

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2018

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P.Nos.37733 & 37751 of 2002

and

WPMP Nos.56626 & 56627 of 2002

S.Nallappan

...Petitioner

in W.P.No.37733 of 2002

P.S.Saravanakumar

...Petitioner

in W.P.No.37751 of 2002

..Vs..

1.V.Sarojini

Prox: Vee Vee Bus Service,
96, Peelamedu,
Coimbatore.

2.The Regional Transport Authority,
Coimbatore (North).

3.The State Transport Appellate Tribunal,
Chennai.

...Respondents
in both Wps

Common Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the 3rd respondent made in Appeal No.258 of 2001/A5 dt.26.07.2002 in granting the mini bus permit in favour of the 1st respondent to ply on the route Kanuval to NGGO Colony (via) Kuppanaickanpalayam, Kalaignar Nagar, Perinbanagar, Appanaickanpalayam and Thudiyalur, and quash the same.

For petitioner : Mr.M.Palani
in both WPs

For Respondents: Mr.K.Ravikumar
for R 2 & R3
in both WPs Addl. Government Pleader

COMMON ORDER

Since the prayer sought for in these writ petitions are only against the impugned order, passed by the 3rd respondent - the State Transport Appellate Tribunal, Chennai Vide its order dated 26.07.2002, which is common to both, these writ petitions were heard together and were disposed of by this common order.

2.For the sake of disposal of these two writ petitions, the facts pertaining to the writ petition in W.P.No.37751 of 2002 are to be noticed.

3.The petitioner has already been granted a mini bus permit on the route called Thudiyalur (Mariappa Gounder Kalyana Mandapam) to Maruthamalai (Via) Appanaickenpalayam, Perinba Nagar, Kalaignar Nagar, Kuppanaickenpalayam, Kanuvai and Kalappanaickenpalayam. The said permit was given to the petitioner, pursuant to the modified area approved scheme in respect of the Revenue District of Coimbatore by Scheme dated 17.11.99, issued under G.O.Ms.No.1532, Home (Transport-III), dated 17.11.1999. According to the modified area approved scheme for Coimbatore District, for giving mini bus permit, such permits are given in rural sector for the maximum length of not exceeding 20 kms, where mini buses are permitted to operate with a capacity of not more than 25 passengers and minimum capacity of 6 passengers.

4.While giving such mini bus permits, according to the modified area approved scheme, there can be an overlapping area of maximum 4 kms of served sector, which means the buses are in operation already called served sector and such served sector can have overlapping of maximum of 4 kms on the route to be approved and given permit for mini bus operation.

5.Accordingly, the mini bus permit was given to the petitioner for the said route and in that route, the petitioner was performing the mini bus service.

6.While so, the first respondent seems to have applied to the second respondent seeking a mini bus route permit on the route called "Kanuvai to Keeranathampudupalayam" via. Kuppanaickenpalayam, Kalaignar Nagar, perinba Nagar, Pannimadai, Sanjeev Nagar, Appanaickenpalayam, Thudialur, NGGO Colony, Sengalipalayam, Ramakrishna College, Chinnamettupalayam Pirivu, Idigarai Pirivu, Krishnapuram.

7.The said application having been considered by the second respondent, was rejected by order dated 28.03.2001, on the ground that the said route between Kanuvai and Keeranathampudupalayam since having been the served sector on

the route to the extent of 9.3 kms, which is not in accordance with the G.O.MS.No.1532, Home Department dated 17.11.1999, that is called the modified area approved scheme in respect of Revenue District of Coimbatore.

8. Aggrieved over the rejection order passed by the second respondent, the first respondent preferred an appeal before the third respondent i.e., the State Transport Appellate Tribunal, Chennai in A.No.258 of 2001 dated 26.07.2002. The third respondent having considered the said appeal has passed the following order:

"7. In result, this appeal is allowed and the order of the Regional Transport Authority, Coimbatore, made in R.No.17588/C2/2001 dated 28.03.2001 is set aside. The matter is remitted to the Regional Transport Authority, Coimbatore to consider the application and grant the mini bus permit for the appellant who has prepared to run the mini bus from Kanuvai to NGGO Colony if the grant is made it comes within the upper limit of 250 mini bus permits earmarked for Coimbatore district within two months from the date of receipt of records from this Tribunal".

9. Thereby, the third respondent-the Appellate Tribunal modified the route sought for by the first respondent i.e., from Kanuvai to Keeranathampudupalayam into Kanuvai to NGGO Colony, by giving the reason that if that modified route of Kanuvai and NGGO colony is given to the first respondent, that will not be hit by the 4 Kms upper limit prescribed by way of overlapping served sector, according to the third respondent. The said overlapping would be only lesser than 4 kms and therefore, in that modified route, permit can be granted and accordingly, direction was given through the impugned order of the third respondent to the second respondent to give mini bus permit to the first respondent in that modified route.

10. Aggrieved over the said order passed by the third respondent- Appellate Tribunal by order dated 26.07.2002, the petitioner preferred this writ petition.

11. A similarly placed mini bus operator, aggrieved by the very same impugned order, has filed the other writ petition i.e., W.P.No.37733 of 2002 as he also claimed that he is already in operation of mini bus permit, where his route of more than 4 kms of served sector is overlapping the modified route i.e., Kanuvai to NGGO Colony sought to be given to the first respondent through the impugned direction of the third respondent.

12. Therefore, both the writ petitioners are challenging the same impugned order of the third respondent dated 26.07.2002.

13. It is submitted by Mr. M. Palani, learned counsel for the petitioners that at the time of admission, there had been an interim stay of the impugned order and the said stay has been continued till date, as no steps had been taken by the first respondent to vacate the stay.

14. The learned counsel for petitioners would further submit that though the impugned order was passed sometime in 2002 July, because of the pendency of the writ petitions, of course the interim stay granted by this Court, the first respondent has not come forward to vacate the interim order and he is also not in operation of the mini bus permit, pursuant to the impugned order.

15. The learned counsel for the petitioners would assail the impugned order on the ground of the reasoning given by the third respondent-Appellate Tribunal that is in the modified route between Kanuvai and NGGO Colony, there had been no overlapping of served sector of 4 Kms. According to the learned counsel for the petitioner, the said reasoning given by the third respondent-Tribunal is incorrect, as both the petitioners herein had already been in operation of mini bus permit and the route for which permit was given to these petitioners are overlapping on the modified route given to the first respondent through the impugned order.

16. The learned counsel in this regard would submit that the distance between Kanuvai and Thudiyalur, where the petitioners had been already in operation is more than 5 Kms., which is a served sector.

17. The learned counsel appearing for the petitioners also made a submission that, the term served sector is meant for only large bus route having the permit capacity of 56 passengers plus alone and not the mini bus operations having the permit capacity of 6 passengers and above and the maximum of 25 passengers. The said issue though had been raised long back before this Court, in similar circumstances, a Division Bench of this Court in the judgment reported in [2007 LW 832] in the matter of R. Shanmugaiah .Vs. P.S. Lakshmanakumar and Others, has held as follows

16.9. A conjoint reading of the above referred to statutory provisions and the decision of the Hon'ble Supreme Court wherein the purpose of fixing stages for a stage carriage service has been stated, leads us to hold that a mini bus is nothing but a stage

carriage service. In other words, a mini bus satisfies the definition of a 'stage carriage' as defined under Section 2(40) of the Act, apart from the fact that Rule 3(o) of the Rules specifically means a mini bus as a stage carriage. As between a regular stage carriage and a mini bus, the only difference is that in respect of a mini bus the maximum number of passengers permissible has been determined as 25, while the minimum is six which is common both for a regular as well as a mini bus. It cannot be disputed that a mini bus operation being a stage carriage has to necessarily operate its vehicle in the route permitted for it in between the various stages determined. Therefore, all the parameters which are prescribed in respect of a regular bus while operating in a permitted route such as the prescription of fares, the starting point and the destination, minimum prescribed number of passengers permissible, the prescribed number of maximum numbers of passengers permissible, the number of stages fixed in between the permitted route are all common and applicable to a mini bus as well. The statutory definition contained in Rule 3(o) of the Rules, defining a 'mini bus' to mean a stage carriage, further strengthens the position that a mini bus operation can only be considered as a stage carriage service and cannot be distinguished from a stage carriage operated with a vehicle of larger passenger capacity when it comes to the question of whether such services is a stage carriage service; or can it be called as any other service under the provisions of the Act. To put it differently, a mini bus operation though by virtue of the definition contained in Rule 3(o) of the Rules has got a restricted number of passengers to be carried at a maximum level, as far its operation in a route is concerned, it is nothing but a stage carriage service.

16.10. Therefore, the irresistible conclusion can only be that a mini bus service is also a stage carriage service in its operation in a permitted route. When such a conclusion is an irresistible one, based on the provisions of the Act and the Rules as

well as the decision of the Hon'ble Supreme Court, we are left with no other option except to hold that a 'stage carriage service' would take within its fold the operation of all types of carriages in any particular route when such carriages are being operated covering different stages in that particular route providing transport facilities for all those who wish to avail the service as passengers.

17. Once we reach the above said conclusion and when we apply the said principle to the facts of this case, it is common ground that the grant of a mini bus permit under the scheme dated 17.11.1999 would be permissible among other excluded categories only if there is no 'stage carriage service' provided as on the date when such a grant is to be made. The relevant part of the scheme reads to the effect that a grant of a mini bus permit is for the purpose of operating in the rural areas of the district where no stage carriage services are provided. The highlighted part of the expression used in the scheme makes it abundantly clear, as on the date, when the grant is considered to be made, there should be no stage carriage service in operation in that route. If the grant on hand is tested on the above terms contained in the scheme, we find that as on the date of the grant, namely 18.10.2005/07.07.2005, the appellant was already operating in the very same route, namely Sivakasi Pandian Complex to Poolavoorani which covers a route length of 9.8 Kms. while the grant made in favour of the first respondent for the route Sivakasi Pandian Complex to Vilampatti overlaps to an extent of 8.7 kms. The permissible overlapping under the scheme is a distance not exceeding 4 kms. Therefore, the grant in favour of the first respondent is clearly hit by the prohibition contained in the scheme.

18. By relying on the said decision of the Division Bench judgment referred above, the learned counsel would further submit that the issue as to whether the operation of mini bus would also be included in the term served sector for the purpose of prescription of maximum overlapping permissible for a new

route, has already been answered that, the stage carriage permit means it is not only for larger buses of 56 plus passengers but also for a mini bus permit of 6 to 25 passengers. Therefore, the mini bus permit has already been given and mini buses pursuant to such permits are in operation already and that route also shall be treated as served sector for the purpose of considering the subsequent request for permit overlapping the served sector.

19. By making these submissions, the learned counsel appearing for the petitioner would also make further submission that, the third respondent-Tribunal before deciding the issue should have called upon the petitioners herein who were already in the served sector and should have ascertained the routes, where these petitioners are plying the mini buses. Since no such attempt has been made by the third respondent, thereby, in violation of the modified area approved scheme of the Government of Tamil Nadu dated 17.11.1999, the third respondent-Tribunal passed the impugned order and therefore, the impugned order is liable to be interfered with and has to be quashed.

20. Though, notice has been served and the name of the first respondent has been shown in the cause list, no one is appearing for the first respondent.

21. Insofar as the official respondents are concerned, Mr. K. Ravi Kumar, learned Additional Government Pleader who is appearing for the respondents, would submit that whether the modified route given by the third respondent-Tribunal through the impugned order in favour of the first respondent i.e., between Kanuvai and NGGO Colony is in violation of the modified area approved scheme of Revenue District of Coimbatore dated 17.11.1999, can be decided only after thoroughly verifying the route permit already given to these two petitioners.

22. If really the route has already been approved, insofar as the two petitioners are concerned, to ply mini buses, having the overlapping served sector of more than 4 Kms has been given by way of modified route by the third respondent through the impugned order, certainly the said overlapping is impermissible, as it would directly violate the modified area approved scheme dated 17.11.1999. Therefore, the learned Additional Government pleader would submit that the issue can be reconsidered by the second respondent i.e., the Regional Transport Authority, Coimbatore. Of course, after giving notice to all the stakeholders in both the writ petitions, as well as the first respondent and after verifying the routes already been approved in favour of the petitioners, the decision can be taken by the second respondent.

23.I have considered the said submissions made by the learned counsel appearing for both the petitioners as well as the learned Additional Government Pleader appearing for the Official respondents.

24.As has been rightly submitted by the learned counsel appearing for the petitioners, both the petitioners have already obtained mini bus permit and they have been in operation. Their claim is that the route already given to them, where they are in operation with mini bus, is no doubt called served sector, if we apply the ratio of the Division Bench judgment referred above. Since the mini bus operation is also considered to be a stage carriage permit on par with larger buses, there can be no doubt in that context and therefore, if any violation takes place beyond 4 Kms in the name of served sector, certainly that will be in violation of the modified area approved scheme for the Revenue District concerned as per the modified area approved scheme dated 17.11.1999, G.O.M.S.No.1532, Home Department.

25.In this regard, it is a definite case of the petitioners that the route between Kanuvai and Thudiyalur, of more than 5 Kms is already a served sector. It is having overlapping route of the modified route now sought to be given to the first respondent i.e. between Kanuvai and NGGO Colony and therefore, the said overlapping is not within the permissible limit of 4 Kms as per the modified area approved scheme and it is beyond 4 Kms.

26.In that view of the matter, factually the petitioners have made out a case that where mini bus permits have already been in operation is having overlapping served sector beyond 4 Kms which is impermissible for the purpose of giving any such subsequent permits even to a mini bus holder, as the same would be in direct violation of the modified area approved scheme.

27.For easy reference, the relevant portion of the modified area approved scheme in respect of the Revenue District of Coimbatore District as permitted in G.O.Ms.No.1532, Home Department dated 17.11.1999 is extracted here under.

"To the complete exclusion of other persons other than the State Transport Undertakings or other States, the existing permits small operators protected under the Tamil Nadu Motor Vehicle (Special Provisions) Act, 1992 (Tamil Nadu Act 41 of 1992), permits of stage carriage operators covered by Inter-State Agreements and the permits of mini bus operators to operate the rural areas of the District where no stage carriage services are provided up to a route length not exceeding 20 Kms, with overlapping distance not exceeding 4

Kms, on the routes where stage carriages are operating”.

28.Only in that context, it was held by the Division Bench of this Court in the judgment referred above that the irresistible conclusion can only be that a mini bus service is also large carriage service in its operation in a permitted route and it has also been held by the Division Bench that wherein the purpose of fixing stages for a stage carriage service has been stated, it leads us to hold that a mini bus is nothing, but a stage carriage service.

29.By applying the said proposition, as already been held by this Court in the aforesaid Division Bench Judgment, certainly the violation beyond 4 Kms in the served sector, for the purpose of new permit to be given, cannot be allowed. Since the said violation was noticed by this Court, there is no hesitation to hold that there is violation of the said modified approved scheme and therefore, the said order is liable to be interfered with.

30.In the result, the impugned order is quashed and the matter is remitted back to the second respondent i.e., the Regional Transport Authority, Coimbatore for fresh consideration by giving opportunity of hearing to both the petitioners, by giving due notice and fix a date for hearing and decide the application made by the first respondent for giving mini bus permit even in the modified route i.e., from Kanuvai to NGGO Colony.

31.It is made clear that while making such consideration, the third respondent shall bear in mind, the law declared by the Division Bench referred above that the mini bus permit/operation is also to be included as a stage carriage permit for the purpose of served sector, and therefore, in the said served sector limitation of 4 Kms at the maximum, there has been no violation from modified approved scheme of the Government, itself.

32.The aforesaid exercise shall be undertaken by the second respondent-the Regional Transport Authority, Coimbatore within a period of three months from the date of receipt of copy of this order. With these observation, both the writ petitions are disposed of accordingly. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

KP

To

1.The Regional Transport Authority,
Coimbatore (North).

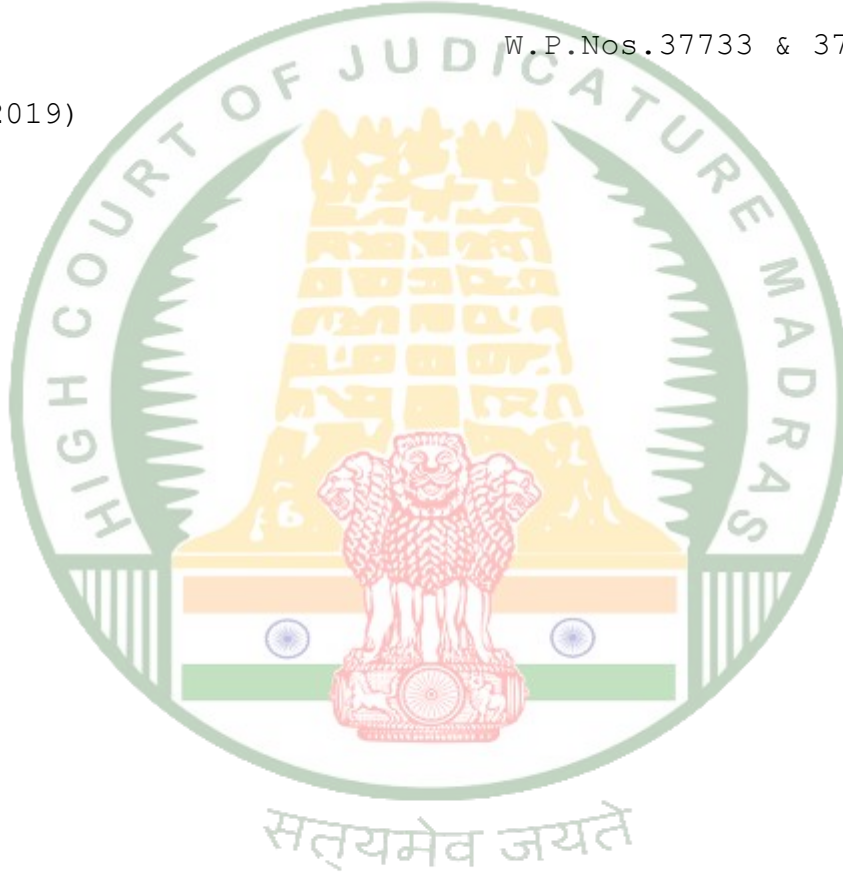
2.The State Transport Appellate Tribunal,
Chennai.

+lcc to Mr.M.Palani, Advocate, S.R.No.56976

+lcc to the Government Pleader, S.R.No. 57241

W.P.Nos.37733 & 37751 of 2002

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