

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

WA.No. 90 of 2015 () IN WP(C).19550/2014

AGAINST THE ORDER/JUDGMENT IN WP(C) 19550/2014 of HIGH COURT OF
KERALA DATED 08-08-2014

APPELLANT(S) :

A.N.NOUSHAD
ANTHINATTU HOUSE, KARIKKODE P.O, THODUPUZHA.

BY ADV. SRI.K.V.GOPINATHAN NAIR

RESPONDENT(S) :

1. THE REGIONAL TRANSPORT AUTHORITY, IDUKKI
REPRESENTED BY ITS SECRETARY, 685 602.

2. THE SECRETARY
REGIONAL TRANSPORT AUTHORITY, IDUKKI 685 602.

3. THE KERALA STATE ROAD TRANSPORT CORPORATION
REPRESENTED BY ITS CHAIRMAN AND MANAGING DIRECTOR
TRANSPORT BHAVAN, THIRUVANANTHAPURAM 695 001.

R3 BY ADV. SRI.P.C.CHACKO, SC,
KERALA STATE ROAD TRANSPORT CORPN.
R1 AND R2 BY SR.GOVERNMENT PLEADER SRI.P.I.DAVIS

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
09-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ASHOK BHUSHAN, Ag.CJ & A.M.SHAFFIQUE, J

W.A.No. 90 of 2015

Dated this the 9th February, 2015

JUDGMENT

Shaffique, J.

Petitioner in W.P(C).No. 19550 of 2014 is the appellant, who challenges the judgment dated 8.8.2014. The petitioner applied for a temporary permit in a notified route Thodupuzha-Moolamattom. He was earlier operating service under a regular permit. The temporary permit was rejected on the ground that it is a notified route and that the State Transport Undertaking has been granted with permit to operate in the said route.

2. The learned Single Judge did not interfere with Exhibit P4 order passed by the Regional Transport Authority relying on the judgment of this Court reported in ***Managing Director, KSRTC Thiruvananthapuram. v. Secretary, Regional Transport Authority, Ernakulam and others*** (2013(3) KHC 8320 (DB)).

3. Learned counsel for the appellant has relied on a Supreme Court judgment reported in ***Punjab Roadways Moga throug its General Manager and others v. Punja Sahib Bus and Transport Co. and others*** (2010 KHC 4294) to indicate the fact that even assuming a case where permit has been granted and the State Transport Undertaking does not operate in the route, the appellant is entitled for a temporary permit. Reference is made to paragraph 26 of the judgment, which reads as follows:

“26. *The abovementioned provision states where a scheme has been published under sub-section (3) of Section 100 in respect of any notified area or notified route, the STA or the RTA as the case may be, shall not grant any permit except in accordance with the provisions of the scheme. An exception has been carved out in the proviso to Section 104 stating, where no application for permit has been made by the STU in respect of any notified area or notified route in pursuance of an approved scheme, the STA or the RTA, as the case may be, may grant temporary permits to any person in respect of any such notified area or notified route*

subject to the condition that such permit shall cease to be effective on the issue of permit to the STU in respect of that area or route. In our view same is the situation in respect of a case where an STU in spite of grant of permit does not operate the service or surrenders the permit granted or is not utilising the permit. In such a situation it should be deemed that no application for permit has been made by the STU and it is open to the RTA to grant temporary permit if there is a temporary need. By granting regular permits to the private operators the RTA will be upsetting the ratio fixed under the scheme which is legally impermissible. In Anwar Ahmed this Court had occasion to examine the scope of the proviso to Section 104 and held as follows: (SCC pp. 193-94, para 7)

“7. It would, therefore, be seen that where the scheme has been published under sub-section (3) of Section 100 in respect of any notified area or notified route, the State Transport Authority or the Regional Transport Authority, as the case may be, shall not grant any permit except in accordance with the provisions of the scheme. Thus, the appellant Corporation has the exclusive right or monopoly to ply their stage carriages and obtain the required permit as per the scheme. The proviso gives only a limited breath of life,

namely, until the Corporation puts the vehicles on the notified routes as per the scheme, temporary permits may be granted to private operators. Thereby, it would be clear that temporary inconvenience to travelling public is sought to be averted till the permits are taken and vehicles are put on the route by the appellant. Therefore, the temporary permits will have only limited breath of life. Private operators are attempting to wear the mask of inconvenience to travelling public to infiltrate into forbidden notified area, route or portion thereof to sabotage the scheme....."

4. There is no dispute about the said proposition, but the question is whether there is any material to indicate that the State Transport Undertaking is not operating in the said route. Learned counsel for the appellant relies on Exhibit P3, an information obtained under the Right to Information Act. The question apparently was to receive information as to whether the State Transport Undertaking was operating in the said route. Information given is as per letter dated 13.6.2014, in which it is stated that for

the past three months service was conducted only for 13 days, since it was not profitable. Thereafter, it is stated that, due to scarcity of conductors, service could not be operated. Further, it is stated that service started in 2011 onwards and service was conducted on all months. It is also stated that service was conducted only for 264 days in the year 2013.

5. A perusal of Exhibit P3 itself indicates that the State Transport Undertaking was given permit and they were operating in the route. Only thing was that they were not operating for the entire period for which permit was granted. It does not mean that they were not operating in the said route. Only under a circumstances, when the State Transport Undertaking is not regularly operating, it is open for the appellant to approach the authority seeking temporary permit. This apparently is a question of fact, which has to be considered by the authority and cannot be adjudicated in a Writ Petition under Article 226 of the Constitution of India. However, we make it clear

that if the appellant has a case that the State Transport Undertaking is not operating in the said route on the basis of the permit issued, it shall be open for the appellant to apply afresh with necessary particulars with the competent authorities. We do not find any ground to interfere with the judgment of the learned Single Judge.

The Writ Appeal is hence dismissed.

**ASHOK BHUSHAN
ACTING CHIEF JUSTICE**

**A.M.SHAFFIQUE
JUDGE**

vgs