

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28 .07.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

Writ Petition Nos.15264 of 2009 & 28801 of 2011
And
M.P.Nos.1 of 2009 & 1 of 2011

Reserved on 24.03.2015

W.P.No.15264 of 2009

Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
Kancheepuram Region,
Kancheepuram-631 501

...Petitioner

-Vs-

1. The State Transport Authority,
Chepauk, Chennai-600 005.

2. The State Transport Appellate Tribunal,
Chennai.

3. Selvi A.M.Mahalakshmi

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorari, to call for the records pertaining to the order of the State Transport Appellate Tribunal, Chennai made in M.V.Appeal No.127 of 1979 dated 27.4.2009 and quash the same.

For Petitioner : Mr. R.Balasubramanian

For Respondents : Mr.Dig Vijaya Pandian, AGP-R1 & R2

Mr.Radha Gopalan for R3

W.P.No.28801 of 2011

A.M.Mahalakshmi

...Petitioner

-Vs-

1. The Secretary,
State Transport Authority,
Chepauk, Chennai.

2. The Managing Director,
Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
Kancheepuram Region.

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, to direct the first respondent to forthwith grant the renewal of permit pursuant to the application of the petitioner dated 6.7.2011 in respect of the petitioner's vehicle TN-21/AE-8199 plying on the route "Redhills to Sathiyavedu" via Thiruvallur and Uthukottai.

For Petitioner : Mr.Radha Gopalan

For Respondents : Mr.Dig Vijaya Pandian, AGP-R1
Mr.R.Balasubramanian for R2

COMMON ORDER

Since the inter-related issues involved in these Writ Petitions, both are taken up together for final disposal.

2. The brief facts, which led to the filing of the present writ petitions, are as follows:

3. For the sake of convenience, the parties mentioned to in W.P.No.15264 of 2009 will be hereinafter referred to in this order.

4. Thiru A.M.Munusamy Mudaliyar, Proprietor of Sri Bharathi Roadways, Kancheepuram, a stage carriage operator, operating his stage carriage on the inter-state route Redhills to Sathyavedu. He applied for renewal of permit in respect of stage carriage MDY 9617 since replaced by TNJ 2507 for a period of 5 years from 27.9.1978 on the above said route. The route is covered by inter-state Agreement vide Sl.No.22 of Part-B, G.O.Ms.No.1000, Home Department, dated

03.06.1975. The application was notified under Section 57(3) of Old Motor Vehicles Act, 1939. The State Transport Undertaking, the petitioner herein objected for the said renewal of permit and also made a counter application for grant of fresh permit to themselves in respect of the same route. The said permit holder A.M.Munusamy Mudaliar objected to the grant of permit to the State Transport Corporation. In the mean time, the permit of the vehicle was transferred to Selvi A.M.Mahalakshmi who was then a minor and represented by mother and guardian Tmt.A.M.Vijayammal with effect from 25.7.1978 and the counter signature of permit was also transferred from the name of Thiru A.M.Munusamy Mudaliar to Selvi A.M.Mahalakshmi, the third respondent herein, in the proceedings of State Transport Authority, Andhra Pradesh, in R.No.34498/E1/1978, dated 28.8.1978. While so, even before passing the orders in the renewal application by the State Transport Authority, Chennai, the permit holder filed W.P.No.2914 of 1978 before this Court, questioning the validity of Rule 155(a) of the Tamil Nadu Motor Vehicles Rules, 1940, wherein, while entertaining the said writ petition, this Court ordered to maintain status quo and giving effect to the order of State Transport Authority is stayed. Accordingly, A.M.Mahalaskhmi is operating the bus continuously by virtue of the temporary permit issued by the State Transport Authority.

5. Later, the State Transport Authority, by proceedings, dated 21.12.1978, rejected the application for renewal of permit of the third respondent and granted permit to the petitioner, with the following condition.

"Implementation of this order will await the decision of the High Court in W.P.No.2914 of 1978 or any other orders that the High Court may pass in this connection."

6. As against the above order, the third respondent preferred an appeal in M.V.Appeal No.127 of 1979 before the State Transport Appellate Tribunal along with interlocutory application for direction. By order, dated 16.10.1979, the Tribunal has granted the interim relief, as under:

"In the result, the petition is allowed and direction issued under Section 134(1A) of the Old Motor Vehicles Act that the permit of the appellat's (A.M.Mahalakshmi) above vehicle MDY 9617, since replaced by TNJ 2507 shall, notwithstanding the

expiry of the period mentioned therein, continue to be valid until the disposal of the above appeal."

7. During the pendency of the above appeal, the third respondent filed another writ petition in W.P.No.2720 of 1981 before this Court. By order, dated 1.6.1982, this Court, while admitting the writ petition, granted interim stay of hearing of the appeal, pending disposal of W.P.No.2720 of 1981. The said appeal has been pending for several years before the Tribunal. However, after new Motor Vehicles Act, 1988 and Act 41/1992 came into force, the above contentions were infructuous and hence, the parties requested to proceed with the appeal. Consequently, the appeal was taken up and finally disposed of by the Tribunal by its judgment dated 27.4.2009 in M.V.Appeal No.127 of 1979, setting aside the order of the State Transport Authority, dated 21.12.1978, with a direction to the State Transport Authority to grant renewal of the permit. Pursuant to the said order, the State Transport Authority has granted the renewal of permit for stage carriage of the third respondent MDY-9617 lastly replaced by TN21/P 4000 from 27.9.1978 to 26.9.1981 and for the further period of every five years from 27.9.1981 to 26.9.2011, subject to the counter signature of permit by the State Authority, Andhra Pradesh.

8. Aggrieved over the above said renewal order of the State Transport Authority, the petitioner herein, preferred an appeal before the State Transport Appellate Tribunal in M.V.Appeal No.173 of 2009. However, pending the said appeal, the petitioner has come forward the present writ petition in W.P.No.15264 of 2009, seeking to quash the order of the Appellate Tribunal made in M.V.Appeal No.127 of 1979.

9. While so, the third respondent herein, who is the petitioner in W.P.No.28801 of 2011, has come forward, seeking to issue a Writ of Mandamus, to direct the State Transport Authority, to grant renewal of permit by considering her application, dated 6.7.2011 in respect of stage carriage TN-21/AE-8199 plying on the route "Redhills to Sathiyavedu via Thiruvallur and Uthukottai. According to the third respondent, pursuant to the direction of the Tribunal in Appeal No.127 of 2009, dated 27.4.2009, the first respondent has granted renewal up to 26.9.2011 and when there is no change in the circumstances and as there was no interim stay from any of the forum, there is no impediment for the first respondent to renew the permit. However, as the petitioner has been objecting to the same, the first respondent has not considered the application for renewal of the

permit. Hence the writ petition.

10. Separate counter affidavits have been in filed on behalf of the first respondent in both the writ petitions, wherein, while reiterating the facts as mentioned above, it is stated that as per Section 89 of the Motor Vehicles Act, 1988, the decision taken by the Appellate Tribunal is final and more over the intere-state route Redhills to Sathiyavedu had been included in the inter-state agreement 1975 in G.O.Ms.No.1000, Home, dated 3.6.1975 vide Sl.No.22 of Part-B, and the third respondent has continuously been operating her carriage on the above said route after paying the tax since 1978 till date. Pursuant to the direction of the appellate Tribunal, the first respondent has granted renewal of the permit in favour of the third respondent for the period from 27.9.1978 to 26.9.1981 and for further period of every five years from 27.9.1981 to 26.9.2011 subject to counter signature of permit by the State Transport Authority, Andhra Pradesh. The appeal in M.V.Appeal No.173 of 2009 preferred by the petitioner is pending and even before the disposal of the said appeal, the petitioner has come forward with the present writ petition. As regards the relief sought for by the third respondent in W.P.No.28801 of 2011, it is stated that while the renewal application was pending, the third respondent was granted temporary permit under Section 87(1)(d) of the Motor Vehicles Act, 1988 and since the above said M.V.Appeal No.173 is still pending, opinion was sought for from the concerned Government Pleader, who in turn, gave opinion to wait till the disposal of the writ petition in W.P.No.15264 of 2009 and hence, the renewal application for the period 2011-2016 has been kept pending. With these averments, the first respondent sought for dismissal of the writ petitions.

11. Heard both sides and perused the entire materials available on record.

12. The main contention of the petitioner is that when admittedly, the authority has passed the order rejecting renewal of the permit, the Tribunal ought not to have granted interim order, that after expiry of the permit, validating the permit of the third respondent till the disposal of the appeal pending before it. It is also pointed out that while the appeal preferred by the permit holder, i.e. third respondent before the Tribunal, new Motor Vehicles Act, 1988 and Act 41 of 1992 have come into force and the third respondent did not have valid permit and the Tribunal has erroneously come to the conclusion that the Old Motor Vehicles Act, 1939 need not be considered for grant of renewal of permit since the said Act was repealed. According to the learned counsel for the petitioner,

Section 89(3) of the Motor Vehicles Act, 1988 provides that every appeal pending at the commencement of the Act shall continue to be proceeded with and disposed of as if the new Act had not been passed. In support of his contention, he relied upon a decision in "Ottapalam Jawan Transport Company (P.) Ltd., versus Regional Transport Authority, Palghat and others" reported in AIR 1990 KERALA 127.

13. It is not in dispute that the third respondent has been operating stage carriage on the inter-state route Redhills to Sathyavedu from the year 1978 having obtained renewal from time to time without any interruption, but however, right from the inception, the petitioner herein, has been objecting the same. The route is covered by Inter-state Agreement vide Sl.No.22 of Part-B, G.O.Ms.No.1000, Home Department, dated 3.6.1975. The third respondent has filed her application for renewal of permit as early as on 6.7.2011 and it has been kept pending for the outcome of the writ petition in W.P.No.15264 of 2008, however, in the mean time, the third respondent has been granted temporary permit to her vehicle under Section 87(1)(d) of the Motor Vehicles Act, 1988 for the period from 27.5.2012 to 24.09.2012. It is to be noted that admittedly, the third respondent has been operating the stage carriage in the said route from 1978 and therefore, she is an existing operator. Act 41 of 1992 has been legislated to 'make certain special provisions in respect of permits for stage carriages under the Motor Vehicles Act, 1988 and in relation to the schemes and routes notified under Chapter VI of that Act and to provide for matters connected therewith. It is not in dispute that the said Act was upheld by the Apex Court in "T.P.K.Thilagavathy Versus RTA., Periyar District, Edoode" reported in (1995) 1 SCC 456.

14. In this regard, it is worthwhile to extract the observation made by the Apex Court in "M/s.Gurucharan Singh Raldev Singh versus Yashwant Singh and others" reported in AIR 1992 SC 180, wherein, it has been held as under:

"The application filed by an operator for renewal of his permit under Section 58 of Motor Vehicles Act, 1939, does not become extinct after coming into force of Motor Vehicles Act, 1988. Renewal of permit being a right within meaning of clause (c) of Section 6 of General Clauses Act, the application survives and continues despite repeal of 1939 Act."

This ratio laid down by the Apex Court would squarely apply to the case of the third respondent herein.

15. The only stand taken by the concerned Regional Transport Officer, before whom, the renewal application made by the third respondent was pending, as could be seen from the counter affidavit filed in W.P.No.28801 of 2011 is that Government Pleader had opened to wait till the disposal of the writ petition filed by the petitioner/Corporation before this Court. In fact, there is no legal impediment for the RTO to consider and dispose of the renewal application filed by the third respondent. In fact, the third respondent was granted temporary permit under Section 87(1)(d) of the Motor Vehicles Act, 1988 and by virtue of the same, the third respondent has been operating her stage carriage and also the fact that there are no changes in the scheme since the name of the third respondent and her predecessors found place in the Annexure II of the Schemes and further, if the renewal application of the third respondent is considered, there would be no inconvenience to the public. However, but for the objection made for renewal of the permit of third respondent by the petitioner/Corporation, it is not appropriate or justified to keep pending or reject the claim of the third respondent for renewal of the permit, more particularly when the third respondent has been plying her stage carriage uninterruptedly right from 1978 onwards and as rightly held by the Tribunal that there is no irregularity or illegality in the earlier permits granted by the authorities, the same cannot be disturbed just for the sake of the petitioner/Corporation.

16. Having gone through the order passed by the Tribunal, dated 27.4.2009 challenged in W.P.No.15264, this Court is of the view that after considering all the facts and circumstances of the case in the light of various decisions of the Apex Court and relevant provisions of law and applying the correct principles of law, the Tribunal has rightly arrived at the decision to accept the claim of the third respondent. On re-appreciation of the entire materials placed on record in the light of the arguments advanced on either side, this Court is unable to take a different view than that of the Tribunal and therefore, the interference of this Court sought to be made into the well considered and merited order of the Tribunal is uncalled for. Therefore, it follows, the writ petition in W.P.No.15264 of 2009 filed by the petitioner/Corporation is devoid of merits and is liable to be dismissed.

In the result, the Writ Petition in W.P.No.15264 of 2009 is dismissed. Consequently, the Writ Petition in W.P.No.28801 of 2011 is allowed and the first respondent therein, i.e. The Secretary, State Transport Authority, Chepauk, Chennai, is hereby directed to consider the renewal application, dated 6.7.2011 of the third

respondent/petitioner in W.P.No.28801 of 2011 in respect of the vehicle bearing No.TN-21/AE-8199 playing on the route "Redhills to Sathiyavedu" via Thiruvallur and Uthukottai and pass appropriate orders therein, in accordance with law, within a period of six weeks from the date of a receipt of a copy of this order. No costs. Consequently, connected MPs are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
State Transport Authority,
Chepauk,
Chennai-600 005.
2. The State Transport Appellate Tribunal,
Chennai.
3. The Managing Director,
Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
Kancheepuram Region.

2 CCs to M/s. S.Radhaagopal, Advocate SR.No. 39240

SVI (CO)
PSI (10.08.2015)

W.P.NO.17204 OF 2008

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