

**(1993) 09 KL CK 0042**  
**In the High Court Of Kerala**  
**Case No : W.A. No. 1169 of 1993**

Secretary, Quilon District Motor Transport Workers Co-operative Society

APPELLANT

Vs

Regional Transport Authority and Ors

RESPONDENT

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**Date of Decision :** 16-09-1993

**Acts Referred:**

General Clauses Act, 1897 — Section 6  
Motor Vehicles Act, 1939 — Section 41(6), 58(2), 68C, 68F(1)  
Motor Vehicles Act, 1988 — Section 217, 217(1), 217(2), 217(4), 71(1)

**Citation :** (1993) 09 KL CK 0042

**Hon'ble Judges :** Jagannadha Rao, C.J;K. Sreedharan, J

**Bench :** Division Bench

**Advocate :** P. Ravindran, for the Appellant; Jose K. Kochupappu, Government Pleader for Respondents 1 to 3 and K.P. Satheesan, for Respondent 4, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Jagannadha Rao, C.J.—The Appellant is the writ Petitioner in O.P. No. 2162 of 1991. He is the Secretary of the Quilon District Motor Transport Workers' Co-operative Society Ltd. More than 50 per cent of the share capital of the Society is owned by the State Government. The Appellant had obtained, when the Motor Vehicles-Act, 1939 was in force, various stage carriage permits. One of the stage carriages, KLQ 6779, was granted a regular permit on the route Kundara-Chinnakkada (via) Anchalamood and. Civil Station, and this was for the period from 23rd December 1987 to 22nd December 1990. The Appellant applied for renewal for a further period of five years from 23rd December 1990 u/s 81 of the Motor Vehicles Act, 1988. The said application was rejected under Ext. P-I order dated 4th January 1991 by the Regional Transport Authority, Kollam by the following order:

Heard. Rejected as permit given under M.V. Act, 1939 cannot be renewed under M.V. Act, 1988. Hence application may be filed for fresh permit.

Then the Appellant filed an appeal before the State Transport Appellate Tribunal in M.V.A.A. No. 108 of 1991 and the appeal was dismissed as per Ext. P-3 judgment dated 7th February 1991 holding :

In Krishna Das v. R.T.A. Palakkad and Ors. in O.P. 10080 of 1990-Y, the Honourable High Court has held that an application filed for renewal under the provisions of M.V. Act, 1988 for a permit obtained under the provisions of the M.V. Act, 1839, is not maintainable.

Krishna Das v. R.T.A. 1991 (2) KLT 203 is the decision of a Division Bench of this Court dealing with a right of renewal of a permit granted under the Old Act and expiring after the commencement of the New Act. u/s 71(4) grant of permits for more than five is restricted. It was held that though it was a case of renewal, the restriction in Section 71(4) which was applicable to initial grant of permits under the New Act, was applicable to renewals after commencement of New Act. There, the judgment in Rajendran v. S.T.A.T. 1991 (1) KLT 255 of a learned Single Judge was affirmed on appeal, but, however, certain observations in Rajendran's case 1991 (1) KLT 255 were dissented in paragraph 11 .of the appellate judgment in Krishna Das's case 1991 (2) KLT 203 with which we are not concerned here.

2. Now, the case before us is also one where the permit was granted under the 1939 Act for the period from 23rd December 1987 to 22nd December 1990. The New Act of 1988 came into force with effect from 1st July 1989. The Appellant is a society. So far as societies are concerned, for the purpose of initial grant of permits, they can get a permit only subject to what is stated in the proviso to Section 71(1). That provision reads as follows:

71. Procedure of Regional Transport Authority in considering application for stage carriage permit.-(1) A Regional Transport Authority shall, while considering an application for a stage carriage permit, have regard to the objects of this Act:

Provided that such permit for a route of fifty kilometres or less shall be granted only to an individual or a State Ttansport undertaking.

3. In the present case, the Appellant-society is seeking, renewal of a permit from 23rd December 1990 for five years even though the same relates to a route of fifty kilometres or less". But, it wants to contend that the above said restriction in Section 71(1) of the New Act of 1988 is applicable only for permits which are sought for the first time, but cannot apply to renewals of permits granted under the Old Act of 1939-, for there was no such restriction under the Old Act.

4. The contention was not accepted by the learned Single Judge, who decided the case now under appeal as also the learned Judges who decided the same principle in Krishna Das's case (!) (supra). The only difference is that in Krishna Das's case (\*) (supra), the applicant was an individual and a different type of restriction for grants of permits, namely, the one contained in Section 71(4) came in the way of the applicant who was seeking renewal, while, in the case before us, the restriction, in Section 71(1) of the New Act is coming in the way of

the society for grant of renewal. The learned Judges in Krishna Das's case (1) (supra) took the view that even, if such restrictions were not there at the stage of grant when the Old Act of 1939 was in force, however, after the New Act, the restrictions imposed by the New Act of 1988, apply at the stage of the applications for renewal. The learned Judges also referred to Section 217 of the New Act, while dealing with this question and held that Section 217(2)(a) contains the words "so far as it is not inconsistent with the provisions" of the New Act. We are in agreement with the view expressed by the Division Bench in Krishna Das's case 1991 (2) KLT 203 (supra).

5. The fact that Section 217(2)(b) which does not contain any such clause, does not help the applicant for renewal. Section 217(4) read with Section 6 of the General Clauses Act, 1897 requires us to hold that there is, as stated in Section 6, "a contrary intention" in the New Act of 1988, which affects the right for renewal contained in Section 81(4) of the New Act of 1988.

5A. The argument that renewal of permit of licence is different from grant is not tenable. In every renewal there is imbedded a grant, though for a new term.

6. The Supreme Court has, while dealing with a similar situation in regard to mining leases and their renewal, observed in- State of Tamil Nadu Vs. Hind Stone and Others, .

It must be remembered that an application for the renewal of a lease is, in essence an application for the grant of a lease for a fresh period. We are, therefore, of the view that Rule 8C is attracted in considering applications for renewal of leases also.

Their Lordships held that Rule 8C of the Tamil Nadu Minor Mineral Concession Rules (1939) which mentioned certain factors to be taken into consideration for grant of lease, are as much applicable at the stage of renewal application.

7. A more direct case is the one in Rural Litigation and Entitlement Kendra Vs. State of U. P., . There the Supreme Court (at page 2201, paragraph 35) was dealing with the provisions of the Forest (Conservation) Act, 1980 which came into being at the stage when the lease granted before the said Act of 1980, came up for renewal after the said Act. They observed:

We agree with the view of Brother Mukherji that the Conservation Act of 1980 applies to renewals as well and even if there was a provision for renewal in the lease agreement in exercise of the lessee's option, the requirements of 1980 Act had to be satisfied before such renewal could be granted.

Therefore, the law in force at the time of renewal is to be applied, even if the original lease gave an option for renewal to the lessee.

7A. The observations of the Supreme Court in V.C.K. Bus Service Ltd. Vs. The Regional Transport Authority, Coimbatore, that a renewal of a permit is only an extension of the permit previously granted, cannot be of any help. There the

limited question was whether when the grant of permit was set aside, the renewal would also, stand automatically set aside. There was no intervening legislation there.

8. It is true that from the point of legitimate expectation, there is some slight difference between cases of grant and cases of renewal, as pointed out by the Supreme Court in *Chingleput Bottlers Vs. Majestic Bottling Company*, There A.P. Sen, J. stated that there are three categories of privilege and he quoted Negarry, V.C. in *Mc Innes v. Onslow Fane* (1978) 3 All E.R. 211 to the following effect:

First, there are what may be called forfeiture cases. In these, there is a decision which takes away some existing right or position, as where a member of an organization is expelled or a licence is revoked. Second, at the other extreme, there are what may be called the applications cases. There are cases where the decision merely refuses to grant the applicant the right or position he seeks, such as membership of the organisation or a licence to do certain acts. Third, there is an intermediate category, which may be called expectation cases which differs from the application cases only in that the applicant has some legitimate expectation from what has already happened, that his application will be granted. This head includes cases where an existing licence holder applies for a renewal of his licence, or a person already elected or appointed to some position seeks confirmation from some confirming authority.

(emphasis supplied)

9. But a legitimate expectation for a renewal based on past conduct cannot be treated as an absolute vested right for a renewal. If before the date of commencement of the period of renewal, there is change in the law, whereby new restrictions are imposed by statute or rules, the applicant for renewal cannot contend that his cases must be considered de hors the change in the statute or rules or on the basis of the law in force at the time of the original grant of the licence. The reason is that the grant of a licence does not, even where there is an option for renewal, guarantee an automatic renewal irrespective of the change in the law or the law-applicable at the time of the grant of renewal. The position in the Supreme Court case above referred to in *Rural Litigation etc.* referred to above is directly in point on the question.

10. Reliance on Section 217(2)(b) of the new Motor Vehicles Act, 1988 is also of no help to the Appellant. We shall here extract Section 217(2) of the new Act:

217(2) Notwithstanding the repeal by Sub-section (1) of the repealed enactments-

(a) any notification, rule, regulation, order or notice issued, or any appointment or declaration made or exemption granted, or any confiscation made or any penalty or fine imposed, any "forfeiture, cancellation or any other thing done, or any other action taken under the repealed enactments, and in force immediately before such commencement shall, so far as it is not" inconsistent with the

provisions of this Act, be deemed to have been issued, made, granted, done or taken under the corresponding provision of this Act;

(b) any certificate of fitness or registration or licence or permit issued or granted under the repealed enactments shall continue to have effect after such commencement under the same conditions and for the same period as if this Act had not been passed;

(c) any document referring to any of the repealed enactments or the provisions thereof, shall be construed as referring to this Act or to the corresponding provision of this Act;

(d) the assignment of distinguishing marks by the registering authority and the manner of display on motor vehicles in accordance with the provision of the repealed enactments shall, after the commencement of this Act, continue to remain force until a notification under Sub-section (6) of Section 41 of this Act is issued;

(e) any scheme made u/s 68C of the Motor Vehicles Act, 1939 (4 of 1939) or under the corresponding law, if any, in force in any State and pending immediately before the commencement of this Act shall be disposed of in accordance with the provisions of Section 100 of this Act;

(f) the permits issued under Sub-section (1-A) of Section 68-F of the Motor Vehicles Act, 1939 (4 of 1939), or under the corresponding provisions, if any, in force in any State immediately before the commencement of this Act shall continue to remain in force until the approved scheme under Chapter VI of this Act is published.

11. Section 217(2)(a) which contains the words "so far as it is not inconsistent with the provisions of this Act" is no doubt different from Section 217(2)(b) which does not contain similar words, but, in our view, the purpose of Section 217(2)(b) is different. The sub-clause is intended to see that permits already in force as on the date of commencement of the new Act are not treated as having lapsed and to declare that if there is any unexpired period of the permit granted under the 1939 Act which falls beyond the date of expiry of the old Act, the same could be treated as valid as long as the conditions imposed under the old Act are complied with. Section 217(2)(b) is not intended by Parliament to create after the expiry of the period of the old Permit on a date after the commencement of the new Act-a right of renewal of the old permit, unhampered by anything said in the new Act. The correct provision that is applicable to the situation is Section 217(4) which states:

The mention of particular matters in this section shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 (10 of 1897), with regard to the effect of repeals.

Applying Section 6 of the General Clauses Act, even if, apart from a mere expectation, there is any vested right for renewal created by the old Act of 1939

in respect of permits granted under that Act and expiring after the commencement of the new Act of 1988, the Court has to see whether the vested right, is affected by the new law. This has to be done by looking into the new law, that is the repealing law, and we have to see whether it contains any provision which affects the existing rights. Section 6 of the General Clauses Act which deals with the effect of repeal says:

6. Effect of repeal.-Where this Act or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then unless a different intention appears, the repeal shall not-

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

The words "unless a different intention appears" occurring in Section 6 are referable to the new repealing law.

12. Going by the same, we are of the view that firstly, under the 1939 Act, there is no right vested in the permit holder to get an automatic renewal. All that was perhaps there was a legitimate expectation based on past conduct, but that expectation is to be governed by the law in force on the date of the renewal. The repealing law imposed new conditions relating to grant of permits and for grant of renewal, the applicant, has to satisfy all the conditions necessary for a grant unless they are dispensed with. If there is a new law imposing restrictions on grant, they are as much applicable for a renewal and unless those conditions are satisfied, the legitimate expectation can as well get defeated by force of the new conditions in the statute in force as on the date of renewal.

13. Further, the acceptance of the Appellant's argument will have an anomalous and far reaching effect frustrating the implementation of several salutary provisions of the 1988 Act. It would mean, that in so far as the permits existing as on the date of commencement of the 1988 Act, the old Act alone would apply even if

the renewal is made after the commencement of the new Act; and so would be the position at every further new renewal. This would result in millions of Motor Vehicles in the country for which permits were granted under the old Act, not being governed by the new Act for all purposes and the benefit of several of the salutary and beneficent provisions of the new Act enacted in public interest will not be applicable to millions of vehicles plying on the road. Such an interpretation of the new Act cannot be permitted.

14. The judgment of the Supreme Court in *M/s. Gurcharan Singh Baldev Singh Vs. Yashwant Singh and others*, no doubt, held basing on Section 217(4) of the new Act that the preferential right vested in an operator for getting a renewal under the Old Act of 1939 as per the proviso to Section 58(2) of the Act, was a vested right" saved and that that right was not affected by the New Act of 1988 read with Section 6 of the General Clauses Act, 1897; But there the renewal application was filed on 18th October 1988 long before 1st July 1989, when the New Act came into force, and that right of preference u/s 58(2) was held to be a vested right. In the case before us, the permit granted under the Old Act of 1939 expired on 22nd December 1990 long after 1st July 1989, when the New Act came into force and, therefore, no question of any preferential right as in Section 58(2) of the Old Act vesting in the permit holder before 1st July 1989 arises. The permit having expired after 22nd December 1990, by which time the New Act came into force, the renewal is governed by the New Act, on the analogy of the decision of the Supreme Court in *Rural Litigation and Entitlement Kendra Vs. State of U. P.*, . We, therefore, follow Krishna Das's case 1991 (2) KLT 203 on this point. We also affirm the judgment under appeal.

15. For the aforesaid reasons, we hold that the prohibition in Section 71(1) proviso of the New Act, 1988 is attracted to the Appellant-society's application filed after the New Act for renewal, and the same was rightly rejected by the R.T.A., S.T.A.T., and the learned Single Judge.