

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 MARCH 2015/22ND PHALGUNA, 1936

WA.No. 1314 of 2014

JUDGMENT DATED 26-03-2014 IN WP(C) 948/2014
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APPELLANT(S)/3RD RESPONDENT:

**KERALA STATE ROAD TRANSPORT CORPORATION,
REPRESENTED BY ITS REGIONAL TRANSPORT OFFICER,
ERNAKULAM, KOCHI-11.**

BY ADV. SRI.P.C.CHACKO, SC, KERALA STATE ROAD TR

RESPONDENT(S)/PETITIONER & R1&R2:

- 1. SUSHAMMA,
W/O REGHU, KADAMATTUSSERY HOUSE, EZHIKKARA,
NORTH PARUR.**
- 2. THE REGIONAL TRANSPORT AUTHORITY,
ERNAKULAM, CIVIL LINES, KAKKANAD,
KOCHI-30.**
- 3. THE SECRETARY,
REGIONAL TRANSPORT AUTHORITY,
ERNAKULAM, CIVIL LINES,
KAKKANAD, KOCHI-30.**

**R1 BY ADV. SRI.M.JITHESH MENON
R2 & R3 BY SENIOR GOVERNMENT PLEADER SRI.P.I.DAVIS**

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 09-02-2015,
THE COURT ON 13-03-2015, DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' ANNEXURES:

ANNEUXRE 1: TRUE COPY OF THE ROUGH SKETCH SHOWING THE LIE OF THE ROUTE APPLIED BY THE 1ST RESPONDENT AS WELL AS THE ALUVA - CHATHANAD NOTIFIED ROUTE.

I.A.NO.144/2015 IN WA.1314/2014

ANNEXURE 1: TRUE COPY OF THE ROUTE MAP OF ALUVA - CHATHANAD ROUTE WITH ITS INTERMEDIATE PLACE.

ANNEXURE 2: TRUE COPY OF THE SKETCH SHOWING THE LIE OF IMPORTANT INSTITUTIONS IN THE KEDAMANGALAM LOCALITY.

ANNEXURE 3: PHOTOGRAPHS OF IMPORTANT INSTITUTIONS SITUATE AT KEDAMANGALAM LOCALITY IN BETWEEN KEDAMANGALAM TEMPLE JUNCTION AND CHATHANAD.

RESPONDENT(S)' ANNEXURES:

ANNEXURE A: A TRUE COPY OF THE COMMUNICATION DTD.26.11.2014 ISSUED BY THE ASSISTANT ENGINEER, PUBLIC WORKS DEPARTMENT ROADS SECTION, NARAKKAL.

ANNEUXRE B: A TRUE COPY OF THE COMMUNICATION FROM THE SECRETARY, NORTH PARAVOOR MUNICIPALITY DATED 29.11.2014 WITH ENGLISH TRANSLATION.

ANNEUXRE C: A TRUE COPY OF DECISION DATED 24.11.2014 OF THE EZHIKKARA GRAMA PANCHAYATH WITH ENGLISH TRANSLATION.

ANNEUXRE D: A TRUE COPY OF THE ROAD MAP OF EZHIKKARA GRAMA PANCHAYATH.

ANNEXURE E: A TRUE COPY OF THE MAP SHOWING THE DISTINCT ROUTES IN THE ALUVA-CHATHANAD SCHEME OPERATED BY THE KSRTC AND PRIVATE OPERATORS.

ANNEXURE R1(a): COPY OF THE DETAILED SKETCH OF THE AREA.

//TRUE COPY//

P.S.TO JUDGE

Ashok Bhushan, Ag. C.J & A.M. Shaffique, J.

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W.A. No. 1314 of 2014

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Dated this, the 13th day of March, 2015.

J U D G M E N T

Shaffique, J.

This appeal is filed by the 3rd respondent in W.P (C) No. 948/2014 challenging the judgment dated 26.3.2014 of the learned Single Judge. The 1st respondent herein is the writ petitioner, who is hereinafter referred as the petitioner.

2. The writ petition is filed seeking to quash Ext. P7 order passed by the State Transport Appellate Tribunal (STAT) and for a direction to the Regional Transport authority (RTA) to grant regular permit to the petitioner to operate on the route Chathanad-North Parur-Munambam in respect of stage carriage KL17/D-4347. The facts narrated by the writ petitioner disclose that he applied for a regular permit in the aforesaid route. Reports were obtained from the Field Officer as well as the Motor Vehicle Inspector and the matter was considered in the meeting held on 16.7.2013. The application was rejected holding that there is overlapping of 6.7 kms. from Kannanchira to Chathanad and 5 kms. from North Parur to Cherai on the Aluva-Chathanad and Aluva-Cherai schemes. It was also found that the proposed route touches two intermediate points in the notified scheme and therefore the same cannot be allowed. Ext. P4 is the said order dated 16.7.2013.

Aggrieved by the same, the petitioner fled a revision before the STAT as MVARP No. 268/2013. The STAT as per order dated 30.11.2013, remanded the matter back to the 1st respondent and Ext. P7 is the said order. It was inter alia contended that sufficient materials were available on record to pass a positive direction to grant the permit. The report of the Field Officer and Motor Vehicle Inspector clearly indicates that there was no objectionable overlapping of the schemes. It is stated that the schemes referred to are complete exclusion schemes with exception clause which would be infringed only if there is a connection or passing through two or more intermediate points. According to the petitioner, the route applied for touches only N. Parur and therefore there is no infringement of the scheme.

3. Counter affidavit is filed by the 3rd respondent Kerala State Road Transport Corporation (KSRTC) supporting the stand taken in Exts. P4 and P7. It is stated that being a complete exclusion scheme, private operators are not entitled to operate at any portion of the route as held in the judgment of this Court in **KSRTC v. Regional Transport Authority**, 1991(3) ILR 40. Hence, it is submitted that being a complete exclusion scheme, private operators are not permitted

to operate in the entire route or a portion thereof.

4. The learned Single Judge having considered the above matter found that the overlapping found in two notified routes was found to be not objectionable since the same came with an exception clause. The learned Single Judge found that the present route in which the petitioner seeks the permit does not connect two or more intermediate places/points as indicated in Schedule-I and Annexure A. The route only touches Parur which is one of the intermediate places in the notified routes of Aluva-Chathanad and Aluva-Cherai. On this basis, the writ petition was allowed and a direction has been issued to grant the permit applied by the petitioner, thereby setting aside Exts. P4 and P7.

5. The KSRTC, being aggrieved by the aforesaid judgment, has preferred this appeal inter alia contending that the route applied by the 1st respondent is touching two intermediate places, viz. Parur and Kadamangalam Temple Junction. Aluva-Chathanad is covered by Ext. P5 scheme. It is stated that in between Chathanad and N. Parur, the intermediate place is Kadamangalam Temple Junction and without touching the intermediate place, no stage carriage service can be conducted. It is stated that there are two ways from N. Parur to Kadamangalam and both

ways join at Kedamangalam temple junction on the way to Chathanad. Hence, the route clearly violates Ext. P5 scheme.

6. During the pendency of this writ appeal, we directed the Government Pleader to get instructions regarding the overlapping and the existence of two intermediate places as contended by the learned counsel for the appellant. An affidavit is filed by respondents 2 and 3. It is stated that after the scheme Aluva-Chathanad was notified on 28.8.1961, stage carriage owned by the State Transport Undertaking started its service on the route Aluva-Chathanad. Most of the vehicles are operating via North Paravoor, KMK Junction, Amayapparambu, Thekkenaluvazhy and Kannanchira. Those stage carriages which sought for permits and were not in the above mentioned route were granted more than 10 stage carriage permits in private sector on the route North Paravoor-Chathanad via KMK Junction, Perupadanna, Kannanchira by deviating the route from KMK Junction for avoiding objectionable overlapping on Aluva-Chathanad complete exclusion scheme with exceptional clause. RTA has been granting permits on the assumption that Kedamangalam Temple Junction, which is one of the intermediate point mentioned in Aluva-Chathanad

scheme, is situated in between KMK Junction and Kannanchira. Further, it is stated that a survey was conducted by way of joint inspection in the presence of the writ petitioner, representatives of KSRTC, President of Ezhikkara Panchayat and the Motor Vehicle Inspector for ascertaining the intermediate point of Kedamangalam temple junction. No such place could be specifically identified by any of the persons in the inspection team. The matter was cross-checked by way of local enquiry including Postal Department, but no such details were forthcoming. The Assistant Engineer, PWD Roads Division, Narakkal has also intimated that there was no place named Kedamangalam Temple Junction identified on the route North Parur-Chathanad. The Secretary, North Paravur Municipality has also informed that no records are available in the office regarding existence of a point by name Kedamangalam Temple junction. They referred to Annexure C in which it is stated that Kedamangalam Temple Junction had existed on 28.8.1961 though no route map is available in this regard with the Panchayat. Therefore, according to the respondents, there is no authentic information available from the records maintained in any office regarding the existence of the place by name Kedamangalam Temple

Junction. They have also produced copy of the map showing the route Aluva-Chathanad as operated by KSRTC vehicles.

7. A reply affidavit is filed by the KSRTC indicating that Kadamangalam Temple Junction is situated in between Chathanad and North Paravur and without touching that place, no stage carriage can be conducted between Chathanad and North Paravur. Kadamangalam Temple is situated facing the temple junction. They also produced a route map to indicate the existence of Kadamangalam Temple Junction.

8. Having regard to the aforesaid factual situation, the short question to be considered in this appeal is whether the grant of permit as directed by the learned Single Judge would affect the scheme approved by the Government in any manner.

9. It is not in dispute that it is a complete exclusion scheme with certain exception, which indicates as under:

“Routes as indicated in Annexure A and all routes connecting or passing through any two or more intermediate points of such routes.”

The intermediate places in the aforesaid route between Aluva-Cherai is UC College, Thattampady, Mannam

and Parur. In between Aluva and Chathanad the intermediate places are UC College, Thattampady, Mannam, Parur and Kadamangalam Temple Junction.

10. The contention now raised is that there is no Kadamangalam Temple Junction or rather the permit applied for by the petitioner does not touch Kadamangalam Temple Junction. As far as the scheme is concerned, it mentions about Kadamangalam Temple Junction. Whether, factually, the route now proposed by the petitioner touches Kadamangalam Temple Junction is a disputed fact. During the pendency of the appeal, this Court directed the RTA to verify whether the route applied for by the petitioner touches Kadamangalam Temple Junction and it is stated that they were unable to locate any such place. No material is available to indicate that there was such a point as matters stand now.

11. The learned counsel for the appellant relied upon the judgment in **KSRTC v. Regional Transport Authority & Others**, 1991 (3) ILR 40, wherein it is stated that “area or route or routes in relation to which the scheme is proposed, as routes as indicated in Annexure-A and all routes connecting or passing through any two or more intermediate points of such routes”, the emphasis is on the intermediate points and

not on the intermediate places. It was further observed that clear effect of the scheme is that the entire route being a nationalized route, overlapping on the route between any two points, has the effect of offending the scheme. In another judgment in **Kerala State Road Transport Corporation v. Regional Transport Authority**, 2010(2) KLT 372, another Division Bench of this Court held that the scheme which shows that it covers the routes indicated in Annexure A and all routes connecting or passing through any two or more intermediate points of such routes, would indicate that it is not necessary to pass through the very same route but connecting two intermediate points through a different line of travel is sufficient. Another Division Bench of this Court in **B.O. Davis & Another v. B.T. Martin & Others**, 2014(2) KLJ 402, held that the routes provided under the scheme means the routes as indicated in Annexure A and all routes connecting or passing through any two or more intermediate points. It is mentioned that when the scheme of 1965 was published as a complete exclusion scheme, but, thereafter when the final approved scheme was framed, permission was given to operators to operate as they do not pass two or more intermediate points. It is argued that in the absence of any such provision by

which the operators are permitted to pass through two intermediate points of such route, the writ petitioner cannot claim any benefit. A reference to Schedule I of Ext. P5 scheme provides that the scheme as proposed in the routes specified in column 5 of Annexure A is with reference to Aluva-Cherai and Aluva-Chathanad. Intermediate places are also specified. It is in fact a complete exclusion scheme. However, what is permissible for private operators is only connecting through one intermediate point through such a route. In other words, the private operator cannot operate if the route touches two or more intermediate points mentioned in Annexure A.

12. Therefore, being a disputed question of fact, it has to be ascertained by the authorities themselves, especially on account of the fact that such a point is mentioned in Ext. P5 scheme. If the route proposed by the petitioner does not touch the said junction, definitely he is entitled for the permit.

13. The facts now made available clearly disclose that even according to the transport authorities, they were unable to locate Kedamangalam Temple Junction and therefore according to them, the proposed route of the petitioner only touches one point.

14. Under such circumstances, we do not think that the learned Single Judge has committed any error in arriving at such a finding that permit can be issued to the petitioner. We, however, observe that if the appellant is able to produce any material to the satisfaction of the RTA regarding infringement of the scheme, it shall be open for them to seek modification of the permit.

With the above observation, the writ appeal is dismissed.

(sd/-)

Ashok Bhushan, Ag. Chief Justice

(sd/-)

A.M. Shaffique, Judge.

Tds/