

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: .09.2016

Date of Reserving the Order	Date of Pronouncing the Order
01.09.2016	07.09.2016

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P.Nos.2056 and 3796 to 3800 of 2011

M.Ananda Kumar ... Petitioner in W.P.No.2056 of 2011
A.Ameer Sahib ... Petitioner in W.P.No.3796 of 2011
and 3797 of 11
A.Abdul Rasak ... Petitioner in W.P.3798 of 2011
A.Mohammed Ammen ... Petitioner in W.P.No.3799 of 2011
S.F.Sirajudeen ... Petitioner in W.P.No.3800 of 2011

vs

- 1.The Regional Transport Authority,
Krishnagiri.
- 2.The State Transport Appellate Tribunal,
Chennai - 104. ... Respondents in all WPS

Prayer in W.P.No.2056/11: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, to call for the records relating to the dismissal of the grant of Stage Carriage permit on the route Berigai to Anchetti (via) Bagalur, Hosur, etc. made in R.No.16921/A2/2006 dated 09.07.2009 on the file of the 1st respondent herein as confirmed by the 2nd respondent herein in M.V.Appeal No.76/2010 dated 28.09.2010 and to quash the same and consequently directing the 1st respondent herein to issue the Stage Carriage permit to the petitioner on the route Berigai to Anchetti (via) Bagalur, Hosur, etc. as applied for by the petitioner herein.

Prayer in W.P.No.3796/11: Petition to issue a Writ of Certiorarified Mandamus, to call for the records relating to the dismissal of the grant of Stage Carriage Permit on the Route Vaniyambadi to Muthur Dam made in R.No.25726/A2/2006 dt.13.7.2009 on the file of the 1st respondent herein as confirmed by the 2nd respondent herein in M.V.Appeal No.66/2010

dt.28.9.2010 and to quash the same and consequently directing the 1st respondent herein to issue the Stage Carriage Permit to the petitioner on the aforesaid route as applied for by the petitioner herein.

Prayer in W.P.3797/11:Petition to issue a Writ of Certiorarified Mandamus, to call for the records relating to the dismissal of the grant of Stage Carriage Permit on the Routes 1) Londonpet to Varatanapalli; 2) Sarjaapur State Border to Krishnagiri and 3) Guruvinayanapalli to Manavarapalli made in R.No.32978/A2/2006 dt.13.7.2009 on the file of the 1st respondent herein as confirmed by the 2nd respondent herein in M.V.Appeal No.65/2010 dt.28.9.2010 and to quash the same and consequently directing the 1st respondent herein to issue the Stage Carriage Permit to the petitioner on the aforesaid route as applied for by the petitioner herein.

Prayer in W.P.3798/11:Petition to call for the records relating to the dismissal of the grant of Stage Carriage Permit on the Route Anchetty to Hosur made in R.No.26735/A2/2006 dt.9.7.2009 on the file of the 1st respondent herein as confirmed by the 2nd respondent herein in M.V.Appeal No.77/2010 dt.28.9.2010 and to quash the same and consequently directing the 1st respondent herein to issue the Stage Carriage Permit to the petitioner on the aforesaid route as applied for by the petitioner herein.

Prayer in W.P.3799/11:Petition to call for the records relating to the dismissal of the grant of Stage Carriage Permit on the Route Oppathavadi to Berigai made in R.No. 22250/A2/2006 Dt. 13.07.2009 on the file of the 1st respondent herein as confirmed by the 2nd respondent herein in M.V. Appeal No. 67/2010 Dt. 28.09.2010 and to quash the same and consequently directing the 1st respondent herein to issue the Stage Carriage Permit to the petitioner on the aforesaid route as applied for by the petitioner herein.

W.P.No.3800/11:Petition to call for the records relating to the dismissal of the grant of Stage Carriage Permit on the Route Berigai to Thorappali made in R.No. 26736/A2/2006 Dt. 09.07.2009 on the file of the 1st respondent herein as confirmed by the 2nd respondent herein in M.V. Appeal No. 75/2010 Dt. 28.09.2010 and to quash the same and consequently directing the 1st respondent herein to issue the Stage Carriage Permit to the petitioner on the aforesaid route as applied for by the petitioner herein.

For Petitioner
in all W.Ps : Mr.K.Doraisami
Senior Counsel
for Mr.T.Padmanabhan

For Respondents
in all W.Ps. : Mr.S.Diwakar
Special Government Pleader (For R1)
R2 - Tribunal

COMMON ORDER

Since all these writ petitions are challenging a common order passed by the State Transport Appellate Tribunal, Chennai (STAT), the writ petitions were heard together and disposed of by this common order.

2.Heard Mr.K.Doraisami, learned Senior Counsel assisted by Mr.T.Padmanabhan, learned counsel appearing for the petitioner and Mr.S.Diwakar, learned Special Government Pleader appearing for the first respondent.

3.The petitioners applied for fresh grant of Stage Carriage permit to ply their buses in various routes in Krishnagiri District. As these applications were not disposed of within a reasonable time, the petitioners had filed writ petitions before this Court seeking for appropriate directions upon the respondents to dispose of their applications. Pursuant to such direction, the first respondent considered the applications and by separate orders rejected the applications. Aggrieved by the same, the petitioners filed revision petitions before the STAT in R.P.Nos.3 to 12 of 2007. The STAT by common order dated 19.01.2009 remitted the matter to the first respondent for fresh consideration with a direction to afford an opportunity of hearing to the petitioners. In terms of the direction issued by the STAT, the first respondent heard the petitioners in person and rejected all the applications by separate orders, all dated 09.07.2009 on the ground that the approved scheme published in G.O.Ms.No.1529, Home (Transport-III) Department dated 17.11.1999 for the whole of the undivided Dharmapuri District including all the area lying in the newly formed Dharmapuri District and in view of the prohibition available under Section 6(4) of the Tamil Nadu Act 41 of 1992, the applications are not feasible of consideration.

4.Challenging these orders, the petitioner preferred appeals to the STAT which were taken on file as M.V.Appeals Nos.65 to 68 of 2010, 70 to 72 of 2010 and 75 to 77 of 2010. The petitioners contended before the STAT that the original scheme for the Dharmapuri District dated 23.05.1995 and the modified scheme

dated 17.11.1999 has not come into force as consent has not been given by the Governor of Tamil Nadu and both the schemes are non-est in the eye of law. It was further contended that all the routes are previously allowed to private operators and they have abandoned the routes and hence all routes are lying vacant till today and the State Transport undertaking is also not operating. It was further submitted that G.O.Ms.No.1529 dated 17.11.1999 is an approved modified area scheme exclusively meant for Dharmapuri District alone and hence the said Government Order is not applicable to Krishnagiri District which was formed subsequently on 09.02.2004, wherein all routes are lying which are the subject matter before the Tribunal. Further, it was contended as there is no separate area scheme/route scheme for Krishnagiri District, Section 6(4) and Section 7 of the Tamil Nadu Act 41 of 1992 is not applicable to the cases on hand and it is not a bar to grant permit. The Department resisted the plea stating that all the routes are not vacant and State Transport undertaking are operating as on date and as there is no area scheme/route scheme for Krishnagiri District, G.O.Ms.No.1529 dated 17.11.1999 intended for Dharmapuri District alone is applicable for Krishnagiri District also for the simple reason that Krishnagiri District has been carved from the main Dharmapuri District. On the above contentions, the STAT heard the parties elaborately and by a common judgment dated 28.09.2010 dismissed all the appeals. Challenging the same, these writ petitions have been filed.

5.The learned Senior Counsel appearing for the petitioners reiterated the contentions before the Tribunal and submitted that initially approved modified scheme for Dharmapuri District was published on 17.11.1999. Thereafter, after bifurcation of the District into two and formation of Krishnagiri District as separate District, draft modification of the approved modified scheme for Dharmapuri District was published vide G.O.Ms.417 dated 01.06.2005. However, the same had lapsed on account of the fact that it was not approved by the Governor of State of Tamil Nadu. Thereafter, the Government vide notification in G.O.Ms.No.271 dated 10.03.2010 approved the modified scheme of Road Transport services in relation to different areas in the State and notification in this regard was issued only for the area comprising of entire revenue District of Dharmapuri District and not for Krishnagiri District. Therefore, it is submitted that the approved modified scheme for Dharmapuri District dated 17.11.1999 cannot be made applicable to the Krishnagiri District more so in the light of the subsequent notification in G.O.Ms.No.271 dated 10.03.2010.

6.The learned Special Government Pleader appearing for the first respondent referred to the common counter affidavit and submitted that the Tribunal after elaborate reasoning has dismissed the appeals and the contentions raised by the learned

Senior Counsel appearing for the petitioner is not sustainable as the approved modified scheme as published in G.O.Ms.No.1529 dated 17.11.1999 is in force.

7.This Court is conscious of the fact that it is an examining order passed by the STAT on appeals from the order passed by the first respondent. The STAT is a Court having full powers to examine and re-examine the materials placed before it. Admittedly the petitioner does not plead any violation of principles of natural justice or lack of opportunity before the STAT. Thus the challenge to the impugned order is on the merits of the order and the grounds raised in the writ petitions are identical to that of the grounds before the Tribunal.

8.The sheet anchor of the arguments of the learned Senior Counsel appearing for the petitioners is that approved modified scheme for the composite Dharmapuri District dated 17.11.1999 cannot be made applicable to the Kirhsnagiri District since separate scheme has been notified for Dharmapuri District alone vide notification in G.O.Ms.No.271 dated 10.03.2010. When such contention was advanced, this Court posed a question as to whether there can be a vacuum in the matter. The response to which a query is by stating that though draft modification for the approved modified scheme for Dharmapuri District was notified on 01.06.2005 it did not fructify into an approved modified scheme for want of approval and allowed to lapse. Further it is contended that because a separate scheme modified has been approved for Dharmapuri District in G.O.Ms.No.271 dated 10.03.2010, it is deemed that there is no scheme operating in respect of Krishnagiri District. In the opinion of this Court, there is an absolute fallacy in such an argument. As far as the Krishnagiri District is concerned, the routes which are being operated in the newly formed District were also part of approved modified scheme for the composite Dharmapuri District in the scheme notified on 17.11.1999. After the Dharmapuri District was bifurcated from the composite District in the year 2010, approved modified scheme for Dharmapuri District alone was in vogue. Thus, it goes without saying that what has not been modified would continue to operate until it is modified. In other words, the approved modified scheme dated 17.11.1999 will hold good till the new scheme is notified and approved separately for Krishnagiri District.

9.It is submitted by the learned Senior Counsel appearing for the petitioners that the STAT committed an error in referring to a decision of the Hon'ble Division Bench of this Court in the case of the Regional Transport Officer, Tirupur Region and another vs. R.Muthulakshmi and another in W.A.Nos.1660 and 1661 of 2009 dated 20.11.2009 stating that the facts of the said case pertain to certain guidelines whereas the contention of the petitioners is with regard to an approved

modified scheme separately issued for the newly formed Dharmapuri District. This Court however is unable to accept the contention made on behalf of the petitioners since the decision of the Hon'ble Division Bench relied upon by the STAT only to support the finding that unless a new guideline is framed for the newly formed District, the guidelines which were in vogue earlier would continue. The analogy in the decision of the Hon'ble Division Bench in the case of R.Muthulakshmi could very well applied to the facts of the present case also. Thus the contention raised by the learned Senior Counsel on behalf of the petitioners does not merit acceptance. The other reasoning given by the STAT are proper and cogent and does not call for interference.

10.In the light of the above, the writ petitions fails and they are dismissed. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

To

- 1.The Regional Transport Authority,
Krishnagiri.
- 2.The State Transport Appellate Tribunal,
Chennai - 104.

+6 cc to Mr.T.Padmanabhan, Advocate SR.51205
+1cc to the Government Pleader Sr.50859

W.P.Nos.2056 and 3796 to 3800 of 2011

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srg 26/09/2016

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