

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21.06.2016

C O R A M

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

W.P.No.17404 of 2015 and
M.P.No.1 of 2015

Tamil Nadu State Transport Corporation (Salem) Limited,
Bharathipuram, Dharmapuri
Rep. by its General Manager ... Petitioner

Vs

- 1.M.Inbasekaran
Prop. Rajam Bus Service,
Vellichandai, Dharmapuri District.
- 2.The Regional Transport Authority,
Krishnagiri.
- 3.The State Transport Appellate Tribunal,
Madras High Court, Chennai. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the 3rd respondent made in M.V.Appeal No.27 & 28 of 2012 vide its order dated 07.01.2015.

For petitioner ... Mr.P.Paramasiva Doss

For R1 ... Mr.K.Hariharan

For R2 ... Mr.A.Mohammed Mubhrak

ORDER

Heard Mr.P.Paramasiva Doss, learned counsel for the petitioner and Mr.K.Hariharan, learned Standing Counsel appearing for the 1st respondent and Mr.A.Mohammed Mubharak, learned Government Advocate appearing for the 2nd respondent and with their consent, the writ petition is taken up for final disposal.

2.The petitioner is a Tamil Nadu State Transport Corporation (Salem) Limited and the challenge is to an order passed by the State Transport Appellate Tribunal, Chennai in M.V.Appl.Nos.27 & 28/2012 dated 07.01.2015. The 1st respondent herein was the appellant before the State Transport Appellate Tribunal and the appeals were filed under Section 89(1)(a) of the Motor Vehicles Act, 1988 against the order passed by the 2nd respondent dated 18.11.2011 and 10.11.2011 rejecting the applications made by the 1st respondent for grant of temporary permit in respect of a stage carriage to ply in the routes from Singarapettai to Athipalli State Border (via) Uthangarai, Samalpatti, Mathur, Krishnagiri, Shoolagiri and Hosur and from Saparthy to Athipalli State Border (Via) Moranapalli, Kaveipattinam, Krishnagiri, Guruparapalli, Shoolagiri, Kamanthotti, Perandapalli and Hosur.

3.The 1st respondent filed applications for grant of stage carriage permit and also for grant of temporary permit to ply in the said routes and the applications were taken up for consideration, pursuant to direction issued by this Court in the writ petitions filed by the 1st respondent. The authority rejected the applications in the light of the prohibition available under Section 6(4) of the Tamil Nadu Act 41/1992. As against which, the 1st respondent filed appeals before the State Transport Appellate Tribunal in M.V.Appl.Nos.221 & 222/2009 and the orders were confirmed with regard to the application for grant of stage carriage permit and so far as the rejection of the application for grant of temporary permit, the orders were set aside and the matter was remanded to the 2nd respondent for fresh consideration. As per the directions issued by the State Transport Appellate Tribunal, the 2nd respondent considered the applications filed by the 1st respondent for grant of temporary permit and rejected the same on the ground that the modified approved area scheme published in G.O.Ms.No.1529, Home (Transport III) Department dated 17.11.1999 and as the entire portion of the route, for which the temporary permit has been applied by the 1st respondent is well served by the State Transport Undertaking and the existing small bus private operators protected under Tamil Nadu Motor Vehicles (Special) Provisions Act, 41/1992. As against the said order, the petitioner filed appeals in App.No.98 & 99/2010 before the State Transport Appellate Tribunal. The State Transport Appellate Tribunal by order dated 10.06.2011 once again remitted the matter to the 2nd respondent for fresh consideration. On remand, the 2nd respondent held that once the scheme has been approved and notified, right to ply stage carriages by private operators on the notified area, routes or portions thereof, is totally frozen and therefore, they have no right to claim any grant of stage carriage, temporary or contract carriage permits there

under on the said notified area, routes or portions thereof except to the extent saved by the scheme. Aggrieved by such order, the 1st respondent preferred the appeals before the Tribunal and the Tribunal disposed of the appeals, by common order dated 07.01.2015. This order is impugned in this writ petition.

4. After hearing the learned counsel for the parties and perusing the materials placed on record, it is evidently clear that for the routes in question, the Tamil Nadu State Transport Corporation (Salem) Limited has been granted temporary permits and the permits have been subsequently extended and is in force as on date. Therefore, it cannot be stated that there is a vacancy in the said route.

5. The endeavour of the learned counsel for the 1st respondent has to convince this Court is to state that the learned counsel for the 1st respondent submitted that the petitioner Corporation has not applied for any pucca permit and they are operating on temporary permits and such temporary permits have been granted under the general category and it cannot be stated that there is no vacancy. Admittedly, the scheme has been approved and notified and therefore, the right of the private operators to operate in the said scheme area stands foreclosed. Therefore, they have no right to claim grant of stage carriage permit.

6. However, in the instant case, the request made by the 1st respondent is only for grant of temporary permit. Admittedly, the area is well served by the petitioner/ Corporation and as on date, it cannot be stated that there is a vacancy. In fact, the State Transport Appellate Tribunal also was conscious of the fact that the petitioner/ Corporation is operating in the route based on temporary permits. But, however, the Tribunal was of the opinion that if a vacancy arises due to non renewal of temporary permits or by stoppage of services by the State Transport Undertaking after expiry of the temporary permits, the 2nd respondent should consider the petitioner's application. In my view, the Tribunal was called upon to decide the correctness of the order passed by the 2nd respondent dated 18.11.2011 and 10.11.2011 and while testing the correctness, the Tribunal prima facie found that there is no error. Therefore, the Tribunal ought to have dismissed the appeals and the direction issued to the 2nd respondent is not only vague but is on hypothetical grounds. Admittedly, when there is no vacancy on the date when the Tribunal passed the order, the Tribunal could not have issued a direction to the 2nd respondent to consider the 1st respondent application for grant of temporary permit in the event of a vacancy arisen. The Tribunal was considering an appeal petition filed by the petitioner rejecting his application for temporary permit, therefore, the facts on the

date of such application should have been relevant for the Tribunal to take note of and pass appropriate orders. That apart, even on the date when the Tribunal passed an order, there is no vacancy as temporary permits were issued in favour of the petitioner/Corporation. Therefore, the Tribunal was not right in directing the 2nd respondent to consider the petitioner's application for grant of temporary permits whenever vacancy arises, it goes without saying that even if the Tribunal grant any such direction, it is always open to any person to make an application, if in his opinion he is eligible to make such an application. Therefore, the direction issued by the Tribunal is superfluous and accordingly, the direction seeks to be set aside.

7.In the light of the above discussions, the Writ Petition is allowed and the impugned orders are set aside and the orders passed by the 2nd respondent dated 18.11.2011 and 10.11.2011 are confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1.M.Inbasekaran
Prop. Rajam Bus Service,
Vellichandai, Dharmapuri District.

2.The Regional Transport Authority,
Krishnagiri.

3.The State Transport Appellate Tribunal,
Madras High Court, Chennai.

+1cc to M/S.P.Paramasivadoss, Advocate Sr.34568
+1cc to Mr.K.Hariharan, Advocate Sr.34814
+1cc to the Government Pleader Sr.23161

W.P.No.17404 of 2015

Ad[co]
srg 06/07/2016