

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 28TH DAY OF JANUARY 2015/8TH MAGHA, 1936

RP.No. 1015 of 2014

AGAINST THE JUDGMENT IN W.P.(C).NO.27738/2014, DATED 24-10-2014

REVIEW PETITIONER(S)/NOT PARTY IN W.P(C) :

BINOY, AGED 48 YEARS,
S/O.P.C.MATHEW, PUTHUKUTTISSERY,
NEERIKKADU P.O, AYARKUNNAM, KOTTAYAM.

BY ADV. SRI.SAJEEV KUMAR K.GOPAL

RESPONDENT(S)/PETITIONER & 1ST RESPONDENT IN W.P.(C) :

1. M.S.SOORAJ KUMAR,
S/O.KUMARAN, MADAPPALLY HOUSE,
PAYYAPPADY P.O, KOTTAYAM- 690 034.
2. THE SECRETARY,
THE REGIONAL TRANSPORT AUTHORITY,
KOTTAYAM- 686 001.

* ADDITIONAL R3 IMPEADED

3. THE KERALA STATE ROAD TRANSPORT CORPORATION,
REPRESENTED BY ITS CHAIRMAN AND MANAGING DIRECTOR,
TRANSPORT BHAVAN, FORT P.O, THIRUVANANTHAPURAM- 695 023.

* ADDITIONAL R3 IS IMPEADED AS PER ORDER DATED 28.01.2015 IN
I.A.NO.389 OF 2014.

R1 BY ADV. SRI.P.DEEPAK
R2 BY GOVERNMENT PLEADER SRI.R.RENJITH
ADDL.R3 BY ADV. SRI.P.C.CHACKO, S.C

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 28-01-2015,
ALONG WITH RP.No.7 OF 2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

- ANNEXURE 1:** TRUE COPY OF THE TIME SCHEDULE IN RESPECT OF THE STAGE CARRIAGE KL-05/Q-721.
- ANNEXURE 2:** TRUE COPY OF THE TEMPORARY PERMIT VIDE NO.P.TEM.5/1373/2014 VALID FROM 21.11.2014 TO 20.03.2015.
- ANNEXURE 3:** TRUE COPY OF THE PROCEEDINGS BY WHICH TEMPORARY PERMIT.
- ANNEXURE 4:** TRUE COPY OF THE ROUGH SKETCH OF THE ROUTE SHOWING THE OVERLAPPING.

RESPONDENT(S)' ANNEXURES :

- ANNEXURE R1(A):** A TRUE COPY OF THE PROCEEDINGS OF THE 2ND RESPONDENT DATED 21.11.2014, SIGNED FOR COMMUNICATION ON 28.11.2014.
- ANNEXURE R1(B):** A TRUE COPY OF THE PROCEEDINGS (RELEVANT EXTRACT) OF THE RTA, KOTTAYAM HELD ON 06.11.2014.
- ANNEXURE R1(C):** A TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN R.P.NO.512 OF 2014.

//TRUE COPY//

P.A.TO JUDGE.

Msd.

K. VINOD CHANDRAN, J

**R.P No. 1015 of 2014 &
R.P No.07 of 2015
in
W.P(C) No.27738 of 2014**

Dated this the 28th day of January, 2015

J U D G M E N T

The review petitions are filed by the Kerala State Road Transport Corporation and a rival operator. The petitioner had filed the above writ petition on the ground that there is a vacancy existing in the route Ayarkunnam-Kottayam in which stage carriage No.KL-05/G 806 was earlier plied. The KSRTC has filed the review petition on the ground that there is objectionable overlap of 3 kms in the route which has a total length of 16 kms. The other review petitioner has also raised substantially the same contention.

2. The respondent authority was directed to file an affidavit, which the respondent authority has filed in RP No.1015/2014. The objectionable overlap asserted by the KSRTC and the other rival operator has been affirmed by the respondent authority. It is also stated that there is no vacancy as such in the permit held by the stage carriage No.KL-05/G

806 since it expired on 27.09.2011 itself.

3. With respect to the contention that there is no vacancy, it is to be noticed that the judgment has specifically directed that, the temporary permit application will be considered only if there is a vacancy still in existence. By speaking of an existing vacancy of a permit, a reasonable understanding would be the existence of a valid permit, in which operation has been defaulted, by the original regular permit holder, and the timings settled in that permit remaining vacant without any clash with the timings settled in any other permit, subsequently. Definitely, a regular permit which has long expired would not be deemed to be a vacancy as such.

4. On the question of objectionable overlap, the writ petitioner has raised serious factual objections, which are detailed in the reply affidavit. The specific allegation of the KSRTC was that there is objectionable overlap between Gomathy Pump Junction to Kanjikuzhy, whereas the petitioner's contention in the reply affidavit is that the petitioner does not operate between Gomathy Pump Junction and Kanjikuzhy; but operates between Shastri Road and Collectorate Junction. The review petitioner in R.P 1015/2014

however, contended that, that is an arrangement made, for regulation of traffic and that cannot absolve the petitioner from the overlap; which definitely occurs in the return trip.

5. In any event, considering the conflicting claims made on the question of objectionable overlap, it would be appropriate that the authority itself consider the same and any rejection made could be assailed before the STAT, who could look into such factual aspects. The conflicting claims would persuade this Court to refrain from exercising the extraordinary power under Article 226, to resolve the factual disputes raised. The judgment would stand reviewed insofar it directs issuance of temporary permit. The respondent authority would consider the issue after hearing the parties. Any temporary permit issued on the strength of the judgment would stand revoked, subject however, to the decision on the application.

Review petitions are allowed.

Sd/
(K. VINOD CHANDRAN, JUDGE)

jma

//true copy//

P.A to Judge