

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.08.2021

PRONOUNCED ON : 06.10.2021

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

**C.R.P.(N.P.D) Nos.956, 1124 & 1125 of 2021 and
C.M.P.Nos.7739, 8732 & 8739 of 2021**

In C.R.P.(N.P.D)No.956 of 2021:

Tvl.GKT Roadways,
No.77, Dindigul Road,
Palani.

...Petitioner

In C.R.P.(N.P.D)No.1124 of 2021:

Tmt.C.Kannagi
W/o.Mr.Chinnasamy,
Prop.SRK Roadways,
No.197-A, Lakshmipuram,
Palani

...Petitioner

In C.R.P.(N.P.D)No.1125 of 2021:

Sri Amman Motor Service,
No.1, Anna Nagar,
Palani

...Petitioner

Vs.

In C.R.P.(N.P.D)Nos.956, 1124 & 1125 of 2021

The Secretary,
Regional Transport Authority,
Palani Region,
Palani.

...Respondent

Prayer in C.R.P.(N.P.D) No.956 of 2021:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order of the State Transport Appellate Tribunal, Chennai, passed in M.V.R.P.No.1 of 2021, dated 30.03.2021, so far, it relates to the remanding the case to the RTA for reconsideration of the non existence application for approval of the fare table in respect of the petitioner's stage carriage, bearing Regn.No.TN94 A 8789, plying on the route Palani to Madurai (via) Sembatti.

Prayer in C.R.P.(N.P.D) Nos.1124 of 2021:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order of the State Transport Appellate Tribunal, Chennai, passed in M.V.R.P.No.2 of 2021, dated 30.03.2021, so far, it relates to the remanding the case to the RTA for reconsideration of the non existence application for approval of the fare table in respect of the petitioner's stage carriage, bearing Regn.No.TN57 AR 5775, plying on the route Palani to Madurai (via) Sembatti.

Prayer in C.R.P.(N.P.D) Nos.1125 of 2021:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order of the State Transport Appellate Tribunal, Chennai, passed in M.V.R.P.No.3 of 2021, dated 30.03.2021, so far, it relates to the remanding the case to the RTA for reconsideration of the non existence application for approval of the fare table in respect of the petitioner's stage carriage, bearing Regn.No.TN94 2333, plying on the route Palani to Madurai (via) Sembatti.

In all the three C.R.P.'s:

For Petitioners : Mr.M.Palani
For Respondent : Dr.S.Suriya, Government Advocate
(Civil Side).

COMMON ORDER

These Civil Revision Petitions are filed,

i) to set aside the order of the State Transport Appellate Tribunal, Chennai, passed in M.V.R.P.No.1 of 2021, dated 30.03.2021, so far, it relates to the remanding the case to the RTA for reconsideration of the non existence application for approval of the fare table in respect of the petitioner's stage carriage, bearing Regn.No.TN94 A 8789, plying on the route Palani to Madurai (via) Sembatti.

ii) to set aside the order of the State Transport Appellate Tribunal, Chennai, passed in M.V.R.P.No.2 of 2021, dated 30.03.2021, so far, it relates to the remanding the case to the RTA for reconsideration of the non existence application for approval of the fare table in respect of the petitioner's stage carriage, bearing Regn.No.TN57 AR 5775, plying on the route Palani to Madurai (via) Sembatti.

iii) to set aside the order of the State Transport Appellate Tribunal, Chennai, passed in M.V.R.P.No.3 of 2021, dated 30.03.2021, so far, it

relates to the remanding the case to the RTA for reconsideration of the non existence application for approval of the fare table in respect of the petitioner's stage carriage, bearing Regn.No.TN94 2333, plying on the route Palani to Madurai (via) Sembatti.

2.The petitioners are the stage carriage permit holders of the buses. Tmt.Kannagi, is the stage carriage permit holder for the bus bearing Regn No.TN57 AR 5775, plying on the route Palani to Madurai (via) Sembatti. Sri Amman Motor Service, is the stage carriage permit holder for the bus bearing Regn No.TN94 2333, plying on the route Palani to Madurai (via) Sembatti. Tvl.GKT Roadways, is the stage carriage permit holder for the bus bearing Regn.No.TN94 A 8789, plying on the route Palani to Madurai (via) Sembatti. The Government issued a G.O.Ms.No.64, Home (Transport VII) Department, dated 16.07.2010, for amending Rule 3 (i) of the Tamil Nadu Motor Vehicles Rules, 1989, to reduce the route length of the Express Service, from 120kms to 80kms. Accordingly, amendment was ordered for substituting the expression “120kms” by “80kms” in Rule 3 (i) of the Tamil Nadu Motor Vehicles Rules, 1989.

3. The petitioners claimed that they operate their buses in the route exceeding 80kms and to a distance of 114.2kms. Therefore, they sent their respective applications to the Secretary, Regional Transport Authority, Palani, for fixing fare table to the buses, on the basis of Express Service. The Regional Transport Authority, Palani, approved their applications on 30.11.2020 and 01.12.2020. Subsequently, without any lawful authority, on 05.02.2021, the Regional Transport Authority, Palani, had cancelled the Express Service approval given to the petitioners' buses, and directed that the petitioners' buses have to be plied as "Mofussil/Ordinary Service". Against the said order dated 05.02.2021 in R.No.001099/A2/2021, the petitioners preferred M.V.R.P.Nos.01, 02 & 03 of 2021, before the State Transport Appellate Tribunal, Chennai.

4. The learned Presiding Officer, State Transport Appellate Tribunal, Chennai, found that, the Regional Transport Authority, Palani, has no power to review its own order dated 05.02.2021, and no personal hearing was given, before cancelling the fare table approval issued to the petitioners.

Instead of allowing the petition in M.V.R.P.Nos.01, 02 & 03 of 2021, the learned Presiding Officer, State Transport Appellate Tribunal, Chennai, set aside the orders of the Regional Transport Authority, Palani, and further remitted the matter back to the Regional Transport Authority, Palani, for passing orders, after taking into consideration, the points raised by the petitioners and the respondent. Against the said order dated 30.03.2021, passed by the the learned Presiding Officer, State Transport Appellate Tribunal, Chennai, these Civil Revision Petitions are preferred.

5. The learned counsel for the petitioners submitted that, once the Regional Transport Authority, Chennai, passed order, classifying the petitioners permit to run the buses as Express Service, it becomes *functus officio*. Then there is no power vested on the Regional Transport Authority to review its own order. There is no opportunity of personal hearing was given to the petitioners before passing the cancellation order R.No.001099/A2/2021, dated 05.02.2021. The State Transport Corporation operate buses of the same type of vehicles as that of the petitioners vehicles as Express Service buses. Therefore, the reasons stated by the Regional

Transport Authority, Palani, that seating space in respect of express stage carriages should be 45cms x 45cms; there shall be provided an entrance cum exit on the left side of the vehicle either in the front side or in the rear and an emergency exit on the off side of the vehicle at the rear window screen of the vehicles; and this conversion involves variation of condition of permit under sub-section (3) of Section 80 read with Tamil Nadu Motor Vehicle Rule 216, are not correct.

6.This matter was considered at length by the State Transport Appellate Tribunal, Chennai. While agreeing with the submission that the Regional Transport Authority, Palani, has no powers to review its own order and no opportunity for personal hearing was given before cancelling the fare table in R.No.001099/A2/2021, dated 05.02.2021, set aside the order dated 05.02.2021, and wrongly remitted the matter back to the Regional Transport Authority, Palani, for fresh disposal. The State Appellate Tribunal, Chennai, should have set aside the order of the Regional Transport Authority, Palani, in its entirety and allowed the petitioners to operate their buses as Express Service buses. Therefore, the learned counsel for the petitioners prayed for

setting aside the orders dated 30.03.2021, passed by the State Transport Appellate Tribunal, Chennai in M.V.R.P.Nos.01, 02 & 03 of 2021, so far as the remanding of the matter is concerned, set aside the order dated 05.02.2021, in R.No.001099/A2/2021 passed by the learned Regional Transport Authority, Palani.

7.The learned counsel for the petitioners relied on the following judgements for the proposition that power to review cannot be exercised without there being given a power under a statute. In the case of ***State of Orissa and others Vs. Commissioner of Land Records & Settlement, Cuttack and others*** reported in (1998) 7 SCC 162, the Hon'ble Supreme Court has held as follows:-

“29.....

It is therefore, clear that the same Judge who disposes of a matter, if available, must “review” the earlier order passed by him inasmuch as he is best suited to remove and mistake or error apparent on the face of his own order. Again, he alone will be able to remember what was earlier argued before him or what was not argued. In our opinion, the above principle is

equally applicable in respect of orders of review passed by quasi-judicial authorities.”

and in the case of ***Haryana State Industrial Development Corporation Limited Vs. Mawasi and others*** reported in ***(2012) 7 SCC 200***, wherein it has been held as follows:-

“26.At this stage it will be apposite to observe that the power of review is a creature of the statute and no court or quasi-judicial body or administrative authority can review its judgment or order or decision unless it is legally empowered to do so. Article 137 empowers this Court to review its judgments subject to the provisions of any law made by Parliament or any rules made under Article 145 of the Constitution. The rules framed by this Court under that article lay down that in civil cases, review lies on any of the grounds specified in Order 47 Rule 1 of the Code of Civil Procedure, 1908.”

8.The learned counsel for the respondent submitted that the petitioners permit for their vehicles were classified as “Mofussil/Ordinary Service” and their route length is 114.2kms. Individual applications were submitted by the petitioners to the Secretary, Regional Transport Authority,

Palani. Based on the length of stage carriages in question and as per G.O.Ms.No.64, Home (Transport VII) Department, dated 16.07.2010, the Secretary, Regional Transport Authority, Palani, revised the fare table as applicable to the Express Service on 30.11.2020 and 1.12.2020 respectively. Subsequently, the Regional Transport Authority, Palani, came to know that the original permits for the petitioners stage carriages were granted as “Mofussil/Ordinary Service”. Realizing that an erroneous order was passed in fixing the fare table, cancelled the said fixation and restored the original fare table for “Mofussil/Ordinary Service”. The petitioners cannot *suo-motu* switch over to Express Service by virtue of amendment in Rule 3 (i) of the Tamil Nadu Motor Vehicles Rules 1989. Change of classification from “Mofussil/Ordinary Service” to Express Service would amount to

i) Variation of permit condition as per the provisions of sub section 3 of Section 80 of Motor Vehicles Act 1988 read with Tamil Nadu Motor Vehicle rule 216 on payment of fees as per Rule 279 and Rule 431 of Tamil Nadu Motor Vehicles Rule 1989.

ii) Alteration of stages as laid down under Rule 246 of Tamil Nadu Motor Vehicles Rules 1989. As per rule 246 (c) of Tamil Nadu Motor

Vehicles rules 1989, in respect of Express service, the distance of each stages shall not be ordinarily less than 25kms. In case of “Mofussil/Ordinary Service”, the distance of each stage shall not ordinarily exceeds 8kms or be less than 4kms which is far less than express service and such Mofussil Service would be more economical and convenient to the travelling public.

iii) It would involve the consequence of revision of timings as required in Rule 248 of the Tamil Nadu Motor Vehicles Rules 1989.

iv) Alteration of seating space as per provisions laid down in Rule 306 (1) (iv) of the Tamil Nadu Motor Vehicles Rule 1989, (express service 45cm x 45cm).

v) For alteration of entrance as per provisions laid down in Rule 319 of the Tamil Nadu Motor Vehicles Rule 1989. (i.e. In the case of express service stage carriages there shall be provided an entrance-cum-exit on the left side of the vehicle either in the front or in the rear and an emergency exit on the off side of the vehicle at the rear window screen of the vehicle). But for ordinary service stage carriages there shall be an entrance in the rear and an exit in the front.

9.It is further submitted that the petitioners vehicles did not comply with the above said provisions. Small bus operators are not eligible for variation of permit as per Section 6(2) of the Tamil Nadu Stage Carriages Special Provisions Act 41/1992. Therefore, the learned counsel for the respondent submitted that the order dated 05.02.2021, in R.No.001099/A2/2021 was passed by the learned Regional Transport Authority, Palani, without properly verifying the original permit and permitted the petitioners vehicles to charge Express fare. Immediately, after coming to know about the wrong order, it was corrected and restored to the original status. Therefore, it is submitted that the order of the Regional Transport Authority, Palani, cannot be challenged and these Civil Revision Petitions have to be dismissed.

10. Considered the rival submissions, and perused the records.

11. From the submissions made, the main submission of the learned counsel for the petitioners is that the Regional Transport Authority, Palani, has no powers to review its own order. The next submission is that

the condition required for classifying the services as “Express Services”, seating space in respect of Express stage carriage should be 45cms x 45cms and there shall be provided an entrance-cum-exit on the left side of the vehicle either in the front or in the rear and an emergency exit on the off side of the vehicle at the rear window screen of the vehicles. It is submitted by the learned counsel for the petitioners that the State Transport undertaking buses, which are running as Express Service, have similar type of seating arrangement and exit-entry arrangement, like the buses run by the petitioners. Therefore, it is not open to the Regional Transport Authority, Palani, to change the classification of petitioners buses as Express Service buses into “Mofussil/Ordinary Service”. The learned counsel for the petitioners drew the attention of this court, about the powers of the Regional Transport Authority, Palani, to approve fare table with modification in respect of the particular stage carriage or of a service of stage carriages.

12.Consideration of materials show that the petitioners cannot take advantage of G.O.Ms.No.64 dated 16.07.2010. While considering the amendment, certain private bus operators and private bus owners

associations raised objections, to the effect that the proposed amendment will result in an increase in the bus fare and more revenue to the State Transport undertakings and have requested to permit private bus operators to ply their stage carriages as “Express Services by amending Section 6 (2) of the Tamil Nadu Act 41 of 1992”.

13. Private bus operators and bus owners associations requested the amendment of Section 6 (2) of the Tamil Nadu Act of 41 of 1992, to permit the private operators to ply their stage carriages as Express Services. However, the Government decided to over rule the objections and confirmed the draft amendment issued in G.O.Ms.No.554, Home (Transport VII) department, dated 13.07.2009 and accordingly, amended Rule 3 (i). It is clear from this G.O.Ms.No.554, Home (Transport VII) department, that the private bus operators and private bus owners association cannot seek advantage of G.O.Ms.No.64 dated 16.07.2010, for plying their service carriages as Express Carriages. If the request was accepted and necessary amendment was made in Section 6 (2) of Tamil Nadu Act 41 of 1992, they have a chance to claim the benefit of operating their stage carriages as

Express carriages. That has not been done in this case. The request for amendment of Section 6 (2) of Tamil Nadu Act 41 of 1992, was negatived and it is plain and clear that the petitioners cannot seek benefit from the G.O.Ms.No.64 dated 16.07.2010, which reduced the kilometres for an Express Services from 120kms to 80kms.

14. It is seen from the orders of the Regional Transport Authority, Palani, that,

i) As per the provisions of clause (iv) of sub rule (1) of Rule 306 of the Tamil Nadu Motor Vehicles Act 1989, the seating space in respect of Express Stage Carriage should be 45cms x 45cms.

ii) As per the second proviso of the Tamil Nadu Motor Vehicles Rule 319, there shall be provided an entrance cum exit on the left side of the vehicle either in the front or in the rear and an emergency exit on the off side of the vehicle at the rear window screen of the vehicles.

iii) Moreover, the above two structural modification and conversion of Mofussil Service to Express Service involves variation of condition of permit under sub-section (3) of Section 80 read with the Tamil

Nadu Motor Vehicles Rule 216.

15. It is also seen that the verification of permits granted to the petitioners, shows that the vehicles were classified as “Mofussil/Ordinary Service Vehicle”. Therefore, their vehicles do not fit into a standard set for claiming the Express Service vehicles. The submission of the learned counsel for the petitioners that the Government vehicles do not have these specifications cannot be taken into consideration for the reason that there is no materials to substantiate this version. It appears from the order dated 05.02.2021 in R.No.001099/A2/2021, passed by the Regional Transport Authority, Palani, that the order fixing the fare table as Express Service to the petitioners vehicles was inadvertently passed without verification of details.

16. The order of the Regional Transport Authority was passed based on the applications filed by the petitioners. It appears that before passing the order dated 05.02.2021 in R.No.001099/A2/2021, no enquiry was conducted and it was like an order passed on the administrative side of

the Regional Transport Authority, Palani. The order is fundamentally not in accordance with law and rules prescribed and therefore, there is nothing wrong in cancelling the order.

17. Suppose the petitioners have a legal right to convert their “Mofussil/Ordinary Service” to Express service and their request was not considered on the basis of the legal right, the petitioners can have every right to challenge the order. In the case on hand, the petitioners have not made out any legal right to claim the benefit under G.O.Ms.No.64 dated 16.07.2010 and their buses have also not satisfied the criteria mentioned above.

18. In the considered view of this court, the order passed by the Regional Transport Authority, Palani, on 30.11.2020 and 01.12.2020 was a mistaken orders and therefore, rectification of the mistaken order in R.No.001099/A2/2021, dated 05.02.2021, cannot be considered as an illegal order. However, this order was passed without hearing the petitioners. The error was apparent on the face of the record. The learned Presiding Officer,

State Transport Appellate Tribunal, Chennai has remanded the matter back for considering submissions of the petitioners and all other relevant aspects and pass orders.

19. Therefore, this court does not want to interfere with the order passed by the learned Presiding Officer, State Transport Appellate Tribunal, Chennai and confirms the order dated 30.03.2021. The Regional Transport Authority, Palani, is directed to hear the petitioners, and pass orders after taking into consideration all the relevant aspects as indicated in the order of remand. With the above direction, these Civil Revision Petitions are disposed of. No costs. Consequently connected miscellaneous petitions are closed.

ep/Jer

06.10.2021

Index: Yes/No

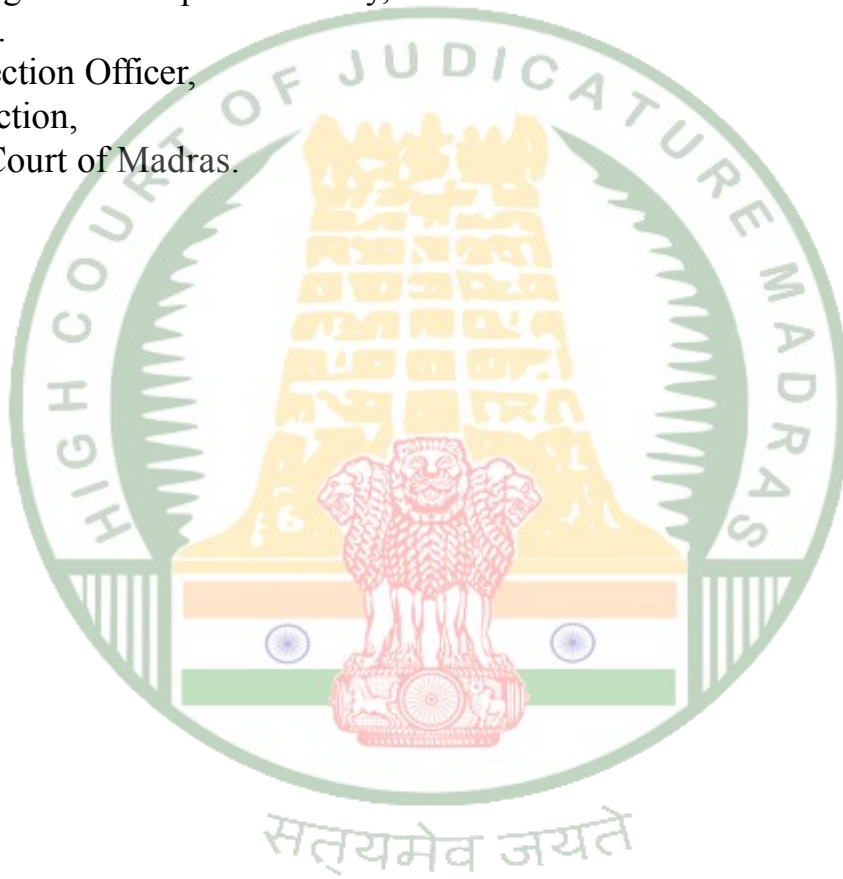
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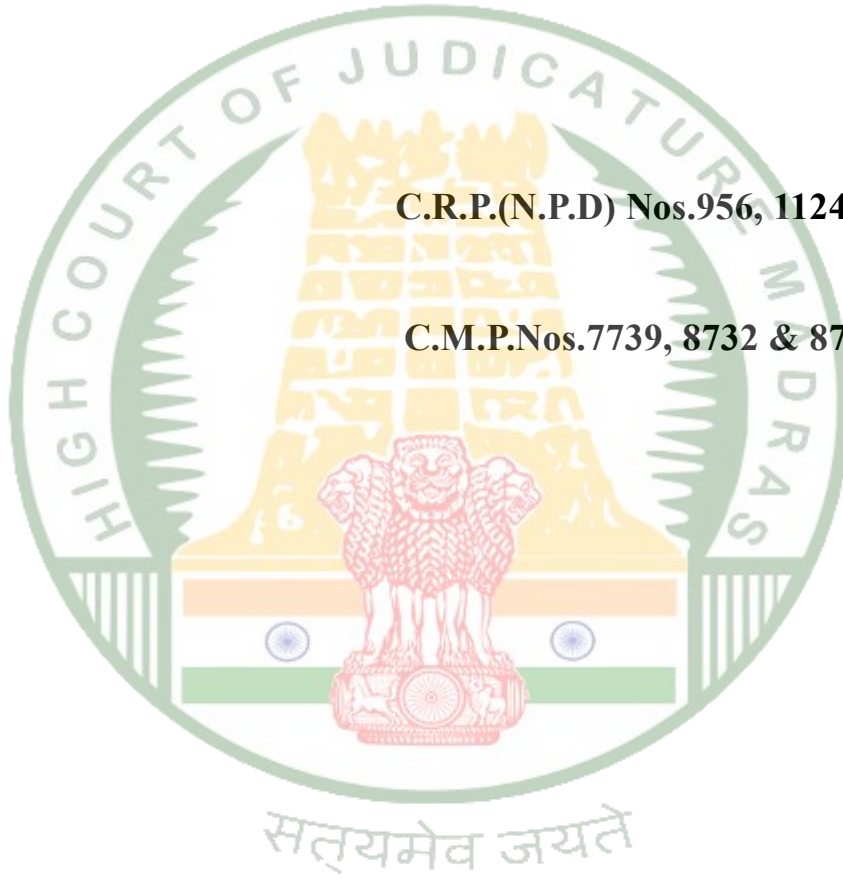
1. The Chairman,
State Transport Appellate Tribunal,
Chennai
2. The Secretary,
The Regional Transport Authority,
Palani.
3. The Section Officer,
VR Section,
High Court of Madras.



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G.CHANDRASEKHARAN.J.

Jer/ep



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