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

FRIDAY, THE 13TH DAY OF FEBRUARY 2015/24TH MAGHA, 1936

WA.No. 149 of 2015

ORDER DATED 14-01-2015 IN WP(C) 33910/2014
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APPELLANT(S)/RESPONDENTS IN WPC:
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1. **THE REGIONAL TRANSPORT AUTHORITY,**
   PALAKKAD - 678 001.

2. **THE SECRETARY,**
   REGIONAL TRANSPORT AUTHORITY, PALAKKAD - 678 001.

   BY SPECIAL GOVERNMENT PLEADER SMT.GIRIJA K. GOPAL

RESPONDENT(S)/PETITIONER IN WPC:

MRS.SUDHA SASIKUMAR,
W/O. SASIKUMAR, BALAKRISHNA MOTORS, GURUVAYOOR,
THRISSUR.

BY ADV. SRI.P.DEEPAK

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 23-01-2015, THE COURT ON 13-02-2015, DELIVERED THE FOLLOWING:

msv/

WA.No. 149 of 2015

APPENDIX

PETITIONER(S)' ANNEXURES:

ANNEXURE A1: TRUE COPY OF THE APPLICATION FOR FRESH REGULAR PERMIT ON THE ROUTE GURUVAYUR - PALAKKAD.

ANNEXURE A2: TRUE COPY OF THE DECISION OF THE RTA, PALAKKAD DTD.25.5.2006.

ANNEXURE A3: TRUE COPY OF THE JUDGMENT DTD.7.11.2006 IN MVAA NO.515/2006.

ANNEXURE A4: TRUE COPY OF THE JUDGMENT DTD.27.11.2008 IN WP(C) NO.31309/2006.

ANNEXURE A5: TRUE COPY OF THE JUDGMENT DTD.29.1.2009 IN WA.NO.712/2007.

ANNEXURE A6: APPLICATION FOR RENEWAL OF PERMIT DTD.17.6.2011.

ANNEXURE A7: TRUE COPY OF THE APPLICATION FOR TEMPORARY PERMIT ON THE ROUTE PATTAMBI-PALAKKAD FOR THE PERIOD FROM 4.7.2011 TO 3.11.2011.

ANNEXURE A8: TRUE COPY OF THE ORDER DTD.15.7.2014 OF K.S.R.T.C.

ANNEXURE A9: TRUE COPY OF OBJECTION DTD.15.10.2014 OF K.S.R.T.C.

ANNEXURE A10: TRUE COPY OF THE W.P.(C) NO.27953/2014.

ANNEXURE A11: TRUE COPY OF THE E-MAIL DATED 4.11.2014.

ANNEXURE A12: TRUE COPY OF THE LETTER DTD.4.11.2014 ISSUED BY THE PETITIONER HERSELF TO THE RTO, PALAKKAD WITH ENGLISH TRANSLATION.

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

ASHOK BHUSHAN, Ag.CJ
& A.M.SHAFFIQUE, J.
* * * * * * * * * * * * *
W.A.No.149 of 2015

Dated this the 13th day of February 2015

J U D G M E N T

Shaffique,J

This appeal is filed by the respondents in W.P.C.No.33910/2014 against the interim order dated 14/01/2015. The writ petition was filed by the respondent herein who is hereinafter referred to as the petitioner. By the impugned order, the learned Single Judge directed issuance of temporary permit to the stage carriage of the petitioner in the route Palakkad - Pattambi on the basis of Ext.P7 application, within one week.

2. The short facts involved in the writ petition would disclose that the petitioner, claiming to be a stage carriage operator and having a regular permit for conducting service on the inter-district route Guruvayoor-Palakkad valid from 20/06/2006 to 19/06/2011 had submitted an application for renewal for a period of five years, which came to be rejected

by the Regional Transport Authority, Palakkad. Petitioner preferred an appeal before the State Transport Appellate Tribunal (STAT) as MVAA No.315/2011 and by judgment dated 24/07/2014, the STAT directed the matter to be reconsidered. Petitioner relied upon Ext.P2 decision issued by the State Transport Authority by which, for fresh inter District permits, general concurrence limit of the route length in the adjacent District is increased to a distance of 20 Kms instead of 10 Kms, to avoid delay in processing the application. The RTA, Palakkad also adopted the said decision as per Ext.P3. Petitioner, therefore, filed an application for temporary permit to operate the route covered by the regular permit. Ext.P4 is the said application. Petitioner filed W.P.C.No.27953/2014 before this Court seeking for a direction to issue temporary permit between Guruvayoor- Palakkad as the distance in Thrissur District is less than 20 Kms. By judgment dated 27/10/2014 (Ext.P5), this Court directed the authority to consider the application

within two weeks, if there is no other legal impediment. It is, pursuant to the aforesaid judgment, Ext.P6 order has been passed on 24/10/2014 served on the petitioner on 21/11/2014 rejecting the application for temporary permit which came to be challenged before this Court. It is inter alia contended that though the judgment in W.P.C.No.27953/2014 dated 27/10/2014 has been submitted before the authorities on 01/11/2014, Ext.P6 order was served only after two weeks and the order does not even mention the fact of the judgment which apparently indicates that the judgment has not been brought to the notice of the 1st respondent. Petitioner also submitted that he has filed another application for temporary permit on the route Palakkad-Pattambi as Ext.P7.

3. Counter affidavit is filed by the 2nd respondent inter alia stating that the petitioner was a permit holder of stage carriage bearing Reg.No.KL-8-AJ 9550 authorised to operate on the inter-district route Guruvayoor-Palakkad as

Limited Stop Ordinary Service subject to the counter signature of RTA, Thrissur. The permit was valid till 19/06/2011. The petitioner was unable to produce the counter signature of sister RTA, Thrissur, as the said route overlapped the notified route. Petitioner filed MVAA No.515/2006 before the STAT challenging the rejection of request for counter signature by RTA, Thrissur. His appeal was dismissed. Ext.R2(b) is the judgment dated 07/11/2006. The application for renewal of temporary permit was rejected by the RTA, Palakkad on 29/07/2011 against which appeal was filed before the STAT which resulted in Ext.P1 judgment in MVAA No.315/2011, and finally in Ext.P6 order. It is stated that it was only on account of an oversight that typographical error has been crept in the date shown in Ext.P6. The date of the proceedings ought to have been 18/11/2014 instead of 24/10/2014. Further it is contended that the stage carriage bearing Reg.No.KL-8-AJ-9550 of which the original permit was issued had stopped service

with the expiry of the permit on 19/6/2011 and clearance certificate for another vehicle was obtained without surrendering the permit. So far no application has been submitted for replacement of the vehicle. It is therefore stated that there is no valid permit for considering an application for temporary permit under Section 87(1)(c). Further, an enquiry was conducted and a report was submitted by the Motor Vehicle Inspector as Ext.R2(d) pointing out that there is no need for temporary permit in terms of Section 87(1)(c) of the Motor Vehicles Act, 1988.

4. Along with the Writ Appeal, appellant has also filed I.A.No.105/2015 producing certain additional documents. Annexure A1 is the application for regular permit submitted by the petitioner on 01/10/2005. The route for which the permit is required is shown as Guruvayoor-Palakkad with vehicle No.KL-8A-3576 which is stated to be an inter-District route and 19 Kms lies in Thrissur District. The application was submitted before the RTA, Palakkad with a note stating

that petitioner would obtain counter signature from RTA, Thrissur. Annexure A2 dated 25/05/2006 indicates that regular permit has been granted and subject to counter signature of sister RTA. Annexure A3 is the judgment dated 07/11/2006 in MVAA No.515/2006. It is evident that the counter signature was rejected on the ground of scheme violation as the route overlaps Guruvayoor-Kozhikode scheme from Guruvayoor to Ottappalam. Though it was contended by the petitioner that overlapping is only from Guruvayoor to Pattambi, the Tribunal observed that the scheme was not cancelled as modification was only temporary and accordingly the appeal is dismissed.

5. Annexure A4 is the judgment dated 27/11/2006 in W.P.C.No.31309 of 2006 by which the petitioners challenge against the judgment in MVAA No.515/2006 was dismissed. Writ appeal came to be filed as W.A.No.712/2007 which also was dismissed.

6. Smt.Girija Gopal, the learned Special Government Pleader submits that the aforesaid documents clearly indicate that the counter signature was refused on the ground that the route between Palakkad - Guruvayoor within the District of Thrissur has an objectionable overlapping of around 19 Km on account of the fact that it was notified route under a scheme. Under such circumstances, it was not proper for the petitioner to operate between Palakkad and Guruvayoor. Despite the said fact that there was an objectionable overlapping in respect of a notified route, petitioner submitted an application for renewal of regular permit by Annexure A6 application dated 17/06/2011. Annexure A7 is the application submitted by the petitioner for temporary permit between Pattambi and Palakkad. When the application was pending, petitioner filed W.P.C.No.18664/2011 and an interim order was passed by this Court on 15/07/2011 which is produced as Annexure A8. By the said order, this Court opined that since the petitioner

was operating the service till 19/06/2011, the Secretary, RTA should consider the application of the petitioner under Section 87(1)(c) of the Act for a temporary permit on the route Pattambi - Palakkad. Annexure A9 is the report of the District Transport Officer to Regional Transport Officer indicating that in the Palakkad-Pattambi route having a length of 70 Kms, 11 Kms from Kolappulli to Pattambi is overlapping the notified route and therefore the application is liable to be dismissed. It is consequent to the aforesaid report that the petitioner's application was rejected. The appellant also produced copy of W.P.C.No.27953/2014 as Annexure A10. In the said writ petition, petitioner sought for issuance of temporary permit on the basis of Ext.P4 application dated 29/09/2014 on the route Palakkad - Guruvayoor relying upon the decisions of State Transport Authority dated 27/05/2014 and RTA, Palakkad extending the distance in an inter-District route from 10 Kms to 20 Kms for which concurrence was not given.

7. The contention urged by the appellants is that material particulars have been concealed by the petitioner in the writ petition. In a case where the regular permit was not granted between the route Palakkad and Guruvayoor on the ground that there is objectionable overlapping on account of existence of a notified scheme, the petitioner should not have relied upon the decision of RTA as well as the decision of the State Transport Authority. In order to claim temporary permit in a notified route, the learned Single Judge was not appraised of the actual state of affairs, whereas reference was only made to the fact that there was denial of counter signature.

8. It is argued that though in Ext.P6 order, no reference was made to the judgment of the learned Single Judge, perusal of the said order indicates that the application of the petitioner has been considered in its entirety and a proper decision has been taken. If there is overlapping found in a notified route between Pattambi to Guruvayoor

and the portion between Pattambi to Kolappulli, it was not open for the petitioner to claim temporary permit. Therefore, it is argued that the learned Single Judge was not justified in directing issuance of temporary permit by way of an interim order without considering the entire issues involved in the writ petition.

9. On the other hand, Sri.P.Deepak, learned counsel appearing for the petitioner contended that, as per judgment dated 27/10/2014 (Ext.P5), this Court had directed the RTA to consider whether renewal of the regular application without concurrence of the sister RTA could be made. However, since the only question agitated was regarding grant of temporary permit and the distance coming within the jurisdiction of sister RTA is less than 20 Kms, there was no difficulty in processing the temporary permit application.

10. It is apparent on a reading of the judgment in W.P.C.No.27953/2014 as well as the averments in writ petition produced as Annexure A10, that there was no

mention about the fact that RTA, Thrissur had rejected the counter signature on the ground of objectionable overlapping. A perusal of judgment in MVAA No.315/2011 also does not indicate any such fact. In the said appeal, the issue raised was regarding renewal of permit as well as temporary permit on the route Palakkad - Pattambi and it is only for that purpose, the matter was remitted back. The operative portion of the said judgment reads as under:

> *"The matter is remitted to the very same authority and the Secretary/RTA, Palakkad is hereby directed to reconsider the application submitted for renewal of permit by the petitioner, and also the application for temporary permit filed by him on the route Palakkad-Pattambi after affording an opportunity of being heard to the appellant as well as to the 3rd respondent."*

The judgment in MVAA No.315/2011 is dated 24/07/2014. It is, after the aforesaid judgment, that the petitioner submitted a fresh application dated 24/09/2014 for temporary permit in the route Guruvayoor-Palakkad. Therefore, it is clear from the aforesaid facts were not

placed before the learned Single Judge either in WPC No.27953/2014 or in the present writ petition.

11. The learned counsel for the petitioner, however, placed reliance on the judgment of the Supreme Court in **Bundelkhand Motor Transport Co. v. Behari Lal Chaurasia** *[AIR 1966 SC 455]*. In the above Constitution Bench judgment, the Supreme Court held that under Section 63, a permit granted by the RTA of one region is not valid in any other region unless the permit has been countersigned by the RTA of the other region. The implication of the provision is that even an inter-regional permit when granted is valid for the region over which the authority granting the permit has jurisdiction and when it is countersigned by the RTA of the other region, the permit becomes valid for the entire route. The Constitution Bench observed that the contention that the permit has no validity until it is countersigned, cannot be agreed upon. In that case, it was found that though the counter signature was not

obtained, the permit is valid to operate between Jabalpur and the point at which the route entered the Rewa region and it can be considered as a regional permit. On this basis, it is argued that, at any rate, petitioner was entitled to have a renewal of permit within the District of Palakkad which alone has been permitted by the learned Single Judge in the interim order.

12. The Learned Government Pleader also placed reliance on the judgment of the Division Bench of this Court in **Managing Director, KSRTC, Tvm v. Secretary, Regional Transport Authority, Ernakulam** *[2013(3) KHC 820 (DB)]* wherein this Court held that once a scheme has been approved and notified, the right to apply for permit by private operators on the notified route or area or portions thereof is totally frozen except to the extent reserved by the scheme and with the restrictions imposed thereunder. Another judgment relied upon is **Assistant Collector of Central Excise v. Dunlop India Limited** *[(1985) 1 SCC*

260]. This judgment is relied upon to contend that the petitioner could have availed of an appellate remedy and has approached this Court invoking Article 226 which is not meant to be a short circuit or intended to circumvent statutory procedure. Reference is made to paragraphs 3 and 5 which reads as under:

> *"3. In Titaghur Paper Mills Co. Ltd. v. State of Orissa A.P. Sen, E.S. Venkataramiah and R.B. Misra, JJ. held that where the statute itself provided the petitioners with an efficacious alternative remedy by way of an appeal to the Prescribed Authority, a second appeal to the tribunal and thereafter to have the case stated to the High Court, it was not for the High Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution ignoring as it were, the complete statutory machinery. That it has become necessary, even now, for us to repeat this admonition is indeed a matter of tragic concern to us. Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public*

injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged.

5. We repeat and deprecate the practice of granting interim order which practically give the principal relief sought in the petition for no better reason than that a prima facie case has been made out, without being concerned about the balance of convenience, the public interest and a host of other relevant considerations. Regarding the practice of some clever litigants of resorting to filing writ petitions in far-away courts having doubtful jurisdiction, we had this to observe: [SCC para 2, p. 648: SCC (Cri) pp. 350-51]

"Having regard to the fact that the registered office of the Company is at Ludhiana and the principal respondents against .whom the primary relief is sought are at New Delhi, one would have expected the writ

petition to be filed either in the High Court of Punjab and Haryana or in the Delhi High Court. The writ petitioners however, have chosen the Calcutta High Court as the forum perhaps because one of the interlocutory reliefs which is sought is in respect of a consignment of beef tallow which has arrived at the Calcutta Port. An inevitable result of the filing of writ petitions elsewhere than at the place where the concerned offices and the relevant records are located is to delay prompt return and contest. We do not desire to probe further into the question whether the writ petition was filed by design or accident in the Calcutta High Court when the office of the Company is in the State of Punjab and all the principal respondents are in Delhi. But we do feel disturbed that such writ petitions are often deliberately filed in distant High Courts, as part of a manoeuvre in a legal battle, so as to render it difficult for the officials at Delhi to move applications to vacate stay where it becomes necessary to file such applications."

In Union of India v. Jain Shudh Vanaspati Ltd- Chandrachud, C.J., A.P. Sen, R.N. Misra, JJ. allowed an appeal against an interim order making the observations:

"After hearing learned counsel for the rival parties, we are of the opinion that the interim order passed by the High Court on November 29, 1983 is not warranted

since it virtually grants to the respondents a substantial part of the relief claimed by them in their writ petition. Accordingly, we set aside the said order."

We have come across cases where the collection of public revenue has been seriously jeopardised and budgets of Governments and Local Authorities affirmatively prejudiced to the point of precariousness consequent upon interim orders made by courts. In fact, instances have come to our knowledge where Governments have been forced to explore further sources for raising revenue, sources which they would rather well leave alone in the public interest, because of the stays granted by courts. We have come across cases where an entire Service is left in a stay of flutter and unrest because of interim orders passed by courts, leaving the work they are supposed to do in a state of suspended animation. We have come across cases where buses and lorries are being run under orders of court though they were either denied permits or their permits had been cancelled or suspended by Transport Authorities. We have come across cases where liquor shops are being run under interim orders of court. We have come across cases where the collection of monthly rentals payable by excise contractors has been stayed with the result that at the end of the year the contractor has paid nothing but made his profits from the shop and walked out. We have come across

cases where dealers in food grains and essential commodities have been allowed to take back the stocks seized from them as if to permit them to continue to indulge in the very practices which were to be prevented by the seizure. We have come across cases where land reform and important welfare legislations have been stayed by courts. Incalculable harm has been done by such interim orders. All this is not to say that interim orders may never be made against public authorities. There are, of course, cases which demand that interim orders should be made in the interests of justice. Where gross violations of the law and injustices are perpetrated or are about to be perpetrated, it is the bounden duty of the court to intervene and give appropriate interim relief. In cases where denial of interim relief may lead to public mischief, grave irreparable private injury or shake a citizen's faith in the impartiality of public administration, a court may well be justified in granting interim relief against public authority. But since the law presumes that public authorities function properly and bona fide with due regard to the public interest, a court must be circumspect in granting interim orders of far-reaching dimensions or orders causing administrative, burdensome inconvenience or orders preventing collection of public revenue for no better reason than that the parties have come to the court

> *alleging prejudice, inconvenience or harm and that a prima facie case has been shown. There can be and there are no hard and fast rules. But prudence, discretion and circumspection are called for. There are several other vital considerations apart from the existence of a prima facie case. There is the question of balance of convenience. There is the question of irreparable injury. There is the question of the public interest. There are many such factors worthy of consideration. We often wonder why in the case indirect taxation where the burden has already been passed on to the consumer, any interim relief should at all be given to the manufacturer, dealer and the like !"*

It was argued that the learned Single Judge ought not to have entertained the writ petition on account of existence of an alternate remedy which is equally efficacious, as the STAT could have verified the entire file relating to the issues raised and considered the claim of the petitioner.

13. There is no dispute about the fact that the petitioner could have availed of the appellate remedy. However, whether the writ jurisdiction should be invoked or not in a particular instance are matters to be considered by

the learned Single Judge and therefore we do not want to express any opinion in that regard especially since the challenge in the appeal is against an interim order.

14. By the interim order, a positive direction has been issued by the learned Single Judge calling upon the appellants to grant temporary permit in favour of the petitioner. It is apparent from the materials now produced and even from Ext.P6 impugned order, that 12 Kms from Pattambi to Kolappulli overlaps the notified area. That apart, the application submitted by the petitioner for considering the issuance of temporary permit claim was for the route Guruvayoor-Palakkad. The RTA, Palakkad heard KSRTC who had objected the issuance of temporary permit since the route was overlapping the notified sector. They contended that the temporary permit would adversely affect their revenue and there will be clash of timings. That apart, the right to operate new service and increased trips in the notified sector is exclusively reserved for the State Transport

Undertakings and there is no urgent need to issue temporary permit, the application has to be rejected. When there is clear finding by the RTA that temporary permit cannot be granted on account of overlapping in the notified route, Exts.P2 and P3 which are relied upon by the petitioner may not have any relevance at all. The learned Single Judge ought to have considered whether the objectionable overlapping was correct or not before passing an interim order. That apart, KSRTC was not made a party to the writ petition when it was clearly indicated in Ext.P6 that KSRTC had objected to the issuance of temporary permit. Hence it was proper that KSRTC also was heard before passing the impugned order.

15. As rightly held by the learned Single Judge, petitioner could have aspired only for obtaining renewal of permit only between Palakkad and Pattambi. But the fact remains that the petitioner had submitted application for temporary permit for a route which was rejected not only on

account of non-obtaining of counter signature by RTA, Thrissur, but on account of the fact that counter signature was rejected due to objectionable overlapping. In Ext.P6 order itself, it is stated that the temporary permit cannot be granted due to objectionable overlapping. Without forming an opinion whether such a finding is justifiable or not, the learned Single Judge ought not to have directed grant of temporary permit in the route Palakkad - Pattambi.

16. The learned Single Judge had come to a finding that the permit does not become redundant and can be operated within the route length confined to the area coming within the jurisdiction of Principal RTA who granted the permit. Referring to Ext.R2(b), which is the judgment in MVAA No.515/2006 dated 07/11/2006, it is observed that the said judgment only negates the challenge against denial of counter signature. But, it is evident that the denial of counter signature was on account of existence of a notified route, which situation has not changed even now.

Therefore, this aspect of the matter was not highlighted before the learned Single Judge. Further, the learned Single Judge proceeded on the basis that overlapping of the notified route is not relevant as the petitioner's permit was a pre-existing one which was same as per Ext.R2(a) notification. This finding again is a disputed fact which requires consideration based on sufficient materials. It is stated in Ext.P6 that in between Pattambi to Kolappully 12 Kms is overlapping the notified route under notification dated 05/12/1965. Whether in such circumstances, a temporary permit could be issued also requires consideration.

17. The RTA was directed to file an affidavit explaining the circumstances under which Ext.P6 order was issued and whether Ext.P5 judgment was intimated to the RTA. The Chairman of RTA, on behalf of 1st respondent, was also directed to place on record the comments of RTA regarding the predating of order when the Chairman had affixed the

signature only on 18/11/2014. The Secretary RTA was also asked to show cause as to why action should not be taken against him for predating the order of RTA and not placing the Ext.P5 judgment before RTA. It is argued by the Learned Government Pleader that there was no reason to call upon the Secretary to give such an explanation as Ext.P6 order was not in non-compliance of the directions in Ext.P5 judgment. Ext.P5 judgment was very well within the knowledge of RTA and the application was rejected due to another reason namely objectionable overlapping in which Exts.P2 and P3 have no relevance.

18. Since the matter is still pending before the learned Single Judge, we do not want to express any opinion on the direction issued by the learned Single Judge to call upon the Secretary, RTA to file appropriate affidavit in the matter, which aspect has to be considered by the learned Single Judge in the course of proceedings.

19. Having regard to the aforesaid findings, we set aside the interim direction to issue temporary permit to the petitioner. Whether Ext.P6 order can be sustained on account of the contentions urged by the appellants require reconsideration. It shall be open for the appellants to place on record all relevant materials before the learned Single Judge.

Hence, this Writ Appeal is allowed setting set aside the interim order dated 14/01/2015 in W.P.C.No.33910/2014, to the extent indicated above.

(sd/-)
(ASHOK BHUSHAN,
ACTING CHIEF JUSTICE)

(sd/-)
(A.M.SHAFFIQUE, JUDGE)

jsr