

(2010) 01 KL CK 0126

High Court Of Kerala

Case No: Writ Petition (C) No. 35729 of 2009

Anilkumar

APPELLANT

Vs

R.T.A.

RESPONDENT

Date of Decision: Jan. 20, 2010

Acts Referred:

- Motor Vehicles Act, 1939 - Section 2(19), 2(20)
- Motor Vehicles Act, 1988 - Section 2(30), 42, 66(1)

Citation: (2010) 1 ILR (Ker) 722 : (2010) 1 KLT 758

Hon'ble Judges: P.N. Ravindran, J

Bench: Single Bench

Advocate: I. Dinesh Menon, for the Appellant; K.S. Mohammed Hashim, Sr. Government Pleader, for the Respondent

Judgement

P.N. Ravindran, J.

The petitioner applied for the grant of a fresh regular permit to operate a stage carriage on the route Olappara-Nedumparambu. In the application for regular permit the petitioner had offered to make available a vehicle before the permit is issued. The Regional Transport Authority, Kollam considered the application at its meeting held on 27.7.2009 and resolved to grant a regular permit to the petitioner subject to settlement of timings. Ext.P1 is a copy of the proceedings issued by the Regional Transport Authority, Kollam in that regard.

2. After Ext.P1 was issued, the petitioner obtained a stage carriage bearing registration No. KL-16D-4302 on lease from Smt. T. Suja, the registered owner of the said vehicle. Ext.P2 is a copy of the lease deed dated 9.12.2009 entered into between the petitioner and the registered owner of the said vehicle. Ext.P3 is a true copy of the certificate of registration in respect of the vehicle leased out to the petitioner by Smt. Suja. The petitioner produced the originals of Exts.P2 and P3 along with other records before the Secretary, Regional Transport Authority, Kollam. It is stated that

the Secretary, Regional Transport Authority, Kollam declined to issue a permit on the short ground that the petitioner is not the registered owner of the vehicle described in Ext.P3 certificate of registration. This Writ Petition is filed contending that a stage carriage operator need not necessarily own the stage carriage which is offered for service and it is enough if he is in lawful possession of the vehicle under a lease agreement. Reliance is placed on the decision of a Division Bench of this Court in *M. Raveendran v. R.T.O. and Anr.* 1995 (1) KLT 126 : 1995 (1) Kar LJ 96. In this Writ Petition, the petitioner seeks a direction to the Secretary, Regional Transport Authority, Kollam to issue a fresh regular permit in respect of the vehicle described in Ext.P3 certificate of registration to operate the stage carriage on the route Olappara-Nedumparambu, within a time limit to be fixed by this Court.

3. Sri. I. Dinesh Menon, the learned Counsel appearing for the petitioner, relying on the decision of the Division Bench of this Court in *M. Raveendran's* case (supra) and the decision of a learned Single Judge of this Court in *Dakshayani v. State Transport Appellate Tribunal* 1990 (2) KLT 885 contended that the petitioner who is in lawful possession of the stage carriage described in Ext.P3 certificate of registration under Ext.P2 lease deed is an owner as defined in Section 2(30) of the Motor Vehicles Act, 1988 and therefore the respondent ought to have issued a permit in respect of the said vehicle to him, giving effect to Ext.P1 proceedings of the Regional Transport Authority, Kollam. Per contra, Sri. K.S. Mohammed Hashim, the learned Senior Government Pleader appearing for the respondent submitted that a learned Single Judge of this Court has in *Bhaskaran v. R.T.A., Alleppey* 2003 (1) KLT 106 held that a permit can be issued only to a registered owner. He submitted that in view of the conflict of opinion in the matter, this Writ Petition may be referred to a Division Bench for consideration. He also submitted that though on an earlier occasion O.P. No. 11495 of 2003 was referred to a Division Bench, in view of the contrary view taken by the learned Single Judge in *Bhaskaran's* case (supra), the Division Bench did not pronounce on the issue and that the said Writ Petition was disposed of without resolving the conflict of opinion.

4. I have considered the submissions made at the Bar by the learned Counsel appearing on either side. The term "owner" was defined in Section 2(19) of the Motor Vehicles Act, 1939 as follows:

"owner" means, where the person in possession of a motor vehicle is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire purchase agreement, the person in possession of the vehicle under that agreement;

The term "owner" is defined in Section 2(30) of the Motor Vehicles Act, 1988 as follows:

"Owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a

motor vehicle which is the subject of a hire purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement;

5. In [K.M. Viswanatha Pillai Vs. K.M. Shanmugam Pillai](#), the Apex Court, interpreting Sections 2(19) and 42 of the Motor Vehicles Act, 1939 held that Section 42 does not require that the owner himself should obtain the permit and that it only stipulates that the owner of a transport vehicle shall not use or permit the use of the vehicle except in accordance with the conditions of a permit. The Apex Court held that the definition of the term "permit" in Section 2(20) of the Motor Vehicles Act, 1939 itself shows that all permits need not be in the name of the owner. The Apex Court approved the view taken by the Allahabad High Court in [Khalil-Ul-Rahman Khan Vs. State Transport Appellate Tribunal and Others](#), that it is not the requirement of the Motor Vehicles Act that in each case the person in whose favour the permit has been issued should necessarily be the owner of the vehicle covered by it.

6. The interpretation to be placed on Section 2(30) of the Motor Vehicles Act, 1988, arose for consideration before a learned Single Judge of this Court in *Dakshayani v. State Transport Appellate Tribunal* 1990 (2) KLT 885. In that case, the Regional Transport Authority, Alleppey dismissed the application for a temporary permit on the ground that the applicant was not the registered owner of the vehicle. He filed an appeal before the State Transport Appellate Tribunal. By judgment delivered on 27.9.2009 the Appellate Tribunal allowed the appeal, set aside the order passed by the Regional Transport Authority and directed the authority to enquire whether the temporary need mentioned is true and in existence and if so to issue a temporary permit for a period of 20 days. The said order was challenged in this Court by another stage carriage operator on the ground that the applicant is not the registered owner of the vehicle and therefore he cannot apply for a permit. Relying on the decision of the Apex Court in [K.M. Viswanatha Pillai Vs. K.M. Shanmugam Pillai](#), the learned Single Judge in *Dakshayani's* case (supra) held that even after the amendment of the definition of the term "owner" in the Motor Vehicles Act, 1988, the legal position continues to be that any person in lawful possession of a motor vehicle is entitled to apply for a permit. It was held that the definition of the term "owner" in the Motor Vehicles Act, 1988, only enlarges the meaning of the term "owner" as defined in Section 2(19) of the Motor Vehicles Act, 1939.

7. The correctness of the decision of the learned Single Judge in *Dakshayani's* case (supra) was canvassed in W.A. No. 733 of 1990. The Division Bench of this Court upheld the decision of the learned Single Judge in *Dakshayani's* case (supra) and held that even after the enactment and coming into force of the Motor Vehicles Act, 1988, there is no change in the definition of the term "owner" and that it is not necessary that the applicant for a permit should be the registered owner of the vehicle. The Division Bench while deciding W.A. No. 733 of 1990 also placed reliance on the decision of the Apex Court in *Viswanathan's* case (supra).

8. When the same issue again arose in O.P. No. 1615 8 of 1994, a learned Single Judge of this Court held that only an owner can apply for a permit. O.P. No. 16158 of 1994 was accordingly dismissed. The correctness of the said decision was canvassed in W.A. No. 1643 of 1994. In Raveendran's case (supra), the Division Bench which decided W.A. No. 1643 of 1994 set aside the decision of the learned Single Judge and approved the dictum laid down by the learned Single Judge in Dakshayani's case (supra) and by the Division Bench in W.A. No. 733 of 1990. The Division Bench in Raveendran's case (supra) held that the term "owner" as defined in Section 2(30) of the Motor Vehicles Act, 1988 includes a person in whose name the motor vehicle stands registered as well as the person in lawful possession of the vehicle under an agreement which includes a lease deed also. The Division Bench held that the definition in the new Act has in effect enlarged the ambit of the definition in the Motor Vehicles Act, 1939 and that nothing contained in Section 66(1) of the Act stands in the way of a person other than the registered owner from applying for a permit. Later another learned Single Judge of this Court in Bhaskaran's case (supra) held that only a registered owner can apply for a permit. The attention of the learned Single Judge was not drawn to the binding decisions of the Division Bench of this Court in Raveendran's case (supra) and in W.A. No. 733 of 1990.

9. It is now well settled by a series of decisions of this Court including the decision of the Division Bench in W.A. No. 733 of 1990 and in Raveendran's case (supra) that even after the Motor Vehicles Act, 1988 was enacted and brought into force, a person other than the registered owner of a vehicle can apply for a regular permit or a temporary permit. In the light of the authoritative pronouncements of the Division Bench of this Court in the aforesaid decisions it has to be necessarily held that the petitioner, who is in lawful possession of the motor vehicle described in Ext.P3 certificate of registration under Ext.P2 lease deed is entitled to apply for and obtain a regular permit or a temporary permit to operate a stage carriage under the provisions of the Motor Vehicles Act, 1988. In such circumstances, the stand taken by the Secretary, Regional Transport Authority, Kollam that a regular permit cannot be issued to the petitioner in respect of the stage carriage described in Ext.P3 certificate of registration for the reason that he is not the registered owner thereof cannot be sustained.

I accordingly overrule the said objection and dispose of the Writ Petition with a direction to the respondent to issue a regular permit to the petitioner pursuant to Ext.P1 proceedings of the Regional Transport Authority, Kollam in respect of the vehicle described in Ext.P3 certificate of registration. Necessary steps in that regard shall be taken and a regular permit issued within one month from the date on which the petitioner produces a certified copy of this judgment before the respondent, after settlement of timings.