
(1977) 09 KL CK 0008
In the High Court Of Kerala
Case No : O.P. 2969 of 1977 C

Sankaran Nair

APPELLANT

Vs

The Regional Transport Authority and Others

RESPONDENT

Date of Decision : 22-09-1977

Acts Referred:

Kerala Motor Vehicles Rules, 1989 — Rule 175
Motor Vehicles Act, 1939 — Section 42, 45, 46, 54, 57

Citation : (1977) 09 KL CK 0008

Hon'ble Judges : P. Subramonian Poti, J

Bench : Single Bench

Advocate : C.M. Kuruvilla, for the Appellant; K. Abdul Salam, Government Pleader for Respondents 1, 2 and 4, M.P. Menon and M. Ramachandran for 3rd Respondent, for the Respondent

Judgement

Subramonan Poti, J.—This Original Petition is to quash Ext. P-4 order passed by the State Transport Appellate Tribunal, Ernakulam. By this order the Appellate Tribunal set aside the order of the Regional Transport Authority, Kottayam passed on 21st April 1977 granting a temporary permit to the Petitioner on the route Palai-Vaikom. By Ext. P-4 order allowing the appeal filed against the order of the Regional Transport Authority by the 3rd Respondent here the Appellate Authority further directed the grant of a temporary permit for a period of 4 months from the date of issue to the 3rd Respondent herein for his bus K.L.O. 4626 on the route Palai-Vaikom.

2. The question is one of competing claims between the Petitioner and the 3rd Respondent for the issue of temporary permit in the route Palai-Vaikom. The Petitioner is owner and permit holder of stage carriage K.L.O. 2237 and K.L.O. 64. His bus K.L.O. 64 was operating in the route Vaikom-Palai from 28th July 1976 in the vacancy of a bus K.L.R. 311. The Regional Transport Authority, Kottayam invited applications for the re-issue of a temporary permit in the vacancy of K.L.R. 311. The Petitioner was an applicant. The 3rd Respondent also applied. The Regional Transport Authority considered the applications on 26th

July 1976 and granted the permit to the 3rd Respondent. Against that the Petitioner filed an appeal before the 4th Respondent, State Transport Appellate Tribunal, Ernakulam. Having met with defeat he filed a petition to this Court as O.P. 5458 of 1976. Certain observations made by the State Transport Appellate Tribunal against the Petitioner were directed to be ignored when the question of issue of fresh temporary permit on the same route was considered by the Regional Transport Authority. Such question was again considered by the Regional Transport Authority at its meeting held on 3rd December 1976 and the permit was again granted to the 3rd Respondent. The Petitioner filed an appeal against this before the 4th Respondent and this appeal was disposed of with the observation that the claims of the Petitioner should be considered when the question of re-issue of permit was taken up.

3. When the question of re-issue of permit was so taken up, the Petitioner and 3rd Respondent filed applications. The Kerala State Road Transport Corporation had published a scheme of nationalisation to the complete exclusion of private operations, proposing to nationalise the services on the route inclusive of Palai-Vaikom sector. This was u/s 68-C of the Motor Vehicles Act. It is the Petitioner's case that in view of such exclusion he had filed the application for issue of temporary permit u/s 68-F(1-C) of the Motor Vehicles Act. He would also say that the 3rd Respondent, instead applying under that section, had moved an application u/s 62 of the Motor Vehicles Act. These applications came up before the Regional Transport Authority on 19th April 1977 and 21st April 1977. Consequent on consideration by the Regional Transport Authority permit was granted to the Petitioner. It was issued to him for the period from 27th April 1977 to 26th August 1977. Against this, the 3rd Respondent filed Motor Vehicles Appeal No. 119 of 1977 before the 4th Respondent. It is the Petitioner's case that when the matter came up before the Appellate Authority it was urged by him that the application by the 3rd Respondent was not in order and further that even if the application was proper, the grant of permit to the Petitioner was not liable to be set aside, since the Petitioner had superior qualifications. By his judgment dated 10th August 1977 the 4th Respondent allowed the appeal and granted permit to the 3rd Respondent for a period of 4 months from the date of issue. It is this order, Ext. P-4, that is challenged.

4. Though it is vehemently argued before me that the question of necessity has not been properly considered by the State Transport Appellate Tribunal, I do not think there is an good faith in this, for both parties wanted the issue of permit and the Petitioner did get the permit and his attempt is really to sustain his permit. Therefore it is not open to the Petitioner to urge such a ground in this petition.

5. But there is another ground urged by Petitioner with considerable vehemence and that concerns the validity of the application filed by the 3rd Respondent. Though the plea may be purely technical and much may not turn on the form of the application, which is the essence of the plea, there is a much larger question

involved in the decision of this plea. An application u/s 62 for the issue of a temporary permit is governed by considerations different from that of an application u/s 68-F(1-C) of the Motor Vehicles Act, 1938. That being the case, irrespective of the form of the application, if the considerations relevant have not been properly applied in the matter of disposal, may be there is a case for complaint. It is because of this that I propose to examine the question here in detail.

6. It is agreed that the application filed by the 3rd Respondent is purported to be one u/s 62 of the Motor Vehicles Act. In that context I must say that Rule 175 of the Kerala Motor Vehicles Rules, 1961 provides for the various forms in which applications are to be made. In respect of a temporary permit only one form is prescribed and that is P.T.A. There is no provision for any application to be made in any other form in respect of the application for permit under Sections 68-F(1-C). Form P.T.A. refers to the provisions of Section 45 and 62 of the Motor Vehicles Act and also to Section 42 of the Act. If any of the forms prescribed is to be used for the purpose of making an application the only one that could be used by any party is form P.T.A. and that has been used by the 3rd Respondent. The Petitioner has also used the same form, but he has added to the form prescribed a mention of Section 68-F(1-C) also, thus improving upon the prescribed form. But a party cannot be found fault with despite his having applied in the form prescribed by the rules. Therefore if the question is merely one that the application is not made specifically u/s 68-F(1-C) there will certainly be no case for interference by this Court.

7. It may be profitable to compare the provisions in Section 62 with that in Section 68-F(1-A and 1-C) to ascertain what different considerations govern the grant of permits under these sections. Section 62(1), reads thus:

62. Temporary permits. -- (1) A Regional Transport Authority may without following the procedure laid down in Section 57, grant permits, to be effective for a limited period not in any case to exceed four months, to authorise the use of a transport vehicle temporarily

(a) for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or

(b) for the purposes of a seasonal business, or

(c) to meet a particular temporary need, or

(d) pending decision on an application for the renewal of a permit and may attach to any such permit any condition it thinks fit:

Provided that a temporary permit under this section shall, in no case, be granted in respect of any route or area specified in an application for the grant of a new permit u/s 46 or Section 54 during the pendency of the application:

Provided further that a temporary permit under this section shall, in no case be

granted more than once in respect of any route or area specified in an application for the renewal of a permit during the pendency of such application for renewal.

Section 68-F(1), (1-A) and (1-C) read as follows:

68-F. Issue of permits to State Transport Undertakings. -- (1) Where in pursuance of an approved scheme, any State Transport Undertaking applies in such manner as may be prescribed by the State Government in this behalf for a stage carriage permit or a public carrier's permit or a contract carriage permit in respect of a notified area or notified route, the State Transport Authority in any case where the said area or route lies in more than one region and the Regional Transport Authority in any other case shall issue such permit to the State Transport Undertaking notwithstanding anything to the contrary contained in Chapter IV.

(1-A) Where any scheme has been published by a State Transport Undertaking u/s 68-C that undertaking may apply for a temporary permit, in respect of any area or route or portion thereof specified in the said scheme, for the period intervening between the date of publication of the scheme and the date of publication of the approved or modified scheme, and where such application is made, the State Transport Authority or the Regional Transport Authority, as the case may be, shall, if it is satisfied that it is necessary to increase, in the public interest, the number of vehicles operating in such area or route or portion thereof, issue the temporary permit prayed for by the State Transport Undertaking.

* * * *

(1-C) If no application for the temporary permit is made under Sub-section (1-A), the State Transport Authority or the Regional Transport Authority, as the case may be, may grant, subject to such conditions as it may think fit, temporary permit to any person in respect of the area or route or portion thereof specified in the scheme and the permit so granted shall cease to be effective on the issue of a permit to the State Transport Undertaking in respect of that area or route or portion thereof.

It can be seen from these provisions that an application u/s 62(1) is to be granted for a period not exceeding 4 months, is to be granted without following the procedure laid down in Section 57, and is to be granted for any of the four purposes mentioned in Section 62(1) Clauses (a) to (d). Section 68-F(1) prescribes the obligation to grant permits only to the State Transport Undertaking in all cases where in pursuance of an approved scheme any State Transport Undertaking applies for a stage carriage permit or a public carriers permit or a contract carriage permit in respect of a notified area or notified route. Section 68-C provides for the preparation and publication of scheme of road transport service of a State Transport Undertaking. Where any such scheme has been published u/s 68-C that undertaking may apply for a temporary permit in

respect of any area or route or portion thereof which falls within the scope of this scheme. That is for operation during the period after the publication of the scheme and before the date of publication of the approved scheme or modified scheme. During that period if the State Transport Undertaking applies for temporary permit u/s 68-F(1-A), the State Transport Authority or the Regional Transport Authority, as the case may be, may issue the temporary permit if it is satisfied of certain matters, i.e. that there is necessity to increase the number of vehicles operating in such area, route or portion thereof in the public interest. Therefore, whereas u/s 62(1) the purposes for which a permit can be granted are those mentioned in Clauses (a) to (d) of Sub-section (1) of that section, that is not the consideration which governs in the matter of grant of a permit u/s 68-F(1-A). The question in the latter case is whether, in the public interest there is necessity to increase the number of vehicles. The second distinction is the fact that unlike in the case of a temporary permit granted u/s 62(1) the maximum period of the permit issued under Section 68-F(1-A) need not be four months. It can be up to the date the final scheme is published and it cannot be even 4 months if the final scheme is published earlier. It has been indicated here that Section 68-F(1-A) relates to applications by State Transport Undertakings, but Section 68-F(1-C) provides that if the State Transport Undertaking does not make an application for temporary permit such temporary permit may be granted to any person subject to the condition that it will enure only until such a permit is granted to the State Transport Undertaking. Thus there is a further limitation to the grant of a permit under Section 68-F(1-C). It should be only on the transport authority finding that there is necessity to increase the number of vehicles operating in the area, or route, in the public interest, that a temporary permit is to be granted whether it be to the State Transport Undertaking or to any other person. In the case of the latter the temporary permit is to be granted only if the State Transport Undertaking has not made an application and that will not enure even till the date of the final scheme if in the meanwhile the State Transport Undertaking is granted a permit. In other words any permit obtained by a person u/s 68-F(1-C) will automatically be superseded by the issue of a permit to the State Transport Undertaking on its application.

8. It seems to be quite evident that if any quasi-judicial authority is determining the question of the issue of a permit it would have to focus its attention on entirely different matters on applications treated as under the two different sections, one u/s 62(1) and the other u/s 68-F(1-A) or 68-F(1-C). That being the case if the authority is not shown to have adverted to this question at all and had never in its contemplation the distinction between these two provisions and the different criteria that would apply in the matter of grant of permits under these provisions, any determination by such authority cannot be said to be proper in law. They would be vitiated due to non-advertence to considerations which are relevant in the matter. That has been held, by Courts, to be sufficient to vitiate an order.

9. Apart from the importance of a proper adjudication on this question for the

purpose of this case, larger considerations weigh with me in interfering with Ext. P-4 order. Now that the matter has come to this Court and it is evident that at no stage advertence was made to the distinction between these provisions though the Petitioner had been urging this even before the Regional Transport Authority, I think it is necessary to call the attention of the authorities to this aspect of the matter, so that, in future when applications are made in respect of routes or areas included in any published scheme the consideration that the Regional Transport Authority shall bestow on the application should be in accordance with the provisions in Section 68-F(1-A) and not that in Section 62(1) of the Act. Possibly, had it been purely an individual issue, taking note of the fact that considerable time had passed since the issue of permit to the 3rd Respondent I would have contented myself with giving a directive for a proper consideration if and when a proper application is made in future, but since I desire that the clarification made herein should engage the attention of the authorities who dealt with this matter and particularly the Regional Transport Authority who may have occasion to come across such cases in future, I think the proper course would be to set aside Exts. P-4 and P-1 orders and remit the matter back to the Regional Transport Authority directing that authority to determine the question of grant of temporary permit to one of the two applicants before it in the light of considerations relevant under the provisions adverted to in this judgment. Until such decision or until the period the permit granted to the 3rd Respondent expires status quo will be continued so that the 3rd Respondent may continue to operate under the permit issued to him. The Original Petition is disposed of as above. In the circumstances of the case parties will suffer costs.