

**Aboobacker Vs. R.T.A.**

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**Court :** Kerala

**Decided On :** Nov-26-2004

**Reported in :** III(2005)ACC606; 2005(1)KLT987

**Judge :** K. Balakrishnan Nair, J.

**Acts :** Motor Vehicles Act - Sections 70, 71, 72, 80 and 102; Kerala Motor Vehicles Rules, 1989 - Rules 143, 159 and 159(2)

**Appeal No. :** W.P. No. 20588 of 2004

**Appellant :** Aboobacker

**Respondent :** R.T.A.

**Advocate for Def. :** G. Prabhakaran and; M.A. Fayaz, Adv.

**Advocate for Pet/Ap. :** Saju J. Vallyara, Adv.

**Judgement :**

**K. Balakrishnan Nair, J.**

1. The point that arises for decision in these Writ Petitions is whether it is mandatory to furnish the details of the vehicle, at the time of considering the application for a regular permit.

2. W.P.(C) No. 29731/2004: The petitioner submitted an application for grant of a regular permit on the route Parappanangadi -- Malappuram. He did not have a ready vehicle. So, in the application form, it was stated that the particulars of a suitable stage carriage will be furnished later. For the purpose of operating the service on the above route, the petitioner purchased a vehicle on 23.3.2004. Temporary registration was obtained for it on the very same day. While the body construction of the vehicle was going on, the 1st respondent R.T.A., Malappuram considered his application on 25.3.2004. Though, there was no objection to the grant of the permit from any quarters, the R.T.A. by Ext.P3 decision, rejected it. The relevant portion of the decision reads as follows:

'Heard. The current records of the offered vehicle as required, in view of judgment dated 13.6.03 of Hon'ble High Court of Kerala in W.P.(C)No. 16171/03, are not produced. Moreover, the entire route is well served by stage carriages with little time gap. Hence rejected'.

3. The order of this Court, mentioned in the above decision of the R.T.A. is an interim order, which says that the Regional Transport Authority can insist that it will consider only the applications for regular permit filed by the applications with ready vehicle having current records, pending finalisation of route formulation. The petitioner appealed against Ext.P3 and the S.T.A.T., by Ext.P6 judgment dated 23.7.2004, affirmed the said decision. The S.T.A.T. found that one of the grounds, that is, the route is well served, is not a valid ground for rejecting the application for permit, in view of the decision of the Apex Court in *Mithilesh Garg v. Union of India*, AIR 1992 SC 443. But, the second ground that the current records of the vehicle were not produced at the time of consideration of the application, has been upheld by the S.T.A.T. On that ground, the appeal was dismissed. The relevant portion of the judgment reads as follows:

'6. The other ground is that the documents of the offered vehicle were not produced. As per Rule 159(2) the current records need be produced only within 1 month of the grant or within such extended period not exceeding 3 months in the aggregate. As per that rule, at the time of application the records of the vehicle need not be there. In *Natarajan v. State*, 1999 (1) KLT SN 11 P.10 = AIR 1999

Ker. 207, the position was considered. There it has been held that at the time of filing the application the vehicle need not be there. But, at the time of consideration, ready vehicle must be there. The current records may be produced only within 1 month thereafter. Hence, if the current records were not produced at the time of consideration of the application on account of the fact that ready vehicle was not there, permit is not liable to be granted. But, if the vehicle was there and failure was to produce current records alone, the position would be different. Hence, I have to consider whether the records were not produced as no ready vehicle was there. In the appeal memorandum, it is specifically stated that the vehicle offered was only under body construction. Chassis was delivered only on 23.3.2004 and the chassis was registered only on 22.4.2004. The application was considered on 25.3.2004. Hence, on the date of application, there was only chassis and there was no ready vehicle. The appellant was not entitled to get a grant permit at the time of application, as there was no ready vehicle. Hence, the appeal is devoid of merits and it is liable to be dismissed'.

4. The point to be decided, is whether the failure to offer a ready vehicle at the time of consideration of the application for permit, is a ground to reject the same. Section 70 of the Motor Vehicles Act deals with the application for stage carriage permit, which reads as follows:

'70. Application for stage carriage permit: -- (1) An application for a permit in respect of a stage carriage (in this Chapter referred to as a stage carriage permit) or as a reserve stage carriage shall, as far as may be, contain the following particulars, namely :--

(a) the route or routes or the area or areas to which the application relates;

(b) the type and seating capacity of each such vehicle;

(c) the minimum and maximum number of daily trips proposed to be provided and the time table of the normal trips.

Explanation:--For the purposes of this section, Section 72, Section 80 and Section 102, 'trip' means a single journey from one point to another, and every return

journey shall be deemed to be a separate trip;

(d) the number of vehicles intended to be kept in reserve to maintain the service and to provide for special occasions;

(e) the arrangements intended to be made for the housing, maintenance and repair of the vehicles, for the comfort and convenience of passengers and for the storage and safe custody of luggages;

(f) such other matters as may be prescribed.

(2) An application referred to in Sub-section(1) shall be accompanied by such documents as may be prescribed'.

This Court, in R. Natarajan's case, 1999 (1) KLT SN 11 P.10 = AIR 1999 Kerala 207, interpreting the above quoted section held that furnishing of particulars of the vehicle in the application itself, is not mandatory. In the said decision it was held as follows:

'The above mentioned provision says that the application for a permit in respect of a stage carriage or as a reserve stage carriage shall, as far as may be, contain the particulars mentioned in Clauses (a) to (f). Nothing in Clauses (a) to (e) cast an obligation on the applicant to furnish particulars of the vehicle proposed to be used for stage carriage service. Rule making authority may, however, under Clause (f) prescribe additional matters in respect of which also particulars should be furnished in an application for stage carriage permit. Legislature has also used the words 'as far as may be' tones down the rigour of the word 'shall', a word which is normally considered as mandatory. Words 'as far as possible', 'as far as practicable' etc. when used in statutes would lessen the rigour of the rule in giving meaning to the extent it is possible, and thereby gives little bit of flexibility to the statutory provisions. In this connection reference is made to decision in Municipal Council. Ajmer v. Satya Narain, ILR (1962) 12 Raj. 693; Vidarbha Mills Berar v. Ellichpur Municipality, AIR 1943 Nag. 277; Rani v. Dy. Director of Consolidation, AIR 1959 All. 525 = 1959 All.L.J 438; State of Kerala v. Idicula, 1980 KLT 120 and W.K. Chauhan v. State of Gujarat, AIR 1977 SC 251 = 1977: Lab IC 38.'

5. Rule 143 of the Kerala Motor Vehicles Rules, 1989 says that the application for a stage carriage permit shall be in Form P. St. S.A. Interpreting the said form in the above decision, this Court held that it was not mandatory to mention the particulars of the vehicle, in the application form.

6. Section 71 or Section 72 of the Act, also does not provide that it is mandatory to mention the particulars of the vehicle, either at the time of submission of the application or at the time of consideration of it. Further, Rule 159 of the Rules expressly provides for grant of one month's time from the grant of the permit, for producing the certificate of registration. The R.T.A. is competent to extend the said time limit, by another three months also. Rule 159 read as follows:

'159. Permits--Entry of registration marks compulsory:-Time for entry:--

(1) No permit shall be issued before entering the registration mark of the vehicle to which it relates has been entered therein.

(2) When the applicant is unable to produce the certificate of registration on the date of his application for permit. owing to the fact that he is not on that date in possession of the vehicle duly registered or for some other reason the applicant shall within one month of the sanctioning of the application by the Transport Authority or such longer period or periods not exceeding four months in the aggregate as the Authority may specify produce the certificate of registration of the vehicle before that Authority so that the particulars of the registration mark may be entered in the permit. In the event of any applicant failing to produce the certificate of registration within a period specified by the Transport Authority, the Authority may revoke its sanction of the application.

(3) The power vested in a Transport Authority under Sub-rule.(2) Shall also be exercised by its delegatee in respect of orders passed under the delegated powers'.

7. Interpreting the above Rule, a Division Bench of this Court in Ushakumari v. Abdul Azeez, 2000 (1) KLT SN 25 P.23 = 2000 (1) KLJ 141, has held that the records of the vehicle need be produced, only at the time of issuance of the

permit. The relevant portion of the said judgment reads as follows:

'As per Rule 159 of the Kerala Motor Vehicles Rules, it is only necessary to produce the current records within the statutory period of 30 days from the date of grant of permit or upto four months which the authority may allow by extending the same. Therefore it is not mandatory on the part of the applicant to produce the records at the time of consideration. This legal position has already been considered by this Court in the Full Bench decision reported in Narayanan v. RTA, Trichur, 1980 KLT 249'.

In view of the above authoritative decision of the Division Bench of this Court, the decision of the Court in R. Natarajan's case, (1999(1) KLT SN 11 P.10 = AIR 1999 Ker.207), stands overruled by necessary implication. So, Ext.P6 judgment of the Tribunal is unsustainable.

8. Further, by the time the appeal was disposed of, the petitioner got the vehicle registered. Accordingly, the Writ Petition is allowed. Exts. P3 and P6 are quashed. The 1st respondent R.T.A. is directed to reconsider the application of the petitioner for permit in accordance with law, within two months from the date of receipt of a copy of this judgment.

9. W.P.(C) No. 20588/2004: The case of the petitioner is identical to the case of the petitioner in W.P.(C) 29731/2004. Accordingly, the Writ Petition is allowed, quashing Exts. P2 and P6. The 1st respondent R.T.A. is directed to reconsider the application of the petitioner for permit in accordance with law, within two months from the date of receipt of a copy of this judgment.

10. W.P.(C) No. 28358/2004: The case of the petitioner herein is also identical to the case of the petitioner in the above two cases. Accordingly Exts. P1 and P4 are quashed. The 1st respondent R.T.A. is directed to reconsider the application of the petitioner for permit in accordance with law, within two months from the date of receipt of a copy of this judgment.

11. A common feature in all the three cases is that all the petitioners were ready with vehicles, when their appeals were considered by the Appellate Authority. But,

the S.T.A.T. took a technical view that the petitioners did not have ready vehicles at the time of consideration of the applications and therefore, the subsequent acquisition of vehicles by them, is not a ground for setting aside the order of the R.T.A. It is well settled that the powers of the Appellate Authority are co-terminus with the powers of the original authority. Further, the appellate power enables the Appellate Court/Tribunal to take into account, the subsequent developments in appropriate cases, in the interest of justice. Therefore, the Appellate Tribunal ought to have taken note of the fact of acquisition of vehicles by the appellants during the pendency of the appeals and should have allowed the appeals. Engendering multiplicity of proceedings can be prevented by following such a course of action. Prevention of multiplicity of proceedings is one of the prime concerns of administration of justice. So, the case of permits other than permits to ply in city limits where the number of vehicles is limited, the S.T.A.T. is not justified in rejecting the appeals, ignoring the subsequent acquisition of vehicles by the appellants, within the time limit prescribed in Rule 159, provided they are otherwise eligible for grant of permits.

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