

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.No.15645 of 2015

A.Ramachandran

.. Petitioner

Vs

1. The State Transport
Appellate Tribunal, Chennai

2. The Regional Transport Authority,

Tiruvannamalai

..Respondents

Prayer:- This Writ Petition is filed to issue a Writ of Certiorari, to call for the records in M.V.Appeal No.77 of 2013, dated 9.3.2015, confirming the order of the 2nd Respondent in R.No.A1/334/2013, dated 2.5.2013, rejecting the application for replacement of existing vehicles with higher seating capacity of other vehicles as not admissible and to quash the same.

For Petitioner : Mr.Radha Gopalan

For Respondent : Mr.M.L.Mahendran,
Government Advocate

ORDER

The Petitioner has challenged the impugned order of the 1st Respondent, thereby confirming the order of the 2nd Respondent, rejecting the request of the Petitioner for replacement of existing vehicles with higher seating capacity.

2. The case of the Petitioner is that the Petitioner was issued with two mini stage carriage permits, bearing TN 25 A 0238 and TN 29 N 0011 during 1992 with seating capacity of 27 in all to provide transport facilities to the people, who are living in Jawadhu Hills Area, by the 2nd Respondent. The Petitioner applied for replacement of the said two mini stage carriages with seating capacity of 50 in all and 56 in all respectively, under Section 83 of the Motor Vehicles Act, 1988. The 2nd Respondent, by order dated 2.5.2013, rejected the said application for such replacements on the ground that if the replacement was allowed, the nature of permit already granted as mini stage carriage would be changed as stage carriage, which is not permissible under Section 83 of the Motor Vehicles Act, 1988. As against the same, the Petitioner filed an appeal before the 1st Respondent Tribunal, alleging that there is no difference between stage carriage and mini stage carriage under the Act and there is only one type of permit i.e. stage carriage permit. The Tribunal also

dismissed the appeal by the impugned order dated 09.03.2015. Hence, this Writ Petition has been filed.

3. The 2nd Respondent filed a counter affidavit, wherein it is averred that the Petitioner made an application before the 2nd Respondent in 1989 for issuance of permits under Section 72 of the Act to operate mini stage carriages with a seating capacity of 27 in all on the route Polur to Amirthi and the major portion of the said route lies on the Jawadhu Hills and at that time, there was no legal impediment to grant such permits. Thereafter, as per the order of this court in WP.No.8216 of 1992, dated 14.7.1992, the Petitioner was issued with the said two permits in 1992 and the same have been renewed upto 19.8.2017. On 3.1.2013, the Petitioner made an application before the 2nd Respondent seeking permission to replace the existing vehicles by two other vehicles of regular stage carriage type, which was rejected by order dated 2.5.2013. In the appeal filed by the Petitioner, the first Respondent Tribunal by order dated 9.3.2015, dismissed the appeal, confirming the order of the 2nd Respondent on the ground that nature of the proposed vehicles differs and that the existing vehicles may be replaced by another vehicle of the same nature. The order has been passed as per the provisions of Section 2(4) and 83 of the Act and Rule 3(o). As per the New Comprehensive Scheme 2011 notified in GO.Ms.No.136 Home (Tr.III) Department dated 23.2.2011, no new permit shall be granted to any private operators in respect of any route other than the mini bus route. As per Section 6(4) of the Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992 (Act 41 of 1992), no new stage carriage permit shall be granted under this Act to any person on any route covered by an approved scheme except in accordance with the provisions of the scheme. The request of the Petitioner for replacement of an existing mini stage carriage having a seating capacity of 25+2 by another regular stage carriage having seating capacity of 48+2 or 54+2 would amount to grant of fresh stage carriage permit and it will be against the provisions of 6(4) of the Act 41 of 1992 and Section 104(1) of the Motor Vehicles Act. Hence, this Writ Petition is liable to be dismissed.

4. Heard both sides.

5. The learned counsel for the Petitioner has contended that the mini bus service is also a stage carriage service in its operation in a permitted route and the difference is only with regard to the seating capacity, as has been held in 2007-WLR-832 (R.Shanmugaiah Vs. P.S.Lakshmanakumar and Regional Transport Authority, Virudhunagar and another) and that as per Rule 3(o) of the Tamil Nadu Motor Vehicle Rules, 'mini bus' means 'stage carriage' and hence, a mini bus operation cannot be distinguished from a stage carriage operation with a vehicle having the seating capacity of 48+2 or 54+2.

6. The learned counsel for the Petitioner further contended that the intention of the legislature is only to consider the nature of the vehicle and not the capacity of the vehicle and without considering the said facts, the impugned order has been passed and hence, prayed for quashing of the impugned order.

7. The learned Government Advocate for the Second Respondent had reiterated the averments made in the counter affidavit and supported the impugned order.

7a.I have considered the aforesaid submissions made on either side and perused the materials available on record.

8.Originally, the petitioner had obtained two permits in the year 1992 to operate two mini stage carriages having the seating capacity of 25 passengers excluding the driver and conductor by virtue of the order of this Court in W.P.No.8216 of 1992 and the same have been renewed for subsequent periods.

9. On 3.1.2013, the petitioner had given an application to the second respondent seeking permission to replace the existing vehicles of mini stage carriages with two other vehicles of regular stage carriage having the seating capacity of 48 +2 and 54 + 2.

10. The second respondent, the Regional Transport Authority, Tiruvannamalai had rejected the request of the petitioner, by his proceedings, dated 2.5.2013 on the ground that as per Section 83 of the Motor Vehicles Act, 1988, the replacement of an existing vehicle covered by a permit by another vehicle may be allowed provided the replacing vehicle is of the same nature with that of the existing vehicle.

11. Aggrieved by the order of the second respondent, the petitioner had preferred an appeal before the first respondent Tribunal. That appeal was also dismissed by the Tribunal on the same ground. Hence, the present writ petition.

12. Now the question is whether the petitioner is entitled for replacing the vehicles having the seating capacity of 27 in all with the vehicles having the seating capacity of 57 in all?

13. In other words, the petitioner wanted new permits to operate the vehicles having the seating capacity of 57 in all instead of 27 in all.

14. Had the petitioner applied for new permits to operate the vehicles having the seating capacity of 57 in all, the contention of the petitioner could have been accepted as there is some force.

15. On the other hand, since the petitioner had applied for the replacement of the vehicles having the seating capacity of 57 in all, as rightly pointed out by the learned Government Advocate, the provisions of Section 83 do not permit the replacement of vehicle unless it is covered by the permit by any other vehicle of the same nature.

16. At this juncture, it is relevant to refer to the Stage Carriage Permit, which was renewed upto 18.8.2017:-

"OFFICE OF THE SECRETARY, REGIONAL TRANSPORT AUTHORITY
TIRUVANNAMALAI DISTRICT

R.No.A1/47886/2012

PSC No.48 TVM/2012

REGISTRRTION No.TN29N 0011
STAGE CARRIAGE

RENEWAL OF PERMIT

The primary permit of the Stage Carriage TN29N 0011 renewed for a further period of five years from 19.08.2012 to 18.08.2017 subject to the conditions already attached to the permit.

Route:Amirthi to Polur (via) Palapirayampattu, Muttanathur, Nambipattu, Veerappanur, Jamunamarthur, Pattaraikadu, Athimoor.

PARTICULARS OF THE VEHICLE:-

Vehicle No.	TN29N0011
Make	A. Leyland
Model	1989
W.B.	147"
S.C.	27 in all
Quarterly tax	Rs.1250/-
Permit Expiry date	19.8.2017

Secretary

Regional Transport Authority, Tiruvannamalai."

17. From the perusal of the Stage Carriage Permit, the petitioner had obtained permit to operate the vehicle having the seating capacity of 27 in all with Wheel Base 147".

18. Now, he wanted to replace the said vehicles with the vehicles having the seating capacity of 57 in all with Wheel Base 210".

19. Now, it is pertinent to see what the provisions of Section 83 of the Motor Vehicles Act, 1988, which deals with the, "Replacement of Vehicles", would say:-

"83. Replacement of vehicles:- The holder of a permit may, with the permission of the authority by which the permit was granted, replace any vehicle covered by the permit by any other vehicle of the same nature."

20. From the above provision, it is clear that the holder of a permit can replace any vehicle covered by the permit by any other vehicle of the same nature.

21. In this regard, the learned counsel for the petitioner, while advancing her arguments, has drawn the attention of this Court to the decision of Karnataka High Court reported in 1994 (2) KarLJ 703 (Geetha B. Rao vs. The Secretary, Karnataka State), wherein, the learned Single Judge has observed as under:-

"The argument of the learned Government Pleader was that the expression "same nature" in the said Section should take to mean and include capacity as well. I am afraid, this construction cannot be placed to that expression. Firstly, on a plain understanding of the meaning of the Section can mean, vehicle of similar type, i.e., a passenger vehicle. It only means that a Tourist vehicle cannot be replaced by a stage carriage or a goods-vehicle. In other words, the 'character' of vehicle cannot be changed. The meaning intended to be conveyed is that the characteristic of the vehicle should not be lost."

22. When the capacity of the bus has been increased from 27 to 57 the size of the bus would become the double and therefore, it cannot be said that the nature of the bus remains as it is. The regular bus having the seating capacity of 57 in all cannot be equated with the 'mini bus', which is having the seating capacity of 27 in all and therefore, the decision relied on by the learned counsel for the petitioner, would not lend any support to the case on hand.

23. The learned counsel has also relied on the decision of the Division Bench of this Court in R. Shanmugaiah vs. P.S. Lakshmanakumar and two others (2007 Writ L.R. 832), wherein, the Division Bench of this Court has dealt with the term, 'Stage Carriage Services', which includes the mini bus as well as the regular bus and therefore, this decision is also not applicable to the case on hand as the issue in the case on hand is different.

24. In view of the above discussion, since the petitioner had applied for replacement of vehicles of different nature having the seating capacity of 57 in all instead of the vehicles having the seating capacity of 27 in all, which are alone permitted under the present permit, which was renewed upto 19.8.2017, the relief sought for by the petitioner cannot be granted, as has been rightly held by the respondents, as there is a bar under Section 83 of the Act.

For the foregoing reasons, the writ petition is liable to be dismissed and accordingly, the same is dismissed confirming the order of the Tribunal. However, there will be no order as to costs.
Srcm

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub-Assistant Registrar

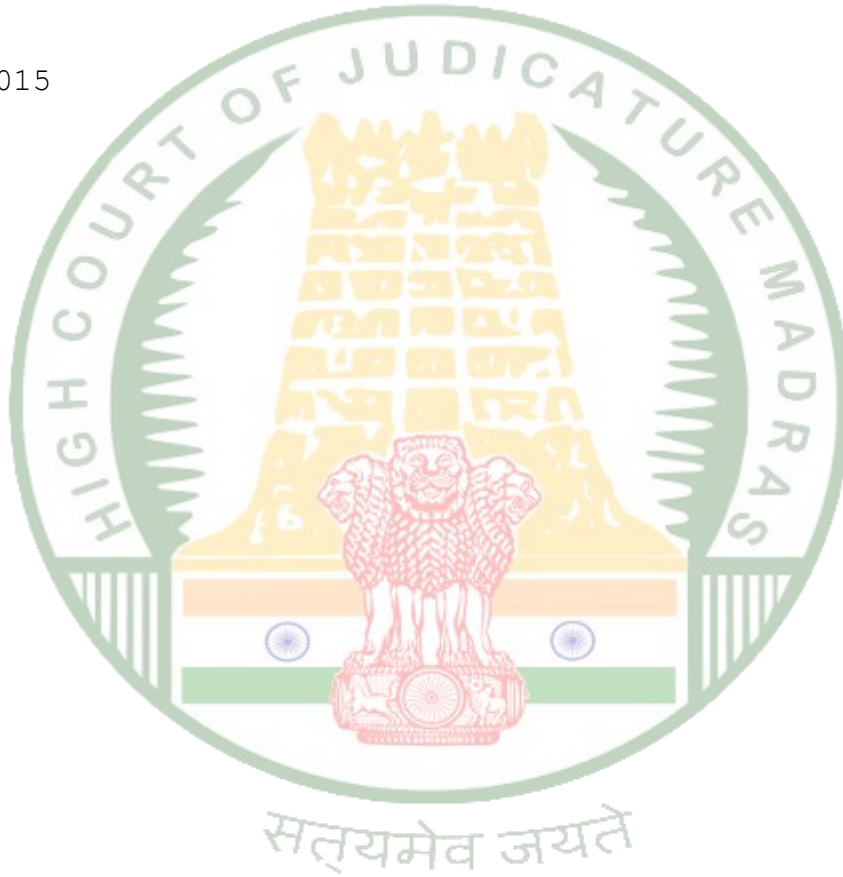
To:

1. The State Transport
Appellate Tribunal, Chennai
2. The Regional Transport Authority,
Tiruvannamalai

+1 C.C. To M/S.S.Radhagopalan, Advocate in SR.NO.63703

WP.No.15645 of 2015

VS (CO)
sd : 08/12/2015



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