



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WEB COPY

W.P. (MD) Nos.18436 and 18854 of 2014
and

W.M.P (MD) No.1 of 2014 in W.P. (MD) Nos.18436 of 2014

V.Premsubburaj

.. Petitioner in both petitions

Vs.

1.D.Mathiazhagan

2.The Regional Transport Authority,
Virudhunagar District,
Virudhunagar.

3.The Secretary
The Regional Transport Authority,
Virudhunagar District,
Virudhunagar.

.. Respondents in both petitions

PRAYER in W.P(MD)No.18436 of 2014: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the 2nd respondent to cancel the mini bus permit of the first respondent in respect of the route Rajiv Nagar to Aruppukottai Government Hospital via Velmurugan Colony, RDO Office (Kamaraj Nagar) upto Pandian Stores, DSB Office, New Bus stand, Nadar Sivan Koil, SBK Boys High School, Telephone Road and Sonai Servaipatti as it exceeds the served sector distance as prescribed under the modified Area Approved Scheme in respect of Virudhunagar District, dated 17.11.1999.

PRAYER in W.P(MD)No.18854 of 2014: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the 2nd respondent to cancel the mini bus permit of the first respondent in respect of the route Aruppukottai Government Hospital to Rajiv Nagar via M.S.Corner, Sonai Servaipettai, Telephone Road, SBK Boys High School, Nadar Sivan Kovil, New Bus Stand, DSB Office, RDO Office (Kamaraj Nagar) upto Pandian Stores and Velmurugan Colony as it exceeds the served sector distance as prescribed under the Modified Area Approved Scheme in respect of Virudhunagar District, dated 17.11.1999.

In both wps;

For petitioner

: Mr.M.Palani

For respondents

: Mr.A.Velan for

M/s.Ajmal Associates for R1

Mrs.S.Srimathy

Special Government Pleader

for R2 and R3



COMMON ORDER

The petitioner is a mini-bus operator plying his vehicle on the route from Nadar Sivankovil to Santhangudi. The first respondent is also a mini-bus operator operating his vehicle on the route from Aruppukkottai Government Hospital to Rajiv Nagar.

2.The case of the writ petitioner is that the route, on which the first respondent is operating, over lapped the served sector for distance beyond 4 k.m. This limit of 4 k.m has been prescribed in the modified approved scheme dated 17.11.1999.

3.To find out as to whether there is over lapping beyond the prohibited distance, this Court called upon the concerned authority to physically measure, verify and submit their report. The stand of the authority is that the over lapping is within the prohibited distance of 4.k.m. But then, the authorities have omitted to take into account the sector served by the operation of the mini-bus. The stand of the authorities appears to be that this need not be taken into account. But then the same would run clearly counter to the Division Bench decision of this Court reported in 2007 Writ L.R. 832 [R.Shanmugaiah vs. P.S.Laksmanakumar and others]. In paragraph 16, the Honourable Division Bench observed that the mini-bus service is also a stage carriage service in its operation in a permitted route. Therefore, '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.

4.Confronted with the aforesaid decision of the Honourable Division Bench, the defence taken by the authority appears to be very strange. The authorities are under the impression that inasmuch as the first respondent was given permit in the year 2005, he would not be hit by the said Division Bench Judgment rendered on 02.08.2006.

5.It is settled law that any decision of Court of law declaring the legal position would operate retrospectively. Therefore, the stand taken by the respondents is liable to be rejected. Probably anticipating this, the first respondent has chosen not to file any counter affidavit.

6.The first respondent was represented by his counsel on earlier occasions. But this Court made it clear that the matter would be taken up for final disposal today. Even today, no counter affidavit has been filed. Instead, the counsel representing the first respondent sought time. This Court is of the view that sufficient time has already been given to the first respondent to make clear his stand. Inasmuch as the materials placed before this



Court clearly establish that the permit given to the first respondent over lapped beyond 4.k.m, it is for the authorities to take appropriate remedial action.

7. Though the prayer in the writ petition is for directing the second respondent to cancel the mini-bus permit of the first respondent, this Court is of the view that the permit given to the first respondent may have to be modified so as to ensure that there is no over lapping beyond 4. k.m distance. Therefore, the respondents 2 and 3 are directed to issue appropriate orders in this regard pertaining to the permit issued in favour of the first respondent, within a period of six weeks from the date of receipt of a copy of this order, in the light of the findings and observation made in this writ petition.

8. Both the writ petitions are allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To:

1. The Regional Transport Authority,
Virudhunagar District,
Virudhunagar.

2. The Secretary
The Regional Transport Authority,
Virudhunagar District,
Virudhunagar.

+2cc to M/S.M.Palani, Advocate SR.No. 57078, 57079
+1cc to M/S.Ajmal Associates, Advocate SR.No. 57181

COMMON ORDER MADE IN
W.P. (MD) Nos.18436 and 18854 of 2014
and
W.M.P (MD) No.1 of 2014
in W.P. (MD) Nos.18436 of 2014
21.03.2018

skn

JM/SV/SAR 1/10.07.2018/3P/6C

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