

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

WP(C).No. 15530 of 2015 (M)

PETITIONER :

**SANEESH A.S.,
AMMUPPILLY HOUSE,
YOUDHAPURAM, KALADY
ERNAKULAM.**

BY ADV. SRI.SAJEEV KUMAR K.GOPAL

RESPONDENT :

**THE SECRETARY,
THE REGIONAL TRANSPORT AUTHORITY
ERNAKULAM - 682 030.**

***ADDL. R2 IMPEADED**

***ADDL.R2. SHIBU
S/O.VARKEY, KAIPARAMPATTU HOUSE, ANGAMALY PO.
ERNAKULAM DISTRICT.**

***ADDL.R2 IS IMPEADED AS PER ORDER DATED 05.06.2015 IN IA 7346/15.**

**R1 BY GOVT. PLEADER SMT. ANITHA RAVINDRAN
ADDL.R2 BY ADV. SRI.K.V.GOPINATHAN NAIR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03-08-2015,
ALONG WITH WP(C) NO. 20262/2015, THE COURT ON 09-10-2015 DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONERS' EXHIBITS :

- EXT. P1: TRUE COPY OF THE REQUEST FOR REVISION OF TIMINGS DATED 22.09.2014.
- EXT. P2: TRUE COPY OF THE JUDGMENT IN WPC.NO.26359/2014 OF THIS HONOURABLE COURT DATED 13.10.2014.
- EXT. P3: TRUE COPY OF THE ORDER OF THE TRIBUNAL IN MVARP 227/2014 DATED 04.02.2015.
- EXT. P4: TRUE COPY OF THE ORDER NO.C3/1443/2015/E ISSUED BY THE RESPONDENT DATED 31.03.2015.
- EXT. P5: TRUE COPY OF THE REQUEST UNDER THE RIGHT TO INFORMATION ACT DATED 07.11.2014.
- EXT. P6: TRUE COPY OF THE REPLY RECEIVED BY THE PETITIONER FROM THE INFORMATION OFFICER DATED 12.11.2014.
- EXT. P7: TRUE COPY OF THE RESOLUTION OF THE MANJAPRA GRAMA PANCHAYAT DATED 20.10.2014.

RESPONDENTS' EXHIBITS :

- EXT. R2(a) COPY OF THE TEMPORARY PERMIT ISSUED TO THE ADDITIONAL 2ND RESPONDENT VALID FROM 21.6.2015 TO 23.10.2015.

//TRUE COPY//

P.A. TO JUDGE

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A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) Nos. 15530 & 20262 of 2015

Dated this the 9th day of October, 2015

J U D G M E N T

1. WP(C) No.15530/2015

- Under challenge in this writ petition is Ext.P4 order passed by the 1st respondent, by which, the petitioner's request for revision of timings of his stage carriage No.KL-02/P-5805 was rejected.
- The petitioner is the registered owner of a stage carriage bearing Reg. No.KL-02/P-5805. He alleges that his request for revision of timings (Ext.P1), though directed to be considered and granted by this Court as per Ext.P2 judgment, was rejected by the 1st respondent. Against the same, the petitioner preferred a revision petition before the tribunal and vide Ext.P3, the tribunal directed to reconsider the issue after convening a timing conference. The petitioner's grievance is that now, as per Ext.P4, the

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1st respondent expressed his inability to settle the objection and accordingly, dismissed the petitioner's request. Hence, this writ petition.

- The additional 2nd respondent filed a counter affidavit as well as an additional affidavit contending that the 1st respondent considered his application for temporary permit in order to operate in place of his regular permit, which has been granted and issued on 24.06.2015. Ext.R2(a) is the copy of the temporary permit. According to him, he commenced operation on the route, Anappara - Angamaly - Perumbavoor, on 24.06.2015 itself in the vacant timings of his regular service, stage carriage bearing Reg.No.KEE-8787. He also contended that the petitioner is not conducting service on the route, Anappara - Angamaly - Annammanada - Mookannur - Munnurpilly, for the past so many years and he has already garaged his vehicle and submitted non use intimation before the authorities. He further

contended that all these facts have been suppressed by the petitioner while filing the writ petition.

2. W.P.(C) No.20262/2015

- The same petitioner has filed this writ petition also. In this case, the petitioner is challenging the temporary permit issued to the 5th respondent (the additional 2nd respondent in the other writ petition) through Exts.P8 & P9 proceedings. The petitioner points out that the application for temporary permit submitted by the 5th respondent was already rejected pursuant to Ext.P5 interim order as could be revealed from Ext.P6. The petitioner points out that however, Ext.P6 was suppressed before this Court by the 5th respondent at the time of final disposal of WP(C) No.12567/2015 by Ext.P7 judgment, on the basis of which, the 5th respondent's application for temporary permit got reconsidered and consequentially, Exts.P8 & P9 proceedings were issued granting temporary permit. According to the petitioner, it is an arbitrary

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exercise of powers by the 2nd respondent. It is pointed out that there is no power vested with the 2nd respondent to reconsider an application, which was already rejected by him unless and until it is being set aside by the competent authority. According to the petitioner, there is an admitted overlapping on Anappara - Angamaly - Perumbavoor route; and therefore, no permit could be granted. The petitioner points out that the said fact was conveniently omitted by the 2nd respondent while issuing Ext.P8. According to the petitioner, the right to get temporary permit de hors the overlapping is only if there is a valid application for renewal. Here, the renewal application (Ext.P4) was submitted with a petition to condone the delay of 12 days. Therefore, according to the petitioner, the grant of temporary permit without considering the overlapping on the said route is per se illegal. Hence, this writ petition.

- The 5th respondent has filed a detailed counter affidavit, justifying the action of the Secretary, RTA.

3. Arguments have been heard.

4. One of the grievances projected by the petitioner is that his request for revision of timings has been rejected by the Secretary, RTA. According to the petitioner, this Court, as per judgment dated 13.10.2014 in WP(C) No.26359/2014 [Ext.P2 in WP(C) No.15530/2015], has directed the Secretary, RTA to consider the request of the petitioner for revision of his own timings as there would be no impediment in considering the same if vacant timings are available, but, definitely, with notice to the rival operators and also subject to preferential claim, if any. A time limit was also fixed. The learned counsel for the petitioner also relied on Ext.P3 order of the STAT in MVARP No.227/2014, which was disposed of setting aside the order of the Secretary and directing to consider afresh the request of the petitioner for revision of timings in respect of his

stage carriage after affording a reasonable opportunity of being heard. According to the petitioner, ignoring the same, the Secretary, RTA has again rejected the petitioner's request.

5. However, it is crucial to note that Ext.P4, which is impugned in WP(C) No.15530/2015, can be subject to a revision before the STAT. Though it was strenuously argued by the learned counsel for the petitioner that the revision under Section 90 is not an effective remedy, as far as the present case is concerned, I am not inclined to accept the same. The clear direction given by this Court, as per Ext.P2, was to consider the petitioner's request only if there is time slot available and subject to preferential claims. What could be discerned from Ext.P4 is that in the timing conference conducted on 31.03.2015, 65 operators participated and in spite of the earnest efforts of the Secretary, RTA, the timings could not be settled. If the petitioner is aggrieved by the same, it is open to the petitioner to approach the tribunal with a

petition under Section 90 of the MV Act to get his grievance redressed.

6. Coming to the challenge against the grant of temporary permit vide Exts.P8 & P9 proceedings in WP (C) No.20262/2015, the learned counsel for the petitioner relied on a Division Bench decision of this Court in **Moideenkutty P.C. & Others v. Secretary and Another** [2012 (2) KHC 317]. It is submitted that the application of temporary permit by the 5th respondent in this case was filed out of time; and therefore, the application for temporary permit could be considered only in cases where the application for renewal are filed within the prescribed period. It was observed by this Court in the aforesaid case that when the application for renewal was filed out of time, the application for temporary permit shall be considered only when the authority is satisfied that the applicant was prevented by good and sufficient cause from making the application for renewal within the time specified. Ext.P10 is the

proceedings dated 26.05.2015 of the RTA, Ernakulam. The renewal application as well as the application for temporary permit were considered in the same meeting. The petitioner points out that all the applications were adjourned and detailed enquiry was ordered though the District Police Chief, Ernakulam Rural, regarding the genuineness of the medical certificate produced. Temporary permit was issued in the name of the 5th respondent as per Ext.P8 pending application for renewal as well as the request to condone delay. Temporary permit was granted to the petitioner on the basis of the recommendation of the Deputy Transport Commissioner for a period of 4 months to operate service on the route, Anappara - Angamaly - Perumbavoor, in the vacant timings of stage carriage bearing Reg.No.KEE-8787 owned by the 5th respondent to facilitate the travelling need of public and students till a final decision on the application for renewal of permit. Accordingly, Ext.P9 was issued. I see no justifiable reason for interfering with

Exts.P8 & P9. The renewal application is pending before the RTA as the genuineness of the medical certificate in support of the petition for condonation of delay is under a proper enquiry. It shall be open to the RTA to consider whether the delay be condoned or not and the application be renewed; and if any order is passed on the same, it shall be open to challenge in appropriate proceedings.

Considering the entire facts and circumstances of the case,

- WP(C) No.15530/2015 is disposed of permitting the petitioner to approach the STAT with a proper petition under Section 90 of the Act challenging Ext.P4; and in the event of filing such a petition within one month from today, the same shall be reckoned as one filed in time; and the same shall be considered and disposed of by the STAT in accordance with law after affording the petitioner and the affected parties an opportunity of being heard.
- WP(C) No.20262/2015 is dismissed. However, the

respondent authority is directed to pass final orders on the renewal application and the application for condoning the delay submitted by the 5th respondent within a period of one month from the date of receipt of a copy of the judgment after affording the petitioner and the 5th respondent an opportunity of being heard.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

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