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was paid. There is no explanation as to why the plaintiff was not so put in possession of the property even after the payment of a major portion of the sale consideration to the defendants. That is a strong indication to show that Ext.A1 agreement even if genuine was not intended to be followed up by a sale deed between the parties. We take cue from the decision of the Supreme Court in *Tejram v. Patirambhau* ((1997) 9 SCC 634) wherein the agreement was construed as one evidencing loan transaction.

7. It is unsafe to grant a decree either for specific performance or for return of the advance amount on the basis of Ext.A1 agreement and normally we would have dismissed the suit *in toto*. But the defendants fairly concede that a sum of ` 75,000/- was availed as loan on the date of Ext.A1 agreement from Mr.V.L.Ittiachen. The said Ittiachen was a Director of the plaintiff company along with his wife and three sons evident by Ext.A4 Memorandum of Association and Articles of Association. It is discernible from the conspectus of events that the plaintiff company was a family concern and that Ittiachen had a say in the monetary transactions. The defendants are willing to repay the sum of ` 75,000/- with interest and the plaintiff is also not averse to receive the amount in the circumstances. Therefore a judgment on admission in terms of Order XII Rule 6 of the Code of Civil Procedure, 1908 is passed for a sum of ` 75,000/- in favour of the plaintiff against the defendants. The said amount will undoubtedly carry interest at 12% per annum from the date of Ext.A1 agreement (13.9.1991) till the date of payment by the defendants. The defendants are at liberty to move appropriately for return of the documents allegedly retained by the said Ittiachen in the course of transaction.

The Appeal Suit is allowed in part and the Memorandum of Cross Objections is dismissed. No costs.

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2016 (3) KLT 87

*Hon'ble Chief Justice, Mr. Justice Ashok Bhushan &
Hon'ble Mr. Justice A.M. Shaffique*

Regional Transport Authority v. Abdul Salam

W.A. Nos.2486, 2455 & 2769 of 2015

Decided on 6th April, 2016

Motor Vehicles Act, 1988, Sections 86, 87 & 2(31) — Motor Vehicles Rules, 1989 (Kerala), Rules 159, 174 & 217 — There is no prohibition under the 1988 Act and the 1989 Rules for a permit holder in withdrawing the vehicle from the service but in that event he has to surrender the permit.

Held: In the appeals before us the request of the petitioners is to issue a clearance certificate permitting them to withdraw/detach the vehicle from the

permit and allow the permit to continue. The petitioners want to keep their permits alive, so that in future if they want they can revive the service. There is no prohibition under the 1988 Act and the 1989 Rules for a permit holder in withdrawing the vehicle from the service but in that event he has to surrender the permit. But without surrendering the vehicle, petitioners want to obtain permission of the authority to detach the vehicle from the permit which is not permissible under the statutory scheme. **(para.15)**

Motor Vehicles Act, 1988, Sections 50, 51 & 48 — With regard to transfer of vehicle no clearance certificate is required.

Section 51 contains a special provision regarding motor vehicles subject to hire purchase agreement wherein S.51(4) provides no entry regarding the transfer of ownership of any motor vehicle which is held under the said agreement shall be made in the certificate of registration except with the written consent of the person whose name has been specified in the certificate of registration as the person with whom the registered owner has entered into the said agreement. Thus with regard to transfer of vehicle no clearance certificate is required as contended by the learned counsel for the petitioners. In the context of Motor Vehicles Taxation Act, 1976 requirement is with regard to a certificate that no tax or other dues are pending against the vehicle. **(para.18)**

**1999 (2) KLT 434; 2002 (3) KLT 374; 2000 (1) KLJ 141;
2006 (3) KLT 1013; 2005 (1) KLJ 205; 2015 (4) KLT 590;
2005 (1) KLT 987 & 1991 (2) KLT 203**

**Spl.Government Pleader (Girija Gopal)
P.Deepak & I.Dinesh Menon**

Referred to
For Appellant
For Respondents

JUDGMENT

Ashok Bhushan, C.J.

These three Writ Appeals, raising common questions of law, have been heard together and are deciding by this common judgment. The Secretary, Regional Transport Authority, who was the respondent in the Writ Petitions has come up in these appeals against the separate judgments of learned Single Judges by which direction has been issued to the Regional Transport Officer for issuing a permitless certificate as prayed for by the Writ Petitioners or to consider the application submitted by the petitioners for the said certificate. Parties shall be referred to as described in the Writ Petitions.

2. Brief facts giving rise to the Writ Appeals are as follows:

W.A.No.2486 of 20151:

3. This Writ Appeal has been filed against the judgment dated 21.08.2015 in W.P.(C) No.25240 of 2015. Petitioner was granted a regular permit to conduct service on the route Chenappady-Erattupetta in respect of stage carriage bearing Reg.No.KL-34/3895. The Permit was valid upto 16.11.2019. Petitioner made an application (Ext.P2 dated 12.08.2015) to the R.T.O. stating that the R.T.A. on 06.07.2015 issued a new permit to petitioner's aforesaid vehicle

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with a clause that the current permit for this vehicle is not liable to be surrendered. Petitioner requested that a clearance certificate be issued to the current permit in order to obtain a new written permit. Petitioner on the very next day filed the Writ Petition praying for the following reliefs:

“1. Issue a writ in the nature of mandamus or such other writ, order or direction commanding the respondent to forthwith issue permitless certificate on Exhibit P2 application, releasing stage carriage bearing registration number KL-34/3895 from Exhibit PI regular permit issued to it to conduct service on the route CHENAPPADY-ERATTUPETTA without insisting on surrender/cancellation of the permit.

2. Issue such other writ, order or direction as this Honourable Court may deem fit and appropriate in the facts and circumstances of the case.”

Petitioner’s prayer in the Writ Petition was to issue a permitless certificate in respect of stage carriage bearing Reg.No.KL-34/3895 by keeping the permit in suspended animation. The intention was to detach the vehicle from regular permit No.P.St.5/21784/2014. Learned Single Judge by judgment dated 21.08.2015 directed the R.T.A. to issue a permitless certificate as requested by the petitioner within two weeks from the date of judgment on condition that the petitioner shall produce records relating to the vehicle intended to be replaced within four months from the date of clearance.

W.A.No.2455 of 2015:

4. This Writ Appeal has been filed against the judgment dated 19.05.2015 in W.P.(C) No.14674 of 2015. Petitioner is a regular permit holder of stage carriage bearing Reg.No.KL-35/F-4577 on the route Uthimoodu-Ernakulam South. The said permit was valid till 04.03.2015. Petitioner has applied for renewal of the permit. The Kerala State Road Transport Corporation has come with a Scheme whereby there is prohibition of granting and renewing of permit as super class services. Notifications were challenged in this Court and the matter was heard by a Division Bench in W.A. No.668 of 2014. Petitioner was issued a communication that he should stop his service. Petitioner made an application on 11.05.2015 praying for issuance of a clearance certificate in respect of vehicle KL-35/F-4577 by keeping the permit under suspended animation. In the application, Ext.P3, petitioner has made the following prayer:

“Hence I most humbly request your good self to issue clearance certificate in respect of the vehicle KL-35/F-4577 by keeping the permit covered by it on the route Uthimoodu-Ernakulam South as Express service under suspended animation, subject to the decision in W.A.No.668 of 2014 and connected cases.

Thanking you.”

Petitioner filed the Writ Petition after a week of submitting the application praying for the following reliefs:

“i. Issue writ in the nature of mandamus or such other writ, order or direction, directing the Secretary, Regional Transport Authority, Ernakulam to issue Clearance Certificate

by considering Ext.P3 request, releasing stage carriage KL-35/F-4577 from Exhibit P1 permit issued to it to conduct service on the route Uthimoodu-Ernakulam South without insisting on surrender/cancellation of the permit.

ii. To grant such other reliefs as this Honorable Court may feel fit and proper.”

5. Learned Single Judge disposed of the Writ Petition directing the R.T.A. to consider Ext.P2 request made by the petitioner for issuance of a clearance certificate and pass orders without insisting for surrender of the existing regular permit already issued. In paragraph 3 of the judgment the following was stated:

“3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, the Writ Petition is disposed of directing the respondents to consider Ext.P2 request made by the petitioner for the issuance of Clearance Certificate in respect of stage carriage bearing registration No.KL-35/F-4577, and pass orders thereon without insisting for a surrender of the existing regular permit. The needful in the matter shall be done within one week from the date of production of a copy of this judgment, provided all dues to the Government, including check reports, and also the Kerala Motor Transport Workers' Welfare Fund Board with respect to the vehicle are satisfied. The petitioner shall produce the current records of the vehicle sought to be substituted within a period of four months from today, failing which the permit shall stand revoked. The Writ Petition is disposed as above.”

W.A.No.2769 of 2815:

6. This Writ Appeal has been filed against the judgment dated 08.10.2015 in W.P.(C) No.29810 of 2015. Petitioner is a permit holder of a stage carriage bearing Reg.No.KL-07/AL-2870 on the route Adivaram-Desom Jn. The regular permit is valid upto 02.09.2020. Petitioner made an application on 29.09.2015 to the R.T.A. stating his intention to dispose of the vehicle and accumulate funds to purchase a suitable vehicle. Petitioner prayed that an order be passed allowing clearance certificate without affecting the validity of permit, i.e., validity of permit under suspended animation. Learned Single Judge disposed of the Writ Petition by making the following observations:

“2. Such clearance certificate can be granted without insisting on the surrender of the existing regular permit in respect of the vehicle. It shall however be ensured that all dues to the Government including check reports and also to the Kerala Motor Transport Workers Welfare Fund Board are satisfied.

3. The respondent shall also specify a period not exceeding four months within which the petitioner shall replace the vehicle on the route covered by the permit. This is because the vehicle now in use requires to be replaced by another to resume operations on the route covered by the permit.”

7. Smt.Girija Gopal, learned Special Government Pleader appearing for the appellants contended that the order passed by the learned Single Judges which are challenged in these appeals were passed without appreciating the statutory scheme contained in the Motor Vehicles Act, 1988 (for short, “the 1988 Act”) and the Kerala Motor Vehicles Rules, 1989 (for short, “the 1989 Rules”). It is

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contended that there is no provision in the 1988 Act and the 1989 Rules to keep a permit under suspended animation. The permit cannot be detached from the vehicle. Petitioner has right to replace the vehicle as per the statutory provisions contained in S.83 of the 1988 Act. Releasing of the vehicles to the petitioners shall have adverse effect on the public interest, since the route for which permit has been granted shall remain unserved. Petitioners are statutorily bound to make available the vehicle throughout the currency of the period of permit for running the service. In the event petitioners are unable to utilise the vehicle for service they can very well surrender the permit. Order issued by the learned Single Judge directing for issuing permitless certificate or for considering the request is not in accordance with the statutory scheme.

8. Shri P.Deepak, learned counsel for the petitioners refuting the submissions of the appellants contended that clearance certificate is required by the petitioners when the vehicle is transferred and it is on account of requirement of different R.T.A.'s requiring the clearance certificate, request is submitted for giving the clearance certificate. It is contended that there are several practical situations where the petitioners are compelled to transfer the vehicle in order to arrange another vehicle to serve in the route and grant of such permission in no manner affect public interest, rather it serves the purpose of providing a better vehicle. It is submitted that there are several orders passed by this Court to the similar effect. Earlier also in W.P.(C) No.14674 of 2015 an earlier judgment dated 02.03.2015 in W.P.(C) No.6482 of 2015 is relied upon wherein, in similar circumstances directions were issued for issuance of clearance certificate without insisting to surrender the existing regular permit.

9. Learned counsel for the parties relied on various judgments which shall be considered while considering the submissions in detail.

10. The only issue which is to be considered in this appeal is as to whether on an application made by the regular permit holder for issuing permitless certificate, i.e., detaching the vehicle from the permit by keeping the permit under suspended animation, order can be passed by the R.T.A. permitting the permit holder to detach the vehicle from the permit to enable the permit holder to use the vehicle for the purpose of any other permit or for purpose of transfer of the vehicle or for any other purpose?

11. The Scheme of the 1988 Act needs to be noted for answering the aforesaid issue.

12. Section 2(31) of the 1988 Act defines permit which is to the following effect:

“2(31) “permit” means a permit issued by a State or Regional Transport Authority or an authority prescribed in this behalf under this Act authorising the use of a motor vehicle as a transport vehicle.”

Permit thus is a permit issued by the R.T.A. authorizing the use of “a motor vehicle as a transport vehicle.” Permit is thus granted with regard to a motor vehicle. An application for permit as per R.143 of the 1989 Rules has to be made in the prescribed form. For a stage carriage the application has to be made in Form P.St.S.A. Form P.St.S.A. contains a column, i.e., Column 6, which is to the following effect:

“FORM P.St.S.A.

.....

.....

6. Registration mark”

There is another Rule, R.159 which relates to issuance of permit. R.159(1) provides that no permit shall be issued before entering the registration mark. R.159(2) further provided that when the applicant is unable to produce the certificate of registration on the date of his application for permit, the applicant shall within one month of the sanctioning of the application by the R.T.A. or such longer period not exceeding four months produce the certificate of registration. R.159(1) is 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.”

Rule 159(2) thus permits an applicant to seek time for submitting the registration mark which can be granted upto four months. As per R.159(1), permit shall not be issued unless entry of registration mark is made in the permit. Thus for issuance of permit, registration mark in the permit is mandatory and permits are issued in reference to a vehicle.

13. Section 83 of the 1988 Act permits a holder of a permit with the permission of the authority to replace the vehicle covered by the permit. S.83 is as follows:

“83. Replacement of vehicles.-- The holder of a permit may, with the permission of the authority by which the permit was granted, replace any vehicle covered by the permit by any other vehicle of the same nature.”

Rule 174 of the 1989 Rules relates to replacement of vehicles which is to the following effect:

“174. Permit-Replacement of vehicles.-- (1) If the holder of a permit desires at any time to replace a vehicle covered by the permit with another vehicle, he shall forward the permit and apply in Form “P.Y.A.” with the fee prescribed in Rule 180 to the Transport Authority which granted the permit stating the reasons for the proposed replacement and shall,--

(a) if the new vehicle is not in his possession, state the material particulars in respect of which the new vehicle differs from the old; and

(b) if the new vehicle is in his possession, forward the certificate of registration thereof.

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(2) Upon receipt of the application, the Transport Authority may in his discretion, reject the application-

(a) if it has previous to the date of receipt of the application given reasonable notice of its intention to reduce the number of Transport Vehicles of that class generally or in respect of the route area to which the permit applies; or

(b) if the new vehicle proposed differs in material respect from the old; or

(c) if the new vehicle proposed is older than the one sought to be replaced; or

(d) if the holder of the permit has contravened the provisions thereof or has been deprived of possession of the old vehicle under the provisions of any agreement of hire purchase, hypothecation or lease.

(3) If the new vehicle proposed does not differ in material respects from the old, the application for replacement of the vehicle may be allowed. If there is material difference between the two vehicles, the application shall be treated as if it were for a fresh permit:

Note - For the purpose of this rule vehicles which differ by not more than 25 percent of the Gross Vehicle Weight or seating capacity, as the case may be, shall not be considered as materially different.

(4) If the Transport Authority grants an application for the replacement of the vehicle it shall call upon the holder of the permit to produce the certificate of registration of the new vehicle if not previously delivered to it and shall make necessary entries in this regard in the permit under its seal and signature and return them to the holder."

Section 86 of the 1988 Act contains provisions cancellation/suspension of permits. S.86 provides as follows:

"86. Cancellation and suspension of permits.--

(1) The Transport Authority which granted a permit may cancel the permit or may suspend it for such period as it thinks fit -

(a) on the breach of any condition specified in Section 84 or of any condition contained in the permit, or

(b) if the holder of the permit uses or causes or allows a vehicle to be used in any manner not authorised by the permit, or

(c) if the holder of the permit ceases to own the vehicle covered by the permit, or

(d) if the holder of the permit has obtained the permit by fraud or misrepresentation, or

(e) if the holder of the goods carriage permit, fails without reasonable cause, to use the vehicle for the purposes for which the permit was granted, or

(f) if the holder of the permit acquires the citizenship of any foreign country :

Provided that no permit shall be suspended or cancelled unless an opportunity has been given to the holder of the permit to furnish his explanation."

A perusal of Section 86(l)(c) indicates that when the holder of the permit ceases to own the vehicle his licence/permit can be suspended/cancelled.

14. When a licence of the permit holder is suspended, he is not authorised to run the vehicle. As per R.185, if the permit is suspended he has to inform the R.T.A. where the vehicle is to be kept during suspension. R.185(1) which is relevant is quoted below:

“185. Permit.-- Suspension or cancellation – The State or Regional Transport Authority may suspend or cancel the permit of any vehicle. When the State or Regional Transport Authority suspend or cancels a permit-

(a) the holder shall surrender the permit or the temporary permit, as the case may be, within seven days of the receipt of a demand in writing by the Transport Authority concerned or any Authority authorised by the Transport Authority;

(b) the holder of the permit shall, if so required by the Regional Transport Authority, intimate to it within 24 hours of the receipt of the order of suspension the place where the vehicle in respect of which the order is passed will be kept during the period of suspension and shall not remove the vehicle from the place so intimated without the prior sanction of the Regional Transport Authority;

(c) the Transport Authority or any authority authorised by the Transport Authority in this behalf shall record in the permit or on the temporary permit, as the case may be, the order of suspension, cancellation or composition; and

(d) send intimation to any authority by which the permit has been endorsed or extended if such endorsement or extension is in force at the time of suspension or cancellation.”

Further S.87(2) provides that temporary permit can be granted to meet a temporary need and S.87(2)(ii) specifically provides that temporary permit can be granted as a result of suspension of by a Court or other competent authority of the permit. R.152 provides that it shall be a condition of the permit of every transport vehicle that the vehicle shall be so maintained as to be available for the service for which the permit was granted for the entire service.

Rule 152 is quoted below:

“152. Failure to use transport vehicle. - It shall be a condition of the permit of every transport vehicle (other than a private service vehicle permit) that the vehicle shall be so maintained as to be available for the service for which the permit was granted, for the entire period of currency of the permit and that the permit is liable to be suspended or canceled, after due notice to the permit holder, if the vehicle has not been used for the purpose for which the permit was granted, for any day in the case of a stage carriage unless a reserve bus duly authorised in this behalf has conducted substitute service in the place of the route-bus which defaulted service, and for a continuous period of fifteen days or more in the case of other transport vehicles, during the period for which the permit authorises the use of the vehicle on the road, unless the State or Regional Transport Authority is satisfied that the permit holder was prevented by sufficient cause from running the service or that the permit holder had obtained the previous permission of the State or Regional Transport Authority to suspend the service for such period during which the vehicle was not operated.”

Permit holder is entitled to surrender his vehicle after notice to the R.T.A. R.217 deals with obtaining sanction when permit holder wants to withdraw before the expiry of the permit the services which the vehicle covered by the permit was providing. R.217 is quoted below:

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“217. Withdrawal of bus from service -- If the holder of a stage carriage permit proposes to withdraw before the expiry of the permit the service which the vehicle covered by the permit is providing, he shall, unless prevented by unavoidable circumstances, give at least one month's notice of his intention to the Transport Authority which issued the permit, and shall surrender the permit on the date from which the service are withdrawn. Upon receipt of the notice, the Transport Authority shall post a copy of the notice on the notice board of the Authority.”

15. The above statutory provisions clearly indicate that the permit holder is specifically obliged to keep the vehicle ready and in use for the entire period of permit. In the event he transfers the vehicle and loses ownership of the vehicle, permit can be suspended or cancelled. When a permit is suspended, temporary permit can be granted. Object is that service covered by permit should always be run for the benefit of the public and permit holder has an obligation to run the service and in the event he wants to withdraw from service, he has to surrender the permit with notice so that the authorities can make proper arrangement. In the appeals before us the request of the petitioners is to issue a clearance certificate permitting them to withdraw/detach the vehicle from the permit and allow the permit to continue. The petitioners want to keep their permits alive, so that in future if they want they can revive the service. There is no prohibition under the 1988 Act and the 1989 Rules for a permit holder in withdrawing the vehicle from the service but in that event he has to surrender the permit. But without surrendering the vehicle, petitioners want to obtain permission of the authority to detach the vehicle from the permit which is not permissible under the statutory scheme.

16. Coming to the facts in W.A.No.2486 of 2015, the petitioner was a regular permit holder who was granted permit with regard to his vehicle on the route Chenappady-Erattupetta which is valid upto 16.11.2019. On 06.07.2015 he was granted another permit for a different modified route. However, the order was issued with a condition that the applicant has no liberty to surrender the valid permit for vehicle No.KL-34/3895 since it will adversely affect the travelling public in the route. Copy of the order dated 06.07.2015 issued by the R.T.A. has been brought on record as Annexure-I. It is useful to extract the aforesaid order:

“Proceedings of the meeting of R.T.A., Kottayam held on 06.07.2015

Present - 1) Sri. U.V Jose, IAS. (District Collector & Chairman R.T.A. Kottayam).

2) Sri. K G Samyuel (Deputy Transport Commissioner CZ II & Member).

Item No. 04 G1/29775/2015 K

Agenda - To re consider the adjourned application (Item No.06 of R.T.A. dated 14/05/2015) for the grant of fresh regular permit to S/C KL-34/3895 or a suitable vehicle with S/C 33 in all to operate on the route Chennappady-Erattupetta Via Kurisinkal Jn. Kanjirappally BS, Kappadu, Kalaketty, Pinnakkanadu and Thidanadu with cut trip to Thampalakkadu from Kanjirappally as ordinary service from the date of issue.

Applicant- Sri T.A. Abdula Salam, Thenmackal,
Kanjirappally.

Order No. GI/29775/2015 K dated 06.07.2015

Heard Sri. K.V.Gopinathan Nair, Learned counsel represented the applicant Sri T.A. Abdul Salam to reconsider the modified application (adjourned Item No. 06 of R.T.A., Kottayam dated 14.05.2015) for a fresh regular permit to stage carriage KL -34-3895 or a suitable vehicle to operate on the route Chenappady-Erattupetta Via Kurisnkal Jn, Kanjirappally BS, Kadappadu, Kalaketty, Pinnakkanadu and Thidanadu with cut trip to Thampalakkadu from Kanjirappally as ordinary service. The stage carriage KL 3895 is reported as having valid regular permit on another route. Out of the total route length of 31.6 Kms, a distance of 800 metres from Kanjirappally Petta Jn. To JN Kurisinkal overlaps on the notified scheme Kottayam-Thekkady scheme, which is under the permissible limit as per G.O.(P) No.42/2009 Trans dated 14.07.2009. Some of the en route operators raised objection that the applicant is trafficking the permit, which is reported baseless by the M.V.I. Kottayam as per the direction of the R.T.A. dated 24.03.2015. Hence. Fresh Regular permit granted on production of another suitable vehicle with the same seating capacity or more on the above route subject to the condition that applicant has no liberty to surrender the valid permit of the stage carriage KL 34 3895, since it will adversely affect the travelling public on the existing route.

Sd/-

Chairman/Members

//True Copy//

Sd/- Secretary,

R.T.A., Kottayam.

Endt. G1/29775/2015/K : Copy communicated to the applicant he is directed to produce the current records within 30 days from the date of dispatch of this notice failing which the sanction is liable to be revoked without any further intimation.

Senior Superintendent.”

Thus petitioner was prohibited, while granting new permit, that he shall not surrender his vehicle No.KL-34/3895. Petitioner made an application contrary to that seeking permission to withdraw the vehicle from the earlier permit to obtain a new permit. What was claimed by the petitioner has already been frowned upon by this Court. In this context reference to the judgment of this Court in *Johnson v. R.T.A., Trichur* (1999 (2) KLT 434) is appropriate. In the above case the question which came up for consideration was as to whether the R.T.A. can issue regular permit in respect of a vehicle already covered by a permit. The following was laid down in paragraph 4:

“4. I had occasion to consider the scope of R.159(2) in O.P.17436/98. This Court took the view that an applicant is bound to give details of the vehicle in the application itself or at least at the time when the application comes up for consideration before the R.T.A. When application comes up for consideration before the R.T.A., R.T.A. could decide the necessity of granting a permit on a particular route to meet the requirement of the travelling public. It is after assessing the necessity the R.T.A. grants the permit. If the vehicle offered by an operator is already covered by a permit, evidently that permit

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was granted by the R.T.A. considering the need of the travelling public as well as necessity of operating vehicle on particular route. If option is given to the operator to choose between permits that will be against public interest and will defeat the object of the legislation.”

To the similar effect is another judgment of a learned Single Judge in *Ahammed v. Regional Transport Authority* (2002 (3) KLT 374). Learned Single Judge held in the said case that when there is already a valid regular permit in respect of the vehicle, the grant of regular permit in respect of the same vehicle to operate on another route would be against the public interest.

The following was laid down in paragraph 4:

“4. The learned Government Pleader submitted that the vehicle offered by the petitioner was having a regular permit valid upto 2007 and regular permit cannot be granted in respect of the same vehicle unless the petitioner surrenders the existing permit. It was further submitted that the decision relied on by the petitioner has no relevancy in the present case. The facts of the above decision in 2000 (1) KLJ 141 cited supra do not have any similarity with the facts of the present case. That was a case where the applicant for the grant of regular permit was not the registered owner of the vehicle, but he applied for the grant of regular permit while the transfer of registration proceedings were pending before the competent authority in respect of the vehicle. In that case, in fact, no vehicle was offered at the time of applying and while considering the grant of the permit. It is settled law that the vehicle need not be offered at the time of grant and the current records of the vehicle need be produced within thirty days from the date of grant of permit or such extended period upto four months in view of R. 159 of the Rules. But, this is a case where the petitioner had offered a vehicle and that vehicle was having a valid regular permit upto 2007 to be operated in another route and that permit was not surrendered. The learned Government Pleader placed reliance on a decision of this Court in *Johnson v. R. T.A., Trichur* (1999 (2) KLT 434). The facts of the above case are identical with the facts of the present case. That was a case where the application filed for the grant of regular permit in respect of the vehicle was having regular permit to operate on another route. There my learned brother Justice Radhakrishnan held:

“An applicant is bound to give details of the vehicle in the application itself or at least at the time when the application comes up for consideration before the R.T.A. When application comes up for consideration before the R.T.A., R.T.A. could decide the necessity of granting a permit on a particular route to meet the requirement of the travelling public. It is after assessing the necessity the R.T.A. grants the permit. If the vehicle offered by an operator is already covered by a permit, evidently that permit was granted by the R.T.A. considering the need of the travelling public as well as necessity of operating vehicle on particular route. If option is given to the operator to choose between permits that will be against public interest and will defeat the object of the legislation. Petitioner's contention if accepted the vehicle can then be covered by any number of permits. That will give an undue advantage to the operator so as to decide through which route he should operate his vehicle. It will also deny the chance of other applicants who otherwise would have got the permit”.

I respectfully agree with the above view taken by my learned brother. When there is already a valid regular permit in respect of the vehicle, the grant of regular permit in respect of the same vehicle to operate on another route would be against the public interest and

would amount to denial of the chances of other applicants who otherwise would have got the permit. R.159 of the Rules which deals only with the production of current records of the vehicle, cannot have any application in the present case. In view of the decision of this Court in 1999 (2) KLT 434 cited supra, I do not think that it would be proper for this Court to direct the first respondent to comply with Ext. PI judgment of the S.T.A.T.” Petitioner in W.P.(C) No.25240 of 2015 has relied on a judgment of the learned Single Judge in *Aysha v. R.T.A., Kasargod* (2006 (3) KLT 1013). It is necessary to refer to the said judgment. In the said case permit was cancelled since the permit holder could not replace the vehicle which had already completed 15 years of its life. Under the decision of the R.T.A. the vehicle was required to be replaced after 15 years. Learned Single Judge in the said case held that vehicle is not required at the time of consideration of grant of permit and the current records need be produced only for the purpose of issuance of the permit. Further it was observed that S.86 of the 1988 Act does not provide non-replacement of a vehicle or the non-availability of a vehicle as a ground for cancellation of the permit. The following was observed in paragraphs 6 and 7:

“6. Going by the law as it stands, including the position propounded by this Court in *Alavikutty's* case (2005 (1) KLJ 205), a ready vehicle is not required at the time of consideration of the question for grant of permit and the current records need be produced only for the purpose of issuance of permit following the grant. So much so, the grant in favour of a person as an operator is not dependent upon the availability of a vehicle to be operated following the grant. The availability of a vehicle is not relevant for the grant but for the issuance of the permit. S.86 does not provide the non availability of vehicle as a ground for cancellation of permit. All that law requires is that the permit should be availed within the outer limit prescribed by the Act and the Rules. S.86 of the Motor Vehicles Act does not provide non replacement of a vehicle or the non availability of a vehicle that is being plied under a permit as a ground for cancellation of permit. The embargo on the permit holder is that after 31.03.2004, a stage carriage, which would have become 15 years' old by then, could not be plied. This does not, by itself, mean that the operator could not have brought a ready vehicle later on, during the currency of the permit. Therefore, the fact that the vehicle has attained the age of more than 15 years is no ground to cancel the permit and an operator, who has permit in his favour, is entitled to bring in another proper vehicle during the currency of the permit.

7. Reverting to the facts of this case, the permit issued to the petitioner is valid till 17.04.2007. She had applied for replacement of the vehicle and had brought a vehicle during the currency of the permit. Even assuming that she was not entitled to ply the stage carriage that she had with her as on 31.03.2004, that is no ground to cancel the permit.”

There cannot be any dispute to the observations of the learned Single Judge that a ready vehicle is not required at the time of consideration of the question of grant of permit. We have already referred to R.159(2) where time to the extent of four months can be granted for producing records of the vehicle. As per R.159(1) permit shall not be issued without entering registration mark of the vehicle. The case before the learned Single Judge was not a case for

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grant of permit or time for producing the vehicle. In the above case the embargo on the permit holder was that after 31.03.2004 a stage carriage which would have become 15 years old by then could not be plied. Learned Single Judge held that cannot lead to cancellation. For the purpose of the present case it is sufficient to observe that in the event embargo was to replace the vehicle before 31.03.2004, and the permit holder did not replace the vehicle., there was no dearth in the authority to suspend the permit of the vehicle and make a temporary arrangement. In the above case permit was cancelled which was not approved by the learned Single Judge. The said case was on its own facts and does not help the petitioners in the present case.

17. A Division Bench of this Court had occasion to consider R.172 of the 1989 Rules in the context of renewal of permit without there being a vehicle mentioned in the application. The Division Bench in *Jaffer v. Usman* (2015 (4) KLT 590) has laid down that an application for renewal of the vehicle cannot be made without the vehicle being available. The Division Bench after referring to R.172 laid down the following in paragraph 10:

“.....Rule 143 provides for application for permit, R.144 provides form of permit. R.159(1) is couched in a negative form with a mandate that no permit shall be issued before entering the registration mark of the vehicle in it. Thus before a permit is issued, registration mark is to be entered in the permit. R.159(2) grants discretion to the R.T.A. to extend time for submitting registration mark. But the Rule clearly indicate that without entry of registration mark of the vehicle no permit shall be issued. Permit is defined in S.2(31). The definition of the permit clearly indicate that permit is authorisation of use of a motor vehicle. Permit thus is attached to a motor vehicle. As per S.83, a vehicle may be replaced by holder of a permit. The phrase “holder of a permit” is used in S.83 which clearly indicate that replacement of vehicle is contemplated during currency of a permit. As noted above, in the present case, this Court by judgment dated 12.09.2013 had directed the authority to issue clearance certificate keeping the permit under suspension. Time for replacement of permit was also to be specified. There is nothing on record that any time for replacement of the vehicle was specified by the Transport Authority. The replacement of vehicle was permissible only till validity of the period of permit. As noted above, as per S.86(1)(c) when the holder of the permit ceases to own the vehicle covered by the permit, the R.T.A. is empowered to cancel or suspend the permit. In the present case, by order of the Court dated 12.09.2013 permit was directed to be kept under suspension. The suspension of the permit continued till the validity of the period of permit, i.e., 15.04.2014.”

Ultimately., the Division Bench after consideration of the statutory provision observed that renewal of permit without there being a vehicle is not contemplated. The following was laid down in paragraph 15:

“15. An application for renewal of permit without there being a vehicle with the application is not contemplated by R.172. Judgment of the learned Single Judge in *Aboobacker v. R.T.A.*, (2005 KHC 169 : 2005 (1) KLT 987 : ILR 2005 (1) Ker. 664 :

2005 (1) KLJ 205) relied by the counsel for the appellant was again a case where this Court was considering R.159. In the above context this Court held that it was not mandatory to produce the records of the vehicle at the time of considering the application for permit. There cannot be any dispute to the proposition of law laid down in the case. But the above case again being a case of grant of permit has no occasion to interpret R.172. Learned counsel for the appellant further relied on the judgment in *Krishna Das v. S. T. A. T. Ernakulam*, (1991 KHC 376 : 1991 (2) KLT 203 : 1991 (2) KLJ 187 : ILR 1991 (3) Ker. 571 : AIR 1992 Ker. 5) and contended that ground on which an application for renewal of permit can be rejected is mentioned in S.81(4) which is exhaustive and the said ground does not contemplate rejection of renewal on the ground of non - availability of the vehicle. As noted above, S.86(1)(c) clearly contemplates cancellation and suspension of a permit when the holder of the permit ceases to own the vehicle covered by the permit. It does not appeal to reason that a ground which is sufficient for cancellation or suspension of the permit is not relevant for deciding the renewal application. In the event, a permit is under suspension, after the expiry of the period of suspension, an application is made for renewal, can it be said that the Transport Authority is powerless to reject the renewal on the ground that the permit is under suspension. The answer shall be obviously, yes. A permit which has been suspended and validity expired during suspension of the permit can very well be rejected on the aforesaid ground. To hold otherwise, shall not advance the object of the Act. The observation which has been relied by a Division Bench to hold that grounds mentioned in S.81(4) are exhaustive were confined for the purpose of evaluating the financial condition of the applicant for renewal of the permit. Thus the said observations cannot be read beyond that. It is useful to quote paragraph 12 which is to the following effect:

“12. As we have answered the first question against the appellant in W.A. No. 34 of 1991, it is not necessary to consider the second question regarding the ambit of S.81(4) of the 1988 Act. But on a reading of the Section we agree with the learned Single Judge that the grounds mentioned in that sub-section are exhaustive and not illustrative for the purpose of evaluating the financial condition of an applicant for renewal of a permit.”

In W.P.(C) No.14674 of 2015 permit of the vehicle was expired on 4.3.2015 and an application was submitted by the petitioner on 11.05.2015 praying for issuance of clearance certificate keeping the permit under suspended animation.

18. The learned counsel for the petitioners sought to justify the prayer for clearance certificate on the ground that on the transfer of vehicle R.T.A. of another District requires clearance certificate for making entry. We have gone through the provisions of the 1988 Act. Under S.50 of the 1988 Act which is a provision for transfer of ownership, there is no contemplation of obtaining such a clearance certificate. S.48 required a no objection certificate from the registering authority before entering the particulars of transfer of ownership and the registering authority for issuing no objection certificate, has to apply its mind to the facts as mentioned in S.48(5) which is to the following effect:

“48. No objection certificate. -

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(5) Before granting or refusing to grant the no objection certificate, the registering shall obtain a report in writing from the police that no case relating to the theft of the motor vehicle concerned has been reported or is pending, verify whether all the amounts due to Government including road tax in respect of that motor vehicle have been paid and take into such account such other factors as may be prescribed by the Central Government."

Section 51 contains a special provision regarding motor vehicles subject to hire purchase agreement wherein S.51(4) provides no entry regarding the transfer of ownership of any motor vehicle which is held under the said agreement shall be made in the certificate of registration except with the written consent of the person whose name has been specified in the certificate of registration as the person with whom the registered owner has entered into the said agreement. Thus with regard to transfer of vehicle no clearance certificate is required as contended by the learned counsel for the petitioners. In the context of Motor Vehicles Taxation Act, 1976 requirement is with regard to a certificate that no tax or other dues are pending against the vehicle.

19. To accept the contention of the petitioners that they are entitled to receive clearance certificate from the authority to detach the vehicle from the permit to use the vehicle for any other permit or other purpose including transfer of the vehicle is to allow the permit which was held by them to remain unserved causing prejudice to the general public whom transport services are provided and regulated by the authority. Request from the petitioners for keeping the permit under suspended animation may range from months to years and permitting such request is nothing but denying the use of services by the general public. Petitioners did not want their permits to be kept under suspension. Since in the event of permit holder loses ownership of the vehicle, power of suspension is granted under S.86 and on suspension temporary permit can be issued on the route. Petitioners wanted their permits to remain alive without it being suspended and detach the vehicle for the use of the vehicle for some other purpose which is clearly contrary to the object and purpose of the 1988 Act and the 1989 Rules as noted above.

20. In view of the foregoing discussion, we are of the view that the directions issued by the learned Single Judges in the judgments are not sustainable. The respective request made by the petitioners before the RTA were not liable to be allowed and the directions issued by the learned Single Judges cannot be sustained.

In the result, the Writ Appeals are allowed. Judgments of the learned Single Judges in the Writ Petitions are set aside and the Writ Petitions are dismissed.

No order as to costs.

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