

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

WA.NO. 2175 OF 2015 () IN WP(C).24250/2015

AGAINST THE ORDER/JUDGMENT IN WP(C) 24250/2015

APPELLANT(S)/2ND RESPONDENT IN WP(C):

JAFFER P.
PATTUPURA HOUSE, OTTATHARA, KODUR P.O.
MALAPPURAM-676516.

BY ADVS.SRI.P.RAVINDRAN (SR.)
SRI.SAJEEV KUMAR K.GOPAL

RESPONDENT(S)/PETITIONER & 1ST RESPONDENT:

1. USMAN
MADASSERY HOUSE, P.O.ANAMANGAD, MALAPPURAM
PIN 676505.

2. THE REGIONAL TRANSPORT AUTHORITY
MALAPPURAM, PIN 676505, REPRESENTED BY ITS SECRETARY.

ADDITIONAL RESPONDENTS IMPEADED:

3. ABDUL RAHIMAN M.P.
MANGADAN PARAMBIL HOUSE,
MANALAYA P.O., ANAMANGADU
MALAPPURAM.
4. KUTHUBUDHEEN, PULLANICKAL HOUSE,
MANALAYA P.O. ANAMANGADU,
MALAPPURAM.

5. ABDUL MAJEED M.P.
MANGADAN PARAMBIL HOUSE,
MANALAYA P.O., ANAMANGADU
MALAPPURAM.

ADDITIONAL RESPONDENTS 3 TO 5 ARE IMPEADED
AS PER ORDER DATED 26.10.2015 ON I.A. NO.1378 OF 2015

R1 BY ADV. SRI.K.V.GOPINATHAN NAIR
R1 BY ADV. SRI.STALIN PETER DAVIS
RADDL. BY ADV. SRI.K.MOHANAKANNAN
RADDL. BY ADV. SMT.A.R.PRAVITHA
BY SENIOR GOVERNMENT PLEADER SHRI C.R. SHYAMKUMAR

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 04.10.2015,
THE COURT ON 26.10.2015 DELIVERED THE FOLLOWING:

“C.R.”

ASHOK BHUSHAN, C.J.

and

A.M. SHAFFIQUE, J.

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W.A. No.2175 of 2015

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Dated this the 26th day of October, 2015

J U D G M E N T

Ashok Bhushan, C.J.

This Writ Appeal has been filed against the judgment dated 07.09.2015 in W.P(C) No.24250 of 2015 by which judgment the learned Single Judge has set aside the order of the Regional Transport Authority renewing the stage carriage permit of the appellant as well as the order permitting replacement of the vehicle. Parties shall be referred to as described in the Writ Petition.

2. Brief facts of the case necessary to be noted for deciding the Writ Appeal are: The 2nd respondent (appellant in this appeal) was granted a regular stage carriage permit on the route Manalaya Harijan Colony-Pattambi in respect of vehicle No.KL-53/3221 valid up to 15.04.2014. The 2nd respondent made an application for issuance of clearance

certificate for the purpose of transferring his vehicle without surrendering the permit. The 2nd respondent filed W.P(C) No.23071 of 2013 seeking a direction to permit him to effect transfer without surrendering the permit. The learned Single Judge disposed of the Writ Petition directing issuance of necessary clearance certificate for sale of his vehicle and the permit be kept under suspension. The 2nd respondent was granted clearance certificate and he transferred the vehicle to one Mohammed Abdul Ravuf.

3. The 2nd respondent made an application for renewal of the permit on 20.03.2014 without replacing the vehicle which he had already transferred. On 24.02.2015 the 2nd respondent made available another vehicle, KL-53/H-1186 for renewal of the regular permit. The 2nd respondent filed W.P(C) No.12384 of 2015 seeking a direction for consideration of the application for replacement of the vehicle. The Writ Petition was disposed of on 17.04.2015 by a learned Single Judge directing consideration of the application for renewal as well as the application for temporary permit. A direction was also issued for

considering his application for replacement of the vehicle. In pursuance of the above order, the RTA by its decision dated 21.05.2015 allowed the renewal application as well as the application for replacement of the vehicle submitted by the 2nd respondent against which order, the Writ Petitioner, Usman, filed W.P(C) No.24250 of 2015 praying for the following reliefs:

- “i) issue a writ of certiorari, calling for records leading to exhibit P3 and quash the same.
- ii) issue a writ of mandamus or order directing the respondent to grant temporary permit to the petitioner on route Manalaya Harijan Colony-Pattambi in respect of vehicle KL-8/AH-1000, in the vacancy of 2nd respondent, complying the exhibit P2 judgment urgently by circulation under Rule 130 of the KMV Rules.
- iii) pass such orders deemed fit in the circumstances of the case.”

Exhibit P3 order which was challenged was the order dated 21.05.2015 of the RTA. It is also relevant to note that the Writ Petitioner had also filed another W.P(C) No.25981 of 2015 challenging grant of regular permit to the 2nd respondent in which Writ Petition learned Single Judge passed an order dated 21.08.2015 directing the RTA to recall the permit issued to the 2nd respondent. By proceedings

dated 24.08.2015 the RTA had recalled the regular permit granted to the 2nd respondent.

4. Learned Single Judge decided W.P(C) No.24250 of 2015 by judgment dated 07.09.2015 by which judgment the Writ Petition was allowed and Ext.P3 decision of the RTA was set aside with regard to item No.105. The second respondent in the Writ Petition has come up in appeal challenging the order of the learned Single Judge.

5. Learned Single Judge vide judgment dated 07.09.2015 held that application for renewal submitted by the 2nd respondent was without a vehicle which could not have been granted. It was further held that replacement of the vehicle was also not permissible since period of permit granted to the 2nd respondent has already run out by 15.04.2014. Learned Single Judge held that decision of the RTA was clearly against the statutory provisions.

6. Shri P.Ravindran, learned Senior Advocate appearing for the 2nd respondent (appellant) submitted that the decision of the learned Single Judge is not in accordance with the statutory provisions of Motor Vehicles Act, 1988

(hereinafter referred to as “the Act”) and the Kerala Motor Vehicles Rules, 1989 (hereinafter referred to as “the Rules”). It is submitted that there was no requirement to give registration mark of the vehicle while submitting the application for renewal of permit and by virtue of Rule 172 (3), the RTA had jurisdiction to extend the period for submission of application for registration of the vehicle. It is submitted that the renewal application filed by the 2nd respondent was well within the time and could have been validly considered. It is further submitted that in view of the judgment of the learned Single Judge dated 17.04.2015 in W.P(C) No.12384 of 2015, the RTA was obliged to consider the renewal application and application for replacement of vehicle and there being no impediment in granting the aforesaid applications, the RTA has rightly allowed the application. It is submitted that against the order of the RTA, Writ Petitioner has alternative remedy of revision before the State Transport Appellate Authority, hence the learned Single Judge ought not have entertained the Writ Petition. It is submitted that grant of renewal amounts grant of fresh

permit and hence the procedure to grant of permit is applicable, i.e., the vehicle can be provided within the time allowed by the RTA even after grant of permit. It is submitted that the Writ Petitioner was an existing operator having a temporary permit and he could not have challenged the renewal granted in favour of the 2nd respondent.

7. Learned counsel appearing for the Writ Petitioner refuting the submissions of learned Senior Advocate for the 2nd respondent contended that renewal application could not have been filed by the 2nd respondent without there being any vehicle. The appellant having already sold his vehicle with regard to which permit was issued, he has no right to submit the renewal application. It is submitted that replacement of vehicle could have been made only till 15.04.2014, i.e., the currency of the permit. The 2nd respondent having submitted the application for placement of vehicle on 21.02.2015, the said replacement could not have been considered. It is submitted that there is a difference between Rules 159 and 172 of the Rules. Rule 159 which deals with issue of permit specifically

contemplates non-availability of the vehicle at the time of application and grant of time for giving registration number of the vehicle whereas Rule 172 does not contain any such stipulation. It is submitted that the RTA committed an error in allowing the renewal application and permitting replacement of the vehicle which has been rightly set aside by the learned Single Judge.

8. Learned counsel for the parties have placed reliance on various judgments of this Court and the Apex Court which shall be referred to while considering the submissions in detail.

9. The short question which arises for consideration in this appeal is whether in the facts of the present case, it was open for the 2nd respondent to submit application for renewal of permit without mentioning in his application about the vehicle number with regard to which he sought renewal of the permit. As observed above, the 2nd respondent sought permission for sale of the vehicle and the vehicle for which permit was issued has already been transferred. The 2nd respondent filed W.P.(C) No.23071 of

2013 which was disposed of on 12.09.2013. It is useful to quote paragraph 2 of the said judgment:

“2. Having regard to the aforesaid facts and circumstances, I am of the view that this writ petition can be allowed as follows:

- a) The respondent authority shall issue necessary clearance certificate to the petitioner for sale of his vehicle KL-53-3221 by keeping the permit under suspension.
- b) The respondent shall also specify the time limit for producing the new vehicle.”

From the aforesaid judgment it is clear that the authorities were directed to issue necessary certificate for sale of the vehicle keeping the permit under suspension. Direction (b) clearly stipulates that time was to be specified for producing the new vehicle. The order thus clearly contemplated replacement by new vehicle. The fact remains that period of permit expired by 15.04.2014. By that time the 2nd respondent did not produce any vehicle for replacement.

10. It is relevant to look into certain statutory provisions before further considering the issue. Section 81 provides for duration and renewal of permits which is to the following effect:

“81. Duration and renewal of permits. - (1) A permit other than a temporary permit issued under section 87 or a special permit issued under subsection (8) of section 88 shall be effective 53 from the date of issuance or renewal thereof for a period of five years.

Provided that where the permit is countersigned under sub-section (1) of section 88, such countersignature shall remain effective without renewal for such period so as to synchronise with the validity of the primary permit.

(2) A permit may be renewed on in application made not less than 15 days before the date of its expiry.

(3) Notwithstanding anything contained in sub-section (2), the Regional Transport Authority or the State Transport Authority, as the case may be, may entertain an application for the renewal of a permit after the last date specified in that sub-section if it is satisfied that the applicant was prevented by good and sufficient cause from making an application within the time specified.

(4) The Regional Transport Authority or the State Transport Authority, as the case may be, may reject an application for the renewal of a permit on one or more of the following grounds, namely :-

(a) the financial condition of the applicant as evidenced by insolvency, or decrees for payment of debts remaining unsatisfied for a period of thirty days, prior to the date of consideration of the application;

(b) the applicant had been punished twice or more for any of the following offences within twelve months reckoned from fifteen days prior to the date of 53. Substituted, by S. 26, *ibid*, for “without renewal” (w.e.f. 14-11-1994).

(c) consideration of the application committed as a result of the operation of a stage carriage service by the applicant, namely :-

(i) plying any vehicle -

(1) without payment of tax due on such vehicle ;

(2) without payment of tax during the grace period allowed for payment of such tax and then stop the plying of such vehicle ;

(3) on any unauthorised route ;

(ii) making unauthorised trips:

Provided that in computing the number of punishments for the purpose of clause (b), any punishment stayed by the order of an appellate authority shall not be taken into account :

Provided further that no application under this sub-section shall be rejected unless an opportunity of being heard is given to the applicant.

(5) Where a permit has been renewed under this section after the expiry of the period thereof, such renewal shall have effect from the date of such expiry irrespective of whether or not a temporary permit has been granted under clause (d) of section 87, and where a temporary permit has been granted, the fee paid in respect of such temporary permit shall be refunded.

Section 83 provides that holder of a permit with the permission of the authority can replace any vehicle covered by the permit. Section 86 provides for cancellation and suspension of permit. Section 86(1)(c) which is relevant for the present case is quoted below:

“86. Cancellation and suspension of permits.- (1) The Transport Authority which granted a permit may cancel the permit or may suspend it for such period as it thinks fit –

.....

(c) if the holder of the permit ceases to own the vehicle covered by the permit.”

Rules have been framed under the Rules. Rule 159 provides for entry of registration marks compulsorily at the time of issue of permit. Rule 159(1) and (2) is quoted below:

“159. Permits-entry of registration marks compulsory.-

Time of entry.-(1) No permit shall be issued before entering the registration mark of the vehicle to which it relates has been entered therein.

(2) When the applicant is unable to produce the certificate of registration on the date of his application for permit, owing to the fact that he is not on that date in possession of the vehicle duly registered, or for some other reason, the applicant shall within one month of the sanctioning of the application by the Transport Authority or such longer period of periods not exceeding four months in the aggregate as the Authority may specify, produce the certificate of registration of the vehicle before that authority so that the particulars of the registration mark may be entered in the permit. In the event of any applicant failing to produce the certificate of registration within the period specified by the Transport Authority, the Authority may revoke its sanction of the application.”

Rule 172 deals with renewal of permit. Rule 172 is quoted below:

“172. Renewal of permits.-(1) Every application for the renewal of a permit shall be made to the Transport Authority which issued the permit.

(2) Application for renewal of permit shall be in Form “PRA” and shall be accompanied by the permit where the motor vehicle is subject to a hire purchase, lease or hypothecation agreement, the certificate or communication, or as the case may be, the declaration referred to in sub-section (8) of Section 51 of the Act.

(3) **Production of permit.-** (a) The Transport

Authority sanctioning an application for renewal of a permit shall call upon the permit holder to produce the Registration Certificate of the vehicle and endorse the renewal in the permit and return them to the holder. The Transport Authority may revoke its sanction of the application for renewal if the permit holder fails to produce the documents aforesaid within one month from the date of despatch of the order requiring the production of the records.

Provided that the Transport Authority may, if satisfied on an application made to it in writing grant an extension or extensions of time not exceeding four months in the aggregate for the production of records.

(b) The Transport Authority may delegate the powers conferred on it by clause (a) to its Secretary in cases where the Secretary has sanctioned the application for renewal of the permit.”

Rule 143 provides for application for permit, Rule 144 provides form of permit. Rule 159(1) is couched in a negative form with a mandate that no permit shall be issued before entering the registration mark of the vehicle in it. Thus before a permit is issued, registration mark is to be entered in the permit. Rule 159(2) grants discretion to the RTA to extend time for submitting registration mark. But the Rule clearly indicates that without entry of registration mark of the vehicle no permit shall be issued. Permit is defined in Section 2(31). The definition of the permit clearly indicates that permit is authorisation of use of a motor vehicle.

Permit thus is attached to a motor vehicle. As per Section 83, a vehicle may be replaced by holder of a permit. The phrase "holder of a permit" is used in Section 83 which clearly indicate that replacement of vehicle is contemplated during currency of a permit. As noted above, in the present case, this Court by judgment dated 12.09.2013 had directed the authority to issue clearance certificate keeping the permit under suspension. Time for replacement of permit was also to be specified. There is nothing on record that any time for replacement of the vehicle was specified by the Transport Authority. The replacement of vehicle was permissible only till validity of the period of permit. As noted above, as per Section 86(1)(c) when the holder of the permit ceases to own the vehicle covered by the permit, the RTA is empowered to cancel or suspend the permit. In the present case, by order of the Court dated 12.09.2013 permit was directed to be kept under suspension. The suspension of the permit continued till the validity of the period of permit, i.e., 15.04.2014.

11. Learned counsel for the appellant has submitted that under Rule 172(3) also the RTA is empowered to grant

time to submit registration certificate of vehicle for endorsement of renewal, hence the Rules does not contemplate that there should be availability of the vehicle at the time when renewal is applied.

12. Judgment of the Full Bench in **Narayanan v. RTA, Thrichur** (1980 KLT 249 [F.B.]) has been relied on. The Full Bench had occasion to consider the provisions of Motor Vehicles Act, 1939 and Rules 175 and 186 of the Motor Vehicles Rules, 1961. Rules 175 and 186 were pari materia to Rules 159 and 172 of the 1989 Rules. In the aforesaid case, the Full Bench was considering Rule 186 in the context of an application for grant of permit. The Full Bench had also referred to Form PSPA under which application was required to be given for grant of permit. The Full Bench made the following observations in paragraph 5:

“5. It was strongly contended before us by counsel appearing on behalf of the respondents that a mere perusal of the Form P. S. P. A. and more particularly items 6 to 8 contained therein, is sufficient to show that an applicant for a stage carriage permit has to mention in the application itself the 'registration mark', 'type', 'seating capacity' and 'maximum laden weight' of the vehicle. On this basis it is argued that it is mandatory under S.46

read along with R.175(a) that the particulars of the vehicle proposed to be put on the road should be furnished by an applicant in his application for the grant of the permit. This argument, however, overlooks the significant fact that item 16 contained in the very same form (P. S. P A.) contemplates that an applicant may not have obtained possession of the vehicle on the date of the application and hence may not be in a position to furnish the aforesaid particulars. Item 16 of the form reads:

"I / We have come in possession of the vehicle on I / We have not yet obtained possession of the vehicle and I / We understand that the permit will not be issued until I / we have done so and have produced the certificate of registration."

In this context reference may also be usefully made to R.186 which reads:

"186(1). No permit shall be issued until the registration mark of the vehicle to which it relates has been entered therein.

(2) When the applicant is unable to produce the certificate of registration on the date of his application for the permit, owing to the fact that he is not on that date in possession of the vehicle duly registered, or for some other reason, the applicant shall within one month of the sanctioning of the application by the Regional or State Transport Authority, or such longer period or periods not exceeding four months in the aggregate as the Authority may specify, produce the certificate of registration of the vehicle before that Authority in order that the particulars of the registration mark may be entered in the permit. In the event of any applicant failing to produce the certificate of registration within the period specified by the Transport Authority, the Authority may revoke its sanction of the application.

(3) The power vested in the Regional or State Transport Authority under sub-r.(2) shall also be exercised by its delegate in respect of orders passed under the delegated powers."

In our opinion, sub-r.(2) extracted above makes it very clear that it is legally open to the Regional / State Transport Authority to sanction the grant of permit to an applicant even in a case where the applicant was not, on the date of his application for the permit, in possession of the vehicle duly registered and was, on that account or for some other reason, unable to produce the certificate of registration on the date of his application for the permit. In such cases, the applicant should produce the certificate of registration of the vehicle before the Regional / State Transport Authority within one month of the sanctioning of the application by such authority or such longer period or periods not exceeding four months in the aggregate as the Authority may specify. We entertain no doubt that the provisions contained in R.175(a) (inclusive of the contents of the Form P.S. P.A) and R.186 have to be read together. On such a combined reading it becomes clear that there is no mandatory obligation cast on an applicant for the grant of a stage carriage permit to furnish in his application the particulars of the stage carriage vehicle proposed to be used by him for operating the service in the event of the permit being granted in his favour. It will not, therefore, be legally right or proper to treat as invalid an application for a stage carriage permit which does not contain particulars of the vehicle proposed to be used or to disqualify or supersede an applicant, who is otherwise found suitable for the grant of a permit, merely on the ground that he had not furnished in the application the particulars of the vehicle owned or possessed by him."

In the above context the Full Bench held that it is not necessary that the applicant should possess the vehicle on the date of making an application for permit. There cannot be any dispute to the proposition of law laid down by the Full Bench in the aforesaid case. The law laid down by the Full Bench was in the context of application for permit. The Full Bench was not considering the case of renewal of permit and the said judgment cannot be said to lay down any law

that at the time of renewal of permit, having a vehicle is not necessary.

13. Rule 172(2) provides that application of renewal for permit shall be in Form 'PRA'. Form PRA as contained in the Rules contains item No.2 which is to the following effect:

“....2. registration mark of the vehicle covered by the permit”

Thus the application for renewal must refer to the registration mark of the vehicle covered by the permit. As noted above permit is issued in the context of a vehicle and renewal of permit is sought in the context of the vehicle. It is true that holder of a permit can get his vehicle replaced during the currency of the permit. In the event the holder replaces his vehicle the permit shall be treated to be a permit with regard to the replaced vehicle and number of that vehicle is to be given in item No.2 as noted above.

14. Rule 172(3) empowers the RTA sanctioning an application for renewal to call upon the holder to produce the registration certificate of the vehicle and at that juncture the RTA has power to grant time to produce the registration certificate. Rule 172(3) uses the words “call upon the permit

holder to produce the registration certificate of the vehicle and endorse the renewal in the permit and return to the holder". "The vehicle" obviously refers to the vehicle in the context of which application for renewal is made. Thus time for producing registration certificate which can be extended by the Transport Authority under Section 172(3) is the time for producing registration certificate of the vehicle for which renewal has been sought.

15. An application for renewal of permit without there being a vehicle with the application is not contemplated by Rule 172. Judgment of the learned Single Judge in **Aboobacker v. RTA** (2005 [1] KLT 987) relied by the counsel for the appellant was again a case where this Court was considering Rule 159. In the above context this Court held that it was not mandatory to produce the records of the vehicle at the time of considering the application for permit. There cannot be any dispute to the proposition of law laid down in the case. But the above case again being a case of grant of permit has no occasion to interpret Rule 172. Learned counsel for the appellant further relied on the

judgment in **Krishna Das v. S.T.A.T. Ernakulam** (1991 KHC 376) and contended that ground on which an application for renewal of permit can be rejected is mentioned in Section 81(4) which is exhaustive and the said ground does not contemplate rejection of renewal on the ground of non-availability of the vehicle. As noted above, Section 86(1)(c) clearly contemplates cancellation and suspension of a permit when the holder of the permit ceases to own the vehicle covered by the permit. It does not appeal to reason that a ground which is sufficient for cancellation or suspension of the permit is not relevant for deciding the renewal application. In the event, a permit is under suspension, after the expiry of the period of suspension, an application is made for renewal, can it be said that the Transport Authority is powerless to reject the renewal on the ground that the permit is under suspension. The answer shall be obviously, yes. A permit which has been suspended and validity expired during suspension of the permit can very well be rejected on the aforesaid ground. To hold otherwise, shall not advance the object of the Act. The

observation which has been relied by a Division Bench to hold that grounds mentioned in Section 81(4) are exhaustive were confined for the purpose of evaluating the financial condition of the applicant for renewal of the permit. Thus the said observations cannot be read beyond that. It is useful to quote paragraph 12 which is to the following effect:

“ 12. As we have answered the first question against the appellant in W. A No. 34 of 1991, it is not necessary to consider the second question regarding the ambit of S.81(4) of the 1988 Act. But on a reading of the Section we agree with the learned single Judge that the grounds mentioned in that sub-section are exhaustive and not illustrative for the purpose of evaluating the financial condition of an applicant for renewal of a permit.”

16. In the facts of the present case where the 2nd respondent could not replace the vehicle during the currency of the permit and there was no vehicle number being endorsed in the permit, it was a fit case where the Transport Authority ought to have rejected the application for renewal.

17. Learned Single Judge relied on the judgment of this Court in **Bhouman v. State of Kerala** (1975 KLT 357). In the said case the Court was considering Sections 58 and 60 of Motor Vehicles Act, 1939 which relates to renewal of

permit. In the above case, vehicle for which permit was issued was seized and fresh registration certificate was issued in favour of the hire purchase company. Petitioner in the said case made an application and prayed that renewal be granted. Referring to Form PRA, the learned Single Judge held that when the owner ceases to own the vehicle for which permit was issued he was not entitled to renewal of his permit. The following was laid down in paragraph 5:

"5. S.2(20) of the Motor Vehicles Act, 1939 which defines 'permit' reads:

" 'Permit' means the document issued by the Commissioner or a State or Regional Transport Authority authorising the use of a transport vehicle as a contract carriage, or stage carriage, or authorising the owner as a private carrier or public carrier to use such vehicle;"

S. 47 of the Act provides for the procedure to be followed by the Regional Transport Authority in considering the application for such stage carriage permit. S.47(1)(a) is as follows:

"47. Procedure of Regional Transport Authority in considering application for stage carriage permit.- (1) A Regional Transport Authority shall, in considering an application for stage carriage permit, have regard to the following matters, namely -

(a) the interests of the public generally;"

Rule 177A of the Kerala Motor Vehicles Rules, 1961 contains the guiding principles for the grant, variation, suspension or cancellation of a stage carriage permit. As per this rule, the applicants for the permit shall first be screened and those who are found to be unsuitable on one or more of the principles laid down in sub-r.(3) shall be disqualified. One of the principles laid down for

disqualifying an applicant is his financial instability. R.205 of the Rules insists that the application for renewal of a permit shall be in form 'PRA'. As per form 'PRA', the registration mark of the vehicle covered by the permit is to be furnished in the application for renewal. S.60 of the Act provides for the cancellation and suspension of the permit. S.60(1)(c) and (e) reads:

"60. Cancellation and suspension of permits. (1) The Transport Authority which granted a permit may cancel the permit or may suspend it for such period as it thinks fit -

(a)

(b)

(c) if the holder of the permit ceases to own the vehicle or vehicles covered by the permit; or

(d)

(e) if the holder of the permit, not being a private carrier's permit, fails without reasonable cause to use the vehicle or vehicles for the purposes for which the permit was granted; or".

The contention of the learned Government Pleader is that Ext. P-2 is an order under S.58 of the Act refusing to entertain an application for renewal of the permit and it is not an order under S.60 cancelling the permit. Reliance is placed on the decision in Dabal Singh v. The State Transport Appellate Tribunal AIR 1967 Allahabad 266. In the above decision it has been held as follows:

"It was open to the Regional Transport Authority to use the fact of the convictions for refusing renewal even though it had not taken any steps for cancellation or suspension of the permit under S.60. The procedure to be followed for suspending or cancelling a licence is not required to be followed for refusing to renew a licence."

As per S.2(20) of the Act, permit is a document authorising the use of a transport vehicle as a contract carriage or stage carriage. Here, admittedly, the petitioner is no longer the registered owner of the vehicle for which the permit was issued. S.58(2) says that the application for renewal of a permit is to be disposed of as if it were an application for a permit. S.57 of the Act provides for the

procedure in applying for and grant of permits. R.177A contains the guiding principles in the matter of grant, variation, suspension or cancellation of stage carriage permits. One of the guiding principles to be followed in disqualifying an applicant is his financial instability. Under S.47 of the Act, the Regional Transport Authority in considering an application for permit must have due regard to the interests of the public generally also among other matters. The interests of the travelling public demand that an application for renewal by an operator who not only committed default of service but ceased to be the registered owner of the vehicle for which the permit was issued must be rejected. R.205 of the Rules insists that the application for renewal of a permit shall be in form 'PRA'. One of the details to be furnished in the application for renewal of permit in the above form is the registration mark of the vehicle covered by the permit. If these are the requirements under the Motor Vehicles Act, 1939 and the Kerala Motor Vehicles R.1961, an operator like the petitioner, who not only defaulted the service on the route but also ceased to own the vehicle for which the permit was issued, will not be entitled to a renewal of his permit. The fact that his permit was not actually cancelled before the application for renewal was submitted cannot be an excuse for insisting that he should get his permit renewed. It is immaterial whether on the date of the application for renewal the petitioner's permit was not, as a matter of fact, cancelled."

18. In so far as the submission of the learned counsel for the appellant that against the decision of the RTA, Writ Petitioner has remedy of filing a revision, the learned Single Judge has dealt with the issue. Learned Single Judge himself

has given reasons in paragraph 1 for entertaining the Writ Petition and not relegating the Writ Petitioner to alternative remedy. The exercise of discretion by the learned Single Judge in the above context cannot be faulted and on the said ground alone we are not inclined to throw the Writ Petition. The Full Bench judgment of this Court in **Ratheesh M.C. and another v. Secretary, Regional Transport Authority, Thrissur and another** (2015 [1] KHC 69) has further been relied on by the learned counsel for the appellant to contend that the existing permit holders have no right to challenge grant of permit. It is useful to quote paragraph 23 of the Full Bench judgment relied on by the learned counsel for the appellant:

“23. We, thus, conclude that although the existing permit holders have no right and cannot be held to be aggrieved person when they sought to challenge a grant of permit on the sole ground, that grant of permit shall prejudicially affect their commercial interest. But, in case where the grant is in a statutory violation, the right to file revision under S.90 or file Writ Petition or Writ Appeal cannot be denied.”

The Full Bench in the aforesaid case has laid down that the existing permit holder has no right to challenge grant of

permit on the sole ground that such grant shall prejudicially affect their commercial interest, but in a case where the grant is against statutory violation, right to file revision under Section 90 was upheld. Full Bench in the said case was considering whether an existing holder was a “person aggrieved” within the meaning of Section 90 of the Act and hence observations were made in the context of Section 90. In the present case challenge made by the Writ Petitioner was not on the sole ground that grant of permit shall prejudicially affect their commercial interest. The Full Bench judgment cannot be read to mean that the Writ Petition filed by the petitioner was not entertainable. Reliance has also been placed on the judgment of the learned Single Judge dated 17.04.2015 by which order the learned Single Judge directed for consideration of application for replacement of the vehicle and renewal. The Court while issuing the said direction did not adjudicate the issue on merit and only direction was to consider and take appropriate decision in accordance with law. The said direction did not oblige the Transport Authority to allow the application for renewal or

replacement of the vehicle.

19. In view of the foregoing discussions we are of the view that there are no such grounds in the Writ Appeal on which in exercise of the appellate jurisdiction of this Court, the judgment of the learned Single Judge can be interfered with.

In the result, the Writ Appeal is dismissed.

Parties shall bear their costs.

**ASHOK BHUSHAN,
CHIEF JUSTICE.**

**A.M. SHAFFIQUE,
JUDGE.**

VSV