IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

W.P.(C).No.1423 of 2015 (C)

AGAINST THE JUDGMENT IN M.V.A.A.NO.103/2014 DATED 25.06.2014
OF THE STATE TRANSPORT APPELLATE TRIBUNAL, ERNAKULAM.

PETITIONER(S):-

KERALA STATE ROAD TRANSPORT CORPORATION,
TRANSPORT BHAVAN, FORT, THIRUVANANTHAPURAM,
REPRESENTED BY ITS AUTHORIXED SIGNATORY
ZONAL OFFICER, SASIDHARAN.

BY STANDING COUNSEL SRI.P.C.CHACKO.

RESPONDENT(S):-

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1. C.ASWATHIKUMAR,
   KAMALALAYAM, CHATHANPARA, THOTTAKKADU P.O.,
   KOLLAM - 691 004.

2. THE REGIONAL TRANSPORT AUTHORITY,
   KOLLAM, REPRESENTED BY ITS SECRETARY,
   PIN - 691 001.

3. THE SECRETARY,
   REGIONAL TRANSPORT AUTHORITY, KOLLAM - 691 001.

   R1 BY ADV. SRI.O.D.SIVADAS
   R2 & R3 BY SENIOR GOVERNMENT PLEADER SRI.BIJU MEENATTOOR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10-03-2015, ALONG WITH R.P. 251/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No.1423 of 2015 (C)

APPENDIX

PETITIONER(S)' EXHIBITS:-

EXHIBIT P1. TRUE COPY OF THE ORDER PASSED BY THE SECOND RESPONDENT DATED 02.06.2014.
EXHIBIT P2. TRUE COPY OF THE MVAA NO.103 OF 2014 FILED BY THE IST RESPONDENT BEFORE THE STATE TRANSPORT APPELLATE TRIBUNAL, ERNAKULAM.
EXHIBIT P3. TRUE COPY OF THE ORDER PASSED BY THE STATE TRANSPORT APPELLATE TRIBUNAL IN MVAA NO.103 OF 2014 DATED 25.6.2014.
EXHIBIT P4. TRUE COPY OF THE NOTIFICATION N.G.O.(P)442/2009 DATED 14.07.2009 ISSUED BY THE TRIBUNAL.
EXHIBIT P5. TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER BEFORE THE SECOND RESPONDENT DATED 12.08.2014.

RESPONDENT(S)' EXHIBITS:-

EXHIBIT R1(a) COPY OF THE TEMPORARY PERMIT ISSUED TO STAGE CARRIAGE NO.KL-02/Q 5039.

EXHIBIT R1(b) COPY OF THE JUDGMENT IN W.P.(C).33197 OF 2014 DATED 10.12.2014.

Vku/- [true copy]

K. Vinod Chandran, J.

W.P(C) No.1423 of 2015-C &
R.P.No.251 of 2015 in W.P.(C).No.33197 of 2014-Y

Dated this the 10th day of March, 2015

JUDGMENT/ORDER

The Kerala State Road Transport Corporation [for brevity "the Corporation"] has filed a writ petition and a review petition, against the operation of a vehicle, bearing registration No.KL-02-T-5290, by two separate operators on the basis of temporary permit.

2. W.P.(C).No.1423 of 2015 is filed against the order [Exhibit P3] of the State Transport Appellate Tribunal [for brevity "the Tribunal"] in M.V.A.A.No.103 of 2014, which the 1st respondent, one Aswathikumar, has obtained; on the basis of which he was operating in the route Vakkom - Sasthamnada on the basis of temporary permit directed to be issued as per Exhibit P3.

3. The review petition is filed for review of the judgment in W.P.(C).No.33197 of 2014, filed by one U.Nazar, who is said to be operating the vehicle on a temporary permit at present, in the very same route with the very same stage carriage as per the judgment sought to be reviewed.

4. Originally, Aswathikumar had applied for a temporary permit, which was rejected by Annexure R1(a), produced in the counter affidavit filed by Nazar in the Review Petition. The rejection was on the ground of an objectionable overlap in a notified route. An appeal against the said rejection was considered by the Tribunal as per Annexure R1(c). In Annexure R1(c), the Tribunal noticed that altogether there were ten regular permits granted in the route traversing Attingal, Kilimanoor and Nilamel. Those permits were valid till 2002-03, which were refused to be renewed. The permit holders had preferred appeals before the Tribunal and the matters were remanded back for fresh consideration.

5. The fresh consideration of the renewal of the ten permits is said to be pending even now, with a modified route on record. Even Annexure R1(c) noticed that the renewal applications were pending and all the vehicles were operating in the route on the basis of successive temporary permits issued by the authority. Aswathikumar in Annexure R1(c) purportedly moved an application under Section 87(1)(c) on a defaulted vacancy of stage carriage KRV 4287, which is said to be one of the 10 renewal applications which were pending before the authority. The Tribunal found that

since the objectionable overlap, if any, on the modified proposal is pending consideration by the Regional Transport Authority [for brevity "RTA"], there would be no difficulty in granting temporary permit in the route.

6. Essentially it is to be noticed that the Tribunal misdirected itself, insofar as not noticing that it was not the regular permit holder whose application for renewal is said to have been pending who approached the Tribunal for issuance of temporary permit. The regular permit renewals were rejected and were pending reconsideration before the RTA. It cannot be said that there was a defaulted vacancy in such circumstance. However, the Tribunal having noticed that the objections could be considered when the renewal is taken up, directed that temporary permit under Section 87 (1)(c) of the Motor Vehicles Act, 1988 [for brevity "the Act"] would be issued to Aswathikumar. Aswathikumar contends that he has been successively issued with such temporary permits and argues that the Corporation was a party therein. Corporation cannot now object to the issuance of temporary permit seems to be the contention.

7. Later on, there was another dispute with respect to the replacement of a vehicle, wherein the prayer was rejected on the

ground that the applicant was not the registered owner of the vehicle. On the basis of the rejection of the replacement application, the temporary permit application was also rejected. Again Aswathikumar was before the Tribunal with M.V.A.A.No.103 of 2014, which was disposed of by Annexure R1(e). Though the challenge was against the rejection of the replacement application, while allowing the same, the Tribunal again directed issuance of temporary permit. Annexure R1(e) produced in the review petition is challenged by the Corporation in W.P.(C).No.1423 of 2015, wherein it is marked as Exhibit P3.

8. In the meanwhile, Nazar enters the fray and obtains an order from this Court, which is sought to be reviewed in R.P.No.219 of 2015. Nazar also proffered the very same vehicle KL-02-T-5290 in the route Vakkom - Sasthamnada and sought for issuance of a temporary permit, which was directed to be issued. The Review petition is filed on the ground that there is objectionable overlap and, hence, no temporary permit could be granted.

9. The learned counsel appearing for the 1st respondent in the review petition [U.Nazar] as also the 1st respondent in W.P.(C). No.1423 of 2015 [C.Aswathikumar] would contend, that, the

Corporation having not challenged Annexure R1(c) judgment of the Tribunal, wherein they were a party, cannot now turn around and raise such objection. As was noticed earlier, Annexure R1(c) was issued on a misapprehension that the appellant therein was one of the regular permit holders whose renewal application, along with modification, was pending consideration. In any event, the benefit of Annexure R1(c), which was filed by Aswathikumar, cannot enure to Nazar, who admittedly is now operating the temporary permit.

10. The further contention with respect to there being no restriction in Exhibit P4 Scheme produced along with W.P.(C). No.1423 of 2015 cannot also be countenanced. The Scheme, as per Clause 4, saves only permits issued in the private sector prior to 09.05.2006. Renewal also is granted, subject, however, to the condition that, on the Corporation introducing a stage carriage in the route, the permit which expires first will be revoked. Such saving is applicable only to existing regular permit holders prior to 09.05.2006. Essentially what comes to fore in the above case is that, when a regular permit application cannot be validly filed due to the restriction in a Scheme, the operator seeks issuance of temporary permits on the basis of defaulted regular permit services. That

cannot be permitted.

Resultantly, the review petition is allowed and the judgment in W.P.(C).No.33197 of 2014 dated 10.12.2014 is recalled and the writ petition dismissed. W.P.(C).No.1423 of 2015 is also allowed, setting aside Exhibit P3 judgment of the Tribunal to the extent it directs grant and issue of temporary permit. Parties are left to suffer their respective costs.

Sd/-
K. Vinod Chandran,
Judge

vku/

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