



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.12.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP (MD) No.21095 of 2018

and

WMP (MD) No.18891 & 18892 of 2018

T.Nithin

... Petitioner

Vs.

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

2.The Regional Transport Officer,
Marthandam, Kanyakumari District.

3.Yesudasan

... Respondents

Prayer : This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the first respondent vide his proceedings in Pro.No.22513/A1/2017 dated 01.10.2018 and quash the same as illegal and consequently direct the first respondent to reconsider the Transfer of Mini Buses permits bearing Registration Nos.TN 74 Y 2747 and TN 74 Y 4063 plying on the route Monda Market to Thuckalay following the direction of the Hon'ble Division Bench in WA(MD)No.1412 of 2017 dated 07.12.2017.

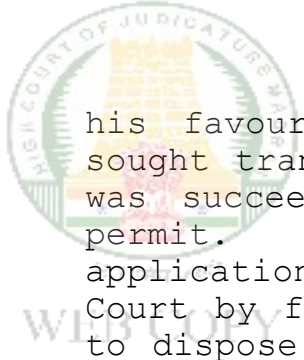
For Petitioner : Mr.A.C.Asaithambi

For Respondents : Mr.Aayiram K.Selvakumar
Additional Government Pleader
for R1 and R2

Mr.A.Thirumurthy for R3

ORDER

The writ petitioner T.Nithin is the grand son of one Pankiraj. He was holding permits in respect of two mini buses bearing Registration Nos. TN 74 Y 2747 and TN 74 Y 4063. He passed away on 15.03.2017. The case of the petitioner is that the original permit holder had executed a registered settlement deed dated 22.11.2016 in



his favour. The petitioner intimated the first respondent and sought transfer of permits on the ground that he is the person who was succeeded to the possession of the vehicles covered by the permit. The authority did not pass any orders on the said application dated 03.04.2017. The petitioner therefore moved this Court by filing WP(MD)No.11401 of 2017 for directing the authority to dispose of his application. Unfortunately, the petitioner did not choose to make the rival claimant namely, his uncle, who is the third respondent herein, as one of the respondents in the writ petition. Therefore, the order originally passed for disposing of the petitioner's representation was recalled and cost was imposed on the petitioner. But, in WA(MD)No.1412 of 2017, the Hon'ble Division Bench directed the authority to pass orders on the application for transfer. Pursuant thereto, the first respondent herein heard both the parties and by the order impugned in this writ petition, rejected the application. The principal reason for rejecting the petitioner's application was that the petitioner could not produce No Objection Certificate from all the legal heirs of the deceased permit holder as contemplated in Rule 214 of Tamil Nadu Motor Vehicles Rules, 1989. The said order is under challenge in this writ petition.

2. Heard the learned counsel on either side.

3. The third respondent has filed a detailed counter affidavit. The learned counsel appearing for the third respondent contended that the third respondent has filed a civil suit in O.S No.47 of 2017 before the District Judge, Nagercoil challenging the settlement deed based on which the writ petitioner is now claiming rights. It is still pending. He also contended that as per Rule 214 of Tamil Nadu Motor Vehicles Rules, 1989, No Objection Certificate from all legal heirs other than the applicant is required. In as much as the said requirement was not satisfied, the order impugned in this writ petition deserves to be sustained. He also contended that one of the two buses is very much lying in his custody and physical possession. Therefore, the writ petitioner cannot claim that he succeeded to the possession of the vehicles. The third respondent also drew the attention of this Court to the previous conduct of the writ petitioner in trying to obtain an order from this Court behind his back.

4. No doubt, the contentions urged by the learned counsel appearing for the third respondent are strong and weighty. But then, this Court cannot lose sight of the fact that even though Pankiraj passed away as early as on 15.03.2017, the third respondent did not file any application seeking transfer of permit in his name. This writ petition was filed on 06.10.2018. In the meanwhile, the matter had seen one round of litigation. The fact that the third respondent did not choose to file any transfer application by itself indicates that the third respondent is not interested in keeping the permit alive.



5.As rightly contended by the learned counsel appearing for the petitioner the convenience of the travelling public will have to be taken note of. These are mini buses. In more or less similar situation, the Hon'ble Madras High Court in WP No.9633 of 1984 observed as follows :

WEB COPY

"The resulting position is that the permits all stand in the name of dead persons. If such a situation is allowed to continue, then, it is very likely that by the time the disputes between the parties are either settled or adjudicated upon, the buses, if by, plying on the routes, or even the permits with reference to the several routes may become useless, especially when, even according to the petitioner, the buses are off the road and nobody is operating on the routes in question and that may lead to cancellations of the permits for non-performance. Such a situation cannot therefore be allowed to be brought about on account of the disputes between the parties since the transport service is basically intended for the convenience of the travelling public and many important routes as detailed in the "C" Schedule to the point cannot be allowed to be cancelled for non-performance resulting in enormous difficulties for the member of the public, who are obliged to travel on those routes. Bearing in mind the need to preserve the permits and prevent their cancellation for non-performance and also taking into account the convenience of the travelling public, it appears to me very just and equitable that for the time being at least, there should be a transfer of all the permits in favour of the respondents 3 to 6 as prayed for by them. The learned counsel for the respondents 3 to 6 was repeatedly asked whether if such a transfer of the permits is effected in their favour, they would hold those permits so transferred not only for their own benefit, but also for the benefit of others, who either earlier or hereafter might have been or may be declared to have an interest or share herein, the learned counsel assured this court that respondents 3 to 6 would so hold the permits when transferred. In view of this, the first respondent is directed to transfer all the permits referred to in his notice R.No.9664/A5/84- dated 16.05.1984 in favour of respondents 3 to 6 in this writ petition. However, it is made very clear that this transfer is only with a view to preserve the buses as well as to protect the permits, so that they may not be lost or cancelled for non-performance."

In the decision reported in 1989 Writ L.R.391 (K.Vediammal vs. The Regional Transport Authority), the aforesaid decision in WP No.9633 of 1984 was followed. Both these decisions were followed and relief was granted to the applicant in WP Nos.620, 621 and 14801 of 2007 dated 30.04.2010.



6.I too feel inclined to adopt the same course of action. The third respondent no doubt has initiated a civil suit questioning the very validity of the settlement deed said to have been executed in favour of the writ petitioner. But then, no interim order has been granted in the said civil suit. But, at the same time, the present proceedings will have to abide by the outcome of the civil suit. This Court called upon the writ petitioner to indicate his willingness to act like a party receiver. The learned counsel appearing for the writ petitioner answered in the affirmative. The learned counsel for the writ petitioner submitted that the petitioner will deposit 50% of the net profits to the credit of O.S No.47 of 2017 on the file of the District Judge, Nagercoil.

7.Recording the said undertaking and respectfully following the decisions of the Hon'ble Madras High Court referred to above, I am of the view that in the interest of the travelling public and to preserve the permits in question, the order impugned in this writ petition deserves to be quashed. It is accordingly quashed. The first respondent is directed to effect transfer on the permits in question in favour of the writ petitioner within a period of three weeks from the date of receipt of a copy of this order. The writ petitioner shall however hold the same not only for his benefit but for the benefit of the other legal heirs. Of course, this will be subject to the outcome of O.S No.47 of 2017 on the file of the District Judge, Nagercoil. It is open to the third respondent to verify the accounts submitted by the writ petitioner. It is also open to the civil court to pass appropriate directions in that regard.

8.With these directions, this writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(cs-III)

/True Copy/

Sub Assistant Registrar(cs-IV)

To

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

2.The Regional Transport Officer,
Marthandam, Kanyakumari District.

+1cc to Mr.A.Thirumurthy Advocate in SR.No.99534

<https://hcservices.ecourts.gov.in/hcservices/>

+1cc to Mr.A.C.Asaithambi Advocate in SR.No.99425



5

WP (MD) No.21095 of 2018
and
WMP (MD) No.18891 & 18892 of 2018
10.12.2018

SKM

SPRSK SAR4 17.12.2018 5P 5C