

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 9TH DAY OF AUGUST 2021 / 18TH SRAVANA, 1943

WA NO. 936 OF 2021

JUDGMENT DATED 10.02.2021 IN WPC 273/2021 OF HIGH COURT OF KERALA

APPELLANTS/NOT PARTIES IN THE W.P.(C):

- 1 P.M. ABDULLAKUTTY
S/O.MOHAMMED UNNI,PUTHUSSEERI MADATHIL HOUSE,THURAKKAL,
NARUKARA.P.O, MANJERI,MALAPPURAM.
- 2 SULAIMAN,
S/O.MUHAMMED UNNI,PUTHUSSEERI MADATHIL
HOUSE,THURAKKAL,NARUKARA.P.O,
MANJERI,MALAPPURAM.
- 3 ABDU RAHIMAN,
S/O MOIDEENKUTTY,KODAVANDI HOUSE,MANJERI COLLEGE.P.O,
MANJERI,MALAPPURAM.
- 4 JOMESH THOMAS,
S/O JOSE THOMAS,NELLITHANATH
HOUSE,THURAKKAL,MANJERI,MALAPPURAM.

BY ADVS.

M.JITHESH MENON

K.INDU (POURNAMI)

R.BRIJESH

P.G.MAHESHKUMAR

RESPONDENTS/PETITIONER & RESPONDENTS IN THE W.P.(C):

- 1 FATHIMA SUHARA.M
W/O.MOHAMMED,POTTANAMCHALIL,
POOKKOLATHUR,PULPATTAM,MANJERI,
MALAPPURAM.

- 2 THE REGIONAL TRANSPORT AUTHORITY
REPRESENTED BY ITS SECRETARY,MALAPPURAM,CIVIL STATION,
UP HILL,MALAPPURAM, PIN-676 505.
- 3 THE SECRETARY
REGIONAL TRANSPORT AUTHORITY,MALAPPURAM,
CIVIL STATION,UP HILL,MALAPPURAM,PIN-676 505

R1 BY SRI. PRASAD CHANDRAN

R2 & R3 BY SRI. K.P.HARISH, SR. GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 09.08.2021, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Dated this the 9th day of August, 2021.

JUDGMENT

SHAJI P. CHALY, J.

The appellants, who are third parties to W.P.(C) No. 273 of 2021, challenges the judgment of the learned single Judge dated 10.02.2021.

2. The issue relates to the direction issued by the learned single Judge to treat the time suggested by the first respondent in the appeal in regard to a stage carriage as provisional timing, after getting a report from the AMVI as to whether that timing clashes with the timing of the existing operators and also the convenience of the travelling public. It was also directed to ensure that the timing proposed does not clash with the timings of the existing operators, which was directed to be done within 4 weeks from the date of receipt of a copy of the judgment.

3. The grievance highlighted by the appellants, who are also stage carriage operators, is that the learned single Judge failed to appreciate the fact that the request/grievance highlighted by the first respondent was only for allotment of a revised set of timings and not for the issuance of a fresh permit and therefore, the direction issued to accept the time suggested by the writ petitioner as the provisional

timing is bad, illegal and arbitrary. According to the appellants, the first respondent/writ petitioner is operating her stage carriage service with a set of timings and there is no requirement for a direction to issue a revised set of timings provisionally without hearing the affected en-route operators. It was also submitted that in the earlier round of litigations, first and second appellants were parties. It was further submitted that the appellants were all objectors in respect of the timings before the Secretary, Regional Transport Authority and still they were not made parties either before the State Transport Appellate Tribunal or in the writ petition.

4. The sum and substance of the material contentions advanced by the appellants is that since the writ petitioner was given a set of timings to operate her vehicle after convening a timing conference, the learned single Judge was not correct in directing the third respondent that the timings suggested by the writ petitioner shall be treated as provisional timings.

5. On the other hand, the learned counsel appearing for the writ petitioner/first respondent submitted that the learned single Judge has directed the authority to accept the timing proposed as provisional timing till a final decision is taken in a Timing Conference and therefore, there is no requirement for interference with the judgment,

since no manner of serious prejudice is caused to the appellants.

6. We have heard the learned counsel for the appellants Sri. Jithesh Menon, learned Senior Government Pleader Sri. K. P. Harish for the Government officials and Sri. Prasad Chandran for the first respondent/writ petitioner, and perused the pleadings and materials on record.

7. In fact, the reliefs sought for by the petitioner/first respondent in the writ petition were as follows:

1. To issue a writ of mandamus or any order, writ, direction or order directing the 2nd respondent to comply with the direction in Ext. P3 judgment of the State Transport Appellate Tribunal as M.V.A.R.P No. 188/2019 and settle the timings, forthwith, or at any rate within a time limit to be fixed by this Hon'ble Court, in the interest of justice;
2. To issue a writ of mandamus or any other appropriate writ, direction or order directing the 2nd respondent to revise the timing of the petitioner's stage carriage on the route Areekode-Pookkottur in respect of her stage carriage KL-18/C 2021, forthwith, or at any rate within a time limit to be fixed by this Hon'ble Court, in the interest of justice.

8. Therefore, it can be seen that the writ petitioner/first respondent had never sought for a relief of treating the timing suggested by the writ petitioner as provisional timing. Moreover, when stage carriages are operated on the basis of the settled set of timings finalised after providing opportunity to all the en-route operators, it may not be appropriate and legal to provide a set of provisional timings suggested by the writ petitioner, which would only upset the

time schedules provided by the authority to all the en-route operators. In fact, the relief granted by the learned single Judge directing the authority to accept the time suggested as provisional timing was sought for by the writ petitioner as an interim relief during the pendency of the writ petition. Therefore, when the writ petition was disposed of, the learned single Judge ought to have granted the main relief sought for in the writ petition alone, which was only seeking a direction to the authority concerned to take a decision on the direction issued by the State Transport Appellate Tribunal in the representation submitted by the writ petitioner for revision of timings, more so due to the fact that none of the affected persons were made parties in the writ petition .

9. Moreover, we are of the clear opinion that since the en-route operators are operating their stage carriages with a set of timings provided in appropriate timing conferences constituted with the juncture of the writ petitioner also, if provisional timing sought for is directed to be accepted, it would definitely upset the timings provided to the other stage carriages operated en-route and create utter confusion and chaos, thus making the issue more complex.

10. We are informed that consequent to the contempt petition filed by the writ petitioner, orders are passed in compliance with the

directions contained in the judgment with respect to the provisional timing which was made subject to the final orders to be passed.

11. Taking into account the respective submissions made across the Bar, we are of the considered view that interference is required to the judgment of the learned single Judge to the extent it directed to accept the timing suggested by the writ petitioner/first respondent as provisional timing after getting a report from the AMVI, and accordingly, we vacate the said direction and consequently there will be a direction to the statutory authority to consider the directions issued by the State Transport Appellate Tribunal in regard to the representation submitted by the writ petitioner/first respondent for revision of timing in accordance with law, after complying with all the statutory requirements including providing notice of hearing to all concerned at the earliest and at any rate within a month from the date of receipt of a copy of this judgment.

This writ appeal is allowed in part as above.

sd/-

**S. MANIKUMAR,
CHIEF JUSTICE.**

sd/-

**SHAJI P. CHALY,
JUDGE.**

Rv

APPENDIX

APPELLANTS' ANNEXURES:

- Annexure A TRUE COPY OF THE ORDER DATED 22.11.2016 ISSUED BY THE THIRD RESPONDENT.
- Annexure B TRUE COPY OF THE ORDER PASSED BY THE 3RD RESPONDENT DATED 19.03.2018.
- Annexure C TRUE COPY OF THE ORDER IN MVARP NO. 67/2018 DATED 13.07.2018.
- Annexure D TRUE COPY OF THE ORDER PASSED BY THE 3RD RESPONDENT DATED 08.11.2018.
- Annexure E TRUE COPY OF THE ORDER IN MVARP NO.188/2019 DATED 04.01.2020
- Annexure F TRUE COPY OF THE JUDGMENT IN WP(C)NO.11828/2020 DATED 17.06.2020
- Annexure G TRUE COPY OF THE ORDER PASSED BY THE 3RD RESPONDENT DATED 03.03.2021
- Annexure H TRUE COPY OF THE OBJECTION PREFERRED BY THE 1ST APPELLANT DATED 17.03.2021
- Annexure I TRUE COPY OF THE OBJECTION PREFERRED BY THE 2ND APPELLANT DATED 17.03.2021
- Annexure J TRUE COPY OF THE OBJECTION PREFERRED BY THE 3RD APPELLANT DATED 17.03.2021
- Annexure K TRUE COPY OF THE OBJECTION PREFERRED BY THE 4TH APPELLANT DATED 17.03.2021.

RESPONDENTS' ANNEXURES: NIL

/True Copy/

PS To Judge.