



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.04.2018

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD)No.2893 of 2011

and

M.P.(MD)No.2 of 2011

WEB COPY

P.T.Mahalingam,
Proprietor,
Mahalingam Roadways,
53, Jawulikadai Street,
Arupukottai.

... Petitioner

-Vs-

1. The Government of Tamil Nadu,
Represented by Principal Secretary to Government,
Home Department,
Fort St.George, Chennai-600 009.

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

... Respondents

Prayer: Writ Petition - filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, calling for the records of the first respondent made in G.O.Ms.No.136, Home (Transport III) dated 23.02.2011 as published in the Tamil Nadu Government Extraordinary Gazette No.69, dated 23.02.2011 and quash the same.

For Petitioner : Mr.M.Palani
For Respondents : Mrs.J.Padmavathi Devi
Special Government Pleader

O R D E R

Challenge in this Writ Petition is to the New Comprehensive Scheme for the Modification of the Approved Modified Area Scheme, 1999, under the Tamil Nadu Motor Vehicles Act, in G.O.Ms.No.136, Home (Transport-III), dated 23.02.2011, as published in the Tamil Nadu Government Extraordinary Gazette No.69, dated 23.02.2011.

2. The writ petitioner is a stage carriage operator and a protected operator under the Tamil Nadu Act 41 of 1992 as well as under the old approved scheme route and subsequently under the Area Approved Scheme published in the year 1995 followed by the subsequent Modified Area Approved Scheme, such as 1997 Scheme and 1999 Modified Area Approved Scheme in respect of Madurai and Virudhunagar District.

3. Insofar as the present case is concerned, a proposal for the New Comprehensive Scheme 2010 to further modify the Approved Modified Area Scheme, 1999 under the Tamil Nadu Motor



Vehicles Taxation Act, 1974, was published vide G.O.Ms.No.271, Home (Transport - III) dated 10.03.2010, in the Tamil Nadu Government Extraordinary Gazette No.68, which reads as under:

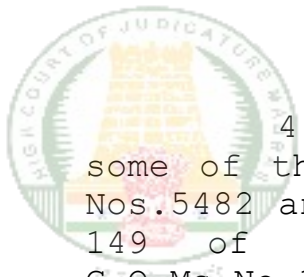
"And, whereas, the State Government are of the opinion that the "Approved Modified Scheme of road transport Service" in relation to the areas as approved and published as above is to be modified and a comprehensive single scheme has to be formulated in relation to the area comprising the entire State of Tamil Nadu, so that the Mini bus routes can be formulated by the Regional Transport Authorities concerned under the powers conferred under clause (ca) of sub-section (3) of Section 68 of the Motor Vehicles Act, 1988, and delegated to the Regional Transport Authorities by the State Transport Authority under Section 68(5) of the said Act, without any restrictions regarding rural / urban areas and as per the guidelines issued by the Government from time to time so as to provide direct bus facilities, to the people of villages / hamlets / habitations that have a population of 100 or more families, so as to reach the nearest Bus Stand of nearest town / city where adequate bus services are provided to various places. The routes should be viable and not more than 30% of the route lengths should overlap with any existing served route.

And, whereas, the State Government, having prepared a modified Scheme, in relation to the area comprising the entire State of Tamil Nadu, in further modification of the "Approved Modified Schemes" referred to above.

Now, Therefore, the Governor of Tamil Nadu hereby publishes the proposed Modified Scheme along with the "Approved Modified Schemes" as required under sub-section (2) of section 102 of the Motor Vehicles Act, 1988 (Central Act 59 of 1988).

The State Transport Undertakings concerned and the persons likely to be affected by the proposed Modified Scheme may send their representations to the Principal Secretary to Government, Home Department, Chennai - 600 009 within thirty days from the date of publication of this Notification in the Tamil Nadu Government Gazette. The proposal and the representations will be taken up for consideration at a hearing by the Principal Secretary to Government, Home Department, Chennai

<https://hcservices.ecourts.gov.in/Hcservices>, to be held at 11 A.M., on 26.04.2010 in the Conference Hall of the Main Secretariat Building, Chennai - 600 009."

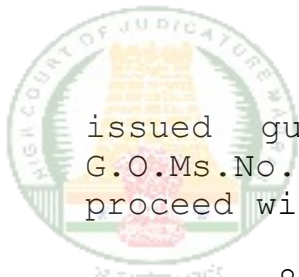


4. The said proposal of the year 2010 was challenged by some of the private bus operators before this Court in W.P.(MD) Nos.5482 and 5483 of 2010 and delegation of powers made under Rule 149 of the Tamil Nadu Motor Vehicles Rules, 1989 in G.O.Ms.No.1057, Home (Tr.VII) Department, dated 14.12.2009 was also challenged in W.P.(MD)No.7259 of 2010. This Court, in W.P.(MD)Nos.5482 and 5483 of 2010, had initially granted interim stay of the draft notification and subsequently, modified the order on 23.04.2010 enabling the Government to conduct public hearing scheduled to be held on 26.04.2010. Accordingly, the public hearing was conducted on 26.04.2010.

5. Accordingly, the public hearing was conducted on 26.04.2010 and the objections were heard by Tmt.S.Malathi, the then Secretary to Government, Home Department. Thereafter, within a period of one month, she got transferred to other department and one Mr.K.Gnanadesikan was appointed as Home Secretary on 18.05.2010. While the matter stood thus, the writ petitions challenging validity of the amendment to Rule 149 of the Tamil Nadu Motor Vehicles Rules, 1989, and the proposal challenged vide W.P.(MD) Nos.5482 and 5483 of 2010 were dismissed on 04.02.2011. Thereafter, by virtue of Rule 24 of the Tamil Nadu Government Business Rules, 1978, the new incumbent, namely, Mr.K.Gnanadesikan, Home Secretary to Government of Tamil Nadu, issued the impugned order approving the Modified Area Approved Scheme under Sub-Section (2) of Section 100 of the Act and the same was published in the Tamil Nadu Government Extraordinary Gazette No.69, dated 23.02.2011.

6. The said impugned order has been challenged by the writ petitioner on the grounds that the person, who heard the objections, did not pass order and the order was passed by another officer and, therefore, the impugned Scheme is in violation of principles of natural justice. Secondly, the issue regarding the issuance of executive instructions by the Government from time to time was held ultravires and not valid. Thirdly, the authority who hears the objections to the proposal and shall record the reasons for rejecting the objections or approving modifications. If the order is passed, without recording reasons, that will amount to non-application of mind.

7. Controverting the arguments, the learned Special Government Pleader would submit that the petitioner has no *locus standi* to maintain this Writ Petition. The object of providing direct bus facilities to the people of villages / hamlets / habitations that have a population of 100 or more families, is to enable them to reach the nearest bus stand of nearest town/city, where adequate bus services are provided to various places and <https://hccs.eas.gov.in/cases/> the condition that the routes should be viable and not more than 30% of the route lengths should overlap with any existing served route. By the modified Scheme, the Government has



issued guidelines to the Regional Transport Authorities in G.O.Ms.No.146, Home (Tr.III) Department, dated 25.02.2011, to proceed with the formulation of mini bus routes and issue permits.

8. She would further submit that according to the Government, the function of the Secretary to Government in this issue is only executive in nature and not *quasi judicial* and, therefore, the approval of the proposal by successor will not violate the principles of natural justice. According to her, there is a total misconception of understanding under Section 68 (3)(ca) of the Act and hence, the delegation of power to the Regional Transport Authority to formulate routes under Section 68(3)(ca) is not illegal. As per Section 67(1), the Government is empowered to issue directions by way of notifications both to the State Transport Authority and Regional Transport Authority with regard to the advantages offered to the public, trade and industry by the development of motor transport and the desirability of preventing uneconomic competition among the holders of permit. In W.P.(MD) Nos.5482, 5483 and 7259 of 2010, by order dated 04.02.2011, this Court has upheld the validity of the amendment made to Rule 149 of the Tamil Nadu Motor Vehicles Rules, 1989 and it is well within the power of the State to confer such a power. Therefore, the contention made by the learned counsel for the petitioner in this regard is not sustainable.

9. I have considered the rival submissions made on both sides.

10. From the materials submitted before this Court, it can be seen that the Government proposed modification of the Approved Scheme issued in the year 1999 and published the same vide G.O.Ms.No.271, Home (Transport - III) Department, dated 10.03.2010. The same was challenged by some transport operators in W.P.(MD)Nos.5482, 5483 and 7259 of 2010. This Court initially granted interim stay and thereafter, modified the same and observed that the hearing fixed by the authority on 26.04.2010 can go on and directed the parties to participate in the hearing as they had already submitted their objections. Accordingly, the hearing was conducted by one Ms.Malathi, and after her transfer, order was passed by her successor in office one Mr.Gnanadesikan after the dismissal of the writ petitions.

11. The issue has to be analysed as to whether the power exercisable under Sections 100 and 102 of the Motor Vehicles Act, 1988, is an administrative or quasi-judicial function and as to whether the impugned order is violative of principles of natural justice and suffers for want of reasons and non-application of mind.

12. A reading of Sections 99, 100 and 102 of the Motor Vehicles Act, 1988 would be beneficial to decide upon the issue ~~presented~~ in the present writ petition. As per Section 99, the Government is empowered to formulate a proposal for framing a Scheme and shall publish the same.



13. Sub-section 2 of Section 100 of the Act makes it mandatory to provide an opportunity of hearing to the parties before approving or modifying the Scheme. It is emphasised in Section 102 of the Act. Hence, it is very clear that the Government shall hear the objections, consider the same and if they so desire, approve or modify such proposal recording the reasons therefor. The decision to approve or modify the scheme is based on the discretion of the concerned authority. Such a decision, whether would fall under administrative function or quasi-judicial function is the primary issue to arrive at a finding. It is no doubt that implementing the Scheme after approving or modifying it, is essentially an administrative function. But while approving or modifying the scheme, the legislation repeatedly insists that the opportunity of hearing shall be mandatory. The element of discretion involved in taking a decision whether to approve or modify vests with the authority. If an authority is to implement the rules, policy decision and decide on the exigencies, it is purely an act carrying out administrative functions. But when there is an objection raised by two or more parties or contest between parties leading to acquiring or depriving rights and interests., duty is cast upon such an administrative authority, to weigh the merits and demerits, advantages and disadvantages, benefits and hardships in the public interest of providing adequate, economical and proper road transport and exercise his discretion judicially. Such exercise of duty shall be mandatorily in compliance with principles of natural justice will make it quasi-judicial and quasi-legislative function. In other words, adjudicating the claim of one or more claims between two or more contending parties is a quasi-judicial function. In the instant case, the Secretary to Government, Home Department, who hears and decides the issues between the private bus operators and State Transport Corporations shall necessarily to be considered as a quasi-judicial authority as he has to make a decision judiciously as to whether the scheme has to be approved or modified or rejected.

14. The learned Special Government Pleader contended that Rule 24 of the Tamil Nadu Government Business Rules, 1978, empowers the Secretary to Government, Home Department, to approve the scheme and hence there is no illegality in the order passed.

15. Rule 24 of the Tamil Nadu Government Business Rules, 1978, reads as under:

"24. Notwithstanding anything contained in these rules, where any undertaking, providing road transport service, is carried on by the State Government with reference to Section 97 of the Motor Vehicles Act, 1988 (Central Act 59 of 1988), the powers and functions which the State Government may exercise and perform under section 100 and 102



of the said Act and the rules relating thereto shall be exercised and performed by the Secretary to the State Government in the Home Department on behalf of the State Government and cases relating to such powers and functions of the State Government under the said sections 100 and 102 and the said rules need not be submitted to the Minister - in - charge."

16. The said rule pertains to allocating the business to the concerned Ministries and departments. Accordingly, the powers and functions exercisable under Sections 100 and 102 of the Motor Vehicles Act, 1988, is delegated to the Home Secretary. In so far as delegation of power is concerned, it is valid. It does not mean that the power exercised under Sections 100 and 102 of the Act, by the Home Secretary is purely administrative. As discussed above, it has to be seen as to whether the power exercisable under Sections 100 and 102 of the Motor Vehicles Act, 1988, are executive or quasi-judicial. In that view of the matter, the powers exercised by the Home Secretary is certainly a quasi-judicial power, for, the process of adjudication is involved in the same.

17. The predominant contention of the writ petitioner is that the authority who heard the matter shall pass orders. One person hears and other person passes an order is violative of principles of natural justice. The Hon'ble Supreme Court in the case of **Gullapalli Nageswara Rao vs. A.P.State Road Transport Corporation** reported in **1959 Supp (1) SCR 319** at Paragraph No.31, observed as under:

"The second objection is that while the Act and the Rules framed thereunder impose a duty on the State Government to give a personal hearing, the procedure prescribed by the Rules impose a duty on the Secretary to hear and the Chief Minister to decide. This divided responsibility is destructive of the concept of judicial hearing. Such a procedure defeats the object of personal hearing. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle



18. The Hon'ble Supreme Court, in the case of **Rasid Javed and others vs. State of Uttar Pradesh and another** reported in (2010) 7 SCC 781, at Paragraph No.51, observed as under:

"51.That a person who hears must decide and that divided responsibility is destructive of the concept of judicial hearing is too fundamental a proposition to be doubted. This settled principle has also been highlighted by this Court in Gullapalli Nageswara Rao but based on such principle the limited authority of hearing given to the Hearing Authority by the State Government cannot be treated as enlarged in its scope. A delegatee must confine his activity within four Corners of the powers invested in him and if he has acted beyond that, his action cannot have any legal sanction unless ratified by the delegator."

19. As per the above judgments, it is clear that the authority who hears the matter shall pass orders.

20. In so far as the objections were heard by one officer, viz., Ms.Malathy, the then Secretary, Home Department and approval made by her successor Mr.Gnanadesikan is concerned, it is violative of principles of natural justice and the procedure of modifying the scheme shall be strictly followed as laid down by the Hon'ble Supreme Court.

21. The second contention raised by the petitioner is that once the scheme is framed, approved or modified, it shall be implemented as such and Government cannot amend or modify by issuing executive instructions.

22. Clause 5(5) of the impugned scheme reads as under:

" (v) the permits of the mini bus operators to operate on the Mini bus routes to be formulated by Regional Transport Authorities under the powers conferred under clause (ca) of sub-section (3) of Section 68 of the Motor Vehicles Act, 1988 (Central Act 59 of 1988) and delegated to the Regional Transport Authorities by the State Transport Authority under Section 68(5) of the said Act, as and when necessary without any restrictions with reference to rural /urban area and as per the guidelines issued by the Government from time to time, so as to provide direct bus facilities to the people of villages / hamlets / ~~hamlets~~ ~~and~~ ~~in~~ ~~the~~ ~~regions~~ that have a population of 100 or more families, so as to reach the nearest Bus Stand of



nearest town / city where adequate bus services are provided to various places. The routes should be viable and not more than 30% of the route lengths should overlap with any existing served route."

23. This Court in W.P.No.12476 of 1998 etc., batch, by its order dated 30.01.1999, while dealing with the previous scheme has held as under:

" 41. I find some force in the contention of the learned counsel for the petitioner. As held by the Andhra Pradesh High Court in SPSRTC case, the proposal for modification of the approved scheme itself is a scheme. When once the scheme has been amended after following the procedure under Section 102 of the Act, the amended scheme will become the scheme. If any further modification is to be made to the scheme, then it goes without saying that the procedure laid down under Section 102 has to be scrupulously followed. When that be the law, it is not open to the Government to reserve the power to issue administrative instructions for future, in order to further modify or amend the amended scheme to vary the distance of the unserved rural area. Hence the reservation of the power under G.O.Ms.No.1254 and 1256 dated 1.9.97 relied on by the learned Advocate General cannot hold good and the same is ultra vires of the statutory provisions of Section 102 of the Motor Vehicles Act."

24. In so far as the present scheme is concerned, the clause which provides for reservation of power by the Government, is analogous to the previous scheme. When it is declared illegal, incorporation of the same objectionable clause shows non-application of mind and that the authority has acted with pre-determination. As held by the learned Judge in W.P.(MD) Nos.5482, 5483 and 7259 of 2010, dated 04.02.2011, the scheme is laudable one, but the procedure adopted by the authority is violative of principles of natural justice.

25. The Supreme Court in **B.A.Linga Reddy and others vs. Karnataka State Transport Authority and others** reported in (2015) 4 SCC 515 at Paragraph No.26, observed as under:

"26. It is apparent that there is no consideration of the objections except mentioning the arguments of the rival parties. Objections both factual and legal have not been considered much less reasons assigned to overrule them. Even Chief, reasons have not been assigned indicating how objections are disposed of."



26. But, when the approval or modification has been made by the person who had not heard the objections, one cannot expect recording of reasons addressing the objections raised. The reasons recorded were based on the written objections made to the proposals. In so far as the rejection is not based on the oral hearing, it can be inferred that order came to be passed in violation of principles of natural justice.

27. In view of the above, this Court is of the considered opinion that the impugned order passed in G.O.Ms.No.136, Home (Transport III) dated 23.02.2011 as published in Tamil Nadu Government Extra-ordinary Gazette No.69 dated 23.02.2011 is not sustainable in the eye of law and accordingly, set aside. The respondents shall re-do the exercise in compliance with principles of natural justice.

28. In the result, the Writ Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1. The Principal Secretary to Government,
The Government of Tamil Nadu,
Home Department,
Fort St. George,
Chennai - 600 009.

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

+1cc to Mr.M.Palani, Advocate Sr.No.62564

SM/TK

VB/SKN/SAR4/05.10.2018/9P/4C

Order made in
W.P. (MD) No.2893 of 2011
18.04.2018