

1996 (1) KLT 755

*P.A. Mohammed J.*

Devee Motors v. State of Kerala

*Motor Vehicles Act, 1988, S. 72(2) - Applies only when Regional Transport Authority initially decides to grant a stage carriage permit and it does not apply to a subsequent variation of permit - To apply to a subsequent variation, it has to be established that the permit already issued contains a condition as prescribed in S. 72(2)(xxii).*

Sub-section (2) of S. 72 applies only when the Regional Transport Authority initially decides to grant a stage carriage permit and it does not apply to a subsequent verification of permit. In order the said provision to apply to a subsequent variation, the owners of the stage carriage must establish that the permit already issued in their favour contains a condition as prescribed in clause (xxii) of sub-s. (2) of S. 72. Only when it is so established the owners can rely on the said provision and maintain that they are entitled to notice before any variation is made in the permit or attach further conditions thereof. Of course, clause (vii) provides a condition as to the maximum number of passengers and maximum weight of luggage that may be carried on the stage carriage; but that does not mean the said condition is always there in every permit because sub-s. (2) only prescribes that one or more of the conditions specified in clause (i) to (xxii) may be attached to a permit. Therefore, it is crystalline that the notice contemplated in clause (xxii) shall be given when it is established that the conditions provided in clauses (vii) and (xxii) were attached to the permit when it was initially granted. The petitioners who have failed to establish the aforesaid requirement cannot plead for notice by virtue of the provisions contained in clause (xxii). This court also cannot agree with the contention that clause (xxii) is a general provision which can be applied in all situations without having regard to the other provisions contained in the Act or Rules. (Para. 3)

*Motor Vehicles Rules, 1989 (Kerala), R. 267(2) - Before fixing the standing capacity, operators are entitled to a hearing.*

The fixation of standing capacity under sub-r. (2) of R. 267 would no doubt result in the demand of higher rate of tax. Therefore, it cannot be said that rights of the petitioners would not be affected adversely in case Ext. P1 decision is implemented by the State Transport Authority. In this connection, it would be apt to note that clause (a) of sub-R. (2) restricts the fixation of number of standing passengers only in case of vehicles wherein the internal height or head-room is not less than one hundred and sixty seven centimetres and five millimetres. Clause (b) further restricts that the number of passengers so fixed shall not exceed twenty five per cent of the number of passengers for whom there is seating accommodations as specified in sub-R. (1) of R. 267 which deals with requirements for seating room of the passengers. The

said sub-rule, among other things, provides that each passenger shall be provided a reasonably comfortable seating space of thirty eight centimetres square measured on straight lines along and at right angles to the front of each seat. What the provisions of these rules indicate is that before fixing the standing capacity the State or Regional Transport Authority must determine various facts with regard to the passenger capacity of a vehicle. In this process of determination, the owners of the stage carriages must also participate in which case there will be a proper and reasonable determination. In view of the aforesaid situation, the petitioners' claim for a personal hearing by the State Transport Authority is reasonable. (Para. 4)

*M.K. Chandramohan Das, K.K. Raziya  
& C.S. Manilal*

For Petitioner

*Government Pleader (K. Thankappan)*

For Respondents

### JUDGMENT

**P.A. Mohammed, J.**

The petitioners are the Inter-state stage carriage operators. The challenge in these Writ Petitions is directed against an order passed by the State Transport Authority, Trivandrum dated. 20.6.1994 directing the Regional Transport Officers to fix the number of standing passengers the vehicle may be required to carry in the vehicle. The above order was issued by the State Transport Authority under R. 267 of the Kerala Motor Vehicles Rules, 1989 which deals with the passenger capacity of the vehicles. Sub-R. (2) of the said rules deals with the standing capacity which runs as follows:

**“Standing capacity :-** The State or Regional Transport Authority may, in respect of any public service vehicle other than a motor cab, fix the number of standing passengers the vehicle may be permitted to carry or the permit holder may be required to carry in the vehicle:

Provided that -

- (a) such standing passengers may be permitted to be carried only in case of vehicles wherein the internal height or head room is not less than one hundred and sixty seven centimetres and five millimetres, and
- (b) the number of standing passengers so fixed shall not exceed twenty-five per cent of the number of passengers for whom there is seating accommodations as specified in sub-r. (1)”.

Provided further that fifty per cent standing passengers may be allowed in “City Services” or “Town Services”.

The State or Regional Transport Authority shall determine which are the City or Town Services for the purpose of this rule”.