

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

RP.No. 168 of 2015

JUDGMENT DATED 12.11.2014 IN WP(C) 29954/2014.

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REVIEW PETITIONER(S)/3RD PARTIES:

1. JOMON.K.E., AGED 41, S/O.IMMANUEL,
KAMICHERIL HOUSE, POOMALA, THRISSUR.
2. K.T.RAJU, AGED 50, S/O.THOMAS,
KOLOTHARA HOUSE, POOMALA.P.O., THRISSUR.
3. KRISHNA KISHORE.N.N, AGE 41,
S/O.NARAYANAN, VADAKKEVALAPPIL HOUSE,
VIYYOOR, THRISSUR, PIN - 680 010.
4. VISWESWARAN, AGED 48, S/O.VASU,
PALLIYIL HOUSE, KOLAZHY, THRISSUR.
5. K.J.JERRY, AGED 50, S/O.JOSEPH,
KAMICHERIL HOUSE, POOMALA.P.O., THRISSUR.
6. RAJESH.K.V., AGED 35, S/O.VIJAYAN,
KOOTTUVARA HOUSE, KOLAZHI, THRISSUR.

**BY ADVS.SRI.M.JITHESH MENON
SMT.K.INDU (POURNAMI)**

RESPONDENT(S)/RESPONDENT AND PETITIONER IN THE W.P.(C):

1. THE SECRETARY,
REGIONAL TRANSPORT AUTHORITY,
THRISSUR, PIN - 680 001.
2. K.R.GOVINDANKUTTY,
KUNDANINGATTU HOUSE, P.O.PUZHAKKAL,
MUTHUVARA, THRISSUR, PIN - 680 553.

**R1 BY GOVERNMENT PLEADER SRI.R.RANJITH
R2 BY ADV. SRI.K.V.GOPINATHAN NAIR**

**THIS REVIEW PETITION HAVING COME UP FOR ADMISSION
ON 12-02-2015 ALONG WITH RP.16/2015 & RP. 41/2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER'S ANNEXURES:

- ANNEXURE A :** TRUE COPY OF THE REGULAR PERMIT OF THE
1ST PETITIONER DATED 2.8.2014.
- ANNEXURE B :** TRUE COPY OF THE REGULAR PERMIT OF THE
2ND PETITIONER DATED 20.9.2008.
- ANNEXURE C :** TRUE COPY OF THE REGULAR PERMIT OF THE
3RD PETITIONER DATED 17.6.2011.
- ANNEXURE D :** TRUE COPY OF THE REGULAR PERMIT OF THE
4TH PETITIONER DATED NIL.
- ANNEXURE E :** TRUE COPY OF THE REGULAR PERMIT OF THE
5TH PETITIONER DATED 1.4.2013.
- ANNEXURE F :** TRUE COPY OF THE AGENDA FOR THE MEETING OF THE
REGIONAL TRANSPORT AUTHORITY THRISSUR
DATED 10.11.2011 IN ITEM 135.
- ANNEXURE G :** TRUE COPY OF THE REPLY DATED 2.12.2014.

RESPONDENT'S ANNEXURES: - NIL

/TRUE COPY/

P.S. TO JUDGE

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K. Vinod Chandran, J.

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R.P.16/2015, R.P.41/2015 & R.P.168 of 2015
in
W.P.(C)No.29954 of 2014

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Dated this the 12th day of February, 2015.

ORDER/JUDGMENT

1. The above review petitions were filed against a judgment, directing issuance of a temporary permit for four months, one by the KSRTC and the other by the State and the 3rd by the rival operators.
2. KSRTC contends that, the route, in which the temporary application was sought, is Kechery-Thrissur-Kozhikode, which has a distance of 210 kms. and there is an objectionable overlap of 60 kms., of various scheme routes. It was also submitted that the defaulted service in which the petitioner sought permit, was a superfast service and as per the present scheme, there is a restriction, insofar as superfast services are concerned and only

KSRTC is permitted to operate such services. It is also contended that only an existing regular permit holder, could seek continuance by virtue of a saving clause in the notified scheme and that too, only till the expiry of their permit or commencement of operation by KSRTC. The proviso to Section 104 was also relied on, to contend that, the application, if any, in such notified route for temporary permit has to be filed, either before the State Transport Authority or the Regional Transport Authority and temporary permit could be granted, only if the KSRTC has not commenced operations thereon.

3. The Government's review, on the ground that, the defaulted service is no more in existence for reason of the regular permit application's renewal, having been rejected. The Government contends that the original permit was initially granted as a limited stop ordinary service till 9.1.2011 and later it was operating as limited stop superfast service till 24.9.2011, when the validity of the permit expired. The renewal application is

also said to have been rejected on 19.7.2013. The Government also seeks to assert the exclusivity to the KSRTC, insofar as superfast services are concerned.

4. The rival operators also take up the exclusivity granted to the KSRTC and further contention is that the list of stops have not been issued to the petitioner in the writ petition.

5. The facts stated above in the review petition by the State and the KSRTC would indicate that, there is no defaulted vacancy, as of now. The regular permit, which is said to have been defaulted, stood expired on 24.9.2011 and the renewal application also stood rejected on 19.7.2013. Learned counsel for the petitioner would contend that, a statutory proceeding is pending against the said rejection. But, however, that does not grant any right to the petitioner herein to seek for temporary permit, since, admittedly, the regular permit was not in his name. What is to be considered is as to whether the petitioner would be entitled to seek for temporary permit.

6. Looking at the proviso to Section 104, when there is a notified route in pursuance to an approved scheme and the KSRTC does not carry on the operations thereon, definitely, any person as indicated in the proviso, would be entitled to seek for a temporary permit, but, however, before the STA or RTA. Admittedly, the petitioner has approached the Secretary, RTA and the Secretary has issued the temporary permit on the directions of this Court. This should not have been done, since, on the notified route, the petitioner does not have a claim to operate on a temporary permit. Much less so when even the grant of a fresh regular permit is interdicted. The saving clause enures only for the benefit of an existing regular permit holder; that too, till the expiry of that permit or commencement of operation by KSRTC. Herein, the permit stands expired and the renewal application rejected. Even the regular permit holder does not have a claim for operation on a temporary permit, much less a stranger.
7. The petitioner, definitely, would have to approach the authority.

It is also to be noticed that KSRTC contends that they have now applied for regular permit and has been granted with the same in which operation is said to have been commenced. Hence, on the operation of KSRTC being commenced, even a valid regular permit cease to be so and the granted temporary permit will also cease to be valid. In such circumstances, the judgment in the writ petition would be reviewed and recalled. The writ petition would stand disposed of with an observation that, if the petitioner approaches the RTA, then the temporary permit could be considered after hearing the KSRTC.

The review petitions would stand allowed and writ petition is disposed of.

K. Vinod Chandran, Judge.

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