

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 31ST DAY OF MARCH 2015/10TH CHAITHRA, 1937

WP(C).No. 6723 of 2015 (M)

PETITIONER :

**JAYAMON
S/O. LATE BAHULAYAN,
CHIRAYIL HOUSE, VAYALAR P.O.
CHERTHALA.**

BY ADV. SRI.JOBY CYRIAC

RESPONDENT(S) :

- 1. THE REGIONAL TRANSPORT AUTHORITY
CHERTHALA-688 524.**
- 2. M/S. SHRIRAM TRANSPORT FINANCE CO. LTD.
ADMINISTRATIVE OFFICE 101-10, SHIV CHAMBERS, SECTOR-11
C.B.C. BELAPUR, NAVI MUMBAI-400 614
REPRESENTED BY THE MANAGER AT ITS SUBORDINATE OFFICE
AT AMEW 33/12, 1ST FLOOR, THIRUVAMBADY JUNCTION,
ALAPPUZHA-688 002.**

**R1 BY SR.GOV'T. PLEADER SRI. BIJU MEENATTOOR
R2 BY ADVS. SRI.C.HARIKUMAR
SMT.C.B.ANUROOPA**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Mn

...2/-

WP(C).No. 6723 of 2015 (M)

APPENDIX

PETITIONERS' EXHIBITS :

- EXT. P1 :** COPY OF THE CERTIFICATE OF REGISTRATION OF THE VEHICLE
NO.KL-06/A 2585.
- EXT. P2 :** COPY OF THE GOODS CARRIAGE PERMIT WITH NO.P.GD.32/638/2008
DTD. 27.5.2008 ISSUED BY THE 1ST RESPONDENT.
- EXT. P3 :** COPY OF THE JUDGMENT IN WPC NO.12905/2013 DTD. 23.5.2013 OF
THE HIGH COURT OF KERALA.
- EXT. P4 :** COPY OF THE TEMPORARY PERMIT DTD.5.9.2014.
- EXT. P4(a) :** COPY OF THE APPLICATION DTD. 22.12.2014.
- EXT. P5 :** COPY OF THE APPLICATION DTD. 5.2.2015.
- EXT. P5(a) :** COPY OF THE ACKNOWLEDGMENT CARD RECEIVED FROM POSTAL
DEPARTMENT.
- EXT. P6 :** COPY OF THE APPLICATION FOR GOODS CARRIAGE PERMIT ALONG
WITH DECLARATION FURNISHED BY THE PETITIONER U/S. 51(9) OF
THE ACT.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

Mn

K.VINOD CHANDRAN, J

W.P.(C).No. 6723 of 2015

Dated 31st March, 2015

JUDGMENT

“CR”

The petitioner purchased a vehicle bearing registration No. KL 06 A 2585 with finance from the 2nd respondent. Agreement with the 2nd respondent was duly endorsed in the registration certificate. The petitioner applied and obtained a Goods Carriage permit, on which the vehicle was being operated. Subsequently, when the petitioner applied for renewal of the Goods carriage permit by Ext.P6, the same was declined to be considered, since No Objection Certificate (NOC) of the financier was not produced.

2. The learned counsel for the petitioner submits that Section 51 of the Kerala Motor Vehicles Act, 1988 (for short 'the Act') does not require production of an NOC and it speaks

only of a request being made to the financier and on no response, a declaration duly filed before the authority under the Act; which the petitioner has complied with. In such circumstances, the petitioner seeks that his application be considered and the permit be renewed.

3. This Court had issued notice to the 2nd respondent who appears and contends that, there is default in the finance availed by the petitioner. If there was default, then, on a request being made to the 2nd respondent, the 2nd respondent ought to have either rejected the petitioner's request or intimated the registering authority about the default committed. Neither of these have been done by the 2nd respondent.

4. A reading of Section 51 of the Act

would indicate that sub-section (6) provides for a protection to the financier insofar as mandating an application to the financier with whom the registered owner has entered into an agreement, for the issuance of an NOC, before *inter alia* applying for renewal of a permit. Sub-section (6) provides that within seven days, financier may issue or refuse to issue such certificate which has to be communicated in writing to the applicant. Sub-section (6) also provides that in the event of no refusal being communicated, it shall be deemed that the financier has no objection.

5. In the present case, it is an admitted fact that, no rejection was made in writing and hence, there is a deemed issuance of the NOC. Sub-section (8) specifically speaks of an application to be made with a declaration, either with the NOC or with the declaration that

no communication has been received from the financier, within a period of seven days specified in that sub-section.

6. The petitioner has filed such a declaration and clause (b) of sub-section (9) specifically mandates renewal of the permit, on such declaration being made. It is also to be noticed that sub clause (a) of sub-section (9), even in the event of rejection by the financier, confers discretion on the authority to either renew or refuse to renew the permit. In the present case, even that discretion need not be exercised, since there is a declaration on record that a communication has been sent to the financier and no response has been received within seven days which brings into operation the deeming provision.

7. The learned Government Pleader submits

that there was no evidence to prove the communication having been sent. The same has been produced in the writ petition. The petitioner shall produce such evidence before the authority and it is conceded by the 2nd respondent financier that the request was received and no response was communicated. In such circumstances definitely, the petitioner's application will have to be considered and the permit renewed forthwith, at any rate, within a period of two weeks from today. The remedies of the financier, to proceed against the vehicle or in the subsequent instances of renewal of permit, would be left open.

The writ petition is allowed. Parties are left to suffer their respective costs.

SD/-

K.VINOD CHANDRAN
Judge

Mrcs

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