

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

WP(C).No. 20796 of 2015 (Y)

PETITIONERS :

1. IDUKKI DISTRICT PRIVATE BUS OPERATORS ASSOCIATION,
THODUPUZHA-685 584,
REPRESENTED BY ITS GENERAL SECRETARY.
2. NELSON PAUL, AVIRAPATTU HOUSE, PAREEKANNI P.O.,
KOTHAMANGALAM.

BY ADV. SRI.I.DINESH MENON

RESPONDENTS :

1. THE REGIONAL TRANSPORT OFFICER, IDUKKI/
SECRETARY, REGIONAL TRANSPORT AUTHORITY, IDUKKI-685 603.
2. THE SECRETARY, REGIONAL TRANSPORT AUTHORITY,
MOOVATTUPUZHA-688 661.
3. THE SECRETARY, KALLOORKKADU GRAMA PANCHAYATH,
KALLOORKKADU-686 668.
4. THE CIRCLE INSPECTOR OF POLICE, KALLOORKKADU-686 668.

Addl.5. WILSON M.C.,
PTA PRESIDENT, ST.JOHN'S U.P SCHOOL, KALOOR,
RESIDING AT MANKUDIYIL HOUSE, KAVAKKADU PO.,
MUVATTUPUZHA, ERNAKULAM DISTRICT - 686 668.

Addl.6. SANTY BABY,
MEMBER, AAYAVANA GRAMA PANCHAYAT,
RESIDING AT PARUNTHANIYIL HOUSE, KALOOR PO.,
KALLOORKKADU, MUVATTUPUZHA,
ERNAKULAM DISTRICT - 686 668.

Addl.7. PRAKASH K.B.
KILIKKATTU THOTTATHIL HOUSE, KALOOR PO., KALLOORKKADU,
MUVATTUPUZHA, ERNAKULAM DISTRICT - 686 668.

Addl.8. ABUBAKER C.M.,
CHOLACKAL HOUSE, KALOOR PO., KALLOORKKADU,
MUVATTUPUZHA, ERNAKULAM DISTRICT - 686 668.

(ADDL.R5 TO R8 ARE IMPEADED AS PER ORDER DATED 24.07.2015 IN IA 10488/15.)

WP(C).No. 20796 of 2015 (Y)

Addl.9. JOBY VARGHESE

S/O.VARGHESE, VEEPANATTU HOUSE, PAINGOTTUR PO.
KOTHAMANGALAM.

(ADDL.R9 IMPEADED AS PER ORDER DATED 03.08.2015 IN IA 11215/15.)

ADDL BY ADV. SRI.V.G.ARUN

ADDL BY ADV. SRI.T.R.HARIKUMAR

R3 BY ADV. SRI.PAUL K.VARGHESE

R3 BY ADV. SMT.A.A.GEETHA

R5 BY ADV. SRI.M.JITHESH MENON

BY GOVERNMENT PLEADER SRI.V.K.RAFEEK

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS :-

EXT.P1: TRUE COPY OF THE PERMIT OF THE 2ND PETITIONER ON THE ROUTE PERINGASSERI-ADIMALI WITH RESPECT TO STAGE CARRIAGE KL-44C 1445.
EXT.P2: TRUE COPY OF THE TIME SCHEDULE OF THE 2ND PETITIONER ON THE ROUTE PERINGASSERI-ADIMALI WITH RESPECT TO STAGE CARRIAGE KL-17 4545.
EXT.P3: TRUE COPY OF THE DECISION DATED 13.2.2015 GRANTING SANCTION TO THE NEW BUS STAND.
EXT.P4: ROUGH SKETCH OF THE ROUTE.
EXT.P5: TRUE COPY OF THE REQUEST SUBMITTED BY THE PETITIONERS BEFORE THE AUTHORITIES NOT TO INSIST TOUCHING THE NEW BUS STAND UNLESS AND UNTIL THE PERMIT IS VARIED OR THE TIME SCHEDULES ARE MODIFIED.
EXT.P6: TRUE COPY OF THE COMMUNIATION DATED 25.6.2015 ISSUED BY THE REGIONAL TRANSPORT OFFICER, IDUKKI COMPELLING THE PETITIONERS TO TOUCH THE NEW BUS STAND.

EXTS.P9, P10 & P11 PRODUCED ALONG WITH I.A.No.14401/2015 : COPY OF THE LIST OF VEHICLES OPERATING TOUCHING THE NEW BUS STAND, COPY OF THE NOTICE DTD.2.9.2015 & COPY OF THE PERMIT DTD.17.9.2015 RESPECTIVELY).

RESPONDENTS' EXHIBITS:-

EXT.R5(a) COPY OF THE PHOTOGRAPHS SHOWING THE AMENITIES PROVIDED AT THE KALOOR BUS STAND.

EXT.R5(b) COPY OF THE PHOTOGRAPHS OF THE POINT AT WHICH THE PASSENGERS ARE FORCED TO BOARD AND ALIGHT PRIVATE STAGE CARRIAGES.

EXT.R5(c) COPY OF THE SKETCH OF THE ROAD LEADING UP TO THE KALOOR BUS STAND.

EXT.R5(d) COPY OF THE REPRESENTATION FILED BY THE RESIDENTS OF KALOOR BEFORE THE 1ST RESPONDENT DTD.9.6.2015.

EXT.R5(e) COPY OF THE COMPLAINT FILED BY THE RESIDENTS OF KALOOR BEFORE THE 1ST RESPONDENT DTD.14.7.2015.

EXT.R5(f) COPY OF THE REPRESENTATION FILED BY THE ADDL.6TH RESPONDENT BEFORE THE 1ST RESPONDENT DTD.16.7.2015.

EXT.R5(g) COPY OF THE REPRESENTATION FILED BY THE ADDL.5TH RESPONDENT BEFORE THE 1ST RESPONDENT DTD.16.7.2015.

EXT.R5(h) COPY OF THE REPRESENTATION FILED BY ADDL.RESPONDENTS 7 & 8 BEFORE THE 1ST RESPONDENT DTD.20.7.2015.

EXT.R5(i) COPY OF THE NEWS ITEM PUBLISHED IN THE MALAYALA MANORAMA DAILY DTD.11.10.2015.

EXT.R5(j) COPY OF THE NEWS ITEM PUBLISHED IN THE MANGALAM DAILY DTD.11.10.2015.

ANIL K.NARENDRA, J.

W.P.(C)No.20796 of 2015

Dated this the 15th day of October, 2015

JUDGMENT

The petitioners have approached this Court in this Writ Petition seeking a writ of certiorari to quash Ext.P3 decision dated 13.2.2015 of the R.T.A., Muvattupuzha and Ext.P6 direction of the Regional Transport Officer, Idukki, the 1st respondent herein dated 25.6.2015. The petitioners have also sought for a writ of mandamus commanding the R.T.A., Muvattupuzha to reconsider the question of touching of new bus stand at Kaloor by the operators operating on the route Thodupuzha-Adimali sector. The further relief sought for in this Writ Petition is a writ of mandamus commanding respondents 1, 3 and 4 to consider Ext.P5 objection submitted by the petitioners and take a decision with notice to them and also to the other interested operators within a time frame fixed by this Court.

2. By order dated 9.7.2015 this Court passed an interim order to the effect that, the operation of Ext.P6 shall be kept in abeyance for three weeks.

3. Later I.A.No.10488 of 2015 was filed by the President of the P.T.A. of St.John's U.P.School, Kaloor along with 3 others seeking an order to implead them as additional respondents 5 to 8 in the Writ

Petition. The aforesaid interlocutory application was allowed on 24.7.2015 and they were impleaded as additional respondents 5 to 8.

4. Still later another operator plying stage carriage in the route Paingottu-Thodupuzha has filed I.A.No.11215 of 2015 seeking an order to implead him as additional 9th respondent. The said application was allowed on 3.8.2015 and he was impleaded as additional 9th respondent.

5. On 3.8.2015, when the Writ Petition came up for consideration, it was brought to the notice of this Court that the matter stands posted for consideration in the next R.T.A. meeting scheduled to be held on 6.8.2015. Recording the aforesaid submission the matter was posted to 11.8.2015 and the interim order was extended till that date. Thereafter, by order dated 21.8.2015, when it was pointed out by respondents 6 to 8 that on account of non-entry of private stage carriages to the bus stand in question, the public is facing difficulties, especially in the light of Onam Season, the interim order passed by this Court was lifted for a period of two weeks and it was also ordered that the same shall continue after the expiry of the aforesaid period of two weeks. By the aforesaid order this Court has also ordered that, if it is found by the R.T.A. that on account of all the stage carriages passing through the varied routes, traffic congestion is created, it shall be open to the R.T.A. to control the number of vehicles to be operated through the same route

subject to public convenience during Onam season.

6. In the affidavit accompanying I.A.No.14288 of 2015, additional respondents 5 to 8 have raised a contention that, when a statutory remedy is available against Ext.P3 order passed by the 1st respondent, the petitioners are not legally entitled to approach this Court under Article 226 of the Constitution of India.

7. I heard arguments of the learned counsel for the petitioners, the learned Government Pleader appearing for respondents 1 to 4, the learned counsel for additional respondents 5 to 8 and also the learned counsel appearing for the additional 9th respondent.

8. The sole issue that arises for consideration in this writ petition is as to the legality or otherwise of Ext.P3 decision taken by the 1st respondent dated 13.02.2015 and also the consequential direction of the Regional Transport Officer, Idukki in Ext.P6 by which the private stage carriage operators were directed to touch the new bus stand at Kaloor, constructed by the 3rd respondent Panchayat, on the route Thodupuzha - Adimaly Centre.

9. It is challenging Ext.P3 proceedings of the RTA, Muvattupuzha and Ext.P6 communication issued by the Regional Transport Officer, Idukki, the petitioners have approached this Court in this writ petition seeking various reliefs. One of the contention raised by the learned

counsel for respondents 5 to 8 is that, Ext.P3 order passed by the RTA, Muvattupuzha is an order which can be challenged before the State Transport Appellate Tribunal under Section 90 of the Motor Vehicles Act. Then the learned counsel for the petitioner would submit that, though a revision can be filed against Ext.P3 order before the Tribunal, the petitioners have chosen to challenge the said order before this Court since, by the time the petitioners came to know about Ext.P3 order passed by the RTA, the time limit of thirty days prescribed under Section 90 to file a revision before the Tribunal had already expired.

10. Section 90 of the Motor Vehicles Act provides for a revision before the Tribunal if a person is aggrieved by an order passed by the authorities under the Motor Vehicles Act. The first proviso to Rule 90 provides that, the Tribunal shall not entertain any application from a person aggrieved by an order of a State Transport Authority or Regional Transport Authority, unless the application is made within thirty days from the date of the order. The second proviso to Section 90 provides further that, the Tribunal may entertain the application after the expiry of the said period of thirty days if it is satisfied that the applicant was prevented by good and sufficient cause from making the application in time. Therefore the provisions under Section 90 of the Act referred to above make it explicitly clear that though a time limit of thirty days is prescribed under

Section 90 for filing a revision, in appropriate cases where sufficient cause is shown for the delay in approaching the Tribunal, it can entertain revision after condoning the delay.

11. In the case on hand, Ext.P3 order of the RTA, Muvattupuzha is one dated 03.02.2015. The present writ petition is filed before this Court on 09.07.2015, much after the expiry of thirty days prescribed in Section 90 of the Act. When a statutory remedy of revision is provided against Ext.P3 order passed by the RTA, if the petitioners are aggrieved by the said order, it is for them to avail such statutory remedy by filing appropriate revision before the Tribunal, if necessary by filing an application for condonation of delay. In that view of the matter, the challenge made against Ext.P3 order is not maintainable in a writ petition filed under Article 226 of the Constitution of India.

12. As far as Ext.P6 proceedings of the Regional Transport officer, Idukki is concerned, it is only an order consequential to Ext.P3 order passed by the RTA. If that be so, when a challenge made against Ext.P3 order is not maintainable in a writ petition filed under Article 226 of the Constitution of India, the conclusion is irresistible that, Ext.P6 consequential order passed by the Regional Transport Officer, Idukki cannot also be challenged in this writ petition.

In the result, the writ petition fails and the same is dismissed without prejudice to the right of the petitioner, to challenge Ext.P3 before the Tribunal.

ANIL K.NARENDHAN, JUDGE

skj/jv

True copy

P.A to Judge