

Kerala High Court

Kerala State Road Transport ... vs Nirmala College Of Information on 2 September, 2008

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WA.No. 2417 of 2007()

1. KERALA STATE ROAD TRANSPORT CORPORATION,  
... Petitioner

Vs

1. NIRMALA COLLEGE OF INFORMATION  
... Respondent

2. MILTAN THOMAS,

3. ABILASH BABU K.V.,

4. VIPIN MOHAN,

5. RAHUL K.P.,

For Petitioner :SHRI.JOHNSON P.JOHN, SC, KSRTC

For Respondent :SRI.JIJO PAUL

The Hon'ble the Chief Justice MR.H.L.DATTU

The Hon'ble MR. Justice A.K.BASHEER

Dated :02/09/2008

O R D E R

H.L.DATTU, C.J. & A.K.BASHEER, J.

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W.A.No.2417 of 2007  
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Dated, this the 2nd day of September, 2008

JUDGMENT

A.K.Basheer, J.

Are the students of Nirmala College of Information Technology, an Off-Campus Study Centre of the Mahatma Gandhi University, entitled to get concession in fares for their travel in the buses of the Kerala State Road Transport Corporation ("Corporation" for short)?

2. The above question was answered in the affirmative by the learned Single Judge in the writ petition filed by the respondents herein who are the Off Campus Study Centre and the students studying in the said institution.

3. Impugning the order passed by the learned Single Judge, it is contended on behalf of the Corporation that the students of the Off-Campus Study Centres would not be entitled to get concession tickets particularly since the Corporation has issued Ext.R1(d) order revoking the earlier decision taken by the Corporation in this regard.

4. In the nature of the contention raised by the appellant it is necessary to refer to some essential facts of the case to consider the question whether any interference is warranted in the orders passed by the learned Single Judge in the writ petition.

5. It was contended by the petitioners in the writ petition that they were entitled to get concession in fares in the buses run by the Corporation in view of Ext.P1 order dated August 12, 2003 issued by the Corporation. In Ext.P1 the Corporation had ordered that students of all Off-Campus Centres mentioned therein would be entitled to get concession in fares. (A perusal of Ext.P1 will show that Nirmala College of Information Technology (Petitioner No.1) was enlisted as Serial No.5 in the said order).

6. However, in the counter affidavit it was contended that the Corporation had been incurring heavy losses during the last few years and therefore it had been decided to cancel Ext.P1 order. It was in this context, the Corporation had pressed in to service Ext.R1 (d) order dated July 9, 2007. In that order all Unit Officers of the Corporation were informed that students studying in Off-Campus Centres under the Distance Education Scheme in Aided and unaided institutions will not be eligible for concession ticket as mentioned in Ext.P1 memorandum.

7. It is contended by the learned counsel for the appellant that the Corporation is justified in issuing Ext.R1 (d) order reversing its earlier decision not only for the reason that students studying in Off-Campus Centres cannot be treated on par with regular students of other educational institutions, but also for the reason that the Corporation is facing acute financial constraints.

8. But, learned counsel for the petitioners has invited our attention to Ext.R1 (b) Notification issued by the Government whereby the rates of fares in the Stage Carriages in the State have been fixed by the Government. Clause 'G' of Ext.R1 (b) which is relevant for the purpose of this case is extracted hereunder:

"G. Students Concession Full time regular students, not engaged in any other calling or profession studying in any recognized educational institution for a recognized course and full time students not engaged in any other calling or profession studying privately in any institution and who have

registered their names in any of the Universities in Kerala as a student for a particular course or private study admitted by a University in Kerala, travelling in a stage carriage for a distance not exceeding 40 Kilometers for a single journey for the purpose of attending classes, from residence to institution shall be eligible for concession in City/Town and Ordinary Mofusil Services at the rate of 75% of the fare fixed as per Notification No.G.O.(P) No.24/2001/Transport dated 28th September, 2001. The amount shall be rounded off to the lower multiple of 10 paise for each journey for the purpose of computation....."

9. A perusal of the above clause undoubtedly shows that, students pursuing their private study in any institution after registering their names in any of the institutions under any of the Universities in Kerala would also be entitled to concession in bus fares. As rightly pointed out by the learned counsel for the petitioners it may not be open to the Corporation to contend for the position that Ext.R1 (b) Notification issued by the Government will not be binding on it. Further, it is the admitted position that the fares in the buses under the Corporation are being fixed by the Government. If that be so, it cannot be said that Clause 'G' in Ext.R1 (b) which prescribes concessional rates of bus fare to the students will not be binding on the Corporation. Obviously, it was in terms of a similar clause in the earlier notification that the Corporation had issued Ext.P1 giving benefit of concession tickets to the students who are studying in Off-Campus Centres of the School of Distance Education under the Mahatma Gandhi University. It may also be noticed that the Corporation does not have a case that petitioner No.1 is not an institution which qualifies the status of an Off- Campus Centre under the Mahatma Gandhi University.

10. Learned counsel for the appellant has drawn our attention to the decision of the Apex Court in Chittoor Zilla Vyavasayadarula Sangham Vs. A.P.State Electricity Board and Others {2001 (1) SCC 396}. The said decision related to certain orders issued by the Government of Andhra Pradesh under the Electricity (Supply) Act, 1948. It is true that in the said decision the Apex Court observed that, any direction issued by a State Government may be binding on the Board only to the extent that it subserve the Board in performing its statutory obligation within the permissible limits of Ss.49 and 59 of the Electricity (Supply) Act, 1948. A perusal of the provisions contained in the above two sections would show that they relate to sale of electricity by the Board and also the general principles of Board's finances. Having gone through the judgment, we find that the observations and the dictum laid down by the Apex Court in the said decision have no application to the facts and circumstances of the case on hand.

11. In the other decision cited before us by the learned counsel for the appellant in T.J.Joseph Vs. State of Kerala (1966 KLT

479), the question that came up for consideration related to the validity of Rule 251 of the Kerala Motor Vehicles Rules 1961. The impugned portion of the said Rule provided that operators of stage carriages shall be entitled to collect from a student of any recognised educational institution travelling in stage carriages for the purpose of attending the classes or returning therefrom only one-half of the fare otherwise payable under the directions issued by the Government. Having carefully perused the judgment, we are unable to find any co-relation between the case on hand and the issue that came up before this Court in the above case.

12. As mentioned earlier, the Corporation had issued Ext. R1 (d) order in July, 2008 cancelling its earlier order which enabled the students of Off Campus Study Centres to avail of concession in bus fares. The specious plea that is now being taken up by the Corporation to justify its action to cancel Ext.P1 order is that the Corporation is in acute financial stringency. But, so long as the Government has been following the policy of extending the benefit of concession in bus fares to the students of educational institutions as a matter of policy and also since the Government has all along recognised the students of Off Campus Centres also for the said benefit as is revealed from clause 'G' in Ext.R1 (b) Notification, we are unable to justify the action of the Corporation in issuing Ext.R1 (d) order denying the said benefit to the students of such Centres. In our view, the learned Judge was justified in arriving at the above conclusion.

13. As mentioned earlier, the fares in the buses run by the Corporation are being fixed by the Government. The Corporation is bound to follow the fare pattern that is being fixed by the Government from time to time. The Corporation has no other option but to accept the policy of the Government in this regard. Therefore, the Corporation cannot be allowed to say that it is empowered to issue an order cancelling the benefit accorded by the Government to the students of Off Campus Centres on its own because of financial stringency. In that view of the matter, Ext.R1 (d) is totally vitiated and unenforceable. Therefore, Ext.R1 (d) is liable to be quashed. We do so.

14. Resultantly, it is declared that the petitioners are entitled to get the benefit of concession in bus fares for their travel in the buses being operated by the Corporation. Thus the question posed for consideration in the judgment is answered in the affirmative. The writ appeal fails, it is accordingly dismissed.

15. Consequently, all pending interlocutory applications are closed.

(H.L.DATTU) CHIEF JUSTICE (A.K.BASHEER) JUDGE MS