

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.4492 of 2009  
and  
M.P.No.1 of 2009

D.Sangeetha

.. Petitioner

Vs.

1.The State Transport Appellate Tribunal,  
High Court Campus, Chennai.

2.The Regional Transport Authority,  
Tiruchirappalli District,  
Tiru chirappalli.

3.M.S.Durairaj

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records of the first respondent in M.V.R.P.No.16/2008 dated 29.01.2009 in setting aside the order of the second respondent in proceedings R. No. 78221/A4/2005 dated 02.08.2007 granting renewal of the permit of Mini Bus TN-27/N-0173 (since replaced by TN-47/E-9502) with the curtailed route "Krishnapuram Pirivu to Keelakalkandarkottai" for a further period of five years from 04.10.2005 to 03.10.2010 and remitting the matter back to the second respondent and to quash that portion of the order directing the second respondent to make joint inspection along with the third respondent, petitioner and the objectors.

For Petitioner : Ms.Radha Gopalan

For R1 : Mr.M.Sricharan Rangarajan  
(Additional Government Pleader)

For R2 : Mr.V.Prabhu  
(Government Advocate)

For R3 : Mr.M.Palani

O R D E R

One D.Sangeetha, a Mini Stage Carriage Operator, was operating on the route, Gandhi Fish Market to Keelakalkandarkottai. The total length of the route was 20

Kms. The permit was for a period of five years, from 2000 to 2005.

2. D.Sangeetha filed an application for renewal of the said permit on 29.08.2005. There were objections from the existing stage carriage operators, contending that the served sector in the route exceeds 4 Kms, which is against the scheme.

3. The Secretary, Regional Transport Authority, Tiruchirappalli, sent Memos to Tiruchy Municipality, Highways Department, Tamil Nadu State Transport Corporation Limited, Motor Vehicle Inspector Grade 1, Tiruchy, and the Secretary, Bus Owners Association, Tiruchy, for a joint survey of the route. The petitioner objected to the joint survey, on the ground that, Section 81(3) of the Motor Vehicles Act, does not provide for any such joint survey, when an application was made for renewal of the permit by filing W.P.(MD).No.11543 of 2005.

4. The writ petition was disposed of, by observing as under:-

"It is open to the respondent, if so advised, to conduct the joint survey or re-survey of the route covered by the permit for the route from Gandhi Fish Market to Keelakalkandarkottai and if they find that the unserved sector is in excess of 4 Kms, they may, while considering the petitioner's application for renewal of permit, curtail the route, so that it does not violate the provisions relating to the distance covered suo motu or on the application by the petitioner agreeing for the curtailment of the route."

5. The petitioner agreed for the curtailment in as much as it was admitted that the length of the served sector exceeds 4 Kms.

6. Inspection was conducted by the Motor Vehicle Inspector Grade-I, Tiruchirappalli, who filed the report, dated 30.05.2007 and gave the following recommendation:-

"Route: Krishnapuram Pirivu Road to Keelakalkandarkottai.

|                             |            |
|-----------------------------|------------|
| Distance of Serve Sector    | : 4.0 Km.  |
| Distance of Unserved Sector | : 9.1 Km.  |
|                             | -----      |
| Total Distance of the Route | : 13.1 Km. |
|                             | -----      |

(Curtailed portion: Gandhi Fish Market to Krishnapuram Pirivu)

7. Accepting the recommendation of the Motor Vehicle Inspector Grade-I, Tiruchirappalli, the Regional Transport Authority, Tiruchirappalli, by an order dated 02.08.2007, renewed the permit, for a further period of five years, from 04.10.2005 to 03.10.2010, on the following route:-

"Therefore, the route Gandhi Fish Market to Keelakalkottai is modified as Krishnapuram Pirivu to Keelakalkandarkottai (Via) Chennai-Thanjavur Road Junction, SIT, Veedhivadangam, Veedhivadangam Junction Road, Trichy-Tanjore Road Junction, Manjathidal, Manjathidal Railway Cross and Alathur on the existing route."

Hence the permit of Mini Bus TN-47/E 9502 with the curtailed route: Krishnapuram Pirivu to Keelakalkandarkottai is renewed for a further period of five years from 04.10.2005 to 03.10.2010 without change of existing timings."

8. Order, dated 02.08.2007, passed by the Regional Transport Authority, Tiruchirappalli, was challenged before the State Transport Appellate Tribunal, Chennai, by filing R.P.No.15 of 2009 under Section 90 of the Motor Vehicles Act, 1988, contending inter alia that,

"(i) The 2nd respondent should have seen that his Secretary has no jurisdiction to pass the impugned order and consequently the order passed in the name of Regional Transport Authority, Tiruchirappalli by his Secretary is totally illegal and without jurisdiction.

(ii) The 2nd respondent should have seen that he being only the Secretary to the Regional Transport Authority and not vested with any power to pass the impugned order, he grossly erred in allowing him to pass the same which is without jurisdiction warranting the interference of this Hon'ble Tribunal.

(iii) The 2nd respondent should have seen that the distance from Gandhi Fish Market to Veedhivadangam is 0.9 kms and this route second forms part of Corporation limit and consequently this sector has become served sector within the meaning of Modified Area Approved Scheme and therefore holding that the served sector exceeds only by 0.3 kms from Gandhi Fish Market to Krishnapuram Pirivu is totally erroneous and improper which warrants the interference of this Hon'ble Tribunal.

(iv) The respondent should have seen that in the earlier litigation the served sector dispute is from Gandhi Market to Gandhi Fish Market which is a distance of 7.4 kms and within which, the served sector Gandhi Fish Market to Veedhivadangam embraces and the distance from Gandhi Market to Gandhi Fish Market is 0.5 kms and by subtracting this 0.5 kms from the total of the distance 7.4 kms, the rest of the 6.9 kms from Gandhi Fish Market to Veedhivadangam being the served sector in terms of the earlier judgment of this Hon'ble Tribunal,

the 2nd respondent grossly erred in holding that the served sector exceeds only by 0.3 kms which is totally unsound, untenable and contrary to the judgments of this Hon'ble Tribunal.

(v) The respondent should have seen that the Corporation that the instance case is from Gandhi Fish Market to Veedhivadangam which is distance 6.9 kms and the Gandhi Fish Market to Veedhivadangam forms part of the earlier sector which is subject matter in the above said Revision Petition namely from Gandhi Market to Veedhivadangam and therefore the 2nd respondent erred in holding the served sector is only 0.3 kms which is contrary to ground reality and runs counter to the earlier judgment of this Hon'ble Tribunal which got confirmed by the Hon'ble High Court and as well Hon'ble Supreme Court as referred to above and consequently the order of the 2nd respondent herein granting renewal in favour of the 1st respondent from Krishnapuram Pirivu to Keelakalkanda Kottai is totally unsound and untenable holding that the served sector exceeds only 0.3 kms and thereby curtailing the same and granting renewal for the route is totally illegal and in violation of the Modified Area Approved Scheme.

(vi) The 2nd respondent should have seen that apart from the served sector and other actual served sector of the route wherein the stage carriages are plying which sector is from Pappakurichy Pirivu to Ellakudi Pirivu which is a distance of 0.05 kms and Manja Thidal Palam which is also distance of 0.05 kms and putting all these together with the served sector from Gandhi Fish Market to Veedhivadangam the served sector route comes around 7 kms which is more than the limit prescribed under the Modified Area Approved Scheme for operation of Mini Buses, the 2nd respondent grossly erred in holding that the served sector of the route exceeds only by 0.3 kms which is totally unsound and untenable warranting the interference of this Hon'ble Tribunal."

9. The State Transport Appellate Tribunal, Chennai, by its order dated 29.01.2009, found that the Regional Transport Authority has not affixed his signature in the proceedings, but somebody else has signed as "For Regional Transport Authority". It was also found that the Regional Transport Authority, Tiruchirappalli, has not passed any orders, in the note file put up before him, but he affixed his signature only. Tribunal set aside the order. The State Transport Appellate Tribunal, Chennai, allowed the revision petition and remitted the matter back to the Regional Transport Authority, for fresh consideration, with a direction of having a joint inspection along with the petitioner herein, third respondent, and objectors, for passing a fresh order, in accordance with the scheme.

10. The order dated 29.01.2009, passed by the State Transport Appellate Tribunal, Chennai, is challenged, in the instant writ petition.

11. The learned counsel for the petitioner contends that the entire order of the Regional Transport Authority, need not have been set aside inasmuch as, it only suffered technical defects. Further, according to the learned counsel, the Tribunal ought not to have directed a fresh joint inspection by the Authority, along with the third respondent herein, petitioner and the objectors. It was submitted that on the available material, fresh order need to have been passed. It was submitted that since there was no material in front of the Tribunal regarding other objections raised by the revision petitioner, they need not to have been considered at all and therefore the portion of the order directing joint inspection is not sustainable.

12. The learned counsel for the third respondent, would support the impugned order by stating that, what the Tribunal has directed that the Authority must reconsider the case, in accordance with law and within the four corners of the scheme framed for grant of permit. He therefore, would submit that the order does not require any interference.

13. The learned counsel for the Government, would support the petitioner to extend that the Tribunal could not have directed the Regional Transport Authority, Tiruchirappalli, to decide the application, in a particular manner.

14. The order of the Regional Transport Authority, has been set aside. The Regional Transport Authority, has been directed to reconsider the matter. The Authority, therefore, has to apply its mind afresh and has to take all relevant materials into account. Objections have been raised by the third respondent in the appeal before the Tribunal giving out facts and figures regarding served sector in the route. It is therefore incumbent on the part of Regional Transport Authority to take into account all materials, including the objection raised by the third respondent before renewing the permit and fixing the route.

15. In the light of the above submissions made by the parties, the Regional Transport Authority, Tiruchirappalli, is directed to decide the issue, within a period of eight weeks from today, by taking into account, all relevant materials, including the objections of the third respondent herein. The petitioner is operating on this route under stay orders passed by this Court. The period of stay is extended till, the Regional Transport Authority takes a final decision in this issue.

16. The writ petition is disposed of with the above mentioned terms. There is no order as to cost. Consequently, the connected miscellaneous petition is closed.

dm

Sd/-  
Assistant Registrar(cs-IX)

//True Copy//

Sub Assistant Registrar

To

1.The State Transport Appellate Tribunal,  
High Court Campus, Chennai.

2.The Regional Transport Authority,  
Tiruchirappalli District,  
Tiru chirappalli.

+1CC TO GOVERNMENT PLEADER SR.NO. 45391

+1CC TO GOVERNMENT PLEADER SR.NO. 45262

+1CC TO GOVERNMENT PLEADER SR.NO. 46174.

W.P.No.4492 of 2009  
and  
M.P.No.1 of 2009

RJ(CO)  
ASK(30/07/2018).

सत्यमेव जयते

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