

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 20.07.2018

ORDER PRONOUNCED ON : 24.08.2018

CORAM :

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.7359 of 2009

G.Marichamy

... Petitioner

vs.

1. The Secretary,
Regional Transport Authority,
Thoothukudi.
2. The State Transport Appellate Tribunal,
Chennai - 104.
3. P.Kaliraj

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of Certiorari or appropriate directions calling for the records relating to the judgment made in MV Appl.No.87 of 2005 dated 05.11.2008 on the file of 2nd respondent and quash the same confirming the order of the 1st respondent made in R.No.50755/B2/04 dated 27.01.2005.

For Petitioner : Ms. K.Saraswathi
for M/s. C.R.Krishnamoorthy

For Respondents: Mr.N.Manikandan,
Government Pleader for R1

O R D E R

The instant writ petition is directed against the order dated 05.11.2008, passed by the State Transport Appellate Tribunal in MV Appl.No.87 of 2005 by which the order of the Secretary, Regional Transport Authority, Thoothukudi in R.No.50755/B2/04 dated 27.01.2005 was confirmed. The grievance of the petitioner reads as under:-

a) The petitioner is plying a stage carriage bearing registration No.TN 76 Y 6756 on the route Ettiyapuram to Sattur

via Kovilpatti, Kalugumalai, Kuruvikulam, Sankarankoil etc., The 3rd respondent P.Kaliraj was operating his bus route from Vilathikulam to Kadalaiyur via Kovilpatti. The timing of the petitioner's bus on the route Ettiyapuram to Sattur was fixed 10.40PM, departure at Kovilpatti has been fixed from 1970.

b) After about 26 years there was a variation of the permit granted to the 3rd respondent. Though the permit was cancelled it was restored by the Honourable High Court in proceeding which is not germane to the present case.

c) The timing of the bus of the petitioner and the respondent were clashing. The petitioner filed in W.P.No.3895 of 2004 before the Honourable Madras High Court, Madurai Bench passed an order directing the authorities to reconsider the timing.

In compliance of the order of the Honourable High Court, the Secretary/Regional Transport Authority on 27.01.2005 in proceedings R.No.50755/B2/2004 passed the following order:-

"At the timing conference, Thiru.G.Marichamy, Petitioner has requested to change the time 10.30PM, departure time at Kovilpatti bus stand to the vehicle TN 72/A 6321. This was objected by the permit holder. At last they agreed to change the time from 10.40PM to 10.27PM.

Even if, the permit holder of the vehicle TN 72/A 6321 has refused the decided time 10.27 PM, as the time not safe to the passengers, (i.e.,) running time 55 minutes).

The existing time was fixed at the time of granting variation (during 1995-96) and now, the same was only implemented by this Authority. In the meanwhile, if it is decided to change the departure time of 10.40 PM from 10.27PM at Kovilpatti bus stand, then, the bus TN 72/A 6321 is being plied in between Vilathikulam bus and Kovilpatti bus stand at the running time of 55 minutes. It brought unnecessary problems to the travelling public. Besides, the time gap between the Buses of petitioner and respondent (5minutes gap) sufficient to pick up & set down the passengers. Hence, with the interest of travelling public and safety, in exercise of the power delegated to me u/r 143(XIII) read with rule 248(1) of the Tamil Nadu Transport Authority, Thoothukudi do hereby allowed the following set of timing already granted and implemented, without any change.

VILATHIKULAM		KOVILPATTI		KDALAIYUR		
A		D	A		D	A
D						
-----		-----		-----		-----
-	-	-	-	-	-	-
-	-	-	-	-	-	-
-	9.30	10.35	-	-	-	-
11.45	-	-	10.40	-	-	-
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(Note:- Timing of the petitioner's bus is at 10.45PM) "

2. The petitioner was aggrieved of this order for the reason that, he has running his bus on 10.40PM which departs at Kovilpatti from 13.06.1970 onwards. The 3rd respondent who is newcomer for the route has been given a time of 10.35PM to the detriment of the petitioner. The order passed by the Secretary, Regional Transport Authority dated 27.01.2005 was challenged before the State Transport Appellate Tribunal by the petitioner. The Tribunal refused to interfere with the order of the Regional Transport Authority holding that the Regional Transport Office have taken in to account the interest and safety of travelling public and that the order does not require any interference. This order has sought to be challenged by the petitioner contending inter-area.

"I. The respondent 1 and 2 herein failed to note that the 1st respondent is a new comer to Kovilpatti by variation and further it failed to consider that the timing conference was convened pursuant to the variation granted in May 1996, subsequently cancelled and again restored in 2004. Meanwhile, several buses of STUs and private operators introduced and therefore confirming the timings of the departure time of 10.45 p.m. at Kovilpatti to the 3rd respondent's bus, (5 mins ahead of petitioner's bus) towards Vilathikulam is creating clash between the operators, unhealthy competition law and order problem arose between the operators and it is definitely against the interest of travelling public.

II. In as much as it was agreed at the timing conference by the 3rd respondent for departing his bus at 10.27p.m. at Kovilpatti it cannot be changed by the 1st respondent herein behind the back of the petitioner without giving any

opportunity which is opposed to the principles of Natural Justice.

III. The 1st respondent further failed to consider that before the petitioner's bus, a bus belongs to the Aravind Transport is having departure at 10.10 p.m. at Kovilpatti towards Vilathikulam. After that the only bus available is petitioner's bus at 10.45 p.m. from Kovilpatti to Vilathikulam, thus enjoying a gap of 35 minutes. This gap can be divided equally between the operators and 10.27 p.m. itself may be fixed by the Transport Authority to the 3rd respondent has in the sense of equity. Failure to do so, the order passed by the 1st respective is confirmed by the 2nd respondent.

IV. The respondent 1 and 2 herein failed to consider that due to the large common sector of from Kovilpatti to Vilathikulam between the buses of the petitioner's and the respondents. The petitioner is very much affected and aggrieved by allowing the departure of 10.45 p.m. at Kovilpatti to the 3rd respondent's bus."

3. The contention of the petitioner is that the respondent had agreed for change of his time from 10.35 p.m to 10.27 p.m. and should have been accepted. This contention was rejected by the authorities on the ground that there are many buses including State Road Transport Corporation buses are plying and fixing the time of the respondent's bus from 10.35 to 10.27 p.m. would affect the safety of the passengers. This findings cannot be interfered with. It is well known that if the difference in time between buses get reduced then the bus driver has a tendency to drive in a rash manner putting the lives of the passengers in danger. The fact that the respondent is agreed to have a time of 10.27 p.m. is not material and cannot be bind on the Regional Transport Authority.

4. The conclusion of the authorities is that, there is a time gap of 5 minutes between the timing of the buses and the petitioner and respondent which have sufficient time for picking up of passengers for both the buses. The order cannot be said to be perverse and the High Court while dealing with the petitioner u/s 227 of the Constitution of India should not substitute its own conclusion to the one arrived by the authorities below. There is no informative in

the decision making process and the decision alone cannot be set aside on the ground that another view is possible. The writ petition is therefore dismissed. There shall be no order to costs.

Sd/-
Assistant Registrar(CS IX)

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Sub Assistant Registrar

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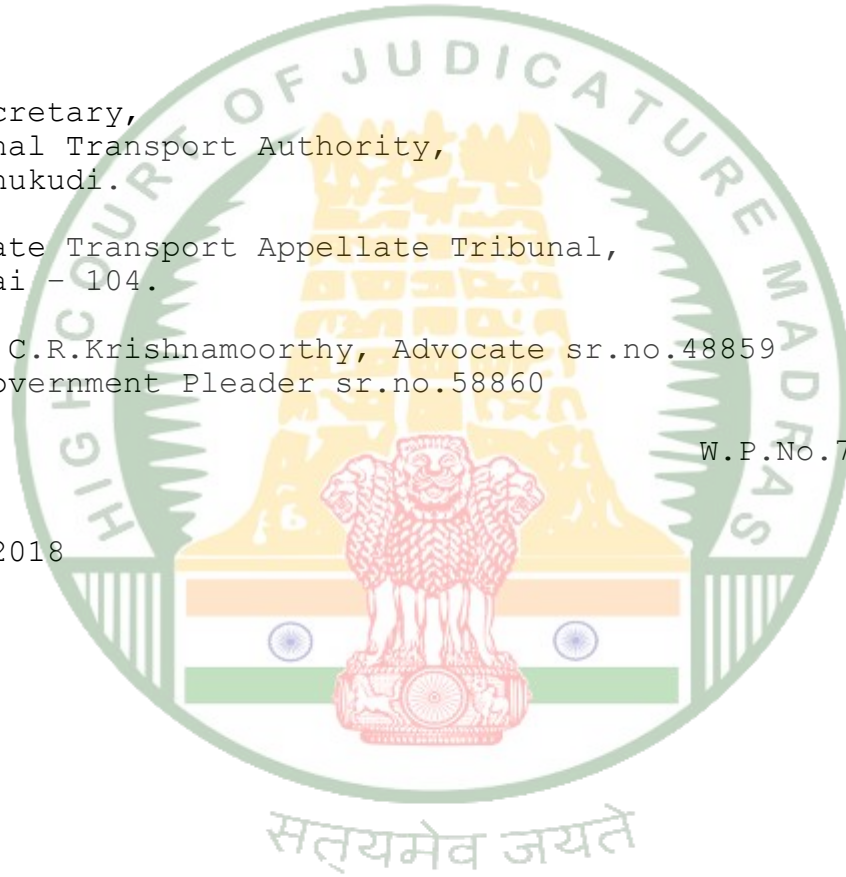
To

1. The Secretary,
Regional Transport Authority,
Thoothukudi.
2. The State Transport Appellate Tribunal,
Chennai - 104.

+1cc M/s. C.R.Krishnamoorthy, Advocate sr.no.48859
+1cc to Government Pleader sr.no.58860

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