
(1993) 02 KL CK 0027
In the High Court Of Kerala
Case No : W.A. No. 232 of 1993-C

Mamu Haji

APPELLANT

Vs

The Chairman, Regional Transport Authority and Others

RESPONDENT

Date of Decision : 12-02-1993

Acts Referred:

Motor Vehicles Act, 1988 — Section 71, 72, 80, 87

Citation : (1993) 02 KL CK 0027

Hon'ble Judges : M. Jagannadha Rao, C.J;K. Sreedharan, J

Bench : Division Bench

Advocate : M.P. Ravindran, for the Appellant; V. Bhaskara Menon, Government Pleader for Respondents 1 to 3 and Sumathi Dandapani, for Respondent 4, for the Respondent

Final Decision : Allowed

Judgement

K. Sreedharan, J.—Petitioner in O.P. 91/1993 is the Appellant. In the Original Petition he challenged the grant of temporary permit for four months to the 4th Respondent on the route Kalikavue-Manjeri, by the Chairman, R.T.A., Malappuram.

2. Writ Petitioner is an existing operator on the route Nilambur-Manjeri (via) Kalikavue. The temporary permit granted to the 4th Respondent was with a set of timings, which clashes with the timings of his vehicle. The common sector of the two permits, namely Manjeri to Kalikavue, has a distance of 40 kms. The clash of timings, it is alleged, virtually ruins his service and that the time schedule of the 4th Respondent's vehicle was settled without affording him any opportunity to put forward his objection. Writ Petitioner also raised a contention that the Chairman of the Regional Transport Authority by himself was not competent to exercise the jurisdiction of the authority and that the grant of the temporary permit by the Chairman is illegal.

3. Government of Kerala, by notification S.R.O. 1619/91, re-constituted Regional

Transport Authorities in the State by constituting the District Collector concerned of the region as its sole member. By this notification, issued in G.O. (P) 91/91/PW and T, dated 30th December 1991, District Collector of the concerned district is the sole member of the Regional Transport Authority for that district, As the sole member, the District Collector can exercise jurisdiction of the Regional Transport Authority. Therefore, the contention raised by the writ Petitioner that the Collector, Malappuram was not authorised to grant temporary permit to the 4th Respondent cannot hold good.

4. The question that arises for consideration is whether the District Collector, Malappuram while granting the temporary permit to the 4th Respondent exercised jurisdiction as Regional Transport Authority. According to the learned Counsel representing the 4th Respondent, no rival operator is entitled to raise any objection in in respect of an application filed by Anr. for grant of permit. Existing operator can only question the schedule of timings fixed at the time of the grant. In this view, it was contended that Appellant-writ Petitioner is not entitled to challenge the grant of the permit. It is true that under the Motor Vehicles Act, 1988, a rival operator is not entitled to raise any objection in respect of an application filed by Anr. for grant of a permit. It is also true that rival operators are not entitled to any hearing. Motor Vehicles Act, 1988 liberalised the provisions relating to the grant of permits. The liberalisation brought out by the Act, in our opinion, does not mean that the Regional Transport Authorities are to act in a purely ministerial manner while granting permits. Even under the Act of 1988, the Regional Transport Authorities are to exercise quasi-judicial functions. They will have to apply their mind to relevant provisions of the Act, namely Sections 71, 72, 80 and 87, while granting permits, either regular or temporary as the case may be. Dehors the provisions contained in Sections 71, 72 and 80 of the Act, no permit can be issued by the Regional Transport Authority. While granting temporary permits u/s 87 of the Act, the Regional Transport Authorities have to get themselves satisfied of the existence of the conditions mentioned therein. If that authority has not considered relevant aspects while issuing the permit, this Court can direct that authority to consider the application in accordance with the provisions of the Act and the Rules framed thereunder. In the instant case, we are afraid, the District Collector exercising the jurisdiction as Regional Transport Authority did not apply his mind to the provisions of the Motor Vehicles Act before granting the temporary permit to 4th Respondent.

5. Learned Government Pleader made available to Court the entire files relating to the grant of temporary permit to the 4th Respondent. The files show that the President of Tuvvur Panchayat wrote a letter to the District Collector, Malappuram. In that letter, it is stated that there is dearth of transport service on the route Pandikkad-Tuvvur-Kalikavue and that a permit has to be granted to vehicle KL-10A/4100. The said vehicle is one owned by the 4th Respondent. That letter of the Panchayat President was received in the Collectorate on 15th October 1992. On the same day, the District Collector made the following

endorsement addressed to the R.T.O.:

T.P. granted, if the bus does not have an existing T.P. or pucca permit.

This endorsement was made as District Collector and not as the Chairman of the R.T.A. or as R.T.A. On 15th October 1992, 4th Respondent is seen to have remitted a sum of Rs. 100 and filed an application for temporary permit in respect of his vehicle KL-10A/4100. Against column 4, purpose for which the permit is required, it was entered "urgent temporary need". Along with this application, 4th Respondent submitted a covering letter, a rough sketch showing the route and a set of timings. Regional Transport Officer is seen to have made an endorsement on 4th Respondent's representation that the vehicle offered is covered by a substitute temporary permit upto 28th October 1992. Consequently, Regional Transport Officer referred the issue back to the Chairman, R.T.A. The Chairman, thereupon, passed the following order:

T.P. granted for 4 months. Request for pucca permit may be placed before the next R.T.A.

The file produced before Court does not contain any application for grant of pucca permit on the route. Pursuant to the above order of the Chairman, the temporary permit for four months is seen to have been issued on 28th December 1992. Immediately after the issue of the temporary permit, a large number of representations are seen to have been received by the Secretary, R.T.A., objecting to the time schedule granted to the temporary permit.

6. The application for the temporary permit put in by the 4th Respondent was not considered by the Chairman, R.T.A. No order is seen to have been passed on that application either. The District Collector, not as Chairman of the Regional Transport Authority, made an endorsement on the letter sent by the President of the Tuvvur Panchayat granting temporary permit. The said action of the District Collector is not one contemplated by the provisions of the Motor Vehicles Act. He had not applied his mind regarding the existence or otherwise of the conditions contemplated by Section 87 of the Motor Vehicles Act for the grant of a temporary permit. Had the application for temporary permit put in by the 4th Respondent been considered by the District Collector as the sole member of the Regional Transport Authority in accordance with law, the existing operators would have had opportunity to raise objection to the schedule of timing. Such an opportunity was also denied to the existing operators. Under these circumstances, the only course that is now open to this Court is to set aside the order granting temporary permit to the 4th Respondent. We do so.

7. The decision in this appeal will not in any way prevent the Regional Transport Authority in disposing of the application filed by the 4th Respondent for the grant of temporary permit in accordance with law.

The Writ Appeal is allowed as stated above. Parties are directed to suffer their respective costs.