

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2017

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Writ Petition No.17337 of 2004

Zoubaidaoummallee

... Petitioner

//vs//

1. The State Transport Authority,
Union Territory of Pondicherry,
Pondicherry.
2. The State Transport Appellate Tribunal,
Pondicherry. Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus or any other appropriate writ or order or direction in the nature of writ, calling for the records of the second respondent made in M.V.AP.No.17 of 2002 dated 22.01.2004 in confirming the order of the first respondent made in No.2905/TD-TP1/Permit/202 dated 9.5.2002 and quash the same and direct the first respondent to consider and pass orders on the application of the petitioner for grant of interstate permit in respect of the route Karaikal to Kumbakonam (via) Nedungadu and Kollumangudi on merits in accordance with the law.

For Petitioner : Mr.M.Palani

For 1st & 2nd Respondent : MrB.Nambiselvam
Addl. Govt.Pleader (Pondy)

O R D E R

Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

2. The learned counsel appearing for the petitioner submitted that the petitioner had applied for inter-state permit to ply on the inter-state route Karaikal to Kumbakonam before the State Transport Authority, Pondicherry, namely the first respondent herein. The first respondent had rejected the said permit on the ground that the route applied for by the petitioner is overlapping the nationalized scheme and also against the prohibition of Section 104 of the Motors Vehicle

Act, against which, the petitioner has filed an appeal before the 2nd respondent herein and the 2nd respondent Tribunal also confirmed the order passed by the first respondent. Challenging the same, the petitioner has filed this writ petition.

3. The learned Additional Government Pleader appearing for the respondents submitted that the issue involved in this writ petition is covered by the decision of the Honourable Supreme Court of India in Civil Appeal No.4480 of 1998 between G.T.Venkataswamy Reddy /vs/ State Transport Authority & Others dated 19.07.2016, wherein it is held as follows:-

49. As we are not called upon to answer any other question, we confine ourselves to the question viz., on the publication of an approved scheme whether the number of the trips of the vehicles of the existing operators can be increased by granting the variation of the permit even when the existing operators are allowed to carry on their operation on the date of the publication of the scheme as it was existing as on that date. To the said question, one other aspect to be considered is along with the number of trips can such existing operator aspire to seek for increasing the number of vehicles as well should also be added. In fact, when the question of conflict as between 'Jayaram' and 'Egappan' was noted while making the present reference to the Constitution Bench in the order dated 22.07.2003, the conflict really pertain to the variation applied for both by way of increase in trips as well as increase of vehicles.

50. Having analyzed the above referred decisions and the statutory provisions, before rendering our final answer to the question referred to this Constitution Bench, it will be worthwhile to make a reference and list out the legal propositions which we are able to discern based on our detailed consideration in this reference:

(a) Chapter IV-A supersedes any inconsistent provisions in Chapter IV.

(b) The policy of the Legislature is clear from Section 68C that the State Transport undertaking may initiate a scheme for the purpose of providing an efficient, adequate, economical and properly coordinated road transport service to be run and operated by the State Transport undertaking in relation to any area or route or portion thereof. It may do so if it is necessary in the public interest.

(c) Grant of variation under Section 57(8) will

be as good as grant of a new permit.

(d) Section 57(8) is controlled by Section 68FF falling under Chapter IV-A, by virtue of the superseding effect of section 68B also falling under Chapter IVA.

(e) Once a scheme formulated under Section 68D gets approved under 68D(3) of Chapter IV, then all the permits in the route/area covered by the Scheme will get frozen by virtue of operation of Section 68FF.

(e) Once a scheme formulated under Section 68D gets approved under 68D(3) of Chapter IVA, then all the permits in the route/area covered by the scheme will get frozen by virtue of operation of Section 68FF.

(f) The effect of Section 68Ff can be altered/modified/cancelled only in the manner as provided for under Section 68E and in no other manner.

(g) By virtue of the above, either a grant of new permit or the variation of an existing permit of private operator cannot be ordered in respect of an area or route covered by an approved scheme.

(h) Increase in the number of trips or vehicles which were being run under the existing exempted permit under a scheme will amount to grant of a new permit to operate one more stage carriage which is not permissible under Section 68FF.

(i) The proposition of law, laid down by this court in 'Jayaram' impliedly stood overrules in 'Adarsh Travels'.

(j) The economy and coordination, two of the factors, which govern the approved scheme, will be seriously infringed if the variation is to be granted of the existing permit condition.

(k) Even if there is an interstate agreement under Section 63 of the Act for increasing the number of trips, such an agreement cannot override the provisions of Chapter IV-A by virtue of Section 68B of the Act. Section 63 being in Chapter IV of the Act, the scheme approved under Chapter IV-A will prevail over it.

(l) The approved scheme will exclude the operation of other stage carriage services on the Route/Area covered by the scheme, except those whose names are mentioned in the scheme and to the extent to which such exception is allowed.

(m) The provisions in Chapter IV-A are devised

to override the provisions of Chapter IV and it is expressly so enacted, the provisions of Chapter IV-A are clear and complete regarding the manner and effect of the ''Take over'' the operation of a road transport service by the State Transport undertaking in relation to any Area or Route or portion thereof (Adarsh Travels).

(n) A necessary consequence of those provisions is that no private operator can operate his vehicle on any part of portion of a notified area or notified route unless authorized so to do by the term of the scheme itself. He may not operate on any part or portion of the notified route or area on the mere ground that the permit as originally granted to him covered the notified route or area. (Adarsh Travels).

4. In the light of the above decisions rendered by the Honourable Supreme Court of India, this Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The State Transport Authority,
Union Territory of Pondicherry,
Pondicherry.

2. The State Transport Appellate Tribunal,
Pondicherry.

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