

**(2016) 03 KL CK 0134**

**In the High Court Of Kerala**

**Case No :** WP(C) No. 9390, 9497, 9560, 10202, 10650, 10652 & 10664 of 2016 (W).

T.M. Basheer

APPELLANT

Vs

Secretary, Regional Transport Authority, Ernakulam-682 030  
and another.

RESPONDENT

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**Date of Decision :** 21-03-2016

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Kerala Motor Vehicles Rules, 1989 — Rule 212  
Motor Vehicles Act, 1988 — Section 72, 87

**Citation :** (2016) 2 KerLJ 80 : (2016) 2 KHC 253 : (2016) 2 KLT 108

**Hon'ble Judges :** V. Chitambaresh, J.

**Bench :** Single Bench

**Advocate :** P. Deepak, Advocate, for the Appellant; Murali Purushothaman, SC, Ele.Comm and K.A. Sanjeetha, Sr. Government Pleader, for the Respondent

**Final Decision :** Disposed Off

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## **Judgement**

V. Chitambaresh, J. - Should the statutory exercises by the Regional Transport Authority or its Secretary in the matter of granting permits, conducting timing conferences or allowing replacement of the vehicles be held up owing to the model code of conduct for election?

2. The petitioners are operators of stage carriage whose applications for temporary permit and variation of regular permit are kept pending under the guise of model code of conduct for election. The model code of conduct for the guidance of political parties and candidates issued by the Election Commission of India is conspicuously silent on this issue. But nevertheless the Chief Electoral Officer in partial modification of her earlier order dated 6.3.2009 had issued an order dated 21.3.2009. It was clarified therein that prior permission must be obtained from the Chief Electoral Officer for issuance of permits even if meetings are conducted by Regional Transport Authority. The applications for issuance or renewal of permits were also directed to be referred to the office of the Chief

Electoral Officer in case any doubt arises as regards the breach of the model code of conduct. It is presumably on the basis of the aforesaid order of the Chief Electoral Officer did the Regional Transport Authority defer the applications.

3. The petitioners contended that the model code of conduct issued by the Election Commission of India did not impinge on the consideration of the applications sought for. The petitioners added that the statutory exercises by the Regional Transport Authority or its Secretary should not be held up for alleged violation of model code of conduct. I directed the Standing Counsel for the Chief Electoral Officer to obtain instructions from the Election Commission of India as to the course to be adopted. The Standing Counsel has passed on a copy of the communication received by him from the Election Commission of India produced along with a statement. The relevant part reads as follows:-

"The Commission's Standing Counsel before the Hon'ble High Court of Kerala has now sought fresh instructions in the case from the ECI and has also brought to the notice of the Commission the provisions of the Kerala Motor Vehicles Rules, 1989. This has been examined in the Commission in the light of the provisions of Chapter V of the Motor Vehicles Act, 1988 and also the Kerala Motor Vehicles Rules, 1989 particularly the composition of the Regional Transport Authorities in the State of Kerala. Regional Transport Authority in Kerala is a three member body and is comprised of the District Collector of the Revenue District as the Chairman, Deputy Transport Commissioner of the concerned Zone and the District Police Chief as members. The Road transport Officer is the Secretary of RTA. The RTA ordinarily meets once in a month. Under the new Rules there are no political nominees in the Regional Transport Authorities in the State of Kerala. Taking note of the provisions of the Motor Vehicles Act, 1988 and also the Kerala Motor Vehicles Rules, 1989, constitution of RTA in Kerala, and the nature of functions of the RTA, the view is that it would not be objectionable from the point of view of Model Code of Conduct if RTA conducts its meeting as per the provisions of the law. Any complaint of violation of Model Code of Conduct has to be enquired on case to case basis."

4. After all the Regional Transport Authority or its Secretary is exercising a quasi judicial power in the grant of permits under Sections 72 and 87 of the Motor Vehicles Act, 1988 ["the Act" for short]. Same is the case when a timing conference is conducted in terms of Rule 212 of the Kerala Motor Vehicles Rules, 1989 ["the Rules" for short]. The Constitution Bench of the Supreme Court in B. Rajagopala Naidu v. State Transport Appellate Authority, AIR 1964 SC 1573 had occasion to observe as follows:-

"In other words, when applications are made for permits under the relevant provisions of the Act and they are considered on the merits, particularly in the light of the evaluation of the claims of the respective parties, the Transport authorities are exercising quasi judicial powers and are discharging quasi judicial functions, and so, orders passed by them in exercise of those powers and in discharging those functions are quasi judicial orders which are subject to the

jurisdiction of the High Court under Article 226."

The Supreme Court speaking through Mr. Justice V.R. Krishna Iyer in *D. Nataraja Muthaliar v. State Transport Authority*, AIR 1979 SC 114 observed as follows:-

"The Transport Tribunals function quasi judicially and this imports some imperatives. You must tell the men whose fundamental right you propose to negative the materials you may use in your decision. You must act on relevant considerations, properly before you, not on rumor or hearsay, ex catheter assertions or inscrutable hunch. The authority must remember that a permit holder has an ordinary right of renewal unless it is shown that outweighing reasons of public interest lead to a contrary result. Permits are not bounty but right, restricted reasonably by the Motor Vehicles Act."

(Emphasis supplied)

5. That the grant of a permit is only a quasi judicial function has been reiterated by this Court in *Anoj Abraham v. Regional Transport Authority*, 2006 (4) KLT 691 wherein it is observed as follows:-

"The grant of a permit is a quasi judicial function. The same has to be exercised in accordance with the satisfaction of the RTA/Secretary concerned. No superior authority can dictate, in what manner the power vested in the RTA/Secretary has to be exercised."

The Supreme Court again in *Pancham Chand and others v. State of Himachal Pradesh and others*, AIR 2008 SC 1888 has cautioned that the State has no say in the matter of grant of permit and said:

"Apart from the fact that nothing has been placed on record to show that the Chief Minister in his capacity even as a member of the Cabinet was authorised to deal with the matter of transport in his official capacity, he had even otherwise absolutely no business to interfere with the functioning of the Regional Transport Authority. Regional Transport Authority being a statutory body is bound to act strictly in terms of the provisions thereof. It cannot act in derogation of the powers conferred upon it. While acting as a statutory authority, it must act having regard to the procedures laid down in the Act. It cannot bye-pass or ignore the same."

6. Mr. Justice S. Siri Jagan has in *Intelligence Decisions Systems (India) Pvt. Ltd. v. Chief Election Commissioner*, 2006 (2) KLT 454 observed as follows as regards the model code of conduct:-

"The object of model code of conduct is not to stop all governmental activities in the State pending elections. Notwithstanding the elections, the normal governmental functions should go on. It is only where with the intention of influencing the voters of the State the party in power declares any promises to the people that the model code of conduct comes into play. Simply because a normal governmental function would also result in some benefit to the public at

large, that would not come within the ambit of the model code of conduct. Election Commission should examine these aspects carefully before coming to the conclusion whether the action infringes the model code of conduct and shall not interdict all governmental functions simply because it would result in some benefit to the voters of the State or the public at large. If without discrimination, the Election Commission takes a policy that all governmental functions resulting in benefits to the people have to be postponed, until after the elections that would affect the interest of the State itself because in certain matters delay itself would vitally affect the project itself, which may ultimately result in irreparable loss to the State."

It was also held in *Omprakash v. Chief Electoral Officer and others*, AIR 2009 Rajasthan 161 that the Chief Electoral Officer cannot interdict the Regional Transport Authority and observed as follows:-

"In the circumstances, therefore, the view taken by the Chief Electoral Officer that the Regional Transport Authority, which is a quasi judicial authority, should not pronounce the order even after hearing is complete cannot be sustained in law. The direction of the Chief Electoral Officer to that extent is declared illegal. The Regional Transport Authority would now be free to pronounce its order."

7. The relevant part of the model code of conduct for the guidance of political parties and candidates issued by the Election Commission of India is as follows:-

"VII. Party in power:

The party in power whether at the Centre or in the State or States concerned, shall ensure that no cause is given for any complaint that it has used its official position for the purposes of its election campaign and in particular:

i) x x x x

ii) x x x x

iii) x x x x

iv) x x x x

v) x x x x

vi) From the time elections are announced by Commission, Ministers and other authorities shall not -

(a) announce any financial grants in any form or promises thereof; or

(b) (except civil servants) lay foundation stones etc. of projects or schemes of any kind; or

(c) make any promise of construction of roads, provision of drinking water facilities etc; or

(d) make any ad-hoc appointments in Government, Public Undertakings etc.

which may have the effect of influencing the voters in favour of the party in power."

The grant or renewal of permits in exercise of the statutory power does not disturb the level playing field in the electoral process or have the effect of vooing the electorate on the eve of elections.

8. To sum up:

i) The Regional Transport Authority or its Secretary are exercising only quasi judicial functions in dealing with the applications for permit or settling the timings.

ii) The grant of permits or its renewal or the settlement of timings are not a bounty but valuable rights to the operators restricted reasonably by the Motor Vehicles Act.

iii) No superior authority can dictate in what manner the power vested in the Regional Transport Authority or the Secretary has to be exercised in a given circumstances.

iv) The Regional Transport Authority being a statutory body is deemed to act strictly in terms of the statutory provisions uninfluenced by any political interference.

v) The mere fact that the grant of permits or the replacement of the vehicle in exercise of the quasi judicial function would benefit the public at large is inconsequential.

vi) The election will come and go and the statutory exercise by the quasi judicial authority need not be deferred on the premise of the model code of conduct.

vii) The model code of conduct does not fetter or keep in limbo the exercise of statutory functions that are manifestly quasi judicial in character.

viii) The Regional Transport Authority and the Secretary are directed to take the proceedings to a logical end soon unless tied down by election duty assigned to them.

9. The Writ Petitions are disposed of. No costs.