

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.A.No.1814 of 2013

M.P.No.2 of 2013

C.M.P.No.1267 of 2016

1. The Regional Transport Authority,
Gobi Region,
Erode District, Erode.
2. The Secretary,
Regional Transport Authority,
Gobichettipalayam. .. Appellant/Respondents

versus

Mr.Kannusamy,
S/o.S.Samyappa Goundar,
Proprietor, Kannan Transport,
No.1/35, Kumara Gounderpalayam,
Avinashi Taluk. .. Respondent/Petitioner
(Substituted in the place of the
respondent, vide order of this Court,
dated 27.03.2015 made in M.P.No.1/15)

Writ Appeal filed under clause 15 of letters patent against the order dated 02.11.2011 in W.P.No.20647 of 2011. Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus Calling for the records of the 1st respondent made in proceeding R.No.1788/B4/2007 dated ..8.2011 and quash the same in revoking the variation granted in favour of the petitioner predecessor and proceeding under R.No.31808/B4/95 dated 30.1.1996 and direct the 1st respondent to implement the said variation forthwith and pass suit further order.

For Appellants : Mr.K.V.Dhanapalan,
Special Government Pleader

For Respondent : Mr.M.Palani

JUDGMENT

(Order of the Court was made by S.MANIKUMAR, J.)

M/s.Lakshmi Saraswathi Transports, represented by its Managing Partner, Kullampalayam Post, Gobichettipalayam, has filed two writ petitions in W.P.Nos.8589 and 20647 of 2011.

2. Prayer sought for in W.P.No.20647 of 2011, is for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent therein, made in proceeding R.No.1788/B4/2007, dated ..08.2011, quash the same, in revoking the variation granted in favour of the petitioner-predecessor and the proceeding issued in R.No.31808/B4/95, dated 30.01.1996 and to direct the first respondent therein to implement the said variation forthwith.

3. Prayer sought for in W.P.No.8589 of 2011, is for issuance of a Writ of Mandamus, directing the second respondent therein, to implement the order of the first respondent therein, made in R.No.31808/B4/95, dated 30.01.1996, granting variation in respect of the stage carriage permit plying on the route Gobi to Kunnathur, so as to ply on varied route Gobi to Tirupur Cotton Market.

4. While considering the rival submissions, the Writ Court, vide common orders, dated 02.11.2011, quashed the impugned proceedings therein, and at Paragraphs 16 to 18, ordered as hereunder:

"16. Moreover, when the petitioner already approached this Court in W.P.No.8589 of 2011, seeking to implement the order of the first respondent, dated 30.01.1996, the Writ Petition was filed on 30.01.2011 and time was taken by the learned Additional Government Pleader periodically from 08.04.2011 onwards. When the matter is pending before this Court, the first respondent should not have passed impugned order, cancelling the variation granted on 30.01.1996.

17. The respondents should have waited for disposal of this case. The attitude of the first respondent is nothing but colourable exercise of power to see that the petitioner does not get relief from this Court. It is also an attempt by the respondents to violate various orders passed by this Court. Hence,

heavy cost is required to be awarded against the first respondent. However, taking a lenient view, no order is passed against the first respondent. The respondents are directed to implement the variation order within a period of three weeks from the date of receipt of a copy of this order.

18. With the above observation, this writ petitions stands allowed. There is no order, as to costs. Consequently, connected Miscellaneous Petition is closed."

5. Being aggrieved by the same, the Regional Transport Authority, Gobi Regional, Erode District and another, have filed two Writ Appeals Nos.2104 of 2012 and 1814 of 2013 against the orders in W.P.Nos.8589 and 20647 of 2011 respectively.

6. On this day, when the matter came up for hearing, by producing the copy of the order of the Hon'ble Division Bench of this Court, made in W.A.No.2104 of 2012, dated 10.12.2012, Mr.M.Palani, learned counsel for M/s.Lakshmi Saraswathi Transports, Gobichettipalayam, submitted that W.A.No.2104 of 2012, filed against W.P.No.8589 of 2011, has been dismissed and inasmuch as the facts and circumstances of W.A.No.1814 of 2013, filed against W.P.No.20647 of 2011 and listed today before us, being similar, prayed to dismiss W.A.No.1814 of 2013.

7. We have heard Mr.K.V.Dhanapalan, learned Special Government Pleader appearing for the appellant and perused the materials available on record.

8. As rightly pointed out by Mr.M.Palani, learned counsel for the respondent that facts and circumstances in W.A.No.1814 of 2013, are similar to W.A.No.2104 of 2012 and therefore, we are of the view that the decision in W.A.No.2104 of 2012, dated 10.12.2012, can be applied to the present case and the same is reproduced hereunder:

"The writ appeal is directed against the order, dated 02.11.2011 made in W.P.No.8589 of 2011, whereby the writ petition, which was filed by the respondent herein seeking a direction to the second respondent therein, who is the second appellant herein, to implement the order passed by the first respondent therein, who is the first appellant herein, dated 30.01.1996 granting variation in respect of the stage carriage permit plying on the route Gobi to Kunnathur so as to ply on the varied route from Gobi to Tirupur Cotton market, was allowed and the respondents therein were directed to implement the said order within a period of three weeks from the date of receipt of a copy of that order.

2.The respondent, which is a registered Partnership Firm, is operating a stage carriage service on the route Gobi to Kunnathur, which is a town service and the said permit was initially held by one Saraswathi and when she was operating her vehicle on the said route, she made an application for variation involving extension of the route from Kunnathur to Tirupur Cotton Market and conversion of the service into mofussil service and the said variation was allowed by the first appellant in January 1988 and the same was implemented with effect from 09.04.1998 and in the meanwhile, the said permit was transferred in favour of one Sethupathy with effect from 11.05.1995 and later to the appellant with effect from 09.10.2007.

3.According to the appellant, the Government, as per Act 19 of 1996, cancelled about 1000 variations including the variation granted to the respondent. But the said Act was struck down by a Division Bench of this Court, as per the judgment, dated 07.08.2003, made in W.P.No.23854 of 2010 etc. batch reported in (2003) 4 CTC 12, pursuant to which, the aforesaid variations were restored. When the order of variation granted to the predecessor of the respondent was not implemented, he has approached this Court by filing W.P.No.292 of 2008 and the said writ petition was disposed of directing the respondents therein to implement order of variation granted in the year 1996, as per the order, dated 23.01.2008. In spite of the aforesaid order, as the authorities have not implemented the order of variation, the respondent has filed W.P.No.8589 of 2011.

4.The learned single Judge, on consideration of the facts and circumstances of the case, allowed the writ petition and directed the respondents therein to implement the variation order within a period of three weeks from the date of receipt of a copy of that order. Aggrieved by the same, the present writ appeal has been filed.

5.We have heard the learned Special Government Pleader appearing on behalf of the appellants and the learned counsel for the respondent.

6. When the writ appeal came up for admission, it is submitted that the writ appeal, which is filed at the instance of the appellants, is liable to be dismissed in view of the earlier judgment of this Court reported in Regional Transport Authority -vs- State Transport Appellate Tribunal (AIR 1995 Madras 226), wherein it has been held that it would not be

open to the Original Authority, viz., the Regional Transport Authority, who are vested with quasi-judicial powers of grant of permit, to maintain an appeal or revision.

7. Following the aforesaid judgment, the writ appeal is dismissed. Connected M.P. is closed. No costs."

9. In view of the above, Writ Appeal No.1814 of 2013, is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Regional Transport Authority,
Gobi Region,
Erode District, Erode.

2. The Secretary,
Regional Transport Authority,
Gobichettipalayam.

+1cc to Mr.M. Palani, Advocate, S.R.No.61822

GJII(CO)
MD(22/11/2016)

W.A.No.1814 of 2013

सत्यमेव जयते

WEB COPY