

(1990) 10 KL CK 0036

High Court Of Kerala

Case No: O.P. 9314 of 1990 H

Dakshayani

APPELLANT

Vs

State Transport Appellate
Tribunal and Others

RESPONDENT

Date of Decision: Oct. 12, 1990

Acts Referred:

- Motor Vehicles Act, 1939 - Section 42, 42(1)
- Motor Vehicles Act, 1988 - Section 66(1)

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

Bench: Single Bench

Advocate: M.K. Chandra Mohandas, for the Appellant; Rajan Babu, Government Pleader, for the Respondent

Judgement

K.T. Thomas, J.

Fourth Respondent applied for a temporary permit on the route Alapuzha-Andhakaranazhi. Third Respondent, who is the Secretary of the Regional Transport Authority, dismissed the application on the ground that the 4th Respondent is not the owner of the vehicle offered in the application. 4th Respondent preferred an appeal, before the State Transport Appellate Tribunal. ("Appellate Tribunal" for short) against the order rejecting the application. The Appellate Tribunal by its judgment dated 27th September 1990 allowed the appeal, set aside the order of the third Respondent and directed the third Respondent to enquire whether the temporary need mentioned as harvesting and marketing of agricultural products is true and is in existence now and if so to issue a temporary permit for 20 days without time clash with the existing operators, particularly the Petitioner. Ext. P-4 is the judgment of the Appellate Tribunal. Petitioner challenges Ext. P-4 in this Original Petition.

2. Learned Counsel for the Petitioner contended that u/s 66(1) of the Motor Vehicles Act, 1988 (for short "the Act") only an owner can apply for a temporary permit. The

material words of Section 66(1) reads thus:

No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority....

Section 66(1) of the Act, and Section 42 of the Motor Vehicles Act, 1939 are identically worded. The Supreme Court has considered the effect of Section 42(1) of the Motor Vehicles Act, 1939 in the decision reported in [K.M. Viswanatha Pillai Vs. K.M. Shanmugam Pillai](#). The Supreme Court observed thus:

Section 42(1) does not require that the owner himself should obtain the permit; it only requires the owner that the transport vehicle shall not be used except in accordance with the conditions of the permit. There is no justification for inserting the words "permit granted" in Section 42(1). The definition of the "permit" itself shows that all permits need not be in the name of the owner because the latter part of the definition shows that it is only in the case of a private carrier or a public carrier that a permit has to be in the owner's name.

The said decision of the Supreme Court was quoted by the Appellate Tribunal in its judgment.

3. Learned Counsel for the Petitioner tried to draw a distinction for application of the said ratio to the facts of the present case. He pointed out that the said decision was rendered when the word "owner" in the Motor Vehicles Act, 1939 did not contain a condition that the owner should be the "registered owner", whereas the definition of "owner" in the present Act contains such a condition. With his change in the definition of "owner", according to the learned Counsel, the ratio laid down in [K.M. Viswanatha Pillai Vs. K.M. Shanmugam Pillai](#), has no application. It is difficult to accept this contention. I do not think that the definition of "owner" in the present Act has any bearing on the question in dispute in this case. If the provisions in the Act imposed a restriction that a permit can be issued only to the owner of a vehicle, then perhaps the change in the definition of "owner" can bear some weight in disregarding the ratio laid down by the Supreme Court in [K.M. Viswanatha Pillai Vs. K.M. Shanmugam Pillai](#), Section 66(1) of the Act, or any other provision or rule does not impose any such restriction. Therefore, the legal position continues without change under the present Act.

4. That apart, the Appellate Tribunal has rightly doubted the locus standi of the Petitioner in questioning the right of the 4th Respondent to use the vehicle. Petitioner has never claimed any ownership right over the vehicle offered by the 4th Respondent. Then how can he come forward and say that the 4th Respondent did not obtain permission from the registered owner of the vehicle. (Of course, it is pointed out that the registered owner has passed away. In that case, the owners of the vehicle must be the legal representatives of that registered owner).

5. I find much force in the doubt expressed by the Appellate Tribunal regarding the locus standi of the Petitioner to question the right of the 4th Respondent to have possession of the vehicle.

For all the said reasons, I am not inclined to interfere. Original Petition is accordingly dismissed.