

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

MONDAY, THE 7TH DAY OF SEPTEMBER 2015/16TH BHADRA, 1937

WP(C).No. 24250 of 2015 (E)

PETITIONER:

USMAN, MADASSERY HOUSE,
P.O.ANAMANGAD, MALAPPURAM.

BY ADV. SRI.STALIN PETER DAVIS

RESPONDENTS:

1. REGIONAL TRANSPORT AUTHORITY,
MALAPPURAM REPRESENTED BY
ITS SECRETARY, PIN - 676 505.

2. JAFFER P., PATTUPURA HOUSE,
OTTATHARA, KODUR P.O.,
MALAPPURAM - 676 516.

R2 BY ADV. SRI.SAJEEV KUMAR K.GOPAL
BY GOVERNMENT PLEADER SMT. K.A. SANJEETHA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 : A TRUE COPY OF THE JUDGMENT IN WPC.23071/13 DT 12-9-2013 OBTAINED CLEARANCE BY THE 2ND RESPONDENT.
- EXHIBIT P2 : A TRUE COPY OF THE JUDGMENT IN WPC.888/2015 OBTAINED BY THE PETITIONER IN THE VACANCY OF THE 2ND RESPONDENT FOR OPERATING TEMPORARY PERMIT.
- EXHIBIT P3 : A TRUE COPY OF THE RELEVANT PORTION OF THE ORDER GRANTING RENEWAL OF PERMIT TO 2ND RESPONDENT BY THE 1ST RESPONDENT WITHOUT A VALID PERMIT VEHICLE WAS OBTAINED CLEARANCE BY THE 2ND RESPONDENT IN 2013, BY OVERRULING THE PETITIONER'S OBJECTION.
- EXHIBIT P4 : A TRUE COPY OF THE JUDGMENT IN WP(C) 28150/2012 DATED 27.11.2012 OBTAINED BY MR. MUHAMMED ABDUL RUF, HE IS PERMIT HOLDER KL-53/3221
- EXHIBIT P5 : A TRUE COPY OF COPY SEND BY RAUF TO THE TRANSPORT COMMISSIONER DT. 15.09.2012, STATING THAT HE IS THE PERMIT HOLDER KL-53/3221.
- EXHIBIT P6 : A TRUE COPY REQUEST FILED BEFORE THE 1ST RESPONDENT ON 30.03.2015 FOR NON CONSIDERATION OF HIS APPLICATIONS.

RESPONDENT(S)' EXHIBITS

- EXHIBIT R2(a) : TRUE COPY OF THE JUDGMENT IN WP(C) 23071/2013 OF THIS HONOURABLE COURT DATED 12.09.2013.
- EXHIBIT R2(b) : TRUE COPY OF THE JUDGMENT IN WP(C) 12384/2015 OF THIS HONOURABLE COURT DATED 17.04.2015.
- EXHIBIT R2(c) : TRUE COPY OF THE PERMIT.

/TRUE COPY/

P.A. TO JUDGE.

“C.R.”

V.CHITAMBARESH, J.

W.P (C) No.24250 of 2015

Dated this the 7th day of September, 2015

J U D G M E N T

seldom do I entertain a writ petition under Article 226 of the Constitution of India when the petitioner has an effective statutory remedy unless there are compelling reasons. I am however constrained to interfere with the decision of the Regional Transport Authority since all the statutory provisions have been thrown to the wind. This is particularly so since the parties are not at variance on facts and only the interpretation of the statutory provisions applicable remains to be considered.

2. The second respondent was operating a stage carriage service with his vehicle KL-53/3221 on the route Manalaya Harijan Colony - Pattambi on the strength of a regular permit. The second respondent applied for clearance certificate obviously to transfer the vehicle to another keeping the regular permit under suspended animation. This was followed by W.P.(C) No.23071/2013 on the file of this Court wherein a clearance certificate was directed to be issued by Ext.P1 judgment dated 12.9.2013. The validity of the regular permit was to expire on

WP(C) No. 24250/2015

15.4.2014 and hence the second respondent had applied for its renewal on 20.3.2014 well in advance. The second respondent did not pursue the application for renewal of the regular permit for quite a long time since he had no vehicle at his disposal for operation of the service. It was only on 21.2.2015 did the second respondent make available another vehicle KL-53 H/1186 for the purpose of the renewal of the regular permit. The second respondent simultaneously put in an application for replacing the vehicle KL-53/3221 with a later model vehicle KL-53 H/1186 to operate service on the route. The Regional Transport Authority by one stroke in its decision on 21.05.2015 (as item No. 105 in Ext.P3 proceedings) allowed both the renewal and replacement. This is challenged by the petitioner in this writ petition contending that there has been a flagrant violation of the provisions of law. The petitioner claims to be a stage carriage vehicle operator and has sought a temporary permit to operate service on the route earlier served by the second respondent.

3. I heard Mr.Stalin.P.Davis, Advocate on behalf of the petitioner, Smt.K.A.Sanjeetha, the Government Pleader and Mr.Sajeev Kumar.K.Gopal,

WP(C) No. 24250/2015

Advocate on behalf of the second respondent.

4. Rule 172 of the Kerala Motor Vehicles Rules, 1989 ('the Rules' for short) deal with the renewal of permit and Rule 172(2) thereof which is relevant is extracted hereunder:

“Application for renewal of permit shall be in form “PRA” and shall be accompanied by the permit where the motor vehicle is subject to a hire purchase, lease or hypothecation agreement, the certificate or communication or as the case may be, the declaration referred to in sub section (8) of Section 51 of the Act.” (emphasis supplied)

Thus every application for renewal of permit shall be in form 'PRA' which is mandatory and entry No.2 in the form is the 'registration mark of the vehicle covered by the permit'. No application for renewal of permit would lie without the registration mark of the vehicle to be covered by the permit and the same is evident by a plain reading of the Rules. The second respondent did not have at his disposal a vehicle leave alone a registration mark on 20.03.2014 on which date he applied for renewal of the permit. The vehicle KL-53 H/1186 was procured much later and made available by the second respondent only on 21.02.2015 on which date he applied for replacement

WP(C) No. 24250/2015

of the vehicle. There cannot be a renewal of the permit in vacuum without the vehicle and the Regional Transport Authority erred in entertaining the application for renewal of the permit. I take cue from the decision in Bhouman Vs. State of Kerala and others [1975 KLT 357] ofcourse rendered under the Motor Vehicles Act, 1939 and the Kerala Motor Vehicles Rules, 1961. The first respondent can however grant time to the holder of the renewed permit to produce the registration certificate and endorse the renewal in the permit under Rule 172(3) of the Rules.

5. There is yet another reason as to why the impugned decision of the Regional Transport Authority requires to be set at naught about which I shall delineate hereunder. The replacement of the vehicle covered by the permit by another vehicle of the same nature is governed by Section 83 of the Motor Vehicles Act, 1988 ('the Act' for short) which reads as follows:

“83. Replacement of vehicle -
The holder of a permit may, with the permission of the authority by which the permit was granted, replace any vehicle covered by the permit by any other vehicle of the same nature.”(emphasis supplied)

WP(C) No. 24250/2015

Thus only a holder of permit can apply for the permission of the Regional Transport Authority which granted the permit to replace the vehicle covered by the permit by another vehicle of the same nature. The validity of the regular permit enjoyed by the second respondent expired on 15.04.2015 and he ceased to be a holder of a regular permit thereafter. It was on 21.02.2015 did the second respondent apply for replacement of the vehicle at a time when the application for renewal of the permit was pending. The holding of a permit or a renewed permit is a sine qua non to enable an applicant to apply for permission to replace the vehicle. But the applications for renewal of the permit and replacement of the vehicle have been dealt with in one breath by the Regional Transport Authority which ought not to have been done. That only a holder of permit can apply for permission of the Regional Transport Authority to replace the vehicle covered by the permit by another is overlooked.

6. The second respondent has a case that no time limit was specified to replace the vehicle on the route while issuing the clearance certificate on 04.10.2013 and that his permit was not revoked. It

WP(C) No. 24250/2015

is also stated that the delay in producing the current records of the replaced vehicle KL-53 H/1186 stands condoned by the payment of Rs.10,000/- to the Road Safety Fund. The second respondent points out that the said sum was deposited pursuant to Ext.R2(b) judgment dated 17.04.2015 in WP(C) No. 12384/2015 by this court. The alleged condonation of delay in producing the current records of the vehicle sought to be replaced does not give life to the expired permit. Moreover the mere pendency of an application for renewal of the permit does not make the permit alive essential for replacing the vehicle on the route. The second respondent has taken the Regional Transport Authority for a ride by producing judgments in the successive writ petitions filed by him which do not advance his case. The wholesome principle that a renewal of permit tantamounts to a fresh grant is of no avail since the parameters for the same are slightly different.

7. It is ofcourse true that a vehicle at the disposal of the applicant is not necessary for a fresh application for stage carriage permit since there is no such insistence under Section 70 of the Act. Moreover Rule 159(2) of the Rules permits the

WP(C) No. 24250/2015

applicant to produce the certificate of registration of the vehicle at a later point of time. It is interpreting Rule 159(2) of the Rules has this court held that an applicant need not be in possession of the vehicle duly registered on the date of his application for permit. The decisions in Narayanan Vs. RTA, Trichur [1980 KLT 249 (FB)] and Joy Vs. Regional Transport Authority [2015(3) KLT 555] were rendered in that context which have no relevance here. Rule 172(2) of the Rules which mandates the application for renewal of permit in form 'PRA' is differently worded from Rule 159(2) which governs the application for fresh permit. After all the forms are part of the Rules and have to be read together with the Act and the Rules to understand the scheme of control of motor vehicles. [see: M.S.R.T Corporation Vs. B.G.R.M Service, Warora (AIR 1970 SC 1926 and M.S.R.T Corporation Vs. M.J.M.S Co. (AIR 1971 SC 1804)]. The object of renewal of permit is to ensure uninterrupted operation of service on the route for which a vehicle should be at the disposal of the applicant on the date of application. But it is logical to think that an applicant should be assured of a new permit before he ventures to procure

WP(C) No. 24250/2015

a vehicle for which an extended time is granted. The second respondent obtained clearance certificate for his vehicle KL-53/3221 on 04.10.2013 and did not operate service on the route for 19 long months. There was no necessity for the Regional Transport Authority to condone the laxity of the second respondent and bless him with a composite order of the nature. I quash Ext.P3 decision of the Regional Transport Authority in so far as it relates to item No.105 concerning the applications put in by the second respondent.

The Writ Petition is allowed. No costs.

V.CHITAMBARESH,
Judge.

ncd