

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.08.2020

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

WP.No.5149/2019 & WMP.No.5857/2019

C.Mohammed

.. Petitioner

Versus

1.The Regional Transport Authority
Krishnagiri.

2.The Regional Transport Officer
Hosur, Krishnagiri District.

.. Respondents

(Cause title amended vide order dated 09.04.2019
made in WMP.No.7798/2019 in WP.No.5149/2019)

Prayer:-Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the impugned order of the 1st respondent vide R.No.62186/B3/2018 dated Nil.11.2018 signed on 07.12.2018 with reference to the rejection of the application for the grant of variation of permit with replacement of vehicle and to quash the same and to further direct the 1st respondent to grant the variation of permit and replacement of vehicle of the petitioner jeep stage carriage with seating capacity of 21 in all into regular stage carriage with seating capacity of 59 in all in respect of vehicle bearing Registration No.MSR.3122 plying on the route 'Ayyur to Kanakapura State Border'.

For Petitioner : Mr.AR.L.Sundaresan
Senior counsel assisted by
Mr.V.S.Srikrishnan
For Respondents: Mr.K.Parameshwaran, GA

ORDER

(1)This writ petition has been filed challenging the impugned proceedings of the 1st respondent dated 07.12.2018 rejecting the application submitted by the petitioner for grant of variation of permit with replacement of vehicle and for a consequential direction to grant variation of permit and replacement of vehicle to the petitioner.

- (2) The case of the petitioner is that he was granted a jeep stage carriage Permit by the Regional Transport Authority [RTA], Krishnagiri, for the route from Ayyur to Kanakapura State Border. This permit was granted in the year 1981 under the Old Act. The petitioner is a small operator as contemplated under Section 3[1] of the Tamil Nadu Motor Vehicles [Special Provisions] Act, 1992 and he is a protected operator whose interest is saved under the provisions of the said Act.
- (3) The vehicle owned by the petitioner became old and worn out and therefore, the petitioner wanted to replace it with a new vehicle. The petitioner also wanted to increase the seating capacity. The petitioner, therefore, submitted a representation to the 2nd respondent on 14.11.2018, requesting for grant of replacement of the vehicle and also increase in the seating capacity. This representation came to be forwarded to the 1st respondent and the 1st respondent conducted an enquiry. The petitioner made his submission before the 1st respondent and the 1st respondent, ultimately passed the impugned order, rejecting the application made by the petitioner. Aggrieved by the same, the present writ petition has been filed before this Court.
- (4) Mr. Ar. L. Sundaresan, learned Senior counsel assisted by Mr. V. S. Srikrishnan, learned counsel appearing on behalf of the petitioner submitted that the impugned order was passed by the 1st respondent by relying upon the judgment of the Hon'ble Supreme Court of India, which will not apply to the facts of the present case. The learned Senior counsel submitted that the 1st respondent has gone on a footing as if by granting permit to the petitioner, there will be an increase in the vehicle in the existing route. The learned Senior counsel submitted that this reason of the 1st respondent is erroneous since the petitioner was already having permit in the said route and he was only seeking for a variation in the permit and that will not in any way bring an added vehicle to the existing route.
- (5) The learned Senior counsel further developed his argument by submitting that the petitioner is a protected operator under Act 41 of 1992 and the entire scheme was only to save the small operators who already have a permit to ply in the existing route. The 1st respondent has proceeded to consider the representation submitted by the petitioner as if a new permit is being granted to the petitioner. This, according to the learned Senior counsel, is an error appalant on the face of the record on the part of the 1st respondent who had assigned it as a reason for the purpose of rejecting the application made by the petitioner. The learned Senior counsel further submitted that what was sought for by the petitioner was only a replacement of the existing vehicle with an increase in the seating capacity and it only constitute a variation in the

existing permit.

(6) The learned Senior counsel, in order to explain the scope of variation of a permit, relied upon a judgment of a Division Bench of this Court in R.Srinivasan V. State of Tamil Nadu rep.by Secretary, Home Department, Fort St. George, Chennai-9 and Others reported in 2003 [4] CTC 12. The learned Senior counsel specifically placed reliance upon the following portions of the judgment, which are extracted hereunder:-

'12. Act 41 of 1992 was enacted with the object to make special provisions in respect of permits for stage carriages under the Motor Vehicles Act, 1988 and in relation to the Schemes and Rules notified under Chapter VI of the said Act. It should be also kept in mind that the said Act was enacted following the judgment of the Apex Court in Pandiyan Roadways case. Chapter VI of the Motor Vehicles Act, 1988 relates to special provisions relating to State Transport Undertakings. Under Section 99, the State Government is empowered to prepare and publish proposal regarding a Scheme giving particulars of the nature of services proposed to be rendered, the area or route proposed to be covered and other relevant particulars respecting thereto. Under Section 102, the State Government is empowered to cancel or modify the Scheme so published under Section 99 of the Act. Section 104 of the Act is more relevant for the disposal of these writ petitions. It relates to the restriction for grant of permits in respect of a notified area or notified route and the said section reads as under:-

"Where a scheme has been published under sub-section (3) of Section 100 in respect of any notified area or notified route, the State Transport Authority or the Regional Transport Authority, as the case may be, shall not grant any permit except in accordance with the provisions of the scheme: Provided that where no application for a permit has been made by the State transport undertaking in respect of any notified area or notified route in pursuance of an approved scheme, the State Transport Authority or the Regional Transport Authority, as the case may be, may grant temporary permits to any person in respect of such notified area or notified route subject to the condition that such permit shall cease to be effective on the

issue of a permit to the State Transport undertaking in respect of that area or route."

13. From the above, it is seen that the State Government though entitled to publish a Scheme notifying the area or route in the public interest, it has power also to allow permit holders to operate on the notified route by detailing such permits in the Scheme itself. That was how when the Scheme was notified in the year 1976 for the route between Madurai and Kumily, some of the operators who were operating on the scheme route were permitted to operate as per Annexure II. While the scheme was tested before the Apex Court in Pandiyan Roadways case, the Apex Court has held that no operator except the names found in Annexure II and the State Transport Undertaking could be granted permit or variation on the notified route. To get over the difficulties experienced by more than 4000 operators who were necessarily to take their vehicles off the road, Act 41 of 1992 was enacted empowering the Transport Authorities to grant variations even on notified routes.

14. Section 3 of the Act 41 of 1992 relates to the power of the Regional Transport Authority to grant permit or renew a permit to a small operator to ply his stage carriage on the entire route or by the draft Scheme or the approved Scheme or on such operation of the route covered by the draft Scheme or approved Scheme for a specific period subject to such terms and conditions which it may in respect of matters specified in sub section (2) of Section 72 of the Motor Vehicles Act or in respect of any other matters as it thinks fit. The relevant section for the disposal of these writ petitions is sub section (2) of Section 6 of the said Act which reads as under:-

"Notwithstanding anything contained in the Motor Vehicles Act or in an approved scheme, the Regional Transport Authority may, on an application made by the small operator in accordance with the rules made in this behalf and subject to such conditions as may be prescribed, vary the conditions of a permit for a stage carriage so as to enable the applicant to operate on the entire route or any portion of the route covered by such approved scheme." By virtue of the above provision, the Transport

Authority is empowered to vary the conditions of permit for stage carriage to enable the permit holder to operate on the entire route or any portion of the route covered by such approved scheme. The provision is explicit in terms of the intention of the legislature empowering the Transport Authorities to grant variation of conditions of permit even on a route covered by draft scheme. Though such an enactment was made, the provisions could not be given effect to for want of Rules till the year 1995 when the Tamil Nadu Motor Vehicles (Special Provisions) Rules 1995 was notified on 18.5.95. Rule 4 of the Rules relates to the variation of conditions of permit. Sub rule (4) of the said Rule relates to the issue in question and the same reads as under:- "The State Transport Authority or the Regional Transport Authority, as the case may be, may, after recording the reasons, by order grant or refuse to grant the variation sought for in the application and shall furnish a copy of such order to the person who filed the representation:

Provided that in the case of variation, the distance covered by such variation shall not exceed twenty four kilometers:

Provided further that such variation shall not have the effect of increasing the number of stage carriages as originally fixed."

In terms of sub section (2) of Section 6 read with sub rule (4) of Rule 4 of the Rules, the State Transport Authority or the Regional Transport Authority, as the case may be, were empowered to grant variations subject to the maximum distance of 24 kms. By an amendment, an explanation to rule 4 was added by a notification of the Government dated 29.12.95. By the said enactment, the following explanation was added.

"For the purpose of the rule, variation shall mean and include:-

- (a) increase in the number of trips on the entire route or part thereof
- (b) reduction of singles or trips or reduction of singles on portions of the route
- (c) extension of the route

(d) curtailment of the route

(e) variation by keeping the termini and deviating the course of the route which may involve creation of additional termini

(f) conversion of the town service into mofussil service and vice versa

(g) conversion of jeep and mini stage carriage services into regular stage carriage services

(h) conversion of Metropolitan service into mofussil service; and

(i) conversion of Express Service into mofussil service and vice versa."

Pursuant to the above, applications that were pending were considered and the petitioners were granted variations between the period 24.1.96 and 24.5.96. The petitioners also started operating their vehicles on the varied routes. At this juncture, an amendment was brought into as Tamil Nadu Motor Vehicles (Special Provisions) Rules, 1995 and the same was notified in G.O.Ms.No.758 Home (Transport III) Department dated 25.5.96. The said amendment reads as under:-

"In exercise of the powers conferred by sub-section (1) of Section 8, read with Section 6 of the Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992 (Tamil Nadu Act 41 of 1992), the Governor of Tamil Nadu hereby makes the following amendments to the Tamil Nadu Motor Vehicles (Special Provisions) Rules 1995:-

In the said Rules, in rule 4,?

(1) in sub rule (4) for the first proviso the following proviso shall be substituted, namely:-

"Provided that in the case of variation, the distance covered by such variation shall not exceed twenty four kilometers."

(2) the explanation shall be omitted."

A plain reading of the amendment would reveal that only the explanation to rule 4 of the Tamil Nadu Motor Vehicles (Special Provisions) Rules, 1995 was omitted and the omission is only prospective.

15. Thereafter, the impugned Act 19 of 1996 was notified on 4.7.96. The relevant provisions

of Section 6 of the Act reads as under:-
"Notwithstanding anything contained in the Tamil Nadu Motor Vehicles Act 1992 or in any other law for the time being in force or in any judgment, decree or order of Court, Tribunal or other authority, any condition of permit of stage carriage of a small operator varied by the Regional Transport Authority during the period commencing on the 24 th day of January 1996 and ending with the 24th day of May 1996, based on the explanation (as it stood prior to the 25th May 1996) to rule 4 of the Tamil Nadu Motor Vehicles (Special Provisions) Rules 1995, made under the provisions of the Tamil Nadu Motor Vehicles (Special Provisions) Act 1992, shall stand cancelled and such permit as it stood prior to the 24th day of January 1996, shall have effect as if no such variation has been made.

Notwithstanding anything contained in section 3, the Regional Transport Authority may, on an application, if, in any exceptional case, he is of the opinion that any variation of the conditions of permit of a stage carriage which stands cancelled under Section 3, did not result in undue hardship or suffering to the traveling public, he may restore such variation and such variation shall be deemed to be a variation made under sub section (2) of Section 6 of the Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992."

A plain reading of Section 3 of the "Impugned Act", is explicitly clear that the condition of permit of stage carriage of a small operator varied by the Regional Transport Authority during the period commencing on 24.1.96 and ending on 24.5.96 based on the explanation to rule 4 of the Tamil Nadu Motor Vehicles (Special Provisions) Rules, 1995 were cancelled. Question arises as to whether when the substantive provision of sub section (2) of Section 6 entitling the Transport Authorities to grant variations is not omitted, by merely deleting the explanation added to sub rule (4) of Rule 4 of the Tamil Nadu Motor Vehicles (Special Provisions) Rules, 1995, could the State Legislature cancel the variations granted.''

- (7) The learned Senior counsel concluded his argument by submitting that the 1st respondent completely misdirected himself in considering the application submitted by the petitioner and therefore, the impugned order requires interference and the fresh application submitted by the petitioner seeking for affiliation in the existing permit, should be considered by the 1st respondent.
- (8) Per contra, Mr.K.Parameshwaran, learned Government Advocate appearing on behalf of the respondents supported the impugned order passed by the 1st respondent. Learned Government Advocate submitted that the grant of variation for an existing permit covered by the Approved Area Scheme will amount to grant of a new permit. In order to substantiate his submission, the learned Government Advocate placed reliance upon Section 80[3] of the Motor Vehicles Act. 1988. The learned Government Advocate therefore submitted that the 1st respondent was perfectly right in rejecting the application / representation submitted by the petitioner and there are absolutely no grounds to interfere with the same.
- (9) This Court has carefully considered the submissions made on either side and the materials available on record.
- (10) There is no dispute with regard to the fact that the petitioner was holding the Jeep Stage Carriage Permit on the route from Ayyur to Kanakapura State border. The vehicle that was owned by the petitioner had the seating capacity of 21 [20+1] in all. This vehicle became old and worn out since it was plying for more than 30 years. The petitioner, therefore, wanted to replace the existing vehicle with a new vehicle and also increase the seating capacity to 59 [57+2]. The petitioner made a representation through the 2nd respondent seeking for grant of replacement of vehicle with the increased seating capacity.
- (11) The petitioner is a small operator/ under the Act 41 of 1992. Section 3[2] of the said Act reads as follows:-
''Notwithstanding anything contained in a draft scheme or an approved scheme, the Regional Transport Authority may on an application made in accordance with the rules made in this behalf vary the conditions of a permit for a stage carriage so as to enable the applicant to operate on the entire route or any portion of the route covered by such draft scheme or an approved scheme.''
- (12) It is also important to take note of Section 6[2] and [3] of the Act and the same is extracted hereunder:-
''Section 6[2]:- Notwithstanding anything contained in the Motor Vehicles Act or in an approved scheme, the Regional Transport Authority, may on an application made by the small operator in accordance with the rules made

in this behalf and subject to such conditions as may be prescribed, vary the conditions of a permit for a stage carriage so as to enable the applicant to operate on the entire route or any portion of the route covered by such approved scheme.''

Section 6[3]:- Notwithstanding anything contained in Chapter VI including section 98 of the Motor Vehicles Act, the provisions of Chapter V of that Act, and the Rules made thereunder shall so far as may be, apply in relation to the renewal or variation of permit under this section as they apply in relation to the renewal or variation of permit under the said Chapter V.''

- (13) It is clear from the above provisions that an application can be made by such a protected operator to seek for variation of the condition of a permit for a State Carriage to enable such operator to operate in the entire route or any portion thereon which is covered under a Draft scheme or approved scheme. Once such an application is made, the Regional Transport Authority will have to consider the same and can impose any conditions while granting variation in the permit.
- (14) The 1st respondent, while passing the impugned order, has mainly assigned two reasons for rejecting the representation made by the petitioner. The first reason assigned is that replacement of the existing State Carriage Permit will amount to bringing in another vehicle in the existing route and therefore, it cannot be done as per the policy of the State Government. The second ground is that whenever a variation is granted for an existing permit covered by an approved area scheme, the same will amount to a new permit and such new permits cannot be granted in favour of the private operators.
- (15) As rightly contended by the learned Senior counsel appearing on behalf of the petitioner, both the reasons assigned by the 1st respondent are on the face of it, erroneous. The petitioner has not sought for retaining of the existing vehicle and bringing in a new vehicle. Only in such a case, it will amount to bringing in another vehicle in the existing route. The petitioner wanted to replace the old vehicle and bring in a new vehicle and that will not, in any way, increase the number of vehicle in the approved route. What is sought under Section 6[4] of the Act 41 of 1992 is only a new permit in favour of a private operator on the route, that is already covered by the approved scheme. In the present case, the petitioner is admittedly having an existing State Carriage Permit and he was only seeking for a variation and the same cannot be considered as granting of a new permit.
- (16) The Division Bench judgment relied upon by the learned Senior counsel appearing on behalf of the petitioner, has dealt with the entire scheme of Act 41 of 1992 and has also dealt

with the term ''variation''. A careful reading of the judgment of the Division Bench shows that from 30.06.1990, the Regional Transport Authority is not empowered to grant any new permit to any operator overlapping the old or part of a notified route. However, the old operators who were granted permit between 1976 to 30.06.1990, would be entitled to seek renewal. The Division Bench has held that by virtue of Section 6 of Act 41 of 1992, the Regional Transport Authority has the power to grant renewal or vary conditions of permit of small operator to ply on a notified route or part of it, notwithstanding anything contained in the draft scheme. This judgment was delivered after relying upon the judgment of the Hon'ble Supreme Court of India in Pandiyan Roadways Corporation Limited V. M.A.Egappan reported in 1987 [2] SCC 45.

(17) This position of law declared by the Division Bench of this Court has not been taken into consideration by the 1st respondent while passing the impugned order.

(18) In view of the above discussion, the impugned order passed by the 1st respondent requires interference of this Court and accordingly, the same is hereby quashed. The petitioner is directed to submit a fresh application before the 2nd respondent under Rule 216 of the Tamil Nadu Motor Vehicles Rules, 1989 and in Form PVA and on receipt of the application, the 2nd respondent is directed to forward the same to the 2nd respondent and the 1st respondent shall pass orders within a period of four weeks thereafter in line with the orders passed by this Court in the present writ petition.

(19) This writ petition is accordingly allowed. No costs. Consequently, the connected miscellaneous petition stands closed.

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

AP

To

1.The Regional Transport Authority
Krishnagiri.

2.The Regional Transport Officer
Hosur, Krishnagiri District.

WP.No.5149/2019

VS (CO)

RMP (13/10/2020)