
(1956) 11 KL CK 0009
In the High Court Of Kerala
Case No : O.P. No. 199 of 1956 (T.C.)

United Motor Union (Private) Ltd., Palai	APPELLANT
Vs	
Road Traffic Board, Kottayam and Another	RESPONDENT

Date of Decision : 07-11-1956

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 48, 60(1)

Citation : AIR 1957 Ker 35 : (1957) 1 KLJ 3

Hon'ble Judges : M.S. Menon, J

Bench : Single Bench

Advocate : K.S. Sebastian, for the Appellant; V. Rama Shenoy, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Menon, J.—The petitioner is the Secretary of the United Motor Union (Private) Limited, Palai. The 1st respondent is the Road Traffic Board, Kottayam, and the 2nd respondent, the Central Road Traffic Board, Trivandrum.

2. The company is the owner of a stage carriage T. C. K. 622, which was operating on the Thodupuzha-Kanjar route. The permit issued in respect of that vehicle was cancelled at a meeting of the Road Traffic Board, Kottayam held at Peermade on 20-2-1936. The order of cancellation is Ext. O which reads as follows:

"Stage carriage TCK, 622 permitted to operate between Thodupuzha and Kanjar was not conducting service from 12-10-1954 due to expiry of certificate of fitness and the travelling public was put to difficulties. The permit holder has not intimated the non-operation of the service as per Rule 293 of the M. V. Rules.

The explanation offered by the permit holder dated 2-1-1956 is not satisfactory or acceptable.

The permit of the vehicle is cancelled."

3. The petitioner took up the matter in appeal before the Central Road Traffic Board, Trivandrum, but without success. The appellate order is Ext. S dated 13-6-1956:

"This is an appeal against the R. T. B. Kottayam cancelling the permit of TCK, 622 operating service on Thodupuzha-Kanjar route for non-operation of service.

Sufficient grounds have not been made out before this Board to interfere with the orders passed by the R. T. B. Kottayam, in this matter. The convenience of the travelling public should be the main question to be looked into by the bus operators and in this particular case, the appellant does not even appear to have intimated the fact of non-operation of the service to the concerned authorities as per the M. V. Rules.

The R. T. B., Kottayam therefore appears to be perfectly justified in passing the Order appealed against, viz., the order dated 6-3-1956. The appeal is therefore dismissed. The stay order issued by the Chairman of this Board No. 41/CB, TAK/56 dated 24-3-56 is vacated."

4. The prayer before me is that Exts. O and S are unsustainable and should be quashed by an appropriate writ or direction under Article 226 of the Constitution on the ground that they are "ultra vires, unconstitutional, illegal and void"

5. Rule 293 of the Travancore-Cochin Motor Vehicles Rules, 1952, reads as follows:

"If at any time the stage carriage is prevented from running in accordance with the schedule prescribed or where no schedule is prescribed is prevented from performing the service for which a permit has been granted, the holder of the permit shall forthwith report the fact and the reason therefore to the authority/which granted the permit and the authority, if any, which has endorsed or extended the permit."

It is conceded by the learned Government Pleader that any violation of this rule cannot sustain the cancellation of the permit. According to him the reference to the violation of R. 293 in Ext. O is no more than the statement of a fact and not the foundation for the order of cancellation. That such is the case is clear from Ext. F (24-11-1955). The notice calling upon the petitioner to show cause why the permit should not be cancelled :

"The registration certificate and the permit of the above vehicle was suspended till the defects of the vehicle are rectified. But you have not yet rectified the defects of the vehicle. Hence please show cause within a week why the permit of the vehicle should not be cancelled."

6. The cancellation of the permit according to the learned Government Pleader was in exercise of the powers conferred by Section 60(1) read with Section 48(d) (iii) of the Motor Vehicles Act, 1939. According to Section 60(1) the Transport Authority which granted a permit may cancel the permit or may suspend it for

such period as it thinks fit on the breach of any condition contained in the permit.

Section 48(d)(iii) permits a Regional Transport Authority to attach to a stage carriage permit a condition that copies of the time table shall be exhibited on the stage carriage and that the time table so exhibited shall be observed.

Such a condition, viz., that a time table should be exhibited and observed has been attached to the permit issued to the company (Ext. 1) and there can be no doubt that the condition that the time table should be observed has been continuously violated right through the long period between 12-10-1954 and the date of Ext. O (20-2-1956). In view of this I must hold that Exhibits O and S are not liable to be quashed and that this petition should be dismissed.

7. Ext. E dated 22-10-1955 is an order of the Secretary of the Road Traffic Board, Kottayam, suspending the permit of the Vehicle till its certificate of registration is restored. The certificate of registration was restored only on 24-2-1956 and according to the learned counsel for the petitioner Ext. E precludes any cancellation of the permit during the interval, and Ext. O dated 20-2-1956 is hence without jurisdiction.

8. I cannot agree. Ext. E, as I read it, is an order imposing a particular punishment which was considered sufficient on the date the order was passed. That does not mean that the authority concerned cannot pass a subsequent order more drastic in character in the light of subsequent events, and that I is exactly what seems to have been done in this case.

9. It is also significant that in reply to Ext. F what the petitioner stated in Ext. G, the explanation dated 2-1-1956, was not that the order of cancellation proposed will be without jurisdiction in the light of Ext. E but that in the circumstances stated therein the Road Traffic Board should desist from cancelling the permit. Ext. G reads as follows :

"Our bus TCK, 622 has been restored to condition and the vehicle has to be tested for the issue of a brake certificate by the T. S. I. Meeuachil. The vehicle has tax arrears and this has to be settled before the vehicle is tested.

We have applied before Government to grant us sufficient time to remit the tax arrears in respect of this and our other vehicles; and the Government have been pleased to sanction payment of the arrears in convenient monthly instalments, and to issue orders for the testing of all our buses.

Before the issue of the testing order we have to execute a Bond before the Inspector General of Police, Trivandrum; and arrangements are being made to execute the bond. This will be completed in the course of this week and the bus will be tested soon after. As such, the cancellation of the certificate of registration of the vehicle will put us to much hardships and loss."

In view of the above facts and circumstances, we pray that the permit of the bus T. C. K. 622 may not be cancelled."

10. The petition fails and is hereby dismissed with costs, advocate's fee Rs. 100/-.