

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2017

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.Nos.11410 to 11412 of 1995

K.Mohammed Abdul Khader
Prop. Japan Travels,
Puliangudi.

... Petitioner in W.P.No.11410/1995

G. Selvamurugan

... Petitioner in W.P.No.11411/1995

K.Muthupandi

... Petitioner in W.P.No.11412/1995

Vs.

1. The Government of Tamil Nadu
rep by its Secretary to Govt.,
Home (Transport) Department,
Madras - 9.

2. The Regional Transport Authority,
Tirunelveli.

3. M/s. Katabomman Transport
Corporation Ltd.,
Tirunelveli.

... Respondents in all W.Ps.

Prayer W.P.No.11410 of 1995:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorari calling for the records relating to the Order of the first respondent in G.O.Ms.No.760 Home (Transport-III) Department dated 23.05.1995, published in Tamilnadu Government Gazette Extra-Ordinary No.268, Part II Sec.1 dated 24.05.1995, approving the area scheme in the Revenue district of Tirunelveli Kattabomman, insofar as it relates to the petitioner's route "Kadayanallur Government Hospital to Shencottah Melur" and to quash the same.

Prayer W.P.No.11411 of 1995:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorari calling for the records relating to the Order of the first respondent in G.O.Ms.No.760 Home (Transport-III) Department dated 23.05.1995, published in Tamilnadu Government Gazette Extra-Ordinary No.268, Part II Sec.I dated 24.05.1995, approving the area scheme in the Revenue district of Tirunelveli

Kattabomman, insofar as it relates to the petitioner's route "Kadayanallur Masud School to Surandai" and to quash the same.

Prayer W.P.No.11412 of 1995:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorari calling for the records relating to the Order of the first respondent in G.O.Ms.No.760 Home (Transport-III) Department dated 23.05.1995, published in Tamilnadu Government Gazette Extra-Ordinary No.268, Part II Sec.1 dated 24.05.1995, approving the area scheme in the Revenue district of Tirunelveli Kattabomman, insofar as it relates to the petitioner's route "Puliangudi Bus Stand to Surandai Bus Stand" and to quash the same.

For Petitioner
in all W.Ps. : Mrs.S.Radha Gopalan

For Respondents
in all W.Ps
For R1 & R2 : Mr.Akil Akbar Ali
Government Advocate

For R3 : Mr.Kalayanaraman

COMMON ORDER

These three writ petitions have been listed under the caption "Entire bundle not available cases". The learned counsels on both sides appeared and they supplied the case papers available with them, to the Court and also made submission on the basis of the available records. Based on the necessary records/case papers supplied by the learned respective counsels, appearing for the parties, the case bundle can be reconstructed and accordingly, these writ petitions are disposed of with the following orders :-

2. The prayer sought for in these three writ petitions is similar and common. For the purpose of disposal the prayer sought for in the first writ petition i.e., W.P.No.11410 of 1995 is extracted hereunder :-

"For the reasons stated in the accompanying affidavit, the petitioner herein very respectfully pray that this Court may be pleased to issue a Writ of certiorari or any other appropriate writ or order or directing in the nature of writ, calling for the records relating to the Order of the first respondent in G.O.Ms.No.760 Home (Transport-III) Department dated 23.05.1995, published in

Tamilnadu Government Gazette Extra-Ordinary No.268, Part II Sec.1 dated 24.05.1995, approving the area scheme in the Revenue district of Tirunelveli Kattabomman, insofar as it relates to the petitioner's route "Kadayanallur Government Hospital to Shencottah Melur" and to quash the same and thus render justice".

3. I have heard Mrs.Radha Gopalan, learned counsel appearing for the petitioners in all writ petitions and Mr. Kalyanaraman, learned counsel appearing for the third respondent transport corporation and Mr.Akil Akar Ali, learned Government Advocate appearing for R1 and R2.

4. Mrs.Radha Gopalan, learned counsel appearing for the petitioners would submit that, the petitioners in these writ petitions had been given a permit to operate stage carriage route in the town service at Tirunelveli District on 19.10.1992. Pursuant to which the petitioner started operating the route from 1993. As against the grant of permit, the transport corporation preferred appeal before the Tribunal and thereafter writ petitions were filed in W.P.Nos. 1218 to 1220 of 1992, where the learned Judge of this Court allowed the writ petition filed by the transport corporation, by thus, the permit granted to the petitioners was cancelled. As against the said order of the learned Judge in the writ petitions, intra Court appeals were filed by the petitioners in W.A.No.1887 to 1889 of 2000, wherein the first Division Bench of this Court by order dated 12.02.2002 has passed the following orders :-

"These matter came up at interlocutory stage. All the learned counsel have requested the Court to dispose of the writ appeals themselves because of the counter affidavit filed by the Government sworn on 21.12.2001.

2.The writ petitions were filed by the Transport Corporation impugning the order of State Transport Appellate Tribunal in granting permission to the appellants to ply stage carriage in the town service routes, viz., (1) Kadayanallur Masudhu High School to Surandai (via) Kammaneri Valasi, Thirumalpuram, Santhamaran Kadayaluritti and Kulayaneri; (2) From the opposite point of Kadayanallur bus stand to Shencottah Melur (via) Kasitharamam, Achampudur, Wa-Wa Nagaram, Vadakarai and Panpoli; and (3) Puliyangudi TDTA Church to Surandai (via)

Thiruvettanallur, Pambukoil, Santhai Ariyanayagipuram, Veerasigamani, Sandamaram, Kadayaluritti and Kulayanari.

3. The learned Single Judge had allowed the writ petitions setting aside the order of State Transport Appellate Tribunal, thus restoring the orders of the Regional Transport Authority on the ground that the above permits on the above routes overlapped the sanctioned schemes in favour of the Transport Corporation. Now that a counter has been filed by the Government clearly admitted that the above routes are not overlapping the notified routes, the basis of the judgment rendered by the learned Single Judge evaporates. The Transport Corporation did not controvert the admissions made in the common counter affidavit filed by Mr. Sunil Paliwal on behalf of the second respondent. In view of the same, these Writ Appeals are allowed. Consequently, C.M.Ps are allowed."

5. The learned counsel for the petitioners would further submit that though the stand of the transport corporation and the other official respondents made before the Division Bench, by way of counter affidavit, was recorded, and based on which the appeals filed by these petitioners were allowed in the afore mentioned order, petitioner had apprehension that, at later point, the transport corporation may re-agitate the issue claiming that the permit granted to these petitioners in the town route is disturbing and overlapping the notified route, where the corporation were operating. The said apprehension, according to the learned counsel for the petitioners, is because of the Government Order in G.O.Ms.No.760 Home (Transport.III) Department dated 23.05.1995, by and under which the State Government notified some routes and the validity of the said government order, though was challenged before this Court in a number of writ petitions, ultimately, the validity had been upheld by this Court. Only in that context, because of the G.O.Ms.No.760 Home (Transport.III) Department dated 23.05.1995, since had been issued at that time, apprehending disturbance from the respondents, on the route for which the permission had been granted by the respondents, the petitioner had filed these writ petitions.

6. Mr. Kalyanaraman, learned counsel appearing for the third respondent transport corporation would submit that the stand of the transport corporation/Government favouring the petitioners has been clearly set out before the Division Bench

of this Court in the first round of litigation, where the orders were passed by the Division Bench on 12.02.2002 in W.A.Nos. 1887 to 1889 of 2000, wherein the stand of the respondents have been taken on record and accordingly, the orders were passed.

7. The learned counsel for the respondents would further submit that, in view the said stand taken by the respondents and the same has been recorded, pursuant to which judicial order was passed by the Division Bench of this Court, and it has become final, the apprehension on the part of the petitioner may not carry any weightage and therefore, the writ petition may be disposed of recording the past records/events.

8. I have heard Mr.Akil Akbar Ali, learned Government Advocate appearing for the official respondents. He has also made the similar submission as that of the submission made by the learned counsel for the third respondent.

9. I have heard, learned counsel appearing for both sides and have noted the submissions made by them and also perused the available records supplied by the learned respective counsel appearing for the parties.

10. Since the issue raised in these writ petitions has already been resolved by the Division Bench of this Court in the Judgment dated 12.02.2002, which is also recorded herein above, in view of the said order having been passed by the Division Bench of this Court, which has admittedly become final, there can be no further order required to be passed in this writ petition. Therefore, recording the said findings and the orders passed by this Court in the said batch of writ appeals in W.A.No.1887 to 1889 of 2000 as form part and parcel of this order, these writ petitions are disposed of.

11. Accordingly, these writ petitions are disposed of with no order as to costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Govt.,
Government of Tamil Nadu,
Home (Transport) Department,
Madras - 9.

2. The Regional Transport Authority,
Tirunelveli.

3. M/s. Katabomman Transport
Corporation Ltd.,
Tirunelveli.

4. The Section Officer,
Writ section,
High Court, Madras. (for reconstruction of EB)

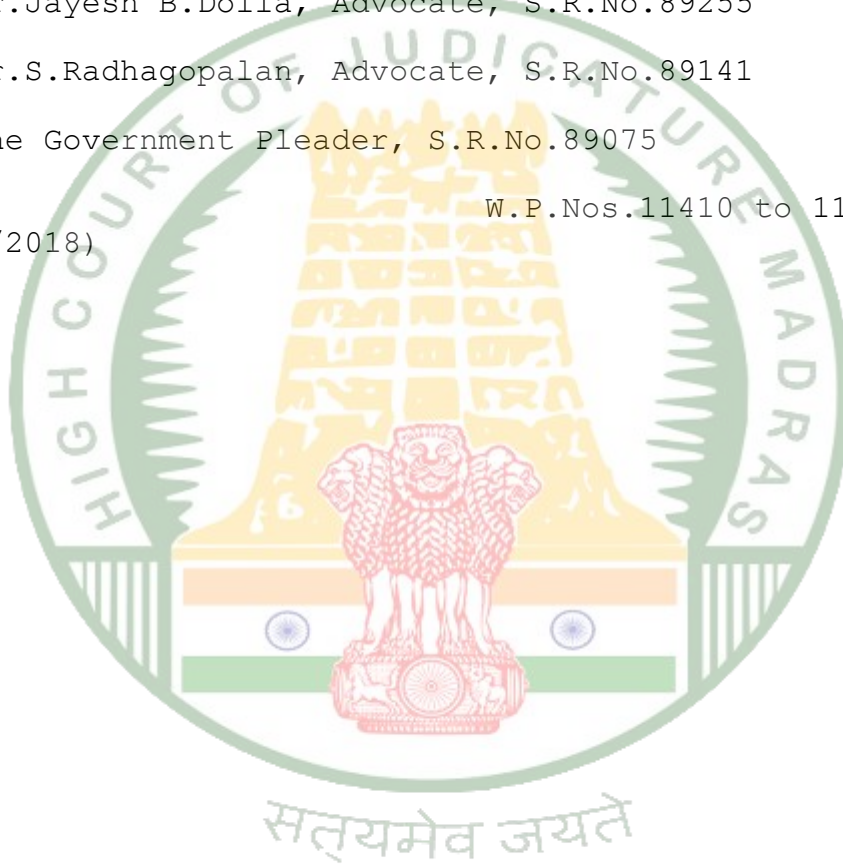
+1cc to Mr.Jayesh B.Dolia, Advocate, S.R.No.89255

+1cc to Mr.S.Radthagopalan, Advocate, S.R.No.89141

+1cc to the Government Pleader, S.R.No.89075

W.P.Nos.11410 to 11412 of 1995

RRK(10/01/2018)



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