

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
22.01.2020	27.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

and

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

W.A. (MD) No.1716 of 2018

and

C.M.P. (MD) Nos.12502 of 2018 & 9294 of 2019

P.Yesudasan

... Appellant/Respondent

-vs-

1.T.Nithin

2.The Regional Transport Authority

Kanyakumari District

Kanyakumari

3.The Regional Transport Officer

Marthandam

Kanyakumari District

... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 10.12.2018, passed in W.P.(MD) No.21095 of 2018, on the file of this Court.

Prayer in WP(MD). 21095/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records pertaining to the Impugned Order passed by the 1st respondent vide his Proceedings in Pro.No.22513/A1/2017, dated 01.10.2018 and quash the same as illegal and consequently direct the 1st respondent to reconsider the Transfer of Mini Buses permits bearing Registration Nos.TN 74Y 2747 and TN 74Y 4063 plying on the route Monda Market to Thuckalay.

For Appellant : Mr.K.N.Thampi

for Mr.Y.M.Bejox Michael

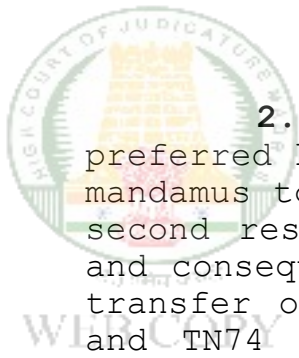
For Respondents : Ms.S.Radha Gopalan

for Mr.A.C.Asaitambi for R1

J U D G M E N T

T.RAVINDRAN, J.

The order, dated 10.12.2018, passed in W.P.(MD) No.21095 of 2018, is put to challenge in this writ appeal.



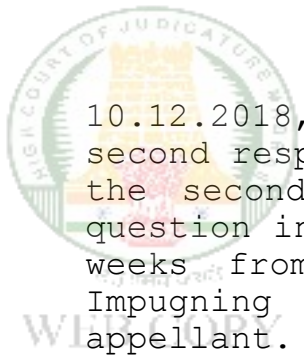
2. Writ petition in W.P.(MD) No.21095 of 2018 has been preferred by the first respondent to issue a writ of certiorarified mandamus to call for the records relating to the order passed by the second respondent, dated 01.10.2018, to quash the same as illegal and consequently, to direct the second respondent to reconsider the transfer of Mini Buses permits bearing registration Nos.TN74 Y2747 and TN74 Y4063 plying on the route Monday Market to Thuckalay, following the directions issued by this Court, vide Judgment dated 07.12.2017 in W.A.(MD) No.1412 of 2017.

3. From the pleadings putforth by the respective parties and the submissions made, it is found that S.Pankiraj, the grandfather of the first respondent and the father of the appellant, was holding permits in respect of two Mini Buses bearing registration Nos.TN74 Y2747 and TN74 Y4063 and that he had passed away on 15.03.2017. According to the first respondent, the abovesaid original permit-holder, namely, S.Pankiraj had executed a registered settlement deed, dated 22.11.2016 in his favour, in respect of the abovesaid two Mini Buses and on that premise, sought for transfer of the permits in his favour from the second respondent. The same had been objected to by the appellant, *inter alia*, impugning the truth and validity of the settlement deed, dated 22.11.2016, said to have been executed in favour of the first respondent by S.Pankiraj and further putforth the case that challenging the abovesaid settlement deed, he had also levied a civil suit in O.S.No.47 of 2017, on the file of the District Court, Nagercoil, and the same is pending and thereby, objected to the transfer of the permits sought for by the first respondent.

4. By way of the order dated 01.10.2018, impugned in the writ petition, the second respondent, *inter alia*, had rejected the application preferred by the first respondent for the transfer of permits in respect of the abovesaid Mini Buses holding that objections had been putforth by the appellant and further, the first respondent has not enclosed the proper legal heirship certificate and no objection certificate from the legal heirs of the deceased S.Pankiraj as contemplated under the Motor Vehicles Act and the Rules framed thereunder and also directed the first respondent that he may, if desires, prefer the appeal before the appropriate Authority, within the time as provided under the Rules. Instead of preferring the appeal before the Appellate Authority, as contemplated under the Motor Vehicles Act and the Rules framed thereunder, the first respondent has lodged the writ petition.

5. In the writ petition, the appellant has filed counter affidavit raising various contentions for the dismissal of the writ petition and also putforth that the first respondent has an alternative remedy of preferring the appeal against the order passed by the second respondent and hence, the writ petition is not maintainable and also highlighted the various decisions rendered by this Court in that regard.

6. The writ petition preferred by the first respondent has come to be allowed by the learned Single Judge, vide order dated



10.12.2018, by quashing the order, dated 01.10.2018, passed by the second respondent and thereby, the learned Single Judge has directed the second respondent to effect the transfer of the permits in question in favour of the first respondent, within a period of three weeks from the date of the receipt of a copy of the order. Impugning the same, the writ appeal has been preferred by the appellant.

7. At the foremost, the learned counsel appearing for the appellant contended that the writ petition preferred by the first respondent is not maintainable and the same should not have been entertained, particularly, when the first respondent is having an alternative remedy of challenging the order passed by the second respondent by way of appeal before the Appellate Authority, as provided under Section 89 of the Motor Vehicles Act, 1988 and the Rules framed thereunder. In this connection, he placed reliance upon the decision of this Court in the case of **Tamilnadu State Transport Corporation v. C.Durai & another**, reported in **2005 Writ L.R.136**.

8. On a perusal of the above cited decision relied upon by the learned counsel appearing for the appellant, it is found that the Honourable Division Bench of this Court in the above cited decision, in more or less a similar case, has held that the writ petition filed against the order of the Regional Transport Authority should not have been entertained at all, particularly, when there is an alternative efficacious remedy of appeal provided under Section 89 of the Motor Vehicles Act, 1988. The position of law, with reference to the same, has been outlined by the Honourable Division Bench in the above cited decision and the same is extracted below:

"Motor Vehicles Act (1988), Sections 89, 90, Constitution of India, Article 226 / Alternative Remedy - Held : No writ petition should ordinarily be entertained when there is an alternative remedy, except in very rare cases if there is some compelling reasons to do so - Learned single judge had allowed the writ petition filed against the order of R.T.A. issuing a permit in favour of the TNSTC, Villupuram to ply the route Tiruvannamalai to Mellacher - Writ petition should not have been entertained at all, as there is an alternative efficacious remedy under Section 89/90 of the M.V.Act, 1988 - Even if there is violation of natural justice or the order is without jurisdiction, the writ petition can still be dismissed if there is an alternative remedy - Impugned order is set aside and writ appeal allowed.

Constitution of India, Article 226/ Alternative Remedy - See Motor Vehicles Act (1988), Sections 89, 90.



Baburam v. Zila Parishad, AIR 1969 SC 556:
and
U.P.State Bridge Corporation Ltd. v. U.P.Rajya Sethu Nigam Karmehar Sangh (1998) 4 SCC 268 - Referred to.

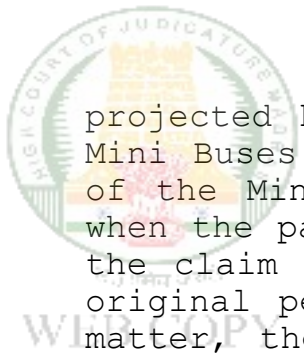
10. In our opinion, no writ petition should ordinarily be entertained, when there is an alternative remedy, except in very rare cases if there is some compelling reason. In the present case, we are of the opinion that the learned single Judge was not justified in entertaining the writ petition at all and should have dismissed it on the ground of alternative remedy. The impugned order is set aside. The writ petition is dismissed."

9. In the light of the abovesaid position of law, as adumbrated by the Honourable Division Bench of this Court, in our considered opinion, when the same is applied to the case at hand, it is found that the first respondent has got an alternative appeal remedy to challenge the order passed by the second respondent, as provided under the Motor Vehicles Act and the Rules framed thereunder. In such view of the matter, in our considered opinion, the learned Single Judge was not justified in entertaining the writ petition at all and should have dismissed it on the ground of alternative appeal remedy.

10. At this juncture, the learned counsel appearing for the first respondent would contend that compelling reasons exist in favour of the first respondent in preferring the writ petition against the order passed by the second respondent and therefore, according to her, the writ petition is maintainable and further, according to her, as the reasons furnished by the learned Single Judge for entertaining the writ petition are sustainable, according to her, the same should be confirmed and not interfered with.

11. In this connection, she would contend that the appellant has not evinced interest to seek for the transfer of permits in his favour, after the demise of the original permit-holder S.Pankiraj and instead, it is only the first respondent, who had initiated action to seek the transfer of permits and considering the plight of the commuters, in the absence of running of the buses in the concerned route, according to her, the same should be considered as a compelling reason for enabling the first respondent to prefer the writ petition challenging the order passed by the second respondent.

12. However, we are unable to accede to the abovesaid arguments putforth by the learned counsel appearing for the first respondent. The appellant cannot be held to be a person not evincing interest to seek the possession of the Mini Buses in question after the demise of the original permit-holder. In fact, when it is seen that the appellant had preferred a civil suit questioning the very truth and validity of the settlement deed



projected by the first respondent for claiming the custody of the Mini Buses in question and also claimed to have the custody of one of the Mini Buses and the suit is still pending and accordingly, when the parties are vying with each other tooth and nail regarding the claim of ownership of the Mini Buses, after the demise of the original permit-holder, one way or the other, in such view of the matter, the appellant cannot be held to be a person not evincing interest in keeping the permits alive. In any event, when the parties are claiming rival ownership in respect of the abovesaid Mini Buses one way or the other as projected by them, in such view of the matter and further, when the first respondent is provided with an alternative remedy of challenging the order passed by the second respondent by way of appeal before the Appellate Authority, we do not find any compelling reason, as such, entitling the first respondent to bypass the alternative remedy and prefer the writ petition questioning the order passed by the second respondent.

13. For the reasons aforesaid, we hold that the writ petition should not have been entertained at all on the ground of alternative appeal remedy available to the first respondent and accordingly, the impugned order, dated 10.12.2018, passed in W.P. (MD) No.21095 of 2018, is set aside and resultantly, the writ appeal is allowed. Consequently, the writ petition in W.P.(MD) No.21095 of 2018 is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

krk

+5 CC to M/s.Y.BEJOX MICHEAL, Advocate (SR-3078[F] dated 27/01/2020)

+1 CC to M/s.A.C.ASAITHAMBI, Advocate (SR-3430[F] dated 28/01/2020)

JUDGMENT IN

W.A. (MD) No.1716 of 2018 and

C.M.P. (MD) Nos.12502 of 2018 & 9294 of 2019

27.01.2020

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