



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **29.07.2019**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**

W.P.(MD)No.3017 of 2019

K.Balamurugan

... Petitioner

/Vs./

1.The Regional Transport Authority, (Collectorate),
Trichy District, Trichy.

2.The Regional Transport Officer,
Srirangam, Trichy District.

3.A.Sathiyaraja

4.Mahesh N.Ratnam

5.K.Palanivelu

... Respondents

[R-3 is impleaded vide Court order dated 28.02.2019 in W.M.P.(MD) No.3759 of 2019.]

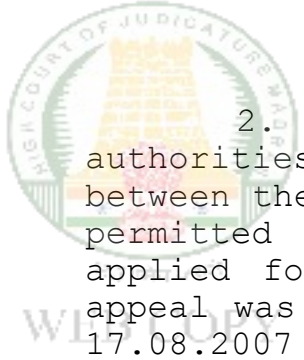
[R-4 and R-5 are impleaded vide Court Order dated 26.03.2019 in W.M.P.(MD)Nos.4721 and 4722 of 2019.]

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the 1st and 2nd respondents to carry out the entry in the petitioner's permit R.No.48912/B1/2017 as Musiri Taluk Office to Kulithalai Bus stand instead of Musiri Taluk Office to Kulithalai Kadambar Kovil as per the order of the Appellate Authority in Appeal No.1029 of 2004, dated 17.08.2007.

For Petitioner	: Mr.A.C.Asaithambi
For R-1 & R-2	: Mrs.J.Padmavathy Devi Special Government Pleader
For R-3 & R-5	: Mr.K.Arunraj
For R-4	: Mr.J.Sivaram

ORDER

The petitioner is a Mini Bus operator and runs a Mini Bus bearing Registration No.TN-33-N-0238. He seeks amendment to his permit to state the route as Musiri Taluk Office to Kulithalai Bus stand instead of Musiri Taluk Office to Kulithalai Kadambar Kovil, as it presently state.



2. According to the petitioner, he sought leave of the authorities to enter into Kulithalai Bus stand as the distance between the route upon which he was plying and the route, if he were permitted to enter the bus stand, was only 0.3 kms. Thus, he applied for variation of permit which request was rejected. An appeal was filed before the appellate authority that was allowed on 17.08.2007 directing the second respondent herein, the Regional Transport Officer to grant the variation as prayed for. The Tribunal states as follows:

3. Points (1) to (v): The appellant herein is the holder of mini bus permit to ply on the route Musiri Taluk Office to (Kulithalai) Kadambarkoil and the appellant has by his application dated 20.02.2004, sought for variation of the route by changing the termini so as to ply from Musiri Taluk Office to Kulithalai Bus Stand in the same route for which the permit is originally granted. Though on receipt of the application, the respondent called upon the Motor Vehicles Inspector to inspect the route and to file a report in this regard, no report from Motor Vehicles Inspector is available in the file. Further the perusal of the file reveals that the applicant has made repeated representations on various dates as per which the distance between Kulithalai Kadambarkoil and Kulithalai Bus Stand is .300 Kms and the applicant has 1 km in the served sector and the total distance of the served sector covered under the proposed modified route would thus come to .4 kms excess and the total distance of the served sector comes to 4.300 kms and the same exceeds the norms fixed by the area scheme, by 300 meters. The authority concerned has not chosen to collect any independent official report as to the exact distance of the served sector covered under the varied route as proposed by the applicant but proceeded to pass the impugned order of rejection on the basis of the distance particulars so furnished by the applicant. Hence this appeal before this Tribunal by the appellant herein.

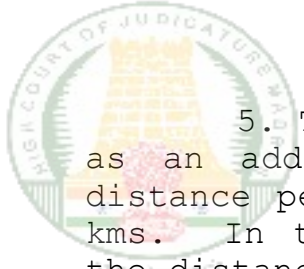
4. As already referred to the respondent has accepted the distance particulars furnished by the applicant between the proposed varied route and the original route and has acted upon the same and the failure on the part of the authority to deny this factor would compel this Tribunal to accept it and to act upon the same. If the distance particulars as furnished by the appellant is to be taken into consideration the same exceeds the distance norms specified in the area scheme by



.3 kms or 300 mts. Which is according to the applicant liable to be negated as trifling in nature. In this regard, the learned counsel for the appellant, has relied upon the judgments of our High Court reported in (1) 1994 writ L.R.340 in Navaneetham P. and 2 others vs. The Regional Transport Authority, Kamarajar District at Virudhunagar and another and (2) unreported judgment in batch of writ petitions Nos.604 to 606 of 2006 in G.Senthil Kumar and others vs. The Regional Transport Authority, Tiruchirappalli and another wherein it is observed that such excess in distance being trifling, cannot be countenanced in law. In the opinion of this Tribunal, such contention, basing upon the observation laid down by our High Court on more than one occasion, is bound to be accepted by this Tribunal and is accepted by this Tribunal. If that is so the ground, on which the impugned order of rejection is based cannot be both in law and on facts allowed to sustain and the same renders the impugned order of rejection to be set aside and is set aside. As there is no other impediment for granting the variation, as sought for by the appellant, the appellant is held entitled to get it and the points in this appeal are accordingly decided.'

3. Thus, the Tribunal has, after considering all relevant factors, directed the respondents to accept the request of the petitioner for variation of sector. Admittedly, this order has become final. The matter was contested before the Tribunal before which the official respondents were duly represented. Thereafter, the petitioner has been plying on the varied route, though the respondents have been issued licence only for the initial route. Despite representation from November 2007, there appears to have been no move on the part of the official respondents to vary the licence in line with the order of the State Transport Authority as early as on 17.08.2007 and hence the petitioner has filed the present writ petition seeking a mandamus to the first respondent to carry out the change of route in his permit as per the order of the STAT dated 17.08.2007.

4. Respondents 3, 4 and 5 have impleaded themselves in the writ petition as respondents. They are private Mini Bus Operators, who state that their business would very much be impacted by the varied route that the petitioner has been permitted to ply on by the Tribunal. According to them, they operate Mini Buses on the sector in question and hence the permission granted to the petitioner by the Tribunal causes them great prejudice.



5. The official respondents have filed both a counter as well as an additional counter. According to them, the total route distance permitted is 7.9 kms, of which, the served portion is 3.9 kms. In the additional counter filed, the respondents state that the distance in the served sector is, in fact, 4.5 kms which exceeds the norms of 4 kms by 500 mts. Thereafter, the route in question was covered by a modified scheme published in G.O.Ms.No.1537 HOME (Transport III) Department, dated 17.11.1999 further modified on 23.02.2011.

6. According to the learned Special Government Pleader, the modified scheme in operation will not cover the route with the variation sought. She points out that the permit held by the petitioner was only upto Kadambar Kovil and the petitioner was infact, violating the terms of the original permit and the respondents are entitled to impose a spot fine for the offences committed by him. She relies on the provisions of Section 80 (3) of the Motor Vehicles Act which require that an application be filed seeking variation of the conditions of permit and, she points out that no such application has been filed thus far.

7. Heard all learned counsel and perused the relevant materials.

8. I am inclined to accept the case of the petitioner based solely on the order of the State Transport Appellate Tribunal dated 17.08.2007. The relevant portion of the order has been extracted before, wherein, after hearing both the parties, the Tribunal has rendered a categoric finding that the variation sought for by the petitioner was only 300 mts. Though, in the additional counter, the respondents state that the variation is, infact, 500 mts., the supporting documents stated to be annexed have not been supplied. The order of the tribunal has become final, and with it, the findings of fact as well. Subsequent events such as modification of the scheme in 2011 will not, in my considered view, impact the order of the Tribunal, particularly since the State, though at liberty to have challenged the order, has not opted to.

9. Thus, in the light of the discussion above, this Writ Petition is allowed. The official respondents are directed to carry out necessary amendments to the permit of the petitioner, in line with the order of the Tribunal, within a period of four weeks from date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar



To

1.The Regional Transport Authority, (Collectorate),
Trichy District, Trichy.

2.The Regional Transport Officer,
Srirangam, Trichy District.

+1 CC to M/s.K.ARUNRAJ, Advocate (SR-78435[F] dated 30/07/2019)

+1 CC to M/s.SPL GP (SR-78467[F] dated 30/07/2019)

+1 CC to M/s.A.C.ASAITHAMBI, Advocate (SR-78584[F] dated 30/07/2019)

Order made in
W.P. (MD) No.3017 of 2019

Dated:
29.07.2019

sm

JM/27.08.2019/5P/6C