

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

RPNo. 1024 of 2014 () IN WP(C).31278/2014

**AGAINST THE JUDGMENT IN WP(C) 31278/2014 of HIGH COURT OF KERALA DATED
22-11-2014**

REVIEW PETITIONER(S)/3RD PARTY:

**LINTO AUGUSTINE AGED 34 YEARS
S/O.AUGUSTINE, 7/149 (8/352), MADAN HOUSE
CHULLI P.O., AYYAMPUZHA, ANGAMALY
ERNAKULAMDISTRICT.**

BY ADV. SRI.M.JITHESH MENON

RESPONDENT(S)/PETITIONER AND RESPONDENT IN THE WPC:

**1. AVINASHKUMAR
CHUTTIKKATTU HOUSE, VAYALKARA, KUNNUKARA P.O.
ERNAKULAM DISTRICT
REPRESENTED BY THE POWER OF ATTORNEY HOLDER
AMARNATH PRABHU, KOLAMVEETIL HOUSE, THEKKUMPURAM
CHENDAMANGALAM, NORTH PARAVURPIN - 683 513.**

**2. THE SECRETARY
REGIONAL TRANSPORT AUTHORITY, ERNAKULAM
PIN - 682 030.**

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

**THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 28-01-2015, ALONG
WITH WPC. 1735/2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER'S ANNEXURE:

- ANNEXURE A:** COPY OF THE REGULAR PERMIT OF THE PETITIONER DATED 12.04.2013
- ANNEXURE B:** COPY OF THE TIMINGS OF THE PETITIONER DATED 01.08.2005 (ISSUED IN RESPECT OF THE EARLIER STAGE CARRIAGE KL/7/AE2838)
- ANNEXURE C:** COPY OF THE REPLY GIVEN BY THE 2ND RESPONDENT DATED 31.10.2014
- ANNEXURE D:** COPY OF THE OBJECTION FILED BY THE JOINT SECRETARY OF PRIVATE BUS THOZHILALI UNION DATED NIL

RESPONDENT'S ANNEXURE: N I L

//TRUE COPY//

P.A. TO JUDGE

JV

K. VINOD CHANDRAN, J.

R.P.No.1024 of 2014 in W.P.(C). No.31278 of 2014
&
W.P.(C) No.1735 of 2015

Dated this the 28th day of January, 2015

JUDGMENT

The petitioner in W.P.(C). No.1735/2015 is the review petitioner in R.P.No.1024/2014. For convenience, parties are referred to by their names.

2. One Pramod Kumar had a regular permit in the route Ernakulam – High Court Junction – Manjapra; in which was endorsed a vehicle bearing registration No.KL-07 BA/4359. The said permit holder died on 03.02.2014. One Amarnath Prabhu as power of attorney holder of Avinash Kumar, is said to have raised a claim for transfer of the regular permit, on the death of the permit holder, for reason of the permit holder having died intestate and without issues. The deceased permit holder is said to be the father's brother of Avinash Kumar.

3. It is not clear as to whether the father of Avinash Kumar is claiming for a transfer of the permit or whether the deceased permit holder had other siblings. In any event, Avinash

Kumar, through his power of attorney holder applied for temporary permit which was granted by judgment in W.P.(C). No.31278/2014. It was specifically directed that, if the facts stated by Avinash Kumar in the writ petition are correct and is verifiable from the records, then the temporary permit application has to be considered, if there is no legal impediment. Subsequent to that, the said Avinash Kumar filed another writ petition – W.P.(C) No.32499/2014, the judgment of which is exhibited as Ext.P6 in W.P.(C). No.1735/2015. Therein, the claim was for consideration of the transfer of the permit in tune with the directions in **Bhagyalakshmy Vs. RTA, Palakkad [2010(2) KLT 431]**.

3. The review petition has been filed seeking review of the judgment directing consideration of the temporary permit application in WPC 31278/2014. The review petitioner submits that the said Avinash Kumar is not a legal heir of the deceased permit holder. Though **Bhagyalakshmy (Supra)** considered the issue of whether a legal heirship certificate has to be produced, the dictum laid down in the said decision cannot be misinterpreted to hold that any person; even one who does not legally succeed to the deceased permit holder, would be entitled to seek a transfer of permit, merely on the basis of a relationship

evidenced by a relationship certificate.

4. The learned counsel appearing for the petitioner in the writ petition however submits that the said question would be one to be considered by the original authority as directed in W.P.(C). No.32499/2014.

5. It is to be specifically noticed that the right to seek transfer of a permit on the death of a regular permit holder would arise, only if a person is legally entitled to succeed to the permit holder. A prior possession of the vehicle or a mere relationship cannot confer such right and **Bhagyalakshmy (supra)** does not go to that extent at all. What has been laid down in **Bhagyalakshmy (supra)** is only that the authority need not insist on a legal heirship certificate, if the person who seeks transfer, is able to convince the authority otherwise, that he is legally entitled to succeed to the deceased permit holder.

6. In such circumstance, this Court is of the opinion that the temporary permit application could not have been directed to be considered when the application for consideration of transfer itself was pending and there is a cloud on the right claimed by the person who now seeks transfer. In such circumstance, judgment in W.P.C.No.31278/2014 would stand reviewed and the writ petition would stand closed, leaving open the remedy of the

petitioner to agitate his cause in the application seeking transfer. W.P.(C). No. 1735/2015 raises a challenge against Ext.P5 – the temporary permit issued pursuant to the direction in W.P.(C). No.32449/2014. No such direction is evident from the said judgment in Ext.P3 and obviously the issuance is on the basis of judgment in W.P.(C). No.31278/2014, which now stands closed. Since the writ petition seeking consideration of temporary permit application is closed, Ext.P5 produced in W.P.(C). No.1735/2015 cannot be operated upon. This Court has found that Avinash Kumar would not be entitled to seek for a temporary permit on the strength of the regular permit, which is defaulted for reason of the death of the regular permit holder, nothing survives in the writ petition especially since the temporary permit challenged is valid only till 28.05.2014. W.P. (C). No.1735/2015 will also stand closed.

The question with respect to the transfer of permit would be considered by the original authority.

Sd/-
K. VINOD CHANDRAN,
JUDGE