

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

WP(C).No. 4641 of 2015 (E)

PETITIONER :

**M.M.SHAJI,
MUNDAPURATH HOUSE, PADINJARETHARA,
WAYANAD.**

BY ADV. SRI.P.DEEPAK

RESPONDENT(S):

- 1. THE REGIONAL TRANSPORT AUTHORITY,
WAYANAD-673 001**
- 2. THE SECRETARY, REGIONAL TRANSPORT AUTHORITY,
WAYANAD -673 001**
- 3. THE FEDERAL BANK LIMITED,
REPRESENTED BY BRANCH MANAGER,
SULTHAN BATHERY BRANCH, SULTHAN BATHERY,
WAYAND- 673 592**

R1 & R2 BY GOVERNMENT PLEADER SMT. ANITHA RAVINDRAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19-08-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

WP(C).No. 4641 of 2015 (E)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: TRUE COPY OF THE REGULAR PERMIT ISSUED TO KL-12/H 4554 VALID
TILL 24.2.2015**

EXHIBIT P2: A TRUE COPY OF THE REQUEST FOR NOC DATED 15.1.2015

**EXHIBIT P3: TRUE COPY OF THE APPLICATION FOR RENEWAL OF PERMIT DATED
29.1.2015**

**EXHIBIT P4: TRUE COPY OF THE DECLARATION DATED 29.1.2015 SUBMITTED
BY THE PETITIONER.**

**EXHIBIT P5: TRUE COPY OF THE APPLICATION FOR TEMPORARY PERMIT FILED
UNDER SECTION 87(1) (D) ON 28.01.2015**

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.4641 of 2015

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Dated this the 19th day of August, 2015

JUDGMENT

The petitioner holds a regular permit to conduct service on the route Mananthavady-Kalpetta. The petitioner alleges that the vehicle covered under the permit is subject to a hire purchase agreement with the third respondent. Ext.P1 regular permit issued to the petitioner is valid till 24.2.2015. Accordingly, on 15.1.2015, the petitioner made a request in writing to the third respondent for the issue of a NOC for the renewal of the permit for a further period of five years. This request was sent by RPAD and was served on the third respondent on the following day itself. However, the third respondent has not responded to the request for NOC till date.

2. Therefore, the petitioner submitted an application for renewal of permit on 29.1.2015 together with a declaration informing the first respondent that the facts of the case warrant invocation of the legal fiction under sub section (6) and and that the application for renewal is only to be sanctioned and permit renewed for a further period of five years from 24.2.2015.

3. The petitioner alleges that Ext.P3 application for renewal has been filed within the time stipulated under Section 81 of the

Act. Since Ext.P1 permit is valid only till 24.2.2015, the petitioner also submitted an application for temporary permit under Section 87(1)(d) of the Act to conduct the service pending disposal of the application for renewal of the permit. However, the second respondent insisted that Ext.P3 application for renewal can be entertained after NOC is obtained from the financier. The petitioner is informed that consideration of Ext.P5 application would stand deferred until receipt of NOC. It is with this background, the petitioner has approached this Court.

4. I have heard the learned counsel for the petitioner and the learned Government Pleader in the matter.

5. The stand taken by the second respondent is that the application for renewal cannot be countenanced till such time NOC is obtained from the financier is absolutely untenable and betrays an erroneous understanding of law. According to the learned counsel for the petitioner, a reading of Section 51 r/w Rule 172 of the Motor Vehicles Rules, 1989 would make it clear that an NOC from the financier is not a mandatory requirement for considering an application for renewal of permit. The statute contemplates a declaration under Section 51(7) in lieu of an NOC. Therefore, it was pointed out that a statutory authority under Section 51(9) of the Act

is enjoined to pass an order on merits even in a case of refusal on the part of the financier to give NOC for renewal of a permit. I see valid force in the said submission.

Therefore, the writ petition is disposed of directing the first respondent to pass orders on Ext.P1 permit in the light of Ext.P4 declaration filed by the petitioner under Section 51((6) of the Motor Vehicles Act, 1988 within a period of one month from the date of receipt of a copy of this judgment.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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