



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 27.06.2017

Date of Reserving the Judgment	Date of Pronouncing the Judgment
13.06.2017	27.06.2017

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CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN
W.A.(MD) Nos.203 & 204 of 2015

S.Syed Abdul Khader ... Appellant in both appeals
-vs-

1.The Regional Transport Authority,
Virudhunagar District, Viruthunagar.

2.The State Transport Appellate Tribunal,
City Civil Court Buildings
Chennai-600 104. ... Respondents in W.A.(MD)No.203 of 2015

1.The Regional Transport Officer,
Virudhunagar District, Viruthunagar.

2.The Regional Transport Authority
Virudhunagar,
Virudhunagar District. ... Respondents in W.A.(MD)No.204 of 2015

PRAYER (in W.A.(MD) No.203 of 2015) : Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 05.12.2014 made in W.P.(MD) No.19749 of 2014, on the file of this Court.

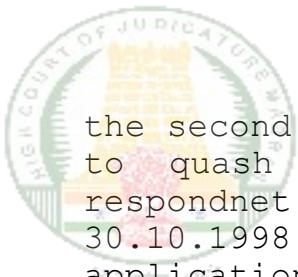
Prayer in WP(MD). 19749/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus calling for the records of the 2nd respondent made in Appeal No.221/2004 dated 04.02.2009 confirming the order of the 1st respondent made in Endt. No.37442/A5/2003 dated 03.03.2004 and to quash the same and consequently direct the 1st respondent to consider and pass orders on the applications for renewal pending before it in respect of vehicle No.TDA 9501 for the route Madurai to Abiramam in accordance with law and pass such further or other orders.

PRAYER (in W.A.(MD) No.204 of 2015) : Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 05.12.2014 made in W.P.(MD) No.19750 of 2014, on the file of this Court.

Prayer in WP(MD). 19750/ 2014 :

<https://hcservices.ecourts.gov.in/hcservices/> Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus calling for the records of proceedings of



the second respondent made in R.No. 17091/B3/98 dated 09.11.1998 and to quash the same as illegal consequently direct the first respondent to consider the petitioner's surrender application dated 30.10.1998 as well as the petitioner's cancellation of surrender application dated 03.11.1998 and pass such further or other orders.

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For Appellant : Mr.A.C.Asaithambi
(In both appeals)

For Respondents : Mr.V.Muruganantham
(In both appeals) Addl. Govt. Pleader

C O M M O N J U D G M E N T

T.S.SIVAGNANAM, J.,

Since both the appeals pertain to the same appellant relating to a stage carriage permit granted to him, they were heard together and are being disposed of by this common judgment.

2. W.A.(MD) No.203 of 2015 is directed against the order, dated 05.12.2014, made in W.P.(MD) No.19749 of 2014, which was filed to quash the order, dated 04.02.2009, passed by the State Transport Appellate Tribunal, confirming the order, dated 03.03.2004, passed by the first respondent / Regional Transport Authority, Virudhunagar, and for a consequential direction upon the first respondent to pass orders on the application for renewal of the stage carriage permit granted to the appellant.

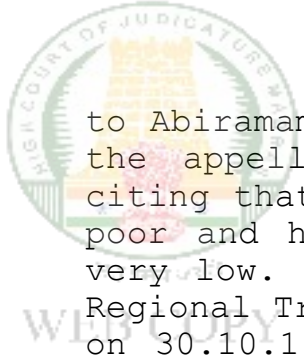
3. W.A.(MD) No.204 of 2015 is directed against the order, dated 05.12.2014 made in W.P.(MD) No.19750 of 2014, which was filed to quash the order, dated 09.11.1998, passed by the second respondent / Regional Transport Authority, Virudhunagar and to direct the first respondent / Regional Transport Officer to consider the appellant's surrender application, dated 30.10.1998 as well as the cancellation of surrender application, dated 03.11.1998.

4. Both the writ petitions were dismissed by a common order, dated 05.12.2014, only on the ground that there is unexplained delay of almost five years from the date of passing of the order impugned therein and therefore, the writ petitions are barred by delay and laches. Thus, there was no adjudication of the appellant's case on merits.

5. Heard Mr.A.C.Asaithambi, learned counsel appearing for the appellant and Mr.V.Muruganantham, learned Additional Government Pleader appearing for the respondents in both appeals and perused the materials placed on record including the original file, which was circulated to us.

<https://hcservices.ecourts.gov.in/hcservices/>

6. The appellant was granted a stage carriage permit for the vehicle bearing registration No.TDA 9501 to ply in the route Madurai



to Abiramam. The permit was valid upto 31.05.2000. On 30.10.1998, the appellant filed an application for surrender of the permit citing that the roads are in very bad condition, collection is very poor and he is unable to maintain the vehicle as the revenue was very low. The said application was received in the office of the Regional Transport Authority (hereinafter, referred to as "the RTA") on 30.10.1998 (Page No.49 of the original file). However, within two days, the appellant's mind changed and he submitted an application, on 03.11.1998, for withdrawal of the surrender application. It is to be noted that 30.10.1998 was a Friday and immediately thereafter on 03.11.1998 the withdrawal application was submitted. The original file does not contain the original application for withdrawal of the surrender application, but only a photostat copy of the same is found in Page Nos.84 and 85 of the original file. The said application bears the date seal of 09.11.1998 and 10.11.1998 respectively.

7. Subsequently, the appellant sent a telegram, on 13.11.1998, mentioning about his withdrawal of surrender letter, dated 03.11.1998, and requested to act on the said letter. This was followed by a letter, dated 17.11.1998. These communications are found in Page Nos.87 to 89 of the original file. Based on the original application filed by the appellant for surrender of permit, dated 30.10.1998, the Regional Transport Officer, Virudhunagar, (hereinafter referred to as "the RTO") issued a Clearance Certificate. This Clearance Certificate is dated 09.11.1998 and it was valid from 30.10.1998 to 28.11.1998. RTA is the competent authority to consider the cancellation or withdrawal applications. The Clearance Certificate is a pre-requisite for the RTA to consider such applications. The Clearance Certificate essentially is to confirm that there are no tax or other dues payable by the permit holder. This Certificate was valid for a period of thirty days from 30.10.1998 to 28.11.1998. The thirty days being computed from the date on which the application for surrender was presented.

8. The question would be as to whether the RTA, competent authority, passed orders accepting the application for cancellation of permit prior to receipt of the application for withdrawal of such cancellation application.

9. Rule 204 of the Tamil Nadu Motor Vehicles Rules, 1989 (hereinafter, referred to as "the Rules") deals with Permit - Surrender and Cancellation. The said Rule prescribes the procedure and form of application to be made and how the application has to be considered. The said Rule reads as follows:

204. Permit - surrender and cancellation.-

(1) (a) If the holder of a permit proposes to surrender the permit for cancellation he shall make an application in form "ACC" to the Secretary of the Transport Authority concerned for the acceptance of surrender of the permit and issue of a Clearance Certificate.



(b) Such application shall be accompanied by the permit and a fee as specified in the Table under rule 279.

(c) No application for the surrender of permit in respect of contract carriage (maxi cab and motor cab allotted under Taxi Trade Quota) shall be considered if such application is made within a period of three years from the date of first registration as maxi cab and motor cab:

Provided that such an application may be considered if the permit holder pays the difference of excise duty as applicable to private cars and produce the evidence for such payment obtained from the competent Central Excise Authorities along with the application.

(2) (a) On receipt of an application in form "ACC" the Secretary of the Transport Authority shall forthwith issue the Clearance Certificate in form "CC".

(b) A Clearance Certificate issued under clause (a) shall be valid for a period not exceeding 30 days from the date of its issue as mentioned therein.

(3) (a) In case where the holder of the permit has no liabilities outstanding or where there is sufficient documentary evidence to prove that the liabilities have been cleared by the permit holder concerned the secretary of the Transport Authority shall direct the permit holder to produce the certificate of registration of the vehicle.

(b) On receipt of the records referred to in clause (a) the Transport Authority, or the Secretary of the Transport Authority if authorised in this behalf by the Transport Authority shall forthwith cancel the permit so surrendered, cancel the endorsement for payment of tax in the certificate of registration and send them together with an order mentioned in Part II of form "ACC" with copies of the said order marked to the registering authority and countersigning authority/authorities if any.

(4) In case the holder of permit has liabilities outstanding and there are disciplinary proceedings pending against him or there are orders in force suspending or cancelling the permit, the Secretary of the Transport Authority concerned shall issue a notice simultaneously along with the certificate in Form "CC" to the holder of the permit that his application for surrender of permit shall be summarily rejected if



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further proof or intimation clearing the liabilities or of having undergone the disciplinary proceedings or if the permit has been ordered to be suspended and the suspension having been undergone or is otherwise modified on appeal or if the holder of the permit has agreed to or has been permitted to pay a certain sum of money in lieu of cancellation or suspension of the permit, and that the same has been fully paid, is not received from him within thirty days from the date of issue of notice. If even after the expiry of the aforesaid period of thirty days the aforesaid defects are not cleared, the Transport Authority, or the Secretary of the Transport Authority may refuse to accept the surrender of the permit, The order refusing the acceptance of surrender shall be in part II of Form "ACC".

10. The appellant had submitted his application in terms of Rule 204 (1)(a). The application having been accompanied by the requisite details and fees, the RTO (for RTA), in terms of Rule 204 (2)(a), issued a Clearance Certificate. Sub-Rule (3)(b) of Rule 204 prescribes the next step to be followed by the RTA on receipt of the records referred to in Clause (a) of Rule 204(3). The said authority is required to pass an order in Part-II of Form "ACC" with copies of the said order marked to the registering authority and countersigning authority / authorities, if any.

11. The original file discloses due compliance upto the stage of issuance of the Clearance Certificate as required under Rule 204 (2)(a). It has to be seen as to whether the RTA has passed orders on the said application in Part-II of Form "ACC" and if so, whether in a proper manner.

12. The respondents rely upon the order, dated 03.11.1998, to justify their stand that the surrender of permit has been accepted. The respondents do not dispute the receipt of the application for withdrawal of the surrender application and it is admitted to have been received in the office of the RTA. It is not known as to what happened to the original of such letter / application as only a photostat copy is found in the Page No.83, wherein the date seal is affixed as 09.11.1998. Thus, it has to be seen that if the withdrawal application was received on 09.11.1998, on what date the RTA passed order in Part-II of Form "ACC".

13. Admittedly, the Clearance Certificate in Form "CC" was issued by the authority only on 09.11.1998. Therefore, the surrender could not have been accepted before the said date. We find that the alleged acceptance of surrender is dated 03.11.1998, ~~submitted by the officer on 06.11.1998 and the date seal affixed is 09.11.1998.~~ Thus, the files clearly disclose that there is no written order in Part-II of Form "ACC". Thus, there was no



acceptance of the surrender application and there is no valid order to the said effect.

14. Further, when such a contention was raised by the appellant before the State Transport Appellant Tribunal, the Tribunal should have endeavoured to examine the files, verified the dates and then recorded a finding. However, the Tribunal, while testing the correctness of the order passed by the Authority, stated that the surrender of permit was accepted and the stage carriage permit was cancelled by the RTA with effect from 30.10.1998 and a Clearance Certificate, dated 09.11.1998, was also issued with effect from 30.10.1998. In terms of Rule 204 of the Rules, Clearance Certificate is a pre-requisite for the RTA to pass an order of cancellation of permit. Therefore, the clearance should precede the order of acceptance of application for cancellation of permit.

15. As noticed above, the Clearance Certificate was issued only on 09.11.1998 and obviously, the order in Part-II of Form "ACC" could not have been passed prior to the said date. Thus, the Tribunal committed an error while confirming the order of cancellation of permit. Hence, we are of the view that the order of the Tribunal confirming the order passed by the RTA cancelling the appellant's permit without considering his application for withdrawal of the cancellation application is not sustainable.

16. The next question would be as to whether the appellant should be denied relief on the ground that he has approached the Court belatedly.

17. The appellant would state that after exhausting all remedies and submitting several representations to review the order of cancellation, he having failed in all his attempts before the authorities had approached the Court to set aside the order. In our considered view, the issue before us is not a recurrent issue as after nationalization of the stage carriages, very few permits have left intact in the State of Tamil Nadu. Therefore, what the appellant has lost is a very valuable right and he should not be denied the remedy on technicalities.

18. In the affidavit filed in support of the writ petition, in W.P.(MD) No.19750 of 2014, the appellant has made a specific averment that on 03.11.1998, at about 10.00 a.m., he went in person to the Office of the RTO at Virudhunagar and submitted a handwritten letter requesting to cancel or drop the surrender application, which he had submitted on 30.10.1998. The RTO is said to have assured the appellant that he will drop the surrender application. Subsequently, on 13.11.1998, he sent a Telegram, but no action was initiated. This averment has not been denied by the respondents by filing a counter affidavit. Further, as mentioned by us earlier, the original of the handwritten letter is missing in the file, but only a photostat copy is available. Therefore, we do not propose to deny the remedy in these appeals on the ground that the appellant



has approached the Court belatedly and considering the facts and circumstances of the case, we find that the delay can be condoned and it is not an unreasonable delay and the delay has been explained.

19. Further, in Paragraph Nos.10 and 11 of the affidavit, the appellant has set out as to under what circumstances, he had challenged the order, dated 09.11.1998, by filing the writ petition. The appellant's specific case is that he had no knowledge of such proceedings till his appeal was dismissed by the Tribunal on 04.02.2009. Thereafter, he made an application to the RTO on 25.05.2010 under RTI Act, obtained information and thereafter, filed the writ petition. Thus, the writ petitions are not liable to be dismissed on the ground of delay and laches.

20. For all the above reasons, we find that the impugned orders challenged in the writ petitions are not sustainable and it is vitiated by procedural irregularities and therefore, they call for interference.

21. In the result, both the writ appeals are allowed and the impugned common order, dated 05.12.2014, in W.P.(MD) Nos.19749 and 19750 of 2014 are set aside and the respondents are directed to accept the appellant's application for cancellation of his surrender application, dated 03.11.1998, consider the same and pass appropriate orders restoring the state carriage permit in favour of the appellant in accordance with law. Such exercise shall be completed by the respondents within a period of four weeks from the date of receipt of a copy of this Judgment. No costs.

Sd/-

Assistant Registrar(Writs)

/True Copy/

Sub Assistant Registrar

To:

- 1.The Regional Transport Authority,
Virudhunagar.
- 2.The State Transport Appellate Tribunal,
City Civil Court Buildings,
Chennai-600 104.
- 3.The Regional Transport Officer,
Virudhunagar District,
Viruthunagar.

+1cc to THE SPECIAL GOVERNMENT PLEADER in SR. No.62194

+1cc to M/s.A.C.ASAITHAMBI Advocate in SR. No.61946

KRK/IA

JS/MR/KKR/SAR.1/4.7.2017/8P-6C

COMMON JUDGMENT

IN

W.A. (MD) Nos.203 & 204 of 2015

27.06.2017