

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

WP(C).No. 14739 of 2011 (N)

PETITIONER :

N.S.PRADEEP, VAZHUVELI TIMBERS,
THAMPANOOR, THIRUVANANTHAPURAM.

BY ADVS.SRI.K.V.GOPINATHAN NAIR
SMT.G.CHITRA

RESPONDENTS :

1. THE REGIONAL TRANSPORT AUTHORITY,
THIRUVANANTHAPURAM, REP. BY ITS SECRETARY, PIN-695039.
2. THE SECRETARY,
REGIONAL TRANSPORT AUTHORITY, THIRUVANANTHAPURAM
PIN-695039.
3. L.RADHIKA, T.C.19/1700,
KRRR NO.182, THAMALAM, POOJAPPURA,
THIRUVANANTHAPURAM.
4. K.MURALIDHARAN,
T.C.25/2867, CHEKKALAVILAKAM, VANCHIYOOR P.O.
THIRUVANANTHAPURAM.
5. THE STATE TRANSPORT APPELLATE TRIBUNAL,
ERNAKULAM.

R3 BY ADV. SRI.A.INEES

R4 BY ADV. SRI.SAJEEV KUMAR K.GOPAL

R1 & R2 BY SR. GOVERNMENT PLEADER SRI.SOJAN JAMES

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27-07-2015,
ALONG WITH W.P.(C)No.18368/2011, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :-

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| EXT.P1 | COPY OF THE TEMPORARY PERMIT ISSUED TO THE PETITIONER FROM 20.5.2003. |
| EXT.P2 | COPY OF THE JUDGMENT OF THE 5TH RESPONDENT IN MVAA.No.832/2007 DTD.30.8.2008. |
| EXT.P3 | COPY OF THE JUDGMENT OF THIS COURT IN W.P.(C). No.34902/08 DTD.19.1.2009. |
| EXT.P4 | COPY OF THE JUDGMENT OF THIS COURT IN W.A.866/2009 DTD.30.7.2009. |
| EXT.P5 | COPY OF THE BROAD SHEET PREPARED BY THE FIELD OFFICER REGARDING THE QUALIFICATIONS OF THE APPLICANTS. |
| EXT.P6 | COPY OF THE PROCEEDINGS OF THE 1ST RESPONDENT DTD.23.6.2010 GRANTING REGULAR PERMIT IN FAVOUR OF THE PETITIONER. |
| EXT.P7 | COPY OF THE REGULAR PERMIT ISSUED TO THE PETITIONER VALID FROM 4.10.2010 TO 3.10.2015. |
| EXT.P8 | COPY OF THE APPEAL MEMORANDUM AS MVAA.NO.303/2010 (WITHOUT EXHIBITS) FILED BY THE 3RD RESPONDENT BEFORE THE 5TH RESPONDENT DTD.2.10.2010. |
| EXT.P9 | COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITIONER BEFORE THE 5TH RESPONDENT IN MVAA.NO.303/2010 DTD.2.11.2010. |
| EXT.P10 | COPY OF THE JUDGMENT OF THIS COURT IN W.P.(C) No.7659/2010 DTD.9.4.2010. |
| EXT.P11 | COPY OF THE COMMON JUDGMENT OF THE 5TH RESPONDENT IN MVAA NOS.303/2010 AND 314/2010 DTD.12.5.2011. |
| EXT.P12 | COPY OF THE REGULAR PERMIT ISSUED TO STAGE CARRIAGE KL-01/AX 707 ON THE ROUTE KONCHIRAVILA-VAYAKLIKADA VALID UPTO 29.6.2015. |

RESPONDENTS' EXHIBITS :

Ext.R3(A) COPY OF THE PREAMBLE OF THE DECISION OF THE 1ST RESPONDENT DTD.29.12.1994.

EXT.R3(B) COPY OF THE JUDGMENT OF THIS COURT IN OP.NO.18144/96 DTD.19.11.96.

EXT.R3(C) COPY OF THE JUDGMENT OF THIS COURT IN W.A.1865/96 DTD.10.12.96.

EXT.R3(D)(1)COPY OF THE REGISTRATION CERTIFICATE OF THE 3RD RESPONDENT'S VEHICLE KL-01/AX-707 ITS TAX ENDORSEMENT AND INSURANCE CERTIFICATE.

EXT.R3(D)(2)COPY OF RESIDENCE CERTIFICATE OF THE 3RD RESPONDENT ISSUED BY THE VILLAGE OFFICER, THIRUMALA DTD.6.8.09.

EXT.R3(D)(3) COPY OF THE ELECTION IDENTITY CARD OF THE 3RD RESPONDENT DTD.26.8.09.

EXT.R3(D)(4) COPY OF THE LEASE AGREEMENT DTD.19.10.09 REGARDING THE OFFICE OF THE 3RD RESPONDENT.

EXT.R3(D)(5)COPY OF THE LETTER ISSUED BY SWAMY MOTORS DTD.19.10.09 REGARDING WORKSHOP OF 3RD RESPONDENT.

EXT.R3(D)(6)COPY OF THE INCOME TAX CERTIFICATE AND PAN CARD OF THE 3RD RESPONDENT DTD.23.9.09.

EXT.R3(D)(7)COPY OF THE REGULAR PERMIT OF THE PETITIONER ON THE ROUTE PAPPANCAMCODE-POONTHURA.

EXT.R3(D)(8)COPY OF THE MEMO ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER DTD.14.1.10 TO STOP THE SERVICE.

EXT.R3(D)(9)COPY OF THE REPLY RECEIVED BY THE 3RD RESPONDENT FROM THE STATEPUBLIC INFORMATION OFFICER DTD.26.5.10 REGARDING CHECK REPORTS OF THE PETITIONER'S STAGE CARRIAGE KL-01/S-3020.

EXT.R3(D)(10)COPY OF THE CHECK REPORT OF THE PETITIONER'S STAGE CARRIAGE KL-01/W-3433 DTD.5.2.10.

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EXT.R3(D)(11)COPY OF THE STATEMENT FILED BY THE 3RD RESPONDENT BEFORE THE 1ST RESPONDENT ON 23.6.10.

EXT.R3(D)(12)COPY OF THE ORDER OF THE 5TH RESPONDENT IN M.V.A.R.P.No.153/2009 DTD.17.4.10.

EXT.R3(D)(13)COPY OF THE REPLY RECEIVED BY THE 3RD RESPONDENT FROM THE STATE PUBLIC INFORMATION OFFICER REGARDING CHECK REPORT OF THE PETITIONER'S STAGE CARRIAGES.

EXT.R3(E)COPY OF THE REPLY AFFIDAVIT FILED BY THE 3RD RESPONDENT BEFORE THE 5TH RESPONDENT IN M.V.A.A.No.303/2010 DTD.15.11.2010.

EXT.R3(F)COPY OF THE ELECTION IDENTITY CARD OF THE PETITIONER DTD.23.7.1997.

EXT.R3(G)COPY OF THE ACKNOWLEDGMENT ISSUED BY THE INCOME TAX DEPARTMENT TO THE PETITIONER.

EXT.R3(H)COPY OF THE LETTER SENT BY THE 3RD RESPONDENT TO SRI.R.GOPALAKRISHNAN NAIR DTD.4.6.2011.

EXT.R3(I)COPY OF THE REQUEST MADE BY R.GOPALAKRISHNAN NAIR TO THE 2ND RESPONDENT DTD.8.6.2011 REGARDING REPLACEMENT OF VEHICLE.

EXT.R3(J)COPY OF THE TEMPORARY REGISTRATION OF VEHICLE OF SRI.R.GOPALAKRISHNAN NAIR VIZ.KL-01-V-TEMP-4061.

EXT.R3(K)COPY OF THE LETTER ISSUED BY KONDODY AUTOCRAFT DTD.7.6.2011.

EXT.R3(L)COPY OF THE REGISTRATION CERTIFICATE OF STAGE CARRIAGE NO.KL-01/BC-455 OF SRI.R.GOPALAKRISHNAN NAIR.

EXT.R3(M)COPY OF THE FORUM P.V.A FILED BY SRI.GOPALAKRISHNAN NAIR DTD.5.7.2011 BEFORE THE 2ND RESPONDENT FOR REPLACEMENT OF VEHICLE KL-01/AX-707 BY NEW VEHICLE KL-01/BC-455.

EXT.R3(N)COPY OF THE CHALLAN RECEIPT FOR REPLACEMENT OF VEHICLE DTD.5.7.2011.

EXT.R3(O)COPY OF THE ORDER OF 2ND RESPONDENT DTD.8.7.11 GRANTING REPLACEMENT OF STAGE CARRIAGE NO.KL-01/AX-707 BY ANOTHER STAGE CARRIAGE NO.KL-01/BC-455.

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EXT.R3(P)COPY OF THE REGULAR PERMIT OF SRI.R.GOPALAKRISHNAN NAIR IN RESPECT OF STAGE CARRIAGE NO.KL-01/BC-455 ISSUED BY THE 2ND RESPONDENT ON 8.7.2011.

EXT.R3(Q)COPY OF THE APPLICATION FOR TEMPORARY PERMIT FILED BY THE 3RD RESPONDENT DTD.6.7.11 IN RESPECT OF HER STAGE CARRIAGE NO.KL-01/AX-707.

EXT.R3(R)COPY OF THE PROCEEDINGS OF THE REGIONAL TRANSPORT AUTHORITY, TVPM IN ITEM NO.7 DTD.26.8.11 GRANTING TRANSFER OF PERMIT IN RESPECT OF KL-22/1166 OF THE PETITIONER.

EXT.R3(S)COPY OF THE PROCEEDINGS OF THE REGIONAL TRANSPORT AUTHORITY, TVPM IN ITEM NO.8 DTD.26.8.11 GRANTING TRANSFER OF PERMIT IN RESPECT OF KL-01/AA-6160 OF THE PETITIONER'S WIFE, GANGA PRADEEP.

EXT.R3(T)COPY OF THE REQUEST FOR INFORMATION FILED BY THE 3RD RESPONDENT BEFORE THE PUBLIC INFORMATION OFFICER DTD.24.6.2014 REGARDING STAGE CARRIAGE NO.KL-01/AA-6160.

EXT.R3(U)COPY OF THE INFORMATION RECEIVED FROM THE PUBLIC INFORMATION OFFICER DTD.10.7.2014 IN RESPECT OF KL-01/AA-6160.

EXT.R3(V)COPY OF THE REQUEST FOR INFORMATION FILED BY THE 3RD RESPONDENT BEFORE THE PUBLIC INFORMATION OFFICER DTD.24.6.2014 REGARDING STAGE CARRIAGE NO.KL-22/1166.

EXT.R3(W)COPY OF THE INFORMATION RECEIVED FROM THE PUBLIC INFORMATION OFFICER DTD.10.7.2014 IN RESPECT OF NO.KL-22/1166.

EXT.R4(a)COPY OF THE MEMORANDUM OF MVAA314/2010 (WITHOUT EXHIBITS) SUBMITTED BY THE 4TH RESPONDENT.

EXT.R4(b)COPY OF THE REPLY RECEIVED FROM THE STATE PUBLIC INFORMATION OFFICER DTD.20.7.2011.

EXT.R13(a)COPY OF THE INTERIM ORDER ISSUED BY THIS COURT IN WA.1156/2011 DTD.5.8.2011.

EXT.R13(b)COPY OF THE JUDGMENT OF THIS COURT IN W.A.1156/2011 DTD.11.8.11.

EXT.R13(c)COPY OF THE LETTER SUBMITTED PRODUCING EXT.P13(b) JUDGMENT DTD.18.8.11.

EXT.R13(d)COPY OF THE ORDER OF THE 2ND RESPONDENT DTD.20.8.11.

ANIL K.NARENDRA, J.

W.P.(C)Nos.14739 & 18368 of 2011

Dated this the 27th day of July, 2015

JUDGMENT

The petitioner has filed W.P.(C)No.14739 of 2011 seeking a writ of certiorari to quash Ext.P11 judgment passed by the State Transport Appellate Tribunal, Ernakulam in M.V.A.A.Nos.303 of 2010 and 314 of 2010 and seeking a declaration that he is the most qualified applicant entitled for the grant of permit, thereby confirming Ext.P6 proceedings of the Regional Transport Authority, Thiruvananthapuram dated 23.6.2010, by which the petitioner has been granted regular permit on the route Pongummoodu-Neeramankara in respect of a stage carriage bearing registration No.KL-01-W-3433, in the defaulted vacancy of KL-01/D 9951 and with its timings, and to dismiss M.V.A.A.Nos.303 of 2010 and 314 of 2010 filed by respondents 3 and 4 therein.

2. W.P.(C).No.18368 of 2011 is filed by the 4th respondent in W.P.(C).No.14739 of 2011, seeking a writ of certiorari to quash Ext.P4 proceedings of the Regional Transport Authority (RTA), Thiruvananthapuram dated 22.6.2010 and Ext.P12 order passed by the State Transport Appellate Tribunal, Ernakulam in M.V.A.A.Nos.303 and 314 of 2010 (produced as Exhibits P6 and P11 respectively in W.P.(C) No.14739/2011).

3. The Exhibits referred to in this judgment, unless otherwise mentioned, would be as they appear in W.P.(C).No.14739 of 2011.

4. The petitioner in W.P.(C).No.14739 of 2011 would contend that he was operating a stage carriage in the route Neeramankara-Pongumoodu on the strength of successive temporary permit granted by the RTA, Thiruvananthapuram, from 20.5.2003 onwards. The document produced as Ext.P1 is the temporary permit granted to the petitioner for the period from 20.5.2003 to 19.9.2003. Till the year 1993 City services at Thiruvananthapuram were exclusively operated by the Kerala State Road Transport Corporation (KSRTC). In the year 1993, following a strike of the employees of the KSRTC, private operators were allowed to commence service in the City. Accordingly, the Government decided to introduce 100 regular stage carriage permits to private operators by modifying the existing scheme. Thereafter, the RTA, Thiruvananthapuram decided to introduce two services each on 50 routes. Route No.32 Neeramankara-Pongumoodu is one of such routes and one permit was granted in favour of stage carriage KL-01/D 9951. The permit holder of the above vehicle later discontinued the service. Since there was need for operation of the service on the above route, the petitioner came forward and submitted an application for the grant of temporary permit in order to operate in the said vacancy. It was after considering the application

submitted by the petitioner, the 1st respondent granted him Ext.P1 temporary permit for operating service on the aforesaid route, with effect from 20.5.2003.

5. In the year 2007, the petitioner submitted an application for regular permit in the aforesaid route, in the vacancy of stage carriage bearing Registration No.KL-01/D 9951. The said application was initially considered by the RTA, Thiruvananthapuram on 20.3.2007, which was adjourned and thereafter considered on 19.9.2007. By order dated 19.9.2007, the 1st respondent RTA rejected the application submitted by the petitioner stating that, in the light of notification dated 9.5.2007 new permits can be granted only to KSRTC. Against the said order the petitioner filed appeal before the State Transport Appellate Tribunal, Ernakulam as M.V.A.A.No.832 of 2007. The Tribunal, on a finding that the application submitted by the petitioner is only to regularize the service, which he was operating from 20.5.2003, allowed the appeal by Ext.P2 judgment, setting aside the order of the 1st respondent Regional Transport Authority and the said authority was directed to grant regular permit in favour of the petitioner.

6. Aggrieved by Ext.P2 judgment, the 3rd respondent herein filed W.P.(C).No.34902 of 2008, which was dismissed by Ext.P3 judgment dated 19.1.2009 holding that, since the reasoning for rejection of

petitioner's application by the RTA is totally unsustainable, as found by the Tribunal in Ext.P2 order, the Tribunal is perfectly justified in allowing the appeal by granting regular permit to the petitioner. Ext.P3 judgment of this Court was under challenge in W.A.No.866 of 2009 filed by the 3rd respondent. A Division Bench of this Court in Ext.P4 judgment found that, the proviso to Section 80(2) of the Motor Vehicles Act contemplates that, even where permits are limited, there can be submission of applications by persons desirous of getting permits and their consideration by the RTA and the said provision does not contemplate any notification. On an earlier occasion, when there were vacancies, the RTA has decided to invite applications. Whether such a procedure should be followed or not, in the case on hand, is a matter for the RTA to decide even assuming the said authority has power to grant permit without inviting applications. Accordingly by Ext.P4 judgment the Division Bench of this Court reversed Ext.P2 judgment of the Tribunal and Ext.P3 judgment of a learned Single Judge of this Court and directed the RTA to consider the application submitted by the petitioner in accordance with law, after hearing the 3rd respondent as well as the other persons. In Ext.P4 judgment the petitioner was allowed to continue the service till the RTA takes a decision as directed above, if he was operating on the route.

7. Pursuant to Ext.P4 judgment, the RTA in its meeting held on 21.10.2009 found that the application submitted by the petitioner is maintainable. In the meantime respondents 3 and 4 have suo-motu filed application for the grant of regular permit. On the basis of the claim made by the petitioner and respondents 3 and 4, the Secretary of the RTA conducted an enquiry through the Field Officers regarding the qualification of the petitioner as well as respondents 3 and 4 and prepared Ext.P5 broad sheet. Thereafter, the RTA considered the application in its meeting held on 23.6.2010 and passed Ext.P6 proceedings holding that the petitioner is the most qualified applicant among the three applicants and therefore granted regular permit in his favour. Accordingly, Ext.P7 regular permit was issued to the petitioner on 4.10.2010 with validity till 3.10.2015.

8. Challenging Ext.P6, respondents 3 and 4 filed M.V.A.A.Nos.303/2010 and 314/2010 before the Tribunal. Ext.P8 is the memorandum of appeal filed by the 3rd respondent in M.V.A.A.No.303/2014. Ext.P9 is the counter affidavit filed by the petitioner in M.V.A.A.No.303/2010. Ext.P11 is the judgment passed by the Tribunal dated 12.5.2011 in the appeals filed by respondents 3 and 5. After considering the rival submissions, the Tribunal observed that the petitioner is a permanent resident of Chennai and he comes to

Thiruvananthapuram once in a month or two months as the situation demands and the business of the petitioner is also done by his Managers and therefore, four marks awarded to him has to be deducted. On such a reasoning, the four marks awarded to the petitioner was deducted and the Tribunal set aside Ext.P6 order, by allowing both appeals and further directing to grant regular permit to the 3rd respondent, who is the appellant in M.V.A.A.No.303/2010. The Tribunal has also found that the 4th respondent has already been granted another City Permit and therefore he is not entitled for any further grant, except to set aside Ext.P6. In Ext.P11 judgment, the Tribunal has also relied on the findings in Ext.P10 judgment of this Court in W.P.(C)No.7659/2010 dated 9.4.2010, a Writ Petition filed by one Smt.Ganga Pradeep, who is none other than the wife of the petitioner herein. It is aggrieved by Ext.P11 judgment, the petitioner is before this Court in this Writ Petition seeking various reliefs.

9. The 4th respondent has filed W.P.(C)No.18368/2011 seeking an order to set aside proceedings of the RTA, Thiruvananthapuram dated 23.6.2010, produced as Ext.P6 in W.P.(C)No.14739/2011 and also challenging the judgment of the Tribunal in M.V.A.A. Nos.303/2010 and 314/2010 produced as Ext.P11 in W.P.(C)No.14739/2011 to the extent the aforesaid decision of the RTA was set aside.

10. By order dated 1.6.2011, this Court stayed the operation of Ext.P11 judgment of the Tribunal, which order of stay was vacated by order dated 19.7.2011 in I.A.No.11486/ 2011. The said order was under challenge in W.A.No.1156/2011. By judgment dated 11.8.2011, the said Writ Appeal was disposed of directing the Registry to list the Writ Petition itself for hearing before the appropriate court on 17.8.2011. Status quo obtaining as on 11.8.2011 was directed to be maintained till then. From the order sheet it is seen that the aforesaid order of status quo was not extended after 17.8.2011.

11. A counter affidavit has been filed on behalf of the 2nd respondent supporting the reasoning of the Tribunal in Ext.P11 judgment.

12. A counter affidavit has been filed on behalf of the 3rd respondent, contending, inter alia, that Ext.P11 judgment passed by the Tribunal is perfectly legal and no interference is warranted. The 3rd respondent would rely on various documents which were produced along with the counter affidavit dated 27.6.2011 and additional counter affidavits dated 5.7.2011, 14.7.2011 and 24.10.2014 in order to substantiate her contention that the petitioner is not entitled for award of four months under Rule 145(3) of the Kerala Motor Vehicles Rules, 1989.

13. The 4th respondent has filed a counter affidavit, contending that, the petitioner is not entitled for award four marks in preference to

him. The 4th respondent would also contend that since the petitioner is already having another permit in Thiruvananthapuram city, he is not entitled or eligible for being considered for the grant of a fresh permit. The learned counsel for the 4th respondent would contend that, when there is no difference between grant of a fresh permit and acquisition of a permit by way of transfer, the Tribunal ought not to have concluded that since the petitioner acquired another permit in Thiruvananthapuram city based on transfer, it will not disqualify him from granting a fresh permit.

14. I heard arguments of the learned counsel for the petitioner, learned Government Pleader appearing for respondents 1 and 2, learned counsel for the 3rd respondent and the learned counsel for the 4th respondent who is also the petitioner in W.P.(C)No.18368/2011.

15. The sole issue that arises for consideration in these Writ Petitions is as to the legality or otherwise of Ext.P6 proceedings of the Regional Transport Authority, Thiruvananthapuram and also Ext.P11 judgment passed by the Tribunal in M.V.A.A.No.303/2010 and 314/2010.

16. Rule 145 of the Kerala Motor Vehicle Rules, 1989 deals with grant, variation, suspension and or cancellation of stage carriage permits. Going by sub-section (1), where the number of a stage carriages are fixed under clause (a) of sub-section (3) of Section 71 of the Motor Vehicles Act 1988, in considering the application for stage carriage permits, the

applicant shall first be screened and those who are found to be unsuitable on one or more of the grounds enumerated in clauses (i) and (ii) of sub-rule (1) shall be disqualified, reason being given for decision of the Transport Authority whenever an applicant is disqualified. Clause (i) deals with financial instability and clause (ii) deals with history sheet of the applicant as an operator of the stage carriage service. As per sub-rule (3) of Rule 145, after eliminating the application in the manner laid down in sub-rule (1), marks shall be awarded for assessing the eligibility of the applicant for the grant of permits in the manner enumerated in Clauses A and B. Clause A deals with Sector or Residential qualifications and Clause B deals with Business or Technical Experience in the field of Stage Carriage Operation. Going by sub-para (i) of Clause A, four marks may be awarded to the applicant who has his place of business or residence along or close to the route applied for. Going by sub-para (ii) of Clause A, marks may be awarded to the applicant who has sector qualification on the route applied in the manner enumerated in sub-clauses (a) to (d) of Rule 145A. Going by sub-para.(ii) of Clause B, one mark may be awarded to other applicants who have experience of more than one year in the operation of stage carriages.

17. A reading of Ext.P6 proceedings of the RTA would show that the petitioner was granted four marks considering the fact that his

residence is at a distance of 100 Meters from the route and that his place of business is 500 meters from the route and further he was also granted one mark under Rule 145(3)A (ii). He was also granted one mark as sector qualification under Rule 145(3)A(ii) since he was operating on the route Poonthura-Pravachambalam with a stage carriage bearing registration No.KL-22-1166, which included a portion of 1 KM from Karamana to Neeramankara in the applied route. In addition to this, he was also granted one mark under technical experience under Rule 145(3) B(ii) for stage carriage operation from the year 2006 onwards. Therefore, on a total, the petitioner was awarded four marks in Ext.P6 proceedings.

18. As far as the 3rd respondent is concerned, she was granted four marks on the ground that her place of business is 1300 meters away from the route. Therefore the total marks awarded to the 3rd respondent is four. As far as the 4th respondent is concerned, he was granted three marks on the ground that he has sector qualification on the route Thiruvallam-Sreekaryam, which includes 8 KM from Pongummood to Palayam out of the 13 KM total route length. The 4th respondent was also granted one mark towards technical experience in operating stage carriage service from the year 1995 onwards. Therefore, the 4th respondent also secured a total mark of four.

19. A reading of Ext.P6 order passed by the RTA would show that the petitioner was awarded four marks on the ground that he is residing at 1135, Lakshmi Vihar, 4, Elamkulam, Thiruvananthapuram, as evident from the Electoral ID Card and that his place of business in the address mentioned in the application for permit is only 100 meter away from the route applied for. Therefore, the 2nd respondent concluded that, the petitioner is qualified as far as the residence and place of business factors are concerned. Ext.P6 proceedings would further show that, before the RTA the 3rd respondent has raised a specific allegation that Smt.Ganga Pradeep, wife of the petitioner, had stated in W.P.(C)No.7659/2010 filed before this Court that, she and her husband are permanent residents of Chennai and by Ext.P10 judgment, this Court dismissed W.P.(C) No.7659/2010 with the observation that, it was clear from her overall conduct that she had filed the writ petition deliberately misrepresenting facts. Therefore, the 3rd respondent would contend that since the place of business as well as the residence of the petitioner is not Thiruvananthapuram, he would not have been awarded four marks under Rule 145(3)A(i). Though the 3rd respondent raised a specific contention on the question of entitlement of the petitioner for award of four marks under Rule 145(3)A(i), there is nothing in Ext.P6 proceedings indicate that such a contention was considered by the RTA while passing the aforesaid

order. Instead, based on the mark awarded to the respective applicants, the 2nd respondent proceeded with the matter and came to a conclusion in Ext.P6 that the petitioner is the most qualified among the three applicants and he has to be granted regular permit in the route in question.

20. Other than an Electoral ID Card of the year 1997, the petitioner has not produced any documents to show that his place of business is at Thampanoor as stated in the application or that he is having residence near route in question, so as to award four marks under the aforesaid criteria. On the other hand, the finding of this Court in Ext.P10 judgment makes it explicitly clear that the petitioner is not a resident of Thiruvananthapuram and he cannot be treated as a person having business place at Thiruvananthapuram, for the purpose of awarding marks under Rule 145(3)A(i). It is pertinent to note that, in the writ petition, the petitioner has not stated anything about his place of residence in Thiruvananthapuram. Even the address of the petitioner shown in the cause title of the writ petition is that of his alleged business place at Thampanoor. Similarly, in the affidavit accompanying the Writ Petition also the aforesaid address at Thampanoor is shown.

21. The object of awarding four marks under Rule 145(3)A(i) is to ensure that some preference is given to persons who are residing either in the same locality or who are doing some business in that locality. Such a

benefit under the aforesaid clause cannot be availed by a person who is having only a place of casual residence in that locality or doing business in that locality without any actual involvement, whatsoever. If such persons are granted permit, it would defeat the very object of the aforesaid provision.

22. A reading of Ext.R3(e) reply affidavit filed by the 3rd respondent in M.V.A.A. No.303/2004 would show that the 3rd respondent has taken a specific contention that, the place of residence stated in that appeal is neither the place of residence nor the place of business of the petitioner, so as to claim the benefit under Rule 145(3)A(i) of the Rules. She has also produced various documents like income-tax acknowledgement for filing returns, etc., in order to substantiate her contention that the petitioner is not residing at Thiruvananthapuram. In this Writ Petition as well, the petitioner has not produced any material whatsoever to show that he is having business place at Thiruvananthapuram. To a query made by this Court, the learned counsel for the petitioner submitted that, the timber business at Thampanoor is in the name of his father. Therefore, there is total dearth of materials to indicate that the petitioner is having any actual involvement in the timber business at Thampanoor. It is also to be noticed that the specific stand taken by the petitioner's wife before this Court, as reflected in Ext.P10

judgment, is that she along with the petitioner herein are permanently residing at Chennai. She has absolutely no case that, the petitioner is having any timber business at Thampanoor. On the other hand, she would say that, the petitioner was having Tours and Travels business at Thampanoor, which is being run through his Managers.

23. A reading of Ext.P10 judgment of this Court dated 9.4.2010 in W.P.(C)No.7659/201, a writ petition filed by none other than the wife of the petitioner, would show that her specific stand before this Court in that Writ petition was that, the petitioner herein is a Director of SRM Group of Companies and that she along with her husband is residing at Chennai. She has stated that the petitioner is also having business in the name and style Megha Tours and Travels at Thampanoor, Thiruvananthapuram and the said business is managed by her husband through his Managers. She has also stated that for the past 11½ years she and her husband are residing at Chennai and that her husband comes to Thiruvananthapuram once in a month or two months as the situation demands. It was relying on the observations/findings of this Court in Ext.P10 judgment, the Tribunal in Ext.P11 came to the conclusion that the petitioner is not entitled for award of four marks under Rule 145(3)A(i) of the Rules.

24. A reading of Ext.P11 judgment passed by the Tribunal would show that, another issue that was raised before the Tribunal was whether

there is any violation of policy decision in granting city permit to the petitioner. It was after referring to the statutory provisions under Rule 82 of the Motor Vehicles Act, 1988 which deals with Transfer of permit, the Tribunal came to the conclusion that when the policy decision is only with regard to grant of regular permit in the city and it cannot extend to the holding of other city service permits. In the case of the petitioner he was not granted any city permit. He was operating city permit obtained through transfer under Section 82 of the M.V. Act, which cannot be equated with a fresh grant. Therefore, the Tribunal came to the conclusion that there is no violation of the said policy decision in considering the first applicant for grant of the permit in question. Relying on the statutory provisions in the Act and the Rules made therein, the learned counsel for the 4th respondent would contend that, transfer of permit under Section 82 read with the relevant Rule under the Motor Vehicles Rules is equivalent to grant of a fresh permit and if that be so, the petitioner is having disqualification for getting a fresh permit in Thiruvananthapuram City.

25. Per contra, relying on the principle laid down in judgment of the Apex Court in **Karnataka State Road Transport Corporation v. B.A.Jayaram (AIR 1984 SC 790)**, the learned counsel for the petitioner would contend that the legislative intent of Section 82 of the Act is only to

the effect that the consideration of an application for transfer of permit shall be in accordance with the procedure for grant of a fresh permit, but such transfer cannot be treated as grant of a permit to the applicant concerned so as to disqualify him from seeking grant of city permit. A reading of the judgment of the Apex Court in **B.A.Jayaram's case (supra)**, in the light of the provisions under Section 82 of the Motor Vehicles Act and Rule 178 of the Kerala Motor Vehicles Rules, which deals with transfer of permit, makes it explicitly clear that, the purport of Section 82 read with Rule 178 is only to follow the procedure prescribed for an application for permit while considering an application for transfer of permit. In such circumstances, the finding of the Tribunal in Ext.P11 judgment that the permit obtained by the petitioner under Section 82 of the Act cannot be equated with a fresh grant of permit is legally sustainable.

26. As I have already found, it was relying on the observations/findings of this Court in Ext.P10 judgment, the Tribunal in Ext.P11 judgment came to the conclusion that the petitioner is not entitled for award of four marks under Rule 145(3)A(i) of the Rules. The reasoning of the Tribunal while setting aside the order granting permit to the petitioner is perfectly legal and no interference of this Court is warranted. Similarly, the finding of the Tribunal that though the 4th

respondent was also awarded with four marks, his application is not liable to be considered in view of the policy decision since he has already been granted a City permit is also perfectly legal. It was thereafter, the Tribunal came to the conclusion that the 3rd respondent, who has got four marks, who is a new entrant, is entitled for the grant of permit in respect of her stage carriage. The reasoning of the Tribunal in this regard is neither perverse nor patently illegal warranting an interference by this Court.

27. In such circumstances, I find absolutely no merit to interfere with Ext.P11 judgment of the Tribunal. The Writ Petitions fail and they are dismissed.

No order as to costs.

ANIL K.NARENDRAN, JUDGE

skj/dsn