

- 6 THE DISTRICT POLICE CHIEF, WAYANAD
WAYANAD RD CIVIL STATION MADATHUMPADI KOZHIKODE
KALPETTA KERALA, PIN - 673122
- 7 THE DISTRICT POLICE CHIEF, IDUKKI. CHERUTHONI KERALA, PIN -
685602
- 8 THE DISTRICT POLICE CHIEF
KOTTAYAM, KOTTAYAM, PIN - 686002

BY ADV P.C.Chacko

OTHER PRESENT:

JOBY JOSEPH-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
20.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

The petitioner who operates contract carriage in pursuance of the contract carriage permit issued under Section 74 of the Motor Vehicles Act 1988 (hereinafter referred to as the 'MV Act') has filed this writ petition for a writ, order or direction in the nature of mandamus commanding the respondents 3 to 8 to take all appropriate and necessary action to ensure that the stage carriages of the Kerala State Road Transport Corporation (KSRTC) are not operated as contract carriages without obtaining special permits under Section 88(8) of the MV Act and without making provision for substitute vehicles on the routes covered by the regular stage carriage permits.

2. The petitioner, in fact, is aggrieved by 'tour packages' operated by KSRTC by using its stage carriages. The

contentions on behalf of the petitioner are that a stage carriage having a stage carriage permit cannot be operated as a contract carriage. In fact, the tour package operations by the KSRTC are nothing but the operation of contract carriage. Such packages cannot be operated using stage carriages for which stage carriage permits under the MV Act have been issued unless special permits are applied for and issued to such stage carriages under section 88(8) of the MV Act and by following the guidelines laid down by Ext.P2 decision of the State Road Transport Authority in its meeting held on 22.11.2016.

3. The learned Counsel for the petitioner has submitted that sub-section (8) of Section 88 of the MV Act carves out an exception to the stipulation that a motor vehicle issued with a stage carriage permit cannot be operated as a contract carriage but with a special permit issued for the said

purpose in respect of the particular stage carriage by the Regional Transport Authority. Rule 143 of the Kerala Motor Vehicle Rules 1989 provides that an application for a special permit under Section 88(8) of the MV Act should be submitted in Form 'P.Sp.A' and the special permit under Section 88(8) of the MV Act should be in Form 'P.Sp' appended to the Rules. Rule 164 stipulates that the application fee for a special permit under Section 88(8) of the MV Act for a stage carriage shall be Rs.500/-.

3.1 Learned Counsel for the petitioner has further submitted that the tour packages conducted by the KSRTC are contract carriage services without having the permit for contract carriage, and this fact is evident from Ext.P3 advertisements regarding the tours being organised by the KSRTC to achieve the target of 1000 package tours to pristine locales in the State during the April-May summer vacation.

These tour package operations have the following features:

- i. Tour packages of one-day duration;
- ii. Advance booking of tickets;
- iii. Passenger list settled in advance prior to the commencement of the journey;
- iv. Contract is for the use of the vehicle as a whole without stopping to pick up or set down passengers not included in the contract anywhere during the course of the journey;
- v. Single fare for the whole journey, i.e., journey not intended for passengers boarding en route paying separate fare for the distance they propose to travel.
- vi. Fare fixed under Column 3 of Ext.P2 is the consolidated fare for the whole journey and no separate fares collected as per the fare notification issued by the State Government under Section 67 of the Motor Vehicles Act, 1988.”

3.2 Learned Counsel for the petitioner submits that one of the salient features for the operation of contract carriages is a contract for a ‘fixed or agreed rate of sum’ as per the definition of ‘contract carriage’ under Section 2(7) of the MV Act. It is further submitted that the fare charged by the KSRTC for tour packages is not the fare notified by the State

Government under Section 67 of the MV Act. There are no different fares indicated for the passengers for Ext.P3 tour packages operation. Therefore, the tour packages cannot be said to be stage carriages. It is also submitted that the said tour packages operation being undertaken by the KSRTC is against the judgment of this Court in the case of *Vijayan Pillai v. R.T.O. Thrissur*¹.

3.3 The learned Counsel for the petitioner has also submitted that the special area permits issued to the KSRTC under the Scheme, issued by the State Government on 16.07.2013, in exercise of the powers conferred by sub-sections (2) and (3) of Section 100 of the MV Act 1988, are only stage carriage permits and not contract carriage permits. The vehicle having a stage carriage permit for a particular area, under the said scheme, cannot be used for the purposes of

¹ 2003 (1) KLT 184

conducting tour operations, and this would be in violation of Sections 88 and 207 of the MV Act.

3.4 Learned Counsel for the petitioner has drawn the attention of this Court to the decision of the Supreme Court in *Brijendra Kumar v. State of U.P.*² to say that there is a difference between ‘stage carriage’ and ‘contract carriage’. *The contract carriage is engaged for the whole of the journey between two points, whereas the stage carriage runs between two points irrespective of any prior contract, and it is boarded by passengers en route who pay the fare for the distance they propose to travel.*

3.4.1 “It is said that the dominant factor which would determine whether a transport vehicle is plied as a ‘contract carriage’ or a ‘stage carriage’ is the actual use of the vehicle and not the permit granted authorising the use.” [*P.K. Santhosh v. State of Kerala*³]

² (1992) 2 SCC 703

³ 2019 KHC 759

3.5 Learned Counsel for the petitioner submits that the phraseology employed by the KSRTC for undertaking the tour package is, in fact, 'contract carriage' and not 'stage carriage' operations, and the same is illegal, and the respondents should be directed to restrain the said operation by the KSRTC without having a permit for contract carriage.

4. Learned Government Pleader has submitted that the petitioner has no legal or fundamental right which gets violated by tour operations undertaken by the KSRTC. The petitioner has not been able to point out which of his fundamental or legal rights is being violated, which has occasioned him to file the present writ petition under Article 226 of the Constitution of India. This is not a Public Interest Litigation. The petitioner is not espousing the cause of the public in general. Therefore, the petitioner ought to have disclosed the violation of any of the vested legal or

fundamental rights. Without disclosing such infringement of legal or fundamental rights in the writ petition, the petition is liable to be dismissed at the threshold as not maintainable.

4.1 Learned Government Pleader has further submitted that the Government of Kerala has issued a superclass scheme under Section 100(2) of the MV Act on 16.07.2023 vide G.O.(P) No.73/2013/Trans. (Ext.R1(a)). The said scheme contemplates fast passenger service, super deluxe service, super express service, super-fast service and luxury service. These services, as contemplated under the Scheme, are to be exclusively run and operated by the KSRTC. The said scheme is an area scheme, and the whole of the State of Kerala is the area for the operation of the aforesaid services under the Scheme by the KSRTC. Clause (3) of the said scheme provides that the permit issued to the private persons on or before the date of the notification would continue till the date of expiry of the

respective permits, and no permit shall be renewed after expiry, and no regular or temporary permit shall be granted in the private sector. The maximum and minimum number of vehicles to be operated in relation to each area would depend upon the traffic demand.

4.2 Clause (7) of the said Scheme provides that the number of vehicles intended to be kept on reserve to maintain the service and to provide for special occasions shall be determined as per the Rules. Clause (18) of the scheme provides that the right to operate any class of service other than ordinary service in the State of Kerala should be reserved exclusively with the KSRTC. Under the scheme, the KSRTC can conduct special trips in super class service on traffic demand. The validity of the said scheme was upheld by the learned Single Judge of this Court in *Kerala Limited Stop/Stage Carriage*

*Operators Association v. Government of Kerala*⁴ as well as by the Division Bench. The Division Bench dismissed the Writ Appeal against the judgment filed by the learned Single Judge in *Monhankumar v. Government of Kerala*⁵.

4.3 Section 99 of the MV Act provides for two schemes, i.e., route scheme and area scheme. The super class service framed under Section 100(2) of the MV Act on 16.07.2023 is an area scheme. The provisions of Chapter VI of the MV Act have an overriding effect over Chapter V. Therefore, the scheme framed under Section 100(2) of the MV Act would have precedence over the permits granted under Chapter V of the MV Act. In pursuance of the approved scheme, the KSRTC being a State Transport undertaking, the application for a permit under the scheme, is required to be submitted under Section 103 of the MV Act, and such permit is to be issued by

⁴ 2014 (2) KLT 135

⁵ 2016 (2) KLY 963

the Regional or the State Transport Authority. Rule 240 of the Kerala Motor Vehicles Rules provides for the application for a permit by the State Transport Undertaking. It is also specifically provided in the form that the permit can be granted for an area or route.

4.4 Learned Government Pleader has submitted that the Regional Transport Authority nationalised sector has issued area permits to the KSRTC for the entire State of Kerala, on 24.04.2019 for vehicle KL-15-A-2267; on 21.05.2022 for vehicle KL-2022-SC-0476A; on 10.06.2022 for vehicle KL-2022-SC-0863A and large number of similar area permits have been issued in favour of the KSRTC under the scheme. It is therefore submitted that the operations carried out by the KSRTC in organising the tours are only in accordance with the provisions of the Act and Rules as well as the scheme, and the writ petition may be dismissed with costs.

5. The questions which fall for consideration by the Court are:

- (i) whether the tour packages operated by the KSRTC are illegal and in violation of the statutory prescription?
- (ii) whether the petitioner's legal or fundamental rights get violated by such an operation which has occasioned him to approach this Court under Article 226 of the Constitution of India?

6. Before answering the questions posed in this writ petition, it would be appropriate to take note of the relevant statutory provisions.

6.1 Subsection (7) of Section 2 defines 'contract carriage' as under:

“(7) “Contract carriage” means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person

with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum –

(a) on a time basis, whether or not with reference to any route or distance; or

(b) from one point to another,

And in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes –

(i) a maxicab; and

(ii) a motorcab notwithstanding the separate fares are charged for its passengers;”

6.2 Subsection (40) of Section 2 defines ‘stage carriage’

in the following manner:

“(40) “stage carriage” means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey;”

6.3 Subsection (31) of Section 2 defines ‘permit’ to

mean:

“(31) “permit” means a permit issued by a State or Regional Transport Authority or an authority prescribed in

this behalf under this Act authorizing the use of a motor vehicle as a transport vehicle;”

6.4 Subsection (43) of Section 2 defines ‘tourist vehicle’

as:

“(43) “tourist vehicle” means a contract carriage, constructed or adapted and equipped and maintained in accordance with such specifications as may be prescribed in this behalf;”

7. Section 67 of the MV Act empowers the State Government to control road transport and, having regard to the factors mentioned in Subsection (1), by notification, may issue directions to the State Transport Authority and Regional Transport Authority regarding the passengers’ convenience, economically competitive fares, prevention of overcrowding and road safety.

7.1 Subsection (3) of Section 67 empowers the State Government to issue notification to modify any permit issued

under the MV Act or make schemes for the transportation of goods and passengers and issue licences under the said scheme for the promotion of development and efficiency in transportation for objectives as mentioned in the said subsection from clauses (a) to (m).

8. Section 70 of the MV Act is in respect of the application for a stage carriage permit, and Section 72 is in respect of the grant of a stage carriage permit. Sections 73 and 74 provide for the application for a contract carriage permit and grant of a contract carriage permit. Subsection (8) of Section 88 empowers the Regional Transport Authority or the State Transport Authority to grant a special permit to any public service vehicle for the convenience of the public by permits issued under Section 72 or under Section 74 for carrying passengers for hire or reward under a contract, express or implied, for the use of the vehicle as a whole

without stopping to pick up or set down along the line of route the passengers not included in the contract.

8.1 Subsection (9) of Section 88, which also begins with a *non-obstante* clause, provides that any transport authority may, for the purpose of promoting tourism, grant permits in respect of tourist vehicles valid for the whole of India or in such contiguous States not being less than three in number including the State in which the permit is issued.

8.2 Subsections (8) and (9) of Section 88 are extracted hereunder:

“(8) Notwithstanding anything contained in sub-section (1)but subject to any rules that may be made under this Act by the Central Government, the Regional Transport Authority of any one region or, as the case may be, the State Transport Authority may for the convenience of the public grant a special permit to any public service vehicle including any vehicle covered] by a permit issued under Section 72 (including a reserve stage carriage) or under Section 74 or under sub-section (9) of this section for carrying a passenger or passengers for hire or reward under a contract express or

implied, for the use of the vehicle as a whole without stopping to pick up or set down along the line of route passengers not included in the contract and in every case where such special permit is granted the Regional Transport Authority shall assign to the vehicle, for display thereon, a special distinguishing mark in the form and manner specified by the Central Government and such special permit shall be valid in any other region or State without the countersignature of the Regional Transport Authority of the other region or of the State Transport Authority of the other State, as the case may be.

(9) Notwithstanding anything contained in sub-section (1) but subject to any rules that may be made by the Central Government under sub-section (14) any State Transport Authority may, for the purpose of promoting tourism, grant permits in respect of tourists vehicles valid for the whole of India, or in such contiguous States not being less than three in number including the State in which the permit is issued as may be specified in such permit in accordance with the choice indicated in the application and the provisions of Sections 73, 74, 80, 81, 82, 83, 84, 85, 86 clause (d) of sub-section (1) of Section 87 and Section 89 shall, as far as may be, apply in relation to such permits.”

9. The provisions of Chapter VI are the special

provisions relating to the State Transport Undertakings, and by virtue of Section 98, the provisions of Chapter VI and Rules made thereunder, or orders issued thereunder have an overriding effect upon the provisions of Chapter V or any other law for the time being in force.

9.1 Section 98 of the MV Act on reproduction would read as under:

“98. Chapter to override Chapter V and other laws. - The provisions of this Chapter and the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in Chapter V or in any other law for the time being in force or in any instrument having effect by virtue of any such law.”

9.2 Section 99, read with Section 100, empowers the State Government to formulate a scheme in the public interest, where road transport services in general or any particular class of such service in any area or route should be run and operated by the State Transport Undertaking,

whether to the exclusion, complete or partial, of other persons. The scheme in Ext.R1(a) has been formulated by the State Government in the exercise of its powers vested in Section 100, read with Section 99 of the MV Act.

10. Tourism is one of the major sources of revenue in the State of Kerala. The Government takes various measures to promote tourism in the State. In order to provide easy access to the pristine tourist locations in the State, the KSRTC has announced budget tour packages and has set the target of 1000 package tours to pristine locations during the April-May summer vacation. It was also said that the KSRTC may hire tourist buses if needed to achieve its target 'Mission 1000' initiative.

10.1 It is not in dispute that the KSRTC buses which are employed for conducting the tour packages had special area permits under the scheme. The petitioner cannot be

granted a permit under the scheme for the services for which the scheme has been promulgated, and the exclusive right is of the KSRTC to offer special services under the scheme. Under the area permit, the KSRTC employs its buses for conducting the tour packages. The area permits are special permits as provided under subsection (8) of Section 88 of the MV Act.

10.2 Therefore, I find no substance in the submission of the learned Counsel for the petitioner that tour packages conducted by the KSRTC without having a contract permit is in violation of the provisions of the Act and Rules made thereunder. In fact, these operations are well within the provisions of the scheme dated 16.07.2013 (Ext.R1(a)) for which special area permits have been granted, and these permit operations do not infringe any of the legal or fundamental rights of the petitioner for which the petitioner could have filed this writ petition.

Thus, this writ petition has no merit and substance,
which is hereby dismissed, but without costs.

sd/-

DINESH KUMAR SINGH

JUDGE

jjj

APPENDIX OF WP(C) 28838/2023

PETITIONER EXHIBITS

- Exhibit P 1 A TRUE COPY OF THE CONTRACT CARRIAGE PERMIT ISSUED TO THE PETITIONER VALID TILL 20.12.2024
- Exhibit P2 TRUE COPY OF THE DECISION OF THE 2ND RESPONDENT DATED 22.11.2016
- Exhibit P3 TRUE COPY OF THE NOTICE UPLOADED IN THE OFFICIAL WEBSITE OF THE KSRTC (UNDATED) AND ALSO THE PAMPHLETS PUBLISHED IN CONNECTION THEREWITH
- Exhibit P 4 A SCREENSHOT OF THE NEWS REPORT THAT APPEARED IN 'THE HINDU' ONLINE EDITION DATED 05.04.2022
- Exhibit P5 A TRUE COPY OF THE DECISION REPORTED IN 2013 SCC ONLINE KERALA 7806 DATED 23.03 .2013

RESPONDENT EXHIBITS

- Exhibit-R1(a) True copy of the notification dated 16.07.2013 vide G.O.(P) No. 73/2013/Trans. by the Government of Kerala
- Exhibit-R1(b) True copy of the order dated 05.05.2018 issued by the Government of Kerala vide G.O.(P) No. B1/118/2018/Trans.
- Exhibit-R1(c) True copy of the judgment dated 21.06.2018 in KSRTC Vs. State of Kerala in W.P.(C) No. 4313 of 2018
- Exhibit-R1(d) True copy of the area permit issued by the secretary RTA nationalized sector dated 24.04.2019 for KL-15-A-2267

Exhibit-R1(e) True copy of the area permit issued by the secretary RTA nationalized sector dated 21.05.2022 for KL-2022-SC-0476A.

Exhibit-R1(f) True copy of the area permit issued by the secretary RTA nationalized sector dated 10.06.2022 for KL-2022-SC-0863A.

Exhibit-R1(g) True copy of the area permit issued by the secretary RTA nationalized sector dated 10.06.2022 for KL-2022-SC-0856A

PETITIONER EXHIBITS

Exhibit P6 A true copy of the notification dated 30.04.2022 [G.O. (P) No: 17/2022/TRANS]

Exhibit P7 A true copy of the fare table for stage carriages for the route in serial number (4) of Exhibit P3