

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2019

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.8042 of 2011 &
M.P.No.2 of 2011

N.Arunprasath

...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,
Erode District,
Erode.

... Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, to call for the records of the 1st 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.K.Bhuvaneswari, AGP

O R D E R

The petitioner has filed this writ petition, seeking the following relief:-

"To issue a writ of Certiorari, to call for the records of the 1st 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. "

2.Today, when the matter is taken up for hearing, the learned counsel for the petitioner would submit that the very same G.O., which was challenged in this writ petition, was already been quashed by this Court in W.P.(MD).No.2893 of 2011 dated 18.04.2018.

3.Considering the submission made by the learned counsel for the petitioner, this Court perused the order in W.P.(MD).No.2893 of 2011, the relevant paragraphs are read as follows:

"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 raised 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.

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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.

4.In view of the above, this writ petition is allowed in similar lines. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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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,
Erode District, Erode.

+1 cc to M/s.M.Palani, Advocate, S.R.No.67807

+1 cc to the Government Pleader, S.R.No.68125

W.P.No.8042 of 2011 &
M.P.No.2 of 2011

RSI (CO)
SSM(13/09/2019)

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