

(2010) 08 KL CK 0077

In the High Court Of Kerala

Case No : Writ Petition (C) No. 20439 of 2009 (Y)

Sayyid Muhammad Haneef Thangal

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 17-08-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 67, 67(1)

Citation : (2010) 4 ILR (Ker) 159 : (2010) 3 KLJ 242 : (2010) 4 KLT 89

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : K.P. Ramachandran and T. Niklavu, for the Appellant; Smitha Sukumar (G.P.), R. Padmakumari and M. Saseendran (SC, Kannur University), for the Respondent

Final Decision : Allowed

Judgement

Thottathil B. Radhakrishnan, J.—The petitioner represents a trust which runs a women's college by name Kaleel Salah English Medium Women's College in Pudiavalappu, Galimukha in Mangalore District Dakshina Karnataka. It is an educational institution which is not affiliated to any university. Petitioner complains that the students of that institution are illegally deprived of the benefit of the Government Order, G.O.(P).97/96/PW&T dated 13.8.1996, as amended by Ext. P7 Government Order, G.O.(P). 103/96/PW&T dated 13.9.1996 and are thus denied the benefit of travel concession in stage carriages. The petitioner has produced materials to show that students of that institution were extended the benefit of travel concession which is now denied. Learned counsel for the petitioner, in the presence of the counsel for the Kannur University, has also shown to the Court the mark lists issued to one of the students of the institution by the Kannur University which conducts Afsal Uluma course in 10+2 scheme. On the basis of the submissions made by the learned counsel for the petitioner and the learned counsel appearing for the 8th respondent Kasaragode Taluk Bus Owner's Association, it can be seen that the fundamental objection to the claim

of the students of the petitioner's institution is that the benefit of the notifications issued by the Government providing concession would not extend beyond the territorial limits of the State of Kerala and therefore, would not be available to students who study outside that State. The educational institution., admittedly, being in the State of Karnataka. its students are not entitled to the benefit of the notification as amended as per Ext. P7. contends the Bus Owners" Association. Learned counsel for the 8th respondent further says that Ext. P3. which is produced to show that concessions were issued earlier, was essentially the product of some misrepresentation.

2. The second among the objections noted above needs to be dealt with first Of the two places shown in Ext. P3. one is in Karnataka and the other in Kerala. Obviously there could not have been any misrepresentation on that count. Since the said document is issued by the Students" Travel Facility Committee of Kasaragod district, it would be far fetched to assume that the members of that Committee could have been duped as regards the identity of the destination of travel of the student concerned. Not only that any benefit in terms of the amendment relied on is to be considered by the committee on a case to case basis and the claim of each student for travel concession has to be decided by looking into whether he/she is studying in any institution as claimed and whether that institution has registered his/her name in any of the Universities in Kerala as a student for a particular course or private study. It has also to be ascertained whether the total distance to be travelled is within the limit of 40 kms. These are questions of facts which the committee will have to look into when claim for concession is made, though the identity of the educational institution and the course vis.a.vis, a particular university may be a general issue of fact for decision by the committee. Therefore., that issue would not really matter much, if the committee decides on the request for travel concession appropriately, in the light of what is stated in this paragraph.

3. The crucial issue falling for decision is as to the scope of the notification. The question would be as to whether the benefit of that notification would be applicable for travel beyond the geographical limits of the State of Kerala. The fact situations is that the claim is made as if the students proceed from a point within the State of Kerala to a point in the State of Karnataka. The power to issue a notification regulating concession of fares is among those powers of the State Government u/s 67 of the Motor Vehicles Act. 1988. hereinafter, the "MV Act", for short. That provision empowers the State Government to control road transport. To exercise that statutory power, it has to take into consideration, the different matters enumerated in clauses (a) to (d) of Section 67(1) of the MV Act Having regard to that a State Government may, from time to time, issue directions to the State Transport Authority and Regional Transport Authority. This has to be done by notification in the Official Gazette. The matters in relation to which such notification could be issued are enumerated in clauses (i), (ii) and (iii) occurring in Section 67(1) which includes the fixation of fares and freights as also any other matter which may appear to the State Government necessary or

expedient to give effect to any agreement entered into with the Central Government or any other State Government or the Government of any oilier country relating to the regulation of motor transport generally, and in particular, to its coordination with other means of transport and the conveying of long distance goods traffic. The power of the State Transport Authority and the attended authorities under the MV Act to grant inter-state permit with concurrence is essentially statutory power. The notification issued by the State Government u/s 67 is one issued in exercise of statutory power (sic) far as the State of Kerala is concerned, such a notification issued by the Government of the State of Kerala would he applicable to all acts which are done by the Government of the State of Kerala and the State Transport Authority and the Regional Transport Authorities in the State of Kerala.) It is not as if the State Government makes a legislation with reference to its legislative competence in terms of the Constitution. It is the State Government issuing a statutory notification in exercise of a statutory power under a central legislation. The intention of Section 67 empowering the State Government to control road transport including for the purpose of giving effect to agreements entered into the Central Government or any other State Government shows the width and amplitude of that power and the primary intent behind it viz., that the purpose of the MV Act in relation to ensuring facilities and means of transport is effectively and efficiently effectuated. Therefore, while giving effect to its inter-state obligations to provide inter-state permits, it would necessarily be within the power of a State Government, here., the Government of Kerala, exercising authority u/s 67 and fixing tariff to extend concession at least in cases where it relates to students and applies to permits applied for and granted from the statutory authorities in the State of Kerala even if such permits could be only with the concurrence of the corresponding authorities in any other State, The larger interest, sought to be addressed by providing travel fare concession to students stands supported by a constellation of constitutional provisions which lie in Parts III and IV of the Constitution of India. Any other way of interpreting Ext. P7 and the primary notification that had been amended by it may only run contrary to the constitutional goals sought to he achieved by ensuring that education is provided to the younger generation of the Nation by permitting them to move within their means and with the reasonable support of the State to reach places where education is provided to them. In the case in hand, it could also be a situation where the matter relates to women empowerment, the institution being a women"s college.

For the aforesaid reasons, the benefit of the amended notification Ext. P7. G.O. (P).103./96/PW&T dated 13-9-1996, would stand extended to such students who would fall within item (ii) of heading "G" in the primary notification viz., G.O.(P), 97./96./PW&T dated 13,8.1996 without, reference to the fact whether the educational institution where they undergo the study is outside the territorial limits of the State of Kerala, provided the stage carriages in relation to which concessions are offered are those which are issued with permits by the transport

authorities in the State of Kerala, It is so declared. It is further directed that the statutory authorities under the MV Act will follow this declaration and give effect to it in terms of what is stated above. The writ petition is allowed to the aforesaid extent. No costs.