
(2003) 07 KL CK 0032
In the High Court Of Kerala
Case No : W.A. No. 1242 of 2003

Vineetha

APPELLANT

Vs

The Regional Transport Authority

RESPONDENT

Date of Decision : 30-07-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 66, 71, 74, 80

Citation : (2004) 1 ACC 245 : AIR 2004 Ker 24 : (2003) 2 KLJ 1041 : (2003) 3 KLT 714

Hon'ble Judges : K. Padmanabhan Nair, J; Cyriac Joseph, J

Bench : Division Bench

Advocate : C.K. Sreejith, for the Appellant; T.K. Latheef (G.P.), for the Respondent

Final Decision : Allowed

Judgement

Cyriac Joseph, J.—This appeal is filed against the judgment dated 30th May, 2003 in O.P. No. 9676 of 2003, Appellant is the petitioner in the Original Petition. The learned Government Pleader accepted notice for the respondents. By consent of the learned counsel for the parties the Writ Appeal has been finally heard and is being disposed of.

2. The appellant had filed an application for grant of regular Stage Carriage permit to operate service on the route Kannur Railway Station-Koottupuzha via., Kannur NBS, Mattannur, Iritty as Limited Stop Ordinary Service. The said application was considered by the Regional Transport Authority, Kannur at its meeting held on 17.02.2003 and the following decision was taken:

Granted as ordinary service subject to settlement of timings vehicle No. KL-13/G 5373.

A copy of the above decision was communicated to the appellant for information and he was directed to produce the current records of the vehicle within 30 days. Aggrieved by the refusal of the Regional Transport Authority, Kannur to grant the

permit to operate as Limited Stop Ordinary Service, the appellant filed O.P. No. 9676 of 2003 praying for a direction to the first respondent Regional Transport Authority, Kannur to reconsider the matter and grant regular permit to operate as Limited Stop Ordinary Service. The appellant also prayed for a direction to the first respondent to convert the permit already granted as Limited Stop Ordinary Service. The learned Single Judge dismissed the Original Petition at the admission stage observing that the attempt of the petitioner is to get lesser running time to operate at high speed and not to limit the number of stops. According to the learned Single Judge "the distance is stated to be only 60 K.Ms. and the petitioner has not established any ease for granting any limited stop operation especially where the vehicle plying is through the village areas where there are large number of stops". Aggrieved by the dismissal of the Original Petition the appellant has filed this appeal.

3. The learned counsel for the appellant submits that as per Ext. P1 decision the Regional Transport Authority, Kannur rejected the appellant's application for regular stage carriage permit to operate service as Limited Stop Ordinary Service. The appellant had not applied for any permit to operate service as Ordinary Service. It is contended that before rejecting the application for permit to operate service as Limited Stop Ordinary Service the Regional Transport Authority should have given to the appellant an opportunity of being heard and should have given in writing the reasons for the refusal. Learned counsel relied on the Second Proviso to Sub-section (2) of Section 80 of the Motor Vehicles Act. 1988. Sub-section (2) of Section 80 of the Motor Vehicles Act. 1988 is extracted hereunder:

80. Procedure in applying for and granting permits:

....

(2) A Regional Transport Authority, State Transport Authority or any prescribed authority referred to in sub-section (1) of section 66 shall not ordinarily refuse to grant an application for permit of any kind made at any time under this Act:

Provided that the Regional Transport Authority, State Transport Authority or any prescribed authority referred to in sub-section (1) of section 66 may summarily refuse the application if the grant of any permit in accordance with the application would have the effect of increasing the number of stage carriages as fixed and specified in a notification in the Official Gazette under clause (a) of subsection (3) of section 71 or of contract carriages as fixed and specified in a notification in the Official Gazette under clause (a) of sub-section (3) of Sec. 74:

Provided further that where a Regional Transport Authority. State Transport Authority or any prescribed authority referred to in sub-section (1) of section 66 refuses an application for the grant of a permit of any kind under this Act., it shall give to the applicant in writing its reasons for the refusal of the same and an opportunity of being heard in the matter.

Learned counsel also relies on the judgment of a learned Single Judge of this Court in Premkumar v. R.T.A. Trichur, 1991 (1) KLT 745.

4. As per the Second Proviso to sub-section (2) of Section 80 of the Motor Vehicles Act, 1988, before refusing an application for grant of a permit of any kind under the Act, the Regional Transport Authority has to give to the applicant in writing its reasons for the refusal of the same and an opportunity of being heard in the matter. In the present case the appellant's application was for grant of a Stage Carriage permit to operate service as Limited Stop Ordinary Service, but what was granted as per Ext. P1 is only a Stage Carriage permit to operate as Ordinary Service. In other words, the request of the appellant for grant of a permit to operate as Limited Stop Ordinary Service was rejected by the Regional Transport Authority. No reason has been stated in Ext. P1 decision for refusing a permit to operate as Limited Stop Ordinary Service and to grant a permit to operate only as Ordinary Service. No reason has been communicated to the appellant in writing for such refusal and no opportunity of being heard in the matter was given to the appellant. Hence the learned counsel for the appellant is right in submitting that Ext. P1 decision is illegal and is liable to be set aside and that the first respondent is liable to be directed to consider the appellant's application afresh in accordance with law.

5. Learned Government Pleader submits that though no reason was stated in Ext. P1 decision, the learned Single Judge has stated in the impugned judgment sufficient reasons for refusing a permit to operate as Limited Stop Ordinary Service. In our view what is stated by the learned Judge in the impugned judgment is only his perception and not the reasons which persuaded the Regional Transport Authority to reject the application. Since the Regional Transport Authority has not given any reasons for taking Ext. P1 decision and has not communicated the reasons for refusal of permit to the appellant and since the Regional Transport Authority has not given him an opportunity of being heard in the matter, Ext. P1 decision is illegal and arbitrary and is liable to be set aside. When it is found that the application for permit was not considered in accordance with the provisions contained in the statute, the proper course is to set aside the decision and to direct the authority to consider the application afresh in accordance with the statutory provisions. It is neither proper nor prudent to justify the impugned decision by guessing or presuming what would have persuaded the authority to take such a decision. The authority should be made to comply with the statutory provision and state its own reasons for the decision. In the above circumstances the impugned judgment is set aside. The Original Petition is allowed to the extent of setting aside Ext. P1 decision of the first respondent Regional Transport Authority, Kannur and directing the first respondent to consider the application of the appellant afresh in accordance with law as early as possible, and at any rate within a period of two months from the date of receipt of a copy of the judgment.