



IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 16.11.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.16897 of 2021

and

W.M.P.No.17882 of 2021

M/s.Easy Ride Transports
Represented by its Managing Partner
M.Jagannathan, No.5, Town Extension 3rd Street
Tiruppur.

...Petitioner

-Vs-

1. The Secretary
Regional Transport Authority
Tiruppur Region North
Tiruppur.

2. The Regional Transport Authority
Tiruppur District, Tiruppur.

...Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent made in R.No.032874/A3/2019 dated 18.07.2020 and quash the same and direct the second respondent to allow the application of the petitioner dated 04.12.2008, filed for extension of the route from Coimbatore Laxmi Mill to Coimbatore Gandhipuram Bus Stand in respect of its stage carriage bearing Regn.No.TN25 AD 2735 plying on the route Tirupur to Coimbatore Laxmi Mill so as to operate on the route Tirupur Old Bus Stand to Coimbatore Gandhipuram Bus Stand. (Prayer amended vide order dated 26.10.2021 made in WMP No.21186/2021 in WP No.16897 of 2021 by NAVJ).

For Petitioner : Mr. M.Palani

For Respondents : Mr.NRR.Arun Natarajan
Special Government Pleader

O R D E R

As per the amended prayer, the prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent made in R.No.032874/A3/2019 dated 18.07.2020, quash the same and direct the second respondent to allow the



application of the petitioner dated 04.12.2008, filed for extension of the route from Coimbatore Laxmi Mill to Coimbatore Gandhipuram Bus Stand in respect of its stage carriage bearing Regn.No.TN25 AD 2735 plying on the route Tirupur to Coimbatore Laxmi Mill so as to operate on the route Tirupur Old Bus Stand and Coimbatore Gandhipuram Bus Stand.

2. It is the case of the petitioner that, the petitioner firm was operating a stage carriage permit vehicle in Regn.No.TN-39-BE-0555 on the route between Tiruppur and Coimbatore Laxmi Mill. Initially the route was a town service operating in between Tiruppur Old Bus Stand to Karumathampatti. In the year 1996, the petitioner made an application for variation involving extension of route from Karumathampatti to Coimbatore by converting the town service into Moffusil service and grant of additional singles and reduction of singles on the existing route.

3. This application of the petitioner was allowed by the second respondent by proceedings dated 05.02.1996. However, while allowing the application, so far as the extension is concerned, it was restricted only upto Laxmi Mill on the ground that, the extension if at all permitted from Karumathampatti to Coimbatore ie., upto Coimbatore Bus Stand, it comes to 27 Kms, however in terms of Section 80(3) of the Motor Vehicles Act, 1988, extension can be granted only upto 24 Kms. Therefore, the extension request was restricted only upto Laxmi Mills because 24 Kms from Karumathampatti ends at Coimbatore Laxmi Mills. That is how the petitioner, after getting that variation in 1996 has been plying the vehicle in the permit route between Tiruppur Bus Stand to Coimbatore Laxmi Mill.

4. When that being so, the petitioner has made an application in the year 2008 for further variation or extension from Laxmi Mill to Coimbatore Gandhipuram Bus Stand covering 3 Kms. The said application submitted by the petitioner was not considered. Therefore, the petitioner has filed number of writ petitions and every time writ of mandamus were issued to consider the application of the petitioner. However, there has been no fruitful action, according to the petitioner, was forthcoming from the respondents. Ultimately, a writ petition was again filed by the petitioner in W.P.No.11450 of 2019, where a direction was given by this Court on 29.04.2019, directing the Regional Transport Authority, Tiruppur North Region ie., the second respondent herein to consider the request of the petitioner and to pass orders on merits.

5. Accordingly, a date was fixed for hearing by giving notice to all the operators in the said route on 01.11.2019. On that date, though several operators attended the hearing, some



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of them sought for further adjournment and some of them had made their objections or protest. The Tamil Nadu State Transport Corporation Limited also appeared in the said hearing before the respondents and they also made a protest saying that, the application since was submitted seeking variation for a modified area, that application for variation should be treated as an application for grant of fresh permit, which is prohibited and therefore the said request can be rejected. The respondent Regional Transport Authority, having considered all the objections as well as the plea made by the petitioner, passed an order dated 18.07.2020 stating that under Section 80(3) of the Motor Vehicles Act, 1988 the application for variation of permit involving extension of route shall be treated as an application for grant of new permit and as per Section 6(4) of the Tamil Nadu Motor Vehicles (Special Provisions) Act, ie., Act 41 of 1992, no new permit shall be granted to any person on any route covered by the approved scheme. By stating this reason, the Regional Transport Authority rejected the said application filed by the petitioner for variation of permit involving extension of route from Coimbatore Laxmi Mill to Gandhipuram Bus Stand.

6. In fact this order dated 18.07.2020 was passed during the pendency of this writ petition, as this writ petition was filed earlier for a writ of mandamus. The prayer in the writ petition has been amended as stated above, by converting it as a writ of certiorarified mandamus. That is how the present writ petition has come up with the amended prayer assailing the order of rejection passed by the Regional Transport Authority, Tiruppur dated 18.07.2020.

7. Heard Mr.M.Palani, learned counsel for the petitioner, who would submit that, insofar as the said reason cited by the respondents in the impugned order that, the application, if any, made for variation shall be treated as fresh application within the meaning of Section 80(3) of the Motor Vehicles Act, 1988 and Section 6(4) of the Tamil Nadu Act 41 of 1992 and therefore, such a variation being treated as fresh application since has been prohibited for grant of fresh permit, it cannot be considered is concerned, according to the learned counsel for the petitioner, the said reason cited by the respondents would not be sustained in the scrutiny of law.

9. Elaborating further, the learned counsel for the petitioner has made submissions that, the State Legislature has enacted Act 41 of 1992 and under Section 6(2) of the said Act, there is a provision available, which empowers the Regional Transport Authority to entertain any application made by a small operator in accordance with the Rules and subject to the conditions that may be prescribed and to vary the conditions of permit for a stage carriage so as to enable the applicant to



operate on the entire route or in variation of the route covered by such approved scheme.

10. Without noticing or without taking into account Section 6(2), the respondent Regional Transport Authority has only taken into account Section 6(4) of the Act 41 of 1992 stating that, as per Section 6(4) no new permit shall be granted to any person on any route covered by the approved scheme.

11. Here in the case in hand, when there is an enabling provision for an existing operator, that too a small operator, who makes an application for variation of the route, that cannot be treated as a fresh application within the meaning of Section 6(4) of Act 41 of 1992.

12. Like that, the same principle would apply in respect of the embargo put in Section 80(3) of the Motor Vehicles Act, 1988 also. Moreover, according to the learned counsel for the petitioner, since there is a non-obstante clause available in Section 6(2) of the Act 41 of 1992 with the words that, "notwithstanding anything contained in the Motor Vehicles Act or any approved scheme", the embargo put in under Section 80(3) of the Motor Vehicles Act would no way stand for considering the application submitted by a small operator seeking variation.

13. Therefore, according to the learned counsel for the petitioner, in both ways, neither the provisions of Section 80 (3) of the Motor Vehicles Act, 1988 nor Section 6(4) of Act 41 of 1992 would stand in the way for considering the application submitted by a small operator like the petitioner, as admittedly the petitioner is a small operator and is having less than five permits.

14. Elaborating further his arguments, the learned counsel for the petitioner would invite the attention of this Court on a decision of a Division Bench of this Court reported in "R.Srinivasan -vs- State of Tamilnadu represented by Secretary, Home Department and Another" reported in 2004(2) TN MAC 68 (DB).

15. By relying upon the said judgment, the learned counsel would contend that, the issue raised in this writ petition, especially in the context of the reason stated by the respondent in the impugned order, is no more res integra, as that has been given a complete answer or quietus by the Division Bench judgment referred to above and therefore, the reason cited by the respondents would not stand in the legal scrutiny. Therefore, the impugned order is liable to be interfered with and consequently suitable direction can be given to the respondent Regional Transport Authority by way of positive direction to grant the variation sought for by the petitioner as



per the application made in the year 2008.

16. Per contra, Mr.NRR.Arun Natarajan, learned Special Government Pleader appearing for the respondents would make submissions to sustain the impugned order passed by the respondents.

17. In this context, he relied upon the averments made in the affidavit filed in support of the writ petition, where he pointed out that, it is the own admission on the part of the petitioner that, they already obtained a variation in the year 1996 where, though he sought for a variation of 27 Kms upto Coimbatore Bus Stand from Karumathampatti, the same had been restricted only upto Coimbatore Laxmi Mill because the variation sought for by the petitioner was covering 27 Kms, which is more than the maximum distance of 24 Kms as contemplated under the Act as well as the Rules. Therefore, once the maximum of 24 Kms permissible variation has already been obtained by the petitioner and they are enjoying the same, they cannot make a fresh or further application to seek for further variation beyond the maximum distance of 24 Kms.

18. Therefore, the learned Special Government Pleader would contend that, if at all the application submitted by the petitioner is to be treated, it can only be treated as a fresh application for fresh permit and not as an application of an existing permit holder seeking for variation and therefore, in that case the application of the petitioner since being one of the fresh application for a fresh permit, it is prohibited under the provisions quoted above and therefore, that kind of fresh application cannot be considered. Hence, the learned Special Government Pleader would contend that, the reasons set out in the impugned order passed by the Regional Transport Authority for rejecting the application of the petitioner is sustainable.

19. I have considered the rival submissions made by the learned counsel appearing on either side and have perused the materials placed on record.

20. The issue raised in this writ petition, though appears to be a complicated one, in the considered view of this Court, is in a very narrow compass.

21. The petitioner is an existing permit holder with stage carriage permit. Initially the permit was in operation between Tiruppur Bus Stand and Karumathampatti. Subsequently, that was sought to be converted into mofussil service by providing variation of 27 Kms upto Coimbatore Bus Stand ie., Gandhipuram Bus Stand. This application was made by the petitioner sometime in the year 1996 and the same, after having been considered, was



allowed to the maximum extent of variation of 24 Kms ie., upto Coimbatore Laxmi Mill. Why this was restricted upto Laxmi Mill and why it was not extended upto Coimbatore Gandhipuram Bus Stand is, because of the maximum permissible distance for variation is 24 Kms. That has been admitted by the petitioner also. Therefore, on this aspect there could be no quarrel.

22. After the said variation obtained by the petitioner, in the year 2008 the petitioner made an application for further variation of 3 Kms between Coimbatore Laxmi Mill to Gandhipuram Bus Stand.

23. That is the application which was the subject matter before the authority where number of directions have given to the Regional Transport Authority by this Court at various point of time in the writ petitions filed by the petitioner earlier to consider the application and to pass orders.

24. Ultimately, a direction was given by this Court in the year 2019 ie., on 29.04.2019. Pursuant to the said direction, the application of the petitioner was taken up for consideration and the hearing was fixed on 01.11.2019, where number of operators appeared before the Regional Transport Authority and they registered their objections or protest.

25. On behalf of the Tamil Nadu State Transport Corporation, objections were raised and a point was raised by them that, since the route covered is for a modified area, their application for variation should be treated as an application for the grant of fresh permit, which is prohibited and hence it should be rejected. The said point raised by the Transport Corporation which was one of the rival operator in the said route was taken into account and accordingly the Regional Transport Authority in the impugned order, has given a reason that the plea raised by the petitioner to get the variation can only be treated as a fresh application for fresh permit and that is impermissible under Section 80(3) of the Motor Vehicles Act, 1988 and Section 6(4) of Act 41 of 1992. Except this reason, no reason whatsoever has been given by the Regional Transport Authority in the impugned order.

26. Insofar as these two reasons are concerned, if they are put into judicial scrutiny whether those reasons would survive to sustain the impugned order is the only question.

27. In this context, as has been rightly pointed out by the learned counsel for the petitioner, in Act 41 of 1992 especially under Section 6, it has been made clear that, an application made in accordance with the Rules for renewal of the permit by small operator to apply stage carriage etc., can be considered and decided under Section 6(1). Like that, if any such



application is made by the small operator for variation of the existing permit that can also be considered and granted, for which, the provision if any available in Motor Vehicles Act, 1988 shall not stand in the way because of the non-obstante clause available in Section 6(2).

28. In this context the petitioner, whether is a small operator or not is concerned, it can be safely concluded that the petitioner is a small operator because as per the explanation to Section 3(1), the term 'small operator' has been explained that, for the purpose of Section 6, small operator means any stage carriage operator holding on the date of commencement of the Act or any date subsequent to the said date of commencement, five or less stage carriage permits.

29. Here admittedly the petitioner is having less than five permits, and therefore there can be no doubt that the petitioner can be treated as a small operator. Hence, the petitioner would be eligible to make application as small operator seeking variation of permit under Section 6 of Act 41 of 1992. That application was in fact filed by the petitioner in the year 2008, which has now been considered and rejected through the impugned order.

30. In this context, if we take up the arguments advanced by the learned Special Government Pleader that, if at all variation is permissible under Section 6(2), that variation would be possible only to maximum extent of 24 Kms and not beyond that.

31. Absolutely there can be no quarrel on such proposition. But, once 24 Kms of maximum variation is permitted to the existing permit holder, whether the existing permit holder will be precluded from making any further application for further variation is a question.

32. In this context, the learned counsel for the petitioner has relied upon Rule 4 and Rule 8 of the Rules called Tamil Nadu Motor Vehicles (Special Provisions) Rules 1995. The relevant Rules are extracted hereunder.

" (4) The State Transport Authority or the Regional Transport Authority, as the case may be, 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 that such variation shall not have the effect of increasing the number of stage carriages as originally fixed."

"(8) Variation of conditions of permit shall not be granted more than once a year under this Rule.

Provided that no application for variation by an operator shall be entertained before the completion of one full year of the implementation of the earlier variation order issued to that operator."

33. If we look at Rule 4, it makes clear that the Regional Transport Authority, after recording reasons, by order, grant or refuse to grant the variation sought for in the application, provided in the case of variation, the distance covered by such variation shall not exceed 24 Kms.

34. Rule 8 makes it clear that, variation of conditions of permit shall not be granted more than once a year under this Rule, provided that no application for variation by an operator shall be entertained before the completion of one full year of the implementation of the earlier variation order issued to that operator.

35. Therefore, if an existing operator wants to make an application for variation, he has to make it and once he needs a variation within one year period from that variation order, he is precluded from making further application for further variation. In other words, it is not restricted for an existing operator to make further application for further variation after the lapse of one year period from the date of the order of the earlier variation ordered by the Regional Transport Authority concerned.

36. If we apply the said Rule to the facts of the present case, the petitioner obtained earlier variation of 24 Kms from Karumathampatti to Coimbatore Laxmi Mill sometime in the year 1996. Subsequently, only in the year 1998 he made an application for variation and this application now is in question, where the impugned order has been passed. Therefore, certainly the present application is beyond the one year limitation as prescribed under Rule 8 referred to above. Once a further application for variation is permissible under Rule 8, then the variation if any sought for in the further application, that variation can be treated only for that variation alone excluding the maximum distance of 24 Kms permissible variation. Therefore, the argument advanced by the learned Special Government Pleader that, the earlier variation is 24 Kms and the present variation sought for is 3 Kms and



therefore altogether it is 27 Kms and therefore it cannot be permitted, has no substance.

37. Moreover, the issue as to whether such kind of permit for existing permit holder can be granted notwithstanding anything contained under the provisions of the Motor Vehicles Act 1988 and Act 41 of 1992, as has been rightly submitted by the learned counsel for the petitioner, is no more res integra in view of the order passed by the Division Bench in the case of "R.Srinivasan -vs- State of Tamilnadu represented by Secretary, Home Department and Another" reported in 2004(2) TN MAC 68 (DB) cited supra.

38. In the said decision, the Division Bench had gone through the entire gamut of the issue, where the validity of an Act called Tamil Nadu Motor Vehicles (Special Provisions) (Cancellation of Variation of Conditions of Permit) Act, 1996 was put under challenge.

39. The relevant paragraphs of the said order of the Division Bench are usefully referred to hereunder.

"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



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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



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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



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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.

.....
.....

16. Before embarking into a discussion on the scope of the amendment omitting explanation to rule 4 of the Tamil Nadu Motor Vehicles (Special Provisions) Rules, 1995, it would be appropriate to refer to the judgment of the Apex Court in Thilagavathi's case as to the scope of Section 6 of Act 41 of 1992. While placing interpretation on various sections of Act 41 of 1992 including Section 6, the Apex Court has observed in paragraphs 7 and 8 as follows:-

"Reverting to the provision of the Act, it is slightly unusual legislation as it came into force in July 1992 yet, except Sections 6 and 7, the remaining provisions of the Act are deemed to have come into force in 1976 and ceased to operate after 30.6.1990. The Act thus seeks to achieve dual objective-one,



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legislatively protecting those operators who were granted permits after 1976 under misconception by the transport authorities that the Scheme excluded other operators from "end-to-end" route only by fictionally enabling the transport authority to have issued permits notwithstanding any provision in the Scheme framed by the Undertaking. Two, it prohibited grant of any new permit after 30.6.1990 which overlapped whole or part of notified route, that is, the Legislature while accepting the interpretation placed by this Court on construction of Scheme prepared under Section 68-C legislatively removed the hurdle in grant of permits on notified route in past, validated the grant so made but prohibited any grant in future. Sections 3, 4, 5 and 10 are directed towards regularizing and validating the permits granted between 1976 and 30.6.1990, whereas Sections 6 and 7 achieve the latter objective. Section 3 is the main section. Its sub-sections (1) and (2) empower a Regional Transport Authority to grant, renew or vary conditions of permit of a small operator, which, according to the explanation to the section, means any stage carriage operator holding not more than five stage carriage permits, to ply on a notified route or part of it notwithstanding anything contained in any draft scheme. Sub-section (3) of Section 3 provides that during the period the permit referred to under sub-section (1) or (2) was in force the draft scheme shall stand modified to that extent. Sub-section (4) makes the provisions of Chapter V of the Act applicable to grant, renewal or variation of permit.

Section 5 provides that Sections 3, 4 and 6 shall have effect notwithstanding anything inconsistent therewith contained in Chapters V and VI including Section 98 of the Motor Vehicles Act. Section 10 validates the grant of permit retrospectively. Section 3



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thus created power in the transport authority to grant, renew, vary or alter permit from 1976 and Section 10 validated such grant notwithstanding anything to the contrary in the new Act.

There was no challenge by the State Transport Undertaking to these provisions by which the grant of permits in favour of the operators between 1976 and 1990 has been permitted and validated.

Section 6 like Section 3 has four sub-sections. Sub-sections (1) to (3) deal with renewal of permit or modification of condition therein in accordance with same procedure as applied to renewal or variation under Chapter V of the Act. But, sub-section (4) debars the authority from issuing any fresh permit. It reads as under:-

"Notwithstanding anything contained in this Act no new permit shall be granted under this Act to any person on any route covered by an approved scheme."

This section unlike other sections comes in operation from 30.6.1990. Thus from 30.6.1990 the Regional Transport Authority is not empowered to grant any new permit to any operator overlapping whole or part of notified route. But so far permits, grant of which has been validated by 30.6.1990, would be renewable under this section even after 30.6.1990. The effect of Section 6, therefore, is that those operators who were granted permits between 1976 to 30.6.1990 would be entitled to seek renewal but the authorities would not be entitled to grant fresh permit after that date. Validity of even sub-sections (1) and (2) was not challenged by the Undertaking. And sub-section (4) cannot be challenged by the appellants as it is in keeping with Chapter VI of the new Act. It is further reinforced by Section 7 which abates all proceedings pending for grant of permit on a notified route before any authority or court in appeal."

In view of the authoritative pronouncement of the



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Apex Court in the said judgment, the Regional Transport Authority is not empowered to grant any new permit to any operator overlapping whole or part of notified route after 30.6.90. But, so far permits, grant of which have been validated by 30.6.90, the same are renewable under Section 6 of the Act. While interpreting Section 6 of the Act, the Apex Court upheld the validity of the same by approving the power of the Regional Transport Authority to grant, renew or vary conditions of permit of small operator namely, any stage carriage operator holding not more than five stage carriage permits to ply on a notified route or part of it notwithstanding anything contained in draft scheme. We find no infirmity in the grant of variations to the petitioners pursuant to subsection (2) of Section 6 of Act 41 of 1992. Such variations granted are sought to be cancelled by the "Impugned Act" solely on the ground that explanation to rule 4 of the Tamil Nadu Motor Vehicles (Special Provisions) Rules, 1995 was omitted. The said explanation was inserted by a notification, dated 29.12.95. Though some arguments were advanced as to the definition of "variation shall mean and include", we do not find any discussion on the same is necessary in view of our finding that the said explanation is sought to be omitted only prospectively. Whenever the legislature sought to omit any provisions of law including an explanation, unless it is explicitly made clear as to the omission is made retrospectively, it must be held that such omission shall be deemed to be prospective only. Hence, in our considered view, the variations already granted pursuant to sub-section (2) of Section 6 read with explanation to rule 4 of the Tamil Nadu Motor Vehicles (Special Provisions) Rules, 1995 are not affected by mere omission of explanation from the rules. Article 19(1)(g) of the Constitution of India protects the right of the petitioners to carry on any occupation, trade or business. Such right could be regulated by the State. The right to ply the vehicles by the petitioners is by virtue of the permits granted earlier and the consequent variations granted to them pursuant to Act 41 of 1992. Such rights cannot be infringed by the State except by law approved by the Courts. In this context, it is to be seen as to whether the deprivation of the petitioners to operate on varied routes could be justifiable by the "Impugned Act". A reading of paragraph



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3 of the "Impugned Act" is beyond doubt that the variations granted to the petitioners prior to 24.5.96 were cancelled only on the ground that they were granted by virtue of explanation to rule 4 and such explanation was omitted on 25.5.96. The basis for cancellation of variation of permits, in our considered view, is unjustifiable. The right conferred on the operators pursuant to the variations granted on the basis of the explanation cannot be infringed by omission of the explanation more particularly, prospectively. Only placing reliance on the omission of explanation by the "Impugned Act", the variations granted to the petitioners prior to 24.5.96 are sought to be cancelled. Hence, the "Impugned Act" is liable to be declared as unconstitutional, ultravires and void.

17. In view of the above discussions, we declare the Tamil Nadu Motor Vehicles (Special Provisions) (Cancellation of variation of conditions of permit) Act, 1996 is unconstitutional, ultra vires and void. Consequently, there will be a direction to the Regional Transport Authority concerned to permit each of the petitioners to operate their stage carriage services on the respective varied routes as per the earlier orders passed pursuant to Act 41 of 1992. Accordingly, all the writ petitions are allowed and the relief prayed in each of the writ petition is granted. No costs. Consequently, all the connected W.P.M.Ps. are closed."

40. It has been held by the Division Bench that, in terms of sub-section (2) to Section 6 read with Rule 4(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. It has further been held that, while interpreting Section 6 of Act 41 of 1992, the Apex Court upheld the validity of the same by approving the power of the Regional Transport Authority to grant, renew or vary the conditions of permit of small operator, namely, any stage carriage operator holding not more than five stage carriage permits to ply on a notified route or part of it notwithstanding anything contained in the draft scheme.

41. Therefore, the Division Bench found no infirmity in the grant of variation to the petitioners in the said batch of cases pursuant to Section 6(2) of Act 41 of 1992. Therefore, neither in the Motor Vehicles Act 1988 nor in the Act 41 of 1992 is there any provision to show that, any application filed by a small operator seeking variation after lapse of one year from



the earlier variation order obtained, can be treated as a fresh application.

42. When that being the factual and legal position, the present reason cited by the respondent in the impugned order that, as per Section 80(3) of the Motor Vehicles Act, 1988 and Section 6(4) of Act 41 of 1992, since the application of the petitioner can be treated as a fresh application, it cannot be considered and granted, is absolutely unlawful and unjustifiable. Therefore, this Court has no hesitation to hold that the impugned order cannot be sustained.

43. In the result,

- This writ petition is allowed and the impugned order made in R.No.032874/A3/2019 dated 18.07.2020 is quashed.
- The matter is remitted back to the respondents for re-consideration. While reconsidering the same, the aforesaid legal as well as factual position shall be borne in mind by the respondent Regional Transport Authority concerned and accordingly they shall pass a suitable order for grant of variation as sought for by the petitioner, since no other reason except the aforesaid reasons, which have been held as unsustainable, has been stated in the impugned order.
- Such an order of grant of variation ie., extension upto Coimbatore Gandhipuram Bus Stand as has been sought for in the application of the petitioner can be considered and granted. The needful as indicated above shall be undertaken by the respondents within a period of eight weeks from the date of receipt of a copy of this order.

43. With the above directions, this writ petition is allowed accordingly. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar

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To

1. The Secretary
Regional Transport Authority
Tiruppur Region North
Tiruppur.

2. The Regional Transport Authority
Tiruppur District, Tiruppur.

+2cc to M/s.M.Palani, Advocate, S.R.No.58648

+1cc to the Government Pleader, S.R.No.59437

W.P.No.16897 of 2021

SR-II(CO)
RGA(08/12/2021)