

(1957) 10 KL CK 0029
In the High Court Of Kerala
Case No : O.P. No. 340 of 1957

P.C. Oommen (Molly Motors)	Vs	APPELLANT
Road Traffic Board, Kottayam and Another		RESPONDENT

Date of Decision : 28-10-1957

Acts Referred:

Motor Vehicles Act, 1939 — Section 48, 57, 57(8)

Citation : AIR 1958 Ker 339

Hon'ble Judges : C.A. Vaidialingam, J

Bench : Single Bench

Advocate : K.S. Sebastian, for the Appellant; Govt. Pleader, (for No. 1), G.B. Pai, P. Govindan Nair and P.K. Kurien, (for No. 2), for the Respondent

Final Decision : Dismissed

Judgement

C.A. Vaidialingam, J.—This is an application under Article 226 of the Constitution of India, for issue of a writ of certiorari or such appropriate writ, order or direction to the 1st respondent, the Road Traffic Board. Kottayam in order to call up the records and proceedings of their order No. K. 49/PT/57 dated 29-7-57 and to quash the said order as ultra vires, illegal, ineffective and void.

2. The petitioner's case is that he is a bus-owner operating a service of two buses on the route Kottayam-Iyer-kunnam about 10 miles distance and that he is also operating a service with one bus on the route Kottayam-Thiruvarpur about 5 miles distance. On 29-7-57, the Road Traffic Board. Kottayam, according to the petitioner, sanctioned the 2nd respondent's prayer by extending the permits as prayed for by them on the two routes namely, Kottayam-Thiruvarpur and Kanjikuzhi-Thiruvathuckal.

The petitioner alleges that this has been done by the Road Traffic Board without complying with the statutory provisions and he also alleges that he has been adversely affected by the grant of the extended permits in favour of the 2nd respondent.

3. According to the 2nd respondent, the Swaraj Motors (Private) Ltd., Kottayam, they had already obtained permits for running transport buses on the Kottayam Town Roads in 1946 and they were so operating on the Kottayam Town Roads from the date of the issue of the permits and that all these permits have been extended up to 26-6-1959. According to them, from 1949 in view of the one way traffic introduced on the M. C. Road, their bus operating between Kottayam District Court-Kodi-matha was diverted and was running between Kanjikuzhi and Thiruvathuckal to the knowledge of the Transport authorities.

They further alleged that after the construction of the Illickal bridge, their bus operating between Kottayam and Thazhathangadi (Illickal bridge) was also proceeding up to Thiruvarpur to the knowledge of the authorities. They further state that they made an application in or about 8-2-1957 to the Road Traffic Board for regularising certain of their services in the Kottayam Town Roads and for re-fixation of starting and terminal points within the Kottayam Town Road and accordingly, the Road Traffic Board, by its order dated 29-7-57 granted the said request. Their application was not in any way, an application for variation of any of the conditions of the permit and they also contend that the applicants herein have no right to challenge those proceedings-.

4. So far as this application is concerned, we are only concerned with that portion of the order of the Road Traffic Board which relates to the Kottayam-Thiruvarpur and Kanjikuzhi-Thiruvathuckal Routes.

5. It is not necessary to consider whether the petitioners are persons aggrieved by the order sought to be quashed, because I am otherwise satisfied that there is no substance in this application.

6. There is no dispute that as early as 27-6-1946 four permits were granted in favour of the 2nd respondent for running their buses on Kottayam Town Roads and permits were issued fixing the starting point and termini in those roads. That such permits for the "Kottayam Town Roads" were granted is clear from enclosures 1, 2, 3 and 4 filed along with the counter-affidavit of the 2nd respondent.

This fact also is clear from Exts. P2 and P3 as also the order which is now sought to be quashed. In fact, even the petitioner himself admits in his affidavit filed in support of his application that the 2nd respondent was granted permits for running buses in the Kottayam Town Roads as early as 1946.

7. It may also be stated at this stage that so far as Kottayam-Thiruvarpur route is concerned, the petitioner himself admits in paragraph 4 of his reply affidavit that he got the formal permit only on 30-8-57 but that it has been granted to him one month earlier by order of the 1st respondent. Taking this statement, it follows that even apart from any other consideration, his interest in this route is only at the most from 3-7-57 whereas the impugned order has already been passed on 29-7-57.

Therefore, even on the facts stated by the petitioner himself, he has no right to challenge, at any rate, the order, in so far as it relates to the Kottayam Thiruvapur route. Mr. K. S. Sebastian, learned counsel for the petitioner contends that this order passed just one day previous to his clients being granted a permit must be considered to be mala fide. Absolutely no materials have been placed to justify this contention of the learned counsel.

8. The substantial attack on the order by the learned counsel is based on the fact that the application dated 8-2-57 by the 2nd respondent in consequence of which the impugned order dated 29-7-57 (Ext. P5) was passed should be considered in law as an application for grant of a new permit and the Road Traffic Board should have followed the procedure as laid down in the Motor Vehicles Act and he also relies upon the provisions of clause 8 of section 57 of the Motor Vehicles Act. Section 57(8) of the Act is as follows :

"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 in case 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.)"

The learned counsel's contention is that there has been a new route authorized under Ext. P5 or in any event, there has been an increase in the number of services above the specified maximum.

9. On the other hand Mr. Govindan Nair, learned counsel for the 2nd respondent contends that his application was not in any way for grant of a fresh permit or for varying the conditions of any permit already granted to him. He has already got a right to run buses in the Kottayam Town roads by virtue of the permits granted to him in 1946 itself and his application was only to so regularise and re-fix the starting and terminal points in the said area.

In my opinion, the application dated 8-2-1957 was not an application for varying the conditions of any permit by inclusion of a new route or routes or a new area. We are not really concerned about the validity of the permits issued to the 2nd respondent in 1946. As stated earlier, they are for the Kottayam Town roads and the routes mentioned therein are also within the said Kottayam Town Roads area.

The order Ext. P5 does not in any way give any fresh right in respect of a new route or routes. At the most, the order gives a right to the 2nd respondent to go in the same route a little longer. This certainly is not inclusion of a new route or routes or a new area as contemplated under clause 8 of Section 57 which is very

strongly relied upon by the learned counsel for the applicant. Nor is this a case of increasing the services above the specified maximum.

10. Mr. Covindan Nair further relies upon the proviso to clause 8 of section 57 which specifically says 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.

Once a permit having been granted to the 2nd respondent for running buses in the Kottayam Town Roads, and in the absence of any evidence to the contrary, it follows that the 2nd respondent provides the only service in this area and even if the order, Ext. P5 has resulted in the increase of the frequency of the service, the said order is amply protected by the said proviso. It is not the case of the petitioner that the 2nd respondent has been allowed to put additional buses in the said area.

11. Mr. Sebastian further relied upon sub-rule (b) of Rule 220 of the Rules framed by the Travancore-Cochin Government under the Act. Rule 220

(a) states that the Transport Authority in its discretion may vary the permit or any conditions thereof subject to the provisions of sub-rule (b). Sub-rule

(b) of Rule 220 is as follows :

"(b). If the application is for the variation of the permit by the inclusion of an additional vehicle or vehicles or if the grant of variation would authorise transport facilities materially different from those authorized by the original permit the Transport Authority shall deal with the application as if it were an application for a permit."

In my opinion, this sub-rule cannot help Mr. Sebastian. In the first place, there has been no application for the inclusion of an additional vehicle and in my view, the application is not also such as to result in the variation of the transport facilities materially different from those authorised by the original permit.

12. Mr. Sebastian further contended that the order Ext. P5 has resulted in the change of bus timings and, therefore, it amounts to variation of the condition of the permit already issued in 1946. A Division Bench consisting of the learned Chief Justice and Mr. Justice Venkatarama Ayyar in the decision reported in M. Kali Mudaliar Vs. A. Vedachala Mudaliar and Others, has held that the timings fixed by the Regional Transport Authority at the time of the grant of permit is not a condition of the permit.

I respectfully agree with the reasoning of the learned Judges and I hold that the change of timings will not amount to variation of the conditions of the permit. Mr. Sebastian finally relied upon the decision reported in Mohammad Jamil and Another Vs. State Transport Authority, Rajasthan and Another, I do not think that the said decision is in any way helpful to the petitioner, because in this case as

already stated, the petitioner has already been granted the right to run his services in the Kottayam Town Roads and what was fixed by the order Ext. P5 was only a re-fixation of the starting point and the termini.

13. In the result, the application fails and is dismissed with costs of the 2nd respondent fixed in the sum of Rs. 100/- C.M.P. 2251/57 is also dismissed.