

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

WP(C).No. 20460 of 2015 (F)

PETITIONER :

**ALI HASSAN, AGED 63 YEARS,
S/O.BEERANKUTTY MUSALIYAR, PATTUPARA HOUSE,
OTTATHARA P.O., KODUR, MALAPPURAM DISTRICT - 676 504.**

**BY ADVS.SRI.G.HARIHARAN
SRI.PRAVEEN.H.**

RESPONDENTS :

- 1. THE SECRETARY, REGIONAL TRANSPORT AUTHORITY,
MALAPPURAM - 676 505.**
- 2. REGIONAL TRANSPORT AUTHORITY, MALAPPURAM
REPRESENTED BY ITS SECRETARY - 676 505.**

R1 & R2 BY GOVERNMENT PLEADER SMT. K.A. ASAJEETHA

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 22-07-2015, THE COURT ON 29-07-2015 DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1:** COPY OF THE REGULAR PERMIT DATED 19.11.2008 ISSUED BY THE IST RESPONDENT IN THE NAME OF THE PETITIONER TO OPERATE ON THE ROUTE KOZHIKODE-PALAKKAD.
- EXHIBIT P2:** COPY OF THE PROCEEDINGS OF THE RTA, KOZHIKODE MADE IN ITEM NO.24 OF THE MEETING HELD ON 25.11.11 GRANTING CONCURRENCE.
- EXHIBIT P3:** COPY OF THE APPLICATION DATED 1.7.15 SUBMITTED BY THE PETITIONER BEFORE THE IST RESPONDENT UNDER RULE 174 OF THE KERALA MOTOR VEHICLE RULES.
- EXHIBIT P4:** COPY OF THE RECEIPT DATED 2.7.15 ISSUED BY THE IST RESPONDENT FOR RS. 5,650/- IN THE NAME OF THE PETITIONER FOR REPLACEMENT OF THE VEHICLE.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A.TO JUDGE

bp

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.20460 of 2015

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Dated this the 29th day of July, 2015

JUDGMENT

Aggrieved by the refusal on the part of the first respondent to consider Ext.P3 application for replacement filed by the petitioner, the petitioner has come up before this Court.

2. The petitioner is a bus operator and registered owner of bus bearing No.KL-10/Q-5369 which was covered with a regular permit valid upto 23.10.2011 to operate on the route between Kozhikode and Palakkad. On the eve of expiry period for regular permit, the petitioner made an application for renewal of permit to operate on the above route within the time stipulated. Though the RTA, Kozhikode in its meeting held on 25.11.2011 had granted concurrence vide decision taken in item No.24 of the said meeting, the permit has not been renewed alleging arrears of tax for the period commencing from 1.4.2012 to 30.10.2012 and from 1.1.2013 to 31.3.2013; it is alleged.

3. Aggrieved by the demand notice from the first respondent and the delay in considering the application for renewal of permit on the ground of pendency of tax arrears, the petitioner approached this Court with W.P(C) No.12426 of 2014 which is pending.

4. The petitioner had filed an application for replacing the vehicle to operate on the route in question with bus bearing No.KL-5/AA-9099 which is a 2010 model vehicle with the same seating capacity that of the outgoing vehicle. However, the first respondent has refused to consider the same insisting for getting NOC from the outgoing vehicle.

5. In this context, the petitioner points out that though there is Section 51 of the Motor Vehicles Act which is specially enacted for protecting the interest of the financiers, no where there is a stipulation for obtaining NOC from the financier. It is with this background, the petitioner has approached this Court.

6. In the statement filed by the first respondent, it was contended that the stage carriage which is presently operated by

the petitioner i.e., KL-10/Q5369 is under hire purchase agreement with Sakthi Finance Ltd., Kurikkal Plaza, Opp; Court Complex, Kacheripadi, Manjeri and on 6.4.2011 the financier has filed an objection against the consideration of replacement of vehicle and surrender of regular permit in respect of the stage carriage. The objection was not withdrawn by the financier till date; it was contended.

7. Arguments have been heard.

8. It is evident from the rival submissions that the petitioner, who was granted permit with endorsement as stage carriage KL 10/Q-5369 has submitted application for renewal of the permit on 14.6.2011 which was considered by the RTA on 28.7.2011. The Secretary was permitted to obtain concurrence from sister RTA, Kozhikode and Palakkad. On 19.9.2014, the petitioner submitted concurrence granted by sister RTA, Kozhikode and Palakkad for endorsing the renewal of regular permit. However, the applicant has not produced the NOC from the financier as stipulated in the KMVR 172(2). Based on the concurrence, renewal was allowed

and the proceedings were issued on 22.9.2014 directing the petitioner to produce the current records with NOC from the financier. However, he has not produced the records of the vehicle as well as the NOC from the financier for endorsing the renewal.

9. It is crucial to note that the financier has filed objection against the consideration of replacement of the vehicle. Though it was strenuously argued by the learned counsel for the petitioner that there is no provision under Section 51 of the Act, which is specifically enacted for protecting the interest of the financiers, it does not stipulate for obtaining NOC from the financiers. In the light of the objection raised by the financier, the respondent was justified in not considering the application for renewal.

10. The learned Senior Government Pleader on instructions submitted that the petitioner has not submitted any application for hypothecation/termination in Form No.35 issued by the financier which is mandatory as per Section 51(3) of the Motor Vehicles Act, while making the application for entering termination of agreement of hire purchase. It was also submitted that already a

complaint has been registered in the Consumer Redressal Forum, Malappuram as C.C No.338 of 2014 between the petitioner and the financier company.

11. In the light of the above, this Court is of the definite view that the petitioner is not entitled to the relief prayed for.

In the result, the writ petition fails and accordingly, it is dismissed.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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