

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2016

Date of Reserving the Order	Date of Pronouncing the Order
09.08.2016	12.08.2016

CORAM

THE HON'BLE MR.JUSTICE T.S. SIVAGNANAM

W.P.Nos.11605 and 19920 to 19923 of 2016
and
W.M.P.Nos.10005 and 17175 to 17178 of 2016

W.P.No.11605 of 2016

V.Palanivel ... Petitioner

Vs

The Regional Transport Authority,
Namakkal (North) ... Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, directing the respondent herein to forthwith permit the petitioner pursuant to his application dated 21.01.2016 to run his mini bus Vehicle No.TN-39/AJ-7983 plying on the route Rasipuram Bus stand to Thoppapatti Mariyamman Kkoil via., Koneripatti Municipal Limit (Veterinary Hospital), Mettukaducolony, Kakkaveri, Kakkaveri Pirivu, S.C.Street, Venkayapalyam, Seerapalli touching Oduvankurichi (touching) water tank, milk society, Tho.Jedarpalayam, sandai to ply viz., Rasipuram Bus stand, Koneripatti, Erikkarai, Pirivu road, Kongu Kalyana Mandapam to reach the destination till such time the road is repaired and in road worthy condition.

For Petitioner : Mrs.Radha Gopalan

For Respondent : Mr.S.Diwakar
Special Government Pleader

W.P.Nos.19920 to 19923 of 2016

D.Sankar ... Petitioner in W.P.19920 of 2016
P.Kailasam ... Petitioner in W.P.19921 of 2016
K.K.Murugesan ... Petitioner in W.P.19922 of 2016
P.Venkatachalam ... Petitioner in W.P.19923 of 2016

Vs

1. The Assistant Commissioner,
Transport Department,
Erode.
2. The Regional Transport Authority,
Namakkal North.
3. V.Palanivel Respondents in all W.Ps.

Prayer in all W.Ps. : These Writ Petitions are filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, directing the respondents 1 and 2 to consider the representation of the petitioner dated 30.05.2016 by restraining 3rd respondent from operating on the Main Road connecting Rasipuram to Kakkaveri.

For petitioner : Mr.Alagu Narayanan
for M/s.RNN Legal

For Respondents : Mr.S.Diwakar
Special Government Pleader
(For R1 & R2)
Mrs.Radha Gopalan (For R3)

C O M M O N O R D E R

The issue involved in all these writ petitions pertain to the permission sought for by a mini bus operator, namely, V.Palanivel, to run his mini bus bearing vehicle No.TN-39/AJ-7983 in a varied route. Since the request made by the petitioner, Palanivel, was not considered by the authorities, he has filed a writ petition in W.P.No.11605 of 2016 to direct the respondent to permit him to run his mini bus in the varied route. This prayer is resisted by Stage Carriage Operators who are operating their stage carriages and the petitioner's mini

bus would overlap the stage carriages route to a distance of 2 kms. The said stage carriage operates have filed separate writ petitions in W.P.Nos.19920 to 19923 of 2016 to consider their representation and to restrain the petitioner, Palanivel, from operating on the main road connecting Rasipuram to Kakkaveri.

2.I have heard Mrs.Radha Gopalan, learned counsel for the petitioner in W.P.No.11605 of 2016, Mr.Alagu Narayanan, learned counsel for the petitioners in W.P.Nos.19920 to 19923 of 2016 and Mr.S.Diwakar, learned Special Government Pleader appearing for the official respondents.

3.One Varathappa Gounder was granted a mini bus permit to operate in the route from Rasipuram Bus stand to Thoppapatti Mariamman Koil (via) Koneripatty, Mettukadu, Colony, Kakkaveri, Kakkaveri Pirivu, S.C.Street, Vengayapalayam, Seeraplli, Oduvankurichi (touching), Water Tank, Milk Society, Tho.Jedarpalayam, Sandai. The said Varathappa Gounder was permitted to replace the vehicle pursuant to an order dated 06.05.2014. Thereafter the permit stood transferred in the name of his son Palanivel by order dated 09.07.2015 and the permit stands renewed and valid till 06.11.2020.

4.The petitioner's case is that even when his father was running the vehicle he made a representation to the Commissioner, Rasipuram Municipality requesting them to take necessary action for repairing the road between Mettukadu Siddha Medical College to Kakkaveri Pattinam link road as the condition of the road was not motorable. After the permit was transferred in the name of the petitioner Palanivel, he has given a representation on 21.01.2016 to the respondent requesting permission to ply the vehicle on an alternative route till the road is repaired. Along with the said representation the petitioner produced a letter given by the Commissioner, Rasipuram Municipality dated 24.02.2016 stating that the road between Mettukadu Homeopathy Medical College to Kakkaveri with the total length of 1230 meters, out of which 700 meters falls under the Rural Infrastructure Scheme wherein tar roads have already been laid and for the remaining portion of 350 meters, necessary action is being taken for laying roads. Therefore, the petitioner's case is that this will establish that the stand taken by the petitioner is correct as he will not be in a position to ply his vehicle in that stretch of the road.

5.The petitioner secured certain information under the Right to Information Act as to whether the underground drainage work is going on in Rasipuram Municipality limits and by relying upon the reply received it is stated that the drainage work is going on and the petitioner cannot ply the vehicle. Further,

the petitioner would admit that his vehicle was impounded on three occasions when he plied in the different route and the petitioner has challenged those proceedings and the matters are pending before the State Transport Appellate Tribunal. With these facts, the learned counsel appearing for the petitioner submits that the petitioner's application is to be considered in accordance with Section 66(3)(m) of the Motor Vehicles Act and he should be permitted to ply in the diverted route till the roads are fully repaired. The learned counsel has referred to certain orders passed in W.P.No.39373 of 2005 (G.Elangovan vs. The Regional Transport Authority, Cuddalore and another) dated 17.10.2006, W.A.No.159 of 2007 (Tamil Nadu State Transport Corporation (Villupuram) Ltd., rep. by its Managing Director, Villupuram vs. G.Elangovan and others) dated 06.02.2007 and W.P.Nos.2886 & 2887 of 2008 (M.Asraf Ali vs. The Regional Transport Authority, Cuddalore) dated 04.02.2008 and submitted that in all those cases positive direction was issued to grant permission to ply in the diverted route when the road condition was bad.

6. During the course of hearing, this Court made a suggestion to the learned counsel for the petitioner that since the application/representation is pending before the first respondent, the Court is inclined to direct the first respondent to take a decision in the matter after hearing the objections. However, the learned counsel by referring to certain orders of this Court in other writ petitions (referred supra) submitted that this Court should consider the prayer sought for as such with regard to issuance of positive direction to permit the petitioner to ply in the diverted route.

7. In the writ petitions filed by the Stage Carriage Operators, the sum and substance of the objection is that the petitioner, Palanivel has operated his mini bus in violation of the permit condition and this was brought to the notice of the authorities by the Stage Carriage Operators and action was initiated against him. Further, it is submitted that the allegation that the petitioner cannot ply his vehicle in the said route is incorrect since other mini buses are plying in the same route and no grievances have been raised. In this regard, a complaint given to the authorities dated 02.11.2015 was referred to. Further, it is submitted that the Commissioner, Rasipuram Municipality has given a communication dated 18.04.2016 addressed to the Regional Transport Authority, Namakkal (North) stating that there is no civil work carried out in the said area. Therefore, the Stage Carriage Operators would state that action should not be taken on the petitioner's application for grant of permission to ply in the diverted route.

8.The learned Special Government Pleader appearing for the Official respondents submitted that the recent report from the Motor Vehicle Inspector, Grade-I, Rasipuram dated 18.04.2016 and the Municipal Commissioner's letter dated 18.04.2016 would show that the route from Rasipuram Busstand to Thoppapatti Amman Koil (via) Koneripatti Municipal limit (Veterinary Hospital), Mettukadu, Colony, Kakkaveri Pirivu, S.C.Street, Venkayapalayam, Seerapalli touching Oduvankurichi is in good condition without any obstruction. Further it is stated that another mini bus TN-25-V-0567 is still plying on the disputed route. Further, the Municipal Commissioner, Rasipuram has informed that there is no work is going on for underground drainage scheme on the route Koneripatti to Mettukadu Salai upto Municipal limit. This has also been supported by a letter given by one other mini bus operator who is plying his bus in the disputed route. Further the check reports issued to the mini bus has been referred to in the counter to show that the petitioner violated the permit conditions. Further it is stated that no underground drainage work has been started from Rasipuram Busstand to Kakkaveri Joint road (via) Koneripatti Koil, Veterinary Hosptial, Mettukadu and Colony and this has been confirmed by the Rasipuram Municipality in communication dated 07.03.2016 and by the Executive Engineer, Underground Drainage Scheme, Rasipuram dated 10.03.2016.. Further it is submitted that the petitioner under the pretence of doing underground drainage work undertaken by the Rasipuram Municipality and Tamil Nadu Water Supplies Department, Underground Drainage works division in general in other parts of Municipal area, the petitioner is trying to make good of the situation so as to run his mini bus on the diverted main road. It is most important to reveal the fact that a mini bus bearing registration No.TN28 V 0567 belonging to Manoharan, Rasipuram is allowed to ply on the same course of route from Rasipuram Busstand to Kakkaveri Pattinam Joint Road (via) Koneripatti Koil, Siddha Medical College, Mettukadu, Colony and Kakkaveri-pttinam Joint road (the very same route permitted to the petitioner)and to proceed to another destination at Malayampatty Pirivu (via) pattinam etc. The Motor Vehicle Inspector, Grade-I, Rasipuram in his report dated 18.04.2016 has confirmed this fact enclosing some photos of operation in respect of mini bus TN28 V 0567. The permit holder of the mini bus TN28 V 0567 in his letter dated 18.04.2016 has stated that he is plying his mini bus regularly through the disputed route.

9.In reply, the learned counsel appearing for the petitioner contended that they have obtained a memo from the Commissioner, Rasipuram Panchayat Union dated 10.06.2016 which shows that the Tar road is only to the distance of 1152 meters and the remaining 255 meters, the width of the road is only 2.20 meters and as a minimum of 6 meters width is required for laying

of Tar road, the same could be done after action has been taken for removing the encroachment. This document is sought to be relied upon to justify their case for seeking diversion. With regard to other mini bus operator, namely, Manoharan, it is submitted that he has also filed an application for diversion of his route by application dated 18.04.2016. Further it is submitted that because of bad road condition another mini bus operator, namely, P.Thillaikarasi had surrendered her permit and on account of the bad road condition, the petitioner not being able to ply his vehicle through the approved route, he will be compelled to stop the vehicle and such stoppage can be only for 15 days and beyond that, the permit itself is liable for cancellation for non-performance and ultimately the petitioner would have to surrender the permit which will be against the public interest as the mini bus goes to interior places. Therefore, it is a contention of the learned counsel that diversion sought for is only for a limited period till the road becomes motorable.

10.The learned Special Government Pleader has relied on the counter affidavits filed in W.P.Nos.19920 to 19923 of 2016 stating about the action initiated against the petitioner Palanivel for violation of permit conditions. Further, the learned counsel referred to paragraph No.7 of the counter affidavit to show that the check reports and the punishment imposed on the petitioner.

11.I have heard the learned counsel for all the parties at great length.

12.As pointed out earlier, the petitioner seeks for a positive direction to consider his application and approve the same to enable him to operate his mini bus in the diverted route. The sole reason for seeking diversion is on the ground that the road condition with regard to the portion of the road is so bad that the petitioner would not be able to ply his vehicle. Since the petitioner seeks for a positive relief from this Court, it would be necessary to examine the stand taken by the petitioner as to whether their request is acceptable and could be done in accordance with law. Undoubtedly, the authorities have conferred power to grant diversion of the route in terms of Section 66 of the Motor Vehicles Act. However, it has to be seen that under what circumstances such power could be exercised?

13.The petitioner's contention is two fold. The Commissioner, Rasipuram Municipality has given a certificate and from the certificate, it can be inferred that the road is not in a motorable condition. Secondly, it is stated that the

underground drainage work is being carried on and therefore, the bus cannot be operated in the original route and diversion should be approved. To examine the petitioner's case it has to be first seen as to whether the documents produced by the petitioner substantiate his case that the condition of the road is bad. The Commissioner, Rasipuram Municipality by communication dated 24.02.2016 stated that the total length of the road is 1230 meters and 700 meters has been black topped as tar road under Rural Infrastructure Scheme and for the remaining 530 meters, tenders have been called for under a Scheme and work will be commenced on 02.02.2016. The other communication referred to by the petitioner is by the Commissioner, Rasipuram Town Panchayat dated 10.06.2016, in which it has been stated that out of the total length of 1407 meters, 1152 meters is a tar road and in so far as the remaining 255 meters, as the width of the road is 2.20 meters and to form a tar road the minimum width should be 6 meters and action will be initiated to remove the encroachment. Thus these two communications do not state that the road is not in a motorable condition. Hence, the petitioner cannot rest his case on the two communications referred to by him. The photographs produced by the learned Special Government Pleader projects entirely a different picture. The Motor Vehicle Inspector who has submitted a report which has also been referred to in the counter affidavit filed on behalf of the respondent clearly states that the road is in a motorable condition and there is another mini bus operator operating in the same route. The decisions relied on by the learned counsel for the petitioner, as referred in paragraph No.5 above are all factually distinguishable. In none of the cases there were third party objector, there was document to establish that the road condition was bad, thus the Court having been satisfied with the factual aspects issued directions. Hence those decisions do not lend any support to the petitioner's case.

14. In such circumstances, this Court concludes that from the documents produced by the petitioner he has not established that the road is not in a motorable condition. That apart, the underground drainage work has not yet commenced and it is stated that it is not falling within the area in dispute. In such circumstances, the petitioner has failed to establish by facts that there is an imminent need for diversion to be granted in favour of the petitioner. Merely because another permit holder Manoharan has also sought for diversion cannot be a factor to improve the case of the petitioner. Above all, the petitioner is guilty of violation of the permit conditions. When the petitioner has made a representation seeking diversion, he should have awaited for orders to be passed by the authorities and he cannot take law into his hands. Counter affidavit

clearly sets out various violations committed by the petitioner and the punishments imposed and the petitioner himself has admitted in the affidavit filed in support of the writ petition that he has challenged those orders by preferring appeals before the State Transport Appellate Tribunal. In such circumstances, this Court is satisfied that the petitioner has failed to make out a case for grant of diversion. From the documents placed by the petitioner to justify their demand, it is seen that the authorities did not certify that the road is in a bad condition and what they have reported in their communications does not in any manner help the petitioner's case. All that has been stated is with regard to the stage of the implementation of the project and that by itself will not lead into an inference that the condition of the road is not in a motorable condition for the petitioner to seek diversion. Without permission, the petitioner ought not to have plied in the diverted route. Further, this Court does not wish to make any further observation on this issue since the petitioner has challenged the punishment imposed on him before the State Transport Appellate Tribunal.

15. With regard to the writ petitions filed by the Stage Carriage Operators, from the counter affidavit filed on behalf of the second respondent, it is seen that necessary action has been taken and in fact the petitioner's mini bus has been suspended for a period of 20 days and 30 days with option to compound to Rs.6,000/- and Rs.9,000/- each and the petitioner has filed appeals against the orders.

16. Thus, action having been taken on the complaint, it would not be necessary to issue any further direction except to direct the authorities to keep a close watch on the petitioner so as to ensure that he operates his mini bus strictly in accordance with the route as approved in the permit.

17. In the light of the above, W.P.No.11605 of 2016 is dismissed and W.P.Nos.19920 to 19923 of 2016 are disposed of in the light of the action initiated by the official respondents with observations. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

cse

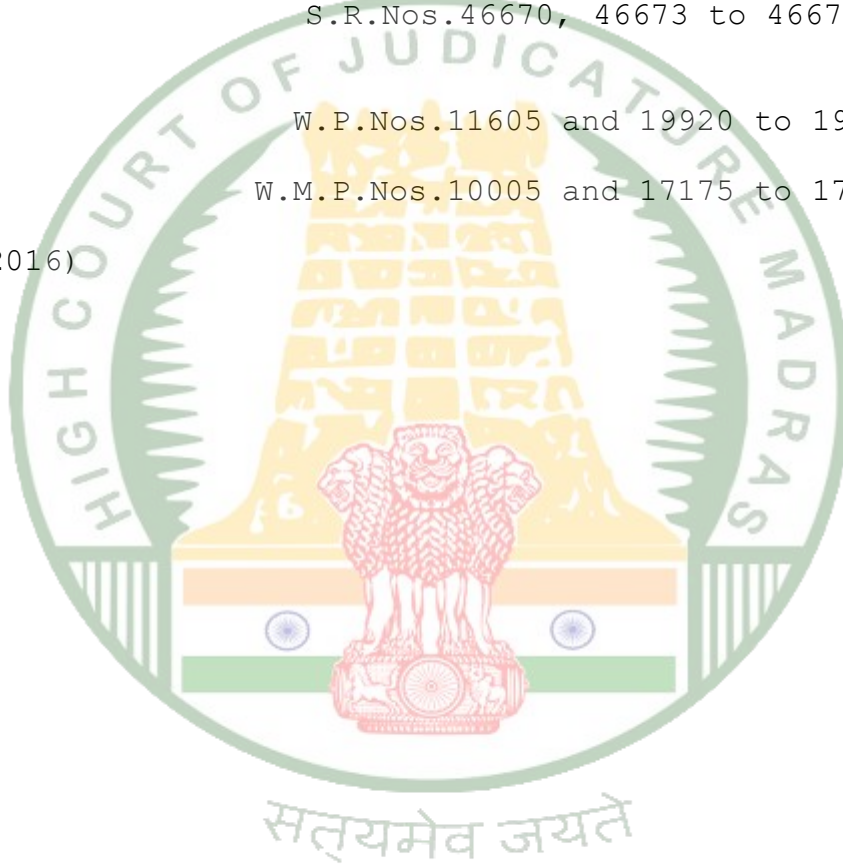
To

1. The Assistant Commissioner,
Transport Department,
Erode.
2. The Regional Transport Authority,
Namakkal North.

+5cc's to Mrs.Radha Gopalan, Advocate,
S.R.Nos.46670, 46673 to 46677

W.P.Nos.11605 and 19920 to 19923 of 2016
and
W.M.P.Nos.10005 and 17175 to 17178 of 2016

MG (CO)
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