

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 16TH DAY OF DECEMBER 2015/25TH AGRAHAYANA, 1937

WA.No. 2648 of 2015 () IN WP(C).21706/2015

AGAINST THE JUDGMENT IN WP(C) 21706/2015 DATED 27-10-2015

APPELLANT(S)/PETITIONER:

SUDHEER
KILIYAN VILAKOM, VAKKAM P.O., VAKKOM
THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.O.D.SIVADAS

RESPONDENT(S)/RESPONDENTS:

1. THE REGIONAL TRANSPORT AUTHORITY
THIRUVANANTHAPURAM (RURAL), ATTINGAL - 695 101.
2. THE SECRETARY
REGIONAL TRANSPORT AUTHORITY
THIRUVANANTHAPURAM (RURAL), ATTINGAL - 695 101.
3. THE MANAGING DIRECTOR
RKV MOTORS AND TIMBERS (P) LTD
THIRUVANANTAPURAM - 695 001.
4. S.RAJASEKHARAN NAIR
S/O. SREEDHARAN PILLAI, KUNNUMPURATH VEEDU
MARKET ROAD, ATTINGAL, THIRUVANANTHAPURAM - 695 101.
5. M.S.BINDU
D/O. V.K.MADHAVAN, LAXMI NIVAS, KANNAMANGALAM
VAKKOM P.O., THIRUVANANTHAPURAM - 695 308.

R1 & 2 BY SR. GOVERNMENT PLEADER SRI. C.R. SYAMKUMAR
R3 BY SRI.MILLU DANDAPANI
R4, 5 BY SRI.M.JITHESH MENON

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 16-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sou.

ASHOK BHUSHAN, CJ & K. RAMAKRISHNAN., J

W.A. No. 2648 of 2015

Dated this the 16th day of December, 2015

JUDGMENT

Ashok Bhushan, CJ.

Heard learned counsel for the appellant, learned Government Pleader for first and second respondents, Smt. Sumathi Dandapani appearing for the third respondent, and Sri. M. Jithesh Menon learned counsel appearing for the fourth respondent.

2. This writ appeal has been filed against the judgment dated 27.10.2015 in W.P(C).No.21706 of 2015, by which order learned Single Judge has dismissed the writ petition filed by the appellant. The appellant had come up in writ petition praying for the following reliefs :

- “1) Call for the records leading to Exhibit p7 and quash the same by issuing a writ of certiorari;
- 2) Issue a writ of mandamus or other appropriate writ, order or direction to the 1st and 2nd respondents to restrain the illegal operation of the 3rd respondent to Panayilkadavu in violation of Exhibit .P1 permit issued to the third respondent.”

3. The brief facts necessary to be noticed for deciding the appeal are:

The third respondent was granted permit to operate on the

route Attingal-Vakkom via Kollampuzha, Mananakku and Nilakkamukku. But it was conducting service to Vakkom to Panayikadavu without permit. On objection filed by the writ petitioner, a stop memo was issued which was subsequently withdrawn by Exhibit P7 order dated 13.7.2015. The petitioner, aggrieved by the said order come up in writ petition.

4. Learned Single Judge, in the judgment noticed the case of the third respondent that the third respondent is operating the service for the aforesaid length without charging any fare and as soon as the stop memo was issued, the service was stopped. On public agitation and demand of the travelling public an order was passed vacating the stop memo.

5. Learned counsel for the petitioner submits that since there was no permit for the said extent, which is about 2 KM, it was not permissible to run any service by the third respondent. It is further submitted that there is curtailment of petitioner's service also to a length of one kilometer, which is refuted by the counsel appearing for the third respondent.

6. Learned Single Judge observed that the third respondent is operating service solely in the interest of public without collecting any fare between the area, Vakkom to

Panayilkadavu, and there is no time clash between the petitioner's and the third respondent's service. Hence it was not a case for any interference under Article 226 of the Constitution. Learned Single Judge further observed that the petitioner has filed the writ petition after three years from the date of commencement of operation by the petitioner.

7. Before the learned Single Judge, it was submitted by the third respondent that if any variation is required in the interest of public, the same can be granted by the first respondent by varying the permit of third respondent *suo moto*. The third respondent also submitted that if required, the third respondent is ready to submit an application for the aforesaid purpose ie., for variation or putting any condition to that effect.

8. It was also informed by learned Government Pleader that the next meeting of the RTA was fixed on 22.12..2015.

9. Considering the facts of the present case and submissions made by the parties, we are of the view that no error has been committed by the learned Single Judge in refusing to exercise the jurisdiction under Article 226 of the Constitution. We however observe that since the next meeting

of the RTA has already been fixed on 22.12.2015. It is appropriate that either the RTA *suo moto* take a decision or on application submitted by the respondent. Subject to any orders passed by the RTA the further service in the extended route shall be carried on. We make it clear that we are not expressing any opinion on merits and it is for the RTA to consider take a decision in the matter.

With the above observation the writ appeal is closed.

Sd/-

ASHOK BHUSHAN,
CHIEF JUSTICE

Sd/-

K. RAMAKRISHNAN
JUDGE

sou.17/12/15

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P.A. To Judge