

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.No.17444 of 2015

MP.No.1/2015

Tamil Nadu State Transport Corporation
(Salem) Limited
Dharmapuri Region, Bharathipuram,
Dharmapuri

Petitioner

Vs

1.A.Mohan Kumar

2.The Regional Transport Authority,
Dharmapuri

3.The Presiding Officer,
State Transport Appellate Tribunal
High Court Campus, Chennai-104

Respondents

Prayer:- This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the 3rd respondent made in M.V.Appeal No.151 of 2014 vide its order dated 30.04.2015.

For Petitioner : Mr.P.Paramasiva Doss

For Respondent : Mr.T.Padmanabhan-R1
Mr.M.L.Mahendran for R2

ORDER

This Writ Petition is filed to issue a Writ of Certiorari to call for the records of the 3rd Respondent made in MV.Appeal No.15 of 2014 vide its order dated 30.4.2015.

2. The case of the Petitioner is as follows:-

a. The instant Writ petition is filed challenging the order passed by the 3rd Respondent in M.V.A.No. 151/2014, dated 30.04. 2015. The said Appeal was preferred by the 1st Respondent, challenging the order passed by the 2nd Respondent in R.No. A3/1187/2013, dated 13.10.2014 rejecting his application for

renewal of state carriage permit for the route: Muthur Dam to Vaniyambadi (Via) Krishnagiri, Bargur, Thirupathur and Jolarpet. Prior to the above M.V Appeal 151/2014, Tvl. Mohan Brothers, Dharmapuri had preferred M.V. Appeal No. 6 of 1974, before the 3rd Respondent Tribunal against the order passed by the 2nd Respondent made in proceedings in R.No.22731/A1/1973 dated 08.06.1974 by revoking the renewal of permit for the route: Muthur Dam to Vaniyambadi, which was expired on 31.12.1973. The said Appeal was dismissed by the 3rd Respondent Tribunal in R.P No.6/1974. Thereafter, the 1st Respondent preferred CRP.No.183 of 1975 as against the order of the 3rd Respondent, confirming the revocation of the renewal of permit and the said CRP was allowed by judgement dated 17.01.1979. After a lapse of 32 years, the 1st Respondent filed an application for the grant of renewal of his stage carriage permit for the same permit route. In the mean time, the 1st Respondent preferred W.P.No. 2628 of 2013 for disposing of the application filed before the 2nd Respondent for renewal of the permit. This court directed the 2nd Respondent, vide its order dated 21.08.2013 to consider the 1st Respondent's Application dated 27.12.2012 and . the said direction was attempted to be interpreted as if that there was a positive direction.

b. The 1st Respondent presented an application dated 27.12.2012 after a gap of nearly 32 years for renewal of his permit for the 7 spells viz. (1) 1st spell 01.02.1982 to 01.01.1987, (2) 2nd spell 02.01.1987 to 01.01.1992, (3) 3rd spell 02.01.1992 to 01.01.1997, (4) 4th spell 02.01.1997 to 01.01.2002, (5) 5th spell 02.01.2002 to 01.01.2007, (6) 6th spell 02.01.2007 to 01.01.2012, and (7) 7th spell 02.01.2012 to 01.01.2017 . The 2nd Respondent after affording opportunity to all the parties concerned, rejected the application dated 27.12.2012 for the grant of renewal of permit on the ground that, the petitioner although one of the partners or Board of Directors, cannot represent as the entity of the very firm was dissolved. The permit was not brought alive and no subsequent renewal applications were made time to time. Due to the order of cancellation of the RTA the entity of saving clause under the Act 41 of 1992 has been lost. No valid reasons for the abnormal delay was shown. As against which, the 1st Respondent preferred M.V. Appeal No. 151 of 2014, before the 3rd Respondent Tribunal against the order passed by the 2nd Respondent made in proceedings R.No. A3/1187/2013 dated 13.10.2014, rejecting the application for the grant of renewal of permit in respect of stage carriage for the route from Muthur Dam to Vaniyambadi. But the 3rd Respondent has remanded the case for renewal of permit vide its order dated 30.04.2015, on an impression that the 2nd Respondent Authority has proceeded with the renewal of permit as an application for grant of renewal of permit.

c. The order of the 2nd Respondent directs that there cannot be any grant of permit, as the area was covered by approved scheme served sector and there cannot be any grant of temporary permit. But, the 3rd Respondent remitted the case for fresh consideration vide its order dated 03.12.2011. 'Renewal of a permit ' as on date, is in engulf of directives of the Tamil Nadu Motor Vehicle (Special) Provisions Act 1992 (41/92) and in particular Section 6(1) of the Tamil Nadu Motor Vehicle (Special) provisions Act (41/92) shall be a exercise in analogous of the procedures to be followed for a ' Grant of Permit ' under section 72 of Motor Vehicles ACT 1988. In such circumstances, this Writ Petition has been filed for the relief as stated above.

3. In the counter affidavit filed by the 1st Respondent, it is averred as follows:-

a. The 1st Respondent along with his two brothers were carrying on transport business under the name and style 'Mohan Brothers'. They have been operating stage carriages and one of the permit is on the route 'Muthur Dam to Vaniyambadi' via., Krishnagiri, Bargur, Thirupathur and Jolarpet. On a family arrangement amongst the brothers, this particular permit came to his share and in order to proceed with renewal application, he was given 'No objection Certificate ' by his two brothers. By this court, specific directions have been given to consider his application on the point of maintainability as well as limitation and the Tribunal has rightly considered both the points, which are only factual aspects of the matter and has rightly allowed the appeal. It is not an application for grant of permit and it is only with regard to renewal of permit. Originally the permit was granted even prior to 1958 and what is now asked for is only renewal of permit and therefore application of Section 72 of the Motor Vehicles Act does not arise at all. The application is made under Section 81 of the Motor Vehicles Act i.e., for renewal of permit, which is a self-contained section. As per Section 6(1) of Special Provisions Act, 41 of 1992 permit can be renewed if the permit is valid for the period from 4.6.1976 to 30.6.1990. In this case the permit is valid up to 31.12.1976. There is no question of any partner or Board of Directors arise. The first respondent is one of the permit holder along with his two brothers and the brothers have given 'NOC' for the permit being renewed in the name of the first respondent and the reasons have also been given for condonation of the delay in filing the renewal application and the renewal application has been filed till date i.e., for the period up to 2017. The Tribunal after considering all the facts of the case has rightly allowed the appeal taking into account the interest of the public also.

b. The route of the first respondent finds a place in the Approved Scheme formulated by the Government, which is notified in the Gazette No.246 and the first respondent's route is 'Muthur Dam to Vaniyambadi' and in the remarks column it is stated 'Renewal application rejected by the RTA. CRP pending before High Court'. When the route is included in the Approved Scheme, it has been repeatedly held by this Court in various decisions that the permit holder is a saved operator and he is entitled to operate on that route and Act 41 of 1992 has no application in the routes which are included in the Approved Scheme. The allegation that there was a cancellation of permit passed in 1980, is factually incorrect. The petitioner is not an aggrieved person for the reason that he is not running the vehicle on the route though the same is vacant for more than 30 years. Even today the petitioner is not running their vehicle and the Tribunal, while allowing the appeal has directed the respondent to pay a cost of Rs.25,000/- to the District Legal Services Authority, City Civil Court, High Court Campus within a period of 20 days from 30.04.2015, which has been complied with on 06.05.2015 and the receipt is also produced along with the typed set of papers. In so far as the direction to produce the vehicle along with the fitness Certificate, Insurance Certificate, Registration certificate and paying of the dues of the Government is concerned, the petitioner has produced all the documents on 11.5.2015 itself. Since the petitioner is not operating its vehicle on the route in question the petitioner is not going to be aggrieved or prejudiced by the order of the Tribunal, whereas on the other hand the first respondent has produced his vehicle along with all the required documents and complied with the orders of the Tribunal and therefore it is only the second respondent who has to make necessary endorsement of the renewal in the permit and Registration Certificate of the vehicle and if the same is done the first respondent will start operating his vehicle immediately in the interest of the travelling public and in such circumstances, this Writ Petition is liable to be dismissed.

4. The learned counsel for the Petitioner submitted that the impugned order is non-est and against the provisions of law, inasmuch as 'Renewal of a Permit' as on date, is in engulf of directives of the Tamil Nadu Motor Vehicle (Special) Provisions Act 1992 (41/92) and in particular Section 6(1) of the Tamil Nadu Motor Vehicle (Special) provisions Act 1992 (41/92) shall be exercised in analogous of the procedures to be followed for a 'Grant of Permit' under section 72 of Motor Vehicle Act 1988 and the 1st Respondent although one of the partners or Board of Directors, cannot represent as the entity of the very firm was dissolved and the permit was not brought alive and no subsequent renewal applications were made time to time and due to the order of cancellation of the Regional Transport Authority, the entity of saving clause under the Act

41 of 1992 has been lost and the Renewal of permit shall be possible only in the event of the 1st Respondent's permit falls and is covered as per the Scheme framed by the State Government. The learned counsel further submitted that since the 1st Respondent was not in possession of a valid permit and the Act came into force on 31st July 1992 and the the permit issued to the 1st Respondent was cancelled as early as on 18th march 1980, the 1st respondent cannot take shelter under the Tamil Nadu Act 41/1992 and prayed for quashing of the impugned order.

5. The learned counsel for the 1st Respondent reiterated the averments made in the counter affidavit and supported the impugned order.

6. This court heard and considered the submissions made by the learned counsel on either side and also perused the materials placed on record.

7. The admitted facts are that the 1st Respondent had preferred M.V. Appeal No. 6 of 1974, before the 3rd Respondent against the order of revocation of renewal of permit passed by the 2nd Respondent made in proceedings, dated 08.06.1974, by revoking the renewal of permit, which was expired on 31.12.1973 and the said appeal was dismissed and CRP.No.183 of 1975 filed against the order of the 3rd Respondent, was allowed by judgement dated 17.01.1979. After a lapse of 32 years, the 1st Respondent presented applications on 27.12.2012 for renewal of his permit for 7 spells and the said applications were rejected by the 2nd Respondent, by order dated 13.10.2014. As against which, the 1st Respondent preferred M.V. Appeal No. 151 of 2014 before the 3rd Respondent, who remanded the case for renewal of permit to the 2nd Respondent, by the impugned order.

8. As per Section 81(2) of the Motor Vehicles Act, 1988, renewal application shall be submitted with prescribed fees 15 days prior to the date of expiry of the permit. Rule 193A of the Tamil Nadu Motor Vehicles Rules, 1989, states "belated renewal of permit". Every application for renewal of permit made after the last date specified in sub section (2) of Section 81 of the Act, shall be accompanied by the additional fees prescribed in the table under rule 279.

9. In 2008-10-SCC-115 (C.Jacob Vs. Director of Geology and Mining and another), the Honourable Supreme Court has held in paragraphs 9 and 14 as under:-

"9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any 'decision' on

rights and obligations of parties. Little do they realize the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to 'consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

14. We are constrained to refer to the several facets of the issue only to emphasize the need for circumspection and care in issuing directions for 'consideration'. If the representation is on the face of it is stale, or does not contain particulars to show that it is regarding a live claim, courts should desist from directing 'consideration' of such claims.
"

10. It is seen from the records that though the permit to ply on the route Muthur Dam to Vaniyambadi obtained by the family of the 1st Respondent had expired as early as on 31.12.1973, the same was not renewed subsequently as per the provisions of the Act and hence, the authority cancelled the permit from 08.06.1974. Even thereafter though this court, in CRP.No.183 of 1975, set aside the orders of the Tribunal as well as the Regional Transport Authority, neither the 1st Respondent nor his family members approached the authority for renewing the permit. No transfer of permit as per law was made. The permit was not brought alive and no subsequent renewal applications were made time to time. After lapse of 32 years, all of a sudden, the 1st Respondent without any authority filed applications before the authority for renewal of permit on 27.12.2012 for seven spell periods, which is against and contrary to the provisions of the Act.

11. In the application dated 27.12.2012 filed by the 1st Respondent, it is admitted that after the death of his mother in 1979 and due to family dispute, the permit in question was abandoned and the Company was dissolved. When the 1st Respondent himself stated that he abandoned the permit in question, and no proper reasons have been given for condoning

the delay of 32 years and no renewal was in existence, he has no locus standi to claim for renewal of permit that too after lapse of 32 years. After lapse of 32 years, it is improper to dig open a dead renewal and start adjudication afresh and a practical view has to be taken in the interest of public especially when there was no objection in respect of the permit in question, as has been held by the Honourable Supreme Court in R.P.David Vs. N.P.Motor Service (P) Limited in SLP (Civil) No.4076 of 1997.

12. The 1st Respondent has submitted a copy of Memorandum of Family Arrangement, in which the family assets have been divided into the family members and it is in no way connected to the issue, as it is only a family arrangement and it is not a court order. Further, the firm M/s.Mohan Brothers, K.R.M.S Dharmapuri is not functioning as on date and the said firm was dissolved. After judgement of this court, made in CRP.No.183/1975, dated 17.1.1979, the said firm or its authorised signatory had not taken any steps to renew the permit or safe guard the permit on the said route.

13. The 1st Respondent was an unsuccessful Applicant before the then Regional Transport Authority during 1973 to 1979 and he was not at all issued with any stage carriage permit on the route in question and he claimed renewal of the non-existent permit contending irrelevant points, the act of which is imaginative and mysterious.

15. The permit was originally granted in favour of M/s.Mohan Brothers. The application filed 21.12.2012 shows that it was filed at the instance of A.Mohankumar, Proprietor of K.Rathna Motor Service and he has to establish before the Regional Transport Authority that he is entitled to make an application for renewal in spite of the fact that the permit was originally granted to M/s.Mohan Brothers and it is the responsibility of the 1st Respondent to plead and prove the said fact before the authority.

16. It has also been held in the judgement delivered by this court in WP.No.2628 of 2013 dated 21.8.2013 that the 1st Respondent is a unsuccessful stage carriage operator and he has not established before the Regional Transport Authority that he is entitled to make an application for renewal in view of the fact that the permit was originally granted to M/s.Mohan Brothers. At present, the firms is not in existence and no stage carriage permit is in existence. Hence, the request of the 1st Respondent is to be treated as absurd, as the Regional Transport Authority can only recognize the firm M/s.Mohan Brothers, KRMS, Dharmapuri and the 1st Respondent will have to be recognized only as a stranger although he is one of the partners , as the charter name and style of the firm which existed was no more

during the Act 41 of 1992.

17. Without considering all these factual aspects, the 3rd Respondent in a slipshod manner remanded the case to the 2nd Respondent, which is against the provisions of the Act. Hence, this Court finds its appropriate to quash the said order of the 3rd Respondent as illegal and improper and accordingly, the same is quashed.

18. In the result, this Writ Petition is allowed. No costs. Consequently, the connected MP is closed.

-s/d-

Assistant Registrar(CSII)

dt:20/10/2015

True Copy

Sub-Assistant Registrar

Srcm

To:

1.The Regional Transport Authority, Dharmapuri

2.The Presiding Officer, State Transport Appellate Tribunal ,
High Court Campus, Chennai-104

+1 cc to Mr.P.Paramasivadoss, Advocate sr.56449

+1 cc to Mr.T.Padmanabhan, Advocate sr.56274

+1 cc to Government Pleader vide sr.57126

सत्यमेव जयते

WP.No.17444 of 2015

gj(co)
aa26/10/2015

WEB COPY