

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on
18.07.2018

Delivered on
03.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1144 of 2016
and CMP No.14758 of 2016

Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
Kancheepuram Region,,
Kancheepuram 631 501. ... Appellant/Petitioner

versus

1. The State Transport Authority
Chepauk, Chennai 600 005.
2. The State Transport Appellate Tribunal,
Chennai.
3. Selvi. A.M.Mahalakshmi ... Respondents/Respondent

Appeal filed against the order passed by this Court dated
28.07.2015 passed in W.P.No.15264 of 2009.

Writ petition filed under Article 226 of the Constitution of
India praying for the issuances of the Writ of Certiorari to
call for the records pertaining to the order of the State
Transport Appellate Tribunal Chennai made in M.V.Appeal No.
127/1979 dated 27.04.2009 and quash the same.

For appellant : Mr.R.Balasubramaniam
For Respondents : Mr.M.Karthikeyan,
Additional Government Pleader for R1
Mrs.S.Radha Gopalan for R3

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The challenge in this intra Court Appeal is to the order of
the learned Single Judge made in WP No.15264 of 2009 dated
28.07.2015, in and by which, the learned Single Judge, dismissed
the Writ Petition filed by the appellant Corporation and

confirmed the order of the State Transport Appellate Tribunal, allowing the Appeal filed by the 3rd respondent and granting permit in favour of the 3rd respondent.

The brief facts that led to the filing of the Writ Petition are as follows:

2. One Thiru.A.M.Munusamy Mudaliyar of Kancheepuram, a stage carriage operator and carrying on business in the name of Sri Bharathi Roadways, was operating a stage carriage on the inter-state route viz. Redhills to Sathyavedu. He had applied for renewal of the stage carriage permit for the bus bearing Registration Number MDY 9617, now replaced by TNJ 2507, for a period of 5 years, from 27.09.1978 on 01.02.1978. Since the route is covered by the inter-state agreement, the Application was notified under Section 57(3) of the Motor Vehicle Act, 1939. The appellant Corporation objected for renewal of the permit and made a counter application for grant of fresh permit to it in respect of the same route. The permit holder, viz. Thiru.A.M.Munusamy Mudaliyar, objected to the grant of permit to the State Transport Corporation. During the pendency of the Renewal Application the said A.M.Munusamy Mudaliyar, transferred the permit to his minor daughter Selvi A.M.Mahalakshmi, the 3rd respondent herein, with effect from 25.07.1978 and the counter signature of the permit was also transferred to Selvi A.M.Mahalakshmi, by the proceedings of the State Transport Authority, Andhra Pradesh, dated 28.08.1978. During the pendency of Renewal Application, the permit holder filed a Writ Petition in W.P.No.2914 of 1978, questioning the validity of Rule 155 (a) of the Tamil Nadu Motor Vehicles Rules, 1940 and by an interim order dated 04.08.1978, this Court had directed status quo to continue and further directed that the order of the State Transport Authority shall not be implemented.

3. In view of the pendency of the Writ Petition and the interim order granted therein, the 3rd respondent continues to operate the stage carriage, on the basis of temporary permit issued by the Authority. The State Transport Authority by an order dated 21.12.1978 rejected the Application for renewal of permit, made by the 3rd respondent and allowed the counter application for permit made by the appellant finding that the 3rd respondent's predecessor in interest, viz. A.M.Munusamy Mudaliyar, was guilty of several failures in operating the stage carriage and he in fact scored lesser marks than the State Transport Corporation, and therefore, the permit was denied to the 3rd respondent.

4. As against the said order, the 3rd respondent filed an appeal before the State Transport Appellate Tribunal, in M.V.Appeal No.127 of 1979. Along with Appeal, an Application in IA No. 163 of 1979 was also filed and the Tribunal allowed the

said application under Section 134 (1) (a) of the Motor Vehicles Act 1939, and issued permit to the 3rd respondent's vehicle to continue plying, notwithstanding the expiry of the period mentioned therein, until the disposal of the Appeal. During the pendency of the Appeal, the 3rd respondent again filed WP No.2720 of 1981 before this Court and this Court by order dated 01.06.1982 made in WMP No.1036 of 1982 stayed the hearing of the Appeal. While the Appeal as well as the Writ Petitions were pending the new Central Motor Vehicles Act came into force in 1998 and the Tamil Nadu Motor Vehicles Special Provisions Act, 1992 (Act 41 of 1992) was enacted.

5. The Writ Petitions came to be disposed of by this Court and the State Transport Appellate Tribunal finally took up the Appeal No.127 of 1979 for hearing and allowed the Appeal by its judgment dated 27.04.2009. While allowing the Appeal, the Tribunal took note of the provisions of a New Motor Vehicles Act 1988 as well as the Tamil Nadu Motor Vehicles (Special provisions Act 1992) and the fact that the 3rd respondent has been continuously plying the vehicle from 1971 for almost 38 years, when the Appeal came to be disposed of.

6. Aggrieved the Corporation approached this Court by filing the Writ Petition in WP No.15264 of 2009. It was the main contention of the Corporation in the Writ Petition that the State Transport Appellate Tribunal has gone wrong in relying upon the judgments of this Court in Writ Appeal Nos.248 and 266 of 2005 and the judgment in Writ Appeal No.74 of 2005. On the other hand, according to the learned counsel for the Corporation the State Transport Appellate Tribunal should have taken note of the judgment of Hon'ble Supreme Court in Cheran Transport Corporation Ltd. Coimbatore v. Regional Transport Authority, reported in 1996 (7) SCC 343. The learned Single Judge however dismissed the Writ Petition concluding that in view of the provisions of the Tamil Nadu Motor Vehicle (Special provisions Act 1992), the 3rd respondent being a saved operator, would be entitled to renewal of the permit de hors the conclusions of the State Transport Authority regarding the suitability or otherwise of the permit holder.

7. Aggrieved the State Transport corporation is before us by way of this Intra Court Appeal.

8. We have heard Mr.R.Balasubramaniam, learned counsel appearing for the appellate Corporation, Mr.M.Karthikeyan, Additional Government Pleader appearing for the 1st respondent, Mrs. S.Radha Gopalan, learned counsel appearing for the 3rd

respondent. The 2nd respondent being the Tribunal is not represented by counsel.

9. Mr.R.Balasubramaniam, learned counsel appearing for the appellant Corporation would vehemently contend that in view of the fact that the Transport Authority has found that the 3rd respondent has got only six marks, while the State Transport Corporation has got 7 marks the State Transport Authority was justified in allowing the Counter Application made by the State Transport Corporation, while rejecting the claim of the 3rd respondent. He would also assail the judgment of the State Transport Appellate Tribunal contending that the State Transport Appellate Tribunal was not right in concluding that the 3rd respondent would be entitled to the benefits of the Tamil Nadu Motor Vehicles Special provisions Act, 1992. According to Mr.R.Balasubramaniam, the Tribunal was not right in following the judgment of the Division Bench in Writ Appeal No. 74 of 2005 and the judgment of the Division Bench in Writ Appeal Nos.248 and 266 of 2005.

10. Per contra Mrs. S.Radha Gopalan, learned counsel appearing for the 3rd respondent would submit that in view of the provisions of Section 3 of the Tamil Nadu Motor Vehicle Special provisions Act 1992, the 3rd respondent being a small operator and saved operator would be entitled to protection if it is shown that she was possessed of a valid permit between 04.06.1976 and 30.06.1990. Therefore, according to the learned counsel, the Tribunal was right in relying upon the judgments of the Division Bench of this Court in Writ Appeal No.248 and 266 of 2005 and 74 of 2005 dated 21.02.2005 and 10.08.2007 respectively.

11. We have considered the rival submissions. Admittedly the predecessor in interest of the 3rd respondent, viz. A.M.Munusamy Mudaliyar, had a valid permit to run the Stage carriage in the route in question till 27.09.1978, thereafter, the State Transport Authority refused renewal by its order dated 21.12.1978. The said order of the State Transport Authority was challenged before the Appellate Tribunal. However, the proceedings in the Appeal were stayed by this Court, pending decision in the Writ Petition filed by the appellant before the Tribunal. By the time the Tribunal took up the Appeal for consideration, the Motor Vehicles Act 1939 was repealed and the New Act was in place and by virtue of the judgment in Hon'ble Supreme Court in Pandian Road Ways Corporation v. M.A.Aggappan, the permits that were granted in any of the scheme routes became invalid. This necessitated enactment of the Tamil Nadu Act 41 of 1942 viz. the Tamil Nadu Motor Vehicle (Special provisions Act

1992), which saved the operation of the permits that were granted between 1976 and 1990. The said Act was upheld by the Hon'ble Supreme Court. The purport of the said Act was held to be to protect those operators who have been issued permits between 1976 and 30.06.1990 by the Hon'ble Supreme Court in T.P.K.Thilagavathy vs. Regional Transport Authority, Periyar District at Erode, reported in 1995 (1) SCC 456.

12. Section 3 of the 1992 Act, which is deemed to come into force, on 04.07.1976, enables the Regional Transport Authority to renew the permits of the small operators to ply their stage carriage on any route covered by a draft scheme or an approved scheme or such portion of the route covered by the draft scheme or approved scheme. The applicability of the State Act was considered by the Division Bench of this Court in Tamil Nadu State Transport Corporation Ltd, Dharmapuri vs. The State Transport Appellate Tribunal, Chennai, in WA Nos. 248 and 266 of 2005 and in Puratchi Thalaivar MGR Transport Corporation vs. The Regional Transport Authority, Kancheepuram and others in Writ Appeal No.74 of 2005. The Division Bench in Writ Appeal Nos.248 and 266 of 2005 had held that the right of renewal of the permit which was valid between 04.06.1976 and 30.06.1990 would stand saved under the provisions of the Tamil Nadu Act 41 of 1992. The Division Bench had after referring to the judgment of the Hon'ble Supreme Court in Civil Appeal No.12854 of 1996 concluded that in view of the judgment of the Hon'ble Supreme Court in Civil Appeal No.12854 of 1996, the permits which were valid between the cut of period i.e. from 1976 and 1990 are protected and saved under the Tamil Nadu Act 41 of 1992. Therefore the permit granted to the predecessor in interest of the 3rd respondent would also be entitled to the said protection and as such the State Transport Appellate Tribunal was justified in relying upon the judgment of the Division Bench in Writ Appeal Nos.248 and 266 of 2005, while allowing the Appeal.

13. Another Division Bench of this Court in Writ Appeal No.74 of 2005 had considered the scope of the protection afforded by Act 41 of 1992, to small operators. In Writ Appeal No.74 of 2005, a Division Bench of this Court rejected the contention of the Corporation that the Appeal filed by the permit holder who did not have a valid permit as on 30.07.1992 will stand abated. The Division Bench took note of the fact that the permit of the individual operator was in force between the period viz. June 1976 to 30.06.1990. In view of the same, the Division Bench concluded that the operator in question the 3rd respondent in Writ Appeal would be a protected operator.

14. Of course Mr.R.Balasubramaniam, learned counsel

appearing for the said Transport Corporation would strenuously contend that the above two judgments of the Division Bench cannot be applied in the case, where there is a Counter Application by the Corporation. We are unable to agree with the contention of the learned counsel, inasmuch as a perusal of the facts in both the cases, viz. the Writ Appeal Nos.248 and 266 of 2005 and Writ Appeal No.74 of 2005, it is clear that it was the Corporation which challenged the grant of permit to the individual operators and the said challenge is rejected on the ground that the permits granted to those small operators would be saved under Act 41 of 1992.

15. Mr.R.Balasubramaniam, learned counsel would submit that the judgment in Cheran Transport Corporation Ltd.'s case, cited supra, would apply to the facts of the case. But on facts, we find that the Hon'ble Supreme Court had found that the 2nd respondent, viz. the Private Operator had been operating the bus, only on the basis of interim orders of the Court and there was no valid permit during the relevant period in favour of the operator. In those circumstances, the Honble Supreme Court held that the High Court could not have granted the benefit to the individual, solely on the ground that the individual had operated the stage carriage in route in question, based on interim orders of the Court. But in the case on hand, the 3rd respondent predecessor in interest was possessed of valid permit, during the relevant period and the said permit was not renewed by the State Transport Authority, which was appealed against and during the pendency of the Appeal, the change in Law came in and the 3rd respondent became a protected operator or a saved operator.

16. We are, therefore, of the view that the learned Single Judge was right in dismissing the Writ Petition as devoid of merits and we do not see any reason to interfere with the judgment of the learned Single Judge. The Writ Appeal therefore fails and it is accordingly dismissed. However, in the circumstances there will be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
Kancheepuram Region,
Kancheepuram 631 501.

2. The State Transport Authority
Chepauk, Chennai 600 005.

3. The State Transport Appellate Tribunal,
Chennai.

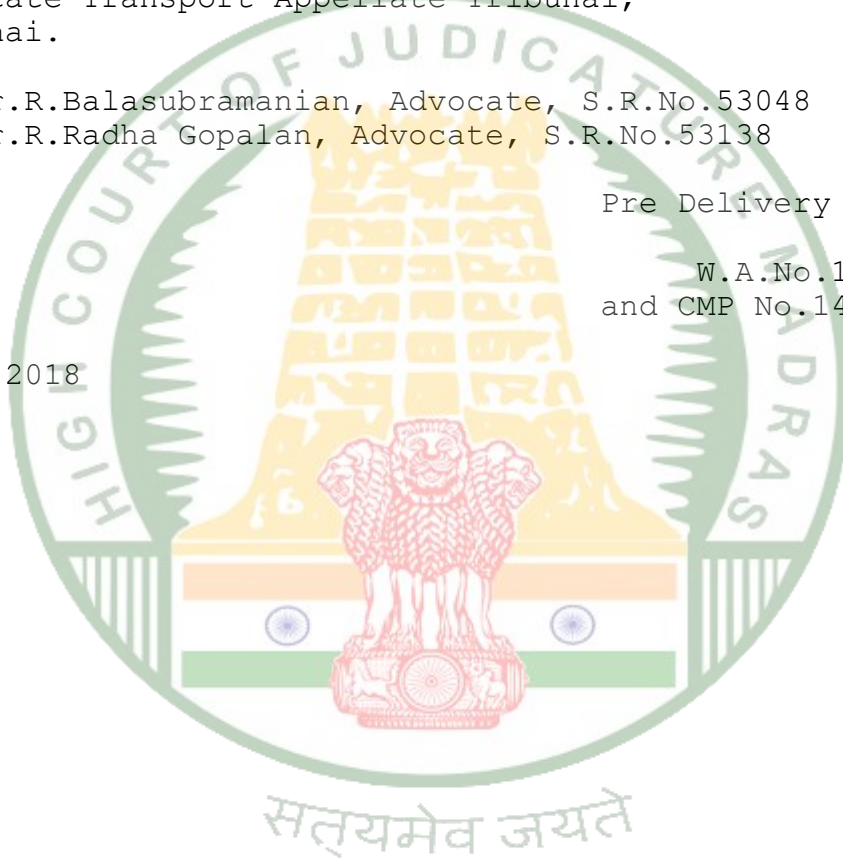
+1cc to Mr.R.Balasubramanian, Advocate, S.R.No.53048

+1cc to Mr.R.Radha Gopalan, Advocate, S.R.No.53138

Pre Delivery Judgment in

W.A.No.1144 of 2016
and CMP No.14758 of 2016

GNR (CO)
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