

(1958) 06 KL CK 0003
In the High Court Of Kerala
Case No : O.P. No. 257 of 1958

Punkunnam-Erattupetta Motor Service	APPELLANT
Vs	
Regional Transport Authority and Others	RESPONDENT

Date of Decision : 13-06-1958

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 62

Citation : (1958) KLJ 997

Hon'ble Judges : N. Varadaraja Iyengar, J

Bench : Single Bench

Advocate : V.K.K. Menon and C.S. Padmanabha Iyer, for the Appellant; K.K. Mathew for 2nd Respondent, P. Govindan Nair, G. Balagangadharan Nair and K. Sukumaran for 3rd Respondent, K.C. John for 4th Respondent and S. Narayanan Potti and N.K. Varkey for 5th Respondent, for the Respondent

Final Decision : Dismissed

Judgement

N.V. Iyengar, J.—This is a petition under Article 226 of the Constitution complaining against the issue of temporary permits on ground not covered by section 62 of Motor Vehicles Act. It would appear that the grant of Pucca permits as ordered by the Respondent authority was being questioned on appeal before higher authority. And as the Pucca permits could not also be availed of in the interval, action was taken u/s 62 for the issue of the temporary permits concerned. Such issue is not warranted by the terms of the section, vide AIR 1957 T.C. 255, affirmed in 1957 KLT 1259. And so the petitioner who was happened to be one of the rival applicants for such temporary permits has come up with this petition.

2. Preliminary objection is taken to the maintainability of the writ motion on the ground that the petitioner as one of the rival applicant had submitted to the jurisdiction of the respondent authority in the instant matter and on that ground was precluded from availing himself of the remedies under Article 226. In my

opinion this objection is entitled to succeed. It has been held in Pannalal Binjraj Vs. Union of India (UOI), that submission to jurisdiction of the inferior tribunal will foreclose an appeal to the writ jurisdiction of the High Court or Supreme Court. The principle was explained by Chagla C.J. in Gandhinagar Motor Transport Society Vs. State of Bombay, in the light of English authorities that it is not so much a case of conferring jurisdiction by acquiescence but a case where the remedy by way of prerogative writ is itself conditioned. Learned Counsel for the respondent argued that in that case it could not even be said that there was some scope for misunderstanding the party's legal rights, because either the law was vague or unsettled. For the decisions in this very court had settled the extent of jurisdiction u/s 62 long previously.

3. Mr. V.K.K. Menon for the writ petitioner submits that we are not bound by the historical anomalies annexed to the prerogative writs in England but can take our own course in distinguishing cases where the rule should be applied and he suggested that the rule should not be applied to a case of clear want of jurisdiction as here. It is not for us to steer on such new line, once the Supreme Court has laid its imprimatur on the English doctrine. It is not denied by Learned Counsel for petitioner that his client was one of the unsuccessful applicants before the respondent authority for the grant of the temporary license here in question. If so there is no doubt that the writ petition does not lie. It is therefore rejected. The petitioner will pay the costs of all the respondents. Counsel's fee Rs. 100/- only one set.