



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A. (MD) Nos.1355 and 1356 of 2019

and

C.M.P. (MD) Nos.11391 and 11393 of 2019

1.The Regional Transport Authority,
Theni District, Theni.

2.The Regional Transport Officer,
Office of the Regional Transport Office,
Theni District. ..Appellants in both appeals

Vs.

M.Rajendran ..Respondent in W.A.No.1355 of 2019
R.Gobinath ..Respondent in W.A.No.1356 of 2019

COMMON PRAYER: Writ Appeals are filed under Clause 15 of the Letter Patent Act, to set aside the order dated 22.10.2019 made in W.P.(MD) Nos.17103 and 17104 of 2019 on the file of this Court allow this writ appeal.

Prayer in WP(MD). 17103/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to Directing the respondents to allow the petitioner Mini Buses bearing Reg.No.TN.60-D-8365 and TN-60-D-8357 from Theni New Bus Stand instead of (Housing Board Colony Ration Shop) to RMTC Colony as per Transport Commissioner Circular in R.NO.90919/E2/2000 dt.29.11.2000.

Prayer in WP(MD). 17104/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to Directing the respondents to allow the petitioner Mini Buses bearing Reg.No.TN.60-B-5252 and TN-60- E-2203 from Theni New Bus Stand instead of (Housing Board Colony Ration Shop) to RMTC Colony as per Transport Commissioner Circular in R.NO.90919/E2/2000 dt.29.11.2000.

For Appellants : Mr.A.K.Baskara Pandian
Special Government Pleader

For Respondent : Mr.A.C.Asaithambi

(in both appeals)



COMMON JUDGMENT

[Judgment of this Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mr.A.K.Baskara Pandian, learned Special Government Pleader for the appellants and Mr.A.C.Asaithambi, learned counsel for the respondents. By consent on either side, these writ appeals are taken up for final disposal at the admission stage itself.

2. These appeals have been preferred against the order and direction issued in W.P.(MD)Nos.17103 and 17104 of 2019, dated 22.10.2019.

3. The respondents filed writ petitions praying for a direction to allow their mini buses bearing Registration Nos.TN 60-D-8365, TN-60-D-8357, TN-60-B-5252 and TN-60-E-2203 to ply from Theni new bus stand instead of Housing Board Colony Ration Shop to RTMC Colony as applying Circular of the Corporation dated 29.11.2000.

4. The writ petitions were filed on 29.07.2019 soon after the petitioners made applications before the first appellant, Regional Transport Authority, dated 06.05.2019. It appears that reasonable time was not given to the first appellant to consider the representations. We find that there was earlier representations given in the year 2017. However, the respondents / writ petitioners did not pursue the same. Thus soon after the representations, dated 06.05.2019, writ petitions were filed in July 2019 and the same have been allowed by the impugned order.

5. The learned Writ Court had opined that the point for consideration is as to whether the objections raised by the appellant were justified or not?. Objections raised by the appellant is on the ground that if the request made by the petitioner is accepted, it will exceed the served sector and therefore, the same cannot be granted.

6. In fact the writ petitioners should have sought for a direction to the first appellant to pass an order on the application and could not have made the prayer to issue a positive direction in the writ petition. Admittedly, the Motor Vehicles Act provides hierarchy of remedies and consequently, the prayer prayer sought for by the writ petitioners cannot be more than what has been projected by the writ petitioners before the writ Court, because there are likely to be other aggrieved persons, who may object the said request.



7. The learned counsel for the respondent submitted that the appellants have admitted in the counter affidavit that there are no other persons operating in the said route. However this cannot be considered in a writ petition on facts. That apart if the writ petitioners are permitted to take his bus into Theni new bus stand and pick up passengers, then the issue relating to admin also may have to be considered. The petitioners seek for benefit of the Circular of the Transport Commissioner dated 29.11.2000. By this Circular, mini buses cannot be permitted to enter into bus stand subject to the condition that overlapping distance of four kilometres should not exceed in the served sector.

8. It is the argument of the learned counsel for the respondent that these six kilo metres, which is the approved route, itself falls within the urban area and question of unserved rural area to an extent of two kilometres mentioned by the appellant is not sustainable. Further, it is submitted that the learned Single Bench had taken into consideration the need for operating mini buses and object such scheme and noted that the overlapping distance included urban areas also that is done if it will not exceed four kilometres of overlapping distance.

9. Further in our view, these issues have to be decided by the authority and the writ petitioners had adequate remedy under the Motor Vehicles Act and there is a Tribunal constituted for such purpose, in the event, the petitioners are aggrieved. Therefore, we are inclined to interfere with the order passed in the writ petitions and issue appropriate directions. So that the petitioners would be in a position to canvas all the issues. Accordingly, these writ appeals are allowed and the writ petitions are set aside. The learned counsel for the respondents submitted that the first appellant has got sufficient power to grant extension up to 24 kilometers. We give liberty to the respondents to raise all the contentions before the first appellant and the same shall be decided by passing a speaking order on merits and in accordance with law after affording an opportunity of personal hearing to the petitioners or to their authorised representatives. Such order shall be passed within a period of ten days from the date of receipt of a copy of this judgment. It is made clear that the finding rendered by the learned writ Court stand vacated and the first appellant shall decide the matter independently and shall not be influenced by the observations made by us in this judgment.

10. It is submitted that one writ petitioner Mr. Rajendran is no more and application has been given by Mr. Rajaendran and transfer of the application may be permitted in favour of the legal



heir. The first appellant shall consider such application and if there are no objections, transfer shall be effected, so that orders can be passed on the representation made by the respondent. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

+1 CC to M/s.A.C. ASAITHAMBI, Advocate (SR-102687[F] dated 29/11/2019)

+1 CC to M/s.GP (SR-103016[F] dated 02/12/2019)

ORDER MADE IN
W.A. (MD) Nos. 1355 and 1356 of 2019
29.11.2019

se (CO)
TR(06.01.2020) 4P 3C