

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.04.2018
Pronounced on: 28.04.2018

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.Nos.3266 of 2012 and 40 of 2010
and M.P.Nos.1 & 2 of 2010

W.P.Nos.3266 of 2012

V.Soundararajan,
S/o.Vaithiyanathan. .. Petitioner

Versus

1.The Assistant Registering Authority,
Unit Office, Neyveli,
Office of the Motor Vehicles Inspector,
Neyveli-607 803.

2.V.Ramesh,
Managing Partner,
M/s.R.V.Vaithianathan & Company. ...
Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus directing the first respondent herein to forthwith take back the application of the petitioner for making necessary hire purchase endorsement in the Registration Certificate of the vehicle TN-31/L-2323 (stage carriage) which was returned by the first respondent vide his proceedings in A.Thi.Mu.No.N1/28239/2011 dated 28.12.2011 and make the necessary hire purchase endorsement.

W.P.Nos.40 of 2010

V.Soundararajan,
1st Partner
M/s.R.V.Vaithianathan & Co. .. Petitioner

Versus

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

2.The Secretary-cum-Regional

Transport Officer,
Cuddalore.

3.V.Ramesh,
Managing Partner,
M/s.R.V.Vaithianathan & Company.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari calling for the records of the 1st respondent in R.P.No.21 of 2008 and to quash the order dated 16.12.2009.

For Petitioner : Mr.V.T.Gopalan, Senior Counsel
(in both WPs.) for M/s.S.RadhaGopalan

For Respondents: Mr.J.Pothiraj
Special Government Pleader
For R1 in W.P.No.3266/2012.
For R2 in W.P.No.40 of 2010.

Mr.Krishnappan
Senior Counsel for
Mr.L.Chandrakumar
For R2 in W.P.No.3266 of 2012.
For R3 in W.P.No.40 of 2010.

ORDER

Both the writ petitions are filed by the same writ petitioner and the issues pertaining to the petitions are inter-related and therefore, they are taken up together for common disposal.

2.The facts as stated in W.P.No.40 of 2010 are narrated hereunder:

The petitioner's father one Mr.R.V.Vaithianathan was a permit holder of six motor vehicles including stage carriage TN-31Q-4545 had died on 07.05.2002. The said Vaithianathan left behind four sons, which includes the petitioner as well as the 3rd respondent herein. After the death of the father, the sons have entered into a partnership deed executed on 26.07.2002 and registered on 31.07.2002 and in terms of partnership deed, they have allocated their transport business in the following manner:

Sl .N o	Partners Name	Vehicle No.	Classes of Vehicle	Nature of permit covered by vehicle and route
1	V.Soundararajan	TN-31Q-4545	Passenger Service	Thozudur to Cuddalore(via), Tittgudi, VDM.

Sl .N o	Partners Name	Vehicle No.	Classes of Vehicle	Nature of permit covered by vehicle and route
2	V.Rajendran	TN-31T- 9797	Passenger Service	Srimushnam to Cuddalore (via) Vridhachalam, Neyveli, Neyveli Township, Kurinchipadi and Kullanchavadi
3	V.Dhakshnamoort hy	TN-31V- 0129	Heavy Goods	Goods Carriage Permit
		TN-31S- 3339	Heavy Goods	Goods Carriage Permit
		TN-31V- 8103	LMV Tractor Mahendra 575-D1	Goods Carriage permit
4	V.Ramesh	TN-31M- 9595	Passenger Service	Vridhachalam to Pan (Via) Neyveli, Kurinchi Sedappalayam, Cuddalore, Vengatampettai, Naduv pattu, Palur with independent singles between VDM to Cuddalore (Via) Neyveli, Kurinchipadi & Kulanchavadi.
		TN-31M- 0001	LMV Car Hindustan (Ambassador)	Tourist taxi permit.

3.The petitioner herein was permitted to hold a permit in the route between Thozudur to Cuddalore (via) Tittgudi, VDM.

Likewise the other partners namely petitioner's siblings have also been individually given various route permits. While giving such permits, the partners have been individually described as M/s.R.V.Vaithianathan & Company represented by the first partner, second partner, Managing Partner as the case may be, since the partners have decided to commonly enjoy the goodwill promoted by their father Mr.R.V.Vaithianathan. On the basis of the arrangement, the petitioner had been operating the route as assigned to him by the second respondent without the any interference of the partners in each of their businesses.

4.It appears that the petitioner had applied for certain changes in the entries of transfer of permit and in response to the request of the petitioner, the second respondent had passed an order on 15.10.2007 changing the entries in respect of the petitioner by describing him as Proprietor of M/s.R.V.Vaithianathan & Company and not as first partner, as he was originally described. Since, M/s.R.V.Vaithianathan & Company had been commonly shared by all the four partners with individual transport business allocated to each one of them, the third respondent aggrieved by the description made by the second respondent, challenged the entries before the first respondent Tribunal in Revision Petition No.21 of 2008.

5.The second respondent vide its order dated 16.12.2009 allowed the revision petition filed by the third respondent herein by a detailed order. While allowing the revision petition, the impugned order of the second respondent dated 15.10.2007 came to be set aside. The order dated 16.12.2009 in R.P.No.21 of 2008, passed by the first respondent Tribunal is challenged in the present Writ Petition by the petitioner herein.

6.Upon notice Mr.J.Pothiraj, learned Special Government Pleader has entered appearance for the second respondent. Shri.V.T.Gopalan, learned Senior counsel for the petitioner would submit that the description of one of the partners as proprietor will no way affect the rights of the other partners in respect of their transport business and since the petitioner owns the stage carriage as per the permission issued to him and operating the transport business in the route assigned to him, he has been correctly described as Proprietor of M/s.R.V.Vaithianathan & Company.

7.According to the learned Senior Counsel appearing for the petitioner, though a permit, if it belongs to a partnership firm it cannot stand in the name of any one of the partners and therefore, the description of the second respondent and the entry made as such cannot be faulted with and therefore the order passed by the first respondent-Tribunal is liable to be quashed.

8.Per contra, the learned counsel appearing for the third respondent would draw the attention of this Court to the letter written by the petitioner himself to the second respondent dated 14.06.2007, in which he had requested the authority to scrutinize the papers and describe him as first partner of M/s.R.V.Vaithianathan & Company. However, it appeared that the second respondent had passed the proceedings on 15.10.2007 and the petitioner came to be described as Proprietor of M/s.R.V.Vaithianathan & Company. The mistake which was crept in the proceedings by the second respondent cannot give rise to any right of proprietorship to the petitioner. Infact, the second respondent-Transport Department had submitted that a lower official in the Department has made the correction without the knowledge of the second respondent himself and the petitioner cannot take advantage of such erroneous or mischievous act by a subordinate official attached to the second respondent office.

9.He would further draw the attention to the scope of the detailed order passed by the first respondent Tribunal, wherein all the contentions raised by the petitioner herein had been discountenanced and rejected.

10.The counsel for the third respondent contended that when the petitioner himself has only requested for change in the records for describing him only as first partner in M/s.R.V.Vaithianathan & Company, it is not known as to how he is aggrieved by the order passed by the first respondent and seeks to set aside the proceedings dated 15.10.2007. The attempt of the petitioner in taking undue advantage of the mistake which was brought out in the records either deliberately or erroneously, ought not to be entertained by this Court.

11.The learned counsel for the second respondent would draw the attention of this Court to a paragraph in the counter affidavit of the second respondent, which reads as under:

"....It is submitted that, after lapse of 5 years, Thiru.V.Soundarajan the representative of M/s.R.V.Vaithianathan & Co., as 1st partner applied for certain changes to be made in the endorsement of permit stating that corrections made in the endorsement was not authenticated and requested to made endorsement as per the orders of the Regional Transport Authority issued in the proceedings in R.No.41385/A1/2002, dated 18.09.02 such as Thiru.V.Soundarajan, 1st partner M/s.R.V.Vaithianathan & Co., Vridhachalam. His request was considered and proceedings was issued in R.No.A1/32836/07 Dated 15-10-07. But at the time of issue of proceedings without the knowledge of the Secretary/Regional Transport Authority, the then PA

to RTO scored out the word Kjš g\$Fjhu® (1st Partner) and suffixed the word proprietor before Tvl.R.V.Vaithianathan & Co., Vridhachalam."

12. According to the learned Special Government Pleader, a P.A. to the Regional Transport Officer had made the correction without the knowledge of the authority and therefore, the first respondent rightly set aside the order of the second respondent as being illegal and unsustainable. In any event, the writ petition is not maintainable, since admittedly, the petitioner himself had only applied for entries in the records describing only as a first partner to the M/s.R.V.Vaithianathan & Company and not as a Proprietor and it was not open to the petitioner to take advantage of the mischief committed by a staff of the second respondent office.

13. This Court has considered the rival submissions of the counsels appearing for the parties. As rightly contended by the learned counsel for the third respondent, the petitioner himself has only applied for him to be described as first partner of M/s.R.V.Vaithianathan & Company, when he made his request on 14.06.2007. However, it appears that when an order came to be issued on 15.10.2007, the officer has scored out the word 'first partner' and replaced it to as 'Proprietor'. The third respondent was aggrieved by such description, since the understanding among the partners was that each one has to be described as a partner of M/s.R.V.Vaithianathan & Company in order to enjoy mainly the goodwill promoted by their father. Therefore, it is not open to any one of the partners to describe himself as a Proprietor of the company.

14. This Court also finds that strangely by taking advantage of the mistake crept-in in the impugned proceedings, several arguments were advanced on behalf of the petitioner herein, who was the second respondent in the proceedings before the first respondent-Tribunal. The first respondent-Tribunal rightly rejected the arguments and allowed the revision petition in favor of the third respondent herein. The first respondent-Tribunal has considered several judgment and finally held in favor of the revision petitioner, the third respondent herein and set aside the proceedings of the second respondent dated 15.10.2007. The detailed conclusion of the first respondent are extracted hereunder:

" 24. From the above said averments and also other averments made in the partnership deed reveals that the above said deed is only partnership deed and not partition deed as contended by the learned counsel for the 2nd respondent and therefore, without notice and consent of other partners, impugned order passed by the Secretary, Regional Transport Authority, subsequently, on 15.10.2007 is not valid in law as rightly contended by

learned counsel for petitioner.

25. Admittedly, in the year 2002 itself, 2nd respondent and other partners applied for transfer of permits, after the death of permit holder and obtained no objection certificate from other partners and produced along with transfer applications, in which it is clearly stated that no objection to transfer of permit in a partnership capacity representing firm in the name and style of M/s.R.V.Vaithianathan & Co., represented by partner and granted transfer permits accordingly. Therefore, the contention of the 2nd respondent that he applied for transfer of permit in the individual capacity and the Regional Transport Authority wrongly passed order on 18.9.2002 is not correct.

26. On the side of the 2nd respondent, further contended that at the time of renewals photos of the 2nd respondent have been affixed and it shows that the permit was granted only in the individual capacity and not in the capacity of partnership firm.

27. On the side of the revision petitioner has contended that in the year 2004 onwards, the Regional Transport Authority has insisted to affix the photos and hence, the above said photos available in the registration certificate book cannot be presumed that the permit was granted in the individual capacity to the 2nd respondent. On the above said document itself, it is stated only as

"M/s.R.V.VAITHIANATHAN & CO.,
PARTNER."

Therefore, the above said contention of 2nd respondent cannot be accepted.

28. On careful perusal of the entire file reveals that upto passing of impugned order on 15.10.2007, in all the documents, it is stated as M/s.R.V.Vaithianathan & Co., represented by partners as transfer of permit granted on 18.9.2002 and therefore, change of name in the impugned order as, Thiru.V.Soundararajan, S/o.(late) R.V.Vaithianathan, Proprietor, Tvl.R.V.Vaithianathan & Co., 27/10, Hospital Road, Vridhachalam, is not valid in law as rightly contended by the learned counsel for the revision petitioner.

29. Further, the Departmental Representative appearing for the 1st respondent himself admitted that the corrections made in the impugned order is not done by the Secretary, Regional Transport Authority, but by one Thiru R.Mohanasundaram, formerly Personal Assistant and disciplinary proceedings also initiated against him and in which it is held that the above said Thiru Mohanasundaram alone has made the above said corrections in the impugned order and therefore the corrections made in the impugned order is not passed by the Regional

Transport Authority or Secretary, Regional Transport Authority and on that ground also, the impugned order is not valid in law.

30.From the above said discussions and from both sides arguments and on perusal of entire records reveals that the impugned order dated 15.10.2007 is not valid in law and is to be set aside and this point is answered accordingly.

31.Point No.(ii): In view of the findings for point No.(i), the revision petition is to be allowed and the order of the 1st respondent is to be set aside and this point is answered accordingly.

In the result, the revision petition is allowed and the impugned order made in R.No.A1/32836/2007, dated 15.10.2007 is set aside."

15.From the above conclusion, it can be seen that the first respondent-Tribunal has considered the partnership in the right perspective and held it in favour of the revision petitioner. The fact that a staff of the second respondent office had made corrections in the description had also been taken note by the Tribunal while allowing the revision petition. Infact, the Tribunal had given elaborate reasons as an answer owing to which all the contentions raised on behalf of the petitioner herein and finally concluded against the petitioner and in favour of the third respondent herein.

16.This Court does not find any infirmity in the order and therefore, the order passed by the Tribunal which led to the filing of the present writ petition has to be upheld.

17.While holding so, this Court is unable to appreciate the conduct of the writ petitioner in challenging the order passed by the first respondent-Tribunal. When the fact of the matter was that the petitioner himself had applied for change of entries in the records by his representation dated 14.06.2007 and requested for description of his name only as first petitioner of M/s.R.V.Vaithianathan & Company. That being the case, the writ petitioner cannot take advantage of the error crept in, in the order passed by the second respondent dated 15.10.2007 and seek to agitate the issue before the first respondent-Tribunal and before this Court. By his conduct, the petitioner was only attempting to overreach his position from the position of one of the partners of M/s.R.V.Vaithianathan & Company to the position of sole proprietor of the company.

18.In the said circumstances, this Court does not find any reasons to interfere with the order passed by the first

respondent-Tribunal and at the same time unable to appreciate the undesirable conduct of the petitioner chosen to challenge the order passed by the first respondent-Tribunal before this Court. Accordingly, the W.P.No.40 of 2010 is dismissed as being devoid of any substance and merits.

19.As far as the other writ petition is concerned viz., W.P.No.3266 of 2012, the prayer is only for a direction to the first respondent to enquire into the applications submitted by the petitioner for making necessary hire purchase endorsement in the Registration Certificate in respect of his vehicle No.TN 31/L-2323 (stage carriage). Since, the application was returned by the authority in view of the objections raised by the third respondent herein.

20. According to the petitioner that the original vehicle had been replaced by the petitioner and he entered into a hire purchase agreement with one M.Shantilal Lalwani and therefore requested the first respondent-Registering Authority for making necessary hire purchase endorsement in the Registration Certificate. Though, the endorsement was made in the RC book, his application has been returned since an objection was raised by the second respondent.

21. In view of the dismissal of the Writ Petition No.40 of 2010, it is made clear that the petitioner shall be described only as a first partner of M/s.R.V.Vaithianathan & Company in respect of permit issued to him and with such description, it is open to the second respondent to scrutinize the application submitted by the petitioner for making necessary hire purchase endorsement. The second respondent is therefore directed to take back the application submitted by the petitioner for making endorsement and to conduct an enquiry and dispose of the application on merits and in accordance with law.

22. While disposing of the above writ petitions, it is made clear that each one of the partners shall operate their own permit routes without interfering with each others business in compliance with the permit as so assigned to all the partners by the second respondent authority. No Costs. Consequently, connected Miscellaneous Petitions are also closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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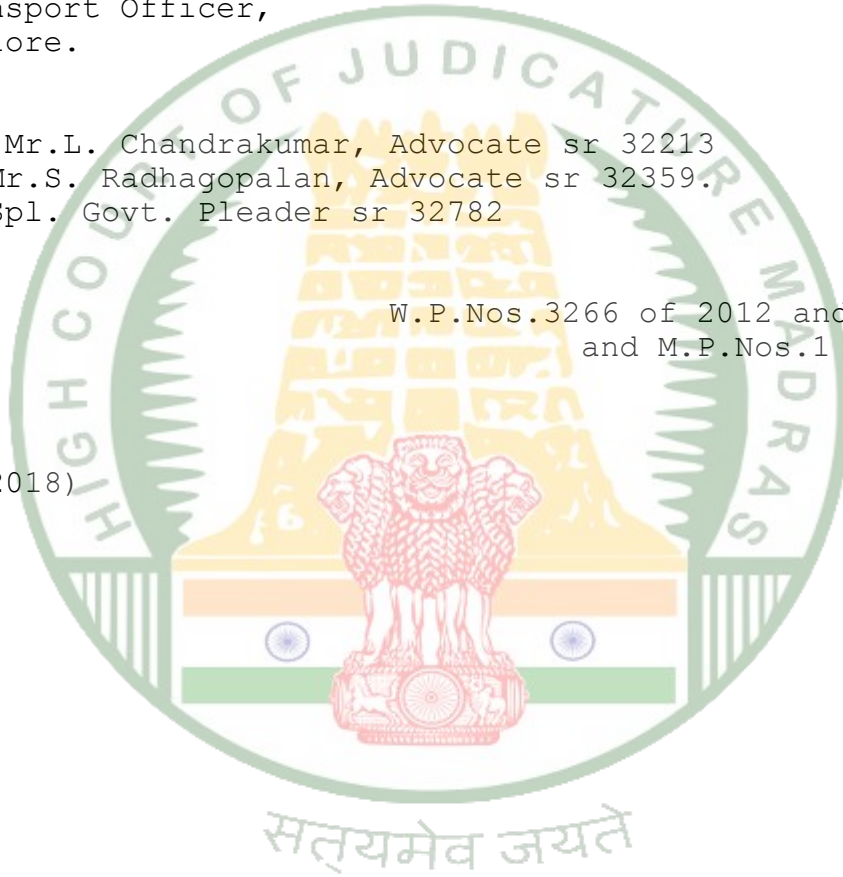
To

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+2 Ccs to Mr.L. Chandrakumar, Advocate sr 32213
+1 CC to Mr.S. Radhagopalan, Advocate sr 32359.
+1 CC to Spl. Govt. Pleader sr 32782

W.P.Nos.3266 of 2012 and 40 of 2010
and M.P.Nos.1 & 2 of 2010

MR(CO)
SP(11/05/2018)



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