

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

WP(C).No. 34203 of 2009 (U)

PETITIONER :

**DANE SHOM, AGED 30, S/O. GEORGE ZACHARIAH,
MEENATHETHIL HOUSE, PONNURUNNY,
KOCHI - 19.**

**BY ADVS.SRI.P.GOPALAKRISHNA MENON
SRI.M.JITHESH MENON**

RESPONDENT(S):

- 1. THE REGIONAL TRANSPORT AUTHORITY,
ERNAKULAM, REPRESENTED BY ITS SECRETARY.**
- 2. THE SECRETARY,
REGIONAL TRANSPORT AUTHORITY, ERNAKULAM.**
- 3. THE KERALA STATE ROAD TRANSPORT CORPORATION,
REPRESENTED BY ITS DISTRICT TRANSPORT OFFICER,
ERNAKULAM.**
- 4. THE STATE TRANSPORT APPELLATE TRIBUNAL,
ERNAKULAM.**

**R1,R2 & R5 BY SR GOVERNMENT PLEADER SRI.BIJU MEENATTOOR
R3 BY ADV. SRI.P.C.CHACKO, SC, KSRTC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 21-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE TIME SCHEDULE IN RESPECT OF KL-13/A.3087 DATED 16/12/94.**
- P2 COPY OF THE APPLICATION DATED 17/1/06 FILED BY THE PETITIONER.**
- P3 COPY OF THE PROCEEDINGS DATED 30/5/06**
- P4 COPY OF THE JUDGMENT IN MVARP NO.323/06 DATED 17/10/06**
- P5 COPY OF THE LETTER DATED 13/11/06.**
- P6 COPY OF THE JUDGMENT IN MVARP NO.180/07 DATED 10/8/07**
- P7 COPY OF THE ORDER OF THE REGIONAL TRANSPORT AUTHORITY, ALAPPUZHA DATED 14/12/07.**
- P8 COPY OF THE ORDER OF THE 1ST RESPONDENT DATED 26/2/08.**
- P9 COPY OF THE JUDGMENT IN MVAA NO.244/08 DATED 4/11/08**
- P10 COPY OF THE ORDER OF THE 1ST RESPONDENT DATED 16/1/09**
- P11 COPY OF THE APPEAL MEMORANDUM AS MVAA NO.268/09 FILED BY THE PETITIONER DATED 14/5/09 (WITHOUT EXHIBITS)**
- P12 COPY OF THE OBJECTION FILED BY THE 3RD RESPONDENT IN MVAA NO.268/09 DATED 3/7/09**
- P13 COPY OF THE REPLY AFFIDAVIT FILED BY THE PETITIONER IN MVAA NO.268/09 DATED 4/7/09**
- P14 COPY OF THE JUDGMENT OF THE 4TH RESPONDENT IN MVAA NO.268/09 DATED 11/8/09**
- P15 COPY OF THE JUDGMENT IN WP(C).NO.10084/09 DATED 9/9/09.**

RESPONDENT'S EXHIBITS:

NIL

/TRUE COPY/

P.A.TO.JUDGE

C.R.

K. VINOD CHANDRAN, J.

W.P.(C) No. 34203 of 2009

Dated this the 21st day of January, 2015

J U D G M E N T

The petitioner is aggrieved with the non consideration of a regular permit application, on the terms, as it existed on the date of application, ie, 17.01.2006.

2. The facts to be noticed are that concurrence was rejected by the sister R.T.A. at Alappuzha. The petitioner filed revision, in which the Tribunal granted a remand on condition that the petitioner would file a modified route. It is to be immediately noticed that in such circumstance, the petitioner's contention that his application should be considered on the terms as existed at the date of application, cannot be countenanced. Even then there was scheme violation on the ground of objectionable overlapping.

3. Even in the modified route, the sister R.T.A. at Alappuzha rejected concurrence, which was set aside by the State Transport Appellate Tribunal. As per the directions in Ext.P6, R.T.A., Alapuzha granted concurrence by Ext.P7. However, by that time there was a draft scheme in operation and the R.T.A. Ernakulam rejected the permit application by Ext.P8.

4. The petitioner filed an appeal from Ext.P8, which was allowed by the Tribunal at Ext.P9, on the ground that rejection on the basis of a draft scheme is not sustainable. Again, the matter was remanded. But, by that time, 2008 scheme had come into operation and there was a further rejection as per Ext.P10. The 2008 scheme was set aside in the judgment reported in **Vijayan P.K. v. Government of Kerala - 2008(3) ILR 476**. After Ext.P9, the resultant order Ext.P10 was also set aside and remanded in Ext.P14,

for reason of the afore cited judgment. The petitioner hence would contend that Ext.P14 has to be complied with as on 17.01.2006, which definitely cannot be countenanced, since it would not be proper for this Court to direct the authority to consider the application *de hors* the scheme which is now in force. The petitioner relies on Ext.P15 judgment to advance his case.

5. Ext. P15 does not lay down any principle and merely recorded that the Court was in favour of the petitioner's submissions. The argument for consideration of an application, as on the terms existing on its filing, was sought to be urged on the basis of **Manikanda Kumar v. Ramakrishnan - 1985 KLT 1026**. The Division Bench therein was concerned with the Motor Vehicles Act, 1939, which as is trite mandated consideration of relative merit of applicants in the matter of grant, as opposed to the rule in favour of grant as per the Motor Vehicles Act, 1988. On the

issue of qualifications it was held that the R.T.A. has to consider the qualification of an applicant, as it existed at the time of application. The said principle cannot be imported herein where there are nationalized schemes brought in, during the intervening period and none can seek consideration, as on the date of application, totally ignoring the scheme routes subsequently notified. Obviously, such a consideration is sought for, to save the permit and route from the rigour of the scheme. That cannot be permitted and when the saving clause of a particular notification is relied on, for a subsequent consideration of an application, it cannot be prayed that the other clauses of the scheme leading to an objectionable overlap has to be excluded. The saving clause can only apply to these permits which have been granted, issued, operated and remaining valid as on the date of the scheme notification.

6. Especially noticing the facts in the present case, this Court is of the opinion that Ext.P15 would not be applicable. In such circumstances, the writ petition would stand dismissed.

Sd/-
K.VINOD CHANDRAN,
JUDGE

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