

(2005) 02 KL CK 0057

In the High Court Of Kerala

Case No : Writ Petition (C) No's. 1133, 3900 and 4006 of 2005 etc.

Prasad

APPELLANT

Vs

R.T.A. Ernakulam

RESPONDENT

Date of Decision : 04-02-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Motor Vehicles Act, 1988 — Section 80(2), 80(3)

Citation : (2005) 2 ACC 661 : (2005) 3 ILR (Ker) 353 : (2005) 2 KLT 227

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : Binoy Vasudevan and I. Dinesh Menon, for the Appellant; P. Gopalakrishna Menon and M.A. Fayaz, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Thottathil B. Radhakrishnan, J.—Advocate Sri. P. Gopalakrishna Menon takes notice on behalf of the 3rd respondent and the learned Government Pleader takes notice for respondents 1 and 2 in W.P.(C) No. 4006/2005. Hence, service is complete in these matters. They are taken up for final disposal on consent of parties.

2. The order impugned in all these Writ Petitions is the same, that is, the decision of the Regional Transport Authority, Ernakulam on Item No. 149 of its meeting held on 26.10.2004 where by the 3rd respondent in all the above Writ Petitions (Smt. Leela) has been granted a variation of a regular permit already issued to her. She has a regular permit for her stage carriage to operate on the route Alwaye-Vaikom Bus Stand. She sought variation by avoiding the portion in that route from Chottanikkara to Vaikom and instead, wanted to operate from Alwaye to Tripunithura with one trip to Chottanikkara.

3. The petitioners are indisputably the persons operating in the sector over which 3rd respondent's stage carriage will ply. They are, therefore, stated to be aggrieved by the aforesaid order of the R.T.A. granting variation of permit to the

3rd respondent.

4. It is the common case of the petitioners that they are aggrieved by the impugned variation.

5. The impugned order is cryptic inasmuch as it does not disclose any reasons. I have today, by separate judgment in W.P.(C) No. 1131/2005, set aside a similar order following the decisions of this Court in *Moidunni v. Sasikumar*, 1998 (1) KLT 26 (Case No. 51) and 966701--> However, the learned counsel for the 3rd respondent urges that the said decisions may not apply since, according to him, those were cases where the Writ Petitions were filed after taking recourse to the statutory remedy under the Motor Vehicles Act, before the State Transport Appellate Tribunal. He points out that in those cases the Tribunal had perused the records and had come to the conclusion that there was no reason for the grant and it was in that context that it was laid down by this Court that the R.T.A. will have to state reasons for its order. I am unable to accept this contention since a perusal of the facts as discernible from the judgment in *P.A. Jose's case* (supra) will show that even in that case the R.T.A. had merely passed an order. "Heard the application. Variation granted" and the S.T.A.T. had set aside the order merely on the ground that it is a "non-speaking order". The person in whose favour the R.T.A. has passed the order, had approached this Court and it was in this context that *P.A. Jose's case* was decided stating that the view of the S.T.A.T. that the order impugned before it, is bereft of reasons, does not warrant any interference. That apart by now, it is well settled that against an order which is, on the face of it, per se arbitrary or cryptic, for lack of reasons being stated or on any other grounds, referable to Article 14 or lack of jurisdiction, it would not be a ground in defence to a Writ Petition that the complaining party has an alternate statutory remedy. The availability of an alternate statutory remedy, even by way of an appeal, is no ground to refuse relief under Article 226 of the Constitution of India in cases of this nature. I, therefore, overrule that contention.

6. The learned counsel for the 3rd respondent in his attempt to support the impugned decision raised yet another contention. The second proviso to Section 80(2) of the Motor Vehicles Act contains a direction to the Transport Authority to state reasons in cases where an application is being rejected. Sub-section (3) of Section 80 provides that an application for variation or extension shall be treated as an application for the grant of a new permit and therefore, the second proviso to Section 80(2) would apply to this case also. On such footing, it is contended on behalf of the 3rd respondent that having regard to the wordings of the second proviso to Sub-section (2) of Section 80, as a corollary, the R.T.A. is not obliged to give reasons while it rejects an application, though it is statutorily compelled to give reasons when it refused to grant. Glossy it looks, but this argument, on a deeper consideration, fails. This is because the order of rejection contemplated in the second proviso to Section 80(2) is an order where a refusal is being made and a person, who applies for a statutory relief, is entitled to know the ground of refusal. This does not, ipso facto, mean that when an application for relief is

contested, that contestant is not entitled to know the ground on which his objection is being overruled and an order for grant is being made. This is a salutary principle of an adversarial decision-making process, be it in judicial, quasi-judicial or other statutory procedures. Therefore, on a contest, a person is entitled to know the reasons why an order is being granted, overruling the contest. Hence, even without any statutory prescription in that regard, it is the requirement of justice and fair play that reasons shall be stated in an order in the nature of the one that is impugned in this Writ Petition. I, therefore, overrule the said contentions.

7. In the result, I hold that the impugned decision is cryptic and arbitrary, for lack of reasons being disclosed. The same is, therefore, quashed. The R.T.A. will take back the application of the 3rd respondent for consideration and shall pass an order in accordance with law within two months from the date of receipt of a copy of this judgment.

These Writ Petitions are allowed as above.