



Vehicles Act of 1939 stands repealed with the expiry of the period of grant given in the permit under the repealed Act, by necessary implication the operator has to make fresh application in the prescribed manner to the concerned Regional Transport Authority or State Transport Authority and seek a grant under section 72. Since the application was not made for fresh grant under the 1988 Act, the rejection of the renewal application under 1939 Act or under the 1988 Act is perfectly legal. [765-B, C, E]

2. The grant of renewal is no more than a fresh permit to operate the transport service for a fresh period mentioned in the renewed permit. Therefore, the operation of the permit issued under section 58 of the repealed Act of 1939 is a terminus with the expiry of the period of the grant and the operation of the Act of 1939 ceases to have effect from that date. Any right to run the permit, therefore, must be under the permit granted under the Act as per its provisions. Harmonious construction of the relevant provisions would lead to the above conclusion lest any other construction would fly in the face of the express provisions of the Act. The application for the renewal would not lie under the Act. [765-C to E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5729 of 1994.

From the Judgment and Order dated 16.9.93 of the Kerala High Court in W.A. No. 1169 of 1993.

Joseph Vellapally, B. V. Deepak and G. Prakash for the Appellant.

G. Viswanatha Iyer and M.A. Firoz for the Respondents.

The following Order of the Court was delivered :

Leave granted.

This appeal arises from the judgment of the Division Bench of the Kerala High Court made in Writ Appeal No. 1169 of 1993 dated 16.9.93. The appellant is a registered cooperative society consisting of workers and it had obtained certain stage carriage permits. One among which was on the route Kundara-Chinnakkada via Anchalmoode and Civil Station of 22 Kilometers distance. The appellant had obtained the permit under s. 58 of the Motor Vehicles Act, Act IV of 1939 on December 23, 1987 for a period of three years which stood expired by December 22, 1990. In the

A meanwhile, the Motor Vehicles Act No. 59 of 1988, (for short 'the Act') has come into force on July 1, 1989 in relation to the State of Kerala. The appellant made an application to the Regional Transport Authority, Kollam, on January 4, 1991 seeking renewal of the permit. The Regional Transport Authority rejected the application on the ground that there is no power under the Act to grant renewal to a permit granted under Act IV of 1939. When the appellant carried the matter in appeal, State Transport Appellate Authority confirmed the same and the High Court by the learned Single Judge and the Division Bench upheld the order of the State Transport Authority. Thus this appeal by special leave.

B

C It is contended for the appellant that renewal is in continuation of the permit granted by the Regional Transport Authority on December 23, 1987. By operation of s.217(2)(b), it is a permit granted under the old Act and continued in its operation and that, therefore, by deeming fiction the appellant is entitled to the renewal as a substantive right and it cannot be rejected on the ground that after the Act has come into force the appellant cannot seek the renewal under the Act by operation of the statutory deeming fiction granted by Clause (b) of sub-s.(2) of s.217. We find no force in the contention. Clause (31) of s.3 defines permit means permit issued by a State or Regional Transport Authority or an Authority prescribed in this behalf under this Act authorising the use of Motor Vehicle as a transport vehicle. Section 72 gives substantive right to grant the permit and s. 81 deals with duration and renewal of the permit. Sub-s.(1) provides that a permit other than a temporary permit issued under s. 87 or a special permit issued under sub-s. (8) of s.88 shall be effective without renewal for a period of five years. The proviso is not necessary. Therefore, it is omitted. Sub-s.(2) provides that a permit may be renewed on an application made not less than fifteen days before the date of expiry. Permit granted under sub- s.(1) of s.72 of the Act shall have, therefore, the duration of five years by operation of sub-s.(1) of s.81 and renewal shall be under sub-s.(2) in the prescribed manner. In other words, the permit granted under s.72 may be renewed for a further period of five years and in an appropriate case, it may be refused. The condition precedent is that the initial grant of permit must be under the Act.

D

E

F

G

H Section 217(2)(b) speaks of only the existing certificate of fitness or registration or licence or permit issued or granted under the repealed enactments and notwithstanding the appeal of the Motor Vehicles Act IV

of 1939, by operation of sub-s.(1) of s.217, the permit shall continue to have effect after such commencement from 1.7.89 under the repealed Act as if that Act was in operation. Under the same conditions and for the same period, as if the Act had not been passed. In other words, notwithstanding the repeal of the Act IV of 1939, the permit issued under the repealed Act will continue to be operative for the period for which it was issued as if this Act had not been passed and the repealed Act continues to be in operation. With the expiry of the period of grant given in the permit under the repealed Act, by necessary implication the operator has to make fresh application in the prescribed manner to the concerned Regional Transport Authority or State Transport Authority and seek a grant under s.72. The grant of renewal is no more than a fresh permit to operate the transport service for a fresh period mentioned in the renewed permit. Therefore, the operation of the permit issued under s.58 of the repealed Act IV of 1939 is a terminus with the expiry of the period of the grant and the operation of the Act IV of 1939 ceases to have effect from that date. Any right to run the permit, therefore, must be under the permit granted under the Act as per its provisions. Harmonious construction of the relevant provisions would lead to the above conclusion lest any other construction would fly in the face of the express provisions of the Act. By necessary implication of s.217(2)(b) the right to renewal under the Act IV of 1939 stands repealed with the expiry of the period of grant of the permit made under the repealed Act. Since the application was not made for fresh grant under the Act, the rejection of the renewal application under Act IV of 1939 or under the Act is perfectly legal. The High Court is right in its conclusion. The application for the renewal would not lie under the Act.

Pursuant to the interim order passed by this Court on April 4, 1994, if the permit of the intervenor is cancelled and the renewal is made in favour of the appellant, obviously with the dismissal of the appeal, the renewal would stand cancelled and the permit granted to the intervenor would stand revived. The appeal is accordingly dismissed but without costs.

T.N.A.

Appeal dismissed.

A

B

C

D

E

F