

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2019

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.21701 of 2008

and

M.P.No.1 of 2008

Tamilnadu State Transport Corporation Limited
rep. by Managing Director
Coimbatore (Division-I)
Coimbatore

...Petitioner

Vs.

1.The State Transport Appellate Tribunal
Chennai

2.The Regional Transport Authority
Coimbatore

3.Ashoka Services
No.335, Marriamman Koil Street
Peelamedu Pudur
Coimbatore-4

... Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of CERTIORARI, calling for the records pertaining to the order dated 07.08.2008 passed in M.V.App. No.520 / 1979 on the file of the State Transport Appellate Tribunal, Chennai the 1st Respondent herein and quash the same.

For Petitioner : M/s.S.Sairaman

For Respondents: Mrs.K.Bhuvaneshwar, AGP for R1 & R2

Mrs.R.Swarnalatha for R3

O R D E R

The writ petition has been filed by the petitioner for issuance of a writ of certiorari, calling for the records pertaining to the order dated 07.08.2008 passed in M.V.App. No.520 / 1979 on the file of the State Transport Appellate Tribunal, Chennai the 1st Respondent herein and quash the same.

2.The brief facts of the case is that the 3rd respondent is a stage carriage operator. During the year 1979 the Regional Transport Authority, Coimbatore i.e. 2nd respondent herein had notified the application of the 3rd respondent seeking the renewal of the permit in respect of their bus bearing Reg.No.TNB2124 plying on the route Coimbatore Town Service route No.8A viz. Pothanur Eye Hospital to Chinthamanipudur (via) Noyyal Bride, Ukkadam, Town Hall, Government Hospital, Old Sungam, Ramanadapuram, Singanallur and Ondipudur for a period of five years from 23.01.1978 under Section 57(3) of the Motor Vehicles Act, 1939. The renewal application was rejected initially by the 2nd respondent, as against the rejection of renewal application, the 3rd respondent filed an appeal in M.V.App.No.520/1979 before the State Transport Appellate Tribunal, Chennai and obtained orders for status quo on 01.11.1980, the appeal was allowed. Thereafter, the petitioner Corporation filed CRP No.889/1981 before this Court. This Court by its order dated 17.01.1983 remanded the matter back to the State Transport Appellate Tribunal, Chennai. Aggrieved by the said order, the petitioner Transport Corporation filed an appeal in W.A.No.155 of 2005. The said appeal was dismissed by the Division Bench of this Court on 03.04.2008. Thereafter, the State Transport Appellate Tribunal entertained the matter and renewed the Stage Carriage Operator permit in favour of the 3rd respondent and rejected the request of the petitioner Transport Corporation. Aggrieved by the said order, the petitioner filed present writ petition before this Court and the very same issue was decided by the Division Bench of this Court in W.A.No.1144 of 2016 dated 03.08.2018. The relevant portion of the order is extracted hereunder:

"11.We have considered the rival submissions. Admittedly the predecessor in interest of the 3rd respondent, viz. A.M.Muthusamy Mudaliyar, had a valid permit to run the Stage carriage in the route in question till 27.09.1978, thereafter, the State Transport Authority refused renewal by its order dated 21.12.1978. The said order of the State Transport Authority was challenged before the Appellate Tribunal. However, the proceedings in the Appeal were stayed by this Court, pending decision in the Writ Petition filed by the appellate before the Tribunal. By the time the Tribunal took up the Appeal for consideration, the Motor Vehicles Act 1939 was repealed and the New Act was in place and by virtue of the judgment in Hon'ble Supreme Court in Pandian Road Ways Corporation V.M.A.Aggappan the permits that were granted in any of the scheme routes became invalid. This necessitated enactment of the Tamil Nadu Act 41 of 1942 viz. the Tamil Nadu Motor Vehicle (Special Provisions Act 1992), which saved the operation of the permits that were

granted between 1976 and 1990. The said Act was upheld by the Hon'ble Supreme Court. The purport of the said Act was held to be to protect those operators who have been issued permits between 1976 and 30.06.1990 by the Hon'ble Supreme Court in T.P.K. Thilagavathy Vs. Regional Transport Authority, Periyar District at Erode, reported in 1995(1) SCC 456.

12. Section 3 of the 1992 Act which is deemed to come into force on 04.07.1976, enables the Regional Transport Authority to renew the permits of the small operators to ply their stage carriage on any route covered by a draft scheme or an approved scheme or such portion of the route covered by the draft scheme or approved scheme. The applicability of the State Act was considered by the Division Bench of this Court in Tamil Nadu State Transport Corporation Ltd., Dharmapuri Vs. The State Transport Appellate Tribunal, Chennai in W.A.Nos.248 and 266 of 2005 and in Puratchi Thalaivar MGR Transport Corporation vs. The Regional Transport Authority, Kancheepuram and others in Writ Appeal No.74 of 2005. The Division Bench in Writ Appeal Nos.248 and 266 of 2005 had held that the right of renewal of the permit which was valid between 04.06.1976 and 30.06.1990 would stand saved under the provisions of the Tamil Nadu Act 41 of 1992. The Division Bench had after referring to the judgment of the Hon'ble Supreme Court in Civil Appeal No.12854 of 1996, the permits which were valid between the cut of period i.e. from 1976 and 1990 are protected and saved under the Tamil Nadu Act 41 of 1992. Therefore the permit granted to the predecessor in interest of the 3rd respondent would also be entitled to the said protection and as such the State Transport Appellate Tribunal was justified in relying upon the judgment of the Division Bench in Writ Appeals Nos.248 and 266 of 2005, while allowing the Appeal.

13. Another Division Bench of this Court in Writ Appeal No.74 of 2005 had considered the scope of the protection afforded by Act 41 of 1992 to small operators. In Writ Appeal No.74 of 2005, a Division Bench of this Court rejected the contention of the Corporation that the Appeal filed by the permit holder who did not have a valid permit as on 30.07.1992 will stand abated. The Division Bench took note of the fact that the permit of the individual operator was in force between the period viz. June 1976 to 30.06.1990. In view of the same, the Division Bench concluded that the operator in question the 3rd respondent in Writ Appeal

would be a protected operator.

3.In view of the categorical decision held by this Court, I am inclined to extend the same benefit to the 3rd respondent herein.

4.This writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The State Transport Appellate Tribunal
Chennai

2.The Regional Transport Authority
Coimbatore.

+1 cc to Mr.S.Sairaman, Advocate Sr.No.45933

+1 cc to M/s.R.Swarnalatha, Advocate Sr.No.45936

+1 cc to The Government Pleader, Sr.No. 46279

W.P.No.21701 of 2008
and M.P.No.1 of 2008

KS (CO)
CSL/11.07.2019

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