

N.M.George Vs. The Secretary

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Court : Kerala

Decided On : Jul-03-2015

Judge : Honourable Mr. Justice a.V.Ramakrishna Pillai

Appellant : N.M.George

Respondent : The Secretary

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI FRIDAY, THE 3D DAY OF JULY 2015/12TH ASHADHA, 1937 WP(C).No. 17454 of 2015 (F) ----- PETITIONER: ----- N.M.GEORGE, AGED 65 YEARS, NELLIKKUNNEL HOUSE, KADALIKKADU.P.O, MUVATTUPUZHA. BY ADV. SRI.K.V.GOPINATHAN NAIR RESPONDENTS: ----- 1. THE SECRETARY, REGIONAL TRANSPORT AUTHORITY, MUVATTUPUZHA PIN-686661.

2. THE SECRETARY, REGIONAL TRANSPORT AUTHORITY, ERNAKULAM, PIN-682030. BY GOVERNMENT PLEADER SMT.K.A.SANJEETHA THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/6/2015 THE COURT ON 30/7-2015, DELIVERED THE FOLLOWING: PJ WP(C).No. 17454 of 2015 (F) ----- APPENDIX PETITIONER(S)' EXHIBITS ----- EXT.P1 TRUE COPY OF THE PROCEEDINGS OF THE REGIONAL TRANSPORT AUTHORITY, MUVATTUPUZHA DATED 27/9.2012

EXT.P2 TRUE COPY OF THE

ORDER

OF THE STATE TRANSPORT APPELLATE TRIBUNAL IN M.P.1325/2012 IN MVAA.391/2012 DATED 26.11.2012 EXT.P3 TRUE COPY OF THE REGULAR PERMIT HOLDING BY THE PETITIONER WITH ENDORSEMENT EXT.P4 TRUE COPY OF THE NOTICE ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DATED 5.5.2015 (NO.17/236/2015/M) EXT.P5 TRUE COPY OF THE

ORDER

OF THIS HONOURABLE COURT IN I.A.1311/2014 IN W.A.667/2014 DATED 23.12.2014 EXT.P6 TRUE COPY OF THE SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 6.6.2015. RESPONDENT(S)' EXHIBITS ----- NIL. / TRUE COPY / P.S. TO JUDGE PJ A.V.RAMAKRISHNA PILLAI, J.

===== W.P(C) No. 17454 of 2015 =====
===== Dated this the 3rd day of July, 2015

JUDGMENT

Ext.P4 by which the first respondent has directed the petitioner to stop service, is under challenge in this writ petition.

2. The petitioner is holding regular permit to operate Fast Passenger on the route between Poomala and Ernakulam. By Ext.P1, the renewal application has been rejected. Against that, the petitioner has filed statutory appeal before the State Transport Appellate Tribunal under Section 89 of the Motor Vehicles Act (for short, the Act) as MVAA No.391 of 2012.

3. The petitioner alleges that invoking Section 214(2) of the Act, the validity of the regular permit has already been extended by the Tribunal till the disposal of the appeal as per Ext.P2 and consequential endorsement has already been made in the permit as evidenced by Ext.P3. Therefore, according to the petitioner, the WP(C)17454/15 :-2:- regular permit hold by the him is valid and the appeals are pending before the Tribunal even now.

4. The petitioner further alleges that the validity of the notification viz., G.O(P) No.73/2013/Tran. dated 16.7.2013 permitting renewal of the permit as higher class of service in respect of private stage carriage operators are pending before a Division Bench of this Court. This Court by Ext.P5 clarified that such temporary permits issued by the Secretary, RTA, pending renewal application, would be under the proviso to Section 104 of the Act and such issue could be only till the State Transport Undertaking applies and obtains the permit.

5. The grievance of the petitioner is that in the case of regular permits which is having validity, the aforesaid order is not applicable. It is pointed out that when the appeals are pending and Ext.P2 is in force, the first respondent issued Ext.P4 directing to stop the service of the petitioner. The petitioner further alleges that his permit is a WP(C)17454/15 -:3:- regular permits having validity as extended by the Tribunal and is conducting operation even now. It is with this background, the petitioner has come up with this writ petition.

6. As it was submitted by the learned Senior Government Pleader that the KSRTC has started operation in the said route, the KSRTC was suo moto impleaded as additional 3rd respondent.

7. I have heard the learned counsel for the petitioner, the learned Senior Government Pleader and the learned Standing Counsel for the respondent corporation.

8. The learned counsel for the petitioner would point out that Ext.P2 of the learned STAT extending the validity of the regular permit is in force and the endorsement has already been effected in the regular permit extending its validity as evident from Ext.P3. Therefore, according to the learned counsel for the petitioner, when there is a valid regular permit enabling to operate the service, the respondents have no power to issue an order directing the petitioner WP(C)17454/15 -:4:- to stop the service in violation of the Tribunal's order.

9. It was further argued by the learned counsel for the petitioner that so long as the petitioner is holding valid regular permit, the order cannot be made applicable in the case of the petitioner. It was pointed out that MVAA No.391 of 2012 is pending

before the Tribunal and Ext.P2 order passed by the Tribunal is in force. It was also argued that as per Ext.P5, what was intended and directed is only to the effect that temporary permits issued under Section 87(1)(d) of the Act pending renewal application shall be subject to the proviso to Section 104 of the Act. It is submitted that such a permit is only a conditional permit which would become invalid when the State Transport Undertaking applies and obtains the permit.

10. The learned counsel for the petitioner submitted that in the instant case the petitioner is holding a regular permit and there was no occasion for issue of any temporary permit, and the regular permit WP(C)17454/15 -:5:- itself is validated by the STAT. The learned Standing Counsel for the respondent corporation, per contra, made available to me for perusal a copy of the stage carriage permit issued by the Government in the name of the managing director of respondent corporation to operate on the route between Poomala and Ernakulam via Thodupuzha- Muvattupuzha (Fast Passenger) subject to the condition that the vehicle should be replaced by later model vehicle on or before 11.10.2015. The period of validity is from 28.1.2015 to 27.1.2010. It was submitted by the learned Standing Counsel that the KSRTC has started to operate on the said route.

11. As per Section 99(2) of the Act, after publication of the draft notification only temporary permit can be issued. Therefore, the argument of the learned counsel for the petitioner that he is holding an extended permit on the strength of orders passed by the learned STAT does not hold good.

12. It is crucial to note that as per the liberalised policy WP(C)17454/15 -:6:- adopted in the Motor Vehicles Act, there is no restriction in granting regular permit in the non-notified route. Therefore, there is no justification for the petitioner to stick on the stand to have a permit through the notified route as the granting of such permit would cause loss to the second respondent. Therefore, this Court is of the view that the petitioner is not entitled to get the relief prayed for. In the result, the writ petition fails and accordingly, it is dismissed. Sd/- A.V.RAMAKRISHNA PILLAI JUDGE krj