

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

WP(C).No. 27351 of 2008 (F)

PETITIONER:

**SMT.VINITHA VIKRAMAN,
CHIRAYATH HOUSE,
KUTTUR.P.O, THRISSUR.**

BY ADV. SRI.I.DINESH MENON

RESPONDENT(S):

- 1. THE STATE TRANSPORT APPELLATE TRIBUNAL,
ERNAKULAM.**
- 2. THE REGIONAL TRANSPORT AUTHORITY,
THRISSUR.**
- 3. THE SECRETARY,
REGIONAL TRANSPORT AUTHORITY,
THRISSUR.**

BY SENIOR GOVT. PLEADER SRI.BIJU MEENATTOOR

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 24-02-2015, THE COURT ON 09-03-2015 DELIVERED
THE FOLLOWING:**

mbr/

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1 : TRUE COPY OF THE REGULAR PERMIT ISSUED TO THE PETITIONER.

EXHIBIT P2 : TRUE COPY OF THE JUDGMENT IN WP(C)NO.14148/05
DATED 24.5.2005.

EXHIBIT P3 : TRUE COPY OF THE PROCEEDINGS DATED 16.8.2006.

EXHIBIT P4 : TRUE COPY OF THE APPEAL MEMORANDUM IN MVAA NO.749/06.

EXHIBIT P5 : TRUE COPY OF THE JUDGMENT IN MVAA NO.749/2006
DATED 6.12.2006.

EXHIBIT P6 : TRUE COPY OF THE JUDGMENT IN WP(C)NO.6887/08 DATED 26.3.2008.

EXHIBIT P7 : TRUE COPY OF THE PROCEEDINGS DATED 2.6.2008.

EXHIBIT P8 : TRUE COPY OF THE APPEAL IN MVAA NO.452/2008.

EXHIBIT P9 : TRUE COPY OF THE COMMON JUDGMENT IN MVAA NO.452 AND 467
OF 2008 DATED 21.8.2008.

EXHIBIT P10 : TRUE COPY OF THE PROCEEDINGS DATED 20.11.2002.

RESPONDENT'S EXHIBITS: - NIL

/TRUE COPY/

P.A. TO JUDGE

mbr/

K.VINOD CHANDRAN, J

W.P.(C).No. 27351 of 2008

Dated 9th March, 2015

JUDGMENT

The petitioner is aggrieved with the consistent rejection of a replacement application which, ultimately, was upheld by Ext.P9 which is impugned herein.

2. Admittedly, the petitioner was a stage carriage operator operating vehicle bearing registration No.KEH 1591 in the route Marottichal - Eravimangalam. Petitioner's regular permit was valid till 07.11.2006. The petitioner filed a replacement application on 08.04.2005, well within the validity of Ext.P1 permit. The petitioner was before this Court seeking consideration of the replacement application. This Court by Ext.P2, directed the application to be considered and by way of an interim order, it was specifically stipulated that, the permit shall not be cancelled

till the consideration. Hence, as on 24.05.2005, when the writ petition was disposed of, permit was not cancelled, is the contention.

3. The cursory consideration made by the RTA in Ext.P3 was challenged in Ext.P4 and set aside and remanded in Ext.P5 judgment of the Tribunal. The RTA having dragged its feet in re-considering the application, again the petitioner was before this Court with Ext.P6 wherein a direction was issued to dispose of the application within six weeks. A detailed order at Ext.P7 was passed.

4. To better understand Ext.P7, background facts are necessary. Long prior, in the year 2000, stipulation was brought in by the various Regional Transport Authorities (RTAs) that no stage carriages having completed 15 years from the date of original registration, shall be operated on the permits issued by the RTAs under the Motor Vehicles

Act, 1988. The same was the subject matter of challenge in a batch of writ petitions. The challenge was negatived by a Division Bench in **Raghavan v. R.T.O, Kollam (2001 (2) KLT 209)**. The Division Bench upheld the RTA's power to make such restrictions. It was noticed that the orders of the RTA's challenged therein had granted six months time for replacement of vehicles, in the case of renewal of permits. The Division Bench, in mitigation of the hardship visited on the stage carriage operators granted two years time from the respective dates of the decision of the RTA's for replacement.

5. A further challenge was made on the ground that the different dates prescribed by the different RTA's were discriminatory. The stipulation of a specific period for replacing the vehicle, when renewal is granted was also challenged. A learned Single Judge rejected the

challenge by judgment dated 10.07.2003. An appeal too was rejected by the judgment reported in **Rashinlal v. R.T.A Kozhikode (2004 (1) KLT 1091)**.

The direction of the learned single Judge, while upholding the stipulation, was noticed by the Division Bench in paragraph 3, which is extracted hereunder :

“Regarding the validity of the permits consequent upon the non replacement of old vehicles within the time granted by the Court and the Government, the learned single Judge has held that in the absence of any stipulation in the permit or in the general order issued by the Regional Transport Authorities stating that failure to replace the vehicles within the stipulated time will result in automatic cancellation of the permit, it would be open to the Regional Transport Authorities to publish a general notification stating that in the event of non replacement of old vehicles within the time stipulated by the Regional Transport Authority and extended by the Court and by the Government the permits granted would stand automatically cancelled on expiry of the due date for replacement of old vehicles. The learned single Judge has also observed that the Regional Transport Authority may give reasonable extension for the validity of the period depending on the steps taken by the operator for purchase of chassis,

construction of body, obtaining clearances etc., for resuming operation with a vehicle or later model vehicles. The learned single Judge has further observed that in such cases, the Regional Transport Authorities are authorized the Secretary, Regional Transport Authority to issue substitute temporary permit to those who are ready to operate vehicles in the said vacancies. At the same time, the learned single Judge has directed that after 31st July 2003 none of the stage carriage operators whose time for replacement of the old vehicles is offered should be allowed to operate the vehicle which is more than 15 years of old age".

6. The petitioner is said to have applied for replacement of the vehicle which had crossed the age of 15 years on 8.4.2005, long after the aforesaid judgment of the Division Bench delivered on 11.02.2004. The outer limit for replacing the petitioner's vehicle expired on 31.03.2004 going by the further extension granted by the STA, pursuant to the aforesaid directions of the learned Single Judge. In Ext.P7, the rejection was made on the basis of the said notification issued by the STA pursuant to the directions of the learned single Judge, and the judgment in Rashinlal (supra). It is

stated in Ext.P7 that pursuant to the judgment of the learned single Judge, on 23.12.2003 it was decided by the STA to direct the RTAs to allow three months time from 1.1.2004 to replace vehicles in a permit which then was endorsed with a stage carriage of more than 15 years age. It was also directed that the permit will stand cancelled, if the vehicle had attained the age of 15 years and not replaced within that time.

7. The learned counsel for the respondents, would rely on Aysha v. RTA, Kasargode (2006 (3) KLT 1013) wherein it has been stated that there can be no embargo on the permit holder, for not replacing a vehicle within the validity of the expiry of the permit, for reason only of the vehicle, which was endorsed in the permit, having completed 15 years. Therein, on the expiry of a permit, the wife and son sought transfer of the permit. The application for transfer of the permit

as also replacement of the vehicle, could not be proceeded with due to non issuance of the NOC, by the financier and various other difficulties expressed by the petitioners therein. It was in such circumstance, that it was held that there would be no embargo in producing a new vehicle within the validity of the period of the permit and the non production of the vehicle alone would not lead to revocation of a permit.

8. The petitioner cannot take shelter under the said principle since the orders issued by the RTAs were upheld by a Division Bench in **Raghavan** (supra) on 28.03.2001. The Division Bench granted two years time from the date of order of the RTA's which were in the year 2000. Hence the replacement ought to have been made before the end of 2002. The date when the petitioner's vehicle crossed the 15 year mark is not clear. But Ext.P2 noticed that he ought to have replaced the vehicle by 31.03.2004;

obviously as per the order issued by the STA. In Ext.P1 permit dated 08.11.2001, there was a stipulation that the vehicle ought to be replaced on it attaining 15 years.

9. The restriction for use of the vehicles above 15 years was upheld in Raghavan (supra), wherein two years time was further directed to be granted to effect replacement. The subsequent challenge was on the ground that different dates prescribed by the various RTA were discriminatory. After the Division Bench judgment on 11.02.2004 there was still time till 31.03.2004 to profer a replacement, as per the decision of the STA on 23.12.2003, which directed replacement within three months from 01.01.2004, and on failure, cancellation of the permit itself.

10. In the instant case, what assumes significance is that, the notification was brought

out initially and different time was allowed by various RTAs for replacement of the vehicles. Subsequently, the said time was extended as is discernible from paragraph 10 of **Rashinlal** (supra). Though in the present case the power under Section 72 was not exercised by the Government, the High Court initially in **Raghavan** (supra), granted such extension for two years which was then extended by the Government for a further period of six months. Eventually, a subsequent challenge was disposed of by the learned single Judge by judgment dated 10.07.2003. The Division Bench decision in **Rashinlal** (supra) came on 11.02.2004. The STA's order granted time for replacement till 31.03.2004 with threat of cancellation of permit, if not replaced. The petitioner applied for replacement and renewal only on 08.04.2005. There is no question of the RTA condoning the delay since the STA's order resulted in automatic cancellation.

11. The learned Government Pleader points to the counter affidavit which states that the permit stood cancelled on 21.05.2002 for reason of no replacement of a vehicle. However, petitioner has produced Ext.P10 by which it is indicated that RTA, Thrissur had, on 20.11.2002, granted variation to the subject vehicle being vehicle having registration No.KEH 1591. However, the replacement having not been effected within three months from 01.01.2004, the permit stood cancelled. True this Court, by Ext.P2 judgment continued the interim orders granted in W.P.(C).14148 of 2005, not to cancel the permit. The interim order obviously was granted in a writ petition filed in 2005 and the permit stood cancelled on 31.03.2004, as directed by the STA, and affirmed in **Rashinlal** (supra). The effect of cancellation on 31.03.2004 could not have been effaced by an interim order not to effect cancellation; passed in 2005. The interim order was

not to revive the permit. There can be no consideration of renewal made after that.

The writ petition is dismissed. Parties are left to suffer their respective costs.

Sd/-

K.VINOD CHANDRAN
Judge

Mrcs

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