

(1997) 08 KL CK 0021
In the High Court Of Kerala
Case No : W.A. No. 767 of 1995

K.S.R.T.C.

APPELLANT

Vs

S.T.A. and Others

RESPONDENT

Date of Decision : 20-08-1997

Acts Referred:

Motor Vehicles Act, 1988 — Section 217

Citation : (1997) 2 KLJ 488

Hon'ble Judges : U.P. Singh, C.J;S. Sankarasubban, J

Bench : Division Bench

Advocate : V. Bhaskara Menon, for the Appellant; K. Radhakrishnan and Govt. Pleader (P.K. Ravikrishnan), for the Respondent

Final Decision : Dismissed

Judgement

S. Sankarasubban, J.—The appellant in the writ appeal is the K.S.R.T.C. The Corporation is the petitioner in O.P. No. 5683 of 1995. The learned single Judge dismissed the original petition and hence this appeal is filed by the Corporation. In the O.P., the Corporation challenged the order passed by the State Transport Appellate Tribunal, viz. Ext.P4. Respondents 3 and 4 in the appeal are stage carriage operators. The third respondent was operating service on the inter state routes Trichur - Pollachi and Chittur - Pollachi while the 4th respondent was operating service on the inter-state route Peringottukurichi - Pollachi. According to respondents 3 and 4, they were operating on the inter state routes since 1962. In 1976, there was an inter-state agreement between the Government of Kerala and the Government of Tamil Nadu. In that agreement, these three routes were set apart to be operated by the Kerala operators. After the 1976 agreement also, respondents 3 and 4 were operating on the routes. According to them, the permits on the above routes were to expire on 20.12.1994, 10.12.1994 and 23.11.1994. Hence, respondents 3 and 4 filed applications for renewal of the permits before the State Transport Authority well in advance on 14.7.1994 and 8.9.1994. At that time, the K.S.R.T.C. objected to this and filed suo motu

applications for operating on the routes. The main contention raised by the Corporation before the State Transport Authority was that it was hit by the notification issued u/s 68D(3) of the Motor Vehicles Act, 1939, viz. the notification dated 21.2.1966 nationalising the route Ernakulam and Thrissur. The State Transport Authority upheld this objection and dismissed the applications for renewal of permits. Against the dismissal of the applications, revision petitions were filed before the State Transport Appellate Tribunal. The S.T.A.T. allowed the revisions and ordered renewal of the permits. It is challenging the order of the Tribunal that the original petition was filed. The learned single Judge dismissed the O.P. upholding the order of the Tribunal. It is against that judgment, the present appeal is filed.

2. The same contentions raised before the learned single Judge were reiterated before us. The first contention was that the routes Thrissur - Pollachi and Chittur - Pollachi and Peringottukurichi - Pollachi form part of the nationalised route mentioned in Ext.P1 notification dated 21.2.1966 and hence the permits ought not have been granted. As rightly stated by the learned single Judge, Ext.P1 is not a complete exclusion scheme. The scheme is only a supplementary and partial exclusion scheme enabling the Corporation to operate two services on the route and the scheme does not prohibit the existing operators to operate service on portions of that route. Further, it is found that only two schedules of the K.S.R.T.C. are to be operated according to the Scheme. Insofar as the notification Ext.P1 is not a complete exclusion scheme and since the existing operators on portions of the route are allowed to continue their operations, it cannot be said that respondents 3 and 4 cannot operate on the route. It is admitted that respondents 3 and 4 were operating on the route on the date of notification. Further, so far as the routes of Chittur-Pollachi and Peringottukurichi-Pollachi are concerned, they do not touch the route. Hence, we agree with the reasoning of the learned single Judge and hold that Ext.P1 notification does not stand in the way of granting the renewal of permits.

3. The second contention urged is that the renewal cannot be granted since the original permit was issued under the 1939 Act. Learned counsel for the Corporation referred to us certain decisions of the Supreme Court and also section 217 of the M.V. Act, 1988. We do not think that it is necessary to go into these aspects since after the 1988 Act came into force, the permits were renewed once and the renewed permits were to expire in 1994. It is thereafter that the present applications for renewal were filed. Hence, there is no basis for the argument of the counsel for the appellant that renewal of the permits cannot be granted under the 1988 Act. The third point urged is that under the inter-State agreement, if the K.S.R.T.C. is prepared to operate, it should be given preference and other operators should not be allowed to operate. This is not correct. What the agreement says is that other things being equal, the application for permit by the State Transport Undertaking should be granted. It is not as if whenever the State Transport Undertaking applied for a permit, the other operators should not be allowed to operate. Hence we agree with the

learned single Judge that Ext.P1 agreement does not give an absolute right to the Corporation to operate on the inter-State route.

In the above view of the matter, we dismiss the writ appeal.