

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 15TH DAY OF DECEMBER 2015/24TH AGRAHAYANA, 1937

WA.No. 2687 of 2015 () IN WP(C).15889/2015

AGAINST THE JUDGMENT IN WP(C) 15889/2015 of HIGH COURT OF KERALA DATED 03-11-2015

APPELLANT(S)/PETITIONER IN WPC:

JOBY JACOB
NAMPOODAKATHU, MOONNILAVU, MANKOMBU
KOTTAYAM DISTRICT.

BY ADV. SRI.SAJEEV KUMAR K.GOPAL

RESPONDENT(S)/RESPONDENTS IN WPC:

1. THE REGIONAL TRANSPORT AUTHORITY
ERNAKULAM-682030, REPRESENTED BY ITS SECRETARY.
2. THE SECRETARY
THE REGIONAL TRANSPORT AUTHORITY, ERNAKULAM-682030.
3. THE REGIONAL TRANSPORT AUTHORITY
KOTTAYAM-686001 REPRESENTED BY ITS SECRETARY.
4. THE SECRETARY
THE REGIONAL TRANSPORT AUTHORITY, KOTTAYAM-686001.
5. VIJI JOSEPH
S/O.JOSEPH, KUREEKATTUPARAYIL HOUSE,
ELANJI-686665.

R BY SRI.P.DEEPAK
R BY GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 15-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ASHOK BHUSHAN, CJ & K. RAMAKRISHNAN., J

W.A. No. 2687 of 2015

Dated this the 15th day of December, 2015

JUDGMENT

Ashok Bhushan, CJ.

Heard. This writ appeal has been filed against the judgment dated 3.11.2015 in W.P(C). No.15889 of 2015, by which the learned Single Judge dismissed the writ petition. Appellant has filed the writ petition praying for the following reliefs :

- “i. Issue a writ of certiorari or other appropriate writs direction or orders calling for the records leading Exhibits P5, P7 and P8 and quash the same.
- ii. Declare that in the light of dismissal of WP(C). 22196/2009, Exhibit P5 has become inoperative, ineffective and unenforceable and consequently Exhibit P7 also become inoperative.
- iii. Issue a writ of mandamus or other appropriate writs, directions or orders directing the 3rd respondent to recall Exhibit P5 in the light of the dismissal of WP(C). 22196/2009.”

2. The contesting respondent ie., fifth respondent had initially filed application for extension of 12 Kilometer which was rejected. The matter was taken before the Appellate Tribunal being M.V.A.R.P. No.223 of 2013 and the Tribunal allowed the revision and passed the following order in paragraph 4 :

“In the result, this revision petition stands allowed and the impugned order dated 30.5.2013 of the RTA, Kottayam stands set aside. The matter is remitted to the very same authority and the Secretary, RTA, Kottayam is hereby directed to reconsider the request for concurrence forwarded from RTA, Ernakulam in respect of the proposed extension of route for stage carriage KL-17/F-191 operated by the revision petitioner on the route Pala-Kaloor after affording an opportunity of being heard to the revision petitioner as well as the 3rd respondent, the KSRTC.”

3. Consequent to the remand by the Appellate Tribunal, the RTA passed an order on 14.8.2014 granting extension of 12 Kilometers, which was however made subject to the disposal of WP(C). No.22196 of 2009. Subsequently WP(C) No.22196 of 2009 has been dismissed. By Exhibit P7, the Regional Transport Authority approved the variation ie., extension of 12 Kilometers from Pala to Erattupetta. The writ petitioner being a registered operator has challenged the said order. The learned Single Judge dismissed the said order by making the following observation in paragraph 8:

“ The learned counsel for the 5th respondent would submit that the writ petition is liable to be dismissed *in limine* on the preliminary ground that the petitioner himself is operating on the strength of a concurrence granted and permit renewed subject to disposal of WPC. No.22196/2009. Ext.R5(a) is the copy of the proceedings of the RTA, Ernakulam dated 29.9.2011. A true copy of the proceedings of the RTA, Kottayam dated 23.11.2011 is produced and marked as Ext.R5(b). The learned counsel for the 5th respondent would submit that the rider subject to the disposal of WPC. No.22196/2009 imposed in Ext.P5 was quite unwarranted since the extension has been

granted in the light of the observation contained in Ext.P4 judgment of STAT wherein the stand taken by the 5th respondent that clause 19 of the approved scheme of nationalisation is not offended by the grant of the proposed extension since no additional trips are introduced over the notified sector and there is no doubling of sector Kottaramattom-Lalom Junction so as to offend Clause 19 of the notification. I see valid force in the said submission."

4. Learned counsel for the appellant challenging the order submits that the prayer of the fifth respondent was clearly contrary to Clause 19 of the Scheme and the Scheme having been upheld by dismissal of the writ petition, the extension granted to the writ petitioner subject to the result of writ petition ought to have been also cancelled. He submits that there is a clear violation of Clause 19 and according to the Scheme, only the State transport undertaking could have been granted any increase in the trips or any new service.

5. We have considered the submission of learned counsel for the appellant and perused the records. In so far as the submission of learned counsel for the appellant that due to dismissal of the WP(C). No.22196 of 2009, the order dated 14.8.2014 ought to have come to an end and the grant in favour of the fifth respondent could not have survive thereafter. The WP(C). No.22196 of 2009 was filed challenging

the scheme as has been submitted by the learned counsel for the appellant. The effect of dismissal of the writ petition was that the scheme has been upheld. Learned Single Judge has adverted to this aspect and having observed in paragraph 8 that there is no violation of Clause 19 we do not find any adverse consequence on the grant to fifth respondent by dismissal of the writ petition.

6. It is further relevant to note that the State undertaking has not challenged the grant in favour of the fifth respondent who are the beneficiary of the said scheme under Clause 19. We are of the view that the learned Single Judge has after considering the relevant submissions rightly dismissed the writ petition at the instance of the appellant. We do not find any merit in the appeal.

Appeal is dismissed.

Sd/-
ASHOK BHUSHAN,
CHIEF JUSTICE

Sd/-
K. RAMAKRISHNAN
JUDGE