

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>Delivered on</i>
20.01.2017	25.01.2017

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH

**W.P.Nos.9998 of 2003 &
50283, 50289 and 50290 of 2006**

R.Subramanian

.. Petitioner in all W.Ps.

Vs.

1. The Regional Transport Authority
Nagapattinam

2. The Regional Transport Officer
Nagapattinam

3. V.Dhanapackiam

.. Respondents in
W.P.No.9998/2003

1. State Transport Appellate Tribunal
High Court buildings
Chennai 600 104

2. The Regional Transport Authority
Nagapattinam

3. V.Dhanapackiam

.. Respondents in
W.P.No.50283/2006

1. State Transport Appellate Tribunal
High Court buildings

Chennai 600 104

2. The Regional Transport Authority
Nagapattinam

3. V.Dhanapackiam (deceased)

4. V.S.V.Vedanayagam

5. V.S.V.Sivashanmugam

6. K.Visalakshi

7. S.Manimekalai

8. S.Indira

9. P.Sivaneswari

10. M.Mahalakshmi

11. S.Susheeladevi

(respondents 4 to 11 are impleaded
as per order dated 6.1.2017
in M.P.Nos.1 of 2010)

.. Respondents in
in W.P.Nos.50289 and 50290 of 2006

Prayer in W.P.No.9998 of 2003: Petition filed under Article 226 of The Constitution of India, praying for the issuance of a Writ of Mandamus directing the first respondent herein to forthwith consider and dispose of petitioner's application for renewal of permit dated 4.2.2003 in respect of petitioner's vehicle TN 60 F 1000 plying on the route Thiruthuraipoondi to Nagoor, by communicating the proceedings mentioned in the reference 1st cited in the Notice dated 12.3.2003.

Prayer in W.P.No.50283 of 2006: Petition filed under Article 226 of The Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records dated 19.7.2006 of the 1st respondent herein in Appeal No.1063/2003 in Confirming the order of the 2nd respondent in

R.No.A2/2534/2003 dated 21.5.2003 and to quash the same.

Prayer in W.P.No.50289 of 2006: Petition filed under Article 226 of The Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the 1st respondent herein in Revision Petition 16/2003 in Confirming the order of the 2nd respondent in R.No.A2/2534/2003 dated 21.5.2003 and to quash the same.

Prayer in W.P.No.50290 of 2006: Petition filed under Article 226 of The Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the 1st respondent herein in Revision Petition 18/2003 in Confirming the order of the 2nd respondent in R.No.A2/2534/2003 dated 21.5.2003 and to quash the same.

For Petitioner
in all W.Ps.

.. Mrs.Rahda Gopalan

For Respondent Nos.1 & 2
in W.P.No.9998 of 2003, and
W.P.No.50283 of 2006 and
2nd respondent in
W.P.Nos.50289 and
50290 of 2006

.. Mr.P.Gunasekaran,
Additional Government Pleader

For Respondents
4, 5, 10 and 11 in
W.P.Nos.50289 and
50290 of 2006

.. Mr.K.Alagiriswamy, Sr.Counsel
for Mr.S.Govindraman

COMMON ORDER

For the sake of convenience, the parties will be referred to by their name.

2. V.Dhanabakyam was a holder of Stage Carriage Permit for the route Thiruthuraipoondi to Nagoor. Dhanabakyam became widowed with 9 children. It appears that Dhanabakyam was not able to operate the bus in the said route and therefore she had permitted one R.Subramanian (writ petitioner) to operate the bus services in her name.

3. Manimegalai and Vishalakshi, two daughters of Dhanabakyam, filed a Suit for declaration in O.S.No.229 of 2000 before the Additional Subordinate Judge, Nagapattinam against Dhanabakyam and her other children for a declaration that the Stage Carriage Permit is common to the family and is not an exclusive property of Dhanabakyam. In the said Suit, R.Subramanian was arrayed as 9th defendant. The suit in O.S.No.229 of 2000 was dismissed on 30.10.2001.

4. Aggrieved by the dismissal of O.S.No.229 of 2000, Manimegalai and Vishalakshi filed A.S.No.9 of 2002 before the Additional District Judge, Nagapattinam.

5. Dhanabakyam and Subramanian presented a joint application on 31.12.2001 under section 82(1) of the Motor Vehicles Act before the Regional Transport Authority for transfer of the Stage Carriage Permit in the name of

Subramanian.

6. It appears that even before the joint application for transfer was submitted, Dhanabakyam is said to have sent a representation dated 1.11.2001 to the Regional Transport Authority stating that she has not given any consent to any one for transfer of the permit. Subsequently, during the pendency of the joint application, Dhanabakyam had given a letter dated 7.1.2002 to the Regional Transport Authority, stating that she is withdrawing the earlier objection dated 1.11.2001. Then, on 22.1.2002, Dhanabakyam is said to have given another representation to the Regional Transport Authority, once again stating that she has objection to the transfer of permit in the name of Subramanian.

7. It may be necessary to state here that in her letter dated 22.1.2002, Dhanabakyam had not denied her signature in the joint application. She had only said that she had signed the papers thinking as it is for a new bus in the place of the existing vehicle, an application is being made.

8. The Regional Transport Authority by order dated 10.10.2002 transferred the permit from the name of Dhanabakyam to R.Subramanian. A copy of the order dated 10.10.2002 was sent to both Dhanabakyam and Subramanian. The Permit was valid till 4.3.2003.

9. Subramanian submitted a renewal application on 4.2.2003 to the

Regional Transport Authority. At that time Dhanabakyam gave a representation dated 20.2.2003 objecting to the renewal. In view of that, the Regional Transport Authority issued notice of hearing dated 12.3.2003 to both Dhanabakyam and Subramanian to decide the issue of renewal of permit.

10. Since the permit was not renewed, Subramanian filed W.P.No.9998 of 2003 on 28.3.2003 before this Court, in which an interim direction was sought to give temporary permit to ply the vehicle in the said route. On 28.3.2003, this Court granted the following interim relief:

"Mr.P.Chandrasekaran, Special Government Pleader takes notice on behalf of the respondents 1 & 2. Issue Notice to the respondent No.3. Private Notice is also permitted. In the meantime, as an interim measure, the petitioner shall be permitted to ply the vehicle on temporary permit."

On the strength of this order, Subramanian is now operating the vehicle, based on temporary permits that are being issued by the Regional Transport Authority from time to time, till date.

11. Reverting to the civil proceedings, A.S.No.9 of 2002 was allowed by the Additional District Judge, Nagapattinam on 22.2.2002, thereby declaring that

the permit in question belongs to the family. Aggrieved by the said judgment, Subramanian has preferred Second Appeal No.1123 of 2002 before this Court and in Civil Miscellaneous Petition No.9058 of 2002, dated 11.7.2002, the stay of the judgment and decree in A.S.No.9 of 2002 has been granted by this Court. The said Second Appeal is pending on the file of this Court.

12. Getting back to the renewal proceedings, the Regional Transport Authority passed an order on 21.5.2003. The relevant portion of the order is as follows:

"Even though the transferor Tmt.V.Dhanabackiam did not appear in person for the hearing, it is clear that there are disputes between Tmt.V.Dhanabackiam and Thiru R.Subramanian, and the Regional Transport Authority it not the competent authority to settle the dispute and it is open to them to approach the appropriate legal forum for settlement. It is also known from the materials available that there are disputes among the family of Tmt.V.Dhanabackiyam and such dispute has to be decided by their family and the Regional Transport Authority, Nagapattinam is not the Authority competent to look into the matter.

Hence I hold that this is a clear case attracting the provisions contained in Rule 210 of Tamilnadu Motor Vehicles Rules, 1989 and accordingly revoke the sanction accorded for transfer of permit of Stage Carriage TN 60/1000 permitted to ply on the route Thiruthuraipoondi to Nagore vide proceedings No.A2/30678/2001 dated 10.10.2002 from the name of Tmt.V.Dhanabackiam,

Vedaraniyam to the name of Thiru R.Subramanin, Nagapattinam as VOID.

I also hold that the application for renewal of permit filed by Thiru R.Subramanian on 4.2.2003 for renewal of permit for a further period of five years from 4.3.2003 to 3.3.2008, will be kept pending till the forgery dispute between Tmt.V.Dhanabackima and Thiru R.Subramanian is settled by Court.

In accordance with the interim order issued by the Honourable High Court, Madras in W.M.P.No.9998/2003, in W.P.No.12667/2003 dated 28.3.2003, temporary permits will be issued to Thiru R.Subramanian, for the Stage Carriage till the disposal of the said case pending before the High Court, Madras."

13. Aggrieved by this order, Subramanian filed two revision petitions, namely R.P.Nos.16/2003 and 18/2003 before the State Transport Appellate Tribunal. In R.P.No.16/2003, Subramanian has challenged that portion of the order dated 21.5.2003, revoking the original order of transfer of permit, which was passed by the Regional Transport Authority on 10.10.2002. In R.P.No.18/2003, Subramanian has challenged that portion of the order dated 21.5.2003 by which the Regional Transport Authority had kept pending his renewal application till the forgery dispute between Dhanabakyam and Subramanian is settled by Court.

14. Subramanian gave an application to the Regional Transport Authority for change of bus for the same route, since the old bus for which permit was granted, had become road unworthy. That application was also dismissed by the Regional Transport Authority on 2.10.2003 on the ground that the dispute between Subramanian and Dhanabakyam was pending before the State Transport Appellate Tribunal and therefore, the request of Subramanian for replacement of bus cannot be granted. Aggrieved by that order, Subramanian filed Appeal No.1063/2003 before the State Transport Appellate Tribunal. The State Transport Appellate Tribunal by the impugned order dated 19.7.2006 dismissed R.P.Nos.16/2003 and 18/2003 and A.No.1063/2003, aggrieved by which, Subramanian has filed three writ petitions namely W.P.Nos.50289, 50290 and 50283 of 2006.

15. During the pendency of the writ petitions 50289 of 2006 and 50290 of 2006, Dhanabakyam died on 21.9.2009. Therefore, all the 9 children of Dhanabakyam have been brought on record as respondents in W.P.Nos.10589 and 10590 of 2006.

16. Heard Mrs.Radha Gopalan for R.Subramanian and Mr.K.Alagiriswamy, learned senior counsel for Mr.S.Govindraman, counsel for respondents 4, 5, 10 and 11, who are the children of Dhanabakyam, and Mr.P.Gunasekaran, learned Additional Government Pleader for the Regional

Transport Authority.

17. Mrs.Radha Gopalan, learned counsel for R.Subramanian has made the following submissions:

(a) Dhanabakyam did not file any appeal to the State Transport Appellate Tribunal against the order dated 10.10.2002 passed by the Regional Transport Authority effecting name transfer;

(b) Subramanian is not a stranger to the whole affairs, inasmuch as even in the suit in O.S.No.229 of 2000, he has been shown as the 9th defendant;

(c) The Regional Transport Authority did not give any opportunity to Subramanian to rebut the allegations of Dhanabakyam;

(d) The Regional Transport Authority ought not to have cancelled the earlier order dated 10.10.2002 while dealing with the application for renewal that was filed by Subramanian;

18. Refuting the above, Mr.K.Alagiriswamy, learned senior counsel appearing for Mr.S.Govindraman, learned counsel for respondents 4, 5, 10 and 11, (the children of Dhanabakyam) made the following submissions:

(a) Fraud has been played on the Regional Transport Authority in obtaining name transfer of permit, which is evident from the preamble portion of the order dated 21.5.2003, wherein the Regional Transport Authority has

mentioned that the Secretary (Regional Transport) had not placed the communication dated 22.1.2002 given by Dhanabakyam, withdrawing her consent;

(b) Strong reliance was placed under Rule 212 of the Tamil Nadu Motor Vehicle Rules, 1989 to justify the order dated 21.5.2003 passed by the Regional Transport Authority;

(c) Judgment and Decree passed by the Additional District Court, Nagapattinam in A.S.No.9 of 2002 dated 22.2.2002 was not brought to the notice of the Regional Transport Authority;

19. This Court gave its anxious consideration to the rival submissions and perused the materials available on record.

20. This Court wanted to satisfy itself as to whether the signature of Dhanabakyam was forged by Subramanian in the joint application dated 31.12.2001?

21. As stated above, Subramanian is not an interloper, who had jumped into the fray for the purpose of knocking away the permit from Dhanabakyam. Even according to the children of Dhanabakyam, their mother had permitted

Subramanian to operate the bus in the route and that is why he was made as 9th defendant in the suit in O.S.No.229 of 2000.

22. Bearing this circumstance in mind, if the objection letter dated 22.1.2002 is viewed, Dhanabakyam had not stated that Subramanian had forged her signature in the joint application, but had only stated that she had signed the application on the impression that she is going to get a new bus. Therefore, from her own admission, one thing is clear, namely that she has admitted her signature in the joint application but has only explained it by saying that she signed it for some other purpose.

23. At this juncture, it may be relevant to dispose of one objection of Mr.Alagiriswamy, learned senior counsel that the judgment and decree in A.S.No.9 of 2002 was passed on 22.2.2002, but whereas the Regional Transport Authority had effected the transfer only on 10.10.2002.

24. The proceeding for transfer of the permit had commenced as early as on 31.12.2001, when the joint application was submitted. At that time O.S.No.229 of 2000 was dismissed. Thereafter, A.S.No.9 of 2002 was allowed on 22.2.2002 and that judgment was stayed by the High Court on 11.7.2002 in S.A.No.1123 of 2002. The Regional Transport Authority was aware of

O.S.No.229 of 2000 which is evident from a reading of para 1 of his order dated 10.10.2002. Therefore, it cannot be stated that Subramanian had suppressed any fact. That apart, the judgment in A.S.No.9 of 2002 was stayed by the Court on 11.7.2002. A Civil Court decreed that the permit belongs to the family can have no binding effect on the Regional Transport Authority, because a permit cannot be a subject matter of a particular suit. The parties can only ask for share in the income earned by operating the bus. They cannot ask for share in permit. Grant of Stage Carriage Permit is governed by the provisions of Motor Vehicles Act, 1988. Hence, the submission of Mr.Alagirisamy, Senior Advocate, pales into insignificance.

25. Subramanian had filed Second Appeal No.1123 of 2002 and obtained stay of the judgment and decree on 11.7.2002. In fact, the Regional Transport Authority was aware of the objection given by Dhanabakyam and also withdrawal of it, at the time of passing the order dated 10.10.2002 transferring the permit. Dhanabakyam cannot also plead that she was not aware of the transfer of permit order dated 10.10.2002, because a copy of the order was also marked to her. Dhanabakyam did not choose to file any appeal before the State Transport Appellate Tribunal. Only when the renewal application was submitted by Subramanian, Dhanabakyam gave a representation dated 20.2.2003, wherein she had stated that she came to know that the permit has been transferred in the name of Subramanian.

26. Now the question is, in the application for renewal, is it open to the Regional Transport Authority to revoke the his earlier order, effecting name change?

27. The Motor Vehicles Act empowers the various authorities designated thereunder to exercise certain specified jurisdictions. The Regional Transport Authority has jurisdiction to grant the Stage Carriage Permit, to effect name transfer in the Stage Carriage Permit and to renew the Stage Carriage Permit under sections 72, 82 and 81 of the Motor Vehicles Act, 1988. Thus, distinct powers are vested on the Regional Transport Authority and one should not overlap the other. Against all these jurisdictions, the aggrieved can prefer an appeal before the State Transport Appellate Tribunal. Therefore, the Regional Transport Authority does not have the power to revoke the transfer effected under section 82 of the Motor Vehicles Act, while dealing with a renewal application under section 81 of the Act. However, administrative authorities are always empowered to recall their orders, if it is found that the same has been obtained by fraud because fraud vitiates all proceedings. This is recognized by Section 86(1) of the Motor Vehicles Act.

28. It may be relevant to extract Rule 210 of the Tamil Nadu Motor Vehicles Rules, 1989 and it reads as follows:

"210. Transfer to be void for false information:- Without prejudice to any other penalty to which the parties may be liable, any transfer of a permit ordered upon an application which the Transport Authority is subsequently satisfied was false in respect of the matter specified in rule 209 or in respect of any other material particular shall be void."

From a reading of the above provision, if it is shown that a fraud or forgery had been committed and transfer obtained or a false information had been given and transfer effected, the Regional Transport Authority would have the power to revoke the order passed under section 82 of the Act.

29. In this case, those circumstances do not exist. This is a case where Dhanabakyam was prevaricating and that may be due to family pressure, which this Court cannot decipher at this distant point of time, especially in the light of the fact that she is no more. The circumstances of this case show that she had permitted Subramanian to operate the bus in her name, aggrieved by which her two children filed a suit in O.S.No.229 of 2000 before the Additional Subordinate Court, Nagapattinam, in which Subramanian was made as the 9th defendant and after the said suit was dismissed on 30.10.2001 only, the joint application dated 31.12.2001 was submitted to the Regional Transport Authority.

30. This is not a case of giving false information because Regional Transport Authority has not stated, as to what false information Subramanian had given at the time of obtaining the transfer of permit. The Regional Transport Authority in the preamble portion of the order has stated that the Secretary had not placed the representation dated 22.1.2002 that was given by Dhanabakyam before him. This militates against his own order dated 10.10.2002, wherein in Reference No.3, he has referred to the letter dated 22.1.2002 given by Dhanabakyam. After having cited the letter dated 22.1.2002 in the reference portion of the order dated 10.10.2002, the Regional Transport Authority cannot later on say that the Secretary did not place the necessary note before him and revoke the name transfer order on that ground.

31. To say that, had the letter dated 22.1.2002 been placed before him, he would not have passed the order on 10.10.2002 would clearly amount to revoking his own order, which is impermissible in law. Even in the order dated 21.5.2003, the Regional Transport Authority has stated as follows:

" I also hold that the application for renewal of permit filed by Thiru R.Subramanian on 4.2.2003 for renewal of permit for a further period of five years from 4.3.2003 to 3.3.2008, will be kept pending till the forgery dispute between Tmt.V.Dhanabackima and Thiru

R.Subramanian is settled by Court ."

It is clear from the above that there was a dispute between Dhanabakyam and Subramanian. On the strength of such inference, the Regional Transport Authority cannot revoke his earlier dated 10.10.2002, which was passed under section 82(1) of the Act.

32. Yet another contention of the Regional Transport Authority that the issue of renewal of permit should be kept pending till the forgery dispute between Dhanabakyam and Subramanian is settled by a court, is indeed very specious. At the risk of repetition, Dhanabakyam herself never complained that her signature was forged. She had only stated that she had signed in the form, thinking that it was for a new bus. That cannot be a good ground for refusal to renew the permit.

33. Coming to the order dated 19.7.2006 passed by the State Transport Appellate Tribunal, Dhanabakyam was made a party to the proceedings and after service of notice, she had entered appearance through a counsel. But, the order does not show anything as to whether her counsel made any arguments.

34. In paragraph No.24 of the order dated 19.7.2006, the State Transport Appellate Tribunal has stated as follows:

"24. It is admitted fact transfer application has been received on 31.12.2001, but it is not joint application, but unilateral one by transferee only. But Rule 208 of Tamil Nadu Motor Vehicles Rules, 1989 contemplates only mandatory joint application."

35. This itself is a wrong premise because it is beyond cavil that the application dated 31.12.2001 was a joint one signed by both Dhanabakyam and Subramanian. Strangely the State Transport Appellate Tribunal has given a finding that it is an unilateral one. Based on such an erroneous finding, the State Transport Appellate Tribunal has predicated its order by further relying upon Rules 210 and 211 of the Tamil Nadu Motor Vehicles Rules, 1989.

36. As observed above, Rule 210 will have no application in the present facts and circumstances of the case because it is nobody's case that the transfer was obtained by giving false information. Rule 210 cannot be read in isolation, because it has to be read with Rule 209. If the information that has been required to be supplied under Rule 209, is found to be false, the power under Rule 210 can be invoked and not otherwise. Hence, neither Rule 209 nor Rule 210 would apply to the facts and circumstances of the case.

37. Proviso to Rule 212 clearly states that when either party states that a party wants to withdraw the consent, before the transfer is sanctioned, the

Transport Authority can drop the proceedings by informing the other party of the withdrawal of the consent. This Rule will apply only before the transfer is effected. In other words, after submitting the joint application for transfer and before order was passed by the Regional Transport Authority, it is open to either of the parties to withdraw the consent. When once a transfer order has been passed, the aggrieved party can only go by way of an appeal to the State Transport Appellate Tribunal under section 89 of the Motor Vehicles Act, 1988 and Rules 157(e) of the Tamil Nadu Motor Vehicles Rules, 1989, because in an appeal, question of facts can be agitated and it can be shown that the consent was withdrawn or the consent was obtained by fraud etc. Dhanabakyam had not chosen to file any appeal against the order dated 10.10.2002. Having missed the bus, she cannot seek to revoke the name transfer, when Subramanian is applying for renewal of his permit. These facts have also not been appreciated by the State Transport Appellate Tribunal.

38. Subramanian had preferred an application to the Regional Transport Authority for replacement of the bus, as the existing bus was not roadworthy. That application was rejected by the Regional Transport Authority by order dated 2.10.2003 on the ground that the dispute between Dhanabakyam and Subramanian was pending before the State Transport Appellate Tribunal. Aggrieved by the order dated 2.10.2003, Subramanian filed an appeal No.1063 of 2003 before the State Transport Appellate Tribunal and the Tribunal by the

common order dated 19.7.2006 has rejected the request of Subramanian for bus replacement. Challenging the order passed by the Regional Transport Authority and the State Transport Appellate Tribunal, Subramanian has filed W.P.No.50283 of 2006. In the said writ petition, Subramanian impleaded Dhanabakyam as a party and after the death of Dhanabakyam on 21.9.2009. Subramanian had not taken any steps to implead her legal heirs, whereas her legal heirs were impleaded in W.P.Nos.50289 and 50290 of 2006 and their counsel Mr.K.Alagiriswamy, learned Senior Counsel for Mr.S.Govindraman, learned counsel on record, was also heard.

39. In W.P.No.50283 of 2006, Subramanian has challenged the order passed by the Regional Transport Authority and the State Transport Appellate Tribunal, refusing for replacement of bus, because both parties had held that on account of the dispute between Subramanian and Dhanabakyam, the name transfer itself was improper. Therefore, the decision in W.P.No.50283 of 2006 is very much dependent upon the decision in W.P.Nos.50289 and 50290 of 2006 and not impleading of the heirs of Dhanabakyam in W.P.No.50283 of 2006 cannot be construed to be fatal. As stated above, her legal heirs were impleaded in the other two writ petitions and their counsel was heard.

40. In the light of the aforesaid discussions and the findings arrived at by this Court that the Regional Transport Authority ought not to have revoked its earlier order, effecting name transfer in favour of Subramanian, this Court is of

the view that the plea of Subramanian for replacement of bus on the ground that the existing bus is not roadworthy, deserves consideration by the Regional Transport Authority.

41. In the result, **W.P.Nos.50283, 50289 and 50290 of 2006 are hereby allowed as prayed for** and the orders passed by State Transport Appellate Tribunal and the Regional Transport Authority are set aside. As regards replacement of bus, it is open to Subramanian to submit a fresh application to the Regional Transport Authority for replacement and the same shall be considered on merits bearing in mind the above findings of this Court.

42. As far as W.P.No.9998 of 2003 is concerned, this Court directs the authorities to give temporary permit to the petitioner, until final orders are passed, renewing his application, pursuant to the order of this Court, allowing W.P.Nos.50289 and 50290 of 2006, as prayed for. Hence, **W.P.No.9998 of 2003 is disposed of with the above directions.** No costs.

25 .01.2017

Index:Yes/No

ajr

Note: Issue on 31.1.2017

To

1. State Transport Appellate Tribunal
High Court buildings, Chennai 600 104
2. The Regional Transport Authority
Nagapattinam

3. The Regional Transport Officer
Nagapattinam

P.N.PRAKASH, J.

ajr

**Order in
W.P.Nos.9998 of 2003,
50283, 50289 and 50290 of 2006**

25.01.2017

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