

Akash Dev Vs. State of Kerala

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Court : Kerala

Decided On : Apr-10-2015

Judge : Honourable the Chief Justice Mr.Ashok Bhushan

Appellant : Akash Dev

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN & THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE FRIDAY, THE 10TH DAY OF APRIL 2015 20TH CHAITHRA, 1937 WP(C).No. 30337 of 2013 (N)

----- PETITIONER(S) : ----- AKASH DEV, S/O.ASOKAN, KALATHIPPARAMBIL HOUSE, VALUMMEL, THOPPUMPADY,KOCHI-5. BY ADV. SRI.K.V.GOPINATHAN NAIR
RESPONDENT(S) : ----- 1. THE STATE OF KERALA, REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO THE GOVERNMENT, SECRETARIAT, THIRUVANANTHAPURAM, PIN- 695 001.

2. THE REGIONAL TRANSPORT AUTHORITY, ERNAKULAM, REPRESENTED BY ITS SECRETARY, PIN- 682 030.

3. THE SECRETARY, REGIONAL TRANSPORT AUTHORITY, ERNAKULAM, PIN- 682 030.

4. THE KERALA STATE ROAD TRANSPORT CORPORATION, REPRESENTED BY ITS CHAIRMAN & MANAGING DIRECTOR, "TRANSPORT BHAVAN", THIRUVANANTHAPURAM, PIN- 695 001. R1 TO R3 BY SR.GOVERNMENT PLEADER SRI.C.R.SYAMKUMAR R4 BY ADV. SRI.P.C.CHACKO, S.C THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON1903-2015, THE COURT ON1004-2015 DELIVERED THE FOLLOWING: Msd. WP(C).No. 30337 of 2013 (N) ----- APPENDIX PETITIONER(S)' EXHIBITS ----- EXHIBIT P1: TRUE COPY OF THE PREVAILING NOTIFICATION ISSUED BY THE1T RESPONDENT DATED2203-2010. EXHIBIT P2: TRUE COPY OF THE TIME SCHEDULE INCLUDING THE PERMIT NUMBER AND VALIDITY ISSUED TO STAGE CARRIAGE KL-07/AW 6240 ON THE ROUTE ALUVA-FORTKOCHI. EXHIBIT P3: TRUE COPY OF THE TEMPORARY PERMIT ISSUED TO THE PETITIONER VALID FROM2102-2012 TO2006-2012. EXHIBIT P4: TRUE COPY OF THE REPORT OF THE JOINT REGIONAL TRANSPORT OFFICER, MATTANCHERRY DATED1602-2013. EXHIBIT P5: TRUE COPY OF THE PROCEEDINGS OF THE2D RESPONDENT DATED1405-2013. EXHIBIT P6: TRUE COPY OF THE APPEAL MEMORANDUM AS MVAA NO.263/2013 DATED0307-2013. EXHIBIT P7: TRUE COPY OF THE TEMPORARY PERMIT ISSUED TO THE PETITIONER VALID UP TO0511-2013. EXHIBIT P8: TRUE COPY OF THE

JUDGMENT

OF THE STATE TRANSPORT APPELLATE TRIBUNAL IN MVAA. NO.263/2013 DATED2711-2013. RESPONDENT(S)' EXHIBITS ----- NIL //TRUE COPY// P.S.TO JUDGE. Msd. ASHOK BHUSHAN, CJ & A.M.SHAFFIQUE, J.

* * * * * W.P.C.No.30337 of 2013 ----- Dated this the day of April 2015

JUDGMENT

Shaffique,J This writ petition is filed challenging Ext.P8 order dated 27/11/2013 in M.V.A.A.No.263/2013 by which the appeal filed by the petitioner was dismissed by the State Transport Appellate Tribunal (hereinafter referred to as 'the Tribunal').

The averments in the writ petition disclose that the permit holder, who was operating in the route Aluva-Fort Kochi since 1985 on a regular permit, discontinued operations during November 2011 and surrendered the permit. Since the route became vacant, petitioner submitted an application for temporary permit for stage carriage KL- 43/3544. The 3rd respondent/Secretary, RTA rejected his application. However, as per the directions issued by the Tribunal in an appeal, he was granted temporary permit W.P.C.No.30337/2013 2 from 21/02/2012 to 20/06/2012. He was allowed to continue service by virtue of temporary permit without any intervention. Ext.P4 is the report of the Joint Regional Transport Officer, Mattancherry which indicates that there exists an urgent temporary and permanent need for more travel facilities for the travelling public in the said route to satisfy the increased travel demand. Petitioner subsequently applied for regular permit which was rejected as per proceedings of the Regional Transport Authority dated 14/05/2013 stating that the route portion from Aluva to Thoppumpady having a length of 30 Kms objectionably overlaps Alappuzha - Ernakulam and Thiruvananthapuram - Thrissur notified scheme. Ext.P5 is the said order which was challenged by the petitioner by filing Ext.P6 appeal before the Tribunal.

2. The Tribunal, confirmed the view taken by the 2nd respondent on a finding that the overlapping exceeds Clause 5(c) of the notification. W.P.C.No.30337/2013 3 3. The petitioner contends that even if there was a scheme as notified on 14/07/2009, it has no application to city permits. It is contended that city permits are granted as prescribed in Section 71(3) of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the 1988 Act'). Ext.P1 notification dated 22/03/2010 has been issued in terms of the said statutory provision stating that the number of stage carriages operated by State Transport Undertaking (hereinafter referred to as 'STU') shall be 250 and by other operators shall be 800. The total number of stage carriages would come to 1050. Therefore, it is contended that merely for the reason that a notification had been issued under Section 100(3) of the 1988 Act, the same will not apply to city routes which is covered by the notification Ext.P1. Hence the petitioner has sought for a direction to grant him regular permit in the said route after quashing Exts.P5 and P8.

4. Heard the learned counsel for the petitioner and the learned Government Pleader appearing on behalf of the W.P.C.No.30337/2013 4 respondents. Section 71 of the 1988 Act reads as under:

71. Procedure of Regional Transport Authority in considering application for stage carriage permit- (1) A Regional Transport Authority shall, while considering an application for a stage carriage permit, have regard to the objects of this Act. (2) A Regional Transport Authority shall refuse to grant a stage carriage permit if it appears from any time-table furnished that the provisions of this Act relating to the speed at which vehicles may be driven are likely to be contravened: (3)(a) The State Government shall, if so directed by the Central Government having regard to the number of vehicles, road conditions and other relevant matters, by notification in the Official Gazette, direct a State Transport Authority and a Regional Transport Authority to limit the number of stage carriages generally or of any specified type, as may be fixed and specified in the notification, operating on city routes in towns with a population of not less than five lakhs. (b) Where the number of stage carriages are fixed under clause (a), the Government of the State shall reserve in the State certain percentage of stage W.P.C.No.30337/2013 5 carriage permits for the Scheduled Castes and the Scheduled Tribes in the same ratio as in the case of appointments made by direct recruitment to public services in the State. (c) Where the number of stage carriages are fixed under clause (a), the Regional Transport Authority shall reserve such number of permits for the Scheduled Castes and the Scheduled Tribes as may be fixed by the State Government under sub-clause (b). (d) After reserving such number of permits as is referred to in clause (c), the Regional Transport Authority shall in considering an application have regard to the following matters, namely:- (i) financial stability of the applicant; (ii) satisfactory performance as a stage carriage operator including payment of tax if the applicant is or has been an operator of stage carriage service; and (iii) such other matters as may be prescribed by the State Government: Provided that, other conditions being equal, preference shall be given to applications for permits from - (i) State transport undertakings; (ii) co-operative societies registered or deemed to have been registered under any enactment for the time being in force; W.P.C.No.30337/2013 6 (iii) ex-servicemen; (iv) any other class or category of persons, as the State Government may, for reasons to be recorded in writing,

consider necessary." Explanation.- For the purposes of this Section "company" means any body corporate, and includes a firm or other association of individuals; and "director", in relation to a firm, means a partner in the firm." 5. In terms of Section 71(3)(a), the State Government, on the basis of the directions issued by the Central Government, shall, by notification in the Official Gazette, directed the STU or the Regional Transport Authority to limit the number of stage carriages as may be fixed and specified in the notification operating on any city routes in towns with a population of not less than 5 lakhs. In regard to Cochin city, Ext.P1 is the notification.

6. In terms of Clause (b) and Clause (c), some reservation had been provided to stage carriage permits for Scheduled Castes and Scheduled Tribes. It is not in dispute that Ext.P1 has been published on the basis of the power W.P.C.No.30337/2013 7 exercised by the Government under Section 71(3)(a) of the 1988 Act. This provision apparently applies in respect of stage carriages to be operated on city routes in towns. It is therefore argued that Chapter VI has no application to the number of stage carriages to be operated in city routes.

7. The learned Government Pleader, however, relies upon Section 98 of Chapter VI of the 1988 Act and contends that the provisions of Chapter VI shall override anything inconsistent contained in Chapter V. Section 98 reads as under:

"8. Chapter to override Chapter V and other laws.- The provisions of this Chapter and the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in Chapter V or in any other law for the time being in force or in any instrument having effect by virtue of any such law." 8. Further reference is made to Section 99 by which the scheme is proposed to indicate that a scheme can be brought into force to be run and operated by STU with W.P.C.No.30337/2013 8 reference to road transport services in general or any particular class of such service in relation to any area or route or portion thereof should be run and operated by the STU. Reference is also made to Section 104 which reads as under:

"04. 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 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." W.P.C.No.30337/2013 9 9. It is not in dispute that permits are granted to stage carriage operators in terms of the provisions under Chapter V of the Act and operation in a city route also requires a permit for which an application has to be submitted under Section 70 of the 1988 Act. Section 71(1) details the procedure for considering the application having due regard to various factors which are narrated in sub clauses (i) to (iv) of sub Section (d) in Section 71. Section 71 (3)(a) is a special provision in relation to operations being carried out in a city route but the manner of consideration of every application is on the basis of the provisions under Section 71(d). Therefore, as far as city routes are concerned, it is akin to any other route. The only factor is the limitation being provided by the State Government on the directions from the Central Government in regard to the number of permits that could be issued. What is provided in Ext.P1 is only the maximum number and it does not mean that the respondent authority should ignore the provisions of W.P.C.No.30337/2013 10 Chapter VI. When there is a clear prohibition under Section 104 in granting any permit except in accordance with the scheme, the said statutory provision applies even in respect of a city route as mentioned in Section 71(3)(a). In other words, even in respect of city routes, the provision in Chapter VI applies. In the result, we do not find any error in the judgment of the Tribunal and accordingly the writ petition is dismissed. (sd/-) (ASHOK BHUSHAN, CHIEF JUSTICE) (sd/-) (A.M.SHAFFIQUE, JUDGE) jsr W.P.C.No.30337/2013 11 W.P.C.No.30337/2013 12