IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 24TH DAY OF JULY 2015/2ND SRAVANA, 1937

WA.No. 740 of 2013 () IN WP(C).27041/2011

AGAINST THE ORDER/JUDGMENT IN WP(C) 27041/2011 of HIGH COURT OF KERALA DATED 22-01-2013

APPELLANT(S)/APPELLANT/RESPONDENT IN WPC:

THE TRANSPORT COMMISSIONER
TRANSPORT COMMISSIONERATE, THIRUVANANTHAPURAM

BY ADV. GOVERNMENT PLEADER

RESPONDENT(S)/RESPONDENTS/PETITIONER IN WPC:
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1. KERALA BUS TRANSPORT ASSOCIATION
STATE COMMITTEE (REG.NO TCCR 710/2006) SALU COMPLEX T.B ROAD
THRISSUR 01 REPRESENTED BY ITS SECRETARY KA NAJEEB

2. K M NAVAS,
S/O.MUHAMMED, KARIPPAI HOUSE, THAIKKATTUKARA P.O
ALUVA.

BY SRI.P.DEEPAK

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 24-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ASHOK BHUSHAN, C.J &
A.M. SHAFFIQUE, J.

W.A. No.740 of 2013

Dated this the 24th day of July 2015

J U D G M E N T

Shaffique, J.

This appeal is filed by the respondent in W.P.(C) No.27041 of 2011, aggrieved by the judgment dated 22.1.2013. The writ petition was filed by the respondents herein being Association of Stage Carriage Operators along with another stage carriage operator challenging clauses 20 and 30 of Ext.P1 Circular dated 26.8.2011 issued by the Transport Commissioner as Circular No.17/2011. The English translation of aforesaid clauses read as under :-

> "**20.** If any check report is pending in relation to any vehicle then renewal of permit, transfer of ownership, endorsement of hypothecation and its cancellation thereof, issue of certificate of fitness and such other services shall not be extended till such time as the proceedings on the basis of the said check report are finalised. However, facility of remittance of motor vehicles tax shall not be denied only for the reason that check report is pending in relation to the vehicle. In any event, the owner shall be informed about the pendency of the check report and advised to settle the same.
>
> **30.** Persons coming for renewal of certificate of fitness and registration shall obtain a certificate from the concerned section regarding clearance of the check report."

2. The main contention urged by the petitioners was that the aforesaid clauses in the Circular were arbitrary and illegal and it affects the legal right of the persons, who were operating the stage carriages, in so far as restriction has been imposed on the concerned authorities to renew the permit, transfer of ownership, endorsement of hypothecation or cancelling the same, issue of certificate of fitness, renewal of the same etc. before finalising the proceedings in respect of check report.

3. The check report is being prepared during the inspection of the vehicle and if there is any violation noticed with reference to the statutory obligations for a particular vehicle, the concerned officer issues check report calling upon the parties to remove the deficiencies or to compound the offence or to face prosecution proceedings or other proceedings in accordance with the statutory provisions.

4. Counter affidavit was filed by the respondent supporting the stand taken in the Circular. According to them, the writ petition itself was not maintainable and no instance had been pointed out to indicate that the aforesaid clauses have been enforced against any person. The first petitioner Association also has no case that enforcing the aforesaid clauses in the Circular would affect their statutory right in any manner.

5. The learned Single Judge having considered the rival contentions declared that clauses 20 and 30 of Ext.P1 Circular are arbitrary and falls foul of Article 14 of the Constitution of India besides offending the right guaranteed to the operators to carry on the business under Article 19(1)(g) of the Constitution of India and thereby allowed the writ petition. It is impugning the aforesaid judgment that this appeal has been filed.

6. Sri.C.S.Manilal, the learned Senior Government Pleader appearing for the appellant raised two points. One is that no attempt has been made by officers of the Transport Department to impose on any of the petitioners or their members either clause 20 or 30 and there had been no instance where any renewal of permit, transfer of ownership, endorsement of hypothecation and cancellation thereof or issuance of fitness certificate, renewal etc. have been withheld on account of the pendency of the check report. Therefore, in the absence of any such pleadings, there was no reason for the learned Single Judge to have quashed clauses 20 and 30. Sec.213(5)(f) of the Motor Vehicles Act, 1986 r/w Rule 405 of the Kerala Motor Vehicles Rules, 1989 gives absolute authority to the officers, namely; the Transport Commissioner to issue such circulars and it was not within the realm of jurisdiction of this Court to consider the validity of the same in the form of

judicial review. The Circular issued was in the form of an interdepartmental instruction and cannot be challenged by the petitioners. The other argument taken was with reference to a finding of the learned Single Judge regarding imposition of compounding fee of ₹10,000/- as referred to in paragraph 8 of the judgment. It is argued that there was no occasion for the learned Single Judge to have come to a finding regarding imposition of compounding fee as no such contention was urged on behalf of the petitioners.

7. Sri.P.Deepak, the learned counsel appearing on behalf of the respondents submits that there was no occasion for the officers of the Transport Department to impose clauses 20 and 30 of the Circular on account of the fact that the petitioners have approached this Court immediately and obtained stay of operation of the said clauses. Further, it is submitted that if the impugned clauses in the Circular is in force, the right of the stage carriage operators to get renewal of their permit, transfer of ownership, endorsement of hypothecation etc. within a specified time limit as provided under the statutory provisions would be curtailed on account of the pendency of the check report. It is argued that the check report has to be completed at the instance of the officers of the Transport Department and the Circular can only direct the

officer to comply with the instructions within a time frame, but to impose restriction on the concerned officer of the Transport Department not to renew the permit, transfer of ownership etc. while the check report is pending, which may take suitable time clearly amounts restriction on the right of the members of the first petitioner.

8. Sri.C.S.Manilal, the learned Senior Government Pleader has relied on the judgment of the Supreme Court in **Sethi Auto Service Station and others** v. **Delhi Development Authority and others** [(2009) 1 SCC 180]. He makes specific reference to paragraph 14 of the said judgment, which reads as under :-

> "It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned."

9. Having regard to the aforesaid factual situation, we are of the view that in so far as clauses 20 and 30 restrictions, by which, the officers of the Transport Department have been prevented from renewing the permit, transfer of ownership of the vehicles, endorsement of hypothecation, its cancellation, issuance of certificate of fitness and renewal which is clearly before finalising the check report, would certainly amount to a restriction on the statutory right of the petitioners and their members. Under such circumstances, we are of the considered view that the learned Single Judge was justified in finding that the said clauses are arbitrary. The judgment in **Delhi Development Authority (supra)** can have no application to the facts of the case, as the impugned Circular is in public domain and intended to be acted upon.

10. But as far as the finding of the learned Single Judge regarding fixation of compound fee as referred to in paragraph 8 of the judgment, we do not think that in the absence of any pleading to that effect, there was any necessity to make such observation. The said observation is beyond the scope of the writ petition and is liable to be set aside. Other than that there is no necessity to interfere with the judgment of the learned Single.

Accordingly this writ appeal is disposed of with the aforesaid modification.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE

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P.A. TO JUDGE

Jvt