

(1990) 12 KL CK 0014

In the High Court Of Kerala

Case No : O.P. No. 9507 of 1990 and connected cases

Joshy Raphael and others

APPELLANT

Vs

R.T.A. and Others

RESPONDENT

Date of Decision : 18-12-1990

Acts Referred:

Motor Vehicles Act, 1988 — Section 115, 7, 71, 71(2), 72(1)

Citation : (1991) 1 KLJ 165

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

Bench : Single Bench

Advocate : G. Prabhakaran and P. Gopalakrishna Menon, for the Appellant; K.V. Gopinathan Nair and Govt. Pleader A.N. Rajan Babu, for the Respondent

Judgement

K.T. Thomas. J.

1. The narrow stretch of land from Vypin to Munambam is a peninsula surrounded by back waters except an isthmus by which the area is joined with the main land. The density of population in this area is probably one of the thickest in India. (2268 persons per sq. km. Kerala's average density is 655 persons per sq. km.). It has only one motorable road starting from one end of the peninsula with its terminus on the other end having a distance of 26 Kms. The result is a high pressure traffic over a limited infrastructure. Out of 76 stage carriages plying on the road, 63 are operated by private individuals and 13 are conducted by the Kerala State Road Transport Corporation. Petitioners applied for stage carriage permits on routes covering different sectors of this peninsula. But the Regional Transport Authority (for short "the Transport Authority") rejected the applications solely on the ground that no fresh permits can be issued on the route between Vypin and Munambam based on the recommendations of NATPAC (which is an acronym developed from the first letters of National Transportation Planning and Research Centre). Petitioners filed appeals before the State Transport Appellate Tribunal (for short "the Appellate Tribunal") As one of the applicants got permit granted only up to Cherai (since concurrence was not

granted by a sister Transport Authority for the route beyond the said point) he filed a revision before the Appellate Tribunal. By a common judgment, the appeals and revision were disposed of Appellate Tribunal concurred with the reasoning of the Transport Authority that in the light of recommendations of NATPAC no fresh permit can be granted on the said route. The Original Petitions are in challenge of the orders of the Transport Authority as well as the common judgment of the Appellate Tribunal dismissing the appeals and revision.

2. The recommendations of NATPAC disfavour granting additional permits on a small sector of the route (between Njarakkal and Cherai). In the project report submitted by NATPAC, it is pointed out that "the existing Vypin-Munambam road, particularly the section between Njarakkal and Cherai is already strained very much by the vehicular traffic system and so introduction of any additional bus service on this section without widening the present road system and bridges will only add problems instead of solving them". Appellate Tribunal also relied on the aforesaid report of NATPAC and declined to grant the permits applied for.

3. It was contended by learned counsel for petitioners that it is not open to the Transport Authority to dismiss the application for regular stage carriage permit, except on the grounds specifically inhibited by the Motor Vehicles Act, 1988 (for short the Act").

4. Sec. 71 of the Act deals with the procedure for considering application for stage carriage permit. The provision contains two restrictions against granting permits. Sub-section (2) says that a Transport Authority shall refuse to grant permit if the lime-table furnished by the applicant is likely to cause contravention of provisions of the Act relating to speed. Sub-section (3) says that the State Government can direct the Transport Authority to limit the number of stage carriages generally or of any specified type operating on city routes. Sub-section (4) contains another restriction that the Transport Authority shall not grant more than five stage carriage permits to any company. The contention is that no application can be rejected except on the grounds mentioned in Section 71 of the Act.

5. The aforesaid argument is mainly based on Sec. 80 of the Act which says that "a Regional Transport Authority shall not ordinarily refuse to grant an application for permit of any kind made at any time under this Act". Merely because the statute directs that a Transport Authority shall not refuse to grant an application "ordinarily", it does not mean that power to refuse the application is restricted to the grounds mentioned in Sec. 71. The word "ordinarily" in sub-section (2) means when circumstances of extra ordinary nature or circumstances other than ordinary nature exist, it is open to the Transport Authority to refuse the grant. "Ordinarily" cannot be taken as invariably. It may mean that in majority of cases (vide *Kailash Chandra Vs. Union of India (UOI)*,) The said word has to be understood in the context in which it is used. A Full Bench of this Court interpreted the word "ordinarily" in the context in which it was used in Rule 44 of the Kerala Education Rules, as a state of affair in which other things are being

equal (vide *Aldo Maria Patroni and Another Vs. E.C. Kesavan and Others*,). The Full Bench observed that the word "ordinarily" imports a certain degree of elasticity to the rule. Here also the word "ordinarily" has the same meaning.

6. The second proviso to Sec. 80 obliges the Transport Authority to give reasons in writing for refusal of the application. This shows that the application can be dismissed if there are good reasons for doing so. Sec.71 (2) mandates that the Transport Authority shall refuse to grant a permit on the ground mentioned therein. It does not mean that the Transport Authority has no power to refuse on any other ground. Sec. 72 (1) confers a discretion on the Transport Authority to grant a stage carriage permit or to refuse to grant a permit. This discretion is subject to the condition that the Transport Authority shall give its reasons for refusal in writing after giving an opportunity of being heard. The Transport Authority has, under the new Act, wide discretion in the matter. In exercising the discretion, The Transport Authority has to consider all relevant factors. The Act does not exhaust the relevant factors which a Regional Transport Authority may take into account in exercising the discretion. What is relevant for consideration in such exercise depends upon facts in each case and on each application. But the argument that a Regional Transport Authority has no power to dismiss an application (except on the grounds specified in the Act) is not correct.

7. Project report submitted by NATPAC should not have been treated as final word on the subject. The said report has no statutory force. There is nothing to show that Government have accepted the report. It is only a study report made by certain persons who are members of a society registered under the Travancore Cochin Literary Scientific and Charitable Societies Registration Act, 1955. No doubt, some of the office bearers of the society are Secretaries to the Government of Kerala. The report of NATPAC cannot be treated as a public document raising a presumption of authenticity or conclusiveness. No doubt, the Transport Authority can take into consideration the said report in the same way as any other item of evidence. But it should not be treated as an inescapable legal hurdle.

8. The Transport Authority and the Appellate Tribunal seems to have given almost statutory force to the project report of NATPAC. The report was not tested or examined by the Transport Authority or Appellate Tribunal, before the same was accepted. At one place the report says like this: "If the existing overcrowding of buses is considered along with the permitted bus capacity, the entire section of Vypin-Cherai is in need of additional bus services and particularly during the peak hours in both directions". The report contains an opinion that introduction of additional bus services on this section will add to traffic problems due to existence of narrow bridges. Different solutions were also suggested in the report. One of the solutions is this: Till additional buses are given permits to ply to clear the peak hour excess traffic, the existing buses can be utilised either by allowing idle buses to run during peak hours or by introducing cut services of buses or a combination of both in Vypin-Njarakkal

section. At another place the report says like this: "Similarly the long standing demand of the people of Nayarambalam Kuzhipilly section for additional bus services, which also experiences overcrowding during peak hours, should not be denied due to inadequate limited road infrastructure facilities in this section". (Nayarambalam-Kuzhipilly sector falls within the distance between Njarakkal - cheral). The report of NATPAC highlights heavy demand for stage carriage facilities in this region which is over populated. Because of narrow bridges in certain areas, it suggested to the Government to provide another motorable road. The report does not say that need of the passenger public should be kept in abeyance until new road is completed. Nor can any such view be taken by the Transport Authority. If any bridge on a motorable road is narrow or unsafe, the State Government can impose restrictions or conditions regarding driving of motor vehicles on such bridges. Power to do so is clearly envisaged in Sec. 115 of the Act. It is admitted that there is no restriction for trucks, lorries, motor cars and other vehicles to ply on this sector. Counsel submitted at the bar that unauthorised services are being conducted by jeeps and trucks during peak hours and make huge profits by exploiting the waiting passenger crowds at bus stops in this region. If all such vehicles can freely ply along this route, why should the Transport Authority take a decision that no stage carriage permit at all be granted on this route? The officials concerned can request the Government to impose such restrictions and conditions as may be necessary in exercise of powers under Sec. 115 of the Act. Instead of exercising such powers, would it be proper to put a permanent embargo against increase in the number of stage carriages to ply on the route, especially when there is no limit as for, all other vehicles including goods vehicles, jeeps, trucks etc? Neither the Transport Authority nor the Appellate Tribunal has considered these aspects. Reliance made on a truncated passage of the report of NATPAC without considering relevant aspects would not serve the objects of the Act.

In the result, I quash the impugned orders passed by the Transport Authority and Appellate Tribunal and direct the Transport Authority to dispose of the applications afresh in the light of the observations made above.

Original Petitions are disposed of in the above terms.