

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

WP(C).No. 21706 of 2015 (K)

NAME AND ADDRESS OF THE PETITIONER(S) :

**SUDHEER,
KILIYAN VILAKOM, VAKKAM P.O, VAKKOM,
THIRUVANANTHAPURAM DISTRICT.**

BY ADV. SRI.O.D.SIVADAS

NAME AND ADDRESS OF THE RESPONDENT(S) :

- 1. THE REGIONAL TRANSPORT AUTHORITY,
THIRUVANANTHAPURAM (RURAL), ATTINGAL-695 101.**
- 2. THE SECRETARY,
REGIONAL TRANSPORT AUTHORITY, THIRUVANANTHAPURAM(RURAL)
ATTINGAL- 695 101.**
- 3. THE MANAGING DIRECTOR,
RKV MOTORS AND TIMBERS (P) LTD., THIRUVANANTHAPURAM.**

*** ADDITIONAL R4 TO R5 IMPEADED**

- 4. S.RAJASEKHARAN NAIR, AGED 56 YEARS,
S/O.SREEDHARAN PILLAI, KUNNUMPURATH VEEDU,
MARKET ROAD, ATTINGAL, THIRUVANANTHAPURAM.**
- 5. M.S.BINDU, AGED 46 YEARS,
D/O.V.K.MADHAVAN, LAXMI NIVAS, KANNAMANAGALAM,
VAKKOM P.O., THIRUVANANTHAPURAM.**

*** ADDITIONAL R4 AND R5 ARE IMPEADED AS PER ORDER DATED 30.07.2015
IN I.A.NO.10878 OF 2015.**

**R1 & R2 BY SR.GOVERNMENT PLEADER SMT.ANITHA RAVEENDRAN
R3 BY ADV. SRI.MILLU DANDAPANI
ADDL.R4 & R5 BY ADV. SRI.M.JITHESH MENON**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 06-08-2015, THE COURT ON 27-10-2015 DELIVERED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXT.P1: THE COPY OF THE PROCEEDINGS DATED 17/07/2003.**
- EXT.P2: THE COPY OF THE REQUEST DATED 04/05/2015.**
- EXT.P3: THE COPY OF THE REPRESENTATION DATED 23/04/2015
SUBMITTED BEFORE THE SECRETARY, RTA.**
- EXT.P4: TRUE COPY OF THE REPRESENTATION DATED 23/04/2015
SUBMITTED BEFORE THE RTA**
- EXT.P5: TRUE COPY OF THE REPRESENTATION DATED 23/04/2015
SUBMITTED BEFORE THE TRANSPORT COMMISSIONER.**
- EXT.P6: TRUE COPY OF THE APPLICATION DATED 09/04/2015.**
- EXT.P7: THE COPY OF THE PROCEEDINGS DATED 13/07/2015.**
- EXT.P8: PHOTOGRAPH OF THE 3RD RESPONDENT'S SERVICE.**

RESPONDENT(S)' EXHIBITS :

- EXT.R3(A): TRUE COPY OF THE RELEVANT PORTION OF ITEM 37 OF AGENDA
OF THE RTA MEETING HELD ON 18.04.2015 AT TRIVANDRUM.**
- EXT.R3(B): TRUE COPY OF THE REPRESENTATION SUBMITTED BY
THE 3RD RESPONDENT, DATED 26.03.2004.**
- EXT.R3(C): TRUE COPY OF THE ROUGH SKETCH OF THE PERMIT OPERATED
BY THE 3RD RESPONDENT.**
- EXT.R3(D): TRUE COPY OF THE REPRESENTATION SUBMITTED BY ONE
MR.RAJASEKHARAN NAIR TO THE RTO, ATTINGAL,
DATED 05.06.2015.**
- EXT.R3(E): TRUE COPY OF THE MASS PETITION CONSISTING OF 216
INHABITANTS OF PANAYILKADAVU.**
- EXT.R3(F): TRUE COPY OF THE REPRESENTATION SUBMITTED TO THE RTA,
ATTINGAL, DATED 27.05.2015.**
- EXT.R3(G): TRUE COPY OF THE REPORT DATED 08.06.2015 OF THE RTA,
ATTINGAL TO THE CHAIRMAN & DISTRICT COLLECTOR AND
DEPUTY TRANSPORT COMMISSIONER AND REPORT OF
THE VILLAGE OFFICER, DATED 18.06.2015.**

//TRUE COPY//

P.A.TO JUDGE.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 21706 of 2015

Dated this the 27th day of October, 2015

J U D G M E N T

Aggrieved by Ext.P7, the petitioner has come up before this Court.

2. The petitioner is an existing stage carriage operator on the route between Attingal and Varkala via Vakkam. There are other four stage carriage services operating on the sector. The 3rd respondent is an existing operator on the route between Attingal and Varkala; and the permit is issued in respect of stage carriage bearing Reg.No.KL 01 AB/5556. The petitioner alleges that the 3rd respondent is proceeding to Panayalkadavu, violating the permit issued to him. On a complaint by the petitioner, a stop memo was issued to the 3rd respondent, which was later vacated by Ext.P7 order. The petitioner alleges that Ext.P7 was issued without notice and without hearing the petitioner. He further alleges that the 3rd respondent is

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conducting illegal operation and he has neither applied for variation of permit nor granted variation by the RTA. According to the petitioner, the 3rd respondent has no manner of right to conduct service on the route other than granted to him. On the basis of Ext.P7, the 3rd respondent has now resumed operation just ahead of the petitioner's service; it is alleged. According to the petitioner, the RTA exceeded its jurisdiction and issued Ext.P7 in an illegal manner protecting the interest of the 3rd respondent. He further alleges that the 3rd respondent is curtailing his trip to Kaikkarakadavu and the said curtailment is causing difficulties to the travelling public. Therefore, according to the petitioner, Ext.P7 order is illegal, arbitrary and liable to be quashed. Hence, this writ petition.

3. The 3rd respondent filed a counter affidavit contending as follows;

RKV Motors & Timbers (P) Ltd. was in the field of stage carriage operation for the last 82 years whereas the petitioner has come into the field only in the year 2012. In

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2012, he was granted the first permit on the route between Attingal and Varkala Temple via Panayilkadavu. By that time, a new bridge was commissioned at Panayilkadavu. On the opening of the bridge, the petitioner was granted another permit on the route, Palachira and Attingal via Panayilkadavu. It is after this, one more permit was taken on the route, Chirayinkil and Kappil H.S., which was subsequently surrendered. After availing the permit on the route, Palachira - Attingal, he sought to curtail the trip between Panayilkadavu and Attingal, which is the common sector between the petitioner and the 3rd respondent. Initially, as per the time granted, he had to start the service in the morning at 5.42 am and the last trip was at 11 pm. After operating for a period of one year, he sought the above variation reducing the running time from 6.10 am up to 7.26 pm. In order to show that this item was included at the meeting held on 18.04.2015, the 3rd respondent has produced Ext.R3(a), which is the copy of the relevant portion of item 37 of agenda of the RTA meeting held at Thiruvananthapuram on 18.04.2015.

He pointed out that the petitioner has not produced his permit or his time schedule before this Court. If he

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has any grievance regarding the time/slot issued to him in comparison to that of the 3rd respondent, he could have raised objection regarding the same before the appropriate forum; it is contended. However, till the month of May, 2015, he has not raised any objection against the operation of the 3rd respondent, which is now protesting as an illegal operation.

As seen from Ext.P1, the permit on the route between Attingal and Vakkom had been issued in 2003. There were two services between Attingal and Panayilkadavu and both these operators failed to proceed from Vakkom to Panayilkadavu and they curtailed that portion since it was not remunerative for them to go up to Panayilkadavu. Due to public demand, the 3rd respondent ventured to go up to Panayilkadavu solely for carrying the passengers in order to enable them to fetch ferry from Panayilkadavu to Akathumuri. From Panayilkadavu area, every day, a minimum of 50 students go to attend the school at Vakkom since there are no sufficient school facilities in that area. Since it is very remote area, the service of the 3rd respondent was the only source of transportation available to them to reach Vakkom as well as to proceed from Vakkom to Panayilkadavu. For this

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operation, the 3rd respondent has not collected any fair from Vakkom to Panayilkadavu and this operation was done only during the interval time without affecting the existing running time. In fact, since there was no variation as such from the route granted by the authority invoking the provision under Section 72, he had submitted Ext.R3(b) representation dated 26.03.2004, requesting the authority to initiate suo moto proceedings to attach further conditions to his permit.

It is pointed out that the distance from Vakkom to Panayilkadavu is only 1.75 km. It is only after the opening of the bridge at Panayilkadavu, the petitioner ventured to apply for a permit took precede up to Varkala. Since the 3rd respondent is doing a free service without collecting any fair between Vakkom and Panayilkadavu, no fair stage was fixed. Therefore, the petitioner was also deprived from collecting fare between Vakkom and Panayilkadavu. This is also an added reason for deprecating the service of the 3rd respondent being operated between Vakkom and Panayilkadavu. Ext.R3(c) is the copy of a rough sketch of the permit, which would give a clear idea regarding the operation that is being carried out by the 3rd respondent from Vakkom to Panayilkadavu.

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According to the 3rd respondent, the petitioner is trying to mislead this Court stating that the 3rd respondent's permit includes the portion, Kaikkarakadavu, also; and the averment that the service is being extended to Panayilkadavu by curtailing the Kaikkarakadavu portion, is incorrect. He points out that Ext.P1 itself would show that his permit does not include the area Kaikkarakadavu. In Ext.P2 representation submitted by the Member of Ward No.3 has also made such incorrect statement. According to the 3rd respondent, Ext.P2 itself shows that the Member has been instigated for filing the complaint by the petitioner. After giving the stop memo, when the 3rd respondent did not proceed to Panayilkadavu, including the Ward Member, Sri. Abi Shailaj, tried to take his vehicle up to Kaikkarakadavu to substantiate their contention raised in Ext.P2. Since law and order situation arose, the vehicle was taken to Kadakkavoor Police Station. The 3rd respondent could convince the police that his permit does not cover the area, Kaikkarakadavu. Hence, on the very next day, the vehicle was released from the Police Station. Since the police did not charge any case against the Member and others, who had compelled his vehicle to conduct operation up to

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Kakkarakadavu, Sri.Biju, Conductor, has preferred a private complaint before the JFCM, Varkala.

The complainant in Ext.P2 is the Ward Member, who is hailing from Panayilkadavu area and fully aware about the operation that was being done by the 3rd respondent and knows all the circumstances that he was doing service freely in the interest of public. Despite being a Member of that Ward, solely for assisting the petitioner, he had submitted Ext.P2 representation without protecting the interest of the members of his own ward; it is contended.

When the 3rd respondent was issued with check reports and stop memo, on receipt of the stop memo immediately on 04.06.2015, he gave instructions to his crew not to proceed the vehicle up to Panayilkadavu. When his service, which is taking trip to Panayikadavu was abruptly stopped, the public was very adversely affected. On the same day, they made oral request to him for resuming the service on the very next day itself. As he could not accede to their request, Ext.R3(d) representation by Mr.Rajasekharan Nair as well as Ext.R3 (e) mass petition consisting of 216 signatures of the inhabitants of Panayilkadavu were made to the Secretary, RTA as well as to the Chairman, copies of which were

forwarded to the 3rd respondent. On the basis of the mass petition, the Secretary, RTA has issued Ext.P7 order. It is only on the basis of Ext.P7 that the 3rd respondent resumed service with effect from 16.07.2015.

It is further pointed out that when the 3rd respondent was issued with the show cause notice, he had given Ext.R3(f) reply on 27.05.2015, in which also, he reiterated his request for varying the condition of his permit taking suo moto action and he would readily comply with any such direction in the interest of public. It is further pointed out that it is discernible from Ext.P7 that further consideration of Ext.P7 would take place in the next meeting.

In Ext.P7, there is a reference regarding the enquiry made by the Secretary, RTA, Attingal and also by the MVI, Attingal and also a report of the Village Officer. In Ext.R3 (g) report submitted by the Secretary dated 08.06.2015, he made a suggestion that the services, which are operating without permit to Kaikkarakadavu as well as to Panayilkadavu, could be regularized by giving appropriate variation for the same thereby redressing the grievance of the public. Ext.R3(g) report has been submitted to the Chairman and also to the Deputy Transport Commissioner,

who are the members of the RTA. Though in that report, it is stated that only 38 trips are being conducted by 12 stage carriages, according to the 3rd respondent, it is not fully correct. He pointed out that his four stage carriages conduct 38 trips together per day besides the petitioner's service.

4. The additional respondents 4 & 5, who subsequently got impleaded, are supporting the case of the 3rd respondent.

5. The petitioner filed a reply affidavit controverting the contentions in the counter affidavit filed by the 3rd respondent.

6. Arguments have been heard.

7. The writ petition is filed challenging Ext.P7 order passed by the Secretary of the RTA pursuant to the decision of the District Collector, who is the Chairman of the RTA. The petitioner points out that the Chairman of the RTA has no jurisdiction to issue an order and he cannot act as an appellate authority against the decision of the Secretary, RTA. It was argued that the 3rd

respondent was issued with a regular permit on the route between Attingal and Vakkom and he can operate only as per the said permit. It was further argued that the 3rd respondent was operating on a route, which is not authorized by the permit and the same is an illegal operation warranting proceedings under Section 86 of the Motor Vehicles Act for cancellation of the permit. It was also pointed out that the 3rd respondent has not applied for variation of permit even now and he conducts illegal operation through a sector, which is not authorized by permit. The grievance of the petitioner is that he is an operator on the route between Attingal and Varkala via Vakkom; and the 3rd respondent is operating just ahead of the petitioner's service to Panayilkadavu; and according to the petitioner, he, being an existing operator, has got every right to challenge the illegal operation of the 3rd respondent.

8. The learned senior counsel appearing for the 3rd respondent as well as the learned counsel for the additional respondents would submit that the residents of

Panayilkadavu are depending on the service operated by the 3rd respondent; and the said service was operated up to Panayilkadavu on the basis of the demand made by the public. It was also pointed out that the portion from Vakkam to Panayilkadavu is suffering from dearth of services; and on the demand made by the local people that the 3rd respondent started operating. It was further pointed out that the operation of the said service was only due to the demand made by the local inhabitants, that too, without charging any additional fare. Therefore, it was pointed that the operation of the service is beneficial to the travelling public of Panayilkadavu area and they are depending upon the said service heavily.

9. The service of the 3rd respondent stopped operation on the basis of a stop memo issued by the 2nd respondent, following a complaint made by the petitioner. As stoppage of service had affected the people of the locality considerably, they have preferred a complaint before the District Collector, the Chairman of the RTA, who, considering the difficulties of the local people and

also taking into account the fact that the said service has been operating to Panayilkadavu for so many years even without charging any additional fare, directed the 2nd respondent to maintain status quo and also placed the matter before the 1st respondent in the next meeting. The direction passed by the Chairman resulted in the impugned order.

10. It is crucial to note that apart from the complaint filed by the petitioner, the people in the locality have not raised any complaint against the operation of the service by the 3rd respondent. The benefits, which would accrue to the travelling public, was the sole aspect considered by the 1st respondent while taking a decision resulted in Ext.P7. If a variation is required in the interest of the travelling public, the same could be granted by the 1st respondent by varying the permit of the operator suo moto. It is crucial to note that the 3rd respondent was operating the service up to Panayilkadavu from 2004 onwards and the petitioner came to the field after a period of 10 years in the sector.

As the 3rd respondent is operating service solely in the interest of public without collecting any fare between the area, Vakkom to Panayilkadavu, and as there is no time clash between the petitioner's and the 3rd respondent's services, this Court is of the view that there is no scope for interference in this matter. Moreover, the writ petition is filed after a period of three years from the date of commencement of operation by the petitioner.

Therefore, the writ petition fails; and accordingly, it is dismissed.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-