



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE **N.KIRUBAKARAN**
AND

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.A. (MD) Nos.301 to 303 of 2019
and
C.M.P. (MD) No.2429 of 2019

W.A. (MD) No.301 of 2019

M.Mariappan : Appellant/5th Respondent

Vs.

1.T.K.Krishnasamy : 1st Respondent/Petitioner

2.The Regional Transport Authority Cum
The District Collector, Dindigul.

3.The Regional Transport Officer, Palani.

4.Sri Ganesh Murugan Finance,
No.7, Senguntha Mudali Street, Karur.

5.M.Gunasekaran : 2 - 5 Respondents/1-4 Respondents

PRAYER: Writ Appeal is filed under Clause XV of Letters Patent against the order dated 11.01.2019 passed in W.P.(MD) No.23085 of 2018.

Prayer in WP(MD). 23085/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue Writ of Mandamus directing the first respondent to conduct an enquiry and to revoke the transfer of the stage carriage permit from the name of the petitioner to the name of the 4th respondent on the route Ottanchathiram bus stand to Vedasandur in respect of vehicle bearing Registration No.TN 57 R 1679 with reference to the representation of the petitioner dated 15.11.2018 to the first Respondent.

For Appellant : Mr.K.M.Venugopal

For Respondent 1 : Mr.S.Govindaraman

for Mr.R.Subramanian

For Respondent 5 : Mr.M.Jegadeeshpandian



W.A. (MD) No. 302 of 2019

M. Mariappan

: Appellant/Petitioner

Vs.

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1. The Regional Transport Authority Cum
The District Collector, Dindigul.

2. The Regional Transport Officer,
Palani, Dindigul District.

3. M. Gunasekaran : Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause XV of Letters Patent against the order dated 11.01.2019 passed in W.P. (MD) No. 25156 of 2018.

Prayer in WP (MD) . 25156/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue Writ of Mandamus directing the Respondents 1 & 2 to transfer the stage carriage permit bus bearing Registration No. TN 57 R 1679 between Oddanchathiram Bus Stand to Vedasanthur.

For Appellant : Mr. K. M. Venugopal

For Respondent 3 : Mr. M. Jegadeeshpandian

W.A. (MD) No. 303 of 2019

M. Mariappan : Appellant/5th Respondent

Vs.

1. T. K. Krishnasamy : 1st Respondent/Petitioner

2. The Regional Transport Authority Cum
The District Collector, Dindigul.

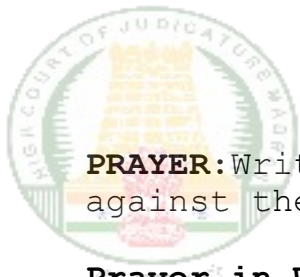
3. The Regional Transport Officer, Palani.

4. Sri Ganesh Murugan Finance,
No. 7, Senguntha Mudali Street, Karur.

5. M. Gunasekaran

6. The Inspector of Police,
<https://hcservices.ecourts.gov.in/hcservices/>
District Crime Branch,
Dindigul.

: 2 to 6 Respondents/1 to 4 & 6 Respondents



PRAYER: Writ Appeal is filed under Clause XV of Letters Patent against the order dated 11.01.2019 passed in W.P.(MD) No.47 of 2019.

Prayer in WP(MD). 47/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorari, calling for the records of the impugned order of the first respondent vide 004871/A1/2017 dated Nil.09.2017 signed by the second respondent on 5.9.2017 with reference to the transfer of stage carriage permit from the petitioner to the name of the fourth respondent on the route Ottanchatiram bus stand to Vendasandur in respect of vehicle bearing Registration No.TN 57 R 1679.

For Appellant	: Mr.K.M.Venugopal
For Respondent 1	: Mr.S.Govindaraman for Mr.R.Subramanian
For Respondent 5	: Mr.M.Jegadeeshpandian

JUDGMENT

(Judgment of the Court was delivered by **S.S.SUNDAR, J.**)

These appeals are preferred as against the order of the learned Single Judge in W.P.(MD)Nos.23085 and 25156 of 2018 and 47 of 2019.

2.The brief facts, that are not in dispute, are as follows:

2.1.The transport vehicle bearing Registration No.TN-57-R-1679 is the subject matter of this litigation. The permit in respect of the said vehicle to ply from Ottanchatram to Vendasandur was granted in favour of T.K.Krishnasamy who is the first respondent in W.A.(MD)Nos.301 and 303 of 2019. He has come forward with the case that he availed financial assistance from one Sri Ganesh Murugan Finance, namely, the fourth respondent in W.A.(MD)Nos.301 and 303 of 2019. It is further stated that in connection with the financial transaction, signature of the first respondent were obtained in blank papers and they were utilised for effecting transfer of permit from the name of the first respondent to one Mr.M.Gunasekaran, the fifth respondent in W.A.(MD)Nos.301 and 303 of 2019 and third respondent in W.A.(MD)No.302 of 2019. The first respondent in W.A.(MD)Nos.301 and 303 of 2019 filed a Writ Petition in W.P.(MD)No.23085 of 2018 for issuance of a Writ of Mandamus directing the Regional Transport Authority to conduct an enquiry and to revoke the transfer of the stage carriage permit from the name of the petitioner to the name of Mr.M.Gunasekaran, the fifth respondent in W.A.(MD)Nos.301 and 303 of 2019 and third respondent in W.A.(MD)No.302 of 2019. The first respondent in W.A.(MD)Nos.301 and 303 of 2019 also filed another writ petition in W.P.(MD)No.47 of 2019 to quash the order of Regional Transport Authority, dated 05.09.2017



regarding the transfer of permit from the writ petitioner to the name of M.Gunasekaran.

2.2.During the pendency of the first Writ Petition in W.P. (MD)No.23085 of 2018, it appears that the fifth respondent in W.A. (MD)Nos.301 and 303 of 2019 and third respondent in W.A.(MD)No.302 of 2019 intended to have some agreement or arrangement with the appellant for transfer of permit from the name of fifth respondent to the appellant. In the Writ Petition filed by the first respondent, an order of *status quo* was granted. The transfer of permit from the first respondent in favour of the the fifth respondent in W.A.(MD) No.301 of 2019 was made as early as on 05.09.2017. It is not in dispute that the fifth respondent along with the appellant has filed a joint application for transfer of permit in favour of the appellant. However, the first respondent and the fifth respondent in W.A.(MD)No.301 of 2019 have amicably settled their dispute. As a result of which, the fifth respondent has withdrawn his consent for transfer of permit from the name of the fifth respondent in W.A.(MD)No.301 of 2019 to the name of the appellant. It is in the said circumstances, the Writ Petition filed by the first respondent was allowed by the learned Single Judge after referring to Rule 212 of Tamil Nadu Motor Vehicle Rules, which reads as under:

"212.Withdrawal of consent for transfer: When the consent of either or both the parties to the transfer of a permit is withdrawn before transfer is sanctioned, the Transport Authority shall drop further proceedings in regard to the transfer of that permit:

Provided that, when either of the parties withdraws such consent, the Transport Authority shall before dropping such proceedings inform the other party of the withdrawal of consent."

3.Reading of Rule 212 of the Tamil Nadu Motor Vehicle Rules, shows that the Regional Transport Authority is required to drop the proceedings once the consent by one of the parties to the transfer is withdrawn before the transfer is sanctioned. It is not in dispute that the permit was not transferred pursuant to the joint application in favour of the appellant. The learned Counsel appearing for the appellant himself admits the factual position. The learned Counsel appearing for the appellant contended that the transport authority before dropping further proceedings has to issue notice to the parties concerned. He further submitted that the joint application cannot be decided without holding an enquiry and an opportunity to the appellant who is one of the parties to the joint application.

4.A reading of Rule 212 clearly indicate that the consent of parties to the application for transfer of permit should be available till the transfer is sanctioned by proceedings of Regional Transport Authority. If the consent of any one is withdrawn before



transfer is ordered, the transport authority has no other option but to drop the proceedings with regard to the transfer of permit. The proviso to Rule 212 is only to ensure whether the withdrawal of consent is true or not. In the present case, neither the appellant nor any one of the parties to the writ petitions dispute the fact that the fifth respondent herein has withdrawn consent pursuant to the settlement of dispute with the first respondent. It is in the said circumstances, this Court find no irregularity or illegality in the order passed by the learned Single Judge.

5. The learned Counsel appearing for the appellant further submitted that the Writ Petition filed by the first respondent is not maintainable as he has an alternative remedy. The writ petition filed by the first respondent is only for issuing a Writ of Mandamus directing the first respondent to conduct an enquiry and revoke the transfer of permit for stage carriage from the name of the first respondent to the name of the fifth respondent herein. It is not in dispute that the transfer of permit was actually effected even before an order of *status quo* was passed. However, that has nothing to do with the present situation. The subsequent development indicate that the first respondent has later filed a joint application along with the fifth respondent in this appeal to transfer the permit from the fifth respondent to the first respondent. The Writ Petition was disposed of along with other Writ Petitions filed by the appellant and the first respondent and the order of learned Single Judge taking note of the subsequent developments cannot be faulted.

6. W.P. (MD) No. 47 of 2019 has been filed by the first respondent in W.A. (MD) No. 301 and 303 of 2019 to quash the order passed by the Regional Transport Authority dated nil and signed by the Regional Transport Officer on 05.09.2017. The Writ Petition in W.P. (MD) No. 25156 of 2018 has been filed by the appellant in all these appeals for issuing a Writ of Mandamus directing the Regional Transport Authority and the Regional Transport Officer, Palani, to transfer the stage carriage permit in favour of the appellant. Having regard to the nature of the order passed by the learned Single Judge, this Court is able to see that the issue arises in all the Writ Petitions is common and hence, the Writ Petition in W.P. (MD) No. 47 of 2019 also has to be dealt with along with other two Writ Petitions. Having regard to the factual situation, the plea that the Writ Petition is not maintainable in view of the alternative remedy is not sustainable. Further, the availability of alternative remedy is not an absolute bar. It is not a thumb rule in every case that a Writ Petition has to be dismissed because of the availability of alternative remedy. The rule is only a rule of convenience and expediency. In such circumstances, this Court has got ample power to entertain the Writ Petition under Article 226 of the Constitution of India, despite an alternative remedy. There are several exemptions. It is only due to the self-imposed restrictions, such writ petitions may not be entertained in certain circumstances. Having regard to the facts and circumstances in this



case, this Court do not find any error in the order passed by the learned Single Judge in W.P.(MD)No.47 of 2019.

7.In the result, all the Writ Appeals are dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS-I)

// True Copy //

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Sub Assistant Registrar(CS)

To

1.The Regional Transport Authority Cum
The District Collector, Dindigul.

2.The Regional Transport Officer, Palani.

3.The Inspector of Police,
District Crime Branch, Dindigul.

+1 CC to M/s.K.M.VENUGOPAL, Advocate (SR-58751[F] dated
04/04/2019)

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-58870[F] dated
04/04/2019)

+1 CC to M/s.M.JEGADEESH PANDIAN, Advocate (SR-58834[F] dated
04/04/2019)

+1 CC to M/s.SPL GP (SR-59263[F] dated 05/04/2019)

**ORDER MADE IN
W.A. (MD) Nos.301 to 303 of 2019
03.04.2019**

srm

SDS (15.10.2020) 6P-8C