

Martin Vs. the Stat

Martin Vs. the Stat

SooperKanoon Citation : sooperkanoon.com/1016312

Court : Kerala

Decided On : Jul-16-2013

Judge : Honourable Mr.Justice a.M.Shaffique

Appellant : Martin

Respondent : The Stat

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE A.M.SHAFIQU TUESDAY, THE 16TH DAY OF JULY 2013 25TH ASHADHA, 1935 WP(C).No. 5819 of 2008 (P) ----- PETITIONER(S): ----- 1. B.T.MARTIN, S/O.THOMMI, RESIDING AT BALIAPADATH HOUSE, ALUVA.

2. MAYA MARTIN, W/O.MARTIN, RESIDING AT BALIAPADATH HOUSE, ALUVA. BY ADV. SRI.P.DEEPAK RESPONDENT(S): ----- 1. THE STATE TRANSPORT APPELLATE TRIBUNAL, ERNAKULAM.

2. REGIONAL TRANSPORT AUTHORITY, ERNAKULAM, REPRESENTED BY ITS SECRETARY.

3. SECRETARY, R.T.A, ERNAKULAM.

4. THE KSRTC, REPRESENTED BY ITS ATO, NORTH PARUR. *ADDL.R5 IMPLAED: R5. P.K.VARGHESE, S/O.KURIAKOSE, DISTRICT SECRETARY,

KERALA STATE ROAD TRANSPORT EMPLOYEES ASSOCIATION (KSRTEA) (CITU), KSRTC DEPOT, ALUVA. (*ADDL.R5 IS IMPEADED AS PER ORDER DTD. 01/04/2008 IN I.A.NO.4522/2008) R1 TO R3 BY GOVERNMENT PLEADER SRI.NOUSHAD THOTTATHIL R4 BY ADV. SRI.BABU JOSEPH KURUVATHAZHA,SC,KSRTC SRI.K.PRABHAKARAN, SC, K.S.R.T.C. ADDL.R5 BY ADV. SRI.K.P.JUSTINE (KARIPAT) THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/01/2013, ALONG WITH WPC. NO.4435/2011 AND CONNECTED CASES, THE COURT ON 16/07/2013 DELIVERED THE FOLLOWING: Kss WPC.NO.5819/2008 P APPENDIX PETITIONER'S EXHIBITS: P1: COPY OF THE REPORT OF THE JOINT RTO, NORTH PARUR 12 01/2007. P2 & P2(A): COPIES OF THE PROCEEDINGS OF THE 2ND RESPONDENT DTD. 19/04/2007. P3 & P3(A): COPIES OF THE REGULAR PERMITS ISSUED TO THE PETITIONERS VALID TILL 15 10/2012. P4: COPY OF THE APPROVED SCHEME IN RELATION TO THE ALUVA- PARUR NOTIFIED ROUTE. P5: COPY OF THE LIST OF 8.STAGE CARRIAGES PREPARED BY THE PETITIONER. P6: COPY OF THE MEMORANDUM OF REVISION PETITION IN MVARP NO.527 OF 2007.P7: COPY OF THE APPROVED SCHEME IN RELATION TO THE ALUVA- VADAKKUMPURAM NOTIFIED ROUTE. P8: COPY OF THE COUNTER AFFIDAVIT FILED IN MVARP NO.527 OF 2007.ALONG WITH EXT.R3(B). P9: COPY OF THE COMMON JUDGMENT DTD. 5/02/2008 IN MVARP NO.527 & 528 OF 2007.P10: COPY OF THE COMMUNICATION ISSUED BY THE 4TH RESPONDENT DTD. 31/01/2008. RESPONDENT'S EXHIBITS: N I L /TRUE COPY/ P.S.TO JUDGE Kss A.M.SHAFFIQUE, J.

----- W.P.(C) Nos. 5819 and 6280 of 2008, 4435, 5511, 20909 and 30635 of 2011, 1755, 3042 and 18040 of 2012 -----

----- Dated this the 16th July, 2013 -----

JUDGMENT

All these writ petitions relates to the grant of regular permits to private stage carriage operators during the validity of a Scheme published by the Government under S. 100 of the Motor Vehicles Act, 1988 (herein after referred as 'M.V.Act').

2. In W.P.(C) 6280/2008, petitioner challenges Ext.P6 order dated 22.1.2008 in M.V.A.R.P No. 335/2007 of the State Transport Appellate Tribunal, (for short STAT), a revision filed by Kerala State Road Transport Corporation (for short KSRTC) challenging the grant of regular permit to a private operator in a notified route. The issue involved in the case was that the Transport authorities had granted a regular permit dated 9.5.2007 to the private operator in the notified route of Ernakulam - Thrissur. According to KSRTC, there is an overlapping of 7 Kilometers (KM) from Aluva to Athani. It is found by the Tribunal that the grant of permit was in violation of W.P.(C) Nos. 5819 and 6280 of 2008, 4435, 5511, 20909 and 30635 of 2011, 1755, 3042 and 18040 o

2. the draft notification dated 9.5.2007 and hence the impugned order was directed to be cancelled. The case was admitted and there was stay of impugned order until further orders. Apparently, the period of permit expired on 21.9.2012 and therefore decision in this case is purely academic.

3. W.P.(C)No.5819/2008 is also filed challenging Ext.P9 order of the STAT in M.V.A.R.P No. 527 and 528 of 2007 filed by KSRTC challenging the grant of regular permit to the private operators on the ground that it violates the notified route between North Parur-Aluva (via) Vedimara, Thekkethazham Engineering College, Manakkappady, Parappilly Kavu temple, Millupady, Kottappuram, U.C.College, East Kadungallur and Thottekkattukara. According to KSRTC the route overlaps Aluva-Vadakkumpuram where there is a complete exclusion as per Government order dated 17.10.1965. The STAT formed an opinion that as per Aluva-Vadakkumbhagam scheme is concerned there is a complete exclusion which does not permit overlapping of any portion of the notified route and therefore the W.P.(C) Nos. 5819 and 6280 of 2008, 4435, 5511, 20909 and 30635 of 2011, 1755, 3042 and 18040 o

3. grant of permit in the case was illegal and directed it to be cancelled and the impugned permit is recalled. In this case also there was an interim stay operation of the judgment. The period of the regular permit expired on 15.10.2012. Therefore the decision in this case is also academic.

4. W.P.(C) No.5511/2011 is filed by a private operator challenging Ext.P1 an order passed by the STAT in M.V.A.A No. 474/2009 which is an appeal filed by the 3rd respondent in the case against rejection of a request for regular permit to operate in the route Angamally-Ernakulam. The Transport Authority had rejected the request on the ground that the route Ernakulam-Thrissur has been approved by notification dated 14.7.2009 under S.100 of the M.V. Act and route applied overlaps 3.5 K.M, on the notified route which is in excess of the permissible overlapping. According to the petitioner the STAT found that in a similar case the overlapping was only 2.5. K.M, and therefore directed the grant of fresh permit. The petitioner is a person similarly placed. He has also applied for a similar W.P.(C) Nos. 5819 and 6280 of 2008, 4435, 5511, 20909 and 30635 of 2011, 1755, 3042 and 18040 o

4. route which was rejected. According to the petitioner he also requires the same treatment as has been done in respect of the other persons who are operating on the same route. Ext.P3 is the order of the STAT in M.V A.A. No.117/2010 by which a similar order had been passed in favour of the another person. The petitioner's complaint is that Ext.P3 had not been challenged by KSRTC whereas they have challenged the order in his favour. The ground raised does not survive as KSRTC has challenged Ext.P3 in W.P.(C) No. 4435/2011.

5. W.P.(C) No. 4435/2011 is filed by KSRTC challenging the order passed by STAT in M.V.A.A No. 117/2010 (Ext.P3 in W.P.(C) No. 5511/2011). By the impugned order STAT directed the Transport authority to grant fresh regular permit to the 3rd respondent for operating the service from Ernakulam High Court Junction - Manjappra (via) Narakkal, Cherai, Parur, Manjali and Angamally. The transport authority had rejected the request for regular permit on the ground that the route applied overlaps 3.5 K.M. on the notified Ernakulam- W.P.(C) Nos. 5819 and 6280 of 2008, 4435, 5511, 20909 and 30635 of 2011, 1755, 3042 and 18040 o

5. Thrissur route which is more than the permissible overlapping in terms of the Scheme. The STAT found that the overlapping is only 2.7 K.M. which is within the permissible limit.

6. W.P.(C) No. 20909/2011 is filed by the Secretary of the Kerala State Road Transport Employees Association challenging Exts.P6 and P9. Ext.P6 is an order passed by STAT in M.V.A.A No.350/2009 in respect of the grant of regular permit in the route Mala-North Parur-Cheranallur. As per the Transport authorities the route overlaps 3 K.M. from Vedimara to KMK Jn. on the notified route Aluva-Vadakkumpuram. The STAT found that the proposed route is to serve mofussil areas and therefore the overlapping of a short distance of 3 K.M. has to be treated as an inevitable intersection. It is also found that the Aluva -Vadakkulam route is not covered by the draft notification. Ext.P9 is an order granting regular permit to the 4th respondent subject to the order passed in Ext.P6. Petitioner in the case contends that in view of the specific provisions under the Act, Court cannot exercise the jurisdiction to relax W.P.(C) Nos. 5819 and 6280 of 2008, 4435, 5511, 20909 and 30635 of 2011, 1755, 3042 and 18040 o

6. the conditions and permit private operators to operate in a route which is notified and when there is complete exclusion. It is also contended that the appellate authority had no jurisdiction to pass any such order.

7. W.P.(C) No. 30635/2011 is filed by a resident of a locality claiming that the 2nd respondent has to consider the request of granting opposite set of timings of service mentioned in Ext.P1 proceedings of the Secretary, RTA to the newly granted service at Ext.P2 taking into consideration Ext.P3 request.

8. W. P.(C) 1755/2012 is filed by a stage carriage operator operating on the basis of Ext.P1 permit dated 9.4.2007. The complaint of the petitioner is that the 4th respondent had applied for a fresh regular permit in the same route which was being considered and the time schedule proposed to the 4th respondent will have to be re-scheduled in consonance with the set of time schedule. According to the petitioner, she being an existing operator and the permit applied by the 4th respondent would infringe Ext.P6 notification dated 14.7.2009. She seeks W.P.(C) Nos. 5819 and 6280 of 2008, 4435, 5511, 20909 and 30635 of 2011, 1755, 3042 and 18040 o

7. to challenge the decision taken at Ext.P8 to grant regular permit to the 4th respondent. Apparently in this case also the petitioner's permit expired on

8.4.2012.

9. W.P.(C) No.3042/2012 is filed by KSRTC challenging the judgment of STAT in M.V.A.A.No.230/2010 directing the transport authority to consider the request of the 2nd respondent for the grant of a fresh permit in the route Kottayam-Changanacherry. The Tribunal also found that the objectionable portion of certain areas are not objectionable overlapping which will not stand in the way of granting permit to the 2nd the respondent.

10. W.P.(C) No. 18040/2012 is filed by KSRTC challenging Ext.P3 judgment of STAT in M.V.A.A No. 350/2009. In this case an application for regular permit to operate on the route Mala- North Parur (Manjummal kavala) was rejected by the transport authority on the ground that the notified route between Aluva and Vadakkumpuram is exclusively reserved for State Transport undertaking. The STAT found that the only objectionable W.P.(C) Nos. 5819 and 6280 of 2008, 4435, 5511, 20909 and 30635 of 2011, 1755, 3042 and 18040 o

8. overlapping is from Edappally to Kaloor Bus-stand. It is also observed that Aluva-Vadakkumpuram route is not covered by the draft notification which is approved by the Government as per the notification dated 14.7.2009. It is found that since the route is to serve moffusil area, no interference is called. Hence the appeal was allowed and there was a direction to grant fresh regular permit to the petitioner subject to settlement of timings.

11. Having regard to the factual circumstances arising in this case it is necessary to consider the scope and effect of the notification issued by the Government under S.100 of the M.V.Act and the nature of interference required in the matter by the statutory authorities.

12. Heard the learned counsel appearing of the petitioners, learned Government Pleader and the learned counsel appearing for the party respondents.

13. Chapter 6 of the M.V Act deals with the special provisions relating to State Transport undertakings. There cannot be any dispute regarding the fact that KSRTC is a State W.P.(C) Nos. 5819 and 6280 of 2008, 4435, 5511, 20909 and

30635 of 2011, 1755, 3042 and 18040 o

9. Transport undertaking. Section 99 deals with formulation of a proposal regarding a scheme by the State Government giving particulars of the nature, services proposed to be rendered, the area or route proposed to be covered for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service in public interest. The proposal is published and once such a proposal is published by virtue of S. 99(2) of the M.V. Act, no permit shall be granted to any person, except a temporary permit during the pendency of the proposal and such a temporary permit shall be valid only for a period of one year from the date of its issue or till the date of final publication of the Scheme under S.100 whichever is earlier.

14. The Scheme becomes final after calling for objection and on the Government publishing the Scheme in the official gazette and also in newspapers as provided under S.100 (3) of the M.V.Act. W.P.(C) Nos. 5819 and 6280 of 2008, 4435, 5511, 20909 and 30635 of 2011, 1755, 3042 and 18040 o

10. 15. If the Scheme is not published as an approved Scheme within a period of one year, the proposal shall be deemed to have elapsed [Section 100(4)]. The Scheme can be cancelled or modified by the Government at any point of time in terms of S.102 which again has to be published as provided under S.102 of the M.V.Act. Section 103 relates to the grant of permits to State Transport undertakings. It also provides for the cancellation or modification of an existing permit. S.103 reads as under: "Issue of permits to State transport undertakings.- (1) Where, in pursuance of an approved scheme, any State transport undertaking applies in such manner as may be prescribed by the State Government in this behalf for a stage carriage permit or a goods carriage permit or a contract carriage permit in respect of a notified route, the State Transport Authority in any case where the said area or route lies in more than one region and the Regional Transport Authority in any other case shall issue such permit to the State transport undertaking, W.P.(C) Nos. 5819 and 6280 of 2008, 4435, 5511, 20909 and 30635 of 2011, 1755, 3042 and 18040 o

11. notwithstanding anything to the contrary contained in Chapter V. (2) For the purpose of giving effect to the approved scheme in respect of a notified area or notified route, the State Transport Authority or, as the case may be, the Regional Transport Authority concerned may, by order.- (a) refuse to entertain any application for the grant or renewal of any other permit or reject any such application as may be pending; (b) cancel any existing permit; (c) modify the terms of any existing permit so as to- (i) render the permit ineffective beyond a specified date; (ii) reduce the number of vehicles authorised to be used under the permit; (iii) curtail the area or route covered by the permit insofar as such permit relates to the notified area or notified route. (3) For the removal of doubts, it is hereby declared that no appeal shall lie against any action taken, or order passed, by the State Transport Authority or any Regional Transport W.P.(C) Nos. 5819 and 6280 of 2008, 4435, 5511, 20909 and 30635 of 2011, 1755, 3042 and 18040 o

12. Authority under sub-section (1) or sub-section (2)".

16. S.104 of the M. V. Act deals with the restriction on the grant of permit in respect of a notified area or a notified route. It imposes a restriction on transport authorities to grant any permit to any other person except in accordance with the provisions of the Scheme. However the proviso permits to grant of such a permit in such a notified area or a notified route subject to the condition that such permit shall cease to be effective on the issue of a permit to the State Transport undertaking in respect of that area or route. Section 104 reads as under: " Restriction on grant of permits in respect of a notified area or notified route.- Where a scheme has been published under sub-section (3) of Section 100 in respect of any notified area or notified route, the State Transport Authority or the Regional Transport Authority, as the case may be, shall not grant any permit except in accordance with the provisions of the Scheme: Provided that where no application for a W.P.(C) Nos. 5819 and 6280 of 2008, 4435, 5511, 20909 and 30635 of 2011, 1755, 3042 and 18040 o

13. permit has been made by the State transport undertaking in respect of any notified area or notified route in pursuance of an approved scheme, the State transport Authority or the Regional Transport Authority, as the case may be, may

grant temporary permits to any person in respect of such notified area or notified route subject to the condition that such permit shall cease to be effective on the issue of a permit to the State transport undertaking in respect of that area or route".

17. Having regard to the aforesaid statutory provisions, the first question to be considered is whether there is a Scheme in terms of S.100 of the M.V.Act. It is not in dispute that the Government of Kerala Transport (B) Department as per notification in the Kerala Gazette as G.O.(P) No. 42/2009/TRAN dated 14.7.2009 as SRO No. 608/2009, by virtue of powers vested under S. 100(2) of the M.V.Act approved proposal regarding the Scheme that the passenger road transport service as per the particulars in the scheme should be run and W.P.(C) Nos. 5819 and 6280 of 2008, 4435, 5511, 20909 and 30635 of 2011, 1755, 3042 and 18040 o

14. operated by the State Transport undertaking. The notification contains a schedule and annexure. The notified routes are specifically mentioned in column 5 of the annexure and the route length at column 7. Paragraph 4 concerns permit issued in the private sector on or before 9.4.2006. It reads as under:

4. Whether the services are to be Yes. the permits issued in the private operated by the State Transport sector on or before 9.5.2006 will be Undertaking to the exclusion of other allowed to continue till the dates of persons or otherwise expiry of the respective permits. thereafter regular permits will be granted to them. When the State Transport Undertaking applies for introducing new services in the above routes, corresponding number of existing private stage carriage permits in the said routes whose permits expire first after filing application by the State Transport Undertaking shall not be renewed. As regards permits issued after 9.5.2006 temporary perits alone shall be issued afresh on expiry in these routes or any portion thereof till such time the State Transport Undertaking replaces with new services. The decision of the State Transport Undertaking to apply for permits to to replace the existing Stage carriages as above shall be taken by the Chief Executive of the State Transport Undertaking. W.P.(C) Nos. 5819 and 6280 of 2008, 4435, 5511, 20909 and 30635 of 2011, 1755, 3042 and 18040 o

15. 18. Paragraph 5 of the schedule relates to the operation of the routes to the exclusion of other service which reads as under:

5. If the operation shall be to the exclusion of other services: (a) Whether such exclusion shall be Partial till the existing private services complete or partial operating on the routes are replaced as provided in item 4 above. (b) If such exclusion shall be partial, The existing services issued with the sector of the route from where other permit on or before 9.5.2006 and after services are to be excluded; and 9.5.2006 shall be permitted to continue as in Clause 4 above till they are replaced by buses owned by the State Transport Undertaking. (c) Whether it is proposed to allow other Yes, on the portion of the route service to pick or set down passengers permitted to operate as in clause 4 between any two places on the route above. Permits will also be granted to covered by the scheme. private stage carriages of other routes permitting them to overlap 5 K.m. or 5% of the length of their own routes, whichever is less on the notified routes, for purposes of intersection. W.P.(C) Nos. 5819 and 6280 of 2008, 4435, 5511, 20909 and 30635 of 2011, 1755, 3042 and 18040 o

16. 19. It is not in dispute that Ernakulam-Thrissur via Irinjalakuda is a notified route. It is also not in dispute that the route covered by the permit granted in these cases are overlapping the notified routes. Whether that is permissible or not is the short question. The private operators relies upon Clause 5(c) of the schedule to the notification. In respect of private operators whether they have permitted to pick or set down passengers between any two places on the routes covered by the Scheme the answer under the scheme is that it is permissible on the portion of the route permitted to operate as in Clause 4 of the schedule. Further permits will also be granted to private stage carriages on other routes permitting them to overlap 5 K.M. or 5% of the length of their own routes whichever is less on the notified routes for the purpose of intersection.

20. It is not in doubt that overlapping is permitted in a notified route only to the extent of 5 K.M. or 5% of the length W.P.(C) Nos. 5819 and 6280 of 2008, 4435, 5511, 20909 and 30635 of 2011, 1755, 3042 and 18040 o

17. of "their own routes" whichever is less on the notified route and that too for the purpose of intersection. This apparently is a question of fact and to decide whether there is an overlapping of the permissible distance or route is purely within the discretion of the transport authority. If the transport authority has found that there is overlapping, in the absence of any material to show that such finding is perverse, I do not think that it would be open for the appellate authority or this Court for that reason to interfere with such findings. The very purpose of a scheme being brought into force is to regulate the operation of stage carriages by providing efficient management of public transport system. If private operators are permitted to operate in notified routes overlooking the scheme, it will not only affect the interest of the State undertaking, it will also give room for private operators to avoid other routes which are not notified. Therefore, a strict interpretation of the scheme is required to be made by the Transport authorities, the Tribunal and the Courts while exercising jurisdiction interfering with the orders passed W.P.(C) Nos. 5819 and 6280 of 2008, 4435, 5511, 20909 and 30635 of 2011, 1755, 3042 and 18040 o

18. by the concerned transport authorities. Reference is also made to the judgment of the Supreme Court in U.P.State Road Transport Corporation v. Oma page 2005 (4)SCC 424). It is held that once a scheme is notified it prohibits plying of private vehicle except as permitted by the Scheme. As matters stand now, a scheme is in operation and if the scheme provides for overlapping of a notified route for the purpose of intersection only to a limited extend, a strict interpretation of such a provision is required to be made. The tribunal or the court cannot grant any concession in that regard by stating that the overlapping is for the purpose of catering to a mofussil area or cannot form an opinion that it is not an objectionable overlapping, though it exceeds the distance mentioned in the notification. Any distance which exceeds the permissible overlapping is objectionable. If the transport authorities have come to such a conclusion and has stated the actual distance of overlapping, in the absence of any other material it may not be possible for the court to take a different view. W.P.(C) Nos. 5819 and 6280 of 2008, 4435, 5511, 20909 and 30635 of 2011, 1755, 3042 and 18040 o

19. 21. Having regard to the aforesaid factual and legal aspects the cases on hand are decided as under: (i) W.P.(C) No. 5819/2008 and W.P.(C) No.6280/2008 are dismissed. (ii) W.P.(C) No. 4435/2011 is allowed setting aside Ext.P2. The permit if any granted to the 3rd respondent in terms of Ext.P2 order is liable to be cancelled. (iii) In W.P.(C) No. 5511/2011, the petitioner has no locus standi to ask for the relief sought for. Hence the writ petition is dismissed. (iv) W.P.(C) No. 30635/2011 the relief sought in the writ petition cannot be granted as the petitioner has no locus standi to seek the aforesaid relief. Hence dismissed. (v) W.P.(C) No. 20909/2011 is allowed. Ext.P6 is set aside and Ext.P9 is quashed. (vi) W.P.(C) No.1755/2012 is disposed of directing the respondents 1 and 2 to reconsider the grant of regular permit to the 4th respondent in the light of the findings rendered above. W.P.(C) Nos. 5819 and 6280 of 2008, 4435, 5511, 20909 and 30635 of 2011, 1755, 3042 and 18040 o

20. (vii) W.P.(C) No. 3042/2012 is allowed setting aside Ext. P3. (viii) W.P.C. 18040/2012 is allowed setting Ext.P3. (sd/-) A.M.SHAFIQU, JUDGE. rka

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com