

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936

WP(C).No. 21982 of 2014 (W)

PETITIONER :

**AJITHKUMAR,
MEMBER, WARD NO.XV,
KALLUVATHUKKAL GRAMA PANCHAYATH,
KOLLAM.**

BY ADV. SRI.K.V.GOPINATHAN NAIR

RESPONDENT(S):

- 1. THE REGIONAL TRANSPORT AUTHORITY, KOLLAM,
REPRESENTED BY ITS SECRETARY, PIN-691 001.**
- 2. THE SECRETARY,
REGIONAL TRANSPORT AUTHORITY,
KOLLAM, PIN-691 001.**
- 3. NAVAS,
DHHARUSALAM, KALAKKODE P.O., BHOOOTHAKULAM,
KOLLAM, PIN-691 302.**

**R1 & R2 BY GOVERNMENT PLEADER SRI.R.RANJITH
R3 BY ADV. SRI.M.JITHESH MENON**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 26-02-2015,ALONG WITH WP(C).NO.23930 OF 2014, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 : TRUE COPY OF THE ROUGH SKETCH OF THE ROUTE.
- EXHIBIT P2 : TRUE COPY OF THE PROCEEDINGS OF THE 1ST RESPONDENT
DT. 8-12-2010 REJECTING THE APPLICATION.
- EXHIBIT P3 : TRUE COPY OF THE JUDGMENT OF THE STATE TRANSPORT
APPELLATE TRIBUNAL IN MVAA NO.265/2011 DT. 20-1-2012.
- EXHIBIT P4 : TRUE COPY OF THE FORWARDING LETTER GIVEN BY THE LOCAL
MEMBER OF LEGISLATIVE ASSEMBLY BEFORE THE DISTRICT
COLLECTOR WHO IS THE CHAIRMAN OF THE 1ST RESPONDENT
DT. 29-4-2012.
- EXHIBIT P5 : TRUE COPY OF THE RESOLUTION PASSED BY THE KALLUVATHUKKAL
GRAMA PANCHAYATH DT. 4-8-2012.
- EXHIBIT P6 : TRUE COPY OF THE PROCEEDINGS OF THE 1ST RESPONDENT
DT. 7-8-2012 GRANTING VARIATION OF PERMIT TO THE 3RD
RESPONDENT.
- EXHIBIT P7 : TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN
WPC.NO. 24016/2012 DT. 12-10-2012.
- EXHIBIT P8 : TRUE COPY OF THE APPEAL MEMORANDUM AS MVAA NO.383/2012
DT. 16-10-2012.
- EXHIBIT P9 : TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE 3RD
RESPONDENT BEFORE THE TRIBUNAL DT. 5-11-2012.
- EXHIBIT P10 : TRUE COPY OF THE REPLY AFFIDAVIT FILED BY THE PETITIONER
BEFORE THE TRIBUNAL DT. 6-11-2012.
- EXHIBIT P11 : TRUE COPY OF THE REPLY GIVEN BY THE 2ND RESPONDENT THAT
THE 3RD RESPONDENT'S SERVICE IS THE ONLY SERVICE
OPERATING ON THE ABOVE ROUTE DT. 23-11-2012.
- EXHIBIT P12 : TRUE COPY OF THE JUDGMENT OF THE STATE TRANSPORT
APPELLATE TRIBUNAL IN MVAA NO.383/2012 DT. 30-11-2012.
- EXHIBIT P13 : TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN
WPC.NO. 29642/2012 DT. 20-12-2012.
- EXHIBIT P14 : TRUE COPY OF THE REPLY AFFIDAVIT FILED BY THE PETITIONER
BEFORE THE TRIBUNAL DISPUTING EVEN THE REPORT OF THE
MOTOR VEHICLES INSPECTOR DT. 1-8-2014.

WP(C).NO.21982/2014

**EXHIBIT P15 : TRUE COPY OF THE JUDGMENT OF STATE TRANSPORT APPELLATE
TRIBUNAL IN MVAA 383/12 DT. 7-8-2014.**

RESPONDENT(S)' EXHIBITS

**EXHIBIT R3(A): TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT DATED
30/4/2012.**

**EXHIBIT R3(B): TRUE COPY OF THE REPORT OF THE MOTOR VEHICLES INSPECTOR
DATED 12/7/2012**

**EXHIBIT R3(C): TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT DATED
10/10/2013.**

**EXHIBIT R3(D): TRUE COPY OF THE LETTER ISSUED BY THE PETITIONER DATED
25/8/2014.**

/TRUE COPY/

P.A.TO.JUDGE

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K. VINOD CHANDRAN, J.
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**W.P.(C) Nos.21982 of 2014 - W &
23930 of 2014 - M**
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Dated this the 26th day of February, 2015

J U D G M E N T

The petitioners in both the writ petitions are said to be members of the Kalluvathukkal Grama Panchayath, who espouse the cause of the public, insofar as the curtailment and extension sought by the 3rd respondent, a regular permit holder. The documents are referred to from W.P.(C)No. 23930 of 2014.

2. The 3rd respondent has a regular permit in the route Kalluvathukkal – Kollam, passing through Meenambalam and Mavinmoodu as is revealed from Ext.P1. The 3rd respondent sought a variation of the route insofar as curtailment between Kalluvathukkal - Meenambalam - Mavinmoodu and an extension from Mavinmoodu to Nellettil Kadavu. The petitioners alleged that the said bus service was one, existing for the last 30 years and had been the means of transport for the residents of Kalluvathukkal

Grama Panchayath.

3. The dispute between the regular permit holder and the Panchayath, which projects the public need has a checkered carrier. The petitioner had initially sought for variation with curtailment and extension as indicated above, which was rejected as per Ext.P2 on the ground that, the same would adversely affect the travelling public. It is not clear as to whether the petitioners or the public were, at any time heard, before Ext.P2 rejection was made. The rejection was challenged by the 3rd respondent before the State Transport Appellate Tribunal in which Ext.P3 judgment was passed directing re-consideration, afresh.

4. Public spirited persons and Organisations are said to have made various representations before the various authorities as indicated in Ext.P4. Ext.P5 is a resolution passed by the Kalluvathukkal Grama Panchayath. The specific grievance projected in the representations as also the resolution of the Panchayath is that, between

Kalluvathukkal and Meenambalam this is the only bus service, which is operating.

5. On re-consideration being directed, the RTA heard the petitioner's Counsel as also the representatives of the Panchayath, the students Union, the Vyapari Vyavasayi Ekopana Samithi and a local club, who jointly ventilated the grievance of the public. It was found that there are 22 stage carriages conducting service through Meenambalam. The objections raised by the public were found to be unsustainable. It was also noticed that, the proposed extension is in an ill served route and the same would be conducive to public need.

6. When Ext.P6 order dated 07.08.2012 was sought to be issued, one of the petitioners herein, approached this Court with a contention that there was undue haste on the part of the authorities to issue permit, without granting certified copy to the Panchayath. This Court hence directed issuance of a copy to the Panchayath

and also directed the Panchayath to approach the Tribunal. The issuance of the proceedings were stayed for a period of two weeks, till the stay petition is disposed of. The Panchayath was before the Tribunal with Ext.P8. On a consideration of the various aspects projected by the parties, the Tribunal by Ext.P12 rejected the claim. Again the Panchayath member was before this Court with a writ petition in which Ext.P13 order was passed, remanding the matter, to the Tribunal with certain observations. The Tribunal on remand, passed Ext.P15 order, which is challenged herein.

7. The learned Counsel appearing for the petitioners would urge that, in fact serious prejudice is caused to the students and other commuters in the area, by curtailment of the service between Meenambalam and Kalluvathukkal since, it is the only bus service operating in the said route. It is also contended that the observations in Ext.P13 judgment were not complied with by the Tribunal

when passing Ext.P15. The learned Counsel for the respondent however would contend that, despite the curtailment having been granted in the year 2012, he has been unable to operate in the varied route for reason only of the Panchayath, having stalled the proceedings in one way or another.

8. To consider the sustainability of Ext.P15 order one has to first look at the observations made by this Court in Ext.P13. This Court found that the Tribunal did not evaluate the resolution passed by the Panchayath, in the proper perspective and the contention that the 3rd respondent's service was the only service in the sector Meenambalam – Kalluvathukkal is not seen discussed or appreciated. The over emphasis given to the report of the Motor Vehicle Inspector and the lack of consideration of the grievance of the public was high lighted.

9. The impugned order of the Tribunal, Ext.P15 has to be analysed in that perspective. The Field Officer's

report was specifically noticed to find that between Nellettilkadavu to Mavinmoodu; the extended route, there were no stage carriage services. There was only one K.S.R.T.C bus and one private stage carriage in between the said places. The Field Officer's report having stated the extension to be a valid one, conducive to the needs of the public, also found that the curtailment could not prejudice the public, since, there were altogether 22 stage carriages conducting several trips through Meenambalam. Kalluvathukkal was noticed as a town situated in the National Highway. Several K.S.R.T.C and private stage carriages were stated to be operating between Meenambalam and Kalluvathukkal.

10. The specific claim of the various public spirited Organisations including the Panchayath was that the 3rd respondent's service is the only service operating between Meenambalam and Kalluvathukkal. However, the Field Officer's report specifically indicated that, there are

too K.S.R.T.C buses operating in that sector and that two private stage carriages are also being operated between Kalluvathukkal and Chirakkara temple passing through Sasthrimukku, a junction at Meenambalam.

11. In such circumstance, it cannot be said that the observations made in Ext.P13 were not taken into account by the Tribunal. The curtailment sought between Meenambalam and Kalluvathukkal was found to be not affecting the general public. Ext.P13 judgment had in fact deprecated the action of the Tribunal, in giving over emphasis to the Motor Vehicles Inspector's report without considering the objections of the public. Though the very same report was relied on by the Tribunal, it is to be noticed that, the Tribunal has specifically noticed the grievances of the general public and found the same to be not valid on the basis of the report itself. The appellant who appeared before the Tribunal has not produced any material to contradict the statements in the Filed Officer's report.

12. In such circumstance, two authorities having examined the question on facts and having found that the variation is one conducive to public need, this Court does not find any reason to interfere with the matter. The public grievance projected on the other side is found to be negatived. The report of the Field Officer itself indicates that, there are sufficient number of stage carriages servicing the route.

This Court does not find any reason to interfere with the impugned order. Hence both the writ petitions would stand dismissed.

Sd/-
K. VINOD CHANDRAN,
JUDGE

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P.A to Judge