

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 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

WA.No. 1444 of 2015 IN WP(C).15162/2015

AGAINST THE JUDGMENT IN WP(C) 15162/2015 DATED 22-05-2015

.....

APPELLANT/THIRD PARTY :

C.A.VARGHESE, AGED 53 YEARS
S/O.ALEXANDER, CHAATHAAMKUNNEL HOUSE, KALLOOPPARA P.O.
MALLAPPILLY, PATHANAMTHITTA DISTRICT.

BY ADV. SRI.M.JITHESH MENON

RESPONDENTS/PETITIONER & RESPONDENT :

1. SUDHAMANI
W/O.DINESH, CHIRAYIL HOUSE, PERINGARA
THIRUVALLA, PATHANAMTHITTA DISTRICT - 689 645.
2. THE SECRETARY
REGIONAL TRANSPORT AUTHORITY
PATHANAMTHITTA - 689 116.

R1 BY ADV. SRI.O.D.SIVADAS
R2 BY SR.GOVERNMENT PLEADER, SRI.C.R. SYAM KUMAR

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 30-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

W.A. No. 1444 OF 2015

Dated this the 30th day of July, 2015

JUDGMENT

Ashok Bhushan, C.J.

Heard learned counsel appearing for the appellant, learned counsel appearing for the 1st respondent and learned Government Pleader appearing for the 2nd respondent.

2. This writ appeal has been filed against the judgment dated 22.05.2015 passed in W.P.(C) No.15162 of 2015 by which the writ petition filed by the petitioner was disposed of directing the respondent-Regional Transport Authority (for short 'RTA') to consider petitioner's application for re-issuance of temporary permit in the light of Ext.P3 judgment after affording the petitioner an opportunity of being heard. The petitioner in the writ petition has come up with the following prayer:

“issue a writ of mandamus or appropriate writ, order or direction to the respondent to consider Ext.P1 application and grant and re-issue temporary permit in respect of petitioner's stage carriage bearing No.KL 27/1788 on the route Mepral-Kallumkal, in vacancy of stage carriage No.KL 3/G 5488 in continuation of Ext.P1 temporary permit.”

3. The petitioner has filed the writ petition relying on Ext.P3 judgment and seeking a direction for re-issuance of temporary permit. Pursuant to the judgment dated 22.05.2015 the 2nd respondent has issued Annexure B order dated 05.06.2015 by which the temporary permit was re-issued. The appellant, who was not a party to the writ petition, after taking leave from this Court has come up with the appeal. Learned counsel for the appellant submits that once the application of the writ petitioner for regular permit as well as temporary permit having been rejected, on the ground that there is overlapping with the notified route, there was no occasion for him to seek a direction to grant temporary permit or re-issue of temporary permit.

4. Learned counsel for the respondent/writ petitioner has objected the locus standi of the appellant, who according to him, is an existing operator and has no ground to challenge the grant of temporary permit. He submits that it is open for him to file a revision petition challenging the grant of temporary permit. He has no jurisdiction to file this appeal.

5. We have considered the submissions made by both parties and perused the records. From the facts it appears that by Annexure C proceedings dated 28.06.2013 the applications for regular permit and also temporary permit filed by the petitioner were rejected by the 2nd respondent-RTA. The 2nd respondent, by Annexure D order dated 26.08.2014, rejected the application for fresh regular permit on the ground that there is overlapping with the notified route. Thereafter, petitioner had again applied for temporary permit which was granted by the 2nd respondent. For re-issue of the temporary permit, he has come up with this writ petition which was disposed of by the learned Single Judge.

6. A perusal of the writ petition does not indicate that earlier orders, i.e. Annexure C and D orders, were not referred to in the writ petition. The temporary permit which was once granted by the Secretary was not an issue in the writ petition. But when the writ petitioner has come up for re-issue of the temporary permit, it was necessary to bring to the notice of the Court the relevant facts, Annexure C and D orders, which were most relevant by which petitioner's applications for regular and

temporary permit were rejected. We are of the view that the order of learned Single Judge which was passed in ignorance of the earlier orders cannot be sustained.

7. In so far as the submission of learned counsel for the petitioner that the appellant has no locus standi, we are of the view that the jurisdiction exercised in ignorance of the actual facts is not justifiable and it is open for the existing operator to bring to the notice of the Court the true facts, so that the exercise of jurisdiction can be corrected.

In view of the aforesaid, we are of the view that the impugned judgment in this appeal cannot be sustained. Accordingly, the Writ Appeal is allowed and judgment of learned Single Judge is set aside.

**Ashok Bhushan,
Chief Justice.**

**A.M. Shaffique,
Judge.**