

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2019

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.16513 & 16514 of 2016
and

W.M.P.Nos.14270, 14271, 14272 & 14273 of 2016

A.Paulraj ... Petitioner in both W.Ps.

-vs-

- 1.The Regional Transport Authority,
Dharmapuri.
 - 2.The Regional Transport Officer,
Dharmapuri.
 - 3.The State Transport Appellate Tribunal,
Chennai-104.
 - 4.S.Prabu
 - 5.Tamilarasan
S/o.Muniyappan
 - 6.N.Shanmugam
 - 7.The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Salem Main Road, Bharathipuram,
Dharmapuri-5.
- .. Respondents in both W.Ps.

[RR4 to 7 are impleaded as per order dated 05.08.2016 in
W.M.P.Nos.19337 & 19338/2016 in W.P.Nos.16513 & 16514/2016]

Petitions under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the impugned orders of the first respondent vide proceedings R.No.A3/50958/2005 and R.No.A3/50959/2005 dated 25.08.2015 and the consequential order of the third respondent in confirming the order of the first respondent in Appeal Nos.196 & 197 of 2015 by order dated 28.03.2016, to quash the same and further to direct the respondent to consider and pass orders on the petitioner's application for grant of minibus permit on the route Dharmapuri Town Bus stand to Kullannur Jack

& Jill School as per the orders of the third respondent in Appeal Nos.267 & 278 of 2007 dated 03.07.2007 respectively.

For Petitioner : Mr.ARL.Sundaresan,
(In both W.Ps.) Senior Counsel
assisted by
Mr.S.Govindraman

For Respondents: RR1 & 2 - Mr.N.Srinivasan,
(In both W.Ps.) Additional Government Pleader

: R3 - Tribunal

: R4 - Mr.K.Hariharan

: RR5 & 6 - Mr.R.S.Vijayaprasad

: R7 - No appearance

COMMON ORDER

These writ petitions have been filed by one Thiru A.Paulraj challenging the orders passed by the State Transport Appellate Tribunal, Chennai (for brevity "STAT") dated 28.03.2016, in M.V.Appeal Nos.196 and 197 of 2015. The appeals have been dismissed confirming the orders dated 25.08.2015, passed by the Regional Transport Authority (for brevity "the RTA"), Dharmapuri, the 1st respondent, who rejected the petitioner's applications for grant of stage carriage minibus permits. One of the major reasons for rejection of the applications is on the ground that the petitioner is a trafficker in bus permits. There are other reasons as well which this Court will consider in the discussions that will follow.

2.Mr.ARL.Sundaresan, learned Senior Counsel assisted by Mr.S.Govindraman, learned counsel for the petitioner contended that the petitioner is not a trafficker in permits, because the two minibus permits, which were granted in the year 2000 to the petitioner were surrendered by him in the year 2001 and subsequently, in the year 2001, he applied for three minibus permits, which were granted and he had renewed the three minibus permits twice once during 2006 and subsequently in 2011 and out of the three permits, two permits were transferred in the year 2012 to the 5th respondent and in the year 2014, one minibus permit was transferred to the 6th respondent along with one spare bus permit.

3.Further, it is submitted that the applications filed by the petitioner in 2006 for grant of two minibus permits were rejected and those orders were put to challenge before the STAT

in Appeal Nos.267 and 268 of 2006, which were allowed by common order dated 03.07.2007, and the matter was remanded to the RTA for fresh consideration. However, the order of remand was not complied with. Therefore, the petitioner was constrained to move this Court by filing writ petitions in W.P.Nos.4745 and 4746 of 2014, which were disposed of by order dated 11.08.2014 and only thereafter, the RTA had taken up the applications, which were rejected by order dated 25.08.2015 and challenging the same, the petitioner had filed appeals before the STAT, which have been rejected by the impugned orders dated 28.03.2016. Therefore, it is submitted that the facts would clearly show that the petitioner is not a trafficker in permits.

4.Secondly, it is submitted that the transfer of permit by the petitioner's father one Mr.Anthony to the 4th respondent in the year 2007, after seven years, after the permit was granted, cannot be put against the petitioner because the two are different business entities. Further, it is submitted that the reason assigned by the STAT that share autos have increased and therefore, it is not necessary for grant of minibus permit, is a perverse finding because of the fact that the State Government issued a statutory notice fixing the number of minibus permits for Dharmapuri District at 250 whereas, 56 permits only have been granted. Further, it is submitted that because the petitioner had transferred the permits earlier that cannot be a disqualification for the petitioner to file applications before the authority for grant of fresh permit. Therefore, it is contended that the order passed by the STAT calls for interference.

5.The learned Additional Government Pleader submitted that all factors have been taken into consideration by the statutory authority, tested for its correctness by the STAT and after two fact finding authorities have recorded that the petitioner is a trafficker in permits, this Court normally will not interfere on such findings. Furthermore, in the counter affidavit, the 2nd respondent has clearly spelt out as to how the number of permits that has to be granted in a particular area has to be decided and there is no error in the order passed by the Tribunal.

6.Mr.K.Hariharan, learned counsel appearing for the 4th respondent, who was the objector before the RTA and also a party before the STAT, submitted that the findings rendered by the Tribunal clearly show that the overlapping distance is more than 70% of the route length and the STAT took into consideration the conduct of the petitioner in having obtained permits and surrendered it and having applied for a fresh permit for the very same route. Therefore, the petitioner is undoubtedly a trafficker in permits and the STAT rightly rejected the claim made by the petitioner.

7.The learned counsel for the 4th respondent referred to the decision of the Hon'ble Division Bench of this Court in the case of N.Sathianathan vs. B.K.P.M.Amaravathi Ammal and others reported in AIR 1965 Madras 308 (Vol.52, C.98) to explain the word "trafficking". Reliance was placed on the decision in the case of Subbulakshmi vs. Regional Transport Authority and another reported in 2007 Writ L.R. 753 to support the contention that the petitioner having transferred the earlier permits, is not entitled to get a new permit in his name, that too, for the very same route. Reliance was also placed on the decision in the case of P.Shanmugaiah vs. P.S.Lakshmanakumar and others reported in 2007 Writ L.R. 832. On the above grounds, the learned counsel seeks to sustain the order passed by the STAT.

8.In reply, Mr.ARL.Sundaresan, learned Senior Counsel for the petitioner submitted that the 4th respondent is no longer in transport business, as he has transferred his permit and he has no locus standi to object to the challenge to the impugned order.

9.In response to the said submission, Mr.K.Hariharan, learned counsel for the 4th respondent fairly submitted that the 4th respondent was an objector before the STAT, and before this Court, the legal position has been placed for consideration and the same may be considered.

10.The learned Senior counsel continuing his reply submissions, contended that the guidelines, which have been referred to in the case of Subbulakshmi (supra), cannot override a statutory notification which has fixed an upper ceiling limit of 250 minibus permits for Dharmapuri District. Therefore, the same cannot be an embargo. Further, the facts in Subbulakshmi (supra) case are entirely different and cannot be applied to the petitioner's case. Further, by relying upon the case in Mithilesh Garg vs. Union of India and others reported in AIR 1992 SC 443, it is submitted that the endeavour of the respondents should be to encourage grant of stage carriage minibus permits. On the above submissions, the learned Senior Counsel seeks for interference of the order passed by the STAT.

11.Before I proceed to consider the contentions advanced by the learned counsel for the parties, the first aspect is to take note of the recent judgment of the Hon'ble First Bench of this Court in the case of E.S.Sundara Mahalingam vs. Special Tribunal for Co-operative Cases and others in W.A.No.4021 of 2019, dated 22.11.2019. The said appeal arose out of an order passed in a writ petition challenging the order of the Special Tribunal for Co-operative Cases headed by the learned District Judge in exercise of powers under Section 152 of the Tamil Nadu Co-

operative Societies Act, 1983. When the appeal was listed for maintainability, the Hon'ble First Bench held that even though the writ petition may have been captioned as a petition under Article 226 of the Constitution of India praying for Writ of Certiorari, yet a writ petition, if questioning the order of Tribunal arising out of the proceedings under a State Act would be entertainable under Article 227 of the Constitution of India.

12. Further, the Hon'ble First Bench held that in the given circumstances, if the writ petition would be maintainable under Article 227 of the Constitution of India, then the writ appeal against the same under Letters Patent would not be entertained by a Division Bench. On this prima facie finding, the parties were given liberty to argue the matter. After referring to the decision of the Division Bench of the Patna High Court in the case of Vijayanand Puri vs. Deorani Devi and another, reported in 2019 SCC OnLine Patna 1808, whereunder the judgment of the Hon'ble Supreme Court in the case of Rupa Ashok Hurrah vs. Ashok Hurra, (2002) 4 SCC 388 and the view taken in Surya Dev Rai vs. Ram Chander Rai, (2003) 6 SCC 675, that was later on overruled in the decision of Radhey Shyam vs. Chhabi Nath, (2015) 5 SCC 423, it was held that the jurisdiction of this Court while testing the correctness of an order passed by a Special Tribunal chaired by a learned District Judge could be exercised under Article 227 and the petition could have been treated to be that under Article 227 only. Accordingly, in the said case, the writ appeal was held to be not maintainable.

13. The case on hand is no different from that of a case of E.S. Sundara Mahalingam (supra). The only difference being, the said Tribunal was constituted under the provisions of the Tamil Nadu Co-operative Societies Act, 1983 and the 3rd respondent Tribunal has been constituted under the provisions of the Motor Vehicles Act, 1988. Both headed by the learned District Judges. Therefore, though the present writ petition has been entertained as a petition under Article 226 of the Constitution of India, applying the decision of the Hon'ble First Bench, this petition has to be treated as a petition under Article 227 of the Constitution of India.

14. Now we move on to consider the correctness of the order passed by the Tribunal. The first issue is whether the petitioner is a trafficker in permits for which, we need to take note the following facts. To be noted that the petitioner and his father both are in transport business. In fact, one or more applications were made by them jointly. So far as the petitioner is concerned, he had applied for two minibus permits, which were granted in the year 2000. For reasons best known to him, in the year 2001, the permits were surrendered. The petitioner states that there were certain difficulties, as the

route was to operate through lands owned by private persons. However, there is nothing to substantiate the same. After having surrendered the two permits, the petitioner had applied for three minibus permits in the same year. These were granted, apart from one spare bus permit, which was granted in the year 2002. Thus, as of 2001-02, the petitioner had four permits, that is, three minibus permits and one spare bus permit. These permits were renewed during the year 2006 and in the year 2011. In the year 2012, the petitioner transferred two of the permits to the 5th respondent. In the year 2014, he transferred one minibus permit and one spare bus permit to the 6th respondent. The petitioner's father, Mr. Antony was granted one minibus permit in the year 2001. This he transferred in favour of the 4th respondent in the year 2007. Even when the petitioner was holding three minibus permits granted in the year 2001, in 2006 he had applied for two fresh permits. Those applications have been rejected and the appeals filed against the orders of rejection have been confirmed which are challenged in these writ petitions. Initially, the applications were rejected, the appeals filed against the said orders were allowed by the STAT on technical ground and the matter was remanded in the year 2007 and in the year 2014, the petitioner filed writ petitions before this Court to dispose of the said applications in terms of the direction issued by the STAT which resulted in the rejection order dated 25.08.2015, affirmed by the STAT by the impugned order dated 28.03.2016.

15. The above facts will clearly demonstrate that the petitioner between the year 2000 and 2001, had been granted five permits out of which, two permits were surrendered by him for reasons best known. It is no doubt true that the petitioner held three permits and also obtained one spare bus permit in the year 2002 and the permits were renewed on two occasions, that is, 2006 and 2011. What is important is that in the year 2006 itself, two applications were filed by the petitioner for operating the minibus permits in the same route. This has been noted by the STAT in paragraph 17 of the impugned order. In fact, those two permits have been sold to the 5th respondent. Therefore, the petitioner under the guise of an existing operator, could not have applied for two permits and probably, the applications in the year 2006 were under such premise because in 2006, the petitioner had three permits and as an existing permit holder he is entitled to apply for one more permit. But such consideration will not be available to the petitioner when he transferred the permits in the year 2011.

16. It may be true that the applications were made in the year 2006, but the applications were considered by the authority in the year 2015, and at the relevant time, the petitioner was no longer an existing operator because by then, he had sold all

the five permits. Though the petitioner states that he is an independent business man and nothing to do with his father, the statement cannot be fully taken into consideration because there were joint applications made by the petitioner and his father and his father also sold the permit, which was granted to him. If these facts are taken into consideration, in the view of this Court, the decision in the case of Subbulakshmi (supra) would apply because the permit holder had transferred the earlier permits issued in his favour and on the date, when his application for new permit was considered, he is not an existing operator.

17.As pointed out earlier, though the applications were made in the year 2006 by the petitioner, when he was an existing operator, when the applications were considered in terms of the order of the STAT in the year 2016, he was not an existing operator. If that is so, he becomes a competitor to his purchaser by seeking for permit in the same route. Therefore, the decision in Subbulakshmi (supra) will be sufficient to non suit the petitioner.

18.In the preceding paragraphs, this Court has noted as to the conduct of the petitioner. The conduct would clearly reveal that the transfer of the permits is undoubtedly sale of the permits and it will be very difficult for the authorities to find out as to whether the petitioner has realised huge financial benefits, but the repeated sales undoubtedly cause a stigma. As held in N.Sathianathan (supra), when sales of buses along with transfer of permits are resorted to repetitively when the normal course of business of the operator does not demand it, and the sales are effected with the clear motive of making a profit by such transfers, it is obvious that the operator is taken an undue advantage of his position as a permit holder to make profits on sales of his permits and this will attract the stigma of trafficking, and it will not be desirable to prefer him, as he had shown himself to be a person who has abused the permits granted to him. The conduct of the petitioner could clearly be brought within the expression "trafficking" as explained in N.Sathianathan (supra).

19.So far as the decision in the case of Mithilesh Garg (supra) is concerned, those observations were rendered by the Hon'ble Supreme Court in cases where area is not covered by a scheme and therefore, the said decision can in no manner advance the case of the petitioner.

20.The learned Senior Counsel for the petitioner had pointed out that merely because the earlier permits were surrendered/transferred, that cannot operate as an embargo for the petitioner to apply a fresh. Such contention cannot be accepted

for the reason that the grant of such carriage permits is regulated by a statute and the rules framed thereunder and it is not merely the applicant who applies for the permit and the grantor, viz., Government, but the most important person who is required to be served is the travelling public. Therefore, the yardstick applied to cases of normal surrender or giving up a claim cannot be applied to a case relating to a stage carriage permit. The petitioner had transferred the permits on the ground that he is giving up transport business and to now turn around and say that he wants to continue the transport business is not only contradictory to what he had committed in writing, but is unbelievable. Therefore, it would also go to show that the reason originally assigned by the petitioner while transferring the permit was not genuine. This will strengthen the case of trafficking against the petitioner.

21. Before this Court, there has been no challenge by the petitioner on any procedural irregularity committed by the STAT. The two fact finding authorities have clearly dealt with all issues and adequate opportunity has been granted to the petitioner and no ground has been raised before this Court alleging lack of opportunity.

22. Thus, for all the above reasons, this Court finds that the petitioner has not made out any ground to interfere with the order passed by the STAT affirming the orders passed by the RTA.

23. In the result, these writ petitions fail and they are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. The Regional Transport Authority,
Dharmapuri.

2. The Regional Transport Officer,
Dharmapuri.

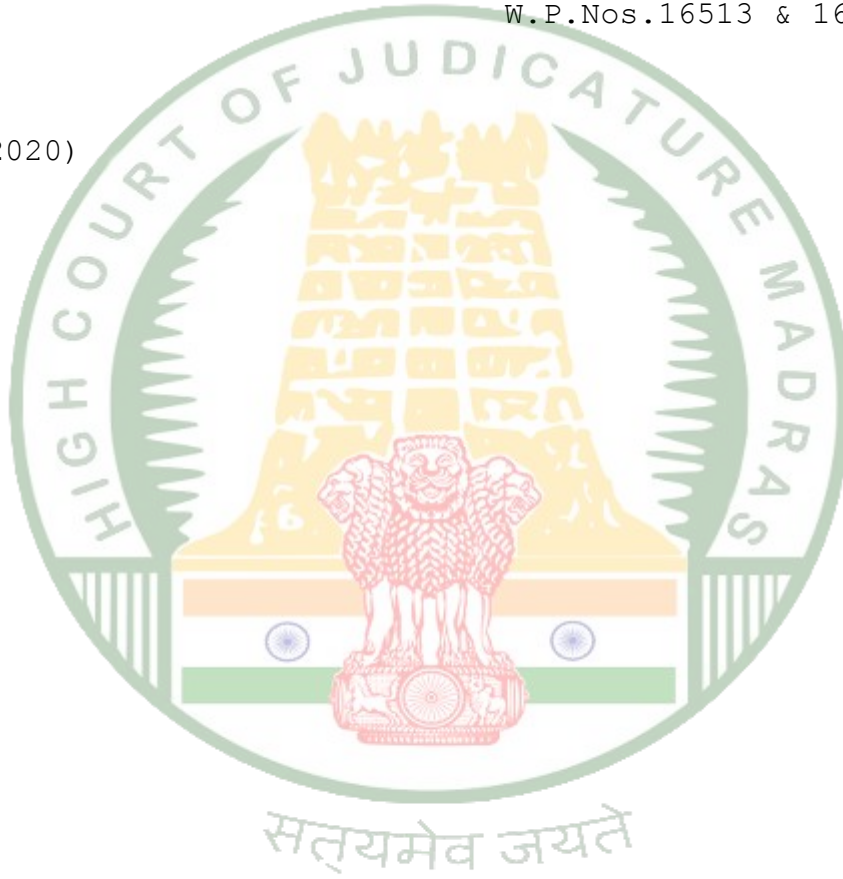
3. The State Transport Appellate Tribunal,
Chennai-104.

4. The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Salem Main Road, Bharathipuram, Dharmapuri-5.

+1 CC to Mr.K.Hariharan, Advocate sr 102783.
+2 Ccs to Mr.S.Govindraman, Advocate sr 102285
+1 CC to Govt. Pleader sr 102534.

W.P.Nos.16513 & 16514 of 2016

SP(06/01/2020)



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