

(1961) 03 KL CK 0007
In the High Court Of Kerala
Case No : A.S. No. 310 of 1959

M/s. V.C.K. Bus Service (Pte)	Vs	APPELLANT
Kerala State Transport Appellate Tribunal and Others		RESPONDENT

Date of Decision : 28-03-1961

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1961) KLJ 485

Hon'ble Judges : T.K. Joseph, J; M.S. Menon, J

Bench : Division Bench

Advocate : K. Neelakanta Menon, for the Appellant; T.N. Subramonia Iyer and A. Hariharasubramonia Iyer for 3rd Respondent, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Menon, J.—The petitioner in O. P. No. 498 of 1958 Messrs. V. C. K. Bus Service (Private) Limited is the appellant before us. The

company is operating buses from Coduvayur to Coimbatore via Thattamangalam and Velanthavalam. Velanthavalam is on the frontier between the

Kerala State and the Coimbatore District of the Madras State. The distance between Thattamangalam and Velanthavalam is 17 miles and the

distance between Velanthavalam and Coimbatore is 16 miles.

2. The third respondent Messrs. P. N. Krishna Iyer & Sons (Private) Limited was a bus operator from Trichur to Velanthavalam via

Thattamangalam. That company applied for an extension of its route from Velanthavalam to Coimbatore. The R. T. B. Trichur, over-ruled the

objections of the appellant and allowed the variation.

3. The appellant then appealed u/s 64 of the Motor Vehicles Act, 1939. That appeal was heard on 29-11-1957 by the first respondent and

dismissed on 12-3-1958 on the preliminary ground that it was not maintainable.

4. The appellant then invoked Article 226 of the Constitution and challenged the correctness of the decision by O. P. No. 498 of 1958.

Vaidialingam J. before whom the petition came up for hearing, dismissed the petition with costs on 30-1-1959.

5. The only question for determination is whether an appeal is competent in the circumstances of this case. The contention of the appellant is that it

is competent u/s 64(b) and (f) of the Motor Vehicles Act, 1939. Section 64(a), (b) & (f) reads as follows:-

Any person-

(a) aggrieved by the refusal of the State or a Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to

him, or

(b) aggrieved by the revocation or suspension of the permit or by any variation of the conditions thereof, or

(f) being a local authority or police authority or an association which, or a person providing transport facilities who, having opposed the grant of a

permit, is aggrieved by the grant thereof or by any condition attached thereto, may within the prescribed time and in the prescribed manner, appeal

to the prescribed authority who shall give such person and the original authority an opportunity of being heard.

6. There can be no doubt that the appellant is a person affected by the variation. As a result of it the competition to be faced from the third

respondent has been extended from a distance of 17 miles to a distance of 33 miles. The variation, however, is not of any permit issued to the

appellant and it is hence not possible to say that he has a right of appeal u/s 64(b) of the Motor Vehicles Act, 1939. In A. I. R. 1952 Madras 545

Rajamannar C. J. and Venkatarama Iyer J. said:

The expression "the permit" in that clause must obviously refer to the permit mentioned in clause (a). That permit is a permit granted to any person

by the Transport Authority. We think the proper construction of that clause is to confine its application to persons aggrieved by the revocation or

suspension of the permits granted to them or again aggrieved by any variation of the conditions of such permits granted to them. That clause does

not confer a right on one person to appeal against an order varying the

conditions of a permit granted to another person.

7. Section 64(f) deals with the grant of permits and prima facie not with any variation thereof. Counsel for the appellant drew our attention to

section 57(8) of the Motor Vehicles Act, 1939, which says:

An application to vary the conditions of any permit, other than a temporary permit, by the inclusion of a new route or routes or a new area or in the

case of a stage carriage permit, by increasing the number of services above the specified maximum, or in the case of a contract carriage permit or a

public carrier's permit by increasing the number of vehicles covered by the permit, shall be treated as an application for grant of a new permit:

Provided that it shall not be necessary so to treat an application made by the holder of a stage carriage permit who provides the only service on

any route or in any area to increase the frequency of the service so provided, without any increase in the number of vehicles.;

and contended that the variation of a permit amounts in scope and effect to the grant of a new permit. *M. Kali Mudaliar Vs. A. Vedachala*

Mudaliar and Others, dealt with a similar contention as follows

It is true that R. 203 provides that if there is an application for the variation of the permit which would authorize transport facilities materially

different from those attached to the original permit, the procedure to be followed is the same as that prescribed for considering applications for

permit; but we do not think that because this procedure applies, the person opposing an application for variation could be deemed to be a person

opposing the grant of a permit within S. 64(f).

The rule mentioned in the extract corresponds to rule 220 of the Travancore-Cochin Motor Vehicles Rules, 1952.

8. We are in respectful agreement with the view of the Madras High Court as regards the scope and effect of the provisions in both (b) and (f) of

section 64. It follows that the decision in O. P. No. 498 of 1958 is correct and that the appeal has to be dismissed.

9. In *Jasram and Another Vs. State Transport Authority and Others*, the court surveyed the authorities on the subject and dealt with section 64(b)

and (f) as follows:-

One view is that only the permit-holder, who is aggrieved by the variation of the condition of his permit can appeal under clause (b) and other

persons providing transport facilities are disentitled to appeal thereunder: A. I. R. 1952 Madras 545 and A. I. R. 1960 Kerala 18. This view finds

support in the observations of the Supreme Court in A. I. R. 1959 S.C. 851.

The other view is that even third persons providing transport facilities are persons aggrieved by variation of conditions by including a new route and

they are entitled to appeal under clause (b). This view is supported by *Jairamdas Vs. Regional Transport and Others*, and A. I. R. 1959 Rajasthan

41. We think the first view is correct because the right of appeal by persons providing transport facilities and aggrieved by a variation having been

specifically provided in clause (f), there was no point in giving to them a right of appeal under another clause.

Considered in another way, if clause (b) be regarded as conferring an unfettered right of appeal to persons providing transport facilities, the

provision in clause (f) would be, so far as those persons are concerned, otiose, We are, therefore, of opinion that other persons providing

transport facilities over a route, which is included by variation under sub-section (8) of Section 57 of the Act in another permit, can appeal only

under clause (f).

We are in agreement with this decision only to the extent it relates, to the ambit of section 64(b).

The appeal fails and is dismissed with costs.