

(2014) 10 KL CK 0276

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 1292 of 2011

Kasaragod District Bus Owners Association

APPELLANT

Vs

Regional Transport Authority

RESPONDENT

Date of Decision : 13-10-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 111, 72, 72(2), 96

Citation : (2015) 2 ACC 183 : (2015) 1 KHC 156 : (2014) 4 KLJ 584

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : P.V. Baby, Advocate for the Appellant; K. Renjith, G.P. and P.C. Chacko, Amicus Curiae, Advocate for the Respondent

Judgement

K. Vinod Chandran, J.—The challenge is against Ext. P1 order, passed by the Regional Transport Authority (hereinafter referred to as, "RTA"), Kasaragod, wherein the RTA took a decision to implement a numbering system and direct uniform colour to all stage carriages operating in Kasaragod District, as also the contract carriages more specifically "autorickshaws" to avoid untoward incidence of violence and in the interest of public safety. The contention raised is that, Ext. P1 is without authority and the RTA does not have the power to make such a stipulation.

2. The learned counsel for the petitioner would contend that, under Clause (xviii) of Sub-section (2) of Section 96 of the Motor Vehicles Act, 1988 (hereinafter referred to as, "MV Act"), the State Government alone has the power to make rules for regulating the painting or marking of transport vehicles and display of advertising matter thereon. The State Government having not prescribed any such Rules, it is the contention that, the RTA cannot impose the conditions in Ext. P1. The petitioner, hence, seeks setting aside of Ext. P1 and permitting the members of the petitioner's Association to continue the stage carriage operations as existed prior to Ext. P1.

3. The learned Government Pleader, specifically referred to Rule 264 under

Chapter VII of the Kerala Motor Vehicles Rules, 1989 (hereinafter referred as, "Rules, 1989") to sustain Ext. P1. In the circumstances of there being a crucial question to be decided with reference to the power of the RTA, this Court appointed Sri P.C. Chacko, as Amicus Curiae, to aid this Court in adjudicating the issue raised.

4. A reading of Ext. P1 indicates that, the same was issued in public interest to avoid violence perpetrated on transport vehicles, in the event of communal disturbances; when, antisocial elements were found to target transport vehicles on the basis of the colour, name and marking, which would indicate the community/religion to which the stage carriage owner belongs. The RTA convened a meeting on 04.06.2010, to specifically consider the issue of avoiding names in the stage carriages as also prohibiting religious names and marks in the autorickshaws. The authority was also influenced by various peace committee meetings organised by the district administration, wherein decision was taken to implement a numbering system and insist on uniform colour to all private buses operating within Kasaragod District. The Superintendent of Police, Kasaragod too recommended the said course and Ext. P1 decision was taken by the RTA to adopt a uniform colour and prepare a numbering system to avoid names on stage carriages and to direct removal of any symbol or names in the autorickshaws.

5. The learned Amicus Curiae would point out various sections in the MV Act, specifically Sections 72 & 111 as also the provisions in Chapter VII of the Rules, 1989, in addition to Rule 264 in Chapter VII, to contend that the State as also the RTA has been conferred with the power to make specifications as to the paintwork or varnish of transport vehicles. Rules specifically speak of the maintenance of paintwork or varnish in a clean and sound condition. Sri Chacko would take me through the various provisions in the rules making specific stipulations and conferring powers on the RTA to regulate the manner and type of transport vehicles allowed to be operated.

6. Part IV of Chapter VII deals with special rules applicable to every educational institution buses and private service vehicles, wherein with respect to the former there is a mandate to paint it in cream yellow colour as per Rule 290(2). Rule 295 in Part V of Chapter VII applicable to motor cabs and tourist buses prescribe special colouring of autorickshaw and markings to be made when an autorickshaw is driven by a woman. Rule 191 coming under Chapter V relates to Control of Transport Vehicles and prohibits advertisements or writing on vehicles unless otherwise specified by the State or RTA by general or specific order. According to the learned Amicus Curiae, despite there being no specific prohibition of markings on autorickshaw in Part III to Chapter VII, the State or RTA would be competent to make such restriction relying on the general provisions in Rule 191. The learned Amicus Curiae has also relied upon a number of decisions to point out that, the RTA when issuing such orders in public interest is perfectly within the jurisdiction conferred as per the MV Act 1988 & Rules of

1989 in bringing out Ext. P1, and no interference could be made on the ground only of lack of jurisdiction.

7. The scheme of the MV Act is such that the various aspects governing the use of motor vehicles including private and public transport vehicles, their registration grant of permit and so on and so forth are provided under the various heads sub-divided into Chapters and Parts. Each of the Chapters in the MV Act 1988 provide for rule making power to the Central Government and the State Government, on the aspects dealt within that Chapter and The Kerala Motor Vehicles Rules arranges the prescription in similarly numbered Chapters and Parts.

8. Section 72 of the MV Act more specifically Sub-section (2) reads as follows:

(2) The Regional Transport Authority, if it decides to grant a stage carriage permit, may grant the permit for a stage carriage of a specified description and may, subject to any rule that may be made under this Act, attach to the permits any one or more of the following conditions...

9. Without going into the conditions that could be imposed by the RTA specifically enumerated under Clauses (i) to (xxiv), the contention is that, the grant of a stage carriage permit to a stage carriage "of a specific description" takes within its ambit and scope, Ext. P1 order. The question arose as to whether the RTA has the power under Section 72(2) to restrict the age of the vehicle for grant of a stage carriage permit, in *Raghavan v. R.T.O., Kollam*, 2001 (2) KLT 209; and a Division Bench found that "the licencing authority i.e., the RTA is well within its jurisdiction to impose such regulatory measures in order to safeguard public interest". The afore cited decision of this Court was upheld by the Hon"ble Supreme Court in *Ismeth Ummer v. Regional Transport Authority*, 2010 (4) KLT 597 (SC) wherein the Supreme Court also emphasized the public interest in so far as old vehicles being prone to accidents and causing inconvenience to the public.

10. In *Alex Thomas v. State of Kerala*, 2008 (4) KLT 603 the question raised was with respect to the painting specified to goods carriage vehicles as per Rules of 1989. The petitioner's contention therein was that, since the petitioner is not using the vehicle for carriage of goods, there would be no requirement for the goods carriage vehicles to be painted in the colour specified under Rules, 1989. This Court found that a goods carriage vehicle, even if not designed solely for carriage of goods, it would come under the second limb of the definition of goods carriage. Being a motor vehicle not adapted or constructed solely for the carriage of goods, all the same being used for the carriage of goods; the intention not to use it for carriage of goods was found to be irrelevant in so far as the specification for painting of goods carriage vehicle in a particular colour.

11. Rule 295; wherein a stipulation for grant of permit made by one of the RTAs on the request made by the local authority, being a municipality, was upheld by a Division Bench of this Court in *Chandramathy C.G. & Others v. State of Kerala &*

others, 2013 (4) KHC 691 (DB). The stipulation that the front portion of an autorickshaw has to be painted in cream yellow colour was found to be in accordance with the rules and within the jurisdiction of the RTA. The stipulation of colouring under Rule 290 with respect to educational buses was also upheld in *Balakrishna Pillai v. Joint R.T.O.*, 1995 (1) KLT 685.

12. Faced with the plethora of decisions, the learned counsel for the petitioner would contend that, those were all cases wherein the Rules of 1989 itself had specifically prescribed painting, in a particular colour. Herein no such prescription is discernible in any of the provisions in the Rules of 1989. Such a contention would be belied, in the context of the specific reliance placed by the learned Amicus Curiae on Section 72, where the RTA has general powers to issue such stipulations with respect to stage carriages and other vehicles while granting permits under the Act and Rules of 1989. Raghavan (*supra*) as affirmed by the Ismeth Ummer (*supra*) would dispel any pall of doubt, if at all, on the power of the RTA to make prescriptions as to the stage carriages; even without a rule to that end coined by the State Government. This Court is of the opinion that, there could be no interference made to Ext. P1.

13. Definitely, the RTA had taken into consideration the safety of the public in making such specifications. The frequency of the communal disturbances, as noticed by the RTA, being more in the district of Kasaragod, there was warrant of such prescription. The spontaneous manner in which such incidents erupt and the volatile nature of the disturbances considerably influenced the RTA, rightly so. Transport vehicles are easy targets causing maximum harm/injury to the travelling public confined in the vehicles. The Superintendent of Police himself had made a recommendation, which was eventually affirmed by the RTA in its meeting. The counter affidavit of the State also specifically refers to various instances, where the public transport vehicles were attacked by miscreants, pursuant to communal disturbances and the various criminal cases registered on account of such violence unleashed against the transport vehicles. The public safety element is hence palpable and obvious.

14. This Court has looked into the various averments in the counter affidavit specifically pointed out by the learned Government Pleader. Reliance placed on Rule 191 & Rule 264 of Chapter VII of the Rules, 1989 to sustain the decision in Ext. P1, is also of considerable significance. They are extracted hereunder:

191. Prohibition of advertisement or writing on vehicles-No advertising device, figure or writing shall be exhibited on any transport vehicle save as may be specified by the State or Regional Transport Authority by general or specific order 35 [and on payment of a fee of 10 per 100 centimetre square for a period of one year or part thereof for each vehicle]:

Provided that in respect of vehicles of the State Transport Undertaking the Government may allow such advertisements subject to the conditions that they may lay down from time to time in this regard.

264. Paintwork or varnish-The paintwork or varnish of every transport vehicle shall be maintained in a clean and sound condition and in accordance with the specifications, if any, laid down by the State or Regional Transport Authority.

The former takes within its ambit prohibition of exhibition of figures and writings including names on transport vehicles. The latter deals with clean and sound maintenance of paintwork or varnish of transport vehicles, with any further specifications. The RTA has been conferred with such powers under the Rules.

15. On the above reasoning, this Court is not inclined to interfere with Ext. P1 order. However, it has to be noticed that, Ext. P1 order was stayed by this Court, when the writ petition was admitted in the year 2011. In such circumstances, obviously, Ext. P1 has not been implemented till now. The RTA definitely would have to take into consideration the situation as it exists now to decide upon whether Ext. P1 requires implementation as of now and whether the situation is still the same.

16. In that context, the petitioner shall make a representation before the RTA through the Secretary, RTA on or before 30.11.2014 and the RTA shall consider the same after hearing the petitioner within a period of "two months" from that date. If no representation is made Ext. P1 shall be implemented.

17. It is made clear that, this Court has specifically found the jurisdiction of the RTA to make an order as indicated in Ext. P1, and has remanded the matter to the RTA, only for fresh consideration, whether the order should be implemented on the ground realities as it exists now. It is also made clear that, Ext. P1 order in so far as the autorickshaws are concerned, shall be implemented, since there is no challenge against that. Only the stage carriage operators have come before this Court, challenging Ext. P1.

18. The writ petition is dismissed with the above observations. This Court has to place on record the enormous effort taken by the Amicus Curiae in enlightening this Court on interpretation of the various provisions of the Act and the Rules, and also for placing before this Court, a wealth of decisions on the subject.