

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.7423 of 2008
and M.P.Nos.2 of 2008 and 1 of 2009

D.Manohar

.. Petitioner

Vs.

- 1.The Government of Tamil nadu
Rep.by Secretary to Government,
Home (Transport) Department,
Fort St.George, Chennai - 600 009.
- 2.The State Transport Authority Tamil nadu,
Ezhilagam, Chepauk, Chennai 600 005.
- 3.The State of Karnataka
rep.by its Principal Secretary to Govt.
Home and Transport Dept.
Vidhan Soudha
Dr.Ambedkar Veethi,
Bangalore 560 001.
- 4.The Karnataka State Transport Authority,
IVth Floor, M.S.Building,
Vidhan Soudha,
Dr.Ambedkar Veethi,
Bangalore 560 001.

.. 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 made in G.O.Ms.No.16 (Home Transport III) dated 07.01.2008 and to quash the same and to direct the first respondent to include the petitioner's interstate route, Bangalore to Jolarpet (via) Madiwala, Chandapura, Athipalli, Border, Hosur, Krishnagiri, Bargur and Tirupattur" in the Interstate Agreement and thereafter finalize the same.

For petitioner	:	Mr.M.Palani
For R1 & R2	:	Mr.N.Inbanathan Addl.Govt.Pleader.
For R3 & R4	:	No Appearance

O R D E R

The present writ petition has been filed for a Writ of Certiorarified Mandamus to call for the records of the first respondent G.O.M.S.No. 16 (Home-Transport III) dated 07.01.2008 (hereinafter referred to as the impugned notification) and to consequently direct the first respondent to include the petitioner's route Bangalore to Jolarpet via Madivala, Chandrapura, Athilpalli, Border Hosur, Krishnagiri, Bargur and Tirupattu in the inter-state agreement.

2.Short point that arises for consideration in the present writ petition is whether the petitioner was entitled to have his name and permit included in the impugned notification in view of pendency of the Civil Appeal No.4442 of 1999 before the Hon'ble Supreme Court which had ordered status quo in favour of the petitioner?

3.In the impugned notification, names of two operators who had their appeal pending in respect of their claim for being included in the previous inter-state agreement were included. The petitioner therefore seeks parity in treatment.

4.The petitioner submits that his predecessor was granted a primary permit in the year 1969-70 by the Karnataka State Road Transport Authority on payment of single tax to ply the stage carriage between Karnataka and State of Tamil Nadu between Bangalore and Jolarpet for the above route as it was not covered by any interstate agreement at that time. These permits were under the provisions of the erstwhile Motor Vehicle Act, 1939.

5.Though none of the details are available in the affidavit, based on the documents filed by the respondent, it appears that the original primary permit was given to one Tmt.Kulsumbi alias Bibijan W/o. Late.Fakruddin Sheriff.

6.The primary permit was thereafter transferred to Thiru.H.N.Munusamy, Bangalore, the petitioner's predecessor who applied for counter signature, which was rejected. It was unsuccessfully contested before the Appellate Tribunal by the petitioner's predecessor. Under these circumstances, C.R.P. No.3605 of 1984 was filed against the order of the Appellate Tribunal. There an interim order was obtained. The permit was subsequently transferred to the petitioner during the pendency of the C.R.P No. 3605 of 1984 which forms the basis of the present writ petition.

7. Thus, the petitioner continued to operate the stage carriage like his predecessor. The said C.R.P. No.3605 of 1984 was dismissed by this court on 10.3.1998.

8. Against order dated 10.3.98, a SLP was filed and admitted and was later numbered as Civil Appeal No.4442 of 1999. The Hon'ble Supreme Court ordered status-quo at the time of admission of the SLP. The status-quo order has continued to operate.

9. By an order dated 8.3.2017, the Hon'ble Supreme Court has remanded the case back to the High Court in the light of the decision rendered in G.P.Venkata Swamy Reedy versus's State Transport Authority and Others (2016) 8 SCC 402 which has dealt with and laid down the principle on which an approved scheme has to be considered and thus has revived the said C.R.P.

10. Under these circumstances, the petitioner filed C.M.P No 6658 of 2018 in the above C.R.P No. 3605 of 1984. By an order dated 21.6.2018, interim order has been continued with the observation as the interim order has been in force since 10.3.1998.

11. Before touching on the merits of the case, certain facts and events which have a bearing on the case are hereinafter narrated.

12. The first Inter-State Agreement was signed between the two states and notified vide G.O.Ms.No.1178 Home dated 30.04.1973. Thereafter, vide G.O.Ms. No.1073 Home dated 10.06.1975 the first supplemental agreement was signed.

13. During the interregnum, a new comprehensive scheme for modification of the Approved Modified Agreement Scheme, 1999 was published vide G.O. Ms. No.136, Home (Transport-III), dated 23.02.2011.

14. The scheme applies to whole of Tamilnadu. The scheme is to the complete the exclusion of persons, other than:-

"(i) The State Transport Undertakings of other States;

(ii) The existing permits of the small operators protected under the Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992 (Tamil Nadu Act 41 of 1992);

(iii) The permits of the stage carriage operators covered by the Inter-State Agreements;

(iv) The permits of the mini bus operators to operate on the Mini bus routes to be formulated by Regional Transport Authorities under the power conferred under clause (cs) of sub-section (3) of Section 68 of the Motor Vehicles Act, 1988 (Central Act 59 of 1988) and delegated to

the Regional Transport Authorities by the State Transport Authority under Section 68 (5) of the said Act, as and when necessary without any restrictions with reference to rural/urban area and as per the guidelines issued by the Government , from time to time, so as to provide direct bus facilities to the people of villages/hamlets/habitations that have a population of 100 or more families, so as to reach the nearest Bus Stand of nearest town/city where adequate bus series are provided to various places. The routes should be viable and not more than 30% of the route lengths should overlap with any existing served route."

15.The second supplemental agreement between the states was signed and entered and notified vide G.O. Ms. No.175 Home dated 01.03.2005 for State Transport Undertakings.

16.Thus, the permit of the petitioner was neither countersigned under Section 63 of the Motor Vehicles Act, 1939 nor included in various inter-state agreements, which came to be signed.

17.As a precursor to the impugned notification, the draft notification under Section 88(5) of the Motor Vehicles Act, 1988, was published vide G.O.Ms.No. 1633, (Transport III) dated 02.11.2007.

18.Petitioner claims to have sent representation on 30.11.2007 and requested the first respondent to include the petitioner's route and permit also in the draft agreement which apparently did not evoke any response and thereby not including the petitioner's name/ permit in the inter-state agreement in the impugned notification. Hearing was conducted on 06.12.2007 by the respondents and thereafter, the impugned notification came to be issued. It is therefore, the petitioner is aggrieved. It is under these circumstances, the petitioner has filed above writ petition.

19.Under G.O.Ms.No. 1633, (Transport III) dated 02.11.2007 names of some of the private operators from Tamil Nadu and Karnataka plying their stage carriers in the respective States as interstate stage carriers were included in Annexures-I and H.

20.The Petitioner has specifically referred to two names at Serial Nos.6 and 7 in the impugned notification in Annexure H. These two name were already included in G.O Ms. No. 1178 dated 30.4.1973 in Serial Nos. 3 and 4, in Appendix II who had certain litigations pending on the date of the impugned notification.

21. These names were included in the impugned notification with a caveat "subject to the disposal of W.A. No.2381 of 2001" of this High Court and "Subject to disposal of Civil Appeal No.3606 of 2003" on the file of the Hon'ble Supreme Court respectively.

22. It is not clear as to whether the Division Bench of this Court has finally disposed the said appeal. Civil Appeal No.3606 of 2003 before the Hon'ble Supreme Court appears to have been finally disposed on 22.09.2016. However, content of the order is not available. Both the parties have also not furnished the details.

23. It is the contention of the petitioner that petitioner is also similarly placed like them and therefore the petitioner's name also should have been included as the petitioner's predecessor had filed the C.R.P No. 3605 of 1984 which was prosecuted by the petitioner and an appeal was pending before the Hon'ble Supreme Court.

24. The respondent has filed a detailed counter wherein it has been stated the stage carriage permit granted to petitioner's predecessor H.N.Munusami of Bangalore for inter-state route between Bangalore to Jolarpet was not valid and the petitioner did not have a right to operate any longer.

25. It was further submitted that the petitioner's name was not included in the interstate Agreement as the State government had already rejected the petitioner's predecessor's request for counter signature.

26. It was further submitted that petitioner's route was also not included in the 2nd Supplemental Reciprocal Agreement vide G.O. Ms. No.175, Home, dated 01.03.2005 between the two States for Inter-State Transport of Stage Carriage.

27. It was further submitted that no person can any longer operate stage carriage other than state transport undertakings and those persons whose name is mentioned in Annexure II to the Approved Modified Agreement Scheme of 1999.

28. In this connection reliance placed on the decision of the Hon'ble Supreme Court in Pandiyan Roadways Corporation Ltd versus Thiru Egappan AIR 1987 SC 458.

29. Heard, Mr.Palani, learned counsel for the petitioner and Mr.Inbanathan, learned Additional Government Pleader for the 1st and 2nd respondents.

30.The learned counsel for the petitioner relied on the following decisions of the Court:

(i)Union of India Vs. Shiv Raj and other (2014) 6 SCC 564

(ii)Gullapalli Nageswara Rao Vs. Andra Pradesh State Road Transport Corporation and another AIR 1959 SC 308

(iii)T.Govindaraja Mudaliar Vs. State of Tamil Nadu and others (1973) 1 SCC 336

(iv)Parbhani Transport Cooperation Society Vs. Regprul Transport Authority (1960) 3 SC 177

(v)B.A.Linga Reddy Vs. Karnataka State Transport Authority (2015) 4 SCC 515

(vi)Palaksha Vs. State of Tamilnadu order dated 07.06.2005 in W.P.Nos.5812 and 8216 of 1996.

31.The decision Union of India versus Shiv Raju and others (2014) 6 SCC 564 was referred to stress the point that the right to object under the provisions of the Land Acquisition Act, 1894 was akin to the fundamental rights and therefore such a right cannot be taken away. Therefore, it was submitted the petitioner was entitled to object and heard by the respondents while finalising the names for the existing operators before the issue of the impugned order.

32.The decision of the Hon'ble Supreme Court in Gallipalli Nageshwara Rao versus APS RTC AIR 1959 Supreme Court 308 was referred to state that the State Government acts as a quasi-judicial authority in the discharge of its function under Section 68-C of the 1939 Act which provision is similar to Section 99 of the 1988 Act. The court held as follows:-

"To state it differently, though the purpose is to provide an efficient, adequate, economical and coordinated group transport service in public interest, the scheme proposed may affect individual rights such as the exclusion, complete or partial, or other persons or otherwise from the business in any particular route or routes. Under Section 68-C, therefore, the State Transport Undertaking may propose a scheme affecting the proprietary rights of individual permit holders during transport business in a particular routes or routes. The said proposal threatens the proprietary rights of that individual or individuals. Under section 68-D read with rule eight and 10 made under the act, any person affected by the aforesaid proposal scheme a file objections within the prescribed time before the Secretary Of the Transport Department. Under the provisions, the State Government is enjoined to approve or modified scheme after holding an enquiry and after giving an opportunity to the objectors or their

representative or representatives of the State Transport Undertaking. Therefore, proceeding prescribed disclose the approximated to that obtaining in courts of justice."

33.The Honourable Supreme Court in T Govinda Raja Mudailiar etc versus The State of Tamil Nadu (1973) 1 SCC 336 held that "the authority who exercises individual power under Section 68-D is bound by what has been stated as a policy decision of the Government. In fact his main function is to hear such objections as may be preferred to the schemes published under Section 68-C and approve or modify the schemes so published after giving an opportunity to the objector. His function being of a quasi-judicial nature he is to bring a judicial approach to the matter and even if he happens to be a servant of the Government he is not bound in any way to carry out or endorse the policy of the Government without discharging his duties as contemplated by Section 68-D".

34.Though on facts it was held that "We are unable to hold nor has anything been shown to us except the suggestion that the schemes as published under Section 68-C were approved in to that the authority acting under Section 68-D had not discharged his duties in a proper and judicial manner. The mere fact that the schemes were approved without any modification cannot establish that the Secretary, Home, who exercised the functions of the State Government under Section 68-D had failed to carry out his functions as laid down in Section 68-D or that he had approved the schemes without any modification merely because the Government Orders contained language of mandatory nature."

35.In Parbhani Transport Cooperative Society Ltd versus RTA, Aurangabad(1960) SCR 177 was rendered in the context of Chapter IV-A of the old Act. Section 68-A (b) defined the expression "State Transport Undertaking" for the purpose of the aforesaid chapter to mean an undertaking providing road Transport service, carried on, among others, by a State Government. Section 68-B's provided that the provisions of chapter VI-A shall have effect notwithstanding anything to the contrary contained in chapter IV.

36.It was observed that under chapter IV, the government does not have any such advantage. It has to compete with other applicants, to secure permits to be able to run its business. Learned counsel submitted that Section 68-F (1) is similar Section 103 of the 1988 Act and therefore, the state cannot have monopoly.

37.The decision in B.A. Linga Reddy and Others versus KSRTC (2015) 1 SCC 515 was referred to wherein Bellary Scheme which came up for consideration. The Court observed as follows:-

"17. It is apparent from the provisions that the scheme is framed for providing efficient, adequate, economical

and properly coordinated road transport service in public interest.

Section 102 of the 1988 Act does not lay down the requirement of recording any express finding on any particular aspect; whereas the duty is to hear and consider the objections. It requires the State Government to act in public interest to cancel or modify a scheme after giving the State transport undertaking or any other affected person by the proposed modification an opportunity of hearing. The State is supposed to be acting in public interest while exercising the power under the provision. However, that does not dispense with the requirement to record reasons while dealing with objections. Modification of the scheme is a quasi-judicial function. While modifying or cancelling a scheme, the State Government is duty-bound to consider the objections and to give reasons either to accept or reject them. The rule of reason is antithesis to arbitrariness in action and is a necessary concomitant of the principles of natural justice."

38. These judgments cited by the learned counsel are not relevant as in the year 1995, the Government of Tamil Nadu has notified the entire State of Tamil Nadu as a notified area under the District Area Scheme of Nationalisation's and froze all the private operators permits that were in force till then.

39. As per the saving clause was provided in the Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992, and thereto only permits issued, granted and renewed during the period from 4.6.1976 to 30.6.1990 were valid and no new permit shall be granted to any person or any route covered by an Approved Scheme.

40. Entire route in the State of Tamil Nadu has been vested with the State Transport Undertaking in view of the Nationalisation of the routes.

41. No person can any longer operate stage carriage other than state transport undertakings and those persons whose name is mentioned in Annexure II to the approved scheme.

42. The petitioner did not have a vested right to have his name included in the agreement as petitioner's name does not feature in any of the previous inter-state agreements. The petitioner also did not have a counter signature from the State within the window period of 04.06.1976 to 30.06.1999 nor was the petitioner's name to be included in any of the agreement. The petitioner merely had the benefit of interim order of the Courts at different stages and not a counter signature.

43.The petitioner also did not make any attempt to challenge the previous notifications, perhaps because the petitioner had the benefit of the interim order of this Court in C.R.P. No 3605 of 1984 and later from the Hon'ble Supreme Court and was allowed to ply his bus for the route. Further, in view of Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992 and the Approved Modified Agreement Scheme, 1999 was published vide G.O.Ms.No.136, Home (Transport-III), dated 23.02.2011, the petitioner's submission lacks merits.

44.The petitioner had no right after passing of the Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992 (Tamil Nadu Act 41 of 1992). However, the petitioner continued to operate stage carriage like his predecessor on the strength of interim orders obtained sofar. Be that as it may, I shall now refer to merits of the case and submissions.

45.The judgments cited by the learned counsel for the petitioner may have been relevant if the petitioner's permit was either countersigned or covered by any of the previous inter-state agreement. However, it was not.

46.The petitioner will have to work out the remedy in the light of the decision of the Hon'ble Supreme Court in G.P.Venkata Swamy Reedy versus's State Transport Authority and Others (2016) 8 SCC 402 in C.R.P. No 3605 of 1984 in the light of order dated 08.03.2017 of the Hon'ble Supreme Court, if the petitioner succeeds in the C.R.P.No.3605 of 1984 .

47.In W.P.No.10854 of 2008 which came to be disposed today, liberty has been given to the petitioner therein to approach the authority for the ensuing inter-state agreement in view of the following:

"i) The Government of Tamil Nadu has notified the entire State of Tamil Nadu as a notified area under the District Area Scheme of Nationalisation's thus freezing all the private operators permits that were in force till then.

ii) As per the saving clause was provided in the Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992, and thereto only permits issued, granted and renewed during the period from 4.6.1976 to 30.6.1990 are valid and no new permit shall be granted to any person or any route covered by an Approved Scheme.

iii) The entire route in the State of Tamil Nadu has been vested with the State Transport Undertaking in view of the Nationalisation of the routes."

48.If the petitioner was entitled for counter-signature

which was denied, the petitioner will have to work out his remedy in the pending C.R.P. No.3605 of 1998.

49. Therefore, demanding his name to be considered in impugned notification at this stage lacks merit. In any event, the relief is also infructuous on the date of the writ petition. Suffice it to state that the petitioner cannot claim to be a similarly placed person as the person at Sl.Nos.6 & 7 to the impugned notification.

50. The above writ petition is disposed with the above observation. No cost. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kkd

To

1. The Secretary to Government,
Home (Transport) Department,
Fort St. George, Chennai - 600 009.
2. The State Transport Authority Tamil nadu,
Ezhilagam, Chepauk, Chennai 600 005.
3. The Principal Secretary to Government,
The State of Karnataka,
Home and Transport Dept.
Vidhan Soudha, Dr. Ambedkar Veethi,
Bangalore 560 001.
4. The Karnataka State Transport Authority,
IVth Floor, M.S. Building, Vidhan Soudha,
Dr. Ambedkar Veethi, Bangalore 560 001.

+1cc to Mr. M. Palani, Advocate, S.R.No. 76240

W.P.No. 7423 of 2008

RJ(CO)

rrs 29/11/2018