

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 26TH DAY OF JUNE 2015/5TH ASHADHA, 1937

WP(C).No. 15807 of 2015 (A)

PETITIONER:

FROIDEN DIAZ
S/O PHILIP DIAZ, HOUSE NO 8/153(11/153)
CHIRAMMEL HOUSE, THUNDATHUMKADAVU, VARAPUZHA

BY ADV. SRI.O.D.SIVADAS

RESPONDENTS:

1. THE SECRETARY
REGIONAL TRANSPORT AUTHORITY, ERNAKULAM PIN 682 030

2. ANAS K.K.
KATTAKATH HOUSE, PERUVARAM, NORTH PARUR 682 013

R2 BY ADV. SRI.K.V.GOPINATHAN NAIR
R1 BY GOVERNMENT PLEADER T.R.RAJESH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 26-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 15807 of 2015 (A)

APPENDIX

PETITIONERS' EXHIBITS

- P1- THE TRUE COPY OF THE TEMPORARY PERMIT DATED 27.9.2014
- P2- THE COPY OF THE TIME SHEET ISSUED TO STAGE CARRIAGE NO.KL 06
C/2276
- P3- THE COPY OF THE APPLICATION FOR REGULAR PERMIT DATED 16.1.2015
- P4- THE COPY OF THE APPLICATION FOR TEMPORARY PERMIT DATED 16.1.2015
- P5- THE COPY OF THE JUDGMENT DATED 18.2.2015 IN WPC NO.4708/2015
- P6- THE COPY OF THE PROCEEDINGS DATED 6.3.2015
- P7- THE COPY OF THE JUDGMENT DATED 31.3.2015 IN MVAA 77/2015
- P8- THE COPY OF THE RELEVANT PORTION OF THE AGENDA FOR THE MEETING OF
THE REGIONAL TRANSPORT AUTHORITY
- P9- THE COPY OF THE TIME SCHEDULE PRODUCED BNY THE 2ND RESPONDENT IN
WPC 7827/2015
- P10- THE COPY OF THE ORDER DATED 17.3.2015 IN WPC 7827/2015
- P11- THE COPY OF THE JUDGMENT DATED 31.3.2015 IN WPC 9562/2015
- P12- THE COPY OF THE PROCEEDINGS DATED 20.4.2015
- P13- THE COPY OF THE TEMPORARY PERMIT DATED 8.5.2015 ISSUED TO THE
2ND RESPONDNET

RESPONDENT(S) ' EXHIBITS NIL

TRUE COPY

CSS/

p.s.to judge

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 15807 of 2015

Dated this the 26th of June, 2015

J U D G M E N T

Challenging Ext.P12 proceedings of the respondent proposing timings of the 2nd respondent's stage carriage, the petitioner has come up before this Court.

2. The petitioner alleges that he was operating on the basis of a temporary permit with a set of timings. Continuance of the said temporary permit was declined on the ground that there was overlapping on the notified sector. Thereafter, he applied for modified application for regular permit. This, according to the petitioner, was avoiding all the objectionable overlapping. He also applied for a temporary permit. The petitioner alleges that initially, the Secretary, RTA rejected the application. However, the State Transport Appellate Tribunal interfered and set aside the order and directed reconsideration of the matter. The petitioner alleges that the 1st respondent has not issued any temporary permit

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pursuant to the order of the Tribunal. The petitioner's grievance is that now the 2nd respondent is attempting to get timings of the petitioner, which was never sought by him along with his application for regular permit. The petitioner points out that the 2nd respondent can claim timings suggested along with his application, which is evident from the agenda. Therefore, the petitioner is challenging Ext.P12 proceedings dated 20.04.2015, by which the Secretary of the RTA had issued temporary permit for 20 days to the 2nd respondent with Ext.P9 set of timings, which, according to the petitioner, is not the proposed set of timings.

3. The 2nd respondent filed a detailed counter affidavit, wherein it was contended as follows;

The petitioner is not entitled for any relief sought in the writ petition and he did not disclose the real and true facts while preferring the writ petition. It was stated that the 2nd respondent has submitted application for the grant of a regular permit to operate service on the route North Parur

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- Vyttila Hub during December, 2011. Along with the application, he suggested a set of timing also for the operation of the service taking into consideration the timing prevailing at that time. The said application was considered by the RTA, Ernakulam, in its meeting held on 04.04.2012. But, instead of granting the regular permit, Ext.R2 (a) proceedings dated 04.04.2012 was issued to modify the proposed route through Manjummelkavala instead of Varappuzha Bridge; it is contended. Aggrieved by the direction contained in Ext.R2(a), the 2nd respondent filed Ext.R2(b) representation on 11.07.2012 requesting that the permit be granted through Varappuzha Bridge itself, for which there is no legal inhibition instead of modifying the route. Thereafter, in spite of the repeated reminders, his application was not included for consideration whereas permits were granted by the RTA through Varappuzha Bridge on the above said route for various other operators; it

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is contended. In view of the inordinate delay in considering his application, the 2nd respondent filed WP(C) No.17489/2014 before this Court; and this Court, as per Ext.R2(c) judgment dated 04.08.2014, directed the RTA, Ernakulam to consider the adjourned application as per order dated 04.04.2012 as expeditiously as possible, at any rate, within a period of two months from the date of receipt of the copy of the judgment. The grant in favour of the petitioner herein was not at all interfered also. The petitioner obtained the regular permit on the aforesaid route though his application and grant of permit was on 06.01.2014. In compliance with Ext.R2(c) judgment, the RTA, Ernakulam considered the application of the 2nd respondent and granted regular permit subject to settlement of timings as per Ext.P8. The timing, which was proposed in the year 2011, has been just mentioned in the agenda. It was further contended that between 2011 and

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2015, a number of other services has been introduced on the aforesaid route; and therefore, as there is no relevancy as far as the proposed timing is submitted in the year 2011, a set of timing as per Ext.P9 for consideration of the authority while settling the timings was suggested by the 2nd respondent. Since there was delay in issuing regular permit, the 2nd respondent again approached this Court with WP(C) No.7827/2015; and this Court directed the 1st respondent to convene a timing conference within a period of three months from 17.03.2015 and to issue regular permit after settlement of timings. It was also directed that if the timing could not be settled within period of three months, necessarily, the granted permit itself has to be issued with the proposed timings subject to finalization of the same in a timing conference. Ext.P10 judgment of this Court is now in force.

4. Arguments have been heard.

5. It was submitted by the learned Government Pleader that the timing conference was scheduled to be held on 09.06.2015 for finalization of the timing in respect of grant of permit in favour of the 2nd respondent as per Ext.P8. Now, the said timing conference was adjourned because of the pendency of this writ petition.

6. It is crucial to note that the petitioner has not been granted a regular permit on the route in question in spite of Ext.P3 application. The application was submitted on 16.01.2015 and he has not operated even on a single day on the route, North Parur - Vyttila Hub, on the basis of the timing, which the 2nd respondent is already operating. It is true that the petitioner has obtained temporary permit on the route, Angamaly - Noarth Parur, on the basis of an order obtained from this Court without disclosing the fact that the said route overlaps the notified route though he is not entitled for a permit in violation of the scheme.

7. It is settled law that no operator is entitled for a particular timing unless and until it is allowed by the

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authority. The mere proposal made by the petitioner for a permit, that too, not so far granted by the authorities, would not confer any right to claim the timing, which is being operated by the 2nd respondent as per Ext.P12.

Therefore, the writ petition is disposed of permitting the petitioner to appear before the Regional Transport Authority concerned, if he has any subsisting grievance in the matter, who shall after hearing both sides take an appropriate decision.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-