

(2002) 04 KL CK 0019
In the High Court Of Kerala
Case No : O.P. No. 3719 of 2002

Mohammed Ibrahim

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 09-04-2002

Acts Referred:

Kerala Motor Vehicles Rules, 1989 — Rule 95(4)

Citation : (2002) 04 KL CK 0019

Hon'ble Judges : R. Rajendra Babu, J

Bench : Single Bench

Advocate : S. Krishnamoorthy, R. Manoj, P.K. Padmakumar, G. Prabhakaran and K.V. Gopinathan Nair, for the Appellant; M.J. Rajasree, Govt. Pleader and K. Ramakumar, for the Respondent

Judgement

R. Rajendra Babu, J.—The common question that arises for consideration in all the above Original Petitions is as to whether a number notified for advance reservation under Rule 95(2) of the Kerala Motor Vehicles Rules (hereinafter referred to as "the Rules"), if it is reserved under Rule 95(4) of the Rules by one or more persons by paying the prescribed fee on a particular day, shall remain open for reservation by any other person on any other day.

2. Heard the learned counsel for the petitioners, respondents and the learned Government Pleader.

3. Rule 95 of the Rules deals with the reservation of fancy registration numbers. Sub-rule 1 of Rule 95 says that the fancy registration numbers can be reserved on application by the owner of a vehicle. Sub-rule 2 says that the Transport Commissioner may notify the fancy numbers to be allotted by advance reservation under Sub-rule (1). Sub-rule 3 says that any number other than those notified under Sub-rule (2) also can be reserved under Sub-rule 1 if any person so applies. Sub Rule 4 stipulates that an application under Sub-rule 1 shall be accompanied by a fee of rupees one thousand (presently the amount is rupees five thousand) and if more applications than one are received on the

same day for a particular registration number, the number shall be allotted to the highest bidder in an auction to be conducted in the manner laid down by the Transport Commissioner. Sub-rule 5 says that reservation of a particular registration number under Sub-rule 1 shall be made within the range to 250 numbers immediately following the last number registered in the serial order. Sub-rule 6 says that the registering authority shall notify for the information of the applicants the date, time and place of the auction.

4. As per Sub-rule 4 if more than one application is received for reserving a notified number on the same day, it shall be auctioned and the number shall be allotted to the highest bidder. A consideration of the above provisions would reveal that a notified number shall be open for reservation only on a particular day and if anybody reserves the same number on a subsequent day, he cannot have any right in respect of the above number. But, as per Sub-rule 5 reservation can be made within the range of 250 numbers immediately following the last number registered in the serial order. Considering the above two provisions, namely Sub-rules 4 and 5, the Transport Commissioner, issued Circular 10/2001. But the above circular dated 31.10.2001 the Commissioner of Transports clarified that if there were more than one application for reserving a particular number, auction shall be conducted as prescribed in the Rules. The second paragraph of the notification reads;

"Certain officers are interpreting Sub-rule (4) to refuse applications for registration of fancy numbers on the ground that application for reservation for a particular number had already been made by another applicant even though the subsequent application is for reserving the number which may be well within the range of 250 numbers prescribed under Sub-rule (5) of the said Rule. Sub-rule (4) states that auction should be conducted if more applications are received on the same day. But so long as Sub-rule (5) is in force, applications have to be accepted for the reservation of any number if it is within the range of 250 numbers specified, even if a subsequent application relates to a number for which an application for reservation has been received. Since the provisions of both the sub rules have to be complied with, it is clarified that applications for reservation of any registration number shall be accepted on any day if the application relates to a number within the range of 250 numbers specified in Sub-rule (5), notwithstanding the fact that application for reservation of that number had been made by any other applicant previously. If there is more than one application for reserving a particular number, auction shall be conducted as prescribed in the rules".

A reading of the above provisions would make it clear that the circular issued by the Transport Commissioner is not in accordance with the provisions under Rules 95(4) and (5) of the Rules. Rule 95(4) specifically mentions that if more than one applications are there for reserving a particular number on the same day, an auction shall be conducted and the number shall be allotted to the highest bidder. What Sub-rule 5 says is that a number, within the range of 250 from the

last number registered in the serial order, shall be available for reservation. That does not mean that when once a number has been reserved by one or more persons on the same day, the same number shall remain open to be reserved by other persons on subsequent days. In view of Sub-rule 4, the right of reservation shall be open for only one day and if it is reserved by one person, it shall be allotted to him and if it is reserved by more than one person on the same day, it shall be auctioned. By no stretch of imagination can it be held that the above number shall be open for reservation on any other day when it has been reserved by any one or more persons by paying the prescribed fee on a particular day. The circular issued by the Transport Commissioner is not a clarification of the Rules, but it has no bearing with the above sub rules and the Transport Commissioner is not competent to issue such a circular. If there is any ambiguity in the Rules, the proper remedy is to amend the Rules and get it clarified and the circular issued by the Transport Commissioner clarifying Sub-rules 4 and 5 of Rule 95 of the Rules is beyond the scope of clarification.

5. The Senior Deputy Transport Commissioner filed a counter on behalf of the State contending that the circular was issued clarifying the position that the number should be left open for reservation by different persons on different days. If the contention of the petitioners that the number shall be available for reservation only on a particular day, then the right of other applicants who could not apply on the same day for reservation of the above number shall be defeated and considering the above aspect the circular 10/2001 was issued whereby an opportunity can be availed of by all persons who intend to reserve the same number which comes within the range. It was further contended that the above circular is in accordance with the spirit of the provisions and as such it is not liable to be quashed. Though such an argument was advanced by the learned Government Pleader and Sri. K. Ramakumar appearing for the additional fourth respondent in O.P. No. 3719/2002, they could not substantiate the same. Reservation itself is a privilege conferred to the person who comes first and reserves the number by paying the prescribed reservation fee. When once a person applies for reservation by paying the prescribed fee, that number, in fact, get reserved in his name. As per Rule 95(4) of the Rules, if more than one application is received on the same day, then only an auction is contemplated and allotment of the number to the highest bidder. When once that number is reserved on a particular day, it does not remain open for reservation on any other day in view of Sub-rule 4. Sub-rule 5 specifies reservation of any number within the range of 250 numbers from the last number registered in the serial order and it cannot be held that the same number shall remain open for reservation on all other days. Hence, the argument advanced by the learned Government Pleader cannot be accepted and the circular issued by the Transport Commissioner alleged to be clarification of the Rules cannot be upheld. The circular is not in accordance with the provisions of Rule 95(4) and (5) of the Rules and as such the circular is liable to be quashed as prayed for in some of the Original Petitions.

6. The petitioners had reserved for allotment of certain numbers by paying the prescribed fee. In cases where there was no other applicant reserving the same number on the same day, the authorities are bound to allot the same number to the applicant. In case where more than one application also had been received on the same day by paying the prescribed fee, the number shall be allotted to the highest bidder after conducting an auction in accordance with the Rules. In case the reservation had been made by any other applicant in respect of the same number subsequent to the earlier reservation, such applicants are not entitled to the above number and no auction as contemplated under the Rules can be conducted. All the original applications shall be disposed of in accordance with the above directions by allotting the numbers. An order shall be passed within seven days from the date of production of a copy of this judgment. Circular 10/2001 is quashed.

All the above Original Petitions are disposed of with the above direction.