



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :16.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P (MD) No.22697 of 2015

and

M.P. (MD) .No.1 of 2015

and

W.M.P. (MD) .Nos.4157 and 5225 of 2017

and

W.M.P. (MD) .No.1192 of 2018

S.Geetha Devi

: Petitioner

Vs.

1.The Regional Transport Authority,
Nagercoil,
Kanyakumari District.

2.The State Transport Appellate Tribunal,
City Civil Court Buildings,
High Court Campus,
Chennai-104.

3.The Management,
through the General Manager,
Tamil Nadu State Transport Corporation,
Tirunelveli Limited,
Nagercoil Region, Ranithottam,
Kanyakumari District.

: Respondents

(R-3 is impleaded vide court order dated 05.01.2016 in W.MP.(MD).
No.72 of 2016)

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order dated 03.11.2015 of the 2nd respondent made in Appeal No.59 of 2015 and quash the same as being illegal, unreasonable and unconstitutional and consequently direct the 1st respondent to permit the petitioners mini bus to make use of Anna Bus Stand, Nagercoil for alighting the passengers, while operating the mini bus on the route.

For Petitioner
For Respondents

: Mr.C.K.Chandrasekaran
: Mr.K.Chellapandian
Additional Advocate General
assisted by
Mrs.J.Padmavathy Devi
Special Government Pleader for R-1



Mr.K.Sathiya Singh for R-3
R-2- Tribunal

ORDER

The writ petitioner is a mini bus operator in Kanyakumari District, with three route permits between i)Chettikulam Junction to Mela Krishnan Puthoor ii)Kottar Railway Vilakku to Therivilai and (iii)Kottar Kavalur Kudieruppu to Parvathipuram Palam. She made a request to the Regional Transport Authority, Nagercoil, Kanyakumari District to permit him to operate his mini buses bearing Regn. Nos.TN-28H-9255, TN-74-E-7791 and TN-74E-7782, upto Anna Bus stand. A route permit was granted between Chettikulam Junction to Mela Krishnan Puthoor via Beach Road, NGO Colony, South Keezhakrishnan Vilai Road, Kunchanvilai Junction, Vellan Villai, Government School, Pillayarapuram West, Koilvilai Turning and Athikatuvilai. Another route permit was granted between Kottar Railway Station Vilaku to Therivilai via Eathamozhi Vilaku, Abdulkadar Hospital, South Kannankulam, Bus Stop, Chatunavududam, Parakkai North Street, Parakkai Nedu Theru, Nedu Theru Vilaku, Parakkai, V.A.O Office Kakkan Puthoor Alamaram and Thengaputhoor Uthendan and another route permit was granted between Kottar Kavalur Kudieruppu to Paravathipuram Palam (Near Merlin Hospital) via PWD Road Turning, Vettaliyammann Koil, Collector Office, Mathias Nagar, Nesamany Nagar Depo, Ananthan Palam, Ananthan Nagar, Parvathi Channel Road, Melaperuvilai Vilaku, Peruvilai, Murugan Coil and Melaperuvilai Vilaku.

2. Her request was rejected by the Regional Transport Authority in R.No.2062/A2/2015, dated 17.03.2015. Against which, he preferred an appeal before the State Transport Appellate Tribunal, Chennai in M.V.Application No.59 of 2015. The same was dismissed by the Tribunal. Hence, aggrieved over the same, the petitioner is before this Court.

3.The grievance of the petitioner is that the police is restraining the petitioner from stopping the bus in the Anna Bus Stand for the purpose of boarding and alighting the commuters. Further, there is no facility for turning the bus. Therefore, she has to compulsorily take a diversion in the return direction. Therefore, while going through the Anna Bus Stand, she should be permitted to enter into the bus stand also.

4.The learned counsel appearing for the petitioner would further contend that there is an one way intervening in routes between Kottar Railway Station Vilaku to Therivilai and Kottar Kavalur Kudieruppu to Parvathipuram Palam (Near Merlin Hospital). The petitioner's vehicles bearing Regn.No.TN-74E-7791 and TN-74E-7782 respectively are plying in the above routes. He would further contend that there is no one way in the route between Chettikulam Junction to Melakrishnan Puthoor, where her vehicle bearing Regn.No.TN-28H-9255 is plying.

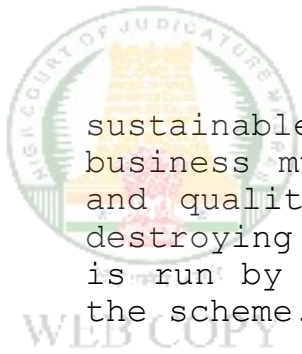


5. Controverting the case projected by the petitioner, the learned Additional Advocate General, appearing for the first respondent would vehemently contend that insofar as vehicle bearing Regn.No.TN-28H-9255 is concerned, the petitioner need not take a left turn to go to one way and on the other hand, he can use the road ahead of the last stop and take reverse the bus as well as park the bus there itself. In stead of utilizing the available facilities, with an ulterior motive, the petitioner asked extension of permit beyond the limit of 4 kms, which is not permissible in the Scheme framed by the Government. But, insofar as the vehicles bearing Regn.No.TN-74E-7791 and TN-74E-7782 are concerned, there is an intervening one way in the route. But, this will not entitle the petitioner to go in a different route to enter into Anna Bus Stand. According to the learned Additional Advocate General, if at all the petitioner has any grievance, he can seek a direction from the Regional Transport Officer.

6. Heard the contentions made on either side.

7. Admittedly, there is no intervening one way in the route between Chettikulam Junction to Melakrishnan Puthoor, where the vehicle bearing Regn.No.TN-28H-9255 is plying. As submitted by the learned Additional Advocate General, if the petitioner plies little further in the same route, she has facilities to take a reverse and return to the origin point. In such circumstances, she cannot ask for extension of a route with oblique motive to ply a long distance.

8. Admittedly, the vehicles bearing Regn.Nos.TN-74E-7791 and TN-74E-7782 are concerned, route permit was granted between Kottar Railway Vilakku to Therivilai and Kottar Kavalur Kudieruppu to Parvathipuram Palam which covers the distance of 10.1 kms and 10.03 kilometres. By subsequent modification made by the Traffic Police, certain distance in the served sector has been declared as one way. The first respondent has directed the mini buses to operate in the circuitous route specified by them, as per traffic regulations, imposed by the State Transport Commissioner. The variation in the traffic arrangement will not alter the route permit granted to the mini buses and the distance specified therein. Plying the bus as per direction of authorities beyond the permitted distance is only the subsequent development, in order to provide free flow of vehicles and to avoid traffic congestion and thereby to avoid hardship caused to the residents of the area. The Transport authority has also imposed a condition that they shall not stop the bus in front of Anna Bus Stand to alight or board the passengers. Therefore, it can be easily inferred that the petitioner's request to go into Anna Bus Stand is only to help the commuters to board and alight the mini buses. In the considered opinion of this Court, it appears to be reasonable and will serve the object of the scheme framed by the Government. On the other hand, the rejection of the request on the ground that the competitors object the same is not



sustainable. A transport operator, who is a competitor in the business must improve their business prospects by providing better and quality service, but it cannot be achieved by preventing or destroying the competitors. More so, the State Transport Corporation is run by the Government. It cannot go contrary to the object of the scheme.

9. In such an event, this Court is of the view that in order to serve the poor commuters, particularly villagers, old aged, disabled, pregnant, poor and illiterate, more effectively, it is better to permit the mini buses to ply through the Bus stand.

10. In similar circumstances, while dealing with a case with same set of facts, a Division Bench of the Kerala High Court in the case of Chokli Moideenkutty vs. The State Transport Appellate Tribunal, Ernakulam, and others reported in AIR 1989 KERALA 271, has held as under:

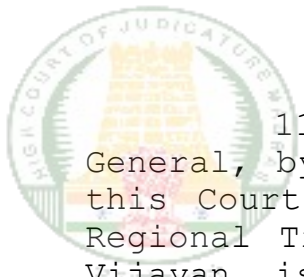
"5. It may become impossible to operate on the notified route on account of subsequent events like the closure of the road or the falling of the bridge or as a consequence of imposition of certain traffic regulations. If the alternate lines of the route that may be required to be followed substantially affect the integrity of the route, it would amount to varying the route. If the notified route is varied, the proper course to be adopted would be to drop the proceedings. In such an event, fresh applications may be called for the grant of permit for the altered route.

6. When a route passes through a village, town or city, there may exist several alternative entry points and exit points. When the R.T.A. takes the decision to open a route, one of the several alternatives available will have been chosen. If on account of subsequent traffic regulations, motor vehicles are not permitted to go by the particular road contemplated by the notified route and traffic is permitted by other alternative road, the question for consideration is as to whether it amounts to variation of the notified route. Such alterations within the limits of the city resulting from traffic regulations are minimal and cannot be regarded as having the effect of varying the notified route itself. In such a situation, it would not be necessary to abandon the proceedings initiated for grant of stage carriage permit for the notified route. But so far as the measuring of the distance for the purpose of Rule 177A(3) is concerned, it is the line of the route in respect of which the R.T.A. took the decision to open the



route that should be measured and not the altered line of the route brought about by traffic regulations. It is a matter of common knowledge that notifications are not promptly published. There is every possibility of the situation being altered consequent upon the traffic regulations being modified between the date of the decision and the date of publication. As the route notified has to be clear, certain and specific, subsequent events should not enter into the picture. We therefore hold that the distance should be measured for the purpose of Rule 177A(3) as on the date on which the R.T.A. took the decision to open the route in respect of which the notification is issued inviting applications, though the notification takes effect only from the date of publication. In this case the decision was taken by the R.T.A. on 23rd Feb., 1985. That is the date that should be taken into account for measuring the distance though the notification inviting applications was published in the gazette on the 23rd January, 1986. As there is dispute in regard to the actual distance of the notified route as on 23-1-1985, the matter has to be remitted to the R.T.A. to examine this limited aspect and to arrive at a fresh decision. It has to take a decision taking into account 23-2-1985 as the relevant date for measuring the distance. If as a consequence of such consideration, the R.T.A. comes to the conclusion that the route notified was a short route, it shall proceed to consider the preference to which the appellant as a new entrant would be entitled to under Rule 177A(3) of the rules. If, however, it comes to the conclusion that the route is a medium route, it shall dispose of the applications in accordance with law.

For the reasons, stated above this writ appeal is allowed and the judgment of the learned single Judge and the orders of the Regional Transport Authority and State Transport Appellate Tribunal are set aside and the case is remitted back to the R.T.A. for fresh disposal in the light of the observations made above. Till fresh disposal by the R.T.A. is in pursuance of the directions contained in this judgment, the appellant shall be permitted to continue to operate on a temporary basis. As the matter has been pending for a long time, we consider it appropriate to direct the R.T.A. to dispose of the entire matter as expeditiously as possible and preferably within a period of three months from the date of receipt of this judgment."



11. The contention of the learned Additional Advocate General, by relying on a judgment of the Hon'ble Division Bench of this Court in W.A.No.582 of 2008 dated 14.07.2018 in the case of Regional Transport Authority, Dharmapuri and another Vs. Banumathy Vijayan, is that the Courts cannot extend the route permit or grant any extension in overlapping the served sector. The said judgment is not applicable to this case. In the instant case, it is not the request of the petitioner to extend the route permit beyond 4 kms. If the route permit granted is only 4 kms, because of the subsequent development, it is diverted in the alternative route, therefore, the question of granting extension of the distance does not arise in this case.

12. Therefore, for the reasons discussed above, the mini buses bearing Regn.Nos.TN-74E-7791 and TN-74E-7782 are concerned, the order passed by the State Transport Appellate Tribunal is set aside and the Writ Petition is allowed with a direction, directing the first respondent to permit the mini buses bearing Regn.Nos.TN-74E-7791 and TN-74E-7782 to enter the Anna Bus stand, which falls within the alternative route, provided by the Transport Authorities.

With regard to the mini bus bearing Regn.No.TN-28H-9255 is concerned, since there is no intervening one way, if permission is granted to enter into Anna Bus Stand, it will go against the route permit granted to the writ petitioner i.e overlapping the 4 Kms. Accordingly, this writ petition is dismissed in respect of the mini bus bearing Regn.No.TN-28H-9255 is concerned. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar (CS-I)

To

1. The Regional Transport Authority,
Nagercoil, Kanyakumari District.

2. The State Transport Appellate Tribunal,
City Civil Court Buildings,
High Court Campus,
Chennai-104.

+1CC to Mr.C.K.Chandrasekar Advocate in SR.No.73222.

+1CC to Mr.K.Sathya Singh Advocate in SR.No.73324.

VS

DS/SKN-RSK/SAR-1:06.08.2018: 6P/5C