

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : Orders Pronounced
02..11..2018 on:28..01..2019

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.5142 of 2017
&
W.M.P.No.5436 and 5437 of 2017

K.M.Jeyaraj

... Petitioner

-Versus-

- 1.The State Transport Appellate Tribunal,
Chennai.
- 2.The Regional Transport Authority,
Coimbatore.
- 3.The Tamil Nadu State Transport Corporation Limited,
Coimbatore.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent in R.No.22707/A2/2010 dated 01.12.2015 and to quash the order dated 01.12.2015 in R.No.22707/A2/2010 passed by the 2nd respondent and for a consequential direction to the 2nd respondent to grant the stage carriage permit to the petitioner on the Town Service Route No.7, Gandhi Park to Gandhi Park in Coimbatore City.

For Petitioner

: Mr.AR.L.Sundaresan,
Senior Counsel for
Mr.S.Govindaraman

For Respondent(s)

: Mr.A.N.Thambidurai,
Spl. Govt. Pleader for
R1 to R3

ORDER

The petitioner, after several rounds of ligation for the grant of a stage carriage permit, has come up with the instant writ petition challenging the order passed by the 2nd respondent

- Regional Transport Authority dated 01.12.2015 in R.No.227097/A2/2010 thereby rejecting the application of the petitioner for stage carriage permit in respect route No.7, Gandhi Park to Gandhi Park in Coimbatore City.

2. The facts leading to the filing of the writ petition in brief are as follows:- On 07.05.1980, the 2nd respondent - Regional Transport Authority, Coimbatore [in short "the RTA"] had issued a notification inviting applications from the interested persons for the grant of permit (1 No.) to ply a Stage Carriage on the Town Service Route No.7, Gandhi Park to Gandhi Park in Coimbatore City.

3. Pursuant to the above said notification, the petitioner and the 3rd respondent - Tamil Nadu State Transport Corporation Limited, a State Owned Corporation [Erstwhile Cheran Transport Corporation Limited - herein after will be referred to as "State Transport Corporation"] submitted their applications for permit. Even though the application was invited for the grant of one stage carriage permit, by order dated 28.10.1986, the RTA had granted two permits, one to the petitioner and the other to the 3rd respondent - State Transport Corporation. Challenging the order granting permit to the petitioner, 3rd respondent - State Transport Corporation filed a writ petition in W.P.No.1105 of 1988 before this court. This court, after hearing the parties, by way of final order dated 11.06.1989, had set aside the order passed by the RTA granting permit to the petitioner as well as to the 3rd respondent in its entirety and remitted the matter back to the RTA to consider the matter afresh and pass orders on merits and in accordance with law.

4. On remand, pending consideration of the applications before the RTA, the petitioner had approached this court by way of Writ Petition in W.P.No.22628 of 1993 for early disposal of the application submitted by the petitioner for permit in compliance with the order of this court dated 11.06.1991 made in W.P.No.1105 of 1988. During the pendency of the above said writ petition, the RTA had passed an order on 09.06.1994 in and by his proceedings in R.No.68619/A2/1987 granted permit in favour of the 3rd respondent and rejected the application of the petitioner on the ground that the proposed route overlaps on approved scheme routes and as per Section 6(4) of the Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992 [in short, "Act 41 of 1992"] no new permit can be granted to private operators on notified routes and also As per Section 7 of the Act 41 of 1992, every application for grant of new permit on notified route made before 31.07.1992 will stand abated. That apart, the RTA had further held that the need of the public has already been fulfilled as the 3rd respondent corporation is

operating its buses in the route. The above said order was not challenged by the petitioner.

5. Thereafter, the writ petition in W.P.No. 22628 of 1993 filed by the petitioner came to be considered by this court and this court, by order dated 13.11.2000, directed the petitioner to file a written representation to the RTA for consideration for grant of permit. Pursuant to the order of this court in the said writ petition, the petitioner submitted his application for grant of permit and the same was rejected by the RTA by an order dated 06.06.2001, on the ground that the application of the petitioner for grant of permit had already been considered and rejected on merits on 09.06.1994 itself and that order has become final and no fresh circumstances warranted for reconsideration of the application and that apart, the route has already been covered by the area scheme and no fresh permit could be granted to any private individual. Challenging the above said order, the petitioner filed another writ petition in W.P.No.25302 of 2001 and this court by order dated 03.03.2008 had set aside the order dated 06.06.2001 passed by the RTA, however, on considering the earlier order of the 2nd respondent dated 09.06.1994, whereby the petitioner's application was rejected, this court held that the petitioner's application cannot be rejected pursuant to the Act 41 of 1992 and directed the petitioner to submit a fresh application for grant of stage carriage permit and the RTA was directed to consider the same afresh. Accordingly, the 2nd respondent considered the application of the petitioner for permit and once again rejected the application of the petitioner by his order dated 24.06.2008. Challenging the said order of the RTA, the petitioner preferred an appeal in MV Appeal No.47 of 2010 before the State Transport Appellate Tribunal [in short 'STAT'] and the appellate tribunal, by order dated 29.03.2011, allowed the appeal and set aside the order passed by the RTA and remitted the matter back to the RTA for fresh disposal. On remand, the 2nd respondent, heard the matter afresh and once again rejected the application by order dated 21.02.2013. That order was again challenged by the petitioner before the STAT and the STAT allowed the appeal and set aside the order passed by the RTA and remitted the matter to the RTA for fresh consideration with a direction to the RTA to consider the petitioner's application as per the order of this court dated 03.03.2008 made in W.P.No.25302 of 2001. Again the RTA rejected the appeal of the petitioner by order dated 01.12.2015 after having elaborately considered the various provisions of the Motor Vehicles Act and also the order passed by this court in W.P.No.25302 of 2001. It is this order which is now under challenge in this writ petition.

6. The 2nd respondent has filed a detailed counter affidavit contending that the application of the petitioner for grant of

permit cannot be considered as both the Repealed Motor Vehicles Act, 1939 and the new Motor Vehicles Act, 1988 debar the grant of new permit on approved scheme routes to any person other than the State Transport undertaking and the approved scheme dated 23.02.2011 was in force which excluded the private operators. Section 104 of the Motor Vehicles Act prohibited granting of stage carriage permit other than mini bus to any private operators and any permit granted to any private individual operator without regard to the restriction contemplated either under the Repealed Act and New Act and various judgments of the Hon'ble Supreme Court could be saved only by provisions of Act 41 of 1992, which only protects the permits issued between 04.06.1976 and 30.06.1992 and any permit granted thereafter cannot be protected under Act 41 of 1992. In the above circumstances, grant of any new permit would be ultra vires to the provisions of the MV Act. So far as the grant of permit under the reserved quota is concerned, the same also cannot be considered as the notification inviting application for grant of permit was called for only under the open category and not under the SC / ST quota and the 2nd respondent had elaborately considered the judgement of this court in W.P.No.25302 of 2011 and had rightly come to the conclusion that the petitioner was not entitled for grant of stage carriage permit.

7. Mr.AR.L.Sundaresan, the learned senior counsel appearing for the petitioner strenuously contended that when this court had clearly held that the provision of Section Act 41 of 1992 will not be applicable to the case of the petitioner and had directed the 2nd respondent RTA to consider the application afresh without reference to the Act 41 of 1992 and subsequently when the petitioner's application was rejected by the RTA, the STAT had set aside the order of the RTA and remitted the matter back to the RTA to consider the application without reference to the Act 41 of 1992 and in accordance with the judgement of this court in W.P.No.21302 of 2011, the RTA had once again rejected the application relying upon the provision in the Act 41 of 1992 giving unsustainable reasons. That apart, according to the learned senior counsel, the petitioner being a person belonging to a scheduled caste is entitled to get permit under the reserved quota, but, that was also not properly considered by the 2nd respondent while passing the impugned order and the reasons given by the 2nd respondent RTA for rejecting the application is totally unsustainable in law and the same is against the specific directions of this court given in W.P.No.25302 of 2001 dated 03.03.2008.

8. Per contra, the learned Special Government Pleader appearing for the respondents contended that after having elaborately considered the order of this court in W.P.No.25302 of 2011, the RTA had come to a right conclusion that the de

hors the provisions in Act 41 of 1992, the petitioner is not entitled to get permit under the new comprehensive scheme which prohibits the grant of new permit on the route covered by the notified area. That apart, according to the learned Special Government Pleader, the application of the petitioner cannot be considered under the reserved quota since the rules have been amended only subsequent to the issuance notification inviting application for the grant of permit from the interested persons and on the date of calling for application, there was no rule for grant of permit under the reserved category and hence, the amended rules cannot be given retrospective effective and as such the petitioner is not entitled to claim permit under the reserved category.

9. I have considered the rival submissions carefully.

10. The writ petition has been filed mainly on the ground that even though the STAT remanded the matter to the RTA with a specific direction that the application of the petitioner cannot be rejected by invoking the provision in Section 6(4) of the Act 41 of 1992 and that the petitioner is eligible to get permit under the reservation policy as he belongs to a scheduled caste community. That apart, according to the petitioner, by order dated 03.03.2008, this court has specifically held that that Act 41 of 1992 will not have any impact on the petitioner application as the application has been made much prior to the Act 41 of 1992 came into force.

11. Originally the notification inviting application from the interested persons for the grant of one stage carriage permit in respect of Town Service Route No.7, Gandhi Park to Gandhi Park in Coimbatore City has been issued under the Old Act. However, the 2nd respondent RTA granted two permits one to the petitioner and the other to the 3rd respondent. On a challenge by the 3rd respondent by way of writ petition in W.P.No.1105 of 1988, the order granting permits in favour of the petitioner as well as in favour of the 3rd respondent, was set aside by this court by an order dated 11.06.1989 and the matter was remanded for fresh consideration. The said writ petition was allowed mainly on the ground that the applications were invited for grant of only one permit and the RTA had no jurisdiction to grant two permits and this court while setting aside both the permits remitted the matter to the RTA for fresh consideration. On remand, the 2nd respondent RTA passed an order dated 09.06.1994 granting the permit in favour of the 3rd respondent and rejected the application submitted by the petitioner for grant of permit. The above said order was passed mainly on the ground that after the Tamil Nadu Act 41 of 1992 came into force, the route particularly overlaps the approved scheme route i.e., between ooty - palakad and Coimbatore - Thanjavur and hence, under Section 6(4) of the Act 41 of 1992, no new permit could be

granted to the private operators on the above notified route. Apart from that , as per Section 7 of the Act 41 of 1992 any application for grant of new permit on the notified route made before 31.07.1992 shall stand automatically abated.

12. Admittedly, the above said order passed by the 2nd respondent RTA was not at all challenged by the petitioner. Hence, the order passed by the 2nd respondent RTA in respect of grant of permit in favour of the 3rd respondent has become final. Thereafter, the writ petition filed by the petitioner in W.P.No.22628 of 1993 seeking for early disposal of the application filed by him before the RTA for permit as per the order passed by this court in W.P.No.1105 of 1998 came to be disposed of by this court on 11.06.1991, whereby this court permitted the petitioner to make a fresh representation to the RTA and pursuant to the order of this court, the application filed by the petitioner for grant of permit was disposed by the RTA by order dated 06.06.2001. The above order was passed on the ground that already the application of the petitioner was rejected on 09.06.1994 and the same has become final and no new circumstances warranted for fresh consideration of the application of the petitioner for the grant of stage carriage permit. When the above order was challenged by the petitioner in W.P.No.25302 of 2001, this court had considered the order passed by the 2nd respondent RTA dated 09.06.1994 and held that the new Act 41 of 1992 cannot be invoked by the respondent to reject the application of the petitioner as abated as the applications were originally called for before the Act 41 of 1992 came to be in force and remitted the matter back to the RTA to consider the matter afresh.

13. This court is unable to comprehend how the validity of the order passed by the RTA dated 09.06.1994 can be considered in a writ petition filed by the petitioner challenging the consequential order passed by the RTA. Be that as it may, now, in the instant case, one thing is clear that in the earlier writ petition filed by the 3rd respondent challenging the permit granted in favour of the petitioner this court had clearly held that as per the notification, only one permit can be granted and RTA had no jurisdiction to grant two permits and remitted the matter back to the RTA for fresh consideration for grant of a permit either to the petitioner or to the 3rd respondent. The relevant portion of the order of this court in W.P.No.1105 of 1988 dated 11.06.1991 reads as follows:-

"3. However, in view of the decision of this court in R.Indira v. Regional Transport Authority, AIR 1983 Mad 380 (DB), which has been affirmed by the Supreme Court in C.A.Nos.2733 and 2734 of 1982, I am of the view that the order of the 2nd respondent cannot be

sustained and the 2nd respondent had committed a grave error of jurisdiction in increasing the number of permits from one to two and revising the same in the same meeting in which he took up the matter for considering the application for the grant of permit. "

14. Pursuant to the above order, the RTA granted the permit in favour of the 3rd respondent and rejected the application of the petitioner by order dated 09.06.1994. The order granting permit in favour of the 3rd respondent was not at all challenged by the petitioner and the same has become final. As per the order passed by this court, referred to above, only one permit could be granted and the same was granted to the 3rd respondent and there is no scope for granting of another permit in favour of the petitioner. All the subsequent proceedings were initiated pursuant to the order passed by this court in W.P.No.22628 of 1993 dated 13.11.2000, which only permitted the petitioner to submit a written representation for permit and directed the RTA to consider the application of the petitioner for the grant of stage carriage permit.

15. It is pertinent to note that the above writ petition was filed by the petitioner only seeking for early disposal of the pending application for grant of the permit in accordance with the order passed by this court in W.P.No.1105 of 1988 dated 11.06.1991 and this court, by order dated 13.11.2000, directed the petitioner to submit his representation for the grant of permit and the RTA was directed to consider the application and pass appropriate orders on merits. The RTA in compliance with the directions of this court, passed an order on 06.06.2001 thereby rejecting the application of the petitioner for the grant of stage carriage permit on the ground that his application had already been rejected by order dated 09.06.1994 and there is no fresh circumstance warranted for reconsideration of his application. When that order was challenged in W.P.No.25302 of 2001, this court, by order dated 03.03.2008, directed the RTA to consider the application of the petitioner without reference to the Act 41 of 1992. On a perusal of the above said order, it is clear that, this court did not consider the fact that, on the date of passing such order, permit has already been granted to the 3rd respondent and the 3rd respondent corporation is operating in the route specified in the permit and this court did not set aside the order granting permit in favour of the 3rd respondent. Till today, the 3rd respondent is operating its services based on the permit granted in their favour. Unless the permit granted in favour of the 3rd respondent is set aside, a second permit cannot be granted in favour of the petitioner, in view of the order of this court dated 11.06.1991 made in W.P.No.1105 of 1988. In the above

circumstances, the first limb of the argument of the learned senior counsel is only liable to be rejected.

16. So far as the second limb of argument advanced by the learned senior counsel for the petitioner regarding grant of permit under the reserved category, admittedly, the notification inviting application for the grant of a stage carriage permit was issued on 07.05.1980 and whereas the Tamil Nadu Motor Vehicle rules have been amended only in the year 1988 in respect of granting permit under reserved category for SC / ST and suitable roaster has been fixed for granting permit under the reserved category. On the date of calling for the application, there was no rule for providing permit under the reserved category. Apart from that, applications were called for, for the grant of only one permit under the open category and therefore, the petitioner was not entitled for permit under reserved category. Hence, this argument of the learned senior counsel is also liable to be rejected.

17. For the foregoing discussions, this court is of the considered view that the writ petition is devoid of merits and the same deserves only to be dismissed.

18. In the result, this writ petition is dismissed. No costs. Consequently, connected WMPs are closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

kmk

To

1.The State Transport Appellate Tribunal, Chennai.

2.The Regional Transport Authority, Coimbatore.

3.The Tamil Nadu State Transport Corporation Limited,Coimbatore.

+1cc to Mr.S.Govindaraman, Advocate SR.No.7149

Writ Petition No.5142 of 2017

SJ(CO)
GMY(18/02/2019)