(2007) 12 KL CK 0026

In the High Court Of Kerala

Case No : WP (C) No. 31996 of 2007 (H)

K. Koya APPELLANT

Vs

The Regional Transport Authority and The Secretary RESPONDENT

Date of Decision : 03-12-2007

Acts Referred:

Kerala Motor Vehicles Taxation Act, 1976 — Section 15
Motor Vehicles Act, 1988 — Section 87(1)

Citation : (2007) 12 KL CK 0026

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : K.K. Mohamed Ravuf, for the Appellant; No Appearance, for the Respondent

Judgement

Antony Dominic, J.—The prayer made in this writ petition is to quash Exts. P1 and P2 and also to direct to issue temporary permit for four months to the petitioner''s vehicle, u/s 87(1)(d) of the Motor Vehicles Act.

2. On facts, it is noticed that the petitioner''s stage carriageNo. KL.10 Q 6342 had a regular permit valid till 8/2/06. He had applied for renewal of the regular permit and also sought temporary permit in terms of Section 87(1)(d). In the meanwhile, when this application was pending, the financier has seized the vehicle and therefore the petitioner offered a new vehicle.

3. This application of the petitioner was not considered and therefore the petitioner approached this Court by filing WP(C)No. 9360/07, in which an interim order was passed directing the respondents to consider the petitioner''s application for temporary permit. Eventually, the application for regular permit was considered and by Ext.P1, the same was rejected on the ground that renewal of permit is pending and that moreover the vehicle KL 10 Q 6342 had tax arrears from 01.4.2005 and hence that permit had become ineffective with effect from that date. The reasoning of the 1st respondent appears to be that since the permit became ineffective as on 1.4.05, its renewal could not have

been ordered with effect from 8/2/06 and therefore temporary permit cannot be issued.

4. Aggrieved by the decision of the RTA, an appeal was filed by the petitioner and that was also dismissed by Ext.P2 judgment of the STAT in M.V.A.A. No. 242/07. In so far as the temporary permit is concerned, it is stated that if renewal application is proper, applicant would be entitled to get temporary permit till the disposal of that application. Proceeding further, it has been held that since it is admitted that tax is in arrears since 1.4.05, the permit was ineffective from that date till 8/2/06 when the permit expired. According to the Tribunal, a valid and effective permit alone can be renewed and as on 8/2/06, there was no such valid permit and hence there is no question for any renewal. It is seeking to quash these and for issuing temporary permit, this writ petition has been filed.

5. I have heard the counsel for the writ petitioner and the learned Government Pleader

6. In so far as the claim for renewal of regular permit is concerned, the question whether default in payment of tax can be material for considering the application for renewal of regular permit was considered by this Court in WP(C)No. 11503/05 and the judgment in that case is Ext.P3. In para 5 of that judgment, it has been held as follows:

For non-payment of tax, the permit granted in respect of a vehicle will remain in suspended animation and the same will revive as and when the tax is paid. In this case, the permit expired on 28.2.2001. For a few months preceding the said date, the permit remained in abeyance by virtue of the operation of Section 15 of the Kerala Motor Vehicles Taxation Act. As and when tax is paid, the permit will normally revive and come into operation. Further, I find that going by the provisions of the Act, there is no bar in granting a permit or renewing a permit, in relation to a vehicle having tax arrears. Only at the time of issuance of the permit the tax arrears should be cleared.

Thus the law laid down by this Court is to the effect that the payment or non payment of tax is not germane for considering an application for the grant of a permit, but is relevant only when it comes to the issue of permit. If that be so, the fact that the petitioner''s vehicle in question was in arrears for the period from 1.4.05, could not have stood in the way of the respondents considering the application made by the petitioner for regular permit. Therefore the reasoning adopted by the RTA and confirmed by STAT does not appeal to me.

7. Now what remains is the claim of the petitioner for temporary permit. According to the counsel, irrespective of whether there is tax arrears or not, so long as an application for regular permit is pending, he is entitled to be issued temporary permit in terms of Section 87(1)(d). True, a plain reading of Section also support this interpretation that is now attempted by the petitioner. But then, this is a case where admittedly tax is in arrears as at the time when the application was made. Therefore, if the request of the petitioner is entertained, it

would enable the operator, who is also a defaulter in payment of tax to make application for regular permit irrespective of the sustainability of such an application and claim temporary permit so long as that application is pending. If a clever operator chooses not to revive the regular permit after it is granted, by remitting tax, that again would mean that while the tax is remain unpaid, the operator would have been making successive applications and operating the vehicle on temporary permits. This cannot be the intention of the legislature. Therefore, I am not inclined to grant the relief as sought for by the petitioner. However, I direct that it will be open to the authority to consider the application for temporary permit applied for by the petitioner, but if it is decided to be granted, permit will be issued only if the petitioner clears the entire tax arrears.

Therefore, adopting the reasoning in Ext.P3 judgment, I dispose of this writ petition directing that the application made by the petitioner for regular permit shall be considered by the 1st respondent, as expeditiously as possible, at any rate within six weeks of production of a copy of this judgment. In so far as the application for temporary permit, that will also be dealt with in the manner indicated in paragraph 7 above.