

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.11.2017
Delivered on : 31.01.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.2483 of 2013
M.P.Nos.1 of 2013 and 1 of 2014

1.The Principal Secretary to Government,
Home Department, Fort St.George,
Secretariat, Chennai - 600 009.

2.The Regional Transport Authority,
Vellore District, Vellore. ...Appellants/Respondent

Vs

K.Santhakumari ...Respondent/Petitioner

Prayer:- Writ Appeal filed under clause 15 of the Letter Patent against the order dated 19.10.2012 made in M.P.No.2 of 2012 in W.P.No.1665 of 2012.

Prayer in M.P. 2 of 2012 in W.P.No.1665 of 2012:

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to issue direction to the 2nd Respondent to permit the Petitioner to operate her mini bus bearing Regn. No TNJ 9857 to pass on the route Arcot to Melakuppam to continue the operation on the aforesaid route pending disposal of the above Writ Petition No. 1665/2012.

For Appellants : Mrs.A.SriJayanthi

For Respondent : Mr.M.Palani

J U D G M E N T

K.K.SASIDHARAN, J.

Whether the State is entitled to file an intra court appeal either directly or through the Regional Transport Authority, challenging the order passed by the writ court, in which, the State is a party, is the core question that arises for consideration in this appeal filed by the Principal Secretary to Government, Home (Transport III) Department and the Regional

Transport Authority, Vellore.

The Facts in Brief

2. The respondent was holding a temporary Mini Bus permit to operate between Arcot and Melakuppam, which was renewed from time to time.

3. The Government of Tamil Nadu has approved an Area Scheme in respect of each of the districts. The Scheme was challenged by the respondent and the other temporary permit holders, as they apprehended that their permits would not be renewed. The writ petitions were dismissed by the learned single Judge of the High Court. In the related appeal, the Division Bench granted liberty to the respondent and other temporary permit holders to submit a representation to the Government.

4. The representation submitted by the respondent to the Government was rejected by order dated 15 September 2011. The said order was challenged in W.P.No.1665 of 2012.

5. The learned single Judge by order dated 19 October 2012 in M.P.No.2 of 2012 in W.P.No.1665 of 2012 issued an interim direction to the appellants to permit the respondent to operate the route, pending disposal of the writ petition. The said order is challenged by the Government and the Regional Transport Authority, Vellore, who were shown as respondents in the interlocutory application and in the writ petition.

Submissions

6. The learned Special Government Pleader submitted that the learned single Judge was not correct in granting the interim direction, notwithstanding the Scheme notified by the Government, even before taking the writ petition for disposal on merits.

7. The learned counsel for the respondent raised a preliminary objection with regard to the maintainability of the appeal. According to the learned counsel, the appeal at the instance of the statutory authority is not maintainable. The learned counsel cited the decision of the Writ Court in Regional Transport Authority, Namakkal Region v. State Transport Appellate Tribunal, Madras [AIR 1995 MAD 226], the unreported Judgment of a Division Bench in W.A.No.2104 of 2012 and a subsequent judgment in W.A.No.1814 of 2013 following the earlier decision.

Maintainability of Appeal

8. In Regional Transport Authority v. State Transport Appellate Tribunal, Madras [AIR 1995 MAD 226], the Regional Transport Authority, Namakkal rejected the applications submitted by the applicants for State Carriage Permit. The

orders were challenged by the applicants before the State Transport Appellate Tribunal. The appeals were allowed. The orders were challenged by the Regional Transport Officer before the High Court in W.P.Nos.6414 to 6416 of 1994. The learned Judge, who dismissed the writ petition held that only an aggrieved party can file appeal. Since the Regional Transport Officer has not sustained any injury to any of his legally protected right, it was held that he cannot maintain a writ petition before the High Court.

9. The appeal filed by Regional Transport Authority, Gobichettipalayam, was rejected by the Division Bench of this Court in W.A.No.2104 of 2012 (order dated 10.12.2012) in Regional Transport Authority v. M/s.Lakshmi Saraswathi Transports, by following the decision of the learned single Judge in Regional Transport Authority case (AIR 1995 MAD 226] . There was no independent consideration of the issue by the Division Bench.

10. When a similar appeal came up for consideration before a Division Bench in W.A.No.1814 of 2013, the learned counsel for the respondent herein cited the judgment in W.A.No.2104 of 2012 dated 10 December 2012 and submitted that the appeal filed by the Regional Transport Authority is not maintainable, in view of the earlier judgment in W.A.No.2104 of 2012. The Division Bench followed the judgment and dismissed the appeal as not maintainable.

11. The earlier proceedings were all at the instance of the Regional Transport Authority. The initial challenge was to the order passed by the Regional Transport Officer. The quasi judicial authority, aggrieved by the order passed by the statutory Tribunal filed the writ petition. The State was not a party in any of those proceedings. Since the quasi judicial authority alone initiated the writ proceedings, the learned single Judge dismissed the writ petition on the ground of maintainability. Even in the two other writ appeals in W.A.No.2104 of 2012 and W.A.No.1814 of 2013, the Regional Transport Authority, Gobi and the Secretary, Regional Transport Authority alone were parties. The State was not a party. Since the facts were identical as found in AIR 1995 Mad 226, the Division Bench dismissed the appeal.

12. In the subject case, the order was passed by the Principal Secretary to the Government, pursuant to a direction issued by the High Court at the instance of the respondent.

13. The respondent made the Government as the first respondent in her writ petition in W.P.No.1665 of 2012. Since the authority to review the permit is the Regional Transport Authority, Vellore, the said authority was impleaded as second

respondent.

14. The learned single Judge directed the Regional Transport Authority, Vellore, to permit the respondent to operate the Mini Bus pending the writ petition. The order was challenged by the State along with the Regional Transport Authority. The State is aggrieved on account of the interim direction given by the Writ Court permitting to operate the Mini Bus notwithstanding the Area Scheme approved and published by the Government in the Gazette No.268 dated 24 May 1995. The Scheme Area would cover the entire Vellore District. The respondent therefore has no legal right to operate a Mini Bus in violation of the Area Scheme. The learned single Judge without reference to the notified Area Scheme issued an interim direction. Naturally, the State is aggrieved and competent to file an appeal challenging such decision.

15. The respondent is trying to avoid a judicial review of the order passed by the learned single Judge by taking up a contention regarding maintainability. In case, there is no challenge, the order contrary to the statute or in violation of the approved scheme would operate and it would operate as a precedent.

16. In *Mohtesham Mohd. Ismail v. Special Director, Enforcement Directorate* and another [(2007) 8 SCC 254], the Special Director without producing authorisation from the Central Government filed a writ petition before the High Court challenging the order passed by the Foreign Exchange Regulation Appellate Board. The Board set aside the order passed by the Special Director which was challenged in the writ petition. The High Court entertained the writ petition notwithstanding the objection raised by the respondent in the writ petition with regard to maintainability. When a challenge was made to the order, the Hon'ble Supreme Court held that the appeal was not maintainable, as it was not filed on behalf of the Central Government. The Supreme Court found that the adjudicating authority without the authorisation of the Central Government filed the writ petition.

17. The judgment in *Mohtesham Mohd. Ismail* (cited supra) is an authority for the proposition that the adjudicating authority cannot file an appeal independently. The judgment also gives a clear indication that in case the writ petition or appeal is filed as authorised by the Central Government, such proceedings are maintainable.

18. We therefore hold that the proceedings at the instance of the Regional Transporting authority is maintainable, in case such proceedings are filed pursuant to the authorisation or on behalf of the State Government.

19. The Bus Operators have been avoiding the judicial review by taking a technical contention regarding maintainability. The State is the aggrieved in all such cases of grant of permits by the Tribunal or Courts. Therefore, the State should be made a party in all such proceedings, whether it be at the instance of Private Operators or by the Regional Transport Officer. The appeal before the Tribunal and the writ petition before the High Court are not maintainable without impleading the State as a party to such proceedings.

20. The present appeal is filed by the State. The State is aggrieved by the grant of permit by the Court, in respect of a route covered by the Scheme. The writ petition is therefore maintainable.

Legality of Interim Order

21. The learned single Judge notwithstanding the Scheme notified by the Government issued an interim direction to permit the respondent to ply the mini bus. The interim direction would amount to a final order given the nature of relief claimed in the writ petition. We are therefore of the view that the State is entitled to succeed.

22. The order dated 19 October 2012 is set aside. The miscellaneous petition in M.P.No.2 of 2012 is dismissed.

23. In the upshot, we allow the intra court appeal. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

svki

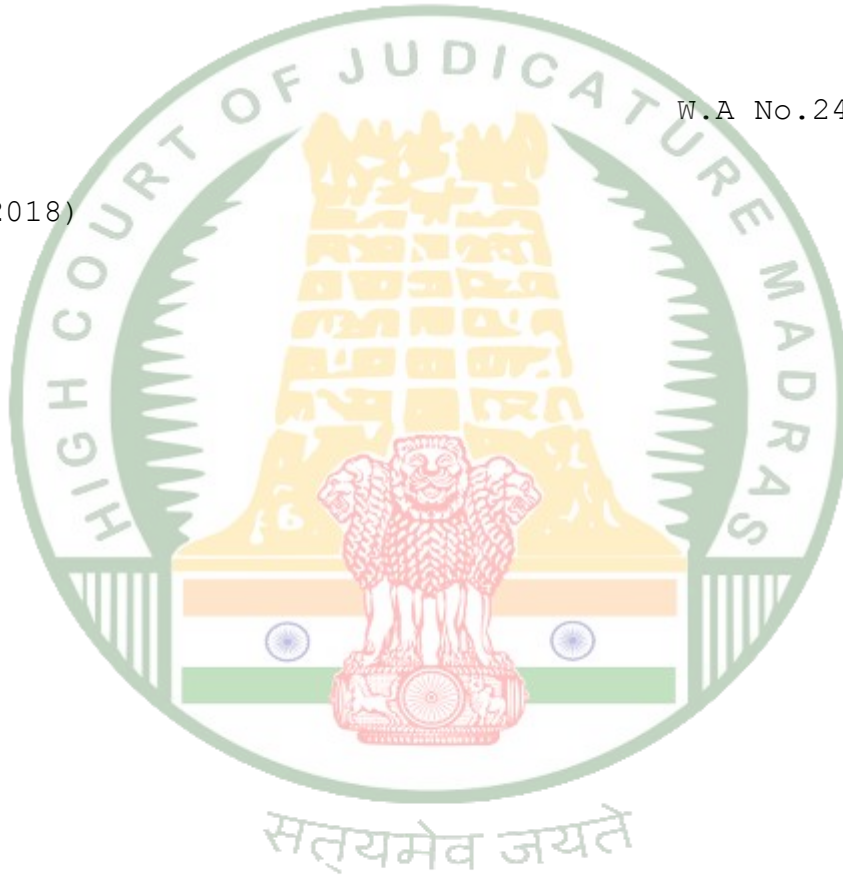
To

1. The Principal Secretary to Government
Home Department, Fort. St. George
Chennai 9.
2. The Regional Transport Authority
Vellore District, Vellore.

3. The Registrar(Judicial)
High Court, Madras.
 4. The Presiding officer
State Transport Appellate Tribunal, Chennai.
 5. The Sub Assistant Registrar
Writ A.E., High Court, Madras.
- +1 CC to Mr.M. Palani, Advocate sr 7013.

W.A No.2483 of 2013

MR(CO)
SP(21/02/2018)



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