

**DECISION OF REGIONAL TRANSPORT AUTHORITY MUVATTUPUZHA
HELD ON 19-01-2019**

**Present:(1)Sri. Mohammed. Y . Safirulla. I.A.S- District Collector & Chairman RTA
Muvattupuzha.
(2)Sri. Abey John- Deputy Transport Commissioner-CZ-II, Ernakulam
&Member RTA Muvattupuzha(Full additional charge)**

Item No-1

Heard the learned counsel represented the applicant Sri T A Sugatan. This is an application for the grant of fresh regular permit in respect of a new or suitable model stage carriage with seating capacity not less than 38 in all to operate on the Avolichal, Kanjiravely- Perumbavoor (Via) Neriamangalm , Kothamangalma and Kuruppampady as ordinary service.

This authority considered the matter in detail. The proposed route is an inter district route having route length of 52 km out of which 10 kms lies in Idukki District. Granted concurrence from RTA Idukki has already received. Hence fresh regular permit granted on the route Avolichal, Kanjiravely- Perumbavoor subject to settlement of timings as per D3 2813/STA/2013 dtd 21/04/2018 circular.

Item No-02

Heard the learned counsel represented the applicant Sri Sulfikkar K U. This is an application for the grant of fresh regular permit in respect of S/c KL 40 Q 5131 with seating 36 in all to operate on the route Kothamangalam - Aluva(Via) Odackaly , Kuruppampady, Perumbavoor and South Vazhakulam as ordinary service .

This authority considered the matter in detail. The proposed route is an intra district route having route length of 38 km . The field officer reported that there is an overlapping of 1.5 km from Perumbavoor to Plakkattuthazham and 1 km from Aluva pump Jn to Aluva Town with the notified scheme Aluva- Kattappana. He is also reported that the route overlaps a distance of 05 km with Aluva- Aluva circular scheme . The report is not seen specific regarding objectionable overlapping . Also certain en route operators contended that the overlapping distance at Aluva is seen different with that of the existing permits. Hence this authority feels that the distance of overlapping shall be ascertained afresh. Secretary RTA shall ascertain the actual distance of objectionable overlapping . Hence adjourned.

Item No-03

Heard the learned counsel represented the applicant Sri Maheshkumar. This is an application for the grant of fresh regular permit in respect of new or suitable stage carriage with seating capacity not less than 34 in all to operate on the route Perumbavoor- Kothamangalam (Via) Kuruppampady, Odackaly , Nellikuzhy as ordinary service.

This authority considered the matter in detail. Strong objections against the timings are raised by the en route operators. Even though the field officer reported that the route is over saturated , route enquiry report submitted is not self explanatory regarding the average time gap of the route.

This authority feels that as this is an oversaturated route , the average time gap shall be ascertained . Secretary RTA shall submit a statistical report detailing the average time gap including the services of KSRTC on the route. Hence adjourned.

Item No-04

Heard the learned counsel represented the applicant Sri Biju C A. This is an application for the grant of fresh regular permit in respect of S/c KL 40 Q 4959 with seating capacity 28 in all to operate on the route Kanichattupara-Perumbavoor (Via) Meckappala, Kannamparambu, Vengoor and Kuruppampady as ordinary moffusil service .

This authority considered the matter in detail. The proposed route is an intra district route having route length of 18.5 km . There is an overlapping of 500 mtrs reported with the notified scheme Aluva- Kattappana which is in the permissible limit of overlapping. The field officer reported that the route portion from Choorathode to Kanichattupara is ill served and starting of a new service is highly beneficial to the travelling public including students.

Hence fresh regular permit granted to the offered vehicle KL 40 Q 4959 on the applied route Kanichattupara-Perumbavoor subject to settlement of timings as per D3 2813/STA/2013 dtd 21/04/2018 circular.

Item No-05

Heard the learned Counsel represented the applicant Sri Yackoob . This is an application for variation of regular permit in respect of S/C KL 44 E 6959 on the route Chathamattom-Perumbavoor as Chathamattom-Perumbavoor touching Thodupuzha by extending the route from Paingottoor to Thodupuzha in the last trip (Via) Kaloor and Ezhallor and return to Chathamattom (Via) Paingottor as Ordinary service.

This authority considered the application in detail in the light of the report of route enquiry officer and existing Government notifications. In the meeting dated 17/03/2018 this authority considered the application and adjourned for want of concurrence from RTA Idukki and the sister authority granted the concurrence subject to the right of the primary authority to verify the feasibility with govt notification vide GO(p) 08/2017/Trans dated 23/03/2017. The existing route overlaps a distance of 600 mtr at Perumbvaoor town with Aluva-Kattappana scheme and in the proposed variation there is reported an overlapping of 1.0 km from Thodupuzha bus stand to Thoppilkadavu palam with the above scheme. As per Clause (19) of the said notification the right to operate additional services or increasing the number of trips on the notified route is exclusively reserved for STU. Further on scrutiny of the file it is found that proposed extension is from an intermediate point of operation and the distance of extension covers the permissible limit of 24 kms preferred in Sec.80(3) of MV act.

In this circumstances the proposed variation is not seen feasible, hence rejected.

Item No-06

Perused the judgment of hon'ble High court in WP(c) 36420 of 2018.

Heard the learned Counsel represented the applicant. This is an application for variation of regular permit in respect of S/C KL 06 D 5341 operating on the route Alattuchira-Perumbavoor- Ayavana SNDP Jn as Perumbavoor- Ayavana SNDP Jn by curtailing the route portion from Alattuchira to Perumbavoor resulting the change of halting place from Alattuchira to Perumbavoor.

This authority in the meeting dated 02/08/2018 considered the application and rejected as per clause (4) of notification no 08/2017/Tran dtd 23/03/2017. Subsequently the hon'ble High court vide judgment in WA no 1109/2018 along with writ petitions WP(c) No 1182/2018 and connected cases clause (4) of notification no 08/2017/Tran was quashed.

Now the applicant produced an order of hon'ble High court in WP(c) 36420 of 2018, where in the court set aside the decision of RTA and directed to consider the application for variation or extension is sought for on the notified routes the same shall be considered and disposed off in accordance with sec. 80(3) of MV act.

This authority re considered the application as afresh in the light of the report of route enquiry officer and existing Government notifications and order of STAT.

It is evident from the enquiry report that, the proposed curtailment will adversely affect the early morning passengers from Perumbavoor to Mannoor (Via) Vengola and Valayanchirangara . Also the same difficulty will happen in the night also.

This authority feels that interest of the public is the main factor for the grant of a variation on existing regular permit. Withdrawal of the trip towards an ill served area will adversely affect the passengers . The existing benefits enjoyed by the public shall not be deprived of consequent to the variation of the permit. Hence curtailment of existing trips cannot be allowed and the application for variation of permit is rejected.

Item No-07

Perused the judgment of hon'ble STAT in MVAA No 148/2018 and connected cases.

Heard the learned Counsel represented the applicant. This is an application for variation of regular permit in respect of S/C KL 17 G 4575 operating on the route Angamaly-Muvattupuzha(Via) Kalady and Perumbavoor and desired to be vary the starting and halting as Mannoor instead of Perumbavoor by avoiding the last trip to Perumbavoor as ordinary service.

This authority in the meeting dated 20/01/2018 considered the application and rejected as per clause (4) of notification no 08/2017/Tran dtd 23/03/2017. Subsequently the hon'ble High court vide judgment in WA no 1109/2018 along with writ petitions WP(c) No 1182/2018 and connected cases clause (4) of notification no 08/2017/Tran was quashed.

Now the applicant produced an order of hon'ble STAT in MVAA No 148/2018 and connected cases , where in the court set aside the decision of RTA and directed to consider the application and disposed off in accordance with sec. 80(3) of MV act.

This authority re considered the application as afresh in the light of the report of route enquiry officer and existing Government notifications and judgment of hon'ble High court. The field officer reported that the proposed curtailment will adversely affect the passengers of Alattuchira, which is an ill served portion. The distance from Perumbavoor to Alattuchira is 16 km and the intention of the applicant is to avoid the early morning and night trip to Alattuchira .

This authority feels that interest of the public is the main factor for the grant of a variation on existing regular permit. Withdrawal of the trip towards an ill served area will adversely affect the passengers . The existing benefits enjoyed by the public shall not be deprived of consequent to the variation of the permit. Hence curtailment of existing trip cannot be allowed and the application for variation of permit is rejected.

Item No-08

Heard the learned Counsel represented the applicant. This is an application for variation of regular permit in respect of S/C KL 17 R 1403 to operate on the route Poomala – Ernakulam (Via) Pannimattom, Kalayanthany, Thodupuzha, Muvattupuzha, Kizhakambalam, Pallikkara, Kakkanad as LSOS. The permit holder is intend to vary the permit in the 2nd and last trip of service by deviating the route from Vengalloor Jn to Thodupuzha (Via) Kolani bye pass without changing existing timings.

This authority considered the application in the light of the report of route enquiry officer and existing Government notifications. In the variation application the permit holder intend to deviate the route from Vengalloor Jn to Thodupuzha (Via) Kolani bye pass for avoiding the traffic congestion in the town. The field officer reported that the proposed deviation adversely affect the interest travelling public . There is an additional overlapping of 300 mtr in the variation portion with Kottayam- Kattappana scheme. Clause 19 of GO(p) No 08/2017/Tran dated 23/03/2017 restricts the additional overlapping of private stage carriages on notified routes. Traffic congestion can't be considered as reason for deviation of the route and bypassing of a single service is against natural justice.

In this circumstances the proposed application for variation is feasible and rejected.

Item No-09

Heard the learned Counsel represented the applicant. This is an application for variation of regular permit in respect of S/C KL 17 K 5796 to operate on the route Thulappally – Ernakulam (Via) Kanjirappally, Erattupetta, Melukavu, Thodupuzha, Muvattupuzha, Kizhakambalam, Pallikkara, Kakkanad as LSOS. The permit is intend to vary in the evening trip by deviating the route from Vengalloor Jn to Thodupuzha (Via) Kolani bye pass without changing existing timings.

This authority considered the application in the light of the report of route enquiry officer and existing Government notifications. In the variation application the permit holder intend to deviate the route from Vengalloor Jn to Thodupuzha (Via) Kolani bye pass for avoiding the traffic congestion in the town. The field officer reported that the proposed deviation adversely affect the interest of travelling public . There is an additional overlapping of 300 mtr in the variation portion with Kottayam- Kattappana scheme. Clause 19 of GO(p) No 08/2017/Tran dated 23/03/2017 restricts the additional overlapping of private stage carriages on notified routes. Traffic congestion can't be considered as reason for deviation of the route and bypassing of a single service is against natural justice.

In this circumstances the proposed application for variation is feasible and rejected.

Item No-10

Heard ; the learned counsel represented both the applicants. This is an application for transfer of permit in respect of S/C KL 40 B 7347 operating on the route Pooyamkutty-Aluva Transfer of permit is allowed as applied for subject to the clearance of Government dues if any.

Item No-11

Heard ; the learned counsel represented both the applicants and the objector Sri Biju C A. This is an application for transfer of permit in respect of S/C KL 36 504 operating on the route Aluva- Kothamangalam .

The counsel of the objector alleged that the permit holder agreed to transfer the permit to his client and produced a copy of agreement dated 27/11/2018, executed between them . In this circumstances this authority feels that more clarification to be ascertained in this matter. Hence Secretary RTA is instructed to conduct a detailed enquiry in this regard after affording an opportunity of being heard to all parties including the objector. Hence adjourned.

Item No-12

Heard ; the learned counsel represented both the applicants. This is an application for transfer of permit in respect of S/C KL 37 1039 operating on the route Kolencherry-Koothattukulam .Transfer of permit is allowed as applied for subject to the clearance of Government dues if any.

Item No-13

Perused the direction received from Transport Commissioner regarding delegation of power for the consideration of permit applications of KSRTC. To avoid inordinate delay on processing permit applications of KSRTC on notified routes, it is instructed that power shall be delegated to concerned Secretary RTAs as per Rule 133 of KMV Rules.

This authority delegated the power to the Secretary RTA to grant and issue intra district permits filed by the STU on notified routes, if the records are current.

Item No-14

1)Perused the judgment of hon'ble High Court in WP(c) 42412 of 2018 dtd 21/12/2018.
2) Heard ; the learned counsel represented the applicant and perused the connected file and records. This is an application for replacement in respect of S/c KL 40 F 2151 on the route Perumbavoor- Uppukulam- Perumannoor with KL 44 5052 within a period of one month from the date of issue of regular permit.

This authority considered the matter in detail. Adhere to the common judgment in WP© 33980 of 2015 of hon'ble court , the State Transport Authority decided to fix the age limit for the stage carriages in applying and granting fresh regular permits as 8 years for ordinary moffusil services . Accordingly RTA Muvattupuzha also decided to implement the condition preferred by the STA for granting fresh regular permits as 8 years for ordinary moffusil services .

RTA held on 02/08/2018 granted fresh regular permit in respect of S/c KL 40 F 2151 to the applicant and regular permit was issued on 13/11/2018 vide permit number 17/3422/2018 with validity from 13/11/2018 to 12/11/2023. Then after on 04/12/2018 , the permit holder filed an application for replacement of the existing vehicle with KL 44 5052 which is a 2007 model stage carriage. STA as well as RTA Muvattupuzha decided to impose the restriction of the age of the vehicle for the grant of fresh permit . The restriction of the age of the vehicle for the grant of permit for a stage carriage is obviously in public interest because old vehicle can cause accidents and inconvenience to public due to poor mechanical condition of the vehicle. The said restriction helps to prevent trafficking of permit also.

*In the produced judgment of hon'ble High Court in WP(c) 42412 of 2018 dtd 21/12/2018 the court directed to consider the replacement application strictly in accordance with law, taking note of the law laid down in **Shaju's case & Usha Nathini's case** .*

In the instant case the applicant filed an application to replace the existing vehicle within a period of one month and is against the conditions of age preferred by the granting authority at the time of permit grant. Sec 72(2) empowered the RTA to grant permit for the stage carriage of a specified description when it decides to grant a stage carriage permit.

The hon'ble Supreme court in C.A No.5227 of 2003 dtd 04/08/2010 [2010[4] KLT 597[SC], has held that "the expression 'specified description' is very wide and this would include the fixing of age of the vehicle also.

In this context road worthiness of the vehicle alone can't be considered as a prime factor .

Moreover STA held on 16/01/2019 reconsidered the decision of STA dtd 14/06/2017 regarding the age of stage carriages , in obedience to the judgment of Hon'ble High court in WP(c) 24680 of 2017 and connected cases . STA decided to re fix the upper age limit for applying and granting fresh regular permit to ordinary/City/Town and LSOS stage carriages as 08 years.

Considering the above aspects this authority feels that, the application of replacement with an older model vehicle within one month of the issue of regular permit, is seems to be against the concept of the granting authority as well as the STA. More over if the application is allowed it will become a wrong precedence towards the issuance of fresh permits . Hence rejected.

Item No- 15

Perused the connected file and records.

The stage carriage KL 40 G 9133 is permitted to operate on the route Eco tourism-Vadakkumpilly- Perumbavoor (Via) Kodanadu, Kurichilakode,Koovappady, Aimury, Thodaparambu and Pooppany as ordinary service, vide regular permit number 17/2764/2018 having validity from 17/09/2018 to 16/09/2023. The permit holder had filed an application for replacement with S/c KL 18 B 1068 which is a 2004 model stage carriage. Since the STA as well as RTA decided to impose restriction on the age of the vehicle for the grant of fresh permit, the application of replacement was placed before the consideration of RTA held on 24/11/2018 and RTA rejected the same.

It is reported that , Joint RTO Thodupuzha vide letter dated 22/11/2018 intimated that Transfer of ownership in respect of KL 40 G 9133 has been effected to the name of Sri Shijo Kuriakose, Thandelpathanpurayil , Panoor P O as per the direction of hon'ble High court in its judgment in WP©34694 of 2018 dtd 07/11/2018 without a permit less/clearance certificate. The permit holder is not seen replied to the show cause notice issued to him in this regard.

This authority considered the matter in detail . As per Sec. 86 (3) of MV act if the holder of the permit ceases to own the vehicle covered by a permit the authority which granted the permit can cancel permit.

Further hon'ble high court in judgment in WP(c) 22257 of 2017 dtd 31/08/2017 viewed that if there is no vehicle to operate under the permit, the permit become invalid. In this circumstances the, the regular permit 17/2764/2018 issued to stage carriage KL 40 G 9133 on the route Eco tourism- Vadakkumpilly- Perumbavoor is hereby cancelled.

Item No-16

Perused the records. This item is included to take further action on regular permit issued in respect of S/c KL 05 P 6066 issued vide permit no 17/240/2004 on the route Kaliyar- Muvattupuzha. It is reported that , the route bus attained 15 years of age and the permit holder failed to replace the vehicle within the period and not replied to the notice issued to him as per Rule 152 of KMV Rules. The route bus is under continuous Form G wef 01/10/2018 onwards and the regular permit issued is seen valid up to 02/08/2019.

Now govt has published a draft notification to amend Rule 260 A for allowing stage carriages not older than twenty years from the date of its registration to operate as an ordinary service. In this circumstances this authority decided to give an opportunity to the permit holder to resume his service relied to the finalization of the above notification.

Item No-17

Perused the records. This is the request of the grantee of fresh regular permit on the route Arakkunnam- Perumbavoor which was granted by this authority held on 20/01/2018. The request of the grantee is to condone delay on submitting records and also requested to issue the granted permit to his stage carriage KL 40 H 5805.

This authority considered the matter in detail. In the sitting dtd 20-01-2018 this authority granted fresh regular permit to the applicant to a suitable stage carriage not older than 08 years from the date its original registration with seating capacity not less than 28 in all to operate on the route Arakkunnam- Perumbavoor subject to settlement of timings. As per his request , RTA held on 19/05/2018 allowed maximum time for the production of current records. Then after on 27/11/2018 the applicant informed that due to the flood affected in the state previous year, he can't submit the records of his purchased vehicle KL 40 H 5805 in time due to the delay in clearance certificate and hence effecting transfer of ownership. As per Rule 159 (2) of KMV Rules the applicant shall within one month of the sanctioning of the application by the Transport Authority or such longer period or periods not exceeding four months in aggregate as the authority may specify , produce the certificate of registration of the vehicle . In this case there was occurred undue delay and it cant be considered by this authority. Hence the request is rejected and the granted sanction is here by revoked.

Item No-18

Ratified.

Item No-19

Next meeting will be conducted on 16-03-2019.

Sd/-

Abey John

Deputy Transport Commissioner
CZ-II & Member RTA Muvattupuzha

Sd/-

Mohammed. Y .Safirulla I.A.S.

District Collector &
Chairman-RTA Muvattupuzha.