

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.09.2019

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Writ Petition No.24156 of 2019

T.Nallammal
Rep by her Power Agent
P.Saminathan

.. Petitioner

/versus/

The Regional Transport Authority,
Tirupur Region, Collectorate,
Tirupur

.. Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent herein to implement the order of the State Transport Appellate Tribunal Transport Appellate Tribunal, Chennai dated 17.07.2009 made in M.V.Appeal No.1004 of 2004 forthwith.

For petitioner : Mr.T.Padmanabhan
For Respondent : Mr.N.Inbanathan
Addl.Govt.Pleader

O R D E R

The petitioner herein gave an application to the respondent on 29.08.2000 for grant of a mini bus permit on the route Tirupur old bus stand to Kunnangalpalayam. The distance of the route is 9.6 kms with an over lapping distance of 3.8 kms. The said route is in compliance with the requirements contemplated in the notification of the Transport department in G.O.Ms.No.1532 dated 17.11.1999. However, his application for grant of mini bus route permit was not considered by the respondent. Hence, the petitioner filed a writ petition and obtained a direction from this Court directing the respondent to consider the representation and pass orders.

2. The respondent has considered the application from others who made their representation subsequent to the petitioner. The petitioner aggrieved by the out of turn consideration of the application ignoring the seniority of the petitioner herein preferred an appeal before Regional Transport

Authority. At the same time, few others also filed the appeal aggrieved by not considering their applications. Since the respondent rejected the appeal quoting the over lapping distance exceeds 3.8 kms, the petitioner herein preferred a Revision petition before the State Transport Appellate Tribunal in MV appeal No.1004 of 2004 under Section 89(1)(a) of the Motor Vehicles Act against the order of the Regional Transport Authority rejecting their application for grant of mini stage carriage permit to ply on the route from Tirupur old bus stand to Kunnagalpalayam. This appeal was disposed of on 17.07.2019, directing the Regional Transport Authority to consider the application afresh and pass order after affording an opportunity to the petitioner as per seniority and three months time was granted to dispose of the application of the petitioner. In spite of the order passed by the State Transport Authority Tribunal setting aside the order passed by the Regional Transport Authority and remanding the matter back to Regional Transport Authority, till date, no order has been passed. Hence, the writ petition is filed to direct the respondent herein to dispose of the application as per the order of the State Transport Appellate Tribunal passed in M.V.A.No1004 of 2004 dated 17.07.2019.

3. In response to the affidavit, the respondent has filed counter, wherein, it is stated that after the order passed by the State Transport Appellate Tribunal in MV. Appeal No.1004/2004, the matter was pending under consideration by the respondent. Meanwhile, the Government of Tamilnadu published a new comprehensive area scheme in G.O.Ms.No.136, Home Transport (3) dated 23.03.2011, according to which the routes should be viable and not more than 30% of route lengths should overlap with any existing served route. Guidelines were also issued by the Transport department vide G.O.Ms.146, Home (Transport III) dated 25.02.2011, constituting a committee headed by the Regional Transport Authority as Chairman consisting the Secretary/Regional Transport Authority, Divisional Engineer, Highways and Rural works and General Manager of the concerned State Transport Appellate Tribunal transport undertakings as members of the Committee and it was decided to consider the application for grant of mini bus permit after the committee identifying the mini bus route. Under this circumstances, the application of the petitioner could not be disposed of within 3 months as directed by the State Transport Appellate Tribunal vide letter dated 17.07.2019. It is further stated in the counter affidavit that G.O.Ms.136 dated 23.03.2011 was challenged by one Mahalingam and the said writ petition was allowed by the Madurai bench of Madras High Court on 18.04.2018.

4. The Government contemplate filing the writ appeal

against the order. Therefore, in such circumstances, till the issue regarding the new Comprehensive Area Scheme contemplated under G.O.Ms.No.136 reach finality, the request of the petitioner to grant mini bus permit has to be kept pending.

5. The reason assigned by the respondent for not complying with the order of State Transport Appellate Tribunal is not justifiable. While the statutory appellate authority has directed the respondent herein to dispose of the application within 3 months and the said 3 months expired by the end of 2009, the respondent has breached the order of the STAT.

6. In the counter affidavit, the respondent citing G.O.Ms.No.136 which was issued on 23.02.2011 and later quashed by this Court on 18.04.2018 cannot be a reasonable cause for not considering the application of the petitioner as per the order of the State Transport Appellate Tribunal. Further more having disobeyed the order of State Transport Appellate Tribunal for nearly 8 years without any compunction, the respondent has stated that though G.O.Ms.No.136 dated 23.02.2011 has been quashed by this Court on 18.04.2018 and the Government is contemplating to file an appeal along with the petition for condoning of delay. Since the litigation regarding new Comprehensive Area Scheme has not reached finality, he is not inclined to pass order on the petitioner appeal. This reasoning stated in the counter affidavit is only to protract the proceedings and justify the disobedience of the Tribunal order. If at all the Government really aggrieved by the order of this Court passed on 18.04.2018, against the G.O.Ms.No.136 dated 23.02.2011, the State should have preferred the appeal in time or else should have come out with alternate method of redressing the issue. The State has opted neither of the two methods. The respondent should have passed some order in application pursuant to the direction of the State Transport Appellate Tribunal, which the respondent has not chosen to do so, but try to justify his dereliction of duty. The G.Os. issued nearly 1½ years after the order of State Transport Appellate Tribunal. Even that G.O.was later quashed by this Court and no appeal has been as on date filed against the order.

7. Hence the writ petition is allowed. The respondent is hereby directed to comply with the direction given by the State Transport Appellate Tribunal vide order dated 17.07.2019 and pass orders within a period of 2 months from the date of receipt of copy of this order. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rpl

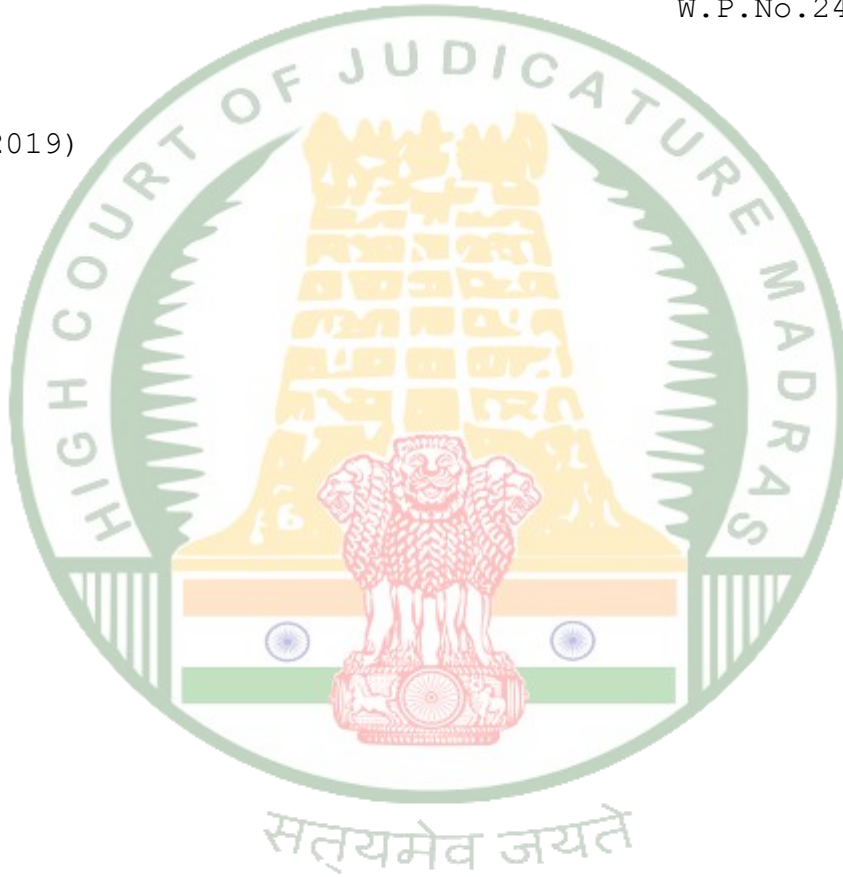
To

The Regional Transport Authority,
Tirupur Region, Collectorate,
Tirupur.

+1cc to Mr.T.Padmanabhan, Advocate, SR.77497
+1cc to the Government Pleader, SR.77380

W.P.No.24156 of 2019

EV(CO)
CB(09/10/2019)



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