

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2020

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.2084 of 2019  
and  
W.M.P.No.34607 of 2019

Rathnamma

... Petitioner

Vs.

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

2. The Regional Transport Officer,  
Hosur - 635 110  
Krishnagiri District.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of writ of mandamus, directing the first respondent herein to grant the application of the petitioner for renewal of permit in respect of the petitioner's stage carriage TN-34/L-3557 plying on the route "Malur to Krishnagiri" for a further period of five years from 01.01.2016 to 31.12.2020.

For Petitioner : Mrs. Radha Gopalan  
For Respondents : Mr. S.N. Parthasarathi,  
Government Advocate

O R D E R

This writ petition has been filed for the issue of writ of mandamus directing the first respondent to consider the application of the petitioner for renewal of permit in respect of the petitioner's Stage Carriage which is plying from Malur to Krishnagiri.

2. The case of the petitioner is that she is a Stage Carriage Operator who is operating the vehicle on interstate route between Malur to Krishnagiri. This route was included in the interstate agreement entered into between the State of Tamilnadu and Karnataka by Government order dated 30.04.1973.

Originally the permit stood in the name of one Anjaiah and it was transferred in the name of his legal representative and the permit was renewed upto the year 1995. The legal representative had also filed an application. The husband of the petitioner also filed applications for renewal of the permit for a period of five years from 01.01.1986. In the meantime, the draft scheme had come into force.

3. The petitioner had earlier approached this Court and filed W.P.No.28894/2010 seeking for the relief of renewal of application. This Court by an order dated 21.12.2010, directed the authority to pass appropriate orders on merits within a period of four weeks. Thereafter, the petitioner also submitted the application along with all the relevant documents and had sought for renewal from 2011-2015.

4. The petitioner again approached this Court and filed W.P.Nos.4151/2016 and 1292/2017, for a direction to the first respondent to consider the application made by the petitioner for grant of temporary permit. This writ petition was disposed of by an order dated 03.04.2017 by directing the first respondent to pass appropriate orders within a period of four weeks.

5. After the above said order was passed, the matter was placed before the first respondent. The first respondent considered the entire case in detail and by proceeding dated 05.09.2017, had once again directed to grant temporary permit in favour of the petitioner. It will be important to extract the relevant finding of the first respondent hereunder:-

"19.The permit holder had operated the vehicle for the period from 04.06.1976 to 30.06.1990, crucial period as enunciated under Tamil Nadu Motor Vehicles Special Provisions Act 41/92. Hence this permit Holder is a saved small bus operator as laid down under Section 3 and 6 of the above Act 41/92.

20.The permit holder has made temporary permit applications continuously for every 90 days the last such application was made seeking temporary permit up to 24.10.2017. The Permit Holder has also made Applications for Renewal of Permit upto 31.12.2020. But the Permit Holder obtained directions from the High Court Madras to consider the Application for the Temporary Permit dated 28.11.2016.

21.Hence, in exercise of the powers conferred on me, under Section 87 (1) (d) of the Motor Vehicle Act, 1988, I, the STA, Chennai do hereby grant temporary permit in respect of a vehicle to be produced to ply on the route Malur to Krishnagiri (via) Bagalur, Hosur, and Shoolagiri for a period of 90 days from the

date of issue as per orders of the Hon'ble High Court Madras in Wps No.41515/2016 & 1293/2017 dated 03.04.2017 subject to counter signature by the STA Bangalore on double point tax for the portions lying in the state of Karnataka."

6. It is clear from the above finding that the first respondent had recognised the fact that the petitioner is a saved small bus operator and therefore entitled for the protection under the Act. However, the first respondent did not proceed to consider the renewal and confined the entire issue only with regard to the grant of temporary permit.

7. The learned counsel for the petitioner submitted that the first respondent ought to have considered the application of the petitioner for renewal of the permit more particularly, after giving a finding that the petitioner is a saved small bus operator. The learned counsel submitted that the scheme that has come into force subsequently cannot be put against the petitioner since the petitioner is a saved small bus operator as laid down under Section 3 and 6 of Act 41 of 1992. The learned counsel in order to substantiate her submission, relied upon the Division Bench judgment of this Court in W.A.No.1144 of 2016 dated 03.08.2018. The relevant portions of the judgment is extracted hereunder:-

"11. We have considered the rival submissions. Admittedly the predecessor in interest of the 3<sup>rd</sup> respondent, viz. A.M.Munusamy Mudaliyar, had a valid permit to run the Stage Carriage in the route in question till 27.09.1978, thereafter, the State Transport Authority refused renewal by its order dated 21.12.1978. The said order of the State Transport Authority was challenged before the Appellate Tribunal. However, the proceedings in the Appeal were stayed by this Court, pending decision in the Writ Petition filed by the appellant before the Tribunal. By the time the Tribunal took up the Appeal for consideration, the Motor Vehicles Act 1939 was repealed and the New Act was in place and by virtue of the judgment in Hon'ble Supreme Court in Pandian Road Ways Corporation v. M.A.Aggappan, the permits that were granted in any of the scheme routes became invalid. This necessitated enactment of the Tamil Nadu Act 41 of 1992 viz. the Tamil Nadu Motor Vehicle (Special Provisions Act 1992), which saved the operation of the permits that were granted between 1976 and 1990. The said Act was upheld by the Hon'ble Supreme Court. The purport of the said Act was held to be to protect those operators who have been issued permits between 1976 and 30.06.1990 by the Hon'ble Supreme Court in T.P.K.Thilagavathy

vs. Regional Transport Authority, Periyar District at Erode, reported in 1995 (1) SCC 456.

12. Section 3 of the 1992 Act, which is deemed to come into force, on 04.07.1976, enables the Regional Transport Authority to renew the permits of the small operators to ply their stage carriage on any route covered by a draft scheme or an approved scheme or such portion of the route covered by the draft scheme or approved scheme. The applicability of the State Act was considered by the Division Bench of this Court in Tamil Nadu State Transport Corporation Ltd, Dharmapuri vs. The State Transport Appellate Tribunal, Chennai, in WA Nos. 248 and 266 of 2005 and in Puratchi Thalaivar MGR Transport Corporation vs. The Regional Transport Authority, Kancheepuram and other in Writ Appeal No.74 of 2005. The Division Bench in Writ Appeal Nos.248 and 266 of 2005 had held that the right of renewal of the permit which was valid between 04.06.1976 and 30.06.1990 would stand saved under the provisions of the Tamil Nadu Act 41 of 1992. The Division Bench had after referring to the judgment of the Hon'ble Supreme Court in Civil Appeal No.12854 of 1996 concluded that in view of the judgment of the Hon'ble Supreme Court in Civil Appeal No.12854 of 1996, the permits which were valid between the cut of period i.e. From 1976 and 1990 are protected and saved under the Tamil Nadu Act 41 of 1992. Therefore the permit granted to the predecessor in interest of the 3<sup>rd</sup> respondent would also be entitled to the said protection and as such the State Transport Appellate Tribunal was justified in relying upon the judgment of the Division Bench in Writ Appeal Nos.248 and 266 of 2005, while allowing the Appeal.

13. Another Division Bench of this Court in Writ Appeal No.74 of 2005 had considered the scope of the protection afforded by Act 41 of 1992, to small operators. In Writ Appeal No.74 of 2005, a Division Bench of this Court rejected the contention of the Corporation that the Appeal filed by the permit holder who did not have a valid permit as on 30.07.1992 will stand abated. The Division Bench took note of the fact that the permit of the individual operator was in force between the period viz. June 1976 to 30.06.1990. In view of the same, the Division Bench concluded that the operator in question the 3<sup>rd</sup> respondent in Writ Appeal would be a protected operator.

14. Of course Mr. R. Balasubramanian, learned counsel appearing for the said Transport Corporation would strenuously contend that the above two judgments of the Division Bench cannot be applied in the case, where there is a Counter Application by the Corporation. We are unable to agree with the contention of the learned counsel, inasmuch as a perusal of the facts in both the cases, viz. the Writ Appeal Nos. 248 and 266 of 2005 and Writ Appeal No. 74 of 2005, it is clear that it was the Corporation which challenged the grant of permit to the individual operators and the said challenge is rejected on the ground that the permits granted to those small operators would be saved under Act 41 of 1992.

15. Mr. R. Balasubramanian, learned counsel would submit that the judgment in Cheran Transport Corporation Ltd.'s case, cited supra, would apply to the facts of the case. But on facts, we find that the Hon'ble Supreme Court had found that the 2<sup>nd</sup> respondent, viz. the Private Operator had been operating the bus, only on the basis of interim orders of the Court and there was no valid permit during the relevant period in favour of the operator. In those circumstances, the Hon'ble Supreme Court held that the High Court could not have granted the benefit to the individual, solely on the ground that the individual had operated the stage carriage in route in question, based on interim orders of the Court. But in the case on hand, the 3<sup>rd</sup> respondent predecessor in interest was possessed of valid permit, during the relevant period and the said permit was not renewed by the State Transport Authority, which was appealed against and during the pendency of the Appeal, the change in Law came in and the 3<sup>rd</sup> respondent became a protected operator or a saved operator."

8. The learned counsel by placing reliance upon the judgment of the Division Bench, submitted that it is now well settled that the permits which were valid between the cutoff period from 1976-1990 were protected and saved and therefore the subsequent scheme cannot be put against the petitioner and the petitioner is entitled for renewal.

9. The first respondent has filed a detailed counter affidavit in this case. The specific stand that has been taken by the first respondent is that the route that is covered in the present case comes under the approved scheme and hence the authority can grant any permit only as provided by the area scheme. Therefore, the claim made by the petitioner to grant

the renewal of permit cannot be considered. Therefore, the first respondent has justified the order passed on 05.09.2017 on the ground that the route in question was reserved for the Tamil Nadu State Transport Corporation and therefore only a temporary permit can be issued periodically and no renewal of permit can be considered.

10. The learned Government Advocate appearing on behalf of the respondents apart from reiterating the stand taken by the first respondent in the counter, submitted that the petitioner is not entitled for the scheme of renewal of permit after the lapse of nearly 32 years and the petitioner cannot now ask for renewal for a period which is already over. The learned counsel further submitted that the interstate agreements and also the area approved scheme by the Government of Tamil Nadu do not permit the respondents to grant renewal to any private operator. Therefore, the learned counsel submitted that the first respondent was perfectly right in granting temporary permit to the petitioner and the claim made by the petitioner is totally unsustainable and this writ petition is liable to be dismissed.

11. This Court has carefully considered the submission made on either side and perused the materials available on record.

12. The status of the petitioner as a saved small bus operator has been recognised by the first respondent in his proceedings dated 05.09.2017. When this status is accepted, the petitioner will be entitled for protection under Act, 41 of 1992. While dealing with this issue, the judgment of the Division Bench, which has been relied upon by the learned counsel for the petitioner has a lot of relevance.

13. The Division Bench after considering all the earlier judgments has categorically held that a small operator and saved operator will be entitled for protection under Act, 41 of 1992, if it is shown that he or she was in possession of valid permit between the period 04.06.1976 and 30.06.1990. Once this fact is established, the right of renewal of the permit becomes automatic. The Division Bench has held that in spite of the approved scheme coming into the effect, the protected and the saved operators will be entitled for renewal.

14. As rightly contended by the learned counsel for the petitioner, the first respondent after having come to a conclusion that the petitioner is a saved small bus operator, ought to have also considered the entitlement of the petitioner for renewal of permit. Of course, the renewal cannot be dated back and it should be considered only for the future period. The authority cannot go back in time and renew the permit for the period which had already expired. Therefore, the only

consideration is to see whether the petitioner is entitled for such a renewal for the future period. The first respondent confined his order only with regard to temporary permit on the ground that the High Court while passing the order in W.P.No.41515/2016 had only confined it for consideration of the application for the temporary permit.

15. In view of the above discussion, there shall be a direction to the first respondent to consider the applications submitted by the petitioner on 08.12.2015 and deal with the same strictly in accordance with law and in line with the orders passed by this Court and pass appropriate orders, within a period of four weeks from the date of receipt of copy of this order. The petitioner is directed to make a fresh representation to the first respondent along with a copy of the application dated 08.12.2015 with all the relevant documents and also a copy of this order.

16. This writ petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

AT

To

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

2.The Regional Transport Officer,  
Hosur - 635 110  
Krishnagiri District.

+2 Ccs to Mr.R.Srinivasan, Advocate sr 18959

+1 CC to Govt. Pleader sr 19751.

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SP(17/03/2020)