

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&**

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 28TH DAY OF JULY 2015/6TH SRAVANA, 1937

WA.No. 661 of 2013 () IN WP(C).11941/2009

**AGAINST THE ORDER/JUDGMENT IN WP(C) 11941/2009 of HIGH COURT OF KERALA
DATED 04-04-2013**

APPELLANT(S)/PETITIONER IN THE WPC:

**P.V. JOY,
PATHIKKAL HOUSE, MAROTTICAL.**

BY ADV. SRI.K.V.GOPINATHAN NAIR

RESPONDENT(S)/RESPONDENTS IN THE WPC:

- 1. THE REGIONAL TRANSPORT AUTHORITY,
THRISSUR, REPRESENTED BY ITS SECRETARY.**
- 2. THE SECRETARY,
REGIONAL TRANSPORT AUTHORITY, THRISSUR.**
- 3. M.J. SHIBU,
S/O. JOHN, MANAMKUZHY HOUSE, P.O. KANNARA
THRISSUR.**

**R3 BY ADV. SRI.I.DINESH MENON
BY SR GOVERNMENT PLEADER SRI.P.IDAVIS**

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 28-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ASHOK BHUSHAN, C.J.

“C.R.”

&

A.M. SHAFFIQUE, J.

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W.A. No. 661 of 2013

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Dated this, the 28th day of July, 2015

J U D G M E N T

Ashok Bhushan, C.J.

Heard Adv.Sri.K.V.Gopinathan Nair, learned counsel appearing for the appellant and the learned Government Pleader.

2. This writ appeal has been filed against judgment dated 4th April, 2013 by which the learned Single Judge has dismissed the writ petition filed by the appellant/petitioner.

3. Brief facts which are necessary for deciding the writ appeal are:

The 3rd respondent was granted permit by Ext.P1 subject to settlement of timings by proceedings dated 2nd June, 2008 of the Regional Transport Authority (for short 'R.T.A'), Thrissur. The grantee was directed to produce current records of the vehicle within one month from the date of sanction of the order, failing which, sanction was liable to be revoked without further notice. The 3rd respondent submitted the details of the vehicle with

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request to condone delay on 13/10/2008. Ext.P1 was communicated to the 3rd respondent on 19/7/2008 and the application was submitted by the 3rd respondent on 13/10/2008. R.T.A. issued Ext.P2 order on 25/11/2008 referring to Rule 159 of the Kerala Motor Vehicles Rules directing for issue of the granted permit. Petitioner filed a revision petition before the State Transport Appellate Tribunal which revision was dismissed by order dated 4th March, 2009. Aggrieved by Exts.P2 and P4, petitioner filed the writ petition praying for the following reliefs;

"i) to call for the records leading to the case and quash Exhibit P2 and P4 by the issuance of a writ of certiorari or any other appropriate writ, direction or order;

ii) to stay the operation and all proceedings pursuant to Exhibit P2 pending disposal of the Writ Petition;

iii) to issue any other appropriate writ, direction or order which this Honourable Court deem fit in the circumstances of the case".

4. Learned Single Judge by the impugned judgment held that the 3rd respondent having produced the current records

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within three months of the date of communication of the grant and therefore, the R.T.A. did not commit any error in condoning the delay, directing the issue of permit, the writ petition has been dismissed. Challenging the judgment of the learned Single Judge, this writ appeal has been filed.

5. Learned counsel for the appellant submitted that the time allowed for submitting the details of the vehicle is one month as per Rule 159(2). He submits that in event details of vehicle are not produced within one month, there shall be automatic revocation of the grant and thereafter there is no jurisdiction to condone the delay. He submits that in any view of the matter, application for extension of time should be filed within one month. He submits that in the present case, the 3rd respondent did not submit the details of the vehicle within one month nor filed any application for extension of time. Hence, the R.T.A. committed error in accepting the details of the vehicle by Ext.P2 proceeding. He has placed reliance on the judgment of the learned Single Judge of this Court reported in ***Seethal v. R.T.A. Trichur*** (2003

(3) KLT 357).

6. We have considered the submission of the learned counsel for the appellant and have perused the records.

7. From the facts brought on the record, it is clear that the grant of permit in favour of the 3rd respondent was communicated to the 3rd respondent on 19/7/2008, which date has been clearly mentioned in the counter affidavit filed by the Regional Transport Officer, Thrissur. It has been further stated in the counter affidavit that, on 13/10/2008, within a period of three months of receipt of the decision from the R.T.A., the grantee has produced the vehicle bearing No.KL-7AJ 4218 with a request to condone delay and allow him maximum time to produce the current records of the vehicle. R.T.A. on 25th November, 2008 considered his request and took a decision to issue permit. The submission which has been raised by the learned counsel for the appellant is that on non production of the details of the vehicle within one month from communication of the decision, the grant shall stand automatically revoked. He further submits that in

event the grantee wants to take benefit of extended period, the application has also to be filed within one month for condonation or for grant of further period, which having not been done, the grant shall automatically stand revoked.

8. Rule 159 provides for entry of registration marks in permits, which is quoted as below:

"159: Permits - entry of registration marks compulsory --Time for entry

(1) No permit shall be issued before entering the registration mark of the vehicle to which it relates has been entered therein.

(2) When the applicant is unable to produce the certificate of registration on the date of his application for permit, owing to the fact that he is not on that date in possession of the vehicle duly registered, or for some other reason, the applicant shall within one month of the sanctioning of the application by the Transport Authority or such longer period or periods not exceeding four months in the aggregate as the Authority may specify, produce the certificate of registration of the vehicle before that Authority so that the particulars of the registration mark may be entered in the permit. In the event of any applicant failing to produce the certificate of registration within the period

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specified by the Transport Authority, the Authority may revoke its sanction of the application.

(3) The power vested in a Transport Authority under sub-rule (2) shall also be exercised by its delegate in respect of orders passed under the delegated powers".

9. A perusal of sub rule (1) of 159 indicates that no permit shall be issued before entering the registration mark of the vehicle to which it relates. Thus there is prohibition of issue of permit without entering the registration mark. Sub Rule (2) of Rule 159 states that when an applicant is unable to produce the certificate of registration on the date of his application for permit, the applicant shall within one month of sanctioning of the application by the Transport Authority, or such longer period or periods not exceeding four months in the aggregate as the Authority may specify, produce the certificate of registration of the vehicle. The last line of sub rule (2) provides that *"In the event of any applicant failing to produce the certificate of registration within the period specified by the Transport Authority, the Authority may revoke its sanction of the application"*.

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10. It is also useful to refer to Ext.P1 order by which sanction was communicated to the 3rd respondent. The relevant part of item No.41 is as follows:

“Communicated to the applicant for information. The grantee is directed to produce current records of the vehicle within one month from the date of sanction of this order failing which sanction is liable to be revoked without further notice”.

11. The submission which has been pressed is that since Rule 159(2) requires applicant to produce the details of the vehicle within one month, on failure of production of the certificate of registration within one month, sanction shall be automatically revoked. A perusal of sub rule (2) of Rule 159 does not lead to the above conclusion. Rule 159(2) requires that an applicant shall within one month of the sanction of the application or such longer period or periods not exceeding four months in the aggregate as the Authority may specify, produce the certificate of registration of the vehicle”. Thus, the period permitted under sub rule (2) is one month or such longer period

or periods not exceeding four months as the Authority may specify.

12. In the present case, the 3rd respondent, within three months from communication of the sanction, has submitted the details of the vehicle which were accepted by the proceeding of R.T.A., which is clear from Ext.P2. Thus, for the present case, R.T.A. shall be treated to have permitted the acceptance of the details of the vehicle within a period of four months. Thus, it cannot be said that R.T.A. under Rule 159(2) has no jurisdiction to accept the details of the vehicle within an aggregate period of four months. The last line of Rule 159(2) as quoted above clearly indicates that in the event of any applicant failing to produce the certificate of registration within the specified period, the Authority may revoke its sanction. Thus, the Rule contemplated revocation of sanction by the authority which is an enabling power to the authority to revoke in the event of applicant failing to produce the certificate within the time allowed. Thus, we are not satisfied that Rule 159(2) can be read in a manner as contended by the learned

counsel for the appellant that after one month, there shall be an automatic revocation of sanction, which cannot be subsequently revived by the R.T.A. The further submission that there should be an application within one month from extension of period also does not appear to be correct from the reading of the Rule. When an authority has been granted power to accept the records of the vehicle within an aggregate period of four months, the authority shall be deemed to have all incidental power to effectuate the object of the Rule. The authority can grant the time when an application is made within one month or can extend the time even if an application is made after one month from the first grant. The power of the authority as given under Rule 159(2) cannot be curtailed by the condition that applicant should file an application within one month. That interpretation shall be putting unnecessary shackle on the jurisdiction of the authority which is given by a statutory rule.

13. As noted above, Rule itself empowers the Authority to revoke the sanction of the applicant. This also means that

Authority can revoke sanction in a case when an applicant does not submit the details of registration, which may depend on the facts of each case.

14. Learned counsel for the appellant has laid much emphasis on the condition of Ext.P1 permit. He submits that, it clearly meant that within one month, he had to produce the details of the vehicle failing which the sanction shall be automatically cancelled. We have already extracted the part of Ext.P1, wherein the relevant words are *“the grantee is directed to produce the current records of the vehicle within one month from the date of sanction of this order, failing which, sanction is liable to be revoked without further notice”*. The above condition clearly indicates that there has to be an action of revocation in event applicant fails to produce the details within one month. As observed above, there is ample power with the Authority to revoke the sanction in event it is not produced within one month. But for the purpose of the present case, no revocation was made by the authority and subsequently, Authority accepted the

application and issued the permit.

15. Now we come to the judgment of the learned Single Judge reported in **Seethal's case** (supra). In the above case, the petitioner was granted a regular stage carriage permit. Petitioner submitted an application for condonation of delay for production of current records of the vehicle beyond four months from the issue of permit. R.T.A. declined the application, against which order, the writ petition was filed. In the above context, learned Single Judge has referred to Rule 159(2) and following was laid down in para 4.

"4. I feel prima facie R.159(2) requires an applicant as far as possible to produce registration particulars along with the application itself. However, there is an inbuilt relaxation of this condition in the Rule itself where an applicant is granted one month's time for production of current records from the date of grant of permit and thereafter if he has justification for non-production of the current records within the said one month to the R.T.A., R.T.A. is vested with power to extend time for production of current records for another three months. Eventhough application in this

regard and adjudication by the R.T.A. are not specifically contemplated on this, it has to be necessarily implied that extension of time by the R.T.A. can be granted only on application by the grantee and on the R.T.A. being satisfied about the inability for the grantee to produce the current records and on being satisfied the R.T.A. is empowered to grant upto another three months' time and not beyond. The position emerging from R.159(2) is that R.T.A. is not vested with power to extend time for production of current records beyond four months in all in any case. Therefore the term used in the latter part of R.159(2) that the R.T.A. "may revoke its sanction of the application", that is the grant of permit, has to be understood as the R.T.A. shall revoke the permit. Since the original grant of permit imposes a general condition for the grant of the same that the "permit shall stand revoked without notice" on non-compliance of any condition all that happens after the grant of extension of time is that the condition of one month stated in the permit gets substituted or extended by such period or in other words, the extension of time granted will be only a modification of the condition of permit. In other words, after the grant of such an extension of time by the R.T.A. in terms of R.159(2) of the Rules, the general condition of the permit should be read to

include such extended time for production of current records. The consequent is that the term "may" used in R.159(2) has to be read as meaning that the permit granted shall stand cancelled on non-production of current records within the extended period granted by the R.T.A. In other words, the consequence of default in production of current records as contemplated in the general condition of permit granted will take effect, that is the automatic expiry of the permit on non-production of current records within the extended period. In this view of the matter, I hold that the effect of S.72(2) of the Act read with R.159(2) of the Rules will be the following:

- 1. The grant of permit containing a general condition that the current records of the vehicle should be produced within one month will lead to automatic cancellation of permit, if current records are not produced or grantee does not make an application for extension of time upto the maximum period of three months within onemonth from the receipt of proceedings granting permit.*
- 2. If an application for extension of time for production of current records is made and if the R.T.A. has granted an order extending the time then the extended period shall stand substituted for the period provided for production of current records mentioned as a general condition in the*

grant of permit. Since the R.T.A. is vested with statutory power, and if it does not reject it, then of course it should be assumed that the extension applied for is granted. Therefore unless rejected, the time applied for by the petitioner upto a maximum period of four months including the one month granted as a general condition in the grant of permit shall form part of the permit granted.

3. If current records are not produced within four months from the date of communication of grant of permit by the grantee, then the permit shall stand cancelled without the R.T.A. requiring to cancel it as that is the necessary consequence of the operation of the condition of permit granted under S.72(2) read with R.159(2)".

16. Learned Single Judge while interpreting Rule 159(2) has recorded his three conclusions as extracted above. Learned Single Judge in his first conclusion has observed that the grant of permit containing a general condition that the current records of the vehicle should be produced within one month will lead to automatic cancellation of permit, if current records are not produced or grantee does not make an application for extension of time upto the maximum period of three months within one

month of proceedings granting permit. Learned Single Judge while coming to the conclusion has referred to the general condition. There may be general condition as referred to by the learned Single Judge in the above case. But, in the present case, the general condition does not refer to any automatic cancellation. Hence conclusion (1) at best can be held to be based on the general condition of that case and cannot be general interpretation of Rule 159(2). As observed above, Rule 159(2) does not indicate that there is any automatic revocation of the sanction in event applicant does not furnish the details of the vehicle within one month. As observed above, in event an applicant does not furnish the details of the vehicle within one month, there is a power with the R.T.A. to revoke the sanction. Thus, as far as conclusion Nos.2 and 3 are concerned, the learned Single Judge has rightly interpreted the provisions of Rule 159(2). We are of the view that conclusion No.(1) as recorded in para 4 cannot be held to be true and correct interpretation of Rule 159 (2) and the said interpretation may be on the facts of the case,

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which was being considered by the learned Single Judge and can have no application in all cases.

In the above view of the matter, we are of the view that learned Single Judge did not commit any error in dismissing the writ petition. Writ appeal is dismissed.

Sd/-

ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-

A.M. SHAFFIQUE, JUDGE

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PS to Judge