

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.07.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No. 39373 of 2005
and
W.M.P.No. 42185 of 2005

V.G.Palanisamy
Prop: Kandan Palani Transports,
Komarapalayam,Namakkal District. ..Petitioner

Vs

1. The State Transport Appellate
Tribunal, Chennai - 104.
2. The Regional Transport Authority,
Erode. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ order or direction in the nature of writ of Certiorari, calling for the records on the file of the first respondent in Appeal No. 7/2002/A5 dated 29.08.2005 confirming the order of the 2nd respondent in R.No.9231/A2/99 dated 27.11.2001 and quash the order dated 29.08.2005.

For Petitioner : Mr.M.Krishnappan

For Respondents : Mr.J.Ramesh, AGP

O R D E R

The prayer sought for in this Writ Petition is for issuance of a Writ of Certiorari, to call for the records from the file of the first respondent in Appeal No.7/2002/A5 dated 29.08.2005,

confirming the order of the 2nd respondent in R.No.9231/A2/99 dated 27.11.2001 and to quash the same.

2. The petitioner is operating 2 stage carriages TN-34-C-3044 and TN-34-C-3045 on K1 Town service, namely Komarapalayam to Government General Hospital in Erode Town. The distance on the route is 20.4 Kms and the vehicles are permitted to operate 16 singles per day. The petitioner submits that out of the total distance of 20.4 kms., a distance of 8 kms., lies in Erode District and remaining distance lies in Namakkal District. The Regional Transport Authority, Namakkal has issued the permit including the portion lying in Erode District, after getting necessary concurrence. The permits are renewed from time to time and are valid upto 31.08.2010.

3. The learned counsel appearing for the petitioner submits that these permits were originally granted in favour of the T.P.K.Karunanidhi of Erode. Subsequently, on the death of the said permit holder, the permits have been transferred in favour of one T.P.K.Thilagavathy. The petitioner has obtained these permits by transfer, with the permission of the Transport Authority, with effect from 17.05.2000. His contention is that right from the initial grant of permit from 01.09.1987, these two vehicles have been permitted to operate from Erode Bus stand to Government General Hospital, via, Nachiappa street, on account of narrowness of the route near clock Tower and Majis street.

4. The learned counsel further submits that the local Police as well as the Transport Authorities have permitted various stage carriages in Erode town to operate on various course of the route, more particularly via Nachiappa street. It is necessary to submit that as a result of the public interest litigation as well as the litigation by the private operators, this Court by Judgment dated 04.10.1999, in W.P.No. 12018 of 1996 batch, has directed the Transport Authority to follow the different course of the route pending finalisation of the traffic congestion being solved. This Court has also given direction to the 2nd respondent to appoint an Expert Committee in consultation with the Police and the District Collector and other public authorities to solve the traffic problem.

5. The learned counsel for the petitioner submits that pursuant to the direction of this Court, the Expert Committee was constituted by the 2nd respondent and the Committee appears to have met and discussed the issue on 23.06.2000 and on 04.07.2000. The petitioner was not issued any notice by the Expert Committee or by the 2nd respondent herein before deciding the request for traffic diversion.

6. No counter was filed on the side of the respondents. The learned Additional Government Pleader reported that the proposals of the Expert Committee was based on the available records and based on the order of this Court in W.P.No. 12018 of 1996, dated 04.10.1999. The relevant paragraph in the proposals of the Expert Committee is extracted hereunder:

" 3. The Town Service route No.K1 and 1 owned by private operators and the town services route No.1 owned by Tamil Nadu State Transport Corporation Ltd., Erode will operate (via) Majid Street as it is."

7. On perusal of the above, it is seen that the Town Services Route No. K1 and 1 is owned by the private operators. However, it appears that Town Services Route No.1 is owned by Tamil Nadu State Transport Corporation Limited. The petitioner has operated two buses and the Tamil Nadu State Transport Corporation Limited operated 8 buses in the same route. However, the private operator alone is directed to operate the route as directed by the Expert Committee. However, the Transport Corporation is allowed to operate the private operators. However, the transport Corporation is directed to avoid Nachiappa Street by the private operators.

8. Considering the above facts, a prima facie case is found that the order is discriminating the operators, adopted by the 2nd respondent.

9. The petitioner submits that the 2nd respondent while rejecting all other operators to operate via Nachiappa Street by holding that the diversion is only via Majis Street, however, the same yardstick was not applied by the 2nd respondent while considering the request of the petitioner who has been permitted to operate via Majis Street instead of Nachiappa Street. Therefore, there will be discrimination in the approach adopted by the 2nd respondent in the matter of grant for operators. Therefore, the order is liable to be set aside for non-application of mind and indiscriminatory in nature.

10. The petitioner submits that the Expert Committee has directed that the private operators who operating on town services route No.K1 and Route No.1, to be operated by Majis Street and route No.1 owned by Tamil Nadu State Transport Corporation Limited will operate also via Majis Street.

11. In light of the above, this court is inclined to remand the matter back to the Authority for fresh consideration and disposal. Accordingly, the Regional Transport Authority has to consider the present circumstances and pass appropriate orders on merits and in accordance with law, after affording sufficient

opportunities to the petitioner and the Tamil Nadu State Transport Corporation. This Court makes it clear, the interim injunction granted to the petitioner will continue till the decision is taken.

12. Accordingly, the present writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Insp cell)

//True Copy//

Sub Assistant Registrar

kmm

To

1. The State Transport Appellate
Tribunal, Chennai - 104.
2. The Regional Transport Authority,
Erode.

+1cc to M/S.Swarnalatha, Advocate SR.61001
+1cc to the Government Pleader SR.61880

W.P.No. 39373 of 2005

RK(CO)
CB(06/11/2019)