

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 11TH DAY OF JUNE 2015/21ST JYAISHTA, 1937

WA.No. 566 of 2015 () IN WP(C).23930/2014

**AGAINST THE ORDER/JUDGMENT IN WP(C) 23930/2014 of HIGH COURT OF KERALA
DATED 26/2/15**

APPELLANT(S)/PETITIONER IN THE WPC:

**K.ANITHA KUMARI
VICE PRESIDENT, KALLUVATHUKKAL GRAMA PANCHAYATH
KOLLAM.**

BY ADV. SRI.K.V.GOPINATHAN NAIR

RESPONDENT(S)/RESPONDENTS IN THE WPC:

- 1. THE REGIONAL TRANSPORT AUTHORITY
KOLLAM REPRESENTED BY ITS SECRETARY, PIN - 691 001.**
- 2. THE SECRETARY,
REGIONAL TRANSPORT AUTHORITY, KOLLAM, PIN - 691 001.**
- 3. NAVAS
DHHARUSALAM, KALAKKODE P.O., BHOOTHAKULAM
KOLLAM, PIN - 691 302.**

**R3 BY ADV. SRI.M.JITHESH MENON
R1,R 2 BY ADV. SR GOVERNMENT PLEADER SRI.C.R.SYAMKUMAR**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 11-06-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ASHOK BHUSHAN, CJ

&

A.M. SHAFFIQUE, J.

=====

W.A. No. 566 of 2015

=====

Dated this, the 11th day of June, 2015

J U D G M E N T

Ashok Bhushan, CJ

Heard the learned counsel for the appellant as well as the learned counsel appearing for the respondents.

2. This writ appeal has been filed against judgment dated 26th February, 2015 in W.P (C) No.(c) No.23930/14. Two petitions were filed, being the members of the Grama Panchayat, espousing the cause of public in so far as curtailment and extension sought by regular permit holder was concerned. Earlier a writ petition was filed challenging the decision of the Tribunal and this Court by judgment dated 20th December, 2012, has set aside the order of the Tribunal and remitted the matter for reconsideration by the Tribunal. Consequent to the order of the learned Single Judge, appeal was again taken up and heard by the Tribunal and the appeal was dismissed. By judgment dated 7th of August, 2014, it was again made subject matter of challenge

before the learned Single Judge. Learned Single Judge heard both the writ petitions and after considering the submissions made by the petitioners has dismissed the writ petition. Petitioner still feeling aggrieved against the judgment of the learned Single Judge has come up in the appeal.

3. Learned counsel for the appellant Sri.K.V.Gopinathan Nair challenging the judgment submits that the specific order of remand has not been adverted to by the Tribunal when deciding the appeal subsequently. He submits that some errors have been committed by the Tribunal in considering the various aspects which were noted by this Court in its earlier judgment. He submits that the findings of the Tribunal were not based on correct appreciation of fact and those incorrect findings were repeated by the Tribunal in its order. He submits that with regard to the curtailed portion, there were no other services, and findings to the contrary ordered by the Tribunal are incorrect.

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

5. Submissions which are sought to be pressed before us have been specifically noted by the learned Single Judge. Those

aspects of the matter where Tribunal's findings were alleged to be recorded incorrectly were considered by the learned Single Judge in paragraphs 8, 9 and 10, which are useful to be extracted here, are as follows:

"8. To consider the sustainability of Ext.P15 order on e has to first look at the observations made by this Court in Ext.P13. This Court found that the Tribunal did not evaluate the resolution passed by the Panchayath, in the proper perspective and the contention that the 3rd respondent's service was the only service in the sector Meenambalam-Kalluvathukkal is not seen discussed or appreciated. The over emphasis given to the report of the Motor Vehicle Inspector and the lack of consideration of the grievance of the public was highlighted.

9. The impugned order of the Tribunal, Ext.P15 has to be analysed in that perspective. The Field Officer's report was specifically noticed to find that between Nellettilkadavu to Mavinmoodu; the extended route, there were no stage carriage services. There was only one K.S.R.T.C. Bus and one private stage carriage in between the said places. The Field Officer's report having stated the extension to be a valid one, conducive to the needs of the public, also

found that the curtailment could not prejudice the public, since, there were altogether 22 stage carriages conducting several trips through Meenambalam. Kalluvathukkal was noticed as a town situated in the National Highway. Several K.S.R.T.C and private stage carriages were stated to be operating between Meenambalam and Kalluvathukkal.

10. The specific claim of the various public spirited Organisations including the Panchayath was that the 3rd respondent's service is the only service operating between Meenambalam and Kalluvathukkal. However, the Field Officer's report specifically indicated that, there are too K.S.R.T.C buses operating in that sector and that two private stage carriages are also being operated between Kalluvathukkal and Chirakkara temple passing through Sasthrimukku, a junction at Meenambalam."

6. What is challenged before this Court is the findings regarding the services being operated in the curtailed portion. The report of the Inspector, the resolutions and other materials have been examined by the Tribunal. In the earlier judgment of this Court, non consideration of the resolution of the Panchayat, which was the espousing cause of general public was made an

-:5:-

issue. The resolution of the Panchayat has been adverted to this Court which in exercise of writ jurisdiction shall not substitute its findings on re-appreciation of evidence. No error was committed by the Tribunal which warranted any interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India. In the appeal also, the same submissions attacking the record on fact are sought to be made. We are of the view that no error was committed by the learned Single Judge dismissing the writ petition.

Appeal is, therefore, dismissed.

Sd/-

ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp

//True Copy//

PS to Judge