opinion on the last point namely, whether the order is vitiated by mala fides, or the other questions dealt with at the hearing which will properly arise for consideration in O. P, No. 370 of 1959.

5. In the result, the original petition is allowed and the order (Ex. P2) made by the first respondent on 21-4-1959 is quashed. The petitioner will get his costs including counsel's fee of Rs. 150/- from the second respondent.