

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2016

CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.8220 of 2009

M.Narayanan @ Munian

.. Petitioner

Vs.

1. The State Transport Appellate
Tribunal, Pondicherry.

2. The Secretary,
State Transport Authority,
Pondicherry.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorari, calling for the records on the file of the first respondent in Motor Vehicle Appeal No.7 of 2005 dated 25.2.2009 confirming the order of the 2nd respondent dated 18.10.2005 in proceedings No.10981/T.D/T.P./10/2005 and quash the same.

For Petitioner : Mr.M.Krishnappan senior counsel
for R.Swarnalatha
For Respondents: Mr. D.Reena Iswariya
AGP (Pondy)

O R D E R

The prayer in the writ petition is for a Writ of certiorari, calling for the records on the file of the first respondent in Motor Vehicle Appeal No.7 of 2005 dated 25.2.2009 confirming the order of the 2nd respondent dated 18.10.2005 in proceedings No.10981/T.D/T.P./10/2005 and quash the same.

2.1. The petitioner had applied for stage carriage permit on 22.2.1990 to the second respondent on the route of Villianur to Kanagachattikulam. The local distance of the route is 23 kms out of which 20 kms lies in Pondicherry and 3 kms lies in TamilNadu state. However, both the terminus, namely, Villianur to Kanagachattikulam are located only in Pondicherry. Therefore, it is only an enclave route.

2.2. The said application was rejected on some grounds in the year 1992, especially, as there was no proper solvency from the petitioner. Thereafter, appeal was preferred to the first respondent, who by order dated 31.3.1995 set aside the order of the second respondent and directed the petitioner to produce the financial solvency certificate within a time frame of three weeks. However, the petitioner could not produce the solvency certificate within the time, but belatedly the petitioner has produced the said solvency certificate only in the year 2005. In spite of the solvency having been produced by the petitioner, the petitioner's application was rejected on 18.10.2005. As against which, the petitioner preferred an appeal to the first respondent in Appeal No.7 of 2005. The first respondent also had dismissed the said appeal on 25.2.2009. Challenging the said order, the petitioner has come out with the present writ petition.

3. Heard both sides.

4. Mr.M.Krishnappan, the learned senior counsel for the petitioner would contend that primarily on two grounds, the petitioner's application was rejected by the original authority as well as the Appellate Authority. Since the order of the original authority got merged with the order of the Appellate Authority, the reasoning given by the Appellate Authority at paragraph 11 of the impugned judgment of the first respondent can be taken up for consideration as to whether the reasoning given by the Appellate Authority is sustainable in law.

5. In this regard, the learned senior counsel would contend that the first reason stating that the route for which the permit is sought for by the the petitioner is a inter state route. For this reason, the learned senior counsel would contend that both the terminus of the route are located only in Pondicherry and only there is a overlapping of 3 kms in the neighbouring Tamil Nadu state and therefore, the same cannot be treated as inter state route, instead it can only be treated as intra-state enclave route. Therefore, the learned senior counsel would contend that the findings in this regard of the second respondent, is unsustainable.

6. The learned senior counsel would further contend that the second ground for rejection is that, the entire Villupuram District of TamilNadu since has been notified by the Government of TamilNadu in G.O.Ms.No.741, Home (Transport-III) Department, dated 23.5.1985 as a scheme area and the said area is exclusively marked for the State Transport undertaking of other states and the existing permits of small operators, hence, no new permit as has been sought for by the petitioner cannot be granted in that area as the same having been notified as scheme area.

7. Insofar as the second ground cited by the second respondent for rejection of appeal of the petitioner is concerned, the learned counsel would contend that the petitioner's application though was rejected by the original authority in the year 1992, the appeal of the petitioner was allowed in the year 1995 only for the production of solvency certificate. Since the petitioner could not do it in time had filed it only in the year 2005. Therefore, any notification comes in between cannot have any bearing on the petitioner's side. Moreover, since the said notification was issued only by the Government of TamilNadu covering the entire revenue district of Villupuram of Tamil Nadu alone as scheme areas and if the petitioner restricts his route only upto Kottakuppam from Villianur avoiding the 3 kms overlapping in the State of TamilNadu, then certainly, there can be no further impediment for the respondents to consider the application and in this regard, the learned counsel would contend that the respondents have got a ample discretion to take such a decision. Without considering this aspect, the Appellate Authority, namely the first respondent also mechanically passed the rejection order which is impugned herein and therefore, the learned senior counsel would contend that the orders impugned are liable to be interfered with.

8. Per contra, the learned Government Pleader appearing for the respondents would contend that though the petitioner's appeal was allowed in the year 1995 and he was directed to produce solvency certificate within a period of three weeks, the petitioner had failed to do the same and after several years only in the year, 2005, the solvency certificate was produced. In the meanwhile, since the Villupuram area was notified as a scheme area for the exclusive usage of State Transport Corporation buses and existing permit holders alone and the route for which permission is sought for by the petitioner is having the overlapping of 3 kms in the state of TamilNadu, especially, in the District of Villupuram which squarely falls under scheme area, the respondents have no power to issue the permit to the petitioner including the overlapping area of 3 kms in the State of TamilNadu.

9. In this context, the reasoning given by the original authority as well as Appellate Authority in the orders impugned are fully fortified and sustainable and therefore, no interference is warranted in this regard.

10. This Court has heard the submissions made by the learned senior counsel and the learned Additional Government Pleader and also perused the materials placed before it.

11. The learned senior counsel has invited the attention of this Court to Section 72 of the Motor Vehicles Act, 1988 especially, Section 72(1) which reads thus:

"Grant of stage carriage permits:-

(1) Subject to the provisions of section 71, a Regional Transport Authority may, on an application made to it under section 70, grant a stage carriage permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit:

Provided that no such permit shall be granted in respect of any route or area not specified in the application."

12. The learned counsel also invited the attention of this Court in second proviso to Section 88(1) of the said Act which reads thus:

"Provided further that where both the starting point and the terminal point of a route are situate within the same State, but part of such route lies in any other State and the length of such part does not exceed sixteen kilometres, the permit shall be valid in the other State in respect of that part of the route which is in that other State notwithstanding that such permit has not been countersigned by the State Transport authority or the Regional Transport Authority of that other State: "

13. By quoting the said proviso, the learned senior counsel would contend that even if the route is having overlapping area on the other state and if both the starting as well as terminal points of the route are said to be in the same state and such overlapping does not exceed 16 kms, the permit shall be valid in other State in respect of that part of the route notwithstanding the permit was not counter signed by the State Transport Authority or the Regional Transport Authority of other state. When that being so, even the overlapping of 3kms in the other state cannot be put against the petitioner for consideration of grant of permit.

14. When we peruse Section 72(1) of the Act, the proviso as referred to above is very clear that no such permit shall be granted in respect of any route or area not specified in the application. When this was pointed out by this Court to the learned senior counsel, it was replied that even if the authorities, namely, original authority as well as Appellate

Authority have any difficulty to give the permit to the petitioner for the entire route including the overlapping area of 3 kms by exercising their discretion, the permit could have been restricted upto the point, which is prior to the overlapping of 3 kms. In other words, the learned senior counsel would contend that the point from Villianur to Kottakuppam could have been taken into account and the permit could have been restricted to that area without even touching the overlapping area of 3 kms within the state of TamilNadu. This discretion neither the original authority nor the Appellate Authority i.e, respondents 1 and 2 herein have exercised and therefore, interference of this Court is warranted, he argued.

15. Insofar as the said submission made by the learned senior counsel for restricting the permit within the point without any overlapping, the learned Additional Government Pleader appearing for the respondents would invite the attention of this Court to Section 72(1) of the Act. According to her once the application is made, the permit if at all given it shall be given only in the area or route specified in that application. When that being so, unless there is a modified application from the petitioner restricting the route from Villianur to Kottakuppam, neither the original authority nor the Appellate Authority had any occasion to consider such a plea and in the absence of the same, the question of using their discretion would not arise as if any discretion as claimed by the petitioner through the learned senior counsel is exercised by the respondents that would run contra to the proviso to Section 72(1) of the Act.

16. This Court finds some force in the contention of the learned Government Pleader appearing for the respondents. But at the same time, this Court also finds that if the petitioner restricts his route only upto Kottakuppam or any other point prior to that point without having any overlapping area in the State of TamilNadu, then there shall be absolutely, no impediment for the respondents to consider the application and decide the same on its own merits.

17. In that view of the matter, this Court is inclined to set aside the impugned order passed by the respondents herein and remand the matter back to the original authority, namely, the second respondent to whom the petitioner shall make a fresh/modified application restricting his route from Villianoor to any point upto Kottakuppam without having overlapping area of other state i.e., State of TamilNadu, within two weeks from the date of receipt of a copy of this order. On receipt of such application, the second respondent shall consider the same and pass necessary orders for grant of permit, if the application otherwise satisfies all other conditions under the Act and Rules

made therein. The needful shall be done within two weeks thereafter, by the second respondent. With this direction, the writ petition is partly allowed. No cost.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

1. The State Transport Appellate
Tribunal, Pondicherry.

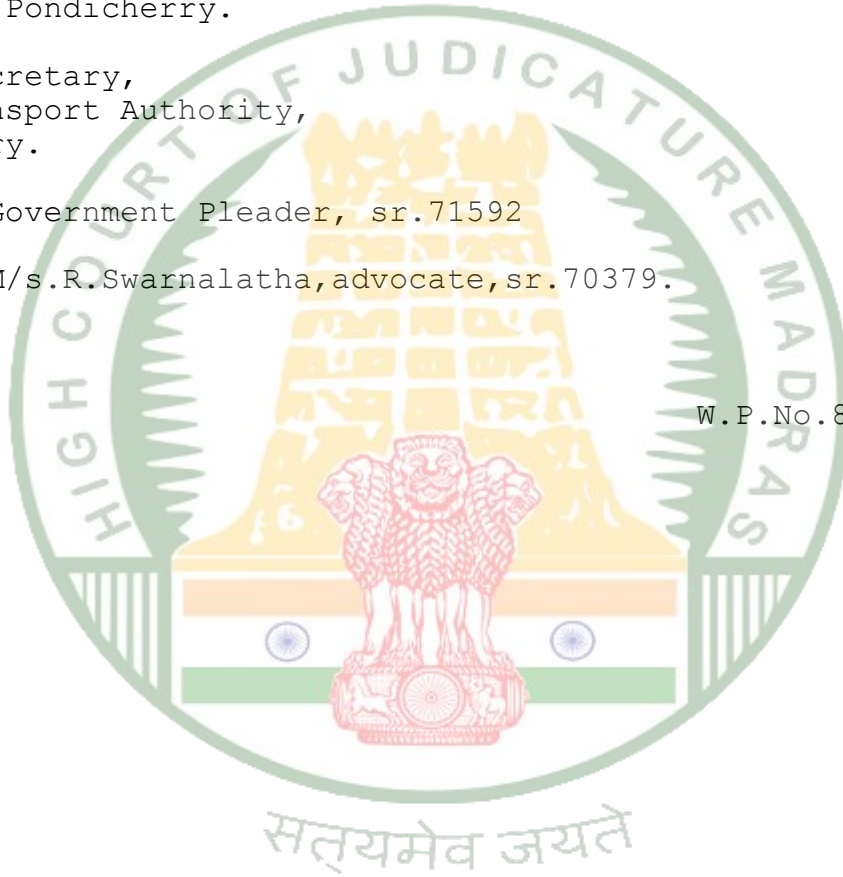
2. The Secretary,
State Transport Authority,
Pondicherry.

+1 cc to Government Pleader, sr.71592

+1 cc to M/s.R.Swarnalatha,advocate,sr.70379.

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