

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.09.2018
Pronounced on : 02.11.2018

CORAM :
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.10854 of 2008
and M.P.No.2 of 2008

T.Venkatesan

.. Petitioner

vs.

1.The State of Tamilnadu,
rep.by its Secretary,
Home, Prohibition & Excise Department,
Fort St.George, Chennai-9.

2.The State Transport Authority,
Chepauk, Chennai-5.

3.The Government of Karnataka,
rep.by its Principal Secretary,
Transport Department,
Vidhan Sowdha, Bangalore,
Karnataka State.

4.The State Transport Authority,
Karnataka Street, M.S.Building,
Dr.Ambedkar Veethi, Bangalore.

.. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus calling for the records of the first respondent relating to G.O.Ms.No.16, Home, Prohibition & Excise (Transport-III) Department, dated 07.01.2008 and to quash the same and further made in G.O.Ms.No.16(Home Transport III) dated 07.01.2008 and quash the same and direct the first respondent to include the petitioner's interstate route, "Bangalore to Avalapalli Dam" in the Inter-state Agreement.

For petitioner : Mr.S.Govindaraman

For R1 & R2 : Mr.N.Inbanathan, AGP

For R3 and R4 : No Appearance

O R D E R

The above writ petition has been filed for a writ of certiorarified mandamus to quash G.O.Ms.16, Home, Prohibition and Excise (Transport III) Department dated 07.01.2008 and to direct the respondent to include the petitioner's inter-state route "Bangalore to Avalapalli Dam" in the Inter-state Agreement on 07.01.2008.

2. It is the case of the petitioner that a primary permit was earlier held by one Mr.Aswatha Reddy. With effect from 09.08.2004 and that the petitioner is the transferee of the said permit.

3. It is the case of the petitioner that he held an inter-state permit for the route Bangalore to Avalapalli Dam" issued by the 4th respondent in the year 1990-91. The primary permit has been renewed from time to time and on the date of the petition was valid up to 15.8.2010.

4. A reciprocal agreement dated 07.01.2008 was signed between the Government of Tamil Nadu and the Government of Karnataka. However, in the said agreement the petitioner's name was not included.

5. The petitioner claims to have sent representations however no reason has been assigned for non-inclusion of the petitioner's route in the said reciprocal agreement.

6. According to the petitioner without hearing the petitioner, non-inclusion of the petitioner in the agreement is contrary to well-settled principles of law.

7. The petitioner has named the concerned official of the first respondent and has stated that though objections at the draft stage of the agreements were heard by Mrs.Malathi, the agreement has been signed by Mr D. Jothi Jagarajan and since the proceedings under section 88 of the Motor Vehicles Act, 1988 are judicial in nature, Mr D. Jothi Jagarajan was incompetent to sign the agreement. In this context the petitioner has relied on the decision of the Hon'ble Supreme Court in Gullapalli Nageswara Rao and Others .Vs. Andhra Pradesh state Road Transport Corporation and Another AIR 1959 SC 308.

8. The respondent has filed a detailed counter objecting to the prayer the petition. It is stated that under section 88 (1) of the Motor Vehicles Act, 1988, a permit granted by the State Transport Authority of one State in respect of a Transport vehicle shall not be valid in any other state unless counter signed by the Transport Authority of other state.

9. Interstate Agreement are governed under Section 88 (6) of the said Act and in such cases procedures in section 80 need not be followed.

10. It is submitted that, as far as, States Carriage Services are concerned order in G.O Ms.Nos.741 to 760 dated 02.03.1995 notified on 24.05.1995 under Section 100 of the said Act, all

Revenue Districts of Tamil Nadu have been brought under the "Area Scheme of Nationalisation".

11. As per the scheme, States Carriage Services of all the Districts/area of Tamil Nadu is to be run and operated by State Transport Undertakings only to the complete exclusion of others and the existing permits of operators protected under the Tamil Nadu Motor Vehicles (Special Provisions) Act 1992 and only permits of stage operators operating on Interstate routes whose permits are governed by Interstate Agreement are protected.

12. As such any person who does not come within the approved scheme cannot operate in any notified route or any part thereof. In this connection the learned counsel for the respondent referred to the decision of the Hon'ble Supreme Court Pandiyan Roadways Corporation vs.M.A.Eagappan, 1987 SC 958

13. According to the respondent Scheme under Chapter VI of the Act, shall have an overriding effect on the enabling provisions of chapter V of the Act. In this connection, the learned counsel for the respondent also referred to the decision Rama Krishna Varma vs. State of Andhra Pradesh AIR 1992 SC 1888 and Ashwini Kumar vs. RJA, Bikanercv AIR 1999 SC 279.

14. The learned counsel for the respondent further submitted that under section 88 (5) of the Motor Vehicles Act, 1988, an opportunity of hearing was given by the Secretary to Government, Home Department. Representations were duly considered and thereafter only the agreement was finalised and published on 7.1.2008 in G O. Ms. No. 16 dated 7.1.2008.

15. It is submitted that the objective of the exercise was to cater to the needs of the increasing passenger transport between the states.

16. The Second Supplemental Interstate Transport Agreement has been notified by both the governments which includes new routes, modified routes and routes for special operation for State Transport Undertakings of both the States. Only following routes of private operators falling in the categories have been included in the Inter-State Agreement:-

i) Routes Of Private Operators of both the States already covered by previous agreements and subsequently varied outside the purview of various agreements but saved under the approved scheme; and

ii) Routes of private operators of both the States whose Intra-State routes were varied as interstate routes and not covered by previous agreements but saved under the approved scheme.

17. The primary permits of the petitioners were not previously countersigned by the authority and were not saved by

the provisions of the Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992 and therefore the Petitioner a private Stage Carry age operator in Karnataka who has not been granted permission cannot make a claim.

18. On the date of the writ petition also no application was pending before this authority. He has further stated that orders were passed only after considering the written submissions and arguments at that time according to the law.

19. Having gone through the provision of the Act and the submissions made on behalf of the petitioner and the respondent it is noticed that the entire State of Tamil Nadu is governed by Approved District Area Scheme in terms of Section 6 (4) of the Tamil Nadu Motor Vehicles) Special Provisions) Act, 1992.

20. As per the provision of the said Act, no new permit shall be granted to any person in any notified route/area. The Government of the Karnataka had recommended to the Government of Tamil Nadu to include 23 routes of private operators in the next Supplemental Inter-State Agreement. The Petitioner also has not produced any document to substantiate that he is the holder of permit under the previous agreement.

21. Learned counsel for the petitioner later drew my attention to letter dated 10.10.2013 addressed by the Principal Secretary to the Government of Karnataka to his counterpart in Tamil Nadu regarding proposed IV Supplemental Interstate Transport Agreement between the two states wherein it has been mentioned due to increase in the passenger traffic between the two state and in view of urgent need to enter into another supplemental agreement augment the services of the respective state STU's to the increasing demand and provide better transport facilities to the travelling public.

22. Learned counsel submits that the petitioner may be permitted to make representation and their representation may be considered in the proposed IV Supplemental Inter-State Agreement even though the said letter pertains to increase the number of State transport stage carriages and for deployment of buses in the unutilised routes due to the mismatch arising out of the number of buses deployed by the respective STU's.

23. According to the petitioner, even if the their route is not directly covered they can be accommodated and therefore, they should be allowed to make representation. There is no bar for making such representations. If the petitioner is entitled to be accommodated, the respondents may pass appropriate orders in accordance with law.

24. In view of the request made by the counsel for the petitioner, the present writ petition is disposed of with liberty to the petitioner to approach the first respondent to make fresh representation before the first respondent to

consider their application for inter--state route permit between Bangalore to Avalapalli Dam under the proposed IV Supplemental Inter-State Agreement if the IV Supplemental Inter-State Agreement has not yet been signed.

25. The petitioner is directed to file the representation within a period of 15 days from the date of receipt of this order on ascertaining the status.

26. First respondent shall consider the representation and pass orders in accordance with law. It is made clear that the observation made herein shall not be construed as a direction to grant permit if the petitioner is not otherwise entitled to interstate route permit as per the provisions of the respective enactments.

27. In view of the above observation, the writ petition is accordingly disposed. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kkd

To

- 1.The Secretary,
Home, Prohibition & Excise Department,
Fort St.George, Chennai-9.
- 2.The State Transport Authority,
Chepauk, Chennai-5.
- 3.The Principal Secretary
The Government of Karnataka,
Transport Department, Vidhan Sowdha, Bangalore,Karnataka State.
- 4.The State Transport Authority,
Karnataka Street, M.S.Building,
Dr.Ambedkar Veethi, Bangalore.

W.P.No.10854 of 2008
and M.P.No.2 of 2008

RJ(CO)

rrs 29/11/2018