

(1993) 03 KL CK 0083
In the High Court Of Kerala
Case No : O.P. No. 15953 of 1992-Y

K. Mohammed Sadique

APPELLANT

Vs

The Secretary, Regional Transport Authority, Kozhikode and
Others

RESPONDENT

Date of Decision : 02-03-1993

Acts Referred:

Constitution of India, 1950 — Article 14
Kerala Motor Vehicles Rules, 1989 — Rule 212, 212(3)
Motor Vehicles Act, 1939 — Section 48, 68

Citation : AIR 1994 Ker 1

Hon'ble Judges : G.H. Guttal, J

Bench : Single Bench

Advocate : P. Ravindran, for the Appellant; V.K. Mohammed Youseff,
Government Pleader and K.V. Gopinathan Nair, for the Respondent

Final Decision : Allowed

Judgement

G.H. Guttal, J.—By the order dated 6th November, 1992 (Ext. P4 to the petition) the Secretary, Regional Transport Authority, Kozhikode, revised the timings of the stage carriage motor vehicle No. KRD 7216 owned by the respondent No. 2. The petitioner, who is also a stage carriage operator, motor vehicles No. KRD 9759 impugns the validity of the order dated 6-11-1992 (Ext. P4 to the petition) made by the Secretary, R.T.A., Kozhikode on the application of the respondent No. 2.

2. The facts giving rise to this petition are in paragraphs 3 and 4 below.

3. The petitioner has been operating the stage carriage since 1978 on the route Manakkadavu city stand -- Kozhikode, which covers a length of 12 kms. The respondent No. 2, who was granted a permit recently operate his stage carriage on Pantheerankavuicity stand, which overlaps of 95% of the petitioner's route. The petitioner was granted a set of timings on 1-7-1988 (Ext. P1 to the petition). The respondent No. 2 was allotted a time schedule by the Secretary, R.T.A., Kozhikode, in March, 1988 (Ext. P2 to the petition). Again, on the application of

the respondent No. 2, the timing in Ext. P2 was revised by the order which is Ext. P3 to the petition. The respondent No. 2 has been operating according to this timing for the last two years. The petitioner has no grievance about these changes in timings as they do not adversely affect him.

4. However, the respondent No. 2 made one more application in November, 1992 for a change of timings. The application was supported by a letter from an M.L.A. Mr. Sujanpal of Kozhikode. The timings in the two earlier notifications (Exts. P2 and P3 to this petition) were in force about which the petitioner never had a grievance. Without notice to the petitioner or the Association of Bus Operators, the respondent No. 1 altered the timings for the operation of the stage carriage of the respondent No. 2 by order dated 6-11-92 (Ext. P4), which is impugned in this petition. The impugned order records the fact that the respondent No. 2 had made an application and that the local M.L.A. too had made a representation. After referring to these representations, the impugned order, refers to the enquiry held by the Assistant Motor Vehicles Inspector, Kozhikode and his suggestion for a revised set of timings for the stage carriage of the respondent No. 2. The suggested timings were notified on the Notice Board of the Office of the Secretary, R.T.A., Kozhikode. No notice to the petitioner or other operators was given with a view to providing them an opportunity to object to the proposed change of timings. In these circumstances there were no objections from any operator. Therefore the respondent No. 1 revised the timings of the stage carriage of the respondent No. 2.

5. There is no dispute about the fact that the timings introduced by the impugned order allows the vehicle of the respondent No. 2 to be ahead of that of the petitioner so that the vehicle of the respondent No. 2 pilots the petitioner's vehicles through most of the distance. This relative position of the two vehicles is at variance with the positions permitted by the earlier timings. I therefore hold that the timings impugned in this petition are prejudicial to the interest of the petitioner.

6. As already stated, the first timing introduced in March, 1988 was changed on 23-10-1992. The timings introduced by Exts. P2 and P3 have become final. The petitioner accepted them. The timings were again changed by the order Ext. P4. The circumstances which justify the change of timings once again are not discernible from the impugned notification (Ext. P4).

7. The only ground for change of timings effected by the impugned notification is "for providing more convenience to the travelling public enroute". In my opinion, this is not a ground or reason justifying the change of timings under Rule 212 of the Kerala Motor Vehicles Rules. No doubt, the respondent No. 2 possesses the authority to prescribe a schedule of timings "from time to time." In *Krishankutty v. John* (1992) 2 KLT 883 the words "from time to time" were construed to mean that the respondent No. 1 can change the timings only if a ground or reason exists for the revision of timings. Such ground or reason has been held to exist "only in altered or changed circumstances or by emergence of new state of

affairs, which did not exist when the earlier order was passed." It is, therefore, clear that unless a change of circumstances or emergence of a new state of affairs which did not exist when the timings Exts. P2 and P3 were fixed, the respondent No. 1 had no authority to change the timings. There are no circumstances suggesting that there has been a change of circumstances or there has emerged a new state of affairs since the fixation of timings by Ext. P2 or P3. The emergence of new circumstances or a new state of affairs is a jurisdictional fact. In the absence of such facts, the change in the timings introduced by the impugned notification is without authority. This is the effect of the judgment in *Krishnankutty v. John* (1992) 2 KLT 883.

8. The altered timing has caused monetary loss to the petitioner, because the impugned notification grants to the respondent No. 2 advantageous timings, to the prejudice of the petitioner. In view of this prejudice, the question is whether by alteration of timings by the impugned notification, the respondent No. 1 has violated the principles of natural justice. It is elementary that before making any adverse order public authority must give to the concerned parties an opportunity to represent their case and urge that the timings should not be changed. The proviso to Sub-rule (3) of Rule 212 of the Kerala Motor Vehicles Rules embodies this principle of natural justice. The proviso is an admonition to the State or the R.T.A. that they "shall not however vary the timings of service without giving to the interested permit holders an opportunity to represent their case." Since the proposed change of timings adversely affects the petitioner's interest, the petitioner undoubtedly is an interested permit holder. If the petitioner has not been given "an opportunity to represent" his case, there is a clear violation of the principle of natural justice embodied in the proviso to Sub-rule (3) of Rule 212 of the Kerala Motor Vehicles Rules.

9. But learned counsel for the respondent No. 2 urged that such opportunity must be taken to have been provided by reason of the fact that a notice inviting objections, if any, was affixed on the Notice Board of the Office of the Secretary, R.T.A. In order that, any notice performs the function of providing an opportunity to the petitioner and other operators of representing their case, it is necessary that the notice reaches the attention of such interested operators. There are numerous operators who may be interested in objecting to the proposed change of timings. There are varied ways in which a change of timing of one operator can prejudice other operators. All the operators of stage carriages are not expected to wait in the office of the respondent No. 1, to watch everyday, whether any change in the earlier timings is proposed. If the circumstances do not show -- as indeed then do not in this case -- that the interested permit holders would come to know of the notification affixed on the Notice Board, then there is a clear denial of the opportunity to make representations. In my opinion, the affixation of the notification on the Notice Board is no notice to the interested permit holders, unless circumstances show that such permit holders naturally notice the notification. No such circumstances exist. Such "notice" cannot be held to constitute "opportunity to represent their case" within the meaning of the

proviso to Sub-rule (3) of Rule 212. In such circumstances, a personal notice to each of the permit holders is necessary. Only then can it be said that the requirements of natural justice have been complied with.

10. In *Thomas Luccka v. Secretary, R.T. A.* (1991) 2 Ker LT 229 a Division Bench of this Court observed, however, that a personal notice to all the permit holders would not be practicable. "It is sufficient if a notice is published on the notice board of the office of the authority, though individual notice will have to go to the owner of the stage carriage the timings of whose service are sought to be varied and the owner of the stage carriage at whose instance variation is sought to be made." On the basis of the sentence quoted above, learned counsel for the respondent No. 2 urged that the petitioner is not owner of the stage carriage "the timings of whose stage carriage are sought to be varied." Nor is the "owner of the stage carriage at whose instance variation is sought to be made." Since the petitioner does not fall in either of the only two classes of operators who by the rationale of *Thomas Lucka v. Secretary, R.T.A.* (1991) 2 KLT 229 are entitled to personal notice, he is not entitled to receive a personal notice.

11. It is therefore necessary to understand what was laid down by *Thomas Lucka v. Secretary, R.T.A.* (1991) 2 KLT 229.

In the first place, the Division Bench was considering a case against the grant of a regular permit with a set of timings adversely affecting an existing operator. The question was whether "the existing operators have a right to an opportunity to represent their case in regard to the timings suggested in an application for permit where the authority desires to modify the same....." The question whether a change of timings proposed by an existing operator could be granted without notice to the other existing operators who may be adversely affected by the proposed change of timings did not arise for consideration. The learned single Judge against whose judgment the Writ Appeal No. 498 of 1991, before the Division Bench arose, had held that "proviso (to Section 212 of the Motor Vehicles Act) docs not relate to the stage of considering the time table attached lo an application for permit." This point was considered in paragraph 9 at page 234 of the report. After setting out what the single Judge had held, which I have quoted above, the Division Bench held that the existing operators whose service is likely to be affected adversely are entitled to an opportunity of making representations but it did not hold that the right to such, opportunity arises from Rule 212. It calls attention to the earlier part of the judgment and observes :

"We have already held at the stage of considering the timings attached to an application for permit, existing operators whose service is likely to be affected adversely are entitled to an opportunity of making representation. For that purpose it is unnecessary to have recourse to Rule 212. We agree that Rule 212 does not deal with the earlier stage contemplated in Section 72(1)."

It is clear, therefore, that the judgment in *Thomas Lucka*, did not consider whether " notice under the proviso to Sub-rule (3) of Rule 212 was necessary to

other operators. It considered the need of notice to existing operators at the stage where an application for a new permit to operate a stage carriage, proposed a timing. Thomas Lucka cannot, therefore be an authority on any question relating to the opportunity referred to in the proviso to Sub-rule (3) of Rule 212. The Division Bench was not called upon to interpret the proviso to Sub-rule (3) of R.212. While interpreting Sections 72 and 123 which, not in so many words, enjoin the authorities to give to the operators an opportunity of making representations, the Division Bench held that such an opportunity is intended by the legislature.

Nevertheless the Division Bench observed :

"However, personal notice to all such permit holders would not be practicable. It is sufficient if a notice is published in the notice board of the office of the authority, though individual notice will have to go to the owner of the stage carriage the timings of whose service are sought to be verified...."

It is these observations that learned counsel for the respondent No. 2 strongly relies on. The inevitable question, therefore, is : Are the "timings" of the petitioner's stage carriage sought to be varied? If the answer is in the affirmative, he is entitled to a personal notice.

The time of departures and arrivals of the petitioner's stage carriage is unchanged. But the time of departure and arrivals of the stage carriage of the respondent No. 2 is so altered that his stage carriage is always ahead of that of the petitioner. Since no change in the time of the petitioner's stage carriage has been made, it is urged that, the petitioner's case does not attract the observation of the Division Bench which requires notice to those operators whose timings are sought to be changed.

The words "time" and "timings" have varied meanings depending upon the context and purpose of their use. If the petitioner's stage carriage continues to depart at 6.00 a.m. the clock "time" of departure is not changed. When you ask what is the "time" of departure of the petitioner's stage carriage, the answer will be 6.00a.m. "Time" means "point of time". It is generally expressed in hours and minutes of the clock. But "timing" is a different expression. "Timing" means "way thing is timed" (The Pocket Oxford Dictionary -- Seventh Edition). Thus, if the departure or arrival is so fixed that the stage carriage of the respondent No. 2 departs or arrives earlier than the stage carriage of the petitioner, the process involved shows "the way the thing is timed." Thus without making a change in the clock time of departure of the stage carriage A, it is possible to change the time of departure of stage carriage B in such a way that the "timing" of stage carriage A is changed without changing the "time". Timing involves choice of the moment for doing a particular act. It is the arrangement of events in the order in which they occur. If the time of departure of stage carriage B is so chosen that it is always ahead of the stage carriage A. what is changed is not merely the clock "time" of departure of the stage carriage B but also the moment of its departure

in relation to other stage carriages. The order in which its departures or arrivals should occur is changed. When the "timing" of different events like departure of stage carriage or trains is considered it becomes clear that "time" is a dimension related to the moment of occurrence or the order of occurrence and not the "time" of the clock. In my opinion "timing" -- the word used in Rule 212 -- necessarily involves the effect of the change of time of departure or arrival, on other stage carriages on a given route. When the order in which the stage carriages of respondent No. 2 and the petitioner, depart or arrive is changed, there is a change of "timings" of the stage carriage of both. Where a number of stage carriage operate on a given route, the schedule of timings involves not only one stage carriage, but the total plan of all stage carriages with their relative spacing in time. "Timing" conveys the idea of one vehicle preceding or succeeding the other, thereby making a planned programme of arrivals and departures of stage carriages. This relative spacing in time of all stage carriage on a given route is the "timings" of the services. Therefore when the time of departure of stage carriage B is altered, the inevitable result is to upset the relative position in time, of other stage carriages and alter their spacing in time. It is in this sense that the word "timing" is used by the legislature.

In my opinion where the clock time of departure or arrival of stage carriage B is altered, the relative spacing in time of other vehicles A, B or C is also varied. This alteration of relative spacing in time, without altering the clock time, is alteration or variation of "timings" of other vehicles on a given route.

12. For the reasons stated in the last paragraph, I hold that the change of time of arrival or departures of the stage carriage of the respondent No. 2, alters the "timing" of the stage carriage of the petitioner and other operators plying on the same route. Therefore, the impugned notification varies the "timings" of the petitioner's stage carriage. Consequently an individual notice to the petitioner was necessary in order to comply with the requirement of the proviso to Sub-rule (3) of Rule 212.

13. It was urged that it is not practicable to serve notices on all the operators on a given route. I do not think this is really impracticable. Since the number of operators on a given route is known it should not be difficult to issue notices to them. The process of giving opportunity to make representation may cause inconvenience. But considerations of inconvenience must yield to the requirements of law.

14. For all these reasons the petition is allowed. The order No. C2/22636/92 dated 6-11-1992 (Ext. P4) is hereby quashed.