

Seethal Vs. R.T.A.

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Court : Kerala

Decided On : Jun-19-2003

Reported in : 2003(3)KLT357

Judge : C.N. Ramachandran Nair, J.

Appeal No. : W.P.(C) No. 16273 of 2003

Appellant : Seethal

Respondent : R.T.A.

Advocate for Def. : M.A. Fayaz, Government Pleader

Advocate for Pet/Ap. : G. Prabhakaran, Adv.

Judgement :

C.N. Ramachandran Nair, J.

1. Petitioner, a grantee of a regular stage carriage permit, is challenging Ext.P5 whereunder the R.T. A. declined an application for condonation of delay filed by the petitioner for production of current records of the vehicle beyond four months for issue of permit. R.T.A. granted a regular stage carriage permit to the petitioner vide Ext.P1 proceedings dated 28.8.2002. It is seen from the photocopy of Ext.P1 produced that the proceeding was signed for communication on 20.9.2002 and on that day the petitioner concedes to have received it. According to the petitioner,

petitioner made an application vide Ext.P2 on 19.10.2002 for grant of maximum time for production of current records in terms of Rule 159(2) of the Kerala Motor Vehicles Rules. According to the petitioner there was no response and the R.T.A. has not revoked Ext.P1 permit granted to the petitioner. Therefore the petitioner produced current records Ext.P3 on 25.2.2003 for issue of permit further to Ext.P1 grant of it. Petitioner also filed Ext.P4 which is in the nature of request for condonation of delay in furnishing current records of the vehicle for issue of permit. It is against this request of the petitioner, that the R.T.A. vide its proceedings dated 27.3.2002 rejected the petitioner's request for time for production of current records of the vehicle or in other words rejected the current records produced by the petitioner beyond the maximum period permissible under Rule 159(2) of the Kerala Motor Vehicles Rules. According to the petitioner even today R.T.A. has not revoked the permit in terms of Rule 159(2) of the Rules and the petitioner's prayer in the Original Petition is for a direction to the R.T.A. to condone the delay in production of current records and issue the permit granted to him under Ext.P1, which according to him, is still in force.

2. Government Pleader on the other hand contended that issue of permit itself was conditional and as is evident from the endorsement in Ext.P1 wherein the R.T.A. has directed the petitioner to produce the current records within one month in terms of Rule 159(2) of the rules and as a consequence of the failure on the part of the petitioner, the permit will stand automatically cancelled is his contention. However, the R.T.A. has not taken this extreme view, even in the impugned proceedings dated 27.3.2003. According to the Government Pleader this is on account of the misconception of the R.T.A. about the legal position and the permit no longer survives by operation of the statutory provision particularly Rule 159(2) read with the condition imposed in Ext.P1 itself under Section 72(2) of the Motor Vehicles Act.

3. I have gone through the permit granted, namely, Ext.P1 wherein there is a general condition annexed to it in the following lines:

The grantee is directed to produce current records of the vehicle within one month from the date of sanction of this order, failing which the sanction is liable to be

revoked with out further notice.

It has been held by a Full Bench of this Court in the decision reported in *Narayanan v. R.T.A., Trichur* (1980 KLT 249 (FB)) that an applicant for regular permit need not produce registration particulars of the vehicle which he is free to produce after grant of the same and within the time provided under the Rule. Even though the decision is under the old Rule, the decision is applicable to present Rule, namely, Rule 159(2) of the Motor Vehicles Rules and this decision has been followed by this Court in later decisions also. Therefore the application filed by the petitioner without being accompanied by registration particulars of the vehicle is consistent with Rule 159 and the R.T.A.'s endorsement in Ext.PI that the permit is liable to be revoked without notice if current records are not produced with one month from the date of grant is also in terms of the first part of Rule 159(2). In other words, if an applicant does not produce current records of the vehicle or make an application for extension of time for a maximum period of three months under Rule 159(2) for production of current records of the vehicle within one month granted by the R.T.A. in the permit, the consequence would be that the permit will no longer be valid after the expiry of one of it's issue by virtue of the operation of the condition provided in it in terms of Section 72(2) of the Act read with Rule 159(2) of the Kerala Rules. However, the position changes when a grantee applies for extension of time in terms of Rule 159(2) of the Rules for production of registration particulars or current records of the vehicle. In fact the maximum time that can be extended under Rule 159(2) by the R.T.A. is four months including one month's time granted under the permit. There is no other provision in the M.V. Act or the Kerala Rules enabling the R.T.A. to extend time for production of current records beyond four months from the date of service of the proceedings granting permit. Of course the grant of permit has to be taken as the date of communication to the grantee and the time for production of current records is to be reckoned with reference to the date of service of communication of permit to the grantee. The contention of counsel for the petitioner is that Rule 159(2) only authorises the R.T.A. to revoke the permit on account of non-production of current records within the maximum period of four months, which they have not so far done in the case of the petitioner, and so much so, according to him, the permit survives even after the lapse of four months from the date of grant of permit without production of

current records of the vehicle. Government Pleader on the other hand submitted that though the term used in Rule 159(2) is 'may', in the context in which it is used, it has to be taken as 'shall' and so much so on expiry of four months from the grant of permit, the permit will automatically expire if the current records of the vehicle and valid registration certificate in favour of the grantee are not furnished within the four months stated in Rule 159(2) of the Rules. It has been held in large number of decisions that the word 'may' is prima facie enabling and permissive and in certain context it shall mean 'shall'. It has been so held by the Allahabad High Court in the decision in Union of India v. Bhagat Ram (AIR 1958 All. 342, 344) by the Rajasthan High Court in State v. Birda (AIR 1957 Raj. 318, 321) and by the Supreme Court in the decisions in M. Karunanidhi v. U.V. Hande (AIR 1983 SC 558) and G.P.S. Kesari v. Lakshminarain Gupta (AIR 1958 SC 964) that Court has unfettered power to ascertain whether a provision is directory or mandatory subject to it's ascertaining the real intention of the Legislature on a careful examination of the scope of the statute. Going by these decisions and in the context in which 'may' is used in Rule 159(2) which does not provide for power to the R.T.A. to extend time for production of current records beyond four months, I am of the view that the word 'may' has to be read as 'shall' in the context in which the same is used. There is also no provision in the Act or Rules enabling the R.T.A. to condone the delay in furnishing current records beyond four months. The word 'may' in the context in which it is used in Rule 159(2) of the Rules has to be read as meaning 'shall' or otherwise the purpose of the Rule will be defeated. It has to be noticed that there is no inherent power vested in the R.T.A. to revive permits which have lapsed by virtue of operation of conditions of permit incorporated by the R.T.A. while granting it in exercise of their powers under Section 72(2) read with Rule 159(2) of the Rules.

4. I feel prima facie Rule 159(2) requires an applicant as far as possible to produce registration particulars along with the application itself. However, there is an inbuilt relaxation of this condition in the Rule itself where an applicant is granted one month's time for production of current records from the date of grant of permit and thereafter if he has justification for non-production of the current records within the said one month to the R.T.A., R.T.A. is vested with power to extend time for production of current records for another three months. Even though application in

this regard and adjudication by the R.T.A. are not specifically contemplated on this, it has to be necessarily implied that extension of time by the R.T.A. can be granted only on application by the grantee and on the R.T.A. being satisfied about the inability for the grantee to produce the current records and on being satisfied the R.T.A. is empowered to grant upto another three months' time and not beyond. The position emerging from Rule 159(2) is that R.T.A. is not vested with power to extend time for production of current records beyond four months in all in any case. Therefore the term used in the latter part of Rule 159(2) that the R.T.A. 'may revoke its sanction of the application', that is the grant of permit, has to be understood as the R.T.A. shall revoke the permit. Since the original grant of permit imposes a general condition for the grant of the same that the 'permit shall stand revoked without notice' on non-compliance of any condition all that happens after the grant of extension of time is that the condition of one month stated in the permit gets substituted or extended by such period or in other words, the extension of time granted will be only a modification of the condition of permit. In other words, after the grant of such an extension of time by the R.T.A. in terms of Rule 159(2) of the Rules, the general condition of the permit should be read to include such extended time for production of current records. The consequent is that the term 'may' used in Rule 159(2) has to be read as meaning that the permit granted shall stand cancelled on non-production of current records within the extended period granted by the R.T.A. In other words, the consequence of default in production of current records as contemplated in the general condition of permit granted will take effect, that is the automatic expiry of the permit on non-production of current records within the extended period. In this view of the matter, I hold that the effect of Section 72(2) of the Act read with Rule 159(2) of the Rules will be the following:

1. The grant of permit containing a general condition that the current records of the vehicle should be produced within one month will lead to automatic cancellation of permit, if current records are not produced or grantee does not make an application for extension of time upto the maximum period of three months within one month from the receipt of proceedings granting permit.

2. If an application for extension of time for production of current records is made and if the R.T.A. has granted an order extending the time then the extended period shall stand substituted for the period provided for production of current records mentioned as a general condition in the grant of permit. Since the R.T.A. is vested with statutory power, and if it does not reject it, then of course it should be assumed that the extension applied for is granted. Therefore unless rejected, the time applied for by the petitioner upto a maximum period of four months including the one month granted as a general condition in the grant of permit shall form part of the permit granted.

3. If current records are not produced within four months from the date of communication of grant of permit by the grantee, then the permit shall stand cancelled without the R.T.A. requiring to cancel it as that is the necessary consequence of the operation of the condition of permit granted under Section 72(2) read with Rule 159(2).

5. Going by the above reasoning, I do not think the controversy raised as to whether the petitioner's application for extension of time was granted by the R.T.A. or not, still subsists. Assuming it was filed, and in the absence of rejection of the same, if it is to be treated as granted, even then petitioner's permit does not survive because the petitioner admittedly produced the current records of the vehicle only on 25.2.2003 as against the last date of production of the same, which was on or before 29.1.2003. Therefore the necessary consequence is that the petitioner's permit stands cancelled and there was no need for the R.T.A. to issue Ext.P5 proceedings, because permit does not survive to be issued after the lapse of four months.

6. In the circumstances, prayer of the petitioner for a direction to the R.T.A. to revive the permit cannot be entertained because R.T.A. has no power of reviving a permit which expired on account of statutory operation. However, it is open to the petitioner to make an application for temporary permit or regular permit. It is to be noted that petitioner was granted a permit and even as on 27.3.2003 when the R.T.A. issued the impugned proceedings declining the permission to start operation, a substitute permit is not issued in the place of the permit already

issued to the petitioner, but expired. Having regard to the fact that R.T.A. has not revoked the permit, probably on account of misconception of law and the further fact that petitioner obtained a vehicle and is ready for operation, I direct the petitioner to make an application for regular permit along with an application for temporary permit, if he desires to make such applications, and on receipt of both the applications, the Secretary R.T.A. will issue temporary permit to the petitioner for a period of two months within which time the R.T.A. will consider the petitioner's fresh application for regular permit, subject to route formulation.

W.P. is disposed of as above.

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