

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

W.P.(C).No.30865 of 2014 (G)

PETITIONER(S):-

SOUMYA S, AGED 29 YEARS,
PUTHUVANA PUTHEN VEETIL, KURAVANKUZHY P.O, KOIPROM,
THIRUVALLA.

BY ADVS.SRI.T.P.PRADEEP
SRI.P.K.SATHEES KUMAR

RESPONDENT(S):-

1. THE REGIONAL TRANSPORT AUTHORITY,
PATHANAMTHITTA 689645
2. THE SECRETARY,
THE REGIONAL TRANSPORT AUTHORITY
PATHANAMTHITTA 689645
3. SUMATHY KUTTY,
PUTHETHU HOUSE, PULLOOPURAM P.O, ANGADY,
RANNY, PIN - 689672

R1 & R2 BY SENIOR GOVERNMENT PLEADER SRI.BIJU MEENATTOOR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
25-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

WP(C).No.30865 of 2014 (G)

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXHIBIT P1 TRUE COPY OF THE O.S NO 61/2014 FILED BEFORE THE
SUB COURT.
- EXHIBIT P2 TRUE COPY OF THE JUDGMENT DATED 25-06-2014 IN
WPC 2029/2014.
- EXHIBIT P3 TRUE COPY OF THE JUDGMENT DATED 20-02-2014 IN
WPC NO 4195/2014.
- EXHIBIT P4 TRUE COPY OF THE JUDGMENT IN MVAA NO 128/2014
DATED 14-07-2014.
- EXHIBIT P5 TRUE COPY OF THE TEMPORARY PERMIT DATED 21-07-2014
ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P6 TRUE COPY OF THE TEMPORARY PERMIT DATED 21-07-2014
ISSUED BY THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/-

[true copy]

K. Vinod Chandran, J.

W.P.(C) No.30865 of 2014-G

Dated this the 25th day of February, 2015

JUDGMENT

The cause of action for the above writ petition is the bickering between a daughter-in-law and mother-in-law; after the death of the spouse; who had a stage carriage permit in his name. Admittedly even before the death of the regular permit holder, the wife was prosecuting various proceedings, before the Family Court against the husband. The regular permit holder died on 22.08.2010 and the stage carriage which was operated in the said permit, being KL-03-P-625, was in the possession of the 3rd respondent, the mother of the deceased permit holder. The petitioner, the wife of the deceased, is aggrieved by the operation of the said vehicle on temporary permits by the 3rd respondent.

2. The petitioner has also a contention that the petitioner had obtained attachment of the stage carriage, when the Original Petition filed by the petitioner was pending before the Family Court. It is also contended that the attachment is subsisting and an appeal has been filed by the petitioner, since certain claims of the petitioner

have been rejected by the Family Court. One another suit, *inter alia* with respect to ownership of the vehicle, is also said to be pending before the Sub Court, Pathanamthitta as O.S.No.61 of 2014; the plaint of which is produced herein as Exhibit P1.

3. The 3rd respondent was issued with notice of the writ petition; but has chosen not to appear and, hence, the writ petition itself is taken up for hearing. I have heard learned counsel for the petitioner and the learned Government Pleader.

4. The 3rd respondent had filed three applications before the Registering Authority/Regional Transport Authority for transfer of permit, renewal of regular permit and four months temporary permit, which she sought to expedite by W.P.(C).No.2029 of 2014. The petitioner herein was also impleaded as the additional 3rd respondent therein. While the matter was so pending, the 3rd respondent is said to have filed another writ petition, W.P.(C).No.4195 of 2014, and obtained an order for considering the temporary permit application filed by the 3rd respondent herein. Exhibit P3 is the judgment in that writ petition. The additional 2nd respondent-the petitioner herein was impleaded, but no notice was sent. This Court directed consideration of the application for temporary permit and issuance of the same if the 3rd respondent

satisfies the authority that the 3rd respondent is entitled to succeed to the estate of her son, the deceased permit holder. The 3rd respondent has again approached the Tribunal for further issuance of temporary permit, which was allowed as per Exhibit P4 and temporary permits have been issued as per Exhibit P5 and subsequently also, is the contention of the petitioner.

5. The learned counsel for the petitioner contends that on the death of the regular permit holder, the legal heirs can operate the vehicle only for three months, that too after intimation of the death of the regular permit holder within a period one month, to the Regional Transport Authority. The second proviso to sub-section (2) of Section 82 of the Motor Vehicles Act, 1988 [for brevity “the Act”]; reads as under -

“82. Transfer of permit:-

(1) xxx xxx xxx

(2) Where the holder of a permit dies, the person succeeding to the possession of the vehicle covered by the permit may, for a period of three months, use the permit s if it had been granted to himself:

xxx xxx xxx

Provided further that no permit shall be so used after the date on which it would have ceased to be effective without renewal in the hands of the deceased holder”.

This indicates that no permit shall be used after its validity expires, without renewal in the hands of the deceased holder, even for the three months as permitted in sub-section (2).

6. In the present case, the permit was valid upto 05.01.2014 and the permit holder died on 22.08.2010. Hence the application of the proviso does not occur till 05.01.2014. The petitioner's objection seems to be in the operation of the vehicle even after the said date and specifically since no renewal has been effected of the said permit. It goes without saying, no renewal could be effected at the hands of the deceased permit holder, after 05.01.2014. The renewal application and the application for transfer of the permit to the 3rd respondent are pending with the authority. Disputes are raised and agitated between the mother and wife of the deceased permit holder, before various civil forums. The Regional Transport Authority, hence, cannot be considering the said applications for transfer and renewal at this point. The attempt of the petitioner seems to stall the 3rd respondent from operating the vehicle in the meanwhile.

7. It is trite that the decision in ***Bhagyalakshmy v. R.T.A., Palakkad*** [2010 (2) KLT 431] does not speak of a particular document/certificate being produced before the authority and speaks

only of some evidence to show succession of the party, who applies for transfer of permit. Definitely if there are more than one legal heirs, the parties will have to be heard before a transfer is effected. In the present case, the mother and the wife of the deceased permit holder are before the Authority in the application filed by the mother. That is directed to be considered after hearing the wife, as per Exhibit P2 judgment. The difficulty expressed by the learned Government Pleader is that, without a resolution of the disputes pending before the civil forum it may not be proper for the Authority to consider the applications as such, at this point of time. This Court finds considerable force in that argument, especially when admittedly disputes are pending before the civil forums as to the ownership of the stage carriage between the mother and the wife of the deceased.

8. What now remains to be considered is, as to whether temporary permits can be issued to the 3rd respondent, for operating the stage carriage. Admittedly the 3rd respondent is one of the legal heirs of the deceased permit holder. The stage carriage, which was run on the regular permit, is also in the possession of the 3rd respondent, at this point of time. The petitioner does not have a claim that she intends to run a stage carriage in the route, which obviously is defaulted for

reason of the death of the permit holder and the resultant dispute with respect to the transfer. The second proviso to sub-section (2) of Section 82, according to this Court, would not apply with respect to the temporary permit. The regular permit cannot be operated by a legal heir beyond three months period or beyond the expiry of a permit at the hands of the deceased permit holder; even if the same is within three months stipulated in Section 82. There is no operation of the vehicle on the regular permit by the 3rd respondent at this point of time. The operation is based on a temporary permit, which is not prohibited by the second proviso to sub-section (2) of Section 82.

9. Reference to Section 87 is made, on the ground that the pendency of a transfer application does not confer any right on a person to seek for operation, on the strength of a temporary permit. Sub-section (1) of Section 87 indicates that a temporary permit can be sought for, *inter alia* on the ground of any need for a regular service and that too definitely in a circumstance when an application for renewal of a permit is pending. The argument of the learned counsel for the petitioner is that it is only the transfer application which is pending; is only to be noticed to be rejected. The renewal application is also pending, as is indicated in Exhibit P2 judgment. However, the

same is kept pending, since first transfer is to be effected; on which there is a dispute raised by the petitioner herein.

10. A temporary permit issued under Section 87 is not confined to a regular permit holder or to a legal heir or one who claims under the regular permit holder alone. Any person intending to operate on a route can apply for the same for a specified period on the ground of the need for a service, which the RTA or the Secretary, as the case may be, would have to consider as per the provisions of the Act and the Rules. A regular permit holder or a legal heir of such person, at best would be entitled to a preferential claim. In the present case, the 3rd respondent, the mother of the deceased permit holder, is a co-owner in possession of the vehicle and there is absolutely no impediment in granting temporary permits to the 3rd respondent on the basis of the possession and also on the basis of co-ownership, which is undisputed by the petitioner herein.

The writ petition is found to be devoid of merit and the same is dismissed. No costs.

Sd/-
K. Vinod Chandran,
Judge

vku/-

[true copy]