

Kerala High Court

K.Aboobacker vs The Secretary on 5 April, 2010

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 9932 of 2010(N)

1. K.ABOOBACKER,

... Petitioner

Vs

1. THE SECRETARY,

... Respondent

2. P.AMEER, S/O.KOMU HAJI,

For Petitioner :SRI.ANIL SIVARAMAN

For Respondent : No Appearance

The Hon'ble MR. Justice K.SURENDRA MOHAN

Dated :05/04/2010

O R D E R

K.SURENDRA MOHAN, J

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WP(C).NO.9932 OF 2010

.....
DATED THIS THE 5TH DAY OF APRIL, 2010

JUDGMENT

The petitioner is a Stage Carriage operator conducting services on the route Vettikad-Perinthalmanna on the strength of a regular permit granted to his Stage Carriage bearing registration No.KL-10/N 7711. He has filed this writ petition challenging Ext.P4 order of the STAT, allowing a revision petition filed by the second respondent herein under Section 90 of the Motor Vehicles Act, 1988. The second respondent had challenged Ext.P3, which is the approved timings issued for the conduct of his services, before the State Transport Appellate Tribunal(STAT). Ext.P3 order shows that the same was rendered after hearing all the affected parties. However, before the STAT, all affected persons were not made parties. Only some of the parties, who came to know of the

proceedings got themselves impleaded. As per Ext.P4 order, Ext.P3 timings were set aside and the matter was remanded for fresh settlement of the timings, after hearing all interested parties. Accordingly, Ext.P6 timings have been issued. The petitioner has submitted Ext.P7 objections to Ext.P6. It is the contention of the petitioner that since Ext.P6 is only a consequential order issued pursuant to Ext.P4 judgment of the STAT, it is a futile exercise challenging the same before the said Tribunal.

2. According to the counsel for the petitioner, the mandate of the Division Bench which is contained in Ext.P5 judgment to the effect that all affected persons should be made parties before the STAT has been flouted in passing Ext.P4. Consequently, the petitioner, who is an interested person was not heard before Ext.P4 was passed, causing irreparable injury and injustice to the petitioner. As a consequence, the petitioner is in a situation where it is not possible for him to challenge Ext.P6 effectively. Therefore, he prays for setting aside Ext.P4 and P6.

3. The learned Senior Government Pleader, Mr.K.C.Santhosh Kumar, points out that though the petitioner was not a party to Ext.P4, when a timing conference was held pursuant to the said order on 25.1.2010, the petitioner also participated and his objections were specifically considered. In view of the above, it is submitted that the grievances of the petitioner do not survive. It is long after the issue of Ext.P6 that Ext.P7 objections have been filed on 7.3.2010. Therefore, he prays for dismissal of the writ petition.

4. I notice from Ext.P3 that the same was issued on the basis of a timing conference conducted on 17.2.2009 in which the second respondent as well as other 64 operators including the KSRTC had attended. Therefore, Ext.P3 shows that the timings therein were issued after hearing all the interested persons. However, Ext.P4 shows that the revision petition was initially filed with only the RTA and the Secretary thereof as parties and that respondents 3 to 11 were subsequently impleaded. Though 64 enroute operators were heard before passing Ext.P3, only nine operators were parties to Ext.P4. It is the above practice of passing orders without all the interested persons on the party array that has been deprecated by the Division Bench in Ext.P5 judgment. In the said judgment dated 18.12.2009 in W.A.2877 of 2009, after considering the contentions of the parties, the Division Bench has made the following observations.

" We notice that in Ext.P4, there is a finding in favour of the appellant, that his claim is genuine and thereafter the remand is made. So, the Secretary, R.T.A is bound by that finding. Even if other operators on the route are heard, the Secretary, R.T.A is bound to redress the grievance of the appellant, which has been found to be genuine by the Tribunal. Therefore, before making such an observation on merits, the Tribunal should have given an opportunity of being heard to the affected operators. It should have insisted that all those, who are operating on the route and who participated in the timing conference, based on which Ext.P2 was issued should have been impleaded. Otherwise, the revision petition should have been dismissed. The illegal practice followed by the Tribunal cannot be pressed into service as a ground to defend Ext.P4".

The Division Bench has gone on to conclude the issue in the following words:-

"Finally, it is pointed out by the learned counsel for the appellant that the writ petitioner can challenge Ext.P5 by filing revision petition before the Tribunal. But, we notice that as long as the observation of the Tribunal in Ext.P4 regarding the merits of the case of the appellant remains, the said challenge will not be efficacious".

5. In view of the above authoritative pronouncement, there could be no doubt that the remand made in Ext.P4 by the STAT, without all the affected parties on the party array, was uncalled for. The said order has become final and a consequential order Ext.P6 has also been passed pursuant to the same. The petitioner participated in the timing conference in which Ext.P6 was settled. His objections have also been considered. In view of the fact that Ext.P7 has already been issued, the proper remedy for the petitioner is to challenge Ext.P7 before the STAT. It is for the petitioner to point out the circumstances under which Ext.P4 was passed without the petitioner on the party array. I do not find any reason to presume that the contentions of the petitioner would not be considered by the authority in the proper perspective. I also notice that the STAT had directed in Ext.P4 to settle the timings afresh " after giving an opportunity to all concerned of being heard". However, as observed by the Division Bench in the passages quoted above, an opportunity of being heard at the time of settlement of timings cannot cure the defect of not being made a party before the STAT.

6. For the foregoing reasons, this writ petition is disposed of directing the petitioner to challenge Ext.P6 before the STAT. In the event of the petitioner challenging the same before the said authority, the STAT shall consider the same in accordance with law, and shall pass appropriate orders thereon, untrammelled by any of the observations made by it in its order dated 6.4.2009 in MVARP No.90 of 2009 evidenced herein by Ext.P4. No costs.

K.SURENDRA MOHAN, JUDGE lgk