

(1990) 12 KL CK 0055

High Court Of Kerala

Case No: O.P. 10206 of 1990

K. Rajendran

APPELLANT

Vs

State Transport Appellate
Tribunal and OthersRESPONDENT

Date of Decision: Dec. 18, 1990**Acts Referred:**

- Constitution of India, 1950 - Article 14, 19(1)
- General Clauses Act, 1897 - Section 6
- Kerala Motor Vehicles Rules, 1989 - Rule 172
- Motor Vehicles Act, 1939 - Section 2(20), 217(1), 217(2), 217(4), 58
- Motor Vehicles Act, 1988 - Section 2(31), 217(2), 66, 68, 69

Hon'ble Judges: K.T. Thomas, J**Bench:** Single Bench**Advocate:** K.K. Chandramohan Das, for the Appellant; A.N. Rajan Babu, Government
Pleader for Respondent Nos. 1 to 3 and K.P. Dandapani, for the Respondent

Judgement

K.T. Thomas, J.

Petitioner can be described as a "fleet owner" in bus transport business since he was operating nine stage carriage services on different routes. As the period of permits of four stage carriages was Bearing expiry, Petitioner applied for renewal of these permits. The applications were considered by the Regional Transport Authority (for short "the Transport Authority") under the provisions of the Motor Vehicles Act, 1988 (for short "the new Act") found that in view of Section 71(4) of the new Act he is not entitled to get renewal of the permits. The Transport Authority pointed out another hurdle against the Petitioner. Tahsildar of the locality had issued prohibitory orders against transfer of four vehicles of the Petitioner and revenue recovery proceedings have been initiated for arrears of tax in respect of some of his vehicles. Those developments dissuaded the Transport Authority from granting renewal in view of Section 81(4) of the new Act. Applications for renewal were

accordingly rejected. Petitioner filed an appeal before the State Transport Appellate Tribunal (for short "the Tribunal") challenging the order of the Transport Authority. The Tribunal held that Section 71(4) of the new Act is not a bar since the original permits were granted under Motor Vehicles Act, 1939 (for short "the old Act"). Renewal of permit, according to the Tribunal, is entirely governed by Section 81 of the new Act in which there is no such interdict. Referring to the decision in [V.C.K. Bus Service Ltd. Vs. The Regional Transport Authority, Coimbatore](#), the Tribunal held that renewal is continuation of the permit and hence the Transport Authority has to dispose of the applications for renewal uninhibited by any limitation contained in Section 71(4) of the new Act. However, Tribunal further observed that the grounds enumerated in Section 81(4)(b) of the new Act are not exhaustive but only illustrative. Tribunal set aside the order of the Transport Authority and directed it to dispose of the applications afresh in the light of the observations. The judgment of the Tribunal (Ext. P-5) is challenged by the Petitioner against its observation that the grounds enumerated in Section 81(4) of the new Act are only illustrative.

2. Third Respondent is desirous of getting a regular stage carriage permit on one of the routes in question, in the vacancy which arises on account of non-renewal of the permit of the Petitioner. Third Respondent, being interested in seeing that the original order of the Transport Authority is maintained, filed another Original Petition challenging Ext. P-5 in so far as the said judgment saves the Petitioner from the disability envisaged in Section 71(4) of the new Act. Learned Counsel for the third Respondent supported the Tribunal's view that the grounds enumerated in Section 81(4) of the new Act are only illustrative. Since common questions are involved, the two Original Petitions were heard together and are being disposed of by this common judgment. (Petitioner in the first Original Petition is referred to as the Petitioner and the Petitioner in the second Original Petition is referred to as the third Respondent).

3. Two points involved in these Original Petitions are: (1) Whether the grounds in Section 81(4) of the new Act are exhaustive; (2) whether the applications for renewal are liable to be dismissed due to the interdict contained in Section 71(4) of the new Act.

4. Section 81(4) of the new Act reads thus:

The Regional Transport Authority or the State Transport Authority, as the case may be, may reject an application for the renewal of a permit on one or more of the following grounds, namely:

(a) the financial condition of the applicant as evidenced by insolvency, or decrees for payment of debts remaining unsatisfied for a period of thirty days, prior to the date of consideration of the application;

(b) the applicant had been punished twice or more for any of the following offences within twelve months reckoned from fifteen days prior to the date of consideration

of the application committed as a result of the operation of a stage carriage service by the applicant, namely:

(i) plying any vehicle-

(1) without payment of tax due on such vehicle;

(2) without payment of tax during the grace period allowed for payment of such tax and then stop the plying of such vehicle;

(3) on any unauthorised route;

(ii) making unauthorised trips:

Provided that in computing the number of punishments for the purpose of Clause (b), any punishment stayed by the order of an appellate authority shall not be taken into account:

Provided further that no application under this sub-section shall be rejected unless an opportunity of being heard is given to the applicant.

5. It is significant that the word "may" is used in the sub-section which indicates that a discretion has been conferred on the Transport Authority to dismiss the application for renewal on any of the grounds enumerated in it. Even if any such ground exists the Transport Authority need not necessarily dismiss the application. If the Transport Authority thinks that the facts in a particular case are such that notwithstanding the existence of any of the grounds mentioned in Section 81(4) the application should not be rejected, it has the power to grant the application for renewal. eg: If the decree passed against the applicant which remains unsatisfied involves only a small amount, the Transport Authority need not necessarily dismiss the application for renewal. The object of enumerating grounds and conferring a discretion is not to make the grounds merely illustrative. Legislature would evidently have intended that the application for renewal should not be dismissed on any ground other than those enumerated in the sub-section. If the legislature intended that the Transport Authority can dismiss the application on any ground whatsoever there is no need to provide Sub-section (4) in this form. The reasonable inference is that the grounds in the sub-section are exhaustive and the Transport Authority has no power to dismiss the application for renewal for any other ground.

6. It was contended that such an interpretation may lead to other difficulties. As an instance it was pointed out that in such a view, a Transport Authority cannot dismiss an application for renewal even if the applicant is not in possession of the vehicle. I do not find any reason for the Transport Authority to become disabled in such an eventuality. If there is no proper application for renewal, the Transport Authority is not obliged to consider the same. Rule 172 of the Kerala Motor Vehicles Rules, 1989 (for short "the Rules") prescribes the contents, the form and adjuncts of an application for renewal. If the applicant is not in possession of a vehicle, he cannot

file a valid application under the Rule. There is no need to consider an incomplete or invalid application. It can be rejected on that ground in limine. But a valid application can be dismissed only on one or more of the grounds enumerated in Section 81(4)(b) of the new Act and not on any other ground.

7. The more important question raised is whether Petitioner is subject to the disability provided in Section 71(4) of the new Act when renewal of permits is considered. The sub-section reads thus:

A Regional Transport Authority shall not grant more than five stage carriage permits to any individual or more than ten stage, carriage permits to any company (not being a State transport undertaking).

The Tribunal noted that there is no corresponding provision in the new Act to Section 58 of the old Act which says that an application for renewal may be disposed of as if it were an application for a permit. The Tribunal observed that as the renewal is only continuation of the permit previously granted vide [V.C.K. Bus Service Ltd. Vs. The Regional Transport Authority, Coimbatore](#), the applications cannot be rejected merely on the ground that the applicant already has more than the eligible number of permits.

8. Renewal of permit can be granted only if a permit has already been granted. Without a permit there is no question of renewal. In this context it has to be considered, what is a "permit"? Section 2(20) of the old Act defined permit as a document issued by a Transport Authority authorising the use of a transport vehicle as a contract carriage or stage carriage or authorising the owner to use the vehicle as a private carrier or public carrier. But the said definition of "permit" does not survive under the new Act. Section 2(31) of the new Act defines "permit" as one "issued by a State or Regional Transport Authority or an authority prescribed in this behalf under this Act authorising the use of a motor vehicle as a transport vehicle".

9. Section 66 of the new Act imposes a prohibition that no owner of a motor vehicle shall use it as a transport vehicle except in accordance with the conditions of a permit. Section 68 of the new Act empowers the State Government to constitute a State Transport Authority for the State and a Regional Transport Authority to exercise powers and functions conferred by or under Chapter V of the new Act in such regions as may be specified in the notification by which the authority is constituted. Section 69 allows a person to file application for permit to the Regional Transport Authority of the region in which it is proposed to use the vehicle or vehicles. Application for stage carriage permit should contain the particulars enumerated in Section 70 of the new Act. The Transport Authority, while considering the application for stage carriage permit, has to follow the procedure laid down in Section 71 of the new Act. Grant of a stage carriage permit should be in accordance with Section 72 of the new Act. Section 81 says that a permit, other than a temporary permit or a special permit, shall be effective without renewal for a period of five

years. Thus, a permit has many sided facets and incidences. A permit cannot be granted under any other enactment. Sub-section (2) says a permit may be renewed on an application made not less than fifteen days before the date of its expiry. It is only the permit which was granted under the new Act that can be got renewed. The corollary is that unless there is a permit granted in accordance with the provisions of the new Act, there is no question of renewal u/s 81 of the new Act.

10. The new Act came into force on 1st July 1989. Section 217(1) declares that the old Act stands repealed with the commencement of the new Act. What would happen to those permits granted under the old Act the period of which has not expired on the above date. Many steps would have taken under the old Act and many actions taken thereunder. What would happen to them. Sub-section (2) of Section 217 saves certain acts or steps taken under the old Act despite the repeal. Any notification, rule, regulation, order or notice issued, or any appointment or declaration made or exemption granted or any confiscation made, or any penalty or fine imposed, any forfeiture cancellation or any other thing done, or any other action taken under the repealed enactments "shall be deemed to have been issued, made, granted, done or taken under the corresponding provision" of the new Act. It is contended on the strength of the said clause that permit being the result of an action taken under the old Act is must be deemed to have been granted under the corresponding provisions of the new Act. The said saving clause is subject to a rider that the action taken under the old Act will be deemed to have been taken under the corresponding provisions of the new Act only "so far as it is not inconsistent with the provisions" of the new Act. A specific provision is made in Section 217(2)(b) regarding permits issued or granted under the old Act. It reads thus: "Any certificate of fitness or registration or licence or permit issued or granted under the repealed enactments shall continue to have effect after such commencement under the same conditions and for the same period as if this Act had not been passed".

11. A permit granted under the old Act will remain unaffected despite the repeal and for the purpose of that permit the new Act has not been enacted at all. This means that a permit granted under the old Act must have its normal duration and expiry under the provisions of the old Act. Such permit cannot be transplanted under the new Act. With the expiry of the period of permit granted under the old Act there is no question of renewal since the old Act also will expire along with it. This adds further strength to the position that renewal of a permit envisaged in the new Act can be granted only in respect of a permit granted under the new Act.

12. To tide over the said difficulty learned Counsel made an endeavour to bring the matter within Sub-section (4) of Section 217. It reads thus: "The mention of particular matters in this section shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals". u/s 6 of the General Clauses Act the repeal of an enactment shall not affect any right, privilege, obligation or liability acquired, accrued or

incurred under any enactment so repealed or any investigation, legal process or remedy in respect of any such right, privilege etc., may be instituted, continued or enforced as if the repealing Act had not been passed. Learned Counsel for the Petitioner contended that every citizen has a right to use public streets or roads and subject to such limitations as the State may impose the right of a citizen to carry on business in transport vehicles on public pathways cannot be denied to him and hence the renewal of permit can be granted under the repealed Act. In support of the said position, learned Counsel invited my attention to some of the observations made by the Supreme Court in [Saghir Ahmad Vs. The State of U.P. and Others,](#). That is a case where the vires of certain provisions of U.P. State Road Transport Act, 1951 was challenged. The background was this: Government of U.P. started running buses on public thoroughfares as a competition, with private operators. Later, the Government decided to exclude the private bus owners from those routes. The Transport Authorities, in furtherance of the said State policy, started cancelling permits already issued to the private operators and refused permits to people who applied for the grant of permits. A Full Bench of the Allahabad High Court held that nationalisation of an industry was not possible by mere executive order without appropriate legislation and directed the Transport Authorities to deal with the application for permits in accordance with the provisions of the old Act. The U.P. Road Transport Act was passed to meet the situation arising from, the said direction of the Allahabad High Court. Some persons challenged the constitutional validity of the said Act on the ground that it contravened Articles 14 and 19(1)(g) of the Constitution. The Supreme Court held that subject to such limits as the State Government may impose the right of a citizen to carry on business in the transport vehicles on public pathways cannot be denied to him and within the limits imposed by the State Government any member of the public can ply motor vehicles on public road. The question whether any person is entitled as a matter of right to get a permit under the old Act was not considered by the Supreme Court in the said decision. But the question was considered in an earlier decision. In [Veerappa Pillai Vs. Raman and Raman Ltd. and Others,](#) it was held that "no one is entitled to a permit as of right even if he satisfies all the prescribed conditions". The Supreme Court further observed that the grant of a permit is entirely within the discretion of the transport authorities and naturally depends on several circumstances which have to be taken into account. Though it can be said that members of the public have the right to use highways and all roads including using motor vehicles to ply on the roads, it cannot be said that a member of the public has a right to get a permit to operate stage carriage service. The right of a member of the public to ply the motor vehicle on public road is different from the right to get a permit. The former can be controlled and regulated by the State for the purpose of ensuring safety, peace and good health of the public, vide [Adarsh Travels Bus Service and Another Vs. State of U.P. and Others,](#).

13. The position is that the right of a citizen to ply motor vehicles on the public way is not analogous to a permit granted to one who wants to operate bus service on the route. Though it can be said that every individual has a right to apply for a permit, there is no right as such to get a permit issued to him because the Transport Authority may have to take into account different considerations while granting permit. Even otherwise, the clear intention manifested in Section 217(2)(b) of the new Act would not help the Petitioner to have a permit (granted under the old Act) continued with all its incidental advantages under the provisions of the new Act.

14. It was next contended that the application for renewal of permit must be disposed of under the corresponding provisions of the new Act in view of Clause (c) of Sub-section (2) of Section 217 of the new Act. "Any document referring to any of the repealed enactments or the provisions thereof, shall be construed as referring to this Act or to the corresponding provision of this Act". Though it can be said that an application for renewal of a permit is a document in a wider sense, it would not ipso facto absorb all the benefits of the corresponding provisions in the new Act. The mere fact that legislature allows references in the application to the old Act to be construed as references made to the new Act would not improve the position. The advantage with Clause (c) is that the application for renewal, if filed under the old Act, can be treated as application filed under the new Act. Such an application may be disposed of by the Regional Transport Authority, as though the same has been filed under the new Act. But, without a permit having been granted under the new Act, there is no question of renewal of a permit under the new Act.

15. For the aforesaid reasons, I hold that the applications filed by the Petitioner for renewal are not maintainable, since none of the applications refers to a permit granted under the new Act. It is open to the Petitioner to apply for fresh permits under the new Act. Such applications should be disposed of under the provisions of the new Act and subject to such restrictions and limitations as provided therein.

Original Petitions are disposed of in the above terms.

I place on record my gratitude and appreciation to Shri. Anil Sivaraman, Advocate, who argued as *amicus curiae* to my satisfaction.