

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P.s 12152 & 12153 of 2009
and
M.P.s 2 & 2 of 2009

Tamil Nadu State Transport Corporation,
(Villupuram Division I) Ltd.,
Villupuram,
rep. by its Managing Director. Petitioner

Vs

1. The State Transport Appellate Tribunal,
Chennai-600 104.
2. S.R.Mohanakrishnan,
S/o. Ramadoss,
No.3, Mariamman Koil Street,
Arakandanallur Post,
Villupuram District.
3. The Regional Transport Authority,
Villupuram District,
Villupuram.

... Respondents

PRAYER in W.P. 12152 of 2009 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent relating to the order in 1st respondent in Appeal No.17/05/A3 dated 25.11.2005 and modified in R.No.1513/2006/A8 in A.No.17/05/A8 dated 30.06.2006, to quash the same and to issue consequential directions to the 1st respondent STAT herein to reconsider the case.

PRAYER in W.P. 12153 of 2009 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent relating to the order in 1st respondent in Appeal

No.18/05/A3 dated 25.11.2005 and modified in R.No.1515/2006/A8 in A.No.18/05/A8 dated 30.06.2006, to quash the same and to issue consequential directions to the 1st respondent STAT herein to reconsider the case.

For Petitioner : M/s.Rajeni Ramadoss

For Respondents : Mrs.Radha Gopalan for R2

Mrs.K.Bhuvaneswari,
Addl. Govt. Pleader for R3

O R D E R

The petitioner is a Transport Corporation. Aggrieved by the order of the 1st respondent, the petitioner has filed the present Writ Petitions.

2. The case of the petitioner is that the 2nd respondent had applied for grant of mini bus permit on 28.09.2000 from the 3rd respondent to ply mini bus between two routes viz., Arumbakkam to Valandai Manalmedil and (2) Arakandanallur to Paranur School. As per the existing Rules in force, the 3rd respondent issued a notice and the petitioner has submitted his objection that as per guidelines issued in G.O.Ms.No.1475, Home (Transport III) Department, dated 28.10.1998, the distance of 1 km. from a boarding point shall be treated as a served sector and the distance of served sector in the proposed routes will be 6.65 kms., which is more than the permissible limit for a mini bus route permit. The 3rd respondent herein thereupon rejected the request of the 2nd respondent on 22.05.2001. Aggrieved by the said order of 3rd respondent, the 2nd respondent herein preferred an appeal before the 1st respondent Tribunal in Appeal Nos.368/2003 and 369/2003. In the said appeals, the objections were filed on behalf of the petitioner, however, without considering the said objections, the 1st respondent Tribunal set aside the order of 3rd respondent dated 22.05.2001 and remanded the matter back to the 3rd respondent for fresh consideration. Thereafter, again, the 3rd respondent has rejected the request of the 2nd respondent. Aggrieved by the said order, the 2nd respondent has preferred appeals before the 1st respondent in Appeal Nos.17/2005 and 18/2005 without impleading the petitioner as a party and there was also no notice was also served on the petitioner. Hence, the petitioner corporation was not aware of the subsequent development before the 1st respondent. However, without the knowledge of the petitioner, the 1st respondent Tribunal has allowed the appeals made by the 2nd respondent and again, remanded the matter back to the 3rd respondent for fresh consideration for issuing two mini bus permits in favour of 2nd respondent. As against that, the 2nd respondent has filed Writ

Petitions in W.P.Nos. 9937 and 9938 of 2006 before this Court challenging the order of remand. This Court by an order dated 27.04.2006 issued a direction to the 1st respondent to decide the issue with regard to the permit within a period of four weeks. In pursuant to the order of this Court, the 1st respondent by an order dated 30.06.2006 issued a direction to the 3rd respondent to grant permit as per the modified route subject to the availability of vacancies and seniority. Since the order of the 1st respondent was not implemented by the 3rd respondent, the 2nd respondent had approached this Court by way of filing Writ Petitions in W.P.Nos.33387 and 33388 of 2006 seeking a direction to the 3rd respondent to implement the orders dated 30.06.2006 in Appeal Nos.17 and 18 of 2005. This Court by a common order dated 03.04.2009 issued a direction to the 3rd respondent to comply with the order dated 30.06.2009 passed by the 1st respondent Tribunal in Appeal Nos.17 and 18 of 2000 within four weeks. Thereafter, the 3rd respondent by its letter dated 04.05.2009 communicated the order dated 03.04.2009 passed by this Court in W.P.Nos.33387 and 33388 of 2006 to the petitioner. Thereafter, the petitioner has filed the present Writ Petitions before this Court challenging the orders dated 25.11.2005 in Appeal Nos.17 and 18 of 2005 and the modified order dated 30.06.2006.

3. The learned counsel appearing for the petitioner would submit that though the earlier rejection order passed in the year 2005, thereafter, several litigations in between the petitioner Corporation and the mini bus operator and the earlier order passed by the 1st respondent Tribunal in Appeal Nos.17 and 18 of 2005 and the Writ Petitions filed before this Court, the petitioner was not impleaded as a party. Hence, the Transport Corporation did not aware of the earlier proceedings. However, after coming to know about the order passed by this Court in W.P.Nos.33387 and 33388 of 2006, the petitioner has filed the present Writ Petitions challenging the above said orders. Though the petitioner is not able to establish before the 1st respondent Tribunal, the distance of served sector is not within 4 kms. and it is beyond 4 kms. and after considering the objections, the 3rd respondent has rejected the operation of the mini bus permit in the above said route. Further, recently, the petitioner Corporation conducted field measurements and the field measurement reveals that the served sector is not available in the present route for granting mini bus permit and hence, it does not arise at the present stage and no vacancy is available for granting mini bus permit in favour of the petitioner. Therefore, the order of 3rd respondent need not be interfered with and already there was an appeal remedy available for the 2nd respondent, but without pursuing the appeal remedy, filing of another appeal before the authority and subsequent Writ Petitions, which is unsustainable one and no opportunity was given to the petitioner to establish the Corporation case before

the appellate authority as well as before this court. Hence, he prayed for allowing these Writ Petitions.

4. Per contra, the learned counsel appearing for the 2nd respondent would submit that initially, the application was made before the Regional Transport Permit for mini bus permit. The 3rd respondent appointed a fit person for field measurement in order to find whether the served sector as well as unserved sector is available for granting mini bus permit in favour of the petitioner as per G.O.Ms.No.1475, dated 28.10.1998. As per the direction of 3rd respondent, the field measurement was conducted by the Motor Vehicle Inspector and on behalf of petitioner corporation, the Branch Manager joined along with Motor vehicle inspector and also Assistant Engineer (R.D.), Mugaiyur Panchayat Union at Manampoondi and filed a report. But, contrary to the report filed by the Regional Transport Authority, the 3rd respondent has rejected the application is per se illegal. As against the order, the 2nd respondent has preferred appeals and in all those appeals, the petitioner has not succeeded. Finally, this Court directed the 1st respondent to implement the order dated 30.06.2006 by granting permit. However, in the present Writ Petitions, the petitioner is not challenging the order of this Court passed in W.P.Nos.33387 and 33388 of 2006 dated 03.04.2009 and filing the Writ Petitions challenging the orders passed by the 1st respondent Tribunal is unsustainable one and the petitioner is duty bound to proceed as per the order passed by this Court in W.P.Nos.33387 and 33388 of 2006.

5. In view of the above, the very issues involved in the present cases is that whether the petitioner corporation is entitled to challenge the orders passed in Appeal Nos.17 and 18 of 2005 dated 30.06.2006 without challenging the order passed by this Court in W.P.Nos.33387 and 33388 of 2005 dated 03.04.2009. Admittedly, there was a joint inspection report before the Regional Transport Authority and without considering the joint inspection report of Regional Transport Authority rejected the mini bus permit on the basis of objection filed by the petitioner. The 2nd respondent has filed appeals before the 1st respondent Tribunal by way of two appeals viz., Appeal Nos.368 and 369 of 2003 and thereafter Appeal Nos.17 and 18 of 2005. However, challenging the order of remand passed by the 1st respondent, the 2nd respondent has approached this Court by way of filing Writ Petitions in W.P. Nos. 9937 and 9938 of 2006 and this Court by way of common order issued a direction to the 3rd respondent to decide the issue with regard to the mini bus permit within a period of four weeks. Thereafter, the 1st respondent has granted the permit in Appeal Nos.17 and 18 of 2005. Since that order is not complied with by the 3rd respondent, the 2nd respondent is constrained to file the Writ Petitions in W.P. Nos.33387 and

33388 of 2006 directing the 3rd respondent to comply with the order dated 30.06.2006. However, the fact remains that the petitioner has not challenged the order passed by this Court in W.P.Nos. 33387 and 33388 of 2006 and it has challenged only the original order dated 30.06.2006 passed by the 1st respondent. Hence, these Writ Petitions are dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

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To

1. The State Transport Appellate Tribunal,
Chennai-600 104.

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

+2 CCS to Mr.S. Radha Gopalan, Advocate sr 55917.

+4 Ccs to Mr.S. Rajeni Ramadoss, Advocate sr 55564.

+1 CC to Govt.Pleader sr 55422.

W.P.s 12152 & 12153
of 2009
and
M.P.s 2 & 2 of 2009

PP (CO)
SP (16/07/2019)

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