

Mathew Vs. Regional Transport Authority, Kottayam and ors.

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Court : Kerala

Decided On : Feb-17-1959

Reported in : AIR1960Ker85

Judge : Varadaraja Iyengar, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 57(3); Motor Vehicles Rules, 1952 - Rule 165

Appeal No. : O.P. No. 97/1959

Appellant : Mathew

Respondent : Regional Transport Authority, Kottayam and ors.

Advocate for Def. : Govt. Pleader for Respondents 1 and 2,; K.K. Mathew,; Ge

Advocate for Pet/Ap. : K.S. Sebastian, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Varadaraja Iyengar, J.

1. This is a petition under Article 226 of the Constitution. The complaint is that the petitioner, bus operator was not heard before orders were passed by the 1st

respondent. Transport Authority and their Secretary the 2nd respondent on an application for variation of route made by the 3rd respondent rival bus operator in the first instance and for consequential variation of timings later on jointly made by the 3rd and 4th respondents. It was objected on behalf of the 1st and 2nd respondents that the petitioner filed his representation beyond the time prescribed and so he was not actually heard on his representation. Petitioner in reply states that the time prescribed and which he overstepped was unauthorised by law, but he was nevertheless in time and so should have been heard in any event. There were various other points raised by the petitioner in his petition and argued before me but as I am with him on the question as to wrongful non-hearing. I do not deal with them.

2. Now, the third respondent's application for extension of his route Vaikom -- Vettikattu Mukku to Neezhoor via Keezhoor was dated 5-8-1958. This was posted on the official notice board of the first respondent on 24-9-1958, apparently under Rule 165 of the 1952 Rules. This rule 165 provides that the posting should be 'not less than 30 days before the date appointed for the receipt of representation.' That is to say the last date for receiving representation against the application should be so fixed as to leave 30 clear days from the date of the posting. Unfortunately the limit of time fixed in this particular case fixed the last date as 10-10-1958. viz- very much less than the 30 days required as above by the Rule 165, though it was added that the representation will be considered on a date after 25-10-1958 viz. more than 30 days after the posting.

The petitioner had filed his representation against the grant of the 3rd respondents application on 14-10-1958 outside the limit fixed for themselves by the 1st respondent but within the 30 days allowed under Rule 165, And on the ground that it was received many days after the appointed date, the representation was not considered by the 1st respondent. It is not denied that the petitioner had sufficient interest to be heard. Clearly therefore the refusal to hear him was illegal and this is enough to vitiate the order allowing the third respondent's application. And as the order passed by the 2nd respondent varying the timings on the joint application of the 3rd and 4th respondents was confessedly consequential on the first order of the 1st respondent, that also has to fall.

3. Learned counsel for the 3rd respondent made a desperate attempt to show that it was open to the Transport Authority under Section 57(3) of the Motor Vehicles Act to prescribe a time within the 30 days limit within which to receive representation as herein. No doubt Section 57(3) provides for the publication along with the application of a notice of the date before which the representation should be submitted but without fixing any date limit while the date after the publication on which the representations received will be considered is fixed to be after 30 days specifically. But it is left to the Rule 165 to fix the outer limit in connection with the submission of the representations and a lacuna in the section if at all was sufficiently cured. There might have been a doubt if there was no Rule 165 fixing the limit but once we have it there is no escape from it.

4. It follows that the order impugned cannot be sustained. I therefore quash the proceedings of the 1st Respondent dated 15-11-1958 and also those of the 2nd Respondent dated 24-12-58 as prayed for. The petition herein is thus allowed. The petitioner will have his costs from the Respondents 3 and 4, Counsel fee Rs. 100 one set only.