

Mohammed Vs. R.T.A.

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Court : Kerala

Decided On : Oct-14-1992

Reported in : 2(1993)ACC332

Judge : Pareed Pillay, J.

Appellant : Mohammed

Respondent : R.T.A.

Judgement :

Pareed Pillay, J.

1. Petitioner challenges the conditions in Ext. P-1 order issued by the Regional Transport Authority, Malappuram. The offensive conditions, according to him, are that he should not curtail any portion of the route or apply for another route curtailing varying any portion of the route already granted and that the permit would stand automatically cancelled as and when the vehicle causes an accident. Contention of the petitioner is that the Regional Transport Authority (First respondent) has no jurisdiction to impose such conditions.

2. The short question that arises for consideration is whether the first respondent is vested with jurisdiction to impose the aforesaid conditions.

3. Section 84 of the Motor Vehicles Act enumerates the general conditions attaching to all permits. Section 84 empowers the transport authority which granted a permit to cancel or suspend it for particular periods as it thinks fit on conditions enumerated thereunder. Section 71 provides for the procedure of the Regional Transport Authority in considering the applications for stage carriage permit. Section 72 provides that subject to the provisions of Section 71 a Regional Transport Authority may, on an application made to it under Section 70 grant a stage carriage permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit Sub-section (2) provides that the Regional Transport Authority if it decides to grant a stage carriage permit, may grant the permit for a stage carriage of a specified description and may, subject to any rules that may be made under the Act, attach to the permit the conditions enumerated thereunder. The conditions enumerated under Section 72(2) do not empower the Regional Transport authority to impose the aforementioned conditions while granting the permit. Of course, it is open to the regional Transport Authority to vary the conditions of the permit of the permit or attach to the permit further conditions. The authority is given that power under Section 72(2)(xxii). This can be done after giving notice of not less than one month to the party concerned. This does not mean that the Regional Transport Authority can impose conditions other than those mentioned under Section 72(2). If the Regional Transport Authority is of opinion that the conditions imposed in the permit are not sufficient and if it wants to include further conditions enumerated Under Sub-section (2) of Section 72 it can do so after giving notice to the party. In other words, further conditions that can be attached to the permit can only be those enumerated Under Sub-section (2) and not any condition of its choice and outside the purview of Sub-section (2). The conditions imposed by the first respondent do fall outside those enumerated Under Sub-section (2). It goes without saying that the first respondent lacked jurisdiction to impose the aforementioned conditions in the permit.

4. Learned Government Pleader submitted that the impugned order is appealable one and so the writ petition is not maintainable. Government Pleader further submitted that the order is appealable as provided under Section 89(1)(a) and as the petitioner has an alternative effective remedy available he cannot get any relief from this Court by invoking Article 226 of the Constitution of India. As the

conditions imposed in the permit are challenged on the fundamental proposition that the Regional Transport Authority lacked jurisdiction to do so, the above contention of the Government Pleader is not tenable. As the challenge against the conditions imposed in Ext. P.1 goes to the root of the jurisdiction of the Regional Transport Authority, existence of alternative remedy is no bar to the remedy Under Article 226 of the Constitution. In a case where an authority has acted wholly without jurisdiction, existence of alternative remedy is not a bar to the maintainability of the writ petition. In *Calcutta Discount Company v. Income-tax Officer* : [1961]41ITR191(SC) , the Supreme Court held:

The High Courts have ample powers Under Article 226 of the Constitution and are in duty bound thereunder, to issue such appropriate orders or directions as are necessary in order to prevent persons from being subjected to lengthy proceedings and unnecessary harassments by an executive authority acting without jurisdiction, alternative remedies such as are provided by the Income-tax Act cannot always be a sufficient reason for refusing quick relief in a fit and proper case.

The first respondent ought not to have included the aforesaid conditions in Ext. P.1. The impugned conditions are liable to be set aside as they cannot be sustained legally. The impugned conditions in Ext. P.1 are hereby set aside. O.P. stands allowed.

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