

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

MONDAY, THE 23RD DAY OF NOVEMBER 2015/2ND AGRAHAYANA, 1937

WA.No. 2489 of 2015 () IN WP(C).10052/2015

AGAINST THE ORDER/JUDGMENT RP NO.696/2015 IN IN WP(C)
10052/2015 DATED 12.08.2015 AND AGAINST ORDER/JUDGMENT IN WPC
NO.10052/2015 DATED 07.07.2015 of HIGH COURT OF KERALA

APPELLANT(S)/REVIEW PETITIONER/4TH RESPONDENT:

ANIL JOSE, AGED 40 YEARS
S/O.DENNISON, JOSE BHAVAN, KATTIKODU
KATTAKADA.P.O, THIRUVANANTHAPURAM.

BY ADV. SRI.SHERRY J. THOMAS

RESPONDENT(S)/RESPONDENTS/PETITIONER & RESPONDENTS 1 TO 3:

1. AHAMMED KABEER,, AGED 54 YEARS
S/O ABDUL RAHMAN, T.C.67/403/C,
MANICKYAVILAKAM
THIRUVANANTHAPURAM-695026.
2. THE KARALA STATE ROAD TRANSPORT CORPORATION,
TRANSPORT BHAVAN, FORT,
THIRUVANANTHAPURAM-695001,
REPRESENTED BY ITS MANAGING DIRECTOR,
THIRUVANANTHAPURAM-695001 .
3. THE DISTRICT TRANSPORT OFFICER,
KERALA STATE ROAD TRANSPORT CORPORATION,
KATTAKADA, THIRUVANANTHAPURAM-695001.
4. THE ASSISTANT DISTRICT TRANSPORT OFFICER,
KERALA STATE ROAD TRANSPORT CORPORATION,
KATTAKADA, THIRUVANANTHAPURAM-695001.

R1 BY SRI.S.SHANAVAS KHAN

R2 TO R4 BY SRI.M.GOPIKRISHNAN NAMBIAR, SC, KSRTC

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 23-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &
ANU SIVARAMAN, JJ.

.....
W.A.No.2489 of 2015

and

C.M.Appl.No.1353 of 2015

.....
Dated this the 23rd day of November, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

- 1.This writ appeal comes up with an application seeking condonation of delay of 101 days in its institution.
- 2.We have heard the learned counsel for the appellant, the learned standing counsel for the Kerala State Road Transport Corporation and the learned counsel for the writ petitioner, who is the first respondent herein.
- 3.The writ petitioner herein obtained an interim order on 17.03.2015 in WP(C) No.8319 of 2015 directing the KSRTC to refrain from allotting room No.F4 in KSRTC Shopping Complex at Kattakkada to the fourth respondent in that writ petition, who is the appellant before us, or to any other person without

conducting fresh auction/tender, pending the writ petition. But, the Officer of the KSRTC is shown to have made allotment of the shop room to the fourth respondent (appellant herein) on 18.03.2015, which is nothing but clear violation of the said interim order. That led to a contempt of court case initiated by the first respondent/writ petitioner. Ultimately, the KSRTC offered to withdraw the allotment to the fourth respondent (appellant herein) on the agreed condition that the shop will be put to auction, provided the writ petitioner (first respondent herein) deposits an amount of ₹25,00,000/-.

4.The contempt of court case was closed as withdrawn by the writ petitioner (first respondent herein) to pave way to the judgment now sought to be appealed against. An application seeking review of judgment was also filed before the learned single Judge. That was also dismissed.

5.As already noted, shop room No.F4 was allotted to the appellant

in clear violation of the interdicting order dated 17.03.2015 issued in WP(C) No.8319 of 2015. Nothing more needs to be stated to say that the learned single Judge was justified in taking the view in the review petition that the writ petition having been closed essentially on agreed fact situation, no question arose for further adjudication. We may also note that the final disposal of the writ petition itself was with the appellant on the array of parties. All these apart, we also are of the view that the matter in issue in relation to any violation of any term of pay, agreement or condition relating to a non statutory contract like allotting licence, rights over a shop room in a building belonging to KSRTC does not generate any issue which could be justiciable as one to be dealt with under Article 226 of the Constitution of India. This way also, we do not see any ground to interfere with the order on the review petition or on the judgment in the writ petition.

In the result,

- (i) taking a lenient view on the basis of the facts

stated in the affidavit seeking condonation of delay, the C.M.Application is allowed.

- (ii) this writ appeal is dismissed without prejudice to the rights, if any, of any party to the litigation to claim any relief before the competent court, in accordance with law.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(ANU SIVARAMAN, JUDGE)