



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

W.P. (MD)No.2159 of 2019

and

M.P (MD)No.1718 and 1719 of 2019

S.Kaja Najumudeen

: Petitioner

Vs.

1.The State Transport Authority,
Ezhilagam, Chennai - 600 005.

2.The Regional Transport Officer,
Madurai (South),
Madurai.

3.The Branch Manager,
Tamil Nadu State Transport Corporation,
(Kumbakonam) Limited, Karaikudi Division,
Ramanathapuram Depot, Karaikudi.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the first respondent with regard to the temporary permit granted to the 3rd respondent vide R.No.51028/A2/2018 (No.P.T.301/STA/2018) dated 28.12.2018, for the route Earwadi Dargah to Kumuli in respect of vehicle bearing Registration No.TN 63 N 1804 or any other vehicle to be replaced in that place and to quash the same.

For Petitioner	: Mr.S.Govindraman
For R1 and R2	: Mr.M.Jeyakumar, Additional Government Pleader
For R3	: Mr.D.Sivaraman

ORDER

The instant Writ Petition has been filed challenging the order of the first respondent with regard to the temporary permit granted to the 3rd respondent vide R.No.51028/A2/2018 (No.P.T.301/STA/2018) dated 28.12.2018, for the route Earwadi Dargah to Kumuli in respect of vehicle bearing Registration No.TN 63 N 1804 or any other vehicle to be replaced in that place.

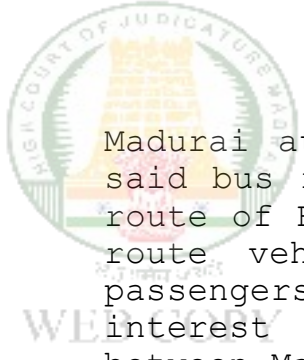
2.It is the case of the petitioner that the 3rd respondent/corporation is operating their bus from Earvadi to Kumuli and it leaves Madurai Bus stand at 07.35.pm, and proceeds to Kumuli and the petitioner's bus also leaves Madurai Bus stand at 07.35,p.m, and proceeds to Usilampatti and reaches



Usilampatti at 08.45.p.m. According to the petitioner, the 3rd respondent bus also takes the same route as that of the petitioner's bus from Madurai to Usilampatti and also reaches Usilampatti Bus stand at 08.45.p.m., as that of the petitioner's bus. Further, it is the case of the petitioner that temporary permit under Section 87 of the Motor Vehicles Act is valid only for a period of 4 months. But the petitioner on expiry of the temporary permit has been repeatedly getting fresh temporary permits from the 1st respondent for a further period of 4 months. According to the petitioner, atleast for the past one year, the 3rd respondent has been getting fresh temporary permits to operate the bus from Yervadi to Kumuli through the Madurai Bus stand as well as through Usilampatti Bus stand. According to the petitioner, it affects his business interest since the 3rd respondent is operating the bus both at Madurai as well as at Usilampatti, at the same time, as that of the petitioner's bus. It is the case of the petitioner that the purpose of temporary permit is only for a specific period i.e., only for a period of 4 months and according to them, it cannot be extended any further. According to them, only in case of public interest, the temporary permit has to be issued. In such circumstances, the writ petition has been filed challenging the temporary permit, dated 28.12.2018, issued by the 1st respondent for the vehicle bearing Registration No.63 N 1804, owned by the 3rd respondent.

3.A counter affidavit has also been filed by the 1st respondent, wherein, they have stated that the route Earvadi to Kumuli is covered by area scheme 1999, which includes the Districts of Ramanathapuram, Madurai and Theni. They have stated that the Transport undertakings are at full liberty to operate their buses as specified in the scheme. According to them, pending decision to grant regular permit on the scheme routes under Section 103 of Motor Vehicles Act 1988, the State Transport undertakings in the State applied for temporary permits and it is being granted under Section 87 1 (c) of the Motor Vehicles Act, 1988 with tentative timings as per proviso to Rule 248 of the Tamil Nadu Motor Vehicles Rules 1989. Further, they have contended that the petitioner is armed with statutory provision to represent his grievances at the time of conducting regular timing conference while granting regular permit under Section 103 of the Motor Vehicle Act 1988 by the 1st respondent. Further, they have stated that the 3rd respondent's bus covering a long distance route from Earvadi to Kumuli to benefit the travelling public bound to Madurai, Theni and Kumuli. According to them, picking up passengers at Usilampatti is very rare for the 3rd respondent, as it is a short distance and the bus is plying on a long distance route.

4.A counter affidavit has also been filed by the 3rd respondent Transport Corporation wherein, they have stated that they are operating their bus as per the permit in the route Earvadi Dharga to Kumuli, via (Madurai) and as per the timings approved by the 1st respondent. According to them, the departure of their bus from



Madurai at 07.35.pm., is proper and they have been operating the said bus for the past 7 years. Further, it is their case that the route of Earvadi Dharga to Kumuli, is about 280.8 Kms and the long route vehicle is operated for the purpose of convenience of passengers and it is their case that it will not affect the interest of the petitioner, who is operating on a short route between Madurai to Usilampatti.

5. Heard Mr.S.Govindraman, learned counsel for the petitioner, Mr.M.Jeyakumar, learned Additional Government Pleader for the 1st and 2nd respondents and Mr.D.Sivaraman, learned counsel for the 3rd respondent.

6. According to the learned counsel for the petitioner, temporary permit issued under Section 87 of the Motor Vehicles Act, 1988 is valid only for a period of 4 months. But, in the case on hand, based on temporary permits, the 3rd respondent has been allowed to operate their bus at the same timing as that of the petitioner's bus both at Madurai as well as at Usilampatti, for the past several years. According to him, the object of issuing temporary permits under Section 87 of the Motor Vehicles Act is only for the following purposes,

- (a) for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or
- (b) for the purpose of a seasonal business, or
- (c) to meet a particular temporary need, or
- (d) pending decision on an application for the renewal of a permit and may attach to any such permit such condition as it may think fit.

7. According to the learned counsel for the petitioner, the 3rd respondent has not satisfied any of the aforementioned 4 conditions. As they have been operating their vehicle on a temporary permit for the past several years, it is also the case of the petitioner that the 3rd respondent's bus halts at Madurai for 30 minutes from 07.05.pm., to 07.35.p.m, whereas, the petitioner's vehicle is allowed to halt at Madurai only for 10 minutes between 07.25.pm, to 07.35.pm. It is his case that majority of the passengers to Usilampatti from Madurai board the bus of the 3rd respondent, which affects the business interest of the petitioner, as less number of passengers board his bus, due to the same timings. The learned counsel for the petitioner submits that the temporary permit granted to the 3rd respondent violates the provisions of Sections 87 and 101 of the Motor Vehicles Act, 1988.

8. Per contra, learned counsel for the 1st respondent would submit that the 3rd respondent is operating a long distance route between Earvadi to Kumuli, whereas, the petitioner is operating on a very short route between the Madurai and Usilampatti and therefore, granting of temporary permit in favour of the 3rd respondent for the route Earvadi to Kumuli will not affect the petitioner's interest, even though the 3rd respondent's bus leaves



Madurai as well as Usilampatti, at the same time as that of the petitioner's bus.

9. Per contra, the learned counsel for the 3rd respondent/transport corporation would submit that only based on a valid temporary permit, the 3rd respondent/transport corporation has been operating the bus in the long route between Earvadi and Kumuli for the past several years. According to him, they pick up lesser number of passengers both at Madurai as well as Usilampatti, than that of the petitioner. Therefore, the petitioner cannot question the grant of temporary permit by the 1st respondent to the 3rd respondent for the route Earvadi to Kumuli. According to him, the 3rd respondent has been operating in the said route for the past 7 years without any hindrance whatsoever.

10. Discussion:

Section 87 of the Motor Vehicles Act, which deals with issuance of temporary permit, reads as follows:

87. Temporary permits. (1) A Regional Transport Authority and the State Transport Authority may without following the procedure laid down in Section 80, grant permits, to be effective for a limited period, which shall not in any case exceed four months, to authorise the use of a transport vehicle temporarily -

(a) for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or

(b) for the purpose of a seasonal business, or

(c) to meet a particular temporary need, or

(d) pending decision on an application for the renewal of a permit and may attach to any such permit such condition as it may think fit.

Provided that a Regional Transport Authority or, as the case may be, State Transport Authority may, in the case of goods carriages, under the circumstances of an exceptional nature, and for reasons to be recorded in writing, grant a permit for a period exceeding four months, but not exceeding one year.

(2) Notwithstanding anything contained in sub-section (1), a temporary permit may be granted thereunder in respect of any route or area where -

(i) no permit could be issued under Section 72 or Section 74 or Section 76 or Section 79 in respect of that route or area by reason of an order of a Court or other competent authority restraining the issue of the same, for a period not exceeding the period for which the issue of the permit has been so restrained; or

(ii) as a result of the suspension by a Court or other competent authority of the permit of any vehicle in respect of that route or area, there is no transport vehicle of the same class with a valid permit in respect of that route or area, or there is no adequate number of such vehicles in



respect of that route or area, for a period not exceeding the period of such suspension:

Provided that the number of transport vehicles in respect of which temporary permits are so granted shall not exceed the number of vehicles in respect of which the issue of the permits have been restrained or, as the case may be, the permit has been suspended.

11. As seen from Section 87 of the Motor Vehicles Act, 1988, normally the temporary permit is granted for a transport vehicle only for a maximum period of 4 months, only under certain exceptional circumstances, that too for the reasons recorded in writing permit can be granted only for 4 months. It is also evident from Section 87 of the Act that the transport vehicle plying will have to satisfy any of the following 4 conditions, namely,

- (a) for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or
- (b) for the purpose of a seasonal business, or
- (c) to meet a particular temporary need, or
- (d) pending decision on an application for the renewal of a permit and may attach to any such permit such condition as it may think fit.

12. This Court has perused and examined the impugned temporary permit issued to the 3rd respondent valid from 08.01.2019 to 07.04.2019. As seen from the permit, the 1st respondent has issued the temporary permit for the convenience of passengers, but, no specific reason has been given as required under Section 87 of the Motor Vehicles Act, 1988.

13. It was contended by the 1st respondent that the 3rd respondent is operating buses as per the 1999 scheme and the said transport corporation undertakings are at liberty to operate their buses as specified in the said scheme. But the said scheme does not refer to temporary permits as in the case on hand. The said scheme is applicable for transport operators only, for 3rd respondent corporation only for permanent permits, whereas, in the instant case, the 3rd respondent is holding a temporary permit and therefore, the said scheme referred to by the 1st respondent is not applicable. Section 101 of the Motor Vehicles Act 1988, permits operation of additional services by State transport undertakings in certain circumstances.

Section 101 of the Act, reads as follows:

101. Operation of additional services by State transport undertaking in certain circumstances:- Notwithstanding anything contained in Section 87, a State transport undertaking may, in the public interest operate additional services for the conveyance of the passengers on special occasions such as to and from fairs and religious gatherings:

Provided that the State transport undertaking shall



inform about the operation of such additional services to the concerned Transport Authority without delay.

14. The aforesaid Section is not applicable for the facts of the case since the 3rd respondent has already obtained temporary permit under Section 87 of the Motor Vehicles Act, 1988 for the applicability of Section 101 of the Act, in public interest, State transport undertaking like that of the 3rd respondent can operate additional services for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings provided, they inform about such operations to the concerned transport authority, without delay. In the case on hand Section 101 of the Act is also not attracted, as already indicated the 3rd respondent is operating the service only based on a temporary permit issued by the 1st respondent under Section 87 of the Motor Vehicles Act, 1988.

15. Admittedly, in the case on hand, the bus belonging to the petitioner as well as the 3rd respondent depart at Madurai Bus stand, at the same time i.e., at 07.05.p.m, and leave Usilampatti at the same time at 08.45.p.m. Though, the 3rd respondent's route from Earvadi to Kumuli is a long route covering about 280.8.kms and the petitioner's route from Madurai to Usilampatti is a much shorter route, certainly the timings for departure of both the buses at Madurai as well as at Usilampatti being the same, the commercial interest of the petitioner will get affected. The impugned temporary permit issued to the 3rd respondent is valid up to 07.04.2019. As seen from the Section 87 of the Motor Vehicles Act, 1988, the 3rd respondent will have to satisfy any of the conditions stipulated therein for the grant of temporary permit. But as seen from the impugned permit, the reasons for granting temporary permit has not been disclosed in the said permit. The petitioner, who is operating his bus from Madurai as well as in Usilampatti at the same time as that of the 3rd respondent bus, is certainly an aggrieved person, if temporary permit is issued to the 3rd respondent for departing their bus at the same time as that of the petitioner's bus. Therefore, before issuing fresh temporary permit in future in favour of the 3rd respondent, the petitioner will have to be heard and given adequate opportunity to raise all objections available to him under law. Further temporary permits are issued only on certain contingencies. Any operator seeking temporary permit will have to satisfy the statutory requirement as stipulated under Section 87 of the Motor Vehicles Act.

16. In the result, the petitioner is directed to submit a fresh representation/application within 2 days from today, seeking for change of timings of the 3rd respondent's bus, bearing registration No. TN 63 N 1804 or any other vehicle belonging to them at both the bus stands, namely, Madurai as well as at Usilampatti and on receipt of the said representation, the 1st respondent shall hold an enquiry and fix a date of hearing, after affording sufficient opportunity to the petitioner to place all objections available to



them under law regarding fixation of timings for their bus as well as the 3rd respondent's bus at Madurai as well as at Usilampatti and the 1st respondent shall pass final orders regarding issuance of fresh temporary permit to the 3rd respondent from 08.04.2019 for a further period of 4 months in accordance with law.

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17. With the aforesaid directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T & P)

// True Copy //

Sub Assistant Registrar (CS)

das

To

1. The State Transport Authority,
Ezhilagam, Chennai - 600 005.
2. The Regional Transport Officer,
Madurai (South),
Madurai.

+1CC TO MR.S.GOVINDRAMAN, Advocate Sr. No.58500
+1CC TO MR.D.SIVARAMAN, Advocate Sr. No.58671
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 59126

W.P. (MD) No.2159 of 2019

and

M.P (MD) No.1718 and 1719 of 2019

02.04.2019

GKG (CO)

TR (10.05.2019) 7P 6C