

(2012) 08 KL CK 0224

High Court Of Kerala

Case No: WA. No. 1393 of 2012 in WPC: 15631 of 2012

The Managing Director, Kerala
State Road Transport
Corporation

APPELLANT

Vs

The Secretary, Rta, Kottayam Pin
686002. and A. Vijayappan Nair,
"Anugraha", (Manthattu),
Chirakadavu Centre P.O
Ponkunnam, Kottayam District
686506

RESPONDENT

Date of Decision: Aug. 1, 2012

Acts Referred:

- Motor Vehicles Act, 1988 - Section 104, 87, 87(2)

Hon'ble Judges: Manjula Chellur, J; A.M. Shaffique, J

Bench: Division Bench

Advocate: Babu Joseph Kuruvathazha, Sc, Ksrtc By, for the Appellant; P.I. Davis, R1 By Sr. Government Pleader and Sri. K.V. Gopinathan Nair, R2 By Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Manjula Chellur, Ag.C.J.

1. Heard learned Standing Counsel for the appellant- Corporation Sri. Babu Joseph Kuruvathazha and also learned counsel representing the second respondent Sri. K.V. Gopinathan Nair. The entire issue revolves round a notified route between Kumily-Ernakulam-via-Kottayam. It is not in dispute that the party respondent was also a stage carriage operator running his buses on this route. It is also not in dispute that after being successful in getting a direction to consider the application of the party respondent for issuing a permit to ply on the above route, he got a regular permit to operate on this notified route, which was the subject matter of challenge in W.P(C).No. 3217 of 2012. During the pendency of the said Writ Petition,

second respondent-writ petitioner sought for a direction to the transport authorities to consider his application for temporary permit on this route, as there was stay of issue of regular permit. The said interim direction was the subject matter of challenge in W.A. No. 502 of 2012. The Writ Appeal came to be disposed of with some directions. After disposal of the Writ Appeal, the temporary permit already granted had expired. Therefore, when the writ petitioner was unsuccessful in getting temporary permit, he approached the learned Single Judge in W.P(C).No. 15631 of 2012. The said matter was contested by Corporation as noted from the judgment of the learned Single Judge dated 5.7.2012. The Writ Petition was allowed in favour of the writ petitioner, directing the first respondent authority to issue a temporary permit to the petitioner in pursuance of Exhibit P9 within one week. On perusal of the judgment of the learned Single Judge, we note, after referring to the special provision for issuance of temporary permits as enumerated u/s 87(2) of the Motor Vehicles Act, 1988, the learned Judge disposed of the Writ Petition. Aggrieved by the same, the Corporation is before us contending that by virtue of Section 104 of the Motor Vehicle Act, which overrides the effect of Sub-section (2) of Section 87, the learned Single Judge ought not to have allowed the Writ Petition directing issuance of temporary permit.

2. As already stated above, this is renewal of a temporary permit, which expired and the same was not considered. Sub- section (2) of Section 87 of the Motor Vehicles Act provides for issuance of temporary permits under various circumstances including where obstacles are put to regular permits with the interference of the Court. Admittedly, there is a Writ Petition, wherein issuance of regular permit is the subject matter of dispute between the Corporation and the party respondent herein. In that view of the matter, in the absence of any special provision enduring to the benefit of the appellant-Corporation that in every route, where the Corporation is conducting operations, there cannot be temporary permits to private carriage operators or any other provision which gives them a vested right to object issuance of temporary permits u/s 87(2) of the Motor Vehicles Act, we are afraid, the Corporation cannot take protection u/s 104 of the Act in the absence of any specific provision in that direction. In that view of the matter, having regard to Sub-section (2) of Section 87 of the Motor Vehicles Act, 1988, the learned Single Judge was justified in passing the judgment impugned before us. Learned Standing Counsel for the appellant-Corporation refers to a judgment of the Apex Court reported in [Adarsh Travels Bus Service and Another Vs. State of U.P. and Others](#), with reference to the overlapping of routes. The subject matter of issuance of a regular permit is the subject matter of a Writ Petition this argument of the appellant- Corporation could be pressed into service before the learned Single Judge while disposing of the Writ Petition on merits. We are afraid, we need not look into the present controversy totally ignoring pendency of the main Writ Petition interfering issuance of regular permit. It would amount to prejudging the issue, which is pending for consideration before the learned Single Judge. Nothing prevents either the appellant-Corporation

or the party respondent to seek disposal of the Writ Petition at an early date.

Accordingly, the Writ Appeal is dismissed.