

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.Nos.17518 to 17526/2015

P.M.Kannappan

Receiver appointed by this

Hon'ble Court in W.A. No.

342 of 1985

...Petitioner in all WPs

Vs

1.The Secretary,
The Regional Transport Authority
Dharmapuri

2.The Regional Transport Authority
Dharmapuri

...Respondents in all WPs

Prayer:-

These Writ Petitions are filed to issue a Writ of Mandamus, directing the 2nd Respondent to consider and pass orders on the renewal applications of the Petitioner, dated

(i) 05.08.1986, 08.11.1991, 22.11.1996, 19.11.2001, 18.11.2006 and 09.11.2011 (W.P.No. 17518 of 2015)

(ii) 05.08.1986, 08.11.1991, 22.11.1996, 19.11.2001, 08.11.2006 and 09.11.2011 (W.P.No. 17519 & 17520 of 2015)

(iii) 05.08.1986, 08.11.1991, 22.11.1996, 19.11.2001, 09.11.2006 and 09.11.2011 (W.P.No.17521 of 2015)

(iv) 05.08.1986, 18.12.1991, 22.11.1996, 19.11.2001, 09.11.2006 & 09.11.2011 (W.P.No. 17522 of 2015)

(iv) 03.03.1986, 18.11.1991, 27.10.1997, 10.02, 09.11.2006 and 09.11.2011 (W.P.No.17523 of 2015)

(v) 05.08.1986, 08.11.1991, 22.11.1996, 19.11.2001, 10.11.2006 and 09.11.2011 (W.P.No. 17524 of 2015) and

(vi) 05.08.1986, 08.11.1991, 22.11.1996, 19.11.2001, 09.11.2006 and 09.11.2011 (W.P.No. 17525 of 2015) and

(vii) 03.03.1986, nil, 03.06.1996, 21.06.2011, 22.08.2006 & 02.05.2011 (W.P.No 17526 of 2015) respectively

for the periods from 9.12.1986 to 8.12.1991 to 9.12.2011 to 8.12.2016, from 19.11.1987 to 18.11.1992 to 19.11.2011 to 18.11.2016 and from 10.7.1986 to 9.7.1991 to 10.7.2011 to 9.7.2016, (W.P.No. 17526 of 2015) respectively in respect of the Petitioner's stage carriage services, (1) bearing Registration No.TN-29-F-2939, permitted to ply on the Route A.Pallipatty to Eriyur, (2) bearing Registration No.TN-55-F-7552, permitted to ply on the Route Dharmapuri to Hoganekkal, (3) bearing Registration No.TN-29-AK-9909, permitted to ply on the Route Palacode to Salem, (4) bearing registration No.TN-55-H-9799, permitted to ply on the route Dharmapuri to Beluhalli, (5) bearing Registration No.TN-46-B-3060, permitted to ply on the route Dharmapuri to Hoganekkal, (6) bearing Registration No.TN-25-D-6784, permitted to ply on the route Palacode to Neruppur, (7) bearing Registration No.TN-29-AK-1011, permitted to ply on the Route Pennagaram to Salem, (8) bearing Registration No.TN-29-AQ-5998, permitted to ply on the Route Dharmapuri to Pannandur and (9) bearing Registration No.TN-63-V-2696, permitted to ply on the route Dharmapuri to Nagamarai, respectively.

For Petitioner
in all WPS : Mr.M.Palani

For Respondents
in all WPs : Mr.A.Kumar, SGP

ORDER

These Writ Petitions are filed to issue a Writ of Mandamus, directing the 2nd Respondent to consider and pass orders, on the renewal applications of the Petitioner, in respect of the nine routes mentioned in the petitions.

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

a. In the year 1960, there were 12 stage carriage permits held by the father of the Petitioner, Muninatha Chettiar, operated in the then unbifurcated Salem District, which now stands split into three Districts as Salem, Dharmapuri and Krishnagiri Districts. The said 12 permits were

operated in various routes in Dharmapuri District. While so, the Government of Tamil Nadu promulgated an ordinance, namely, Ordinance No.6 of 1971, dated 18.6.1971, amending the old Motor Vehicles Act, 1939 and by inserting Section 62B therein and as per the terms of the said Ordinance, any person, who is having 10 and above stage carriage permits, was not entitled to any fresh permit or renewal of the existing permits. This Ordinance was replaced by the Tamil Nadu Act 16 of 1971, amending the old Act. As this Act infringed the right of private operators, who had more than 10 permits and permits are considered to be a property within the meaning of Articles 19(1)(f) and 31 of unamended Constitution, the said Act was challenged before this Court in a batch of Writ Petitions in WP.No.2079/1971. This Court, in those Writ Petitions, pending the Writ Petitions, challenging the validity of the Act, directed the concerned Transport Authorities to grant temporary permits. The father of the Petitioner filed renewal applications for permits, but however, they were not taken up for consideration because of the Act and pendency of the Writ Petition, before this Court. While so, one of the elder brothers of the father filed a suit in OS.No.15 of 1965 in respect of both movable and immovable properties, which includes permits standing in the name of the father of the Petitioner, contending that they were all joint family properties. Pending the suit, the Salem District was bifurcated into Salem District and Dharmapuri District and the suit was transferred to Dharmapuri District, wherein the properties are located. The suit was transferred to Krishnagiri Court and the Court dismissed the suit, in so far as it relates to the transport permits holding that they were exclusive property of Muninatha Chettiar. As against the same, AS.No.246 of 1971 was filed before this Court. During the pendency of the above appeal, the Tamil Nadu Act 16 of 1971 was passed by the Tamil Nadu legislature. This court, by judgement dated 25.10.1977, allowed the appeal suit and declared that the permits were also joint family properties and are liable for partition and accordingly, passed a preliminary decree with reference to transport permits. After preliminary decree was passed the, no final decree was passed. Out of 12 permits, 2 permits were nationalized, one permit was not renewed and as such the present batch of Writ Petitions is concerned with 9 route permits, as stated above.

b. Though the father of the Petitioner applied for renewal of permit in the year 1971, no renewal had been taken place due to pendency of the Writ Petition, challenging the validity of Tamil Nadu Act 16 of 1971. The Tamil Nadu Act was struck down by this Court by judgement dated 7.7.1979 and the

father of the Petitioner died on 26.9.1979 leaving behind him his wife, 4 sons, and 4 daughters as legal heirs. After the Act was struck down by this court, the 2nd Respondent granted renewal for these permits for a period of three years from 8.12.1971 to 7.12.1974 by proceedings dated 8.2.1982. The mother of the Petitioner Vedanayaki Ammal @ Nagammal applied for transfer of permit in her name and on 12.01.1982, the permits were transferred in favour of his mother. She also filed renewal applications for renewal of those permits, but however, the same were not taken up for consideration and she died on 2.4.1984 and on her death, as her legal heirs the Petitioner and other brothers applied for transfer of permits in their names. On seeing the applications for transfer of permit, one of the sons of Petitioner's father's brother namely P.M.Thandava Chettiar filed a Writ Petition in WP.No.9633 of 1984 for transfer of permit in his name. This court, by order dated 11.4.1985, dismissed the Writ Petition, directing the Petitioner therein to work out his remedy in the civil suit. As against the same WA.No.342/1985 was filed, which was disposed of by order dated 23.4.1985, modifying the order by appointing the Petitioner as Receiver to run the transport services, pending passing of final decree by the District Court. Pursuant to the order of this Court rendered in WA.No.342 of 1985 dated 23.4.1985, nine permits as detailed above were transferred in his name as Receiver by proceedings dated 5.8.1985. On such transfer, the Petitioner applied for renewal of permits in respect of 9 routes as detailed above. Though the Petitioner approached the authority for granting renewal, the authorities are granting only temporary permits and finally the Petitioner sent a representation dated 23.4.2015, requesting to grant renewal of permits for the above routes in his favour, but till date the authority is granting only temporary permits. Hence, this Writ Petition has been filed for the reliefs as stated above.

3. The 1st Respondent filed a counter affidavit, contending that after striking down of the Tamil Nadu Act 16 of 1971 by this court on 7.7.1978 in a batch of Writ Petitions, all the applications for transfer and renewal of permits were taken up for consideration. After the demise of the original permit holder, the mother of the Petitioner took over possession of all the 12 routes. By proceedings dated 12.1.1982 in R.No.31664/A5/1981, the Regional Transport Authority, Salem Region had allowed the transfer of permits of the 10 routes to the legal heir of the deceased Mother, since those routes were taken by the State Transport Undertaking due to nationalization policy. In WP.No.2079/ 1971, a direction was issued to keep the renewal applications pending and to

issue temporary permits on the routes in question, pending the Writ Petition. Since the dispute arose among the sons i.e. legal heirs of the deceased with regard to possession on succession of vehicles and family properties, they have filed a civil case before the civil court as well as before this court. This court, by order dated 23.4.1985, in WA.No.342, appointed the Petitioner as Receiver in OS.No.1 of 1977 and in so far as the transport business is concerned, he would operate the routes as receiver and to the benefit of the parties, who ultimately succeed in the Petition. In pursuance to the above order, the Petitioner was operating the vehicles on temporary permits for the said nine routes and in view of the prohibitory order passed in the said civil suit, the applications for transfer of permits could not be considered. As per the directions of this Court in WP.No.2079 of 1971, temporary permits are being issued from time to time and as per Section 87(1)(d) of the Motor Vehicles Act, 1988 temporary permits may be issued, pending decision on the application for renewal of permit. The Petitioner filed an appeal before the State Transport Appellate Tribunal, Chennai in A.No.84/2013, aggrieved against the orders of the Regional Transport Authority, Dharmapuri, made in R.No.A3/68984/2012, dated 26.5.2013 to renew the permit route in question, which was rejected for the reason of submission of application for renewal of permit with a delay of 76 days. Aggrieved against the orders of the State Transport Appellate Tribunal, Chennai, the State Transport Corporation, Dharmapuri moved this court in WP.No.26510/2014. The Petitioner has misconceived the facts and to get the relief from the authorities, he has given a representation to the 2nd Respondent, though the Respondents are awaiting delivery of judgement in OS.No.1/1989. In such circumstances, this Writ Petition is liable to be dismissed.

4. The learned counsel for the Petitioner contended that the action of the 2nd Respondent in keeping the applications pending without granting renewal of permit is in clear dereliction of statutory duty, when permits have been transferred in favour of the Petitioner as Receiver of the Court and that the Respondents grossly erred in granting temporary permits in respect of these routes ever since 1974 till date, which is in gross violation Section 62(1) of the old Motor Vehicle Act and Section 87(1) of 1988 Act and that the Respondent is exceeding its jurisdiction to continue to grant temporary permits in respect of the routes in question for more than four decades and as Receiver appointed by this Court, the Petitioner is entitled the renewal of permit, in accordance with law and therefore, it is just and necessary to direct the Respondents to consider and pass orders on the

renewal applications filed by the Petitioner as Receiver in respect of the routes as stated above in the interest of travelling public.

5. The learned Special Government Pleader for the Respondents submitted that as per the directions of this Court in WP.No.2079 of 1971, temporary permits are being issued from time to time and as per Section 87(1)(d) of the Motor Vehicles Act, 1988, temporary permits may be issued, pending decision on the application for renewal of permit and when the civil suit is pending, the Petitioner approached this court for obtaining favourable orders, by suppressing material facts.

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 Petitioner prayed for a direction to direct the 2nd Respondent to consider and pass orders on the renewal applications to grant pucca renewal, in respect of the petition mentioned nine routes.

8. At this juncture, it is relevant to point a few facts, which are relevant and necessary for the disposal of these Writ Petitions, viz. After the demise of the original permit holder, the mother of the Petitioner took over possession of all the routes. After the demise of the mother of the Petitioner, the Regional Transport Authority concerned allowed the transfer of permits of the routes to the legal heirs of the deceased Mother. Since there was a dispute arose among the legal heirs of the original permit holder/deceased, they have filed civil cases before the civil court as well as before this court. In WP.No.2079/1971, a direction was issued to keep the renewal applications pending without disposing of the same, until otherwise directed by the Court, besides directing the Regional Transport Authority concerned to issue only temporary permits on the routes in question, pending disposal of the main Writ Petition, which direction has not been challenged or set aside so far, in a manner known to law. Further, as per the order of this court, dated 23.4.1985 made in WA.No.342/1985, the Petitioner, as receiver appointed in OS.No.1 of 1989, is operating the routes in question, only on temporary permits, only to the benefit of the parties, who ultimately succeed in the civil cases.

9. Thus, it is clear that the Petitioner was permitted to operate the routes in question only on temporary

permits and that the Petitioner, all along, in all these years, is operating, as receiver to the benefit of the parties, the routes only on temporary permits, as per the directions of this Court made in WP.No.2079/1971, which direction is not challenged or set aside in a manner known to law. Unless and until the said direction to issue temporary permits is decided, on merits or set aside and till the rights of the parties are decided in the final decree proceedings in the civil cases, at this stage, the impugned applications for transfer of pucca permits or for renewal filed by the Petitioner, who is only a Receiver and acting for the benefit of the litigant parties, could not be directed to be considered by the authority concerned, in these Writ Petitions. In such view of the matter, these Writ Petitions are liable to be dismissed.

10. In the result, these Writ Petitions are dismissed. No costs. However, it is open to the Petitioner to approach the concerned court for early disposal of the civil cases pending and after the outcome of the civil cases, to obtain necessary orders.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

Srcm

To:

1. The Secretary,
The Regional Transport Authority
Dharmapuri

2. The Regional Transport Authority
Dharmapuri

9 CCs to Mr.M.Palani, Advocate SR.No. 58769

WP.Nos.17518 to 17526/2015

PSI (03.11.2015)