



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.11.2016

Pronounced on : 28.03.2017

WEB COPY

CORAM:

THE HON'BLE Dr.JUSTICE S.VIMALA

WP (MD) No.1583 of 2016

and

WMP (MD) No.1351 of 2016

1. M.Muthuramalingam
2. P.Murugesan
3. R.Nagarajan
4. G.Senthil
5. N.Manoharan
6. K.Renganathan
7. M.Velumayil
8. S.M.Miyana
9. B.Balamurugan
10. M.Paranthaman
11. V.Rajendran
12. Arasu Viraivu Pokkuvarathu

ozhiyar Sangam

(Rep by its Secretary C.Kumar SETC Ltd.,)

... Petitioners

versus

1. The State of Tamil Nadu,
Rep. by its Secretary to Government
and Chairman of Transport Corporations,
Fort St. George,
Chennai - 9.
2. The State Express Transport Corporation
(Tamil Nadu) Ltd.,
Rep. by its Managing Director,
Pallavan Salai,
Chennai - 2.
3. The General Manager,
The State Express Transport Corporation
(Tamil Nadu) Ltd.,
Pallavan Salai, Chennai - 2.



4. The Branch Manager,
The State Express Transport Corporation
(Tamil Nadu) Ltd.,
Madurai Branch, Melur Road,
Madurai - 7.

5. The Inspector of Labour,
Tami Nadu Housing Board Building,
Ellis Nagar, Madurai - 16.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a writ of declaration, declaring the action of the respondents in compelling the workmen to work in Route No.137 from Madurai to Chennai and Chennai to Madurai under "1 to 1" system beyond the working hours fixed in Chapter V of the Motor Transport Workers Act, 1961 as illegal and null and void and consequently, forbear the respondents from operating buses of the Madurai Branch, the second respondent Corporation in violation of the provisions of Motor Transport Workers Act, 1961.

For Petitioners	:	Mr.A.Rahul
For R1	:	Mr.M.Murugan, Government Advocate
For R2 to R4	:	Mr.K.Sathiya Singh
For R5	:	No appearance

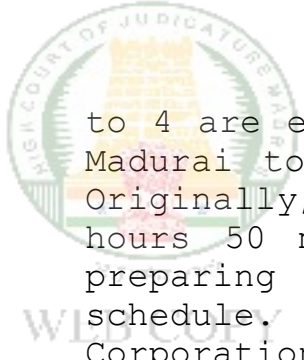
ORDER

Every accident is a notice that something is wrong with men, methods, or material - investigate - then act - Safety saying, circa early 1900s

1.1. Alleging that the method adopted by the employer would amount to an invitation to suffer accident the petitioners have sought for the relief of declaration, to declare the action of the respondents in compelling the workmen of the Madurai Branch of the second respondent Corporation to work in Route No.137 from Madurai to Chennai and Chennai to Madurai under "1 to 1" system, beyond the working hours fixed in Chapter V of the Motor Transport Workers Act 1961, as illegal and null and void and consequently, to forbear the respondents from operating buses from Madurai Branch, the second respondent, in violation of the provisions of the Motor Transport Workers Act, 1961.

2. The petitioners 1 to 11 are Drivers and Conductors of the second respondent Corporation. The 12th petitioner is the Trade Union registered under the Trade Unions Act.

2.1. It is the case of the petitioners that the respondents 2



to 4 are engaging the petitioners to work in Route No.137 between Madurai to Chennai by introducing a new System called "1 to 1". Originally, the total "running time" from Madurai to Chennai is 9 hours 50 minutes and further one hour 15 minutes is given for preparing the bus for operation and for closing the travel schedule. Totally 11 hours is fixed by the second respondent Corporation in Route No.137 to operate buses from Madurai to Chennai. After reaching Chennai, workmen concerned will be given 12 hours rest and thereafter, the workmen were permitted to operate the buses from Chennai to Madurai. This system of operation has been in force for more than three decades. While so, the Branch Manager of the Madurai Branch introduced the new system, which is popularly known as "1 to 1", under which, one driver and one conductor has to commence the operation of the bus from Madurai and after reaching Chennai, without taking sufficient rest, they have to again operate the bus back to Madurai. This change in shifting the system has been introduced without issuing notice, under Section 9-A of the Industrial Disputes Act. Furthermore, the respondents 2 to 4 are compelling the Drivers and Conductors to operate the vehicle beyond 8 hours, which has resulted in large scale road traffic accidents.

2.2. Now, it is the grievance of the petitioners is that the respondents forced them to work beyond the working hours fixed under the Motor Transport Workers Act, 1961 (hereinafter referred to as "the Act")

3. The learned counsel for the petitioners submitted that as per Section 13 of the Act, if the Employer wants to engage the worker beyond 8 hours, the Employer has to seek approval from the competent authority and in no case for more than 10 hours in a day and 54 hours in a week, a Motor Transport Worker shall be engaged in driving duty. In terms of Section 15 of the Act, a adult Motor worker shall not be engaged beyond 5 hours without being given an interval for rest at least for half an hour. Under Section 15(2) of the Act, the period of rest for at least 9 consecutive hours should be provided between the termination of duty on any one day and the commencement of the duty on the next following day. However, the respondents forced the petitioners to work beyond the working hours fixed under the Motor Transport Workers Act, 1961. Hence, the present writ petition has been filed.

4. In order to appreciate the contentions raised in the writ petition, it is necessary to consider the essential provisions relating to Motor Transport Workers Act, 1961.

Section 13 - Hours of work:

"No adult motor transport worker shall be required or allowed to work for more than eight hours in any day and forty eight hours in any week:



Provided that where any such motor transport worker is engaged in the running of any motor transport service on such long distance routes, or on such festive and other occasions as may be notified in the prescribed manner by the prescribed authority, the employer may, with the approval of such authority, require or allow such motor transport worker to work for more than eight hours in any day or forty-eight hours in any week but **in no case for more than ten hours in a day and fifty-four hours in a week, as the case may be:**

Provided further that in the case of a break-down or dislocation of a motor transport service or interruption of traffic or act of God, the employer may, subject to such conditions and limitations as may be prescribed, require or allow any such motor transport worker to work for more than eight hours in any day or more than forty-eight hours in any week.

Section 15 - Daily intervals for rest

"(1) The **Hours of work** in relation to adult motor transport workers on each day shall be so fixed that no period of work shall exceed five hours and that no such motor transport worker shall work for more than five hours before he has had an interval for rest for at least half-an-hour:

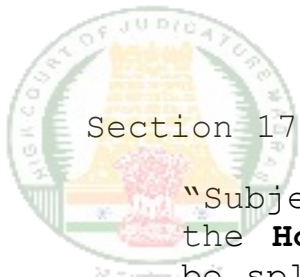
Provided that the provisions of this sub-section in so far as they relate to interval for rest shall not apply to a motor transport worker who is not required to work for more than six hours on that day.

(2) The **Hours of work** on each day shall be so fixed that a motor transport worker is, except in any case referred to in the second proviso to section 13, allowed a period of rest of at least nine consecutive hours between the termination of duty on any one day and the commencement of duty on the next following day."

Section 16 - Spread-over

"(1) The **Hours of work** of an adult motor transport worker shall, except in any case referred to in the second proviso to section 13, be so arranged that inclusive of interval for rest under section 15, they shall not spread-over more than twelve hours in any day.

(2) The **Hours of work** of an adolescent motor transport worker shall be so arranged that inclusive of interval for rest under section 14, they shall not spread-over more than nine hours in any day."



Section 17 - Split duty

"Subject to the other provisions contained in this Act, the **Hours of work** of a motor transport worker shall not be split into more than two spells on any day."

Section 18 - Notice of hours of work

"(1) There shall be displayed and correctly maintained by every employer a notice of **Hours of work** in such form and manner as may be prescribed showing clearly for every day the hours during which motor transport workers may be required to work.

(2) Subject to the other provisions contained in this Act, no such motor transport worker shall be required or allowed to work otherwise than in accordance with the notice of **Hours of work** so displayed.

[Cf. Factories Act, 1948, Section 61, Mines Act, 1952, Section 36.]

5. Coming to the facts of this case, it is apparent that, by G.O.Ms.No.647, Labour and Employment (B1) Department dated 29.04.2005, the dispute was referred to the adjudication before the Labour Court, Tirunelveli in I.D.No.64 of 2005. The Labour Court gave a finding that in respect of Express Transport Buses, in respect of route No.888, from Kanyakumari to Bangalore and Route No.283, from Kanyakumari to Vellore, compulsion made on the part of the Employer to the same driver to perform the function is illegal and therefore, the claim made by the Employee is justified and consequently, the Employer was prohibited from assigning dual employment to the Employees. Subsequently, several representations have been submitted on 28.12.2012, 26.02.2013, 19.02.2015 and 18.03.2015 to the Inspector of Labour, praying for action against the employer based on Motor Transport Workers Act. But, no action has been taken.

5.1. The reasoning given by the Labour Court are relevant for consideration in this writ petition also. The Labour Court has considered the following aspects.

(i) The institution in which the petitioners are employed is a Public Service Institution

(ii) Apart from profit, the Transport Corporation is expected to take care of safety, security and comfort of the passengers.

<https://hcservices.ecourts.gov.in/hcservices/> If there is no rest for the driver and if the same person is asked for work for 15 to 16 hrs. per day, it would only lead to accident, ultimately, touching the



safety and security.

(iv) When one driver is driving, the other driver is expected to take rest, instead, if he has to do job of the conductor, then, he cannot take rest and has a telling effect upon the quality of performance and it would have the impact upon the safety and security of the passengers.

With all these reasonings, the Labour Court held that the act of the employer is against law and against the fundamental rights of the employees.

6. The Employer has relied upon the exemption given by some of the Transport Corporations, under which, there is no necessity to employ a separate conductor. The Labour Court referred to the amendment made in Karnataka Transport Sector, where, the contingency provided is that if at all, before departure of the vehicle, all tickets have been issued, then, it is enough to engage a driver alone. It is not the case of the respondents that there is a practice of issuing all tickets before departure of the vehicle. If there is on-line booking, it is available to a limited extent.

7. The log-sheet dated 23.10.2016, in respect of route No.137, from Madurai to Chennai is enclosed in the typed set of papers, from which, the following fact is evident.

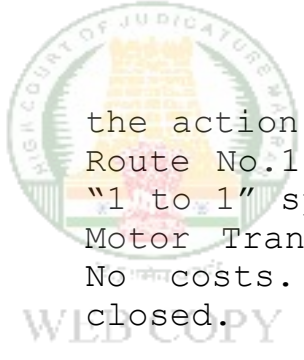
Destination	Departure	Arrival
From Madurai to Chennai	19.00 hrs.	03.15 hrs.
From Chennai to Madurai	07.05 hrs.	17.15 hrs.

As per the chart, the driver will get rest only for four hours. Therefore, the working hours is against the Motor Transport workers Act, 1961 and therefore, the communication is illegal.

8. The details as furnished by the State Express Transport Corporation with regard to the accident which occurred between 01.01.2008 and 31.08.2013, would go to show that 3269 accident had taken place, in which, the death of passengers were 406 which includes 26 drivers and 19 conductors; 1044 persons have sustained grievous injuries.

8.1. Nothing is so important as safety, for, safety to an individual means safety to the family, to the employer and to the country. Safety in its widest sense, concerns the happiness, contentment and freedom of everyone. Therefore, the liberty, safety and security of the drivers have to be secured at all cost. Thus, it is clear that the employees have rightly asked for declaration as prayed for and the relief has to be granted as

9. In the result, the Writ Petition is allowed declaring that



the action of the respondents in compelling the workmen to work in Route No.137 from Madurai to Chennai and Chennai to Madurai under "1 to 1" system beyond the working hours fixed in Chapter V of the Motor Transport Workers Act, 1961 is illegal and null and void. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

The Secretary to Government
and Chairman of Transport Corporations,
Fort St. George,
Chennai - 9.

+ 1 CC TO Mr.K.SATHIYA SINGH, ADVOCATE IN SR No. 18906
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 19403

OGY
TE/RSK/SAR-II : 07/06/2017 : 7P/4C

order made in
W.P.(MD) No.1583 of 2016
and WMP(MD) No.1351 of 2016
28.03.2017