

(1991) 06 KL CK 0052
In the High Court Of Kerala
Case No : O. P. No. 1862 of 1991

Unni Nair

APPELLANT

Vs

R. T. A. and others

RESPONDENT

Date of Decision : 24-06-1991

Acts Referred:

Motor Vehicles Act, 1988 — Section 72(2), 80(3)

Citation : (1991) 2 KLJ 140

Hon'ble Judges : K. T. Thomas, J

Bench : Single Bench

Advocate : K. P. Dandapani, for the Appellant; K. V. Gopinathan Nair and Govt. Pleader A. N. Rajan Babu, for the Respondent

Final Decision : Dismissed

Judgement

K. T. Thomas, J.—A regular stage carriage permit was granted to the petitioner on the route Kiittippuram - Ponaani. Petitioner, after operating service on the route for sometime, applied for extension of the permit to cover Ponnani Puthenpally route also. Regional Transport Authority granted the extension applied for. Petitioner, after operating bus service on Kuttippuram - Puthonpally route for sometime, applied for a further extension to cover a route up to Kunnamkulam. Though Regional Transport Authority granted that extension, - it remained in stupor since one of the existing operators on the route challenged the decision in revision before the State Transport Appellate Tribunal ("Appellate Tribunal for short). Revision was allowed and the second extension was countermanded on the premise that both extensions put together would exceed the maximum distance allowed under Sec. 80 (3) of the Motor Vehicles Act, 1988 (for short "the Act"). The said order of the Appellate Tribunal (Ext. P&) is challenged in this Original Petition. There is no dispute that the total distance covered by the two extensions would exceed twenty four kilometres.

2. Sec. 80(3) of the Act deals with applications for extension of the route. According to the sub-section, an application for extension or curtailment of the

route shall be treated as an application for the grant of a new permit. Second Proviso to the sub-section says "provided further that. (ii) in the case of extension, the distance covered by extension shall not exceed twenty four kilometres from the terminus. Apparently, the said proviso imposes a ban against extension when the distance exceeds the limit specified therein. Learned counsel for the petitioner, in order to surmount the aforesaid legal hurdle, adopted a twin strategy. He contended first that the ban contained in the second proviso is applicable only when the extension sought for exceeds the limit and not when an already extended route is considered for further extension unless the further extension covers a distance in excess of the limit. Learned counsel made an endeavour to build up a premise that once an extension is granted, it relates back to the "original permit and the permit must be deemed to cover the entire distance and the extended portion is not separately considered or treated for any purpose thereafter. If the aforesaid argument is accepted, Regional Transport Authority will get unrestricted and limitless powers of extending original route to any distance, eg:-The first extension can be granted for a distance of twenty three kilometres and the next extension for another twenty three kilometres can also be granted and like that any number of extensions would be granted. The obvious consequence then would be the legislative intent fixing a limit for the extension is frustrated. Any interpretation which would flout the clear intention expressed by the legislature must be averted.

3. The second line of argument is based on the principle that so long as the permit does not contain a condition that the distance shall not exceed twenty four kilometres, there would be no legal obstacle in extending the route to any distance. Learned counsel invited my attention to the decision of a Division Bench of this Court in *S. T. A. Kerala v. Nallappa Transports* (AIR 1978 Kerala 140). Under Sec. 48(3) of the Motor Vehicles Act, 1939 (for short "the old Act"), Regional Transport Authority had the power to attach any one or more of the conditions enumerated thereunder to the permit. Clause (xxi) of the sub-section enables Regional Transport Authority to vary the condition of the permit or to attach further conditions in the permit. The limit of twenty-four kilometres is mentioned in the provision in the aforesaid context. Sec. 72 (2) of the new Act corresponds to Sec. 48 (3) of the old Act. Clause (xxii) of the sub-section empowers the Transport Authority to vary the conditions of the permit, and its proviso contains a restriction in regard to such variation in the same line as provided in Clause (xxi) of S. 48 (3) of the old Act. But Sec. 80 (3) of the new Act is an innovation. There was no provision in the old Act which would correspond with it. Sec. 80 (3) contains an absolute ban that in the case of extension, the distance covered by extension shall not exceed twenty-four kilometres from the terminus. It is by the said sub-section that a permit holder becomes entitled to apply for extension or curtailment of the route. It is irrespective of whether the permit incorporates any condition or not. Hence the decision in *S. T. A. Kerala*'s case has no application.

For the aforesaid reasons, I dismiss this Original Petition.