

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

Con.Case(C).No.639 of 2014 (S) IN WP(C).12367/2014

AGAINST THE ORDER/JUDGMENT IN WP(C) 12367/2014 of
HIGH COURT OF KERALA DATED 20-05-2014

PETITIONER/PETITIONER IN WP(C):

U.NAZAR, AGED 47 YEARS,
S/O.UMMER,
325, ASUMA MANZIL,
8, MISSION COLONY, PERUMKULAM,
ATTINGAL, THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.O.D.SIVADAS

RESPONDENT/RESPONDENT IN WP(C):

SAJAN K.JOSEPH,
S/O.JOSEPH,
THE SECRETARY,
REGIONAL TRANSPORT AUTHORITY, ATTINGAL.

BY GOVERNMENT PLEADER SRI.P.P.PADMALAYAN

THIS CONTEMPT OF COURT CASE (CIVIL) HAVING BEEN FINALLY
HEARD ON 10-02-2015, ALONG WITH RP. 845/2014, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S ANNEXURES:-

- ANNEXURE – A1 : COPY OF THE TEMPORARY PERMIT ISSUED TO THE PETITIONER DTD.31.1.2014.
- ANNEXURE – A2 : COPY OF THE JUDGMENT DTD.20.5.2014 IN W.P.(C)No.12367/2014.
- ANNEXURE – A3 : COPY OF THE PROCEEDINGS OF THE RESPONDENT DATED 24.10.2013.
- ANNEXURE – A4 : COPY OF THE JUDGMENT IN W.P.(C)No.2099/2014.
- ANNEXURE – A5 : COPY OF THE JUDGMENT DTD.6.8.2014 IN W.P.(C) No.19059/2014.
- ANNEXURE – A6 : COPY OF THE TEMPORARY PERMIT ISSUED BY THE RESPONDENT.

RESPONDENTS' ANNEXURES:-

- ANNEXURE R1(a) : COPY OF THE SANCTIONED ORDER.
- ANNEXURE R1(b) : COPY OF THE ORDER DTD.23.6.2014.
- ANNEXURE R1(c) : COPY OF THE PAGES OF ATTENDANCE REGISTER.

True copy

P.A to Judge

ANIL K.NARENDRA, J.

Cont.Case No.639 of 2014 & R.P.No.845 of 2014
in
W.P.(C)No.12367 of 2014

Dated this the 10th day of February, 2015

JUDGMENT

Cont.Case No.639 of 2014 is filed by the petitioner in W.P.(C) No.12367 of 2014 alleging that, the respondent who is the Secretary of the Regional Transport Authority, Attingal, had wilfully violated Annexure-A2 judgment of this Court dated 20.5.2014, by which the said respondent was directed to issue a temporary permit of 4 months duration to the petitioner, within three weeks from the date of production of a certified copy of the judgment, by passing appropriate orders on Ext.P2 application for temporary permit dated 16.4.2014, if the vacancy of KL-01/C-7243 is still in existence and any other person has not applied for a temporary permit to operate stage carriage in that vacancy.

2. The Contempt of Court case was filed on 25.6.2014. On 2.7.2014, when the case came up for consideration before this Court, the learned Government Pleader was directed to get instructions and the matter was posted to 9.7.2014. On that day, at the instance of the learned Government Pleader, the case was adjourned to 31.7.2014 for getting instructions. On 31.7.2014 the learned Government Pleader on instructions submitted that, the respondent has already passed an order

in compliance of the direction contained in Annexure-A2 judgment and sought time to produce copy of the said order before this Court along with the affidavit of the respondent. Therefore the case was posted to 5.8.2014.

3. The respondent has filed an affidavit dated 31.7.2014, producing therewith Annexure-R1(b) order dated 23.6.2014 passed in purported compliance of Annexure-A2 judgment of this Court, by which Ext.P2 application for issue of temporary permit stands rejected.

4. The learned counsel for the petitioner contended that Annexure-R1(b) order is a pre-dated one. Further, the decision taken therein and also the procedure adopted by the respondent for disposal of Ext.P2 application for temporary permit is not in terms of the directions contained in Annexure-A2 judgment of this Court. The learned counsel would also point out that, at the time of issuance of Annexure-A2 judgment, the petitioner was operating the stage carriage on the strength of Annexure-A1 temporary permit, which was valid till 30.5.2014, and by Annexure-A3 proceedings dated 24.10.2013 of the respondent, the petitioner was also issued with a set of timings, after hearing other operators.

5. Since the affidavit filed by the respondent dated 31.7.2014 was unsatisfactory, the learned Government Pleader was directed to make available the RTA files relating to Ext.P2 application for temporary permit. On 26.8.2014 the learned Government Pleader made available the RTA files and a perusal of the said files disclosed among other things that, for non-compliance of an order passed by the State Transport Appellate Tribunal, Ernakulam, in M.P.596 of 2013 in M.V.A.A.No.198 of 2013, by which the respondent herein, was directed to issue temporary permit for 3 months to the petitioner herein, in the vacancy of KL-01/C-7243, a show cause notice dated 30.8.2013 was issued to him, to show cause why contempt of court proceedings should not be initiated against him. It appears that, thereafter the respondent has issued temporary permit in compliance of the said order passed by the State Transport Appellate Tribunal, Ernakulam.

6. Since the respondent has already issued Annexure-R1(b) order in purported compliance of Annexure-A2 judgment of this Court, it is for the petitioner to challenge the said order, if so advised, in an appropriate proceedings. But it has to be made clear that, the respondent who is the Secretary of the Regional Transport Authority cannot sit in appeal over the judgment of this Court. As the Secretary of such an Authority, the

respondent is bound to comply with directions contained in the judgment issued by this Court, in letter and spirit, failing which he has to face the consequences for wilful non-compliance of such judgment, rendering himself to be proceeded against under the Contempt of Court Act, 1971.

7. On 22.8.2014 the learned Government Pleader has filed an additional affidavit of the respondent dated 20.8.2014 in which he has tendered unconditional apology for the delay in complying with the direction contained in Annexure-A2 judgment of this Court. Though the reasons stated therein are not satisfactory, taking a lenient view, this contempt court case is closed, accepting the unconditional apology tendered by the respondent. But, this will not prejudice to the right of the petitioner to challenge Annexure-R1(b) order in appropriate proceedings.

In the result, Cont.Case No.639 of 2014 is closed.

The Registry shall return the RTA files relating to Ext.P2 application for temporary permit, to the learned Government Pleader forthwith.

R.P.No.845 of 2014

R.P.No.845 of 2014 is filed by the Kerala State Road Transport Corporation (KSRTC), a 3rd party to W.P.(C)No.12367 of 2014, seeking review of the judgment of this Court dated 20.5.2014 in W.P.(C)No.12367 of 2014, contending that, the route applied for in Ext.P2 application, which

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is having a total length of 18 Kms. overlap Thiruvananthapuram-Palakkad notified route and since the said overlapping is beyond the permissible limit in terms of Clause 5(c) in the Schedule to S.R.O.608/2009 the writ petitioner is not legally entitled for grant of temporary permit.

In compliance of the judgment of this Court on 20.5.2014 in W.P.(C) No.12367 of 2014 the second respondent, who is the Secretary of Regional Transport Authority has issued an order dated 23.6.2014 (produced as Annexure-R1(d) in Cont.Case No.639 of 2014), rejecting Ext.P2 application for temporary permit submitted by the 1st respondent herein. In such circumstances, this review petition is closed leaving open all the contentions raised by the review petitioner.

ANIL K.NARENDRA, JUDGE

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