

Benny Mathew Vs. Alexander Joseph

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Court : Kerala

Decided On : Nov-14-2002

Reported in : 2003(1)KLT505

Judge : R. Rajendra Babu, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 88(1) and 88(4)

Appeal No. : O.P. Nos. 14683 and 21786 of 2002

Appellant : Benny Mathew

Respondent : Alexander Joseph

Advocate for Def. : Sajeev Kumar K. Gopal, Government Pleader

Advocate for Pet/Ap. : P. Deepak, Adv.

Disposition : Petitions allowed

Judgement :

R. Rajendra Babu, J.

1. The common question arising in both these O.Ps. is whether a regular permit to a stage carriage to operate on an inter-district route can be renewed when the conditions imposed in the permit had not been complied with within the period of its validity.

2. Regular permit to operate on the inter-district route Kayamkulam-Udayagiri was granted to one Philip Zachariah in respect of his stage carriage by the R.T.A., Kannur. The route Kayamkulam-Udayagiri was a long distance inter-district route traversing the districts of Alappuzha, Kottayam, Ernakulam, Thrissur, Malappuram, Kozhikode and Kannur and the permit was issued subject to countersignature of all the sister R.T.As., and was valid upto 24th February 2001. The permit holder did not obtain countersignature from all the sister R.T.As., and he was not operating. In 1997 the permit was transferred in the name of Sri Alexander Joseph, the 1st respondent in O.P. 14683/02, and the vehicle also had been replaced. The 1st respondent operated the vehicle without obtaining countersignature from all the sister R.T.As., and certain charge sheets also were laid against him for operation without countersignature and he got the offences compounded. When he filed the application for renewal of the permit, the R.T.A., Kannur rejected the same holding that the countersignature was not obtained from the sister R.T.As. for the earlier permit, that no concurrence was obtained for the renewal from the sister R.T.As. and that offences also had been detected for operation without countersignature. The 1st respondent challenged the above order before the STAT in M.V.A.A. 738/2001. The STAT passed an interim direction under Section 214(2) of the, Motor Vehicles Act and thereafter reversed the order of the R.T.A. and directed reconsideration giving certain directions. The above order is under challenge in O.P. 14683/2002.

3. Inter-district permit was granted by the R.T.A., Kannur, to one, Sarada in respect of her stage carriage on the long distance route Kudiyanmala-Manimala traversing the districts Kannur, Kozhikode, Thrissur, Ernakulam and Kottayam subject to countersignature of the sister R.T.As. and the permit was valid upto 27th July 2000. The permit was transferred to Sri T.P. Asootty, the 1st respondent in O.P. 21786/02, and he was operating on the route without obtaining countersignature from the sister authorities. On 15th November 1999 the 1st respondent filed an application for renewal of the permit. The R.T.A., Kannur, rejected the application on the ground that the original permit was never validated by obtaining countersignature from the sister authorities. Aggrieved by the above order, the 1st respondent filed M.V.A.A. 653/2001 before the STAT. The STAT issued an interim direction under Section 214(2) of the Act and thereafter allowed

the appeal, set aside the order of the R.T.A. and remanded the matter for fresh consideration giving certain directions. The above order is under challenge before this Court in O.P. 21786/02.

4. Heard the learned Counsel appearing for the petitioners, the respondents and also the learned Government Pleader.

5. The 1st respondent in both the O.Ps., were holding regular permit in respect of their stage carriage to operate on long distance inter-district routes. The permit was granted by the primary authority subject to counter-signature from the sister authorities. Admittedly some of the sister authorities had not granted countersignature during the validity of the period of the above permits. The primary authority rejected the applications for renewal on the ground that the original permit was not got countersigned by all the sister authorities and as such there was no valid permit for renewal. But the Tribunal took the view that the renewal application can be rejected only on the grounds specified under Section 81(4) of the Motor Vehicles Act. The learned Counsel appearing for the petitioners submitted that the grounds specified under Section 81(4) would be applicable only when there was a valid permit. It was further argued that the permit would become valid in respect of the entire route only when the sister R.T.As. countersigned the above permit granted by the primary authority. Section 88(1) of the Motor Vehicles Act which deals with the validity of the permits outside the region of the authority granting the same reads:

'88. Validation of permits for use outside region in which granted.- (1) Except as may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region shall not be valid in any other region, unless the permit has been countersigned by the Regional Transport Authority of that other region, and a permit granted in any one State shall not be valid in any other State unless countersigned by the State Transport Authority of that other State or by the Regional Transport Authority concerned: * * * *'

A reading of Section 88(1) of the Act would indicate that a permit granted by a Regional Transport Authority of one region shall not be valid in any other region unless the above permit has been countersigned by the R.T.A. of the other region

unless otherwise prescribed. When once the R.T.A. of the other region countersigns the above permit, it becomes valid for operation within the above region also. It would further indicate that the permit granted by an authority of a region shall be valid within the region of that authority even without countersignature from the authority of the other region.

6. The clause 'except as may be otherwise prescribed' in Section 88(1) of the Act had been considered by the Supreme Court in *Bundelkhand Motor Transport Co. v. Behari Lal Chaurasia* (AIR 1966 SC 455) and held:

'The Legislature has by providing in the opening part of Sub-section (1) 'Except as may be otherwise prescribed' made the provision subject to the rules framed under Section 68 and a rule conferring authority to countersign the permit in so far as it relates to another region upon the Authority who issues the permit is made. The validity of a section which is made subject to the provisions of the rules to be framed by a piece of delegated legislation is not challenged before us. Rule 63 must, therefore, prevail over the direction of the Statute.'

In view of Section 88(1) of the Act the State also had framed the rules. Rule 169 of the Kerala Motor Vehicles Rules (for short Rules) deals with the procedure in respect of countersignature. Rule 170 of the Rules deals with the issue of temporary permits in respect of inter-district permits without countersignature. Rule 171 deals with the grant of regular permit to be valid in respect of other regions without countersignature. Rule 171 says that a permit in respect of an inter-district route can be granted without countersignature if there is previous concurrence of the authority of the other region. Thus Rules 170 and 171 of the Kerala Motor Vehicles Rules envisage the issue of inter-district permits without countersignature from the authorities of the other regions. Sub-section (1) of Section 88 of the Motor Vehicles Act says that a permit granted by the Regional Transport Authority of any one region shall not be valid in another region except as may be otherwise prescribed. If the permit granted is not in respect of a temporary permit or if the permit is not granted without prior concurrence from the authority of the other region, that permit shall not be valid in respect of the other region, unless it is countersigned by the other authority. Thus it is clear that in view of Section 88(1)

of the Act, the permit issued by one authority for operation of a vehicle within the region of another authority shall not be valid unless it is countersigned or prior concurrence has been obtained.

7. Section 66 of the Act says that no owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place save in accordance with the conditions of a permit granted or countersigned by the Regional or State Transport Authority authorising him to use the vehicle in that place in the manner in which the vehicle is being used. The High Court of Mysore in *Narayanappa v. Mysore Revenue Appellate Tribunal* (AIR 1969 Mys. 266) has taken the view that an inter-district permit issued by one of the regional authority shall be valid within the region of that authority and its validity is not kept in abeyance till the permit is countersigned by the other authority. I respectfully agree with the above view taken by the learned Judge of the High Court of Mysore. Though the inter-district permit issued has been for operation of the vehicle in different regions, the permit shall be valid within the region of the authority which issued the permit though it may not be valid in other regions unless it has been countersigned by the authority of the other regions. Thus, though the permit issued in the present case was valid for operation within the region of the R.T.A., Kannur, it could not be valid in the other regions unless the permit had been countersigned by the authority of the other regions.

8. Permits are issued for a specific period for operation of the vehicle on a specified route. When one of the conditions for validating the permit and for operation of the vehicle was to obtain the countersignature from the authorities of other regions, such permit should be validated within the period of validity of the permit. The validation of a permit after the period stipulated for the operation of the vehicle can never be said to be a proper validation of the permit. When the permit is sought to be renewed, there should be a valid permit for operation throughout the route. If countersignature from the authority of a particular region is not obtained, it cannot be said that the permit is valid over that region and thereby it is not a valid permit for operating on the entire route.

9. Another argument advanced by the learned Counsel for the 1st respondent was that an application for renewal of permit can be rejected only on grounds mentioned in Section 81(4) of the Act with specify certain grounds for rejection. In fact those grounds are only in respect of the renewal of a valid permit. Even if there is a valid permit for renewal, it can be rejected on the grounds enumerated under Sub-section (4) of Section 81. The learned Counsel for the 1st respondent placed reliance on the decision of this Court in *Rajendran v. State Transport Appellate Tribunal, Ernakulam* (1991 (1) KLT 255). Therein this Court held :

'The object of enumerating grounds and conferring a discretion is not to make the grounds merely illustrative. Legislature would evidently have intended that the application for renewal should not be dismissed on any ground other than those enumerated in the sub-section. If the Legislature intended that the Transport Authority can dismiss the application on any ground whatsoever, there is no need to provide Sub-section (4) in this form. The reasonable inference is that the grounds in the sub-section are exhaustive and the Transport Authority has no power to dismiss the application for renewal for any other ground.'

The above decision would apply only when there was a valid permit for renewal. An invalid permit cannot be renewed on the ground that a renewal application can be rejected only on the grounds specified under Section 81(4) of the Act. Section 81(4) can have application only when there is a valid permit for renewal. So far as the present cases are concerned, as the permit had not been renewed by the authorities of some of the regions, there was no valid permit to operate on the entire route for renewal. Hence the approach made by the Tribunal in directing a reconsideration of the applications which were dismissed by the R.T.A. are liable to be set aside and the orders passed by the R.T.A. are to be upheld.

In the result the O.Ps. are allowed. The Judgment passed by the S.T.A.T. in M.V.A.A. 738/2001 and 653/2001 are set aside and the order passed by the R.T.A. are upheld.