

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

THURSDAY, THE 1ST DAY OF OCTOBER 2015/9TH ASWINA, 1937

WP(C).No. 29828 of 2015 (C)

PETITIONER:

**K.S. ABDUL WAHAB
KANJIRAPARAMBIL HOUSE
VEDIMARA,
MANNAM P.O.**

BY ADV. SRI.P.DEEPAK

RESPONDENT:

**THE SECRETARY
REGIONAL TRANSPORT AUTHORITY
ERNAKULAM - 682 030**

BY GOVERNMENT PLEADER SMT. SANJEETHA K.A.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
01-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

DCS

APPENDIX

PETITIONER(S)' EXHIBITS

-
- EXHIBIT-P1- TRUE COPY OF THE REGULAR PERMIT VALID TILL 04.08.2008**
- EXHIBIT-P2- TRUE COPY OF THE CERTIFICATE OF REGISTRATION OF
KL-07/AL 2004**
- EXHIBIT-P3- TRUE COPY OF THE RELEVANT EXTRACT OF THE APPLICATION
FOR RENEWAL FILED ON 10.12.2007**
- EXHIBIT-P4(a)- TRUE COPY OF THE PROCEEDINGS OF THE RTA,
MUVATTUPUZHA DATED 18.12.2007**
- EXHIBIT-P4- TRUE COPY OF THE PROCEEDINGS OF THE RTA, IDUKKI DATED
05.02.2008**
- EXHIBIT-P5- TRUE COPY OF THE REPRESENTATION DATED 12.03.2012**
- EXHIBIT-P6- TRUE COPY OF THE PROCEEDINGS OF THE RTA, ERNAKUALM
DATED 04.04.2012**
- EXHIBIT-P7- TRUE COPY OF THE NOTICE DATED 15.04.2013 ISSUED BY THE
RESPONDENT**
- EXHIBIT-P8- TRUE COPY OF THE APPLICATION FOR RENEWAL DATED
23.09.2015**
- EXHIBIT-P9- TRUE COPY OF THE APPLICATION FOR REPLACEMENT DATED
23.09.2015**
- EXHIBIT-P10- TRUE COPY OF THE APPLICATION FOR TEMPORARY PERMIT
FILED UNDER SECTION 87(1)(d) IN RESPECT OF THE LEASED
VEHICLE KL-07/CE 4122 DATED 23.09.2015**

RESPONDENT(S)' EXHIBITS:-NIL

/TRUE COPY/

P.A. TO JUDGE

DCS

“C.R.”

V.CHITAMBARESH,J.

**-----
W.P.(C) No. 29828 of 2015
-----**

Dated this the 01st day of October, 2015

JUDGMENT

Does the Motor Vehicles Act, 1988 (the 'Act' for short) contemplate a renewal of an application filed for renewal of a regular permit ?

2. The petitioner was the holder of a regular permit to conduct service on the inter-regional route Kattappana - Ernakulam in respect of his stage carriage bearing registration No. KL-07/AL 2004. The regular permit was effective for a period of five years from 05.08.2003 to 04.08.2008 and the petitioner did file an application for renewal of the permit well in time on 10.12.2007. The concurrence of the Regional Transport Authorities of Idukki and Muvattupuzha (within whose jurisdiction also the route falls) was obtained as was necessary. The petitioner produced the current records of the vehicle KL-07/AL 2004

on 12.03.2012 and sought for expeditious sanctioning of the application for renewal of permit. Nevertheless the Regional Transport Authority, Ernakulam did not consider the application for renewal of permit for want of a No Objection Certificate from the Financier of the vehicle. The failure to clear the pending check reports in respect of the vehicle by the petitioner also delayed the consideration of the application for renewal of permit. The petitioner did not bother to clear the way despite the decision dated 04.04.2012 of the Regional Transport Authority, Ernakulam and the subsequent notice dated 15.04.2013.

3. The regular permit even if renewed as sought by the petitioner would have expired on 03.08.2013 and an application for further renewal of permit should have been filed atleast 15 days ahead. The petitioner however thought of filing a further application for renewal of the permit only on 23.09.2015 and the same is reportedly pending consideration. It is the case of the petitioner that the second application for renewal of the regular permit should be

tacked on to the first application for renewal of the permit where final orders have not yet been passed. The vehicle KL-07/AL 2004 being of a 2002 model had by then completed 12 years and rendered unfit to operate on the long distance exceeding 150 Kilometers. The petitioner simultaneously filed an application for replacement of the vehicle on the route on 23.09.2015 alleging that he has procured a 2015 model vehicle on lease. The petitioner to top it all has filed yet another application (Ext. P10) for temporary permit to operate service on the route Kattappana - Ernakulam. The petitioner rests his claim under Section 87(1)(d) of the Act on the ground that he is entitled to preference since his application for renewal of the regular permit is pending decision. The writ petition has been filed seeking a direction to the respondent Secretary of the Regional Transport Authority, Ernakulam to issue a temporary permit in the lines stated above.

4. I heard Mr. P. Deepak, Advocate on behalf of the petitioner and Smt. Sanjeetha K.A., Government Pleader at

length.

5. It may appear in first blush that the petitioner is entitled to a preferential claim under Section 87(1)(d) of the Act for temporary permit even though the contentions are proved to be hollow on a deeper scrutiny. A regular permit (which is not a temporary or special permit) shall be effective from the date of issuance or renewal thereof only for a period of five years under Section 81(1) of the Act. The regular permit so issued may be renewed on an application made not less than 15 days before the date of its expiry as per Section 81(2) of the Act. The validity of the regular permit earlier issued expired on 04.08.2008 and hence the application put in by the petitioner on 10.12.2007 for renewal of the permit is well in time. Ofcourse an application filed for renewal of the permit after the last date specified in Section 81(2) of the Act can be entertained if sufficient cause is shown under Section 81(3) of the Act.

6. It may at once be noticed that a permit renewed after the expiry of the validity period shall have effect from

the date of expiry itself under Section 81(5) of the Act or the renewal relates back in other words. The validity of the renewal would enure only for a period of five years from the date of expiry of the regular permit as per Sections 81(1), (2), (3) and (5) of the Act. A period of five long years is sufficient to process the application for renewal including obtaining the No Objection Certificate from the Financier or clearing check reports. I am conscious of the decision in **Kerala Bus Transport Association's** case [2013 (1) KLT 440] that mere pendency of a check report is not a reason enough to refuse renewal of permit. The retroactive operation of the renewal of the permit will have effect only if the application for renewal is processed within a period of five years from the date of expiry of the permit.

7. The Act nowhere contemplates a renewal of an application filed for renewal of permit and the second application can only be treated as yet another application for renewal of permit. The applicant will be disentitled to the benefit of retroactive operation of Section 81(5) of the

Act in the second application after the lapse of five years from the expiry of the permit. The situation would be different if the permit is renewed and an application for further renewal is filed under Sections 81(2) and 81(3) of the Act. There is no provision in the Act to tack on the second application with the first application for renewal of the permit wherein final orders were not passed within a period of five years from the date of expiry of the permit.

8. Even otherwise the petitioner has to fail on the ground that the second application for renewal was filed only on 23.09.2015 whereas the regular permit even if renewed would have expired on 03.08.2013. There is a gap of two years between the expiry of the renewed permit (even if assumed to be done) and the preferment of the second application for renewal of permit. The second application dated 23.09.2015 cannot be treated as a continuation of the application dated 10.12.2007 for renewal of the permit as is contended. The second application can only be treated as one under Section 81(3)

of the Act and the petitioner is at any rate not entitled to the benefit of Section 81(5) of the Act.

9. Can the preferential claim staked by the petitioner under Section 87(1)(d) of the Act be reckoned on the ground that his application for the renewal of permit is pending decision ? Such a preferential claim can be availed by the petitioner only if the application for renewal of permit was filed within a period of 15 days before the date of expiry of the permit. The application for renewal is alive only if it is filed in time as per Section 81(2) of the Act or the delay condoned on establishing good and sufficient cause under Section 81(3) of the Act. An application for the renewal of permit filed out of time cannot be treated to be pending unless the delay is condoned for the purpose of reckoning the preferential claim. The petitioner would have been entitled to the preferential claim under Section 87(1)(d) of the Act had an application for temporary permit been made well before 03.08.2013. The petitioner loses the benefit when once the period of five years lapses after the

expiry of the regular permit and the benefit of Section 87(1)(d) of the Act cannot be called in aid. It cannot be said that the application dated 23.09.2015 filed by the petitioner for renewal of permit is pending decision as to confer the benefit of Section 87(1)(d) of the Act. I decline the relief sought in this regard by the petitioner especially since more than seven years have rolled by since the expiry of the regular permit granted to operate service.

10. There can however be no inhibition in law for the application dated 23.09.2015 (Ext. P10) for temporary permit being considered as one under Section 87(1)(c) of the Act. Section 87(1)(c) of the Act provides for grant of permits to be effective for a limited period and to authorise the use of a transport vehicle temporarily to meet a particular temporary need. Any application for temporary permit put in by any other applicant for operation of service on the route shall also be considered along with the application filed by the petitioner. Final orders on the application for temporary permit put in by the petitioner

shall be passed by the respondent within a period of two weeks from the date of receipt of this judgment. The subtle distinction between Section 87(1)(c) and 87(1)(d) of the Act in the matter of issue of temporary permits shall however be borne in mind by the respondent.

The writ petition is disposed of. No costs.

**V.CHITAMBARESH
JUDGE**

DCS