

(2004) 03 KL CK 0048

High Court Of Kerala

Case No: Writ Petition (C) No"s. 4986 and 5929 of 2004

Premalal

APPELLANT

Vs

Government of Kerala

RESPONDENT

Date of Decision: March 22, 2004

Acts Referred:

- Motor Vehicles Act, 1988 - Section 2, 63(3), 68(3), 72, 80

Citation: (2005) 1 ACC 6 : (2004) 2 ILR (Ker) 321 : (2004) 3 KLT 48

Hon'ble Judges: Nauvdip Kumar Sodhi, C.J; K.K. Denesan, J

Bench: Division Bench

Advocate: Deepak and G.O. Prabhakaran, for the Appellant; Abdul Rahim, Govt. Pleader, for the Respondent

Final Decision: Allowed

Judgement

N.K. Sodhi, C.J.

These three Writ Petitions have been put up for hearing before us on a reference made by a learned Single Judge. Since common questions of law and fact arise in these cases, they can be conveniently disposed of together. For the sake of convenience, facts are being taken from W.P. (C) No. 5929 of 2004.

2. Petitioners are stage carriage operators carrying on their business of running stage carriages on different routes on the strength of permits granted to them by the Regional Transport Authority, Alappuzha. Petitioner No. 1 applied for a regular stage carriage permit on Cherthala--Aroor temple route and made an application to the Regional Transport Authority, Alappuzha. The Regional Transport Authority considered the application in its meeting held on 9th October, 2003 and as per item No. 15 of its agenda, the application of the first petitioner was taken up for consideration and the same was granted subject to settlement of timings. Similarly, petitioner No. 2 applied for a regular stage carriage permit on Chalipally-Chellanam route to the same Authority. His application was taken up for consideration by the

Regional Transport Authority on 27th February, 2003 and the same was rejected. A communication was sent to this petitioner on 3rd April, 2003. Feeling aggrieved by the rejection of his application, he filed an appeal before the State Transport Appellate Tribunal, Ernakulam and the same was allowed by order dated 20th November, 2003 and the Regional Transport Authority was directed to grant a regular permit to the second petitioner on Chalipally--Chellanam route. Even though both the petitioners had been granted regular stage carriage permits by the concerned authorities, the same were not being released by the Secretary, Regional Transport Authority, Alappuzha. A communication dated 12th February, 2004 was addressed to the first petitioner informing him that the process of route formulation was going on and that the Regional Transport Authority at its meeting held on 9th October, 2003 had already considered the proposals for route formulation and decided to formulate 32 new inter-district routes and the matter was now pending with the State Government. As regards the inter-district routes, the first petitioner was informed that the route formulation in regard to those routes was being undertaken by the State Transport Authority for the State. The Secretary also referred to an order passed by a learned Single Judge in W.P. (C) No. 21433 of 2003, dated 7th July, 2003 wherein a direction had been issued to complete the route formulation within a stipulated period before sanctioning the regular stage carriage permits. Reference was also made to a similar order passed in W.P. (C) No. 27224 of 2003 dated 26th August, 2003. The first petitioner was further informed that till the route formulations were completed, the permit granted to him could not be issued. A communication dated 15th January, 2004 had been addressed to the second petitioner informing him that the permit would be issued only after obtaining a clarification from the State Transport Appellate Tribunal. It is against these communications that the present Writ Petition has been filed by the two petitioners.

3. When the matter came up for hearing before a learned Single Judge, the orders passed by this Court in W.P. (C) No. 27224 of 2003 were produced before him to contend that permits could not be granted till the completion of the route formulation. A learned Single Judge disposed of W.P. (C) No. 27224 of 2003 directing the Transport Authorities to complete the route formulation within a fixed time frame and directed that in the meantime, temporary permits be issued till the route formulation was completed. It appears that the learned Single Judge before whom this Writ Petition came up for hearing did not agree with the observations made in the order dated 26th August, 2003 passed in W.P. (C) No. 27224 of 2003 and after referring to the Division Bench judgment of this Court in W.A. No. 468 of 1995 decided on 16th August, 1995, referred the matter to be heard by a Division Bench. This is how the matter has been placed before us.

4. We have heard the learned Counsel for the parties and are of the view that the Writ Petitions deserve to succeed. Mr. AbduI Rahim, learned Senior Government Pleader appearing for the respondents strenuously contends that Clause (ca) was introduced in Sub-section (3) of Section 68 of the Motor Vehicles Act, 1988 (for short

"the Act") in the year 1994 by Act 54 of 1994 and in view of this provision, route permits could not be granted till the Government formulates the routes for plying the stage carriages. Learned State Counsel further stated that the process of route formulation was presently going on and that the Regional Transport Authorities in the State have formulated some routes on intra-district routes whereas on inter-district routes, the process has been undertaken by the State Transport Authority for the State. He argues that there was a purpose with which the Legislature introduced Clause (ca) in S .68(3) of the Act and that it implies that till such formulation is completed, the route permits could not be granted. Sri. Deepak, learned Counsel for the petitioners, on the other hand, contends that route formulation under Clause (ca) of Section 68(3) of the Act could not stand in the way of the Regional Transport Authorities in granting and releasing the stage carriage permits because the provisions contained in the newly added Clause (ca) is only an enabling provision and that there is no provision in the Act which prohibits or debars the Regional Transport Authorities from granting and issuing such permits pending route formulation.

5. From the rival contentions raised by the learned Counsel for the parties, the short question that arises for consideration is -- whether a stage carriage permit could be granted before the route formulation is completed by the State Government in exercise of its powers under Clause (ca) of Section 68(3) of the Act?

6. At this stage, it is necessary to refer to Clause (ca) which was introduced in Sub-section (3) of Section 68 of the Act. It reads as under:

"The State Transport Authority and every Regional Transport Authority shall give effect to any directions issued u/s 67 and the State Transport Authority shall, subject to such directions and save as otherwise provided by or under this Act, exercise and discharge throughout the State the following powers and functions, namely:

(ca) Government to formulate routes for plying stage carriages.

As already observed, this provision was introduced by Section 22 of Act 54 of 1994 with effect from 14th November, 1994. Section 68 of the Act finds place in Chapter V of the Act which deals with control of transport vehicles. This Chapter begins with Section 66 which provides for the necessity of permits. Its mandate is that 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 except in accordance with the conditions of a permit granted or countersigned by Regional or State Transport Authority or any prescribed authority authorising him to use the vehicle in that place in the manner in which the vehicle is being used. It is, thus, clear that no vehicle can be used as a transport vehicle without a permit. Section 67 deals with the powers of the State Government to control the road transport in the State. This section gives power to the State Government to issue directions both to the State Transport Authority and also to the

Regional Transport Authority in regard to different matters specified therein including matters pertaining to fixation of fares and freights and other allied subjects. Section 68 deals with the constitution of Transport Authorities in the State. There is a State Transport Authority constituted for the entire State to exercise and discharge the powers and functions specified in Sub-section (3). Similarly, Regional Transport Authorities are constituted to exercise and discharge throughout such areas as may be specified in the notification in respect of each such Authority; the powers and functions which are assigned to them by or under this Chapter. Applications for permits are required to be made to a Regional Transport Authority of the region in which it is proposed to use the vehicle. This is the requirement of Section 69. Section 70 then deals with an application for a stage carriage permit. Section 80 deals with the procedure in applying for and granting permits. According to this provision, an application for a stage carriage permit can be made at any time. It further provides that a Regional Transport Authority shall not ordinarily refuse to grant an application for permit made at any time under this Act. It may be mentioned that this was a departure made by the Legislature when the Act was enacted in the year 1988. In the earlier law relating to motor vehicles (Motor Vehicles Act, 1939) a detailed procedure had been provided in Section 57 thereof which had to be followed in the matter of grant of regular stage carriage permits and before the grant of such permits, the concerned authority had to fix the number of permits to be granted after assessing the public need. After the new Act came into force, that procedure has been done away with and permits can be applied for by the operators at any time which are normally to be granted by the Regional Transport Authorities. Procedure for grant of permits under the Act has been liberalised to such an extent that an intended operator can get a permit on the asking irrespective of the number of operators on the route. Now, when a permit is normally to be granted, can it be said that Clause (ca) added in Sub-section (3) of Section 68 of the Act can restrict the powers of the Regional Transport Authorities in the matter of granting permits? The answer to this question has to be in the negative. Section 68, as already noticed, deals with the State Transport Authorities and Sub-section (3) provides that the authorities set up under the Act shall give effect to any directions issued by the State Government u/s 67 of the Act and that the State Transport Authority shall discharge throughout the State the functions enumerated therein. Clause (ca) is one such clause which has already been reproduced above. It appears to be a clause which enables the Government to formulate the routes for plying stage carriages. The Government, no doubt, has the power under this clause to formulate routes for plying of stage carriages but there is no provision in the Act which requires that the grant of permits u/s 80 by the Regional Transport Authority shall be subject to the route formulation by the Government under Clause (ca) in Section 68(3) of the Act. The power of the Regional Transport Authority u/s 80 read with Section 72 of the Act granting route permits is independent of the power of the State Government to formulate routes for plying stage carriages and this power cannot, therefore, control the authorities in the

matter of grant of stage carriage permits. Again, there is no requirement in the Act that an operator must ply on a route which has been formulated by the State Government u/s 68(3) of the Act.

7. The term "route" has been defined in Clause 38 of Section 2 of the Act to mean a line of travel which specifies the high way which may be traversed by a motor vehicle between one terminus and another. It would, therefore, be open to an operator to apply for the grant of a permit to travel the distance between two terminals. Since an operator can apply for a stage carriage permit at any time, the Regional Transport Authority is required to consider such an application in accordance with law and it is not normally required to reject the same. Such an application would be rejected only if it appears from any time-table furnished that the provisions of the Act relating to the speed at which vehicles may be driven are likely to be contravened. Once permits have been granted as in the instant case, the Secretary of the Regional Transport Authority was not justified in withholding those permits merely because the routes were being formulated by the State Government u/s 68(3)(ca) of the Act.

8. In the matter of grant of permits on city routes, the Central Government can direct the State Government to limit the number of stage carriages generally keeping in view the number of vehicles, route conditions and other relevant matters but there is no such power with any authority to limit the number of stage carriage permits to be operated within the State on intra-district or inter-district routes.

9. With respect, we do not agree with the view expressed by the learned Single Judge in W. P. (C) No. 27224 of 2003 and we overrule the same. Similar view has been expressed by the same learned Judge in W.P. (C) No. 21433 of 2003 as well. The view that we have taken finds support from a Division Bench Judgment of this Court in Quilon District Motor Transport Workers' Co-operative Society Ltd. v. Regional Transport Authority, Kollam and Ors., W.A. No. 468 of 1995 decided on 16th August, 1995. In this view of the matter, the impugned communications sent by the Secretary, Regional Transport Authority to the petitioners cannot be sustained.

W.P.(C) No. 4986 of 2004

10. In this case, the applications for the grant of a regular stage carriage permit on Erattakulangara, Alappuzha via. Paravoor route were taken up for consideration by the Regional Transport Authority in its meeting held on 15th January, 2004 and the matter was adjourned in the light of the Judgment of this Court in W.P. (C) No. 27224 of 2003, dated 26th August, 2003. Obviously, the Regional Transport Authority wanted the State Government to complete the route formulation u/s 68(3)(ca). We have already held that the power of the Regional Transport Authority to issue permits cannot be controlled by such route formulations.

11. In the result, all the three Writ Petitions are allowed. The impugned communications Exts.P2 and P2 (a) in W.P. (C) No. 5929 of 2004 and Ext.P3 in W.P. (C)

No. 6665 of 2004 are quashed and a direction issued to the Secretary, Regional Transport Authority, Alappuzha to release the permits to the petitioners forthwith. In W.P. (C) No. 4986 of 2004, the Regional Transport Authority is directed to consider the applications and dispose them of in accordance with law expeditiously preferably within two months from the date of receipt of a copy of this order. During the interregnum period, the petitioners may apply for the grant of a temporary permit on the route in question and if such an application is filed, the same shall be decided in accordance with law by passing an appropriate order thereon. There is no order as to costs.