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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2021

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. NO.19638 OF 2021

AND

W.M.P.NO.20920 OF 2021

T.Mahalingam

... Petitioner

Vs

1. The Secretary,
Regional Transport Authority,
Pollachi, Coimbatore District.

2. The Regional Transport Authority,
Pollachi Region at Coimbatore.

... Respondents

PRAYER :

Petition filed Under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents herein to restore the variation of route granted in R.No.45256/A3/95 dated 06.02.1996 to ply on the route Pollachi to Palladam as directed by the Division Bench of this Court in a batch of writ petitions forthwith.

For Petitioner : Mr.K.Hariharan

For Respondents : Mrs.Akila Rajendran
Government Advocate

ORDER

The prayer sought for herein is a writ of mandamus directing the respondents herein to restore the variation of route granted in R.No.45256/A3/95 dated 06.02.1996 to ply on the route Pollachi to Palladam as directed by the Division Bench of this Court in a batch of writ petitions forthwith.



2. The Predecessor of the petitioner was holding the permit for running a Stage Carriage for the route between Pollachi and Kattampatti who had applied for variation upto Palladam i.e. between Pollachi and Palladam. Considering his request, that variation order was passed by the Regional Transport Authority, Coimbatore on 06.02.1996.

3. However, subsequently, by virtue of an Act called "Tamil Nadu Motor Vehicles (Special Provisions) (Cancellation of Variation of Conditions of Permit) Act, 1996, all those variation given pursuant to Act 41 of 1992 were cancelled.

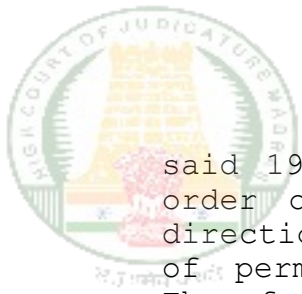
4. Subsequently, the permit in question, where the variation was also given, was cancelled by virtue of the Act referred to above and ultimately the permit was transferred in the name of the petitioner on 12.09.2003.

5. In the meanwhile, the validity of the said Act of 1996 was under challenge by various permit holders and those writ petitions were decided by a Division Bench of this Court, by order dated 07.08.2003, whereby, the Division Bench of this Court declared the said 1996 Act as ultra vires and void. Consequently, a direction was given to the concerned Regional Transport Authorities to permit each of the petitioners i.e., the permit holders to operate their stage carriage services on the respective varied routes as per the earlier orders passed pursuant to Act 41 of 1992.

6. Therefore, the permission for varied route granted on 06.02.1996 by the Regional Transport Authority, Coimbatore to and in favour of the predecessor in permit holder of the petitioner also got restored. Therefore, with such varied stage carriage permit route since the permit has got transferred already in the name of the petitioner on 12.09.2003, there could be no further impediment for the petitioner to be permitted to ply the vehicle in the varied route.

7. For getting the said permission, though the petitioner had been repeatedly requesting the respondent Transport Authority, such requests have not yielded any desired result and in this regard, the petitioner had given a representation on 10.04.2017 and a reminder on 08.05.2017 and all those request and reminder made by the petitioner though had been received by the respondents, they have not acted upon, hence, the petitioner moved this writ petition with the aforesaid prayer.

8. In this regard, Mr.K.Hariharan, learned counsel appearing for the petitioner has submitted that, since the variation has already been given pursuant to Act 41 of 1992 and the said variation though was cancelled pursuant to 1996 Act, when the



said 1996 Act was declared to be void and ultra vires by the order of a Division Bench of this Court dated 07.08.2003, a direction also was given by this Court that all those variation of permits given pursuant to Act 41 of 1992 got restored. Therefore, the permit holder shall be permitted to ply a vehicle in the varied route.

9. Therefore, the learned counsel for the petitioner would submit that, after the said declaration of law and the consequential direction made by the Division Bench of this Court by order dated 07.08.2003 only on 12.09.2003, the permit was transferred in the name of the petitioner. Therefore, the said permit when was transferred to the petitioner, it was transferred with variation also and such variation has got restored by virtue of the order of this Court dated 07.08.2003. Hence, the learned counsel would submit that, when the petitioner made request to the respondent to issue necessary orders formally permit the petitioner to ply the vehicle with the said permit on the varied route, the same was not considered, therefore, the petitioner moved this writ petition.

10. Hence, the learned counsel seeks indulgence of this Court to issue a suitable direction to the respondents.

11. Per contra, Mrs.Akila Rajendran, learned Government Advocate appearing for respondents has relied upon the following averments made in the counter affidavit which reads thus:

"6.It is submitted the Tamil Nadu Motor Vehicles (Special Provisions Cancellation of Variation of Conditions of Permit Act, 1996, was challenged before this Hon'ble Court by several persons including the said Mr.V.Venkidupathy. It is submitted that the Hon'ble Division Bench of the Hon'ble High Court of Madras held the Tamil Nadu Motor Vehicles (Special Provisions Cancellation of Variation of Conditions of Permit) Act, 1996 as unconstitutional vide Order dated 07.08.2003 in R.Srinivasan Vs. State of Tamil Nadu and Another (2003 (4) CTC 12). The Hon'ble Division Bench while holding the Tamil Nadu Motor Vehicles (Special Provisions Cancellation of Variation of Conditions of Permit) Act, 1996 as unconstitutional directed the Regional Transport Authority to permit each of the petitioners therein to operate their stage carriage services on the respective varied routes as per the earlier order passed pursuant to Act 41 of 1992 (Tamil Nadu Motor Vehicles Special Provision Act, 1992) and the portion of the order is extracted hereunder for easy reference:



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"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 order 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."

7. It is submitted that the said Mr. V. Venkidupathy who was successful in challenging the cancellation of variation of permit before this Hon'ble Court in the said batch of Writ Petitions continued to operate the Vehicle as Town Service from Pollachi Bus Stand to Kattampatti in spite of the order of the Division Bench of High Court in his favour. It is submitted that the Vehicle Reg No. TN41 D 0333 was continuously plied as Town Service from Pollachi B.S to Kattampatti by Mr. V. Venkidupathy from 19.04.2001 to 11.09.2003. Thereafter, the said Permit i.e., from Pollachi B.S to Kattampatti was transferred by the said V. Venkidupathy to the Petitioner herein i.e., Mr. T. Mahalingam on 12.09.2003 and from the said date to till date i.e., for a period of more than 18 years, the Petitioner herein using the said permit is plying his Vehicle as Town Service Vehicle from Pollachi Bus Stand to Kattampatti. It is submitted that the Petitioner herein on 01.02.2007 has replaced the Vehicle No of the permit from TN41 D 0333 to TN41 Q 9855.

10. It is most respectfully submitted that the request of the Petitioner cannot be accepted due to the fact that Mr. V. Venkidupathy despite obtaining favourable Order from this Hon'ble Court continued to ply the Vehicle as Town Service from Pollachi B.S to Kattampatti and he has chosen to transfer the said permit i.e., Town Service Permit to the Petitioner herein and therefore the Petitioner herein is estopped from claiming variation of route based on the Order dated 07.08.2003 of this Hon'ble Court. It is further submitted that the permit holder during the date of the Order of this Hon'ble Court i.e., Mr. Venkidupathy has chosen to waive his right granted by this Hon'ble Court. The said Venkidupathy has thereafter transferred the said Town Service Permit to the Petitioner herein and has thereafter continuously plied the Vehicle as a



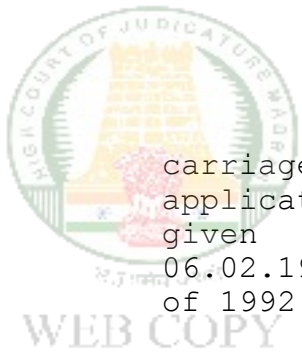
Town Service Vehicle for a period of more than 18 years from the date of order of this Hon'ble Court.

13. It is submitted that the Petitioner's representation dated 10.04.2017 can only be considered as an Application for grant of a new Permit. It is respectfully submitted that State Transport Undertaking i.e., STU's are operating adequate number of services in the route Pollachi Bus Stand to Palladam and the request of the Petitioner cannot be accepted. It is further submitted that the entire revenue district of Coimbatore has been covered by an Approved Scheme by the Govt. of Tamil Nadu. Therefore, by virtue of Sections. 103 and 104 of the Motor Vehicles Act, 1988, the request of the Petitioner cannot be considered. It is submitted that the route Pollachi to Palladam is serviced by STU through several buses and therefore the Petitioner's request for variation cannot be granted since the route is an notified route under the Scheme. It is further submitted that the Petitioner is presently plying the Vehicle as Town Service from Pollachi Bus Stand to Kattampatti and withdrawal of the service would cause loss of service to the public for short distance passengers to Pollachi."

12. Relying upon these averments made in the counter affidavit which is the stand of the respondents, the learned Government Advocate would contend that, once the variation given pursuant to Act 41 of 1992 was cancelled by virtue of the provisions of the 1996 Act, even though the said Act was declared to be a void one, subsequently no such extension i.e., variation was given to any one including the petitioner as beyond the original distance / route under the original permit issued to the petitioner's Predecessor in permit holder, nothing can be since extended, the variation sought for by the petitioner cannot be considered and granted. Therefore, the learned Government Advocate would contend that, the present plea raised by the petitioner seeking a writ of mandamus to give a direction to the respondents to consider the request of the petitioner for grant of such variation as claimed by the petitioner is not feasible for compliance, hence, the learned counsel seeks dismissal of this writ petition.

13. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

14. Insofar as the factual matrix of this case is concerned, there can be no much quarrel. No doubt initially the petitioner's Predecessor was given permit to run the stage



carriage vehicle between Pollachi and Kattampatti which was, on application, had been varied upto Palladam. This variation was given by the Regional Transport Authority concerned on 06.02.1996, of course, pursuant to the provisions of Act No.41 of 1992.

15. Subsequently various such variations given to the stage carriage permit holders have been cancelled at one stroke by bringing a legislation called the Tamil Nadu Motor Vehicles (Special Provisions) (Cancellation of Variation of Conditions of Permit) Act, 1996 (in short 'the 1996 Act').

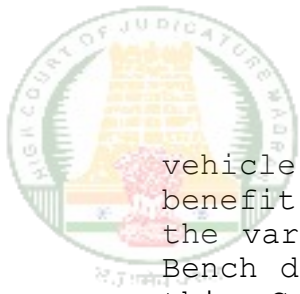
16. Subsequently, the said 1996 Act was put under challenge before this Court, where, after exhaustive discussion, the Division Bench by order dated 07.08.2003 has held that, the 1996 Act is ultra vires and void. Also, a consequential direction was given by the Division Bench of this Court to the concerned Regional Transport Authorities to permit each of the petitioners i.e., the permit holders to operate their stage carriage services on the respective varied routes as per the earlier orders passed pursuant to Act No.41 of 1992.

17. Therefore, on 07.08.2003 the variation which has already been granted and subsequently cancelled, again been restored and the permit holder was permitted to ply the vehicle in the varied route. Only subsequent to that the permit was transferred in the name of the petitioner on 12.09.2003, therefore, on the date the permit was transferred in the name of the petitioner, the earlier permit with varied route was in live and available for usage.

18. When that being so, now, only a formal request has been made by the petitioner to give such variation to put the endorsement which is in the name of the petitioner, and such request has not been considered by the respondents. Therefore, the petitioner has approached this Court by filing the present writ petition.

19. In this regard, though a stand has been taken by the respondents, as averred in the counter affidavit, which has been quoted herein above and relying upon the same, though the learned Government Advocate made submissions that the request of the petitioner is not feasible for compliance, such a stand taken by the respondents, in the considered opinion of this Court, would run contra to the decision made by this Court in a Division Bench order dated 07.08.2003 cited supra.

20. When the 1996 Act itself was declared to be an ultra vires and a consequential direction was given to the Regional Transport Authorities to permit the permit holders to ply the



vehicle in the varied route, the question of denying such benefit to the petitioner as his permit also was restored with the varied route by virtue of the said decision of the Division Bench dated 07.08.2003 is unjustifiable and unlawful. Therefore, this Court has no hesitation to hold that the petitioner is entitled to seek for a mandamus.

21. In that view of the matter, this Writ Petition is disposed of with the following orders:

That there shall be a direction to the respondents to consider the request of the petitioner with regard to the variation of the route as has been allowed already by earlier order of the Regional Transport Authority dated 06.02.1996 and subsequent restoration by virtue of the order of the Division Bench of this Court dated 07.08.2003 and accordingly pass necessary orders on the application of the petitioner permitting the petitioner to ply the vehicle in the varied route as per the earlier order dated 06.02.1996 and accordingly the necessary orders shall be passed within a period of four weeks from the date of receipt of a copy of this order.

22. With these directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Sgl

To

1. The Secretary,
Regional Transport Authority,
Pollachi, Coimbatore District.
2. The Regional Transport Authority,
Pollachi Region at Coimbatore.

+1cc to Mr.K.Hariharan, Advocate, S.R.No.60232

+1cc to the Government Pleader, S.R.No.60294

W.P.No.19638 of 2021

PMK(CO)
PM/10/02/2022