

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.22487 of 2004
and
WPMP.No.27210 of 2004

R. Kandasamy

... Petitioner

Vs.

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

2.The Secretary,
Regional Transport Authority,
Erode District, Erode.

.... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent made in R.No.30234/A3/2003 dated 27.06.2003 and quash the same and forbear the second respondent or its subordinate or men or agents from preventing the petitioner for making use of old bus stand while operating his stage carriage service from Tiruppur to Erode.

For Petitioner : Mr.M.Palani

For Respondents : Mr.A.Zakkir Hussain
Government Advocate

O R D E R

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus calling for the records of the first respondent made in R.No.30234/A3/2003 dated 27.06.2003 and quash the same and forbear the second respondent or its subordinate or men or agents from preventing the petitioner for making use of old bus stand while operating his stage carriage service from Tiruppur to Erode.

2. The petitioner is the stage carriage operator in Erode, operating a stage carriage bearing Regn.No.TN 33/AB 0049 on the route Tiruppur to Erode (via) Mannari, Periyapalayam, Thirimmanaickenpalayam, Uthukuli, Railway Station,

Puluvarpalayam, Vijayamangalam, Saralai and Perundurai and various routes to Tiruppur old bus stand. After construction of a new bus stand in Tiruppur town in 2003, the respondent conducted a meeting with the Commissioner of Tiruppur Municipality and the District Collector, Coimbatore.

3. The petitioner's Association made an objection on 13.05.2003. After outcome of the meeting, the Regional Transport Authority passed an order on 27.06.2003 directing the petitioner to operate the bus on by diverting the route granted by the original permit attached to the new bus stand.

4. Aggrieved with the above said order, the petitioner has filed the present writ petition.

5. Mr.M.Palani, learned Senior Counsel appearing for the petitioner would submit that the said impugned order is passed without following the procedure established under the Central Motor Vehicles Act and are contrary to Sections 72 (2) (xxii) of the Act and under Section 80 (3) of the Motor Vehicles Act (in short 'Act')

The relevant portion of Sections 72 (2) (xxii) and 80(3) of the Act are extracted as follows:

72 (2) (xxii):

that the Regional Transport Authority may, after giving notice of not less than one month,

(a) vary the conditions of the permit;

(b) attach to the permit further conditions;

provided that the conditions specified in pursuance of clause (i) shall not be varied so as to alter the distance covered by the original route by more than 24 kms, and any variation within such limits shall be made only after the Regional Transport Authority is satisfied that such variation will serve the convenience of the public and that it is not expedient to grant a separate permit in respect of the original route as so varied or any part thereof;

80(3):

An application to vary the conditions of any permit, other than a temporary permit, by the inclusion of a new route or routes or a new area or by altering the route or routes or area covered by it, or in the case of a stage carriage permit by increasing the number of trips above the specified maximum or by the variation, extension or curtailment of the route or routes or the area specified in the permit shall be treated as an application for the grant of a new permit:

6. In accordance with Section 72 (2)(xxii), the authority granted permit to operate the stage carriage. If there is any

deviation from the original permit, they have to invoke Section 72 (2)(xxii) of the said Act as stated supra. The Regional Transport Authority may, after giving notice of not less than one month and vary the conditions of the permit and attach to the permit further conditions which it is similar to this proviso-3 of under Section 80(3) of the Act as stated supra.

7. Both the above stated Sections clearly says that if there is any variation of permit, the authority should issue notice to the permit holder for variation of permit. In the present case on hand, the respondent has passed the impugned order without following the above said procedures contemplated under Sections 72 (2)(xxii) and 80 (3) of the Act.

8. Learned counsel appearing for the petitioner also relied on the decision of this Court reported in 2004 (1) CTC 161 wherein para - 11, it is stated as follows:

11. Insofar as the restrictions imposed on the Omni buses from entering into Chennai city, we have already referred to the judgment of the Apex Court as to the liberalization policy in transport operations and the right of the operators to get permits to operate the vehicles subject to reasonable restrictions. There is no dispute that the petitioners are the contract carriage permit holders to operate Omni buses. An intending contract carriage operator makes an application under Section 73 of the Act to the Regional Transport Authority for grant of permit. The application shall contain the type and seating capacity of the vehicle, the area for which the permit is required and any other particulars that may be prescribed. Considering the application, the Regional Transport Authority may grant such permit under sub-section (1) of Section 74. Proviso to sub-section (1) of Section 74 mandates that no such permit shall be granted in respect of any area not specified in the application. By this proviso, it is implied that once the permit is granted, to operate the stage carriage in the area covered by the permit, the operator is entitled to operate on the said area. Sub-section (2) of Section 74 relates to the conditions that the vehicle shall be used only for a specified period or a specified route or routes in the permit. Such conditions can be varied only by the Regional Transport Authority. Of course, the State Government is empowered to direct the State Transport Authority and the Regional Transport Authority to limit the number of contract carriages depending upon the number of vehicles already permitted, route conditions and other relevant matters. Such directions could be given only by a

notification in the official gazette. An indepth reading of Section 74 makes it clear that so long as the contract carriage permit is in force and the Omni buses are operated strictly in accordance with the conditions of permit, any deviation in the route would amount to variation of conditions of permit which would in turn result in the cancellation of permit. In this context, the reliance placed on Section 115 and Rule 370 is referable. The State Government or any authority authorized in this behalf by the State Government, if satisfied that it is necessary in the interest of public safety or convenience, may by notification in the official gazette prohibit or restrict subject to such exception and conditions as may be specified in the notification, the driving of motor vehicles or any of the specified class or description of motor vehicles. The learned Advocate General would contend that the power to pass the impugned Government Order could be traced to Section 115 and Rule 370 of the Act and Rules. The power of the State Government or any authority authorised in this behalf by the State Government to prohibit or restrict the movement of the vehicle in the interest of public safety or convenience cannot be disputed. However, exercise of such power again should not be arbitrary and discriminatory.

9. On perusal of the above judgment, it is manifested that the Division Bench of this Court has categorically held that after reading of Section 74 of the Contract, if there is deviation of the Rule, it would amount to variation and it would, in turn, result in the cancellation of permit unless the permit holder put off notice for variation which is not permissible. However, in this case, the Regional Transport Authority, after convening the meeting with the Commissioner of Tiruppur Municipality and District Collector, Coimbatore, passed an exparte order against the petitioner without following the procedures, and issued show cause notice, which is not permissible.

10. While entertaining the writ petition, this court, by its order dated 06.08.2001, has passed an interim order in favour of the petitioner. Further, learned counsel for the respondent did not dispute the legal facts as well as the judgment of this court.

11. In view of the aforementioned facts and circumstances, the writ petition is allowed. However, liberty is granted to the respondent to follow the procedures, if it is necessary and pass orders in the interest of General Public.

It is made clear that this order will not stand in the way of respondent to recourse and to take necessary action after following the procedures contemplated under Sections 72 (2) (xxii) and 80 (3) of the Act.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

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

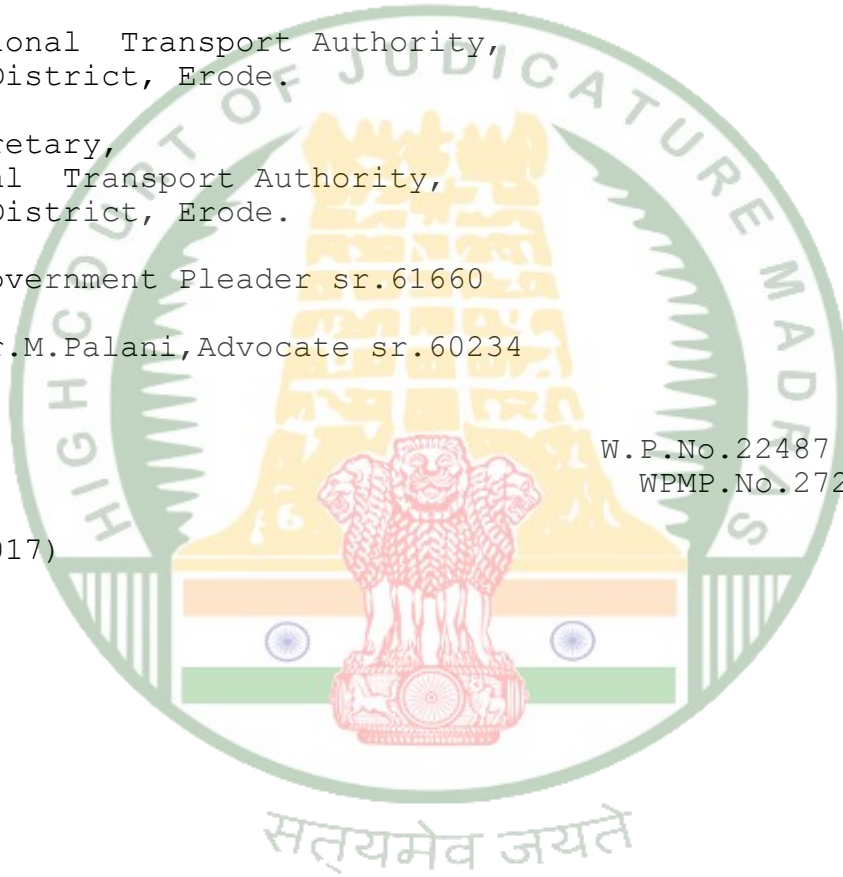
2.The Secretary,
Regional Transport Authority,
Erode District, Erode.

+1cc to Government Pleader sr.61660

+1cc to Mr.M.Palani,Advocate sr.60234

W.P.No.22487 of 2004 and
WPMP.No.27210 of 2004

ss(14/9/2017)



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