

(2000) 02 KL CK 0051

In the High Court Of Kerala

Case No : O.P. No's. 32594 of 1999 and 1044 and 1439 of 2000

Joseph Chacko and Another, etc.

APPELLANT

Vs

Regional Transport Authority, Kottayam and Others

RESPONDENT

Date of Decision : 29-02-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 70, 71

Citation : AIR 2000 Ker 356

Hon'ble Judges : S. Sankarasubban, J

Bench : Single Bench

Advocate : A. Inees, for the Appellant; L.G. Suresh Babu, Govt. Pleader, K.V. Gopinathan Nair, G. Prabhakaran and Stalin Peter Davis, for the Respondent

Judgement

S. Sankarasubban, J.—In O.P. No. 32594 of 1999, there are two petitioners. They are the existing operators operating on the route Cheepumkal-Ernakulam via. Kottayam. Respondents 4 to 6 applied for the grant of the regular permits on the routes Puthuppally-Ernakulam via. Kottayam, Katoor Bus stand-Kottayam and Karinattuvala-Ernakulam via. Kottayam respectively. Applications of respondents 4 and 5 were considered by the first respondent at its meeting held on 24-9-1998 and the application of the sixth respondent was considered by the first respondent at its meeting held on 26-11-1998. In all these matters, the first respondent passed a uniform order rejecting the applications. Ext. P1 is the copy of the order dated 26-11-1998. It is with regard to the sixth respondent.

2. Against the above orders, appeals were filed before the State Transport Appellate Tribunal as M.V.A.A. Nos. 977 of 1998, 981 of 1998 and 42 of 1999. The first petitioner got himself impleaded in M.V.A.A. Nos. 981 of 1998 and 42 of 1999 and the second petitioner got himself Impleaded in M.V.A.A. No. 977 of 1998. It was argued on behalf of the petitioners that the jurisdiction of the Regional Transport Authority to reject the applications for the permits is not taken away by the new Motor Vehicles Act. Section 80(2) of the Motor Vehicles Act only says that the Regional Transport Authority shall not ordinarily refuse to

grant an application for permit. The State Transport Appellate Tribunal by Ext. P2 and similar orders, allowed the appeals and remanded back the matter to the Regional Transport Authority. This is what the Appellate Tribunal stated in Ext. P2: "It appears that the application for the grant of regular permit was rejected by the 1st respondent merely on the ground that the route is oversaturated. According to the Regional Transport Authority, the sector is being served by 1080 trips and there is one service every minute on the sector." According to the Appellate Tribunal, the reasoning of the Regional Transport Authority is not correct in view of the decision in *Mithilesh Garg, Vs. Union of India and others etc. etc.*, . The State Transport Appellate Tribunal set aside the Impugned order and the first respondent was directed to reconsider the application on merits.

3. A counter affidavit has been filed on behalf of fifth respondent. Respondents 4 and 6 have also filed a counter affidavit. In the counter affidavits, they have taken the contention that the petitioners have no locus standi to file this Original Petition.

4. It was further contended that the order of remand made is correct and the reason given by the Regional Transport Authority in rejecting the application is sustainable. Hence, the Original Petition, O.P. No. 32594 of 1999 is to be rejected.

5. Two other Original Petitions. O.P. Nos. 1044 of 2000 and 1439 of 2000, have been filed. Similar question as raised in O.P. No. 32594 of 1999 are also raised in these Original Petitions.

6. Two contentions are raised in these cases. A permit holder cannot object to the granting of permit. His only right is to contest the timings. The other question is whether the Regional Transport Authority was correct when it held that no further permit can be granted on the route Karinattuvala-Ernakulam, Kaloor Bus stand on the ground that the route is oversaturated and there is service in every minute on the sector. According to the Regional Transport Authority, there is a previous decision of the Regional Transport Authority to stop sanctioning permits in the sector because of traffic congestion and accident. In the decision reported in *Ushakumari v. Abdul Azeez* (2000) 1 K LJ 141 : (2000 AIHC 1015), it was held that the existing operators have no right to object to the grant of new permit and their right is only confined to the objection regarding timings. The Division Bench followed the decision in *Mithilesh Garg, Vs. Union of India and others etc. etc.*,) and other connected matters so far as the present case is concerned.

6A. According to me, the petitioners in O.P. No. 32594 of 1999 got themselves impleaded as respondents in the M.V.A. As. and they were heard before the orders were passed. Hence, it is not proper to prevent them from attacking the orders passed by the State Transport Appellate Tribunal. Further, so far as the present cases are concerned, it is not a case of mere granting of permit. This is a case, according to the Tribunal, where the sector is oversaturated and hence, no fresh permit can be granted. If additional permits are granted contrary to the

decision taken by the Regional Transport Authority, then it will naturally affect other operators on the route and question of timing also will arise. The Regional Transport Authority has taken into account the following criteria for not granting any new permits, i.e.. Sector is being served by 1080 trips. The first service starts at 4 A.M. in morning and last ends at 11.30 P.M. in the night. There is a previous decision by the Regional Transport Authority to stop sanctioning permits in the sector because of traffic congestion and accident.

"The greater flow of the passengers and freight with least impediment so that islands and isolating are not created leading to regions or local imbalances, the present situation of number of service on Kottayam-Ernakulam route is very much indicative of the local imbalance, one of the other objectives of Motor Vehicles Act 1988 is concern for road safety, it has been a fact that many roads are to be repaired and even if there are sanctioned permits, it cannot be operated for want of timings settlement". In the appeal, the State Transport Appellate Tribunal stated thus: "the reasoning of the R.T.A. in this regard cannot be sustained in view of the decision of the Honourable Supreme Court in Mithilesh Garg, Vs. Union of India and others etc. etc., . It cannot also be said that the road accidents occur only on account of unhealthy competition among the service operators."

7. After coming into force of the Motor Vehicles Act, 1988, there has been liberalisation of issue of the permits. Formerly, the operators used to fight in order to get a permit and it is only after comparing their qualifications that permits used to be granted. Now, u/s 70 of the Motor Vehicles Act. It is stated that an application for a permit in respect of a stage carriage shall contain the certain particulars mentioned in Section 70. Section 71(2) of the Act says that a Regional Transport Authority shall refuse to grant a stage carriage permit if it appears from any time-table furnished that the provisions of this Act relating to the speed at which vehicles may be driven are likely to be contravened. Section 80 of the Act says that an application for a permit of any kind may be made at any time. A Regional Transport Authority shall not ordinarily refuse to grant an application for permit of any kind made at any time under this Act. It may summarily refuse the application if the grant of any permit in accordance with the application would have the effect of increasing the number of stage carriages. Thus, the Regional Transport Authority have the discretion to refuse to grant a permit. In case the permit is refused to be granted, reasons have to be stated. In these cases, the number of permits has not been restricted by any order of the Government. Respondents cannot merely refuse to grant a permit on the ground that there are number of operators operating on the route and that the route is oversaturated.

8. The Motor Vehicles Act is intended for the benefit of the travelling public. Every person has a right to operate the vehicles on the route. He has got a fundamental right, but it is subject to certain restrictions imposed by the Motor Vehicles Act. In paragraph 14 of the decision, it is stated that the Regional

Transport Authority has the power under the Act to refuse an application for grant of permit by giving reasons. It is for the authority to take into consideration all the relevant factors at the time of consideration of the applications for grant of permits. The statutory authorities under the Act are bound to keep a watch on the erroneous and illegal exercise of power in granting permits under the liberalised policy, it is not clear from the order passed by the Regional Transport Authority whether it had the required statistics with it before the order is passed. The proceedings of the Regional Transport Authority referred to a decision previously taken to stop sanctioning permits in the sector because of traffic congestion and accidents. It is not clear in which year the decision was taken. Further, merely because of traffic congestion and accidents, the Regional Transport Authority will not be justified in refusing to grant permits.

9. The primary duty for the Regional Transport Authority is to find out whether the issue of permit is necessary for the travelling public. Even though the Regional Transport Authority has stated that for Kottayam-Ernakulam route a number of permits have been issued, it has not taken into account the fact that the Kottayam-Ernakulam route is one which is mostly frequented by the travelling public. If necessity exists, then the Regional Transport Authority cannot refuse to grant permits on the ground that there are number of operators on the route. The orders of the Regional Transport Authority have not considered these points. In a State which is thickly populated and the ordinary mode of transportation is by bus, the Regional Transport Authority should take more care when it takes a decision that it will not issue permits on the route, because it is oversaturated. Further, any decision taken regarding the non-grant of permit cannot be said to be permanent. Even if the Regional Transport Authority had taken a decision more than six months back that permit need not be issued, that decision would require reconsideration in the light of subsequent developments.

10. Hence, I agree with the State Transport Appellate Tribunal that the matter has to go back to the Regional Transport Authority for taking fresh decision. But the setting aside the order of the Regional Transport Authority does not mean that the Regional Transport Authority has to immediately grant permits to the applicants. If the Regional Transport Authority feels that there are reasons which exist to refuse to grant permits, then clearly, the Regional Transport Authority can take such a decision. But any decision taken should be on the basis of the actual facts existing. The Regional Transport Authority is directed to take a decision in the matter as early as possible.

The original Petitions are disposed of with the above directions.