

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.NAVANITI PRASAD SINGH
&

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

TUESDAY, THE 17TH DAY OF OCTOBER 2017/25TH ASWINA, 1939

WP(C). No. 30359 of 2017 (S)

PETITIONER(S):

PRIVATE BUS OWNERS ORGANISATION,
VYPEEN PARAVUR UNIT, ROOM NO.22, MUNICIPAL BUS STAND BUILDING,
N.PARAVUR-683513, REPRESENTED BY ITS PRESIDENT, MR.PRAKASHAN,
AGED 70 YEARS, SON OF RAMAN, MANNALLY HOUSE,
CHERAI P.O., PIN-683514.

BY ADVS.SRI.P.B.SAHASRANAMAN
SRI.T.S.HARIKUMAR

RESPONDENT(S):

1. THE TRANSPORT COMMISSIONER,
TRANSPORT COMMISSIONERATE, 2ND FLOOR, TRANS TOWERS,
VAZHUTHACAUD, THYCAUD P.O., THIRUVANANTHAPURAM-695001.
2. THE REGIONAL TRANSPORT AUTHORITY,
OFFICE OF THE REGIONAL TRANSPORT AUTHORITY, CIVIL STATION,
KAKKANAD, COCHIN-682030.
3. THE REGIONAL TRANSPORT OFFICER,
OFFICE OF THE REGIONAL TRANSPORT AUTHORITY, CIVIL STATION,
KAKKANAD, COCHIN-682030.
4. ABDUL RAHMANKUTTY,
PATTANHITHARA HOUSE, ERIYAD, AZHEEKODE JETTY P.O.,
KODUNGALLOOR-680666.

R1-R3 BY ADV. SRI.RANJITH THAMPAN, ADDL.ADVOCATE GENERAL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17-10-2017,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**NAVANITI PRASAD SINGH, C.J. &
RAJA VIJAYARAGHAVAN V., J.**

W.P.(C) No. 30359 of 2017

Dated this the 17th day of October, 2017

JUDGMENT

Navaniti Prasad Singh, C.J.

This writ petition depicts a very sorry state of affairs. A racket was going on in this State where public transporters would apply for permanent permit before the Regional Transport Authority (RTA) under the provisions of the Motor Vehicles Act, 1988 and the Rules framed thereunder and while the procedure of calling for objections and others were being considered, the operators would file application for grant of temporary permit.

2. For grant of temporary permit, there is hardly any enquiries or objections required, because by nature of things, it is an *ad hoc* arrangement. On the mere asking, during the pendency of grant of permanent permit, temporary permits were being granted circumventing the substantive provisions with regard to grant of permanent permit. This objectionable practice continued not just for months, but for years. This was brought to our notice in another proceedings and we gave a detailed judgment in the case of **Cannannore District Bus Operators Association v. State of Kerala** [2017 (3) KLT 126].

3. We, in clear terms, held that the provisions of the Act did not authorise such grant of temporary permits. During the pendency of permanent permits, no temporary permit could be granted. The reason was obvious. A person seeking permanent permit clearly shows that the requirement is not temporary which are the conditions stipulated in Section 87(1)(a), (b) and (c). The requirement being permanent, Section 87(1)(a), (b) and (c) are not attracted at all. So far as Section 87(1)(d) is concerned, it clearly stipulates that pending renewal, the permanent permit already having been granted, a temporary permit can be granted. Thus, we pointed out that pending an application for grant of permanent permit, no temporary permit can be granted. We were cognizant of this racket being indiscriminately carried out at all levels. Therefore, in the last paragraph of the judgment we directed the Secretary, RTA to circulate this judgment to all concerned so that this nefarious practice be stopped.

4. Our apprehensions were correct. This writ petition brings on record that our order and judgment are still being abused with impunity. Exhibit P3 would show how the RTA directs the grant of temporary permit pending consideration of application for grant of permanent permit. It also notices the Division Bench judgment

which is a contradiction in terms. The RTA directs the Secretary to grant temporary permits.

5. Another unusual feature is the plea that RTA has delegated some of its functions to the Secretary and it is pursuant thereto, the Secretary is exercising the functions of the RTA. If that be so, no direction can be issued by the delegator to the delegatee at all. They are exercising the same power under the same statute. But here, the RTA considers the Secretary, though a delegatee, as a subordinate to whom directions are issued. This is absolutely illegal and unwarranted. However, the Secretary was more responsible. He rejects the applications for grant of temporary permit in view of the Division Bench judgment of this Court. What is shocking is an appeal is preferred to the State Transport Appellate Tribunal (STAT) against the order of the Secretary, and the Appellate authority, without noticing the Division Bench judgment, by interim orders directs grant of temporary permit frustrating the provisions of the Act and the judgment of this Court with impunity.

6. When the above facts were brought to the notice of this Court, this Court directed the RTA to file an explanation. We have seen the explanation and say no more. An unconditional apology

is tendered with a promise not to repeat. We would accordingly quash Exhibits P3 and P4 and direct that whenever an application is made for grant of permanent permit which pre-supposes no temporary need or necessity, no temporary permit can be granted. We further hold that even though powers of the RTA may be delegated to the Secretary, no direction can be issued by the delegator to the delegatee as the relationship between delegator and delegatee is not that of a senior and a junior, or a superior and an inferior. They are at par, one representing the other. This practice of issuance of temporary permits must end.

With the aforesaid observation and direction, this writ petition stands disposed of. Let a copy of this judgment be sent to the Secretary, Department of Road Transport, for circulation to all concerned, including the STAT and all authorities under the Motor Vehicles Act in this State.

Sd/-
Navaniti Prasad Singh,
Chief Justice

Sd/-
Raja Vijayaraghavan V.,
Judge

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SECTION OFFICER

APPENDIX

PETITIONER(S)' EXHIBITS:-

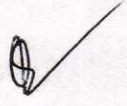
- P1- SOME PHOTOGRAPHS AVAILABLE IN THE INTERNET AND THE BOARD PUT UP BY THE PWD OFFICIALS IN FRONT OF THE VARAPUZHA BRIDGE.
- P2- TRUE TYPED COPY OF THE MINUTES OF THE MEETING OF THE RTA, DATED 15/07/2017 AGENDA ITEM 44.
- P3- TRUE TYPED COPY OF THE MINUTES OF THE AGENDA ITEM NO.1 OF THE MEETING OF THE RTA HELD ON 15/07/2017.
- P4- TRUE PHOTOCOPY OF THE TEMPORARY PERMIT ISSUED BY THE 3RD RESPONDENT TO THE 4TH RESPONDENT DATED 19.09.2017.

RESPONDENT(S)' EXHIBITS:-

- ANNEXURE R2(A):- COPY OF THE PROCEEDINGS OF THE SECRETARY, REGIONAL TRANSPORT AUTHORITY.
- ANNEXURE R2(B):- COPY OF ORDERS OF STAT DATED 11.08.2017 AND 16.09.2017 IN MVAA NO.181/17.

KRJ

//TRUE COPY//


P.A. TO JUDGE