

(1999) 08 KL CK 0038

In the High Court Of Kerala

Case No : W.A. No's. 1554 etc. of 1999

Malappuram Dist. Private Bus Operators Assn.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 02-08-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Consumer Protection Act, 1986 — Section 27, 3

Motor Vehicles Act, 1988 — Section 67, 72, 72(2), 72(2)(xiii), 90

Citation : (1999) 2 KLJ 306

Hon'ble Judges : S. Sankarasubban, J;AR. Lakshmanan, J

Bench : Division Bench

Advocate : A. Inees, P. Ravindran, P. Gopalakrishna Menon, M. Jithesh Menon and K.S. Madhusoodanan, for the Appellant; S.V. Balakrishna Iyer, K. Jayakumar (Sr. G.P.) and Alexander Thomas (Govt. Pleader), for the Respondent

Final Decision : Allowed

Judgement

AR. Lakshmanan, Ag. C.J.

1. Heard Mr. A. Inees, Mr. P. Ravindran, Mr. P. Gopalakrishna Menon, Mr. K. Jayakumar, Senior Govt. Pleader, Mr.S.V. Balakrishna Iyer and Mr.K.S. Madhusoodanan for the respective parties. These appeals were filed against the judgment of the learned single Judge of this court in O.P.No.3849 of 1993 dated 7-7-1999. Writ Appeal No.1554 of 1999 was filed by the Malappuram District Private Bus Operators Association and another. Writ Appeal No. 1646 of 1999 was preferred by the Trichur District Private Bus Operators" Association represented by its General Secretary. Writ Appeal No. 1647 of 1999 was filed by the Kerala State Private Bus Operators Federation. Writ Appeal No. 1675 of 1999 was filed by the State of Kerala represented by the District Collector, Malappuram and the Regional Transport Officer, Malappuram.

2. The original petition was filed by the appellant in Writ Appeal No. 1554 of 1999 against the order in O.P.No.33 of 1992 passed by the Consumer Disputes

Reddressal Forum, Malappuram. The said petition was filed by a bus passenger and Secretary of the bus passengers' association of Aliparamba Panchayat. According to the complainant, the complaint was filed to rectify the anomalies in fare stages on the Perinthalmanna-Aliparamba sector. The complainant has impleaded the State of Kerala represented by the District Collector, Malappuram and the Regional Transport Officer, Malappuram as opposite parties. The Consumer Disputes Redressal Forum, by its order above referred to ordered the Regional Transport Officer, Malappuram to rectify the mistake and to refix the fare stage after getting sanction from the Government. It was further ordered that the RTA shall complete all the proceedings within two months after receiving copy of the order to avoid punishment under Sec. 27 of the Consumer Protection Act. None of the appellants were made parties to the original petition filed before the Consumer Disputes Redressal Forum. The appellants in W.A.Nos. 1646, 1647 and 1675 of 1999 filed the above appeals after obtaining leave for preferring the appeals against the judgment in O.P.No.3849 of 1993. All the appellants including the State have raised the following four contentions:

(1) According to them Sec. 94 of the Motor Vehicles Act puts a bar on jurisdiction of civil courts to entertain any question relating to the grant of a permit under the Act and that the Motor Vehicles Acts a self contained special Act providing rights, liabilities and remedies and that the Regional Transport Authority is the final authority for fixing the fare table and fare stages and that if there is any grievance, the affected party can file a revision under Sec. 90 of the Motor Vehicles Act.

(2) Section 3 of the Consumer Protection Act, 1986 provides that the said Act is not in derogation of the provisions of any other law and that the provisions of the said Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Therefore, if any person including a passenger has any grievance, the remedies are provided under the Motor Vehicles Act itself and other civil courts have no jurisdiction to usurp the functions of the Regional Transport Authority.

(3) The appellants who are the bus operators association of Trichur and Malappuram and the Kerala State Private Bus Operators Federation, who are the affected parties were not parties in the complaint before the Consumer Disputes Redressal Forum. They were not heard before passing the impugned order in O.P.No.3849 of 1993. According to them the Consumer Disputes Redressal Forum has no jurisdiction to pass Ext.P2 order and that the Motor Vehicles Act, which is a special Act provides rights and remedies for the affected parties and that the Regional Transport Authority is the final authority to fix fare stages and fare, table and therefore if there are any grievances, remedy is provided under Sec. 90 of the Motor Vehicles Act by filing a revision before the State Transport Appellate Tribunal.

(4) It was also contended that the order passed by the Consumer Disputes Redressal Forum was in violation of the principles of natural justice and it affects

the fundamental rights of the bus operators in the State to carry on business.

3. On behalf of the petitioner before the Consumer Disputes Redressal Forum Mr. S.V. Balakrishna Iyer argued and supported the judgment of the learned single Judge. Though he argued the case by supporting the judgment of the learned single Judge, he could not effectively deny the arguments advanced by Mr. Inees, Gopalakrishna Menon, P. Ravindran and the Senior Government Pleader Sri. K. Jayakumar. We are not persuaded with his argument and the reasons given by him to support the judgment.

4. The learned single Judge in paras.5 and 6 of the judgment issued a general direction in the following manner:

5. Therefore, in order to safeguard the interest of the passengers of this State I think it is only appropriate in the interest of justice to give a general direction to the various Regional Transport Authorities to fix the fare stage afresh after conducting due enquiries in the matter. I think such fixation of fresh stages must precede the issuance of fresh notification to increase the fare. Otherwise, the present restriction against any change in the existing fare stage will continue to be in force and the passengers will be Again divested of money illegally and without any authority. As held by this court the objects of Sec. 67 rule out a profit motive and public utility service corporations such as the State Transport Corporation, Electricity Board etc. are expected to function without any profit motive. Therefore, any illegal collection without any authority of law from the passengers will be arbitrary, discriminatory and liable to be intercepted by this court.

6. Under these circumstances, while confirming Ext.P2 order of the fourth respondent I direct the State/Regional Transport Authorities of the State to undertake the process of fixation of fare stages for all routes in the State after conducting necessary enquiries. This must be irrespective of the prohibition of the Government in the order referred to above. The second respondent-State is also directed to give necessary instructions/directions in this matter to all the authorities. It is also made clear that any fresh upward revision of the rates of fares shall be notified only after the fixation of the fare stages as directed above.

It is argued by Mr. Gopalakrishna Menon that the above direction contained in the judgment of the learned single Judge affects the motor transport industry in the State of Kerala and also affects all the stage carriage operators in the State. It is contended that the learned single Judge has gone far beyond the relief prayed for by the petitioner in the original petition. Nobody had a case that the fare stages on all the routes in the State of Kerala have to be revised and there are anomalies and as a matter of fact the fare stages in all routes in the State of Kerala were fixed during 1976 and nobody had challenged the same before appropriate forum and the learned single Judge, without considering the jurisdictional aspects pointed out by the petitioner in O.P.No.3849 of 1993 regarding power of the Consumer Disputes Redressal Forum to direct refixation

of fare stage while confirming the order passed by the Consumer Disputes Redressal Forum and gave a general direction to all the Regional Transport Authorities to refix the fare stages on all routes in the State of Kerala.

5. Mr. A. Inees contended that the Regional Transport Authorities were not made parties in the original petition and some directions have been issued to the parties who are not parties in the original petition. A further direction also has been given to the Government not to issue fare revision notification under Sec. 67 of the Motor Vehicles Act till the general directions given by the learned single Judge is complied with, which really affects the rights of the existing stage carriage operators in the State of Kerala and the learned single Judge passed the order affecting their rights without hearing them. Therefore, he would submit that the judgment of the learned single Judge is legally not correct and without jurisdiction.

6. Mr. Inees further submitted that the permit was granted by the R.T.A., Malappuram to the operators under Sec. 72 of the Motor Vehicles Act, 1988 and conditions are attached under Sec. 72(2) of the said Act and that Sec. 72(2)(xiii) and (xiv) of the Motor Vehicles Act provides fares to be charged in accordance with the fare table approved by the Regional Transport Authority. He invited our attention to the relevant portion of the above section, which is extracted hereunder:

72. Grant of stage carriage permits:

(1) xx xx xx

(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 rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely:--

xx xx xx

(xiii) that fares shall be charged in accordance with the approved fare table;

(xiv) that a copy of, or extract from the fare table approved by the Regional Transport Authority and particulars of any special fares or rates of fares so approved for particular occasions shall be exhibited on the stage carriage and at specified stands and halts;

xx xx xx

XX XX XX

He also invited our attention to Rule 211 of the Kerala Motor Vehicles Rules, 1989, which gives power to the Regional Transport Authority to fix fare stages on all routes after conducting such enquiry as it may deem desirable and when stages are fixed, fare shall be collected according to stages. The above rule is extracted hereunder:--

211. Fixation of fare stages for stage carriages:-- In the case of stage carriages the State or Regional Transport Authority shall after such enquiry as it may deem desirable, fix fare stages on all routes. The maximum distance of each such stage shall not ordinarily exceed six kilometres and five hundred metres. When stages are so fixed, fare shall be collected according to stages:

xx xx xx

7. Mr. P. Ravindran, counsel for the appellant in Writ Appeal No. 1646/99, after adopting the arguments of the other two learned counsel, submitted that the Consumer Disputes Redressal Forum has assumed the jurisdiction, which it did not have, and by its order required the Regional Transport Authority to rectify the alleged anomaly in the fare stages and the learned single Judge while dismissing the original petition filed by the appellant in Writ Appeal No.1554 of 1999, has rendered the judgment which is the subject matter of the appeal. He would also further submit that the learned single Judge on the assumption that it is mandatory to fix fare stages every time when there is revision of fares, has required the RTAs to refix the fare stages. It is submitted by Mr. Ravindran that fare stages are fixed after due enquiry and with notice to all affected parties and therefore, the said order is revisable under Sec. 90 of the Act and the learned single Judge, without considering any of these aspects, has rendered the impugned judgment. It is also submitted that the learned single Judge has rendered the judgment far more detrimental to the operators without any of the affected operators on the party array and without even any of the RTAs, who are bound to give effect to the judgment, on the party array. Therefore, he submitted that the order of the learned single Judge is legally unsustainable.

8. Mr. K. Jayakumar, Senior Government Pleader also reiterated the above arguments advanced by other learned counsel and submitted that the Motor Vehicles Act has sufficient safeguards to ensure proper fixation of fare stages and the Consumer Disputes Redressal Forum has no jurisdiction to go into the matter, and that the learned single Judge has not noticed that fare stages have been fixed and are in existence and periodic revision of fares cannot await the fresh fixation of stages. He also submitted that the transport services in the State of Kerala are run to a great measure by private operators, who cannot be expected to function without profit motive. He would also further urge that the necessity for absence of profit motive in public sector institutions has been adverted to by the learned single Judge without comprehending the reality that if public utility services like the State Transport Corporation and Electricity Board run without profit, the ultimate sufferers will be the people of the State and from this angle also it was submitted that the directions of the learned single Judge are unsustainable and without jurisdiction.

9. Mr. Balakrishna Iyer, at the time of hearing, invited our attention to the notification issued by the Public Works and Transport (M) Department, Government of Kerala in the Kerala Gazette, Extra-ordinary dated 2nd November, 1990 and clause (D) of the notification which reads as follows:-

(D) Fixation of Fares:

In respect of routes where fare stages have already been fixed, such fare stages shall be retained without changes. However for the purpose of calculation, the distance between two stages will be taken generally as 2.5 kilometres, since the fare stages are generally fixed not only on the consideration of distances, but also taking into consideration factors like importance of places and convenience of passengers.

The fares shall be fixed in such a way that fares shall be increased at least by a minimum of 25 paise in the second stage in Ordinary/Mofussil City and Town Services. In respect of other services fares shall, be fixed at the rates mentioned in clause A or B above as the case may be.

Clause D of notification dated 13th August, 1996 reads as follows:--

F. Fixation of Fares:

In respect of routes where fare stages have already been fixed, such fare stages shall be retained without changes. However, for the purpose of calculation, the distance between two stages will be taken generally as 2.5 kilometres for Ordinary/Mofussil/City/Town services, since the fare stages are generally fixed not only on the consideration of distance, but also taking into consideration factors like importance of places and convenience of passengers.

The fare shall be fixed in such a way that the fare shall be increased by 25 ps. in the second stage, 30 ps. in the third stage and 40 ps. in the fourth stage. In ordinary, Mofussil, City and Town services. In respect of other services the fares shall be fixed at the rates mentioned in Clause (A) or clause (B) above as the case may be.

10. We are of the opinion that there cannot be any obstacle on the part of RTAs who can be directed to rectify the anomalies in the fixation of fare stages under rule 211 if there is a dispute. We do so. The two notifications above referred to will not stand in the way.

11. We shall now consider the arguments advanced by the respective parties. As rightly pointed by the respective counsel for the appellants Rule 211 of the Kerala Motor Vehicles Rules 1989 gives power to the Regional Transport Authority to fix fare stages on all routes after conducting such enquiry as it may deem desirable and when stages are fixed fare shall be collected according to stages. We have already extracted Rule 211 in paragraph supra.

12. The other arguments in regard to bar on jurisdiction of civil courts made by counsel for the appellants is well founded. Section 94 of the Motor Vehicles Act, which is a self-contained special Act, provides that the Regional Transport Authority is the final authority for fixing the fare table and fare stages and the grievance, if any, the affected party can file a revision u/s 90 of the Act. Section 94 of the Act puts a bar on the jurisdiction of the civil courts to entertain any

question relating to grant of permit under the Act. We have already noticed that section 3 of the Consumer Protection Act, 1986 provides that the said Act is not in derogation of the provisions of any other law. Therefore, if any person including a passenger, has any grievance, remedies are provided under the special Act itself and other civil courts have no jurisdiction to usurp the functions of the RTA.

13. As rightly pointed out by counsel for the appellants including the State of Kerala the learned Judge before passing the impugned judgment, has not heard any of the affected parties namely the bus operators of the State or their Federation or Association or any of the Regional Transport Authorities. The main question raised by the petitioner in O.P. No.3849 of 1993 that the Consumer Disputes Redressal Forum has no jurisdiction to pass Ext. P2 order was not considered and discussed by the learned single Judge and no finding is rendered on that question. The question of violation of principles of natural justice was also not considered. On the other hand the complaint made by a lone bus passenger was apparently treated as a public interest litigation and dealt with as a general question affecting the people of the State. The petitioners in the original petition are the Private Bus Operators Association of Malappuram District and another. The learned Single Judge considered the various sections and rules in the Motor Vehicles Act and the Rules and the decision on the aspect regarding the authority of the Regional Transport Authority in fixing fare stages and came to the conclusion that the RTA is the final authority to fix the fare stages and even the Government cannot restrain the powers of the statutory authority. The learned Single Judge without stating any reasons, confirmed Ext. P2 order and issued various directions to the Regional Transport Authorities of the State and to the State Government for refixation of fare stages on all the routes in the State. According to the bus operators, there will be as many as 10,000 routes and the number of different stages will be 1,00,000 and that there are no disputes regarding majority of the fare stages and if refixation smarts for all the routes, disputes will be raised by the parties with conflicting interest and the settlement of fare stages will be a worthless process. In fact the learned single Judge himself found that the RTA is the competent authority to fix fare staged and that power has to be exercised by the said authority irrespective of any prohibition by the Government by executive instructions. Having thus held that the RTA alone has jurisdiction to refix the fare and fare stages the learned single Judge ought to have held that the order passed by the Consumer Disputes Redressal Forum is an encroachment on the jurisdiction of the RTA and therefore ought to have set aside the same. Apart from a lone bus passenger, there were no other petitions or petitioners before this court taking up the cause of the passengers relating to non-fixation of fare stages. There was no material to assume that there are disputes on all routes in the State. Therefore, the direction to refix the stages on all the routes in the State, in our opinion, is not called for and without any justice.

14. The arguments advanced by the leaned counsel for the appellants in regard to the bar of jurisdiction in the civil courts u/s 3 of the Consumer Protection Act

merit acceptance. Section 94 of the Act bars jurisdiction of civil courts to entertain any question relating to the grant of permit and fare stages like timings and grant of permit. Section 3 of the Consumer Protection Act, 1986 provides that the provisions of that Act shall not be in derogation of the provisions of any other law in force. These two sections, read together, make it crystal clear that the Consumer Disputes Redressal Forum has no jurisdiction to deal with the fare stages or fares of a stage carriage.

15. The provisions of the Motor Vehicles Act and the Rules framed thereunder in built the provisions exist for the redressal of grievances arising out of giving effect to the provisions of the Act. As already noticed, the Motor Vehicles Act is a self-contained Code and disputes touching matters related to the various provisions of the Statute are to be resolved in the various Fora provided by the Act itself. Therefore, we are of the opinion that any grievance regarding anomalies in the fixation of fare stages have to be first raised before the RTA and then by way of revision before the STAT.

16. The Consumer Protection Act, 1986 which clothes the Consumer Disputes Redressal Forum with powers to adjudicate upon certain types of disputes relating to consumption of good and service lays down clear parameters for the Forum to exercise its jurisdiction. The petitioner before the Consumer Disputes Redressal Forum is a bus passenger, who will not answer the definition of a consumer and the RTA will not answer the definition of manufacturer under this Act, inasmuch as the RTA does not render any service to the bus passenger, consumer, the inadequacy of which can be complained against before the Consumer Disputes Redressal Forum. In our opinion there is a total ouster of powers of the Consumer Disputes Redressal Forum or any act of any Civil Court in deciding questions involving the provisions of the Motor Vehicles Act, a clear prohibitory provision of the Motor Vehicles Act notwithstanding the Consumer Disputes Redressal Forum had rendered an order directing the RTA to rectify the alleged anomaly in fare stages with permission of the Government if necessary. This decision, if permitted to stand, would have affected large number of stage carriage operators and would have upset the fare stages arrived at by the RTA. As pointed out by learned counsel for the appellants, the learned Single Judge has rendered as order detrimental to the operators without any of the affected operators on the party array and without even any of the RTAs who are bound to give effect to this order on the party array. The order, in our view, is legally unsustainable. Matters which are expressly kept out of its jurisdiction are now sought to be brought within its purview which is legally unjustifiable. This apart, the learned Judge has granted the relief by the impugned judgment which Were not sought for even by the petitioner before the Consumer Disputes Redressal Forum. The reliefs now granted in the original petition challenging the order of the Consumer Disputes Redressal Forum is something not sought for by any party to the proceedings. The fixation of fares under the Motor Vehicles Act is a legislative function, fixation of fare stages is purely administrative and either way judicial scrutiny into such acts, as repeatedly held by this court, is extremely

limited in scope. The passenger in a bus is not a consumer for the purpose of the Consumer Protection Act: nor is the Regional Transport Authority, a statutory functionary under the Motor Vehicles Act, a provider of any service, the quality of Which can be complained of by the bus passenger.

17. This apart, a Division Bench of this court comprising of K. Narayana Kurup & S. Sankarasubban, JJ. in CMP No. 177 of 1999 in Writ Appeal No. 1755 of 1997 has clearly directed revision of fares which is long overdue. Therefore, the judgment of the learned single Judge will now stand in the way of the Government in revising the fares. The learned single Judge had found that the judgment of this court reiterated in 1991 (2) KLT 470 (Udyogamandal C.P. Council v. State of Kerala) is no longer a good law on the ground that this court in State of Kerala v. Sebastian, 1995 (1) KLT 421 held that powers exercised u/s 67 of the Motor Vehicles Act cannot be termed as purely administrative in character to partake the character of subordinate legislation. But the learned single Judge did not consider the fact that the judgment in 1991 (2) KLT 470 was rendered after referring to the earlier Division Bench decision of this court reported in U.E. Samithi v. State of Kerala, 1988 (2) KLT 218. In the judgment in 1991(2) KLT 470 the learned single Judge considered the same question relating to anomalies in the fixation of fare stages and held that it cannot be correct in proceeding under Article 226 of the Constitution of India following eight decisions of the Supreme Court. It is also a settled law as per the proposition laid down by the Hon'ble Supreme Court that the fare fixation is not the function of the Court. However, the learned single Judge had held that the judgment rendered by the learned single Judge of this court in 1991(2) KLT 470 is no longer a good law. It is to be noticed in this context that nobody had raised such a contention in the original petition regarding the validity of the proviso contained in the fare revision notification issued by the Government during 1990 to the effect that the existing fare stages shall be retained, has to be declared illegal. However, the learned single Judge held otherwise and by holding so the learned single Judge has given a general direction in paragraphs 5 and 6 of the judgment impugned in these appeals to the effect that all the RTAs in the State to undertake the process of fixation of fare stages for all routes in the State after conducting necessary enquiries and it was also made clear that fresh fare revision shall be notified only after the fixation of fare stages. As already seen the above direction is against the order of the Division Bench of this court in C.M.P.No.177/1999 in W.A.No.1755 of 1997, a true copy of which has been filed in one of the appeals. That order was rendered because a consumer forum has filed original petitions O.P.Nos. 17034 of 1997 and 16935 of 1997 to declare that the strike conducted by the members of the appellant Federation for the purpose of alerting the Government to enhance the fares in stage carriages is illegal. Against the said judgment writ appeal No. 1755 of 1997 was filed by the Federation and the Division Bench held that the Single Judge had not adjudicated any matter which was not raised by the petitioner in the original petition. The writ appeal was accordingly disposed of by directing that the Government is free to take its own

decision in the matter. In the light of the above judgment it appears that the appellants Associations were making repeated requests for the enhancement of fare in stage carriages because the fare revision has to be effected from time to time taking into consideration the hike in prices of chassis, spare parts, tyres, fuel and tax and other incidental expenses for operation of the stage carriages. According to the bus operators the ever increasing of the operational expenditure and the corresponding rise in the price for all the accessories had resulted in narrowing down the meagre income derived from the stage carriage operation. The judgment of the learned single Judge forecloses the Government from doing their act under Sec. 67 of the Motor Vehicles Act to issue next fare revision notification. Therefore, we are of the view that the judgment of the learned single Judge is liable to be interfered with.

All the above Writ Appeals are allowed. Ext.P2 filed in O.P.3849 of 1993 is quashed and the Original Petition is allowed. No costs.