

Ajith Kumar Vs. the Regional Transport Authority, Kollam

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Court : Kerala

Decided On : Dec-20-2012

Judge : Honourable Mr.Justice Harun-Ul-Rashid

Appellant : Ajith Kumar

Respondent : The Regional Transport Authority, Kollam

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE HARUN-UL-RASHID THURSDAY, THE 20TH DAY OF DECEMBER 2012 29TH AGRAHAYANA 193 WP(C).No. 29642 of 2012 (E)

----- PETITIONER(S): ----- AJITH KUMAR, AGED 3 YEARS MEMBER, WARD NO.XV, KALLUVATHUKKAL GRAMA PANCHAYATH KOLLAM. BY ADV. SRI.K.V.GOPINATHAN NAIR RESPONDENT(S): -----

1. THE REGIONAL TRANSPORT AUTHORITY, KOLLAM REPRESENTED BY ITS SECRETARY, PIN-691 001.

2. THE SECRETARY REGIONAL TRANSPORT AUTHORITY, KOLLAM-691001.

3. NAVAS DHARUSALAM, KALAKKODE P.O., BHOOTHAKULAM KOLLAM-691 302. R1 & R2 BY GOVERNMENT PLEADER SRI.G.GOPAKUMAR R3 BY ADV.SRI.P.GOPALAKRISHNAMENON THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12.12.2012, THE COURT ON 20-12-2012 DELIVERED THE FOLLOWING: WP(C).No. 29642 of 2012 APPENDIX

PETITIONER'S EXHIBITS: EXT.P1: COPY OF THE ROUGH SKETCH OF THE ROUTE. EXT.P2: COPY OF THE PROCEEDINGS OF THE 1ST RESPONDENT DATED 8 12.2010 REJECTING THE APPLICATION. EXT.P3: COPY OF THE JUDGMENT OF THE STATE TRANSPORT APPELLATE TRIBUNAL IN MVAA NO.265/2011 DATED 20 1.2012. EXT.P4: COPY OF THE FORWARDING LETTER GIVEN BY THE LOCAL MEMBER OF LEGISLATIVE ASSEMBLY BEFORE THE DISTRICT COLLECTOR WHO IS THE CHAIRMAN OF THE 1ST RESPONDENT DATED 29 4.2012. EXT.P5: COPY OF THE RESOLUTION PASSED BY THE KALLUVATHUKKAL GRAMA PANCHAYATH DATED 4 8.2012. EXT.P6: COPY OF THE PROCEEDINGS OF THE 1ST RESPONDENT DATED 7 8.2012 GRANTING VARIATION OF PERMIT TO THE 3RD RESPONDENT. EXT.P7: COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN W.P.(C) NO.24016/2012 DATED 12 10.2012. EXT.P8: COPY OF THE APPEAL MEMORANDUM AS MVAA NO.383/2012 DATED 16 10.2012. EXT.P9: COPY OF THE COUNTER AFFIDAVIT FILED BY THE 3RD RESPONDENT BEFORE THE TRIBUNAL DATED 5 11.2012. EXT.P10: COPY OF THE REPLY AFFIDAVIT FILED BY THE PETITIONER BEFORE THE TRIBUNAL DATED 6 11.2012. EXT.P11: COPY OF THE JUDGMENT OF THE STATE TRANSPORT APPELLATE TRIBUNAL IN MVAA NO.383/2012 DATED 30 11.2012. RESPONDENT'S EXHIBITS: NIL /TRUE COPY/ P.A. TO JUDGE VPV HARUN-UL-RASHID, J.

----- W.P.(C).No.29642 Of 2012 ----- Dated this the 20th day of December, 2012.

JUDGMENT

The writ petition is filed seeking to quash Exts.P6 & P11 and for other incidental reliefs.

2. Ext.P6 is the copy of the proceedings of the RTA dated 7.8.2012 granting variation of permit to the 3rd respondent. Ext.P11 is the copy of the judgment of the STAT in MVAA.No.383/2012 dated 30.11.2012. Ext.P6 order was challenged by the very same petitioner in W.P.(C). No.24016/2012. Ext.P6 order is marked as Ext.P7 in the said writ petition. The RTA, by proceedings dated 8.12.2010,

considered the application for variation of permit submitted by the 3rd respondent and found that the proposed variation will adversely affect the travelling public and that there is no circumstantial change as envisaged in Rule 145(6) of the Motor Vehicle Rules. The application was rejected. The 3rd respondent filed an appeal before the STAT. Objectors are not made parties. The grievance raised in W.P.(C).No.24016/2012 is that the 3rd ::2:: W.P.(C).No.29642 Of 2012 respondent has not disclosed the fact that his service is the only service on the sector Meenambalam - Kalluvathukkal before the Tribunal. At the same time he contended before the Tribunal that there are 22 services on the remaining sector. The Tribunal without hearing the petitioner or other objectors remanded the matter to the 1st respondent by judgment dated 20.1.2012 in MVAA.No.265/2011. After remand the matter was taken for consideration by the RTA. The petitioner, Panchayath and other objectors seriously objected grant of curtailment on the said sector. The Kalluvathukkal Grama Panchayath by way of resolution requested the authorities not to curtail the existing facilities stating that it is the only service on the sector from Meenambalam to Kalluvathukkal. Even though the objectors contended before the RTA that it is the only service on the sector Meenambalam - Kalluvathukkal, Tribunal, without considering the said fact, set aside the order of the RTA. The RTA by Ext.P6 order dated 7.8.2012 allowed the application for variation subject to settlement of timings. The said order is challenged before this Court in W.P.(C).No.24016/2012 inter alia stating that the period ::3:: W.P.(C).No.29642 Of 2012 for filing review petition also expired, therefore, the petitioners are unable to move revision with a petition to condone the delay. It is also stated that since urgent orders are necessary, the writ petition was filed seeking the reliefs. This Court disposed of the writ petition directing the petitioner to approach the Tribunal by way of filing revision petition. This Court also further observed that in the event of the petitioner filing a revision petition within a period of two weeks from the date of the judgment, the Tribunal shall treat the revision petition as if the same is filed within the time prescribed. This Court in paragraph 4 of Ext.P7 judgment held as follows: "Kalluvathukkal Grama Panchayath convened a meeting on 4.8.2012 and passed Ext.P6 resolution pointing out that the 3rd respondent's service is the only service which is operating between Kalluvathukkal and Meenambalam and the entire workers, students and Government employees

are depending upon the sole service. It was requested by all objectors that curtailment sought for will seriously affect the entire travelling public. The grievance of the objectors is that Ext.P7 order was passed without noticing the true fact that this is the only service between the sector from ::4:: W.P.(C).No.29642 Of 2012 Maenambalam to Kalluvathukkal. According to them, this fact was deliberately and willfully suppressed while the application for curtailment was allowed". Pursuant to Ext.P7 judgment, the petitioner filed revision petition before the Tribunal as MVARP.No.423/2012. It is submitted that since the Tribunal is of the view that an appeal is maintainable against the grant of variation, the revision petition was converted as an appeal which has been allowed by the Tribunal and the revision petition was numbered as M.V.A.A.No.383/2012. Ext.P11 is the copy of the judgment of the Tribunal. It is contended that the Tribunal without considering any of the relevant and important aspects stated that the report of the Motor Vehicle Inspector appears to be valid and arrived at a conclusion that the variation by curtailment and extension was allowable for the said reasons. It is submitted that the appeal preferred by the petitioner was rejected.

3. The learned counsel for the petitioner submits that the Tribunal failed to consider the primary relevant aspects with regard to the inconvenience caused to the public due to the ::5:: W.P.(C).No.29642 Of 2012 curtailment of the only service to the sector Meenambalam - Kalluvathukkal. It is also contended that the Tribunal did not call for the records from the 1st respondent to assess the factual situation and without the original records of the 1st respondent it is improper to observe that the official records does not reveal that the public will be put to great prejudice if curtailment is allowed. It is pointed out that it is the only service on the above sector which is operating for the last 30 years. It is also submitted that the entire section of the public including the Panchayath specifically requested the 1st respondent that the withdrawal of the service from the above sector will seriously affect the travelling public. It is also contended that the Tribunal brushed aside the important relevant aspects with regard to the inconvenience of the public whereas the Tribunal has carried away only on the basis of a flimsy report submitted by the Motor Vehicle Inspector which does not contain the actual situation.

4. In Ext.P11 judgment, the Tribunal found that the reasons stated by the Motor Vehicle Inspector in his report dated 12.7.2012 appears to be valid for arriving at a conclusion by the ::6:: W.P.(C).No.29642 Of 2012 RTA that variation of curtailment and extension sought for by the 3rd respondent was allowable. The Tribunal took notice of the submissions made by the learned counsel for the appellant that the sketch submitted by the Motor Vehicle Inspector in Ext.R3(b) is completely wrong and that itself would show that he has not done a serious enquiry. The Tribunal also observed that the dispute is regarding the curtailment of a portion from Meenambalam to Kalluvathukkal. The Tribunal solely relying on the report of the Motor Vehicle Inspector held that the 1st respondent considered the materials in the report of the MVI which appears to be reasonable. It is also found that the contention raised by the appellant that the public will be put to great prejudice is not revealed from the official records. It is seen that the Tribunal did not evaluate the resolution passed by the Panchayath in the proper perspective. It is also seen that the contention of the petitioner that the only service on the sector Maeenambalam - Kalluvathukkal was not seen discussed and appreciated. The emphasis was given to the report of the MVI and the contentions raised were not seen discussed or ::7:: W.P.(C).No.29642 Of 2012 appreciated independently, especially when the contents of the report of the MVI itself is disputed.

4. It is alleged that the 1st respondent passed impugned order with a motive to favour the 3rd respondent somehow or other and ignoring the public convenience and public interest. It is contended that the public convenience and public interest are totally ignored while passing Ext.P6 order.

5. Taking into consideration the aforesaid facts and circumstances, this Court is of the view that the matter requires reconsideration by the Tribunal afresh. Ext.P11 is therefore quashed. There will be a direction to the STAT, Ernakulam to consider the matter afresh and pass appropriate orders. Ext.P6 order shall be kept in abeyance till a decision is taken by the Tribunal. The writ petition is disposed of as above. HARUN-UL-RASHID, Judge. bkn/-