



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.04.2021

DELIVERED ON : 17.09.2021

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.5378 of 2021

and

W.M.P. (MD) .No.4296 of 2021

WEB COPY

S.P.Ramalakshmi

... Petitioner

vs.

1)The Regional Transport Authority,
Tenkasi.

2)The Regional Transport Authority,
Tirunelveli.

3)The Regional Transport Officer,
Tenkasi.

... Respondents

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 relating to the impugned order passed by the 1st respondent herein in Proc.in.No.32675/A1/2017 dated 14.12.2020, quash the same and consequently direct the 1st respondent to grant mini bus permit to the petitioner for the route Thenkasi Thomson School (Sakkadai Palam) to Agarakattu Bus Stop.

For petitioner

: Mr.D.Sivaraman

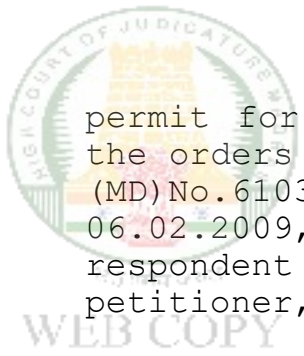
For Respondents

: Mr.V.Anand, Government Advocate

ORDER

This writ petition has been filed by the petitioner for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 1st respondent herein in Proc.in.No.32675/A1/2017, dated 14.12.2020, quash the same and consequently direct the 1st respondent to grant mini bus permit to the petitioner for the route Thenkasi Thomson School (Sakkadai Palam) to Agarakattu Bus Stop.

2.The learned counsel for the petitioner would state that the petitioner is a post graduate and applied for a permit to operate mini bus in the routes (i)Tenkasi Thomson School-Ayikudi (ii) Shencottai to Ilathur, later, he withdrew the application for Shencottai to Ilathur. Originally, the petitioner's application was returned by the 3rd respondent on 15.07.2005, stating that number of permits approved for the Tirunelveli District have saturated. Thereafter, the petitioner made a representation to the 2nd respondent who has also by order dated 06.06.2006, rejected to grant



permit for the above route, citing the very same reason. Against the orders dated 15.07.2005 and 06.06.2006, the petitioner filed W.P (MD)No.6103 and 6016 of 2006 and this Court, by order, dated 06.02.2009, set aside those orders with a direction to the 2nd respondent to grant mini bus permit for the route sought for by the petitioner, if there is no other impediment.

3.He would further state that despite the above order of this Court, the 1st respondent rejected the petitioner's application by order dated 05.06.2009, stating that on the same route, stage carriages are already being operated and overlapping distance exceeds the permissible limit. According to the petitioner, the 2nd respondent was transferred and relieved on 03.06.2009 itself, but the said order dated 05.06.2009 was passed by the 3rd respondent in the name of the 2nd respondent. Thus, the petitioner filed W.P(MD) Nos.10900 and 10899 of 2009 and the same were dismissed on the ground of alternative remedy, but on review in Review Application Nos.15 and 16 of 2011, dated 01.07.2011, the dismissal of W.P(MD) Nos.10900 and 10899 of 2009 was set aside with a direction to the 2nd respondent to pass order after giving notice to the petitioner. However, once again, the 2nd respondent rejected the petitioner's application by order dated 24.06.2012, stating that the route length in the served sector exceeds 4 kms which is against G.O.Ms.No.1548, Home(Transport) Department, dated 17.11.1999. Against the said order, the petitioner filed M.V.Appeal Nos.130 and 129 of 2012 before the State Transport Appellate Tribunal, Chennai, and the Tribunal set aside the order dated 24.06.2012 and remitted the matter for fresh consideration.

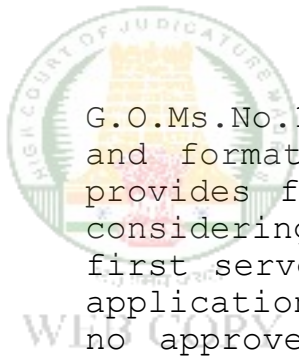
4.It is further stated that thereafter, the petitioner made a representation dated 07.02.2014, to the respondents to consider his application. Despite the direction of the Deputy Transport Commissioner, Tirunelveli, to consider the petitioner's application, the 2nd respondent did not pass any orders. Hence, the petitioner filed W.P(MD)Nos.12003 and 12004 of 2014 to direct the respondents to implement the order of the State Transport Appellate Tribunal and this Court, by order dated 19.08.2014, has directed the 2nd respondent to take follow-up action on the direction of the Tribunal. Once again, the 2nd respondent rejected the petitioner's application on 12.08.2014, against which, the petitioner filed W.P (MD)No.14733 of 2014 and this Court by order dated 05.09.2014, directed the petitioner to approach the Tribunal by way of appeal and accordingly, the petitioner filed M.V.Appeal No.140 of 2014 and the same was allowed again remanding the matter to the 2nd respondent for fresh consideration with a direction to the Regional Transport Authority to resurvey the route in the presence of the petitioner. The respondents issued a notice to the petitioner for joint inspection and on 20.12.2017, the petitioner participated in the joint inspection. Thereafter, without giving any opportunity to the petitioner, once again the 2nd respondent rejected the petitioner's application on 09.06.2018 on the very same grounds.



5. According to the petitioner, the joint inspection report is in his favour and new comprehensive scheme 2011 in G.O.Ms.No.136, dated 23.02.2011 was set aside by this Court in W.P(MD)No.2893 of 2011, dated 18.04.2018, and despite the same was informed to the 2nd respondent, without application of mind, he passed the rejection order dated 29.06.2018 on the ground that the overlapping distance exceeds the limit mentioned in the above scheme, against which, the petitioner filed W.P(MD)No.15522 of 2018 and this Court set aside the order dated 29.06.2018 and directed to consider the petitioner's application as per the old scheme i.e., Modified Area Approved Scheme in G.O(Ms)No.1548, Home (Transport-III) Department, dated 17.11.199, after giving opportunity of personal hearing to the petitioner. Though umpteen number of times, the petitioner's application was rejected citing the same reason, the 2nd respondent has again passed the rejection order dated 26.09.2019, stating that the terminal point near Thomson School is a congested one and there is no sufficient area for the travelling public for waiting to get in and get down from the mini bus, against which the petitioner filed W.P(MD)No.23022 of 2019 and this Court has set aside the order dated 26.09.2019. As Tenkasi District had been bifurcated into Tirunelveli and Tenkasi, this Court suo motu impleaded the Regional Transport Authority, Tenkasi, and directed him to conduct a combined joint inspection.

6. It is the contention of the petitioner, though joint inspection was conducted on 17.09.2020, the Inspector attached to the 3rd respondent's office measured the tar portion of the road alone and gave negative report that the route is not feasible for operation of mini bus. According to the petitioner, even at the time of inspection, he requested the officials to measure the width of the entire road since in some portions, there was no tar road at all and in some places, tar road was small and damaged. However, the 1st respondent by impugned order dated 14.12.2020 rejected the petitioner's application on new reasons that the breadth of the road at the terminal point is within 4.5 kms and to turn the vehicle, the vehicle has to cross more than 4 kms on the served sector and further already, three other mini buses are being operated on the same route. According to the learned counsel for the petitioner, the above reasons are not only contrary to the facts, but also against the earlier orders passed by this Court. Hence, this writ petition.

7. The respondents have filed a detailed counter affidavit. The learned Government Advocate appearing for the respondents would state that as per the order passed by this Court in W.P(MD)No.6017 and 6103 of 2006, the petitioner was informed to take part in the joint inspection which he failed to do so and the inspection revealed that the entire route length of 5.5 kms became served by State Transport Undertaking buses and other mini buses and only after giving personal hearing to the petitioner, his application was



G.O.Ms.No.1548 on 17.11.1999 before bifurcation of Tenkasi District and formation of new district does not alter the said G.O which provides for a maximum 250 permits in Tirunelveli District and by considering valid applications on the principle of 'first come, first served', all 250 permits were exhausted and the petitioner's application did not come under valid applications list and there is no approved modified scheme for Tenkasi District authorising the grant of mini bus permits.

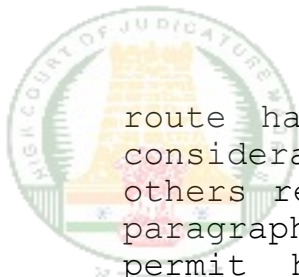
8.He would also state that the physical inspection report clearly says that the road before the Thomson School which is stated as a terminus of the proposed mini bus route, is having a width of 4.50 meters only without any side wings and having drainage on both sides of the road. Further, the area in which, the permit is sought for, being residential area, parking of mini bus would affect the movement of other residential vehicles and emergency vehicles and there is no road with width of 8.8 meters as stated by the petitioner, whereas the actual width is 450 cms where the mini bus could not make 'U' turn and if allowed, it will have severe impact on road safety. According to the respondents, the road near Thomson School is a narrow road with higher traffic potential and not recommended for terminus of the route. Thus, he would state that considering the road safety and in obedience of the orders passed by this Court, the impugned order has been passed which does not require interference by this Court.

9.Heard the learned counsel for the petitioner as well as the respondents.

10.Perusal of the impugned order shows that citing six reasons, the rejection of the petitioner's application has been made. Firstly, it is stated that 250 permits were already granted in Tirunelveli District and secondly, the petitioner has already been issued with a mini bus permit for the route from Shenkottah bus stand to Elathur VAO Office. The said contention has been considered and rejected by this Court in W.P(MD)No.6017 and 6103 of 2006, wherein this Court had found that the petitioner in the affidavit has narrated seven persons whose applications submitted later to the petitioner, were considered and permits were issued, but the counter affidavit is silent over the said averment and further holding that despite the possession of one permit, the 2nd respondent had granted permits to one Selvam and Manimaran who were directly having permits, allowed the above writ petitions directing the 2nd respondent to grant mini bus permit to the petitioner. Thirdly, it has been stated that already three mini bus permits were issued on the same route other than the petitioner and this Court in similar W.P(MD)Nos.22137 and 22198 of 2019, dated 12.03.2020, has rejected the said contention holding as follows:-

'10.In the impugned order, it had been stated that there are already three mini buses were operating on the same route.

<https://hcservices.gov.in/hcservices> stand that several operators are operating in the



route had also come before the Honourable Supreme Court for consideration in Mithilesh Garg and others v. Union of India and others reported in (1992) 1 Supreme Court Cases 168, wherein at paragraph 6, a discussion was made with respect to several permit holders operating on the same route. In the said judgment, it has been observed as follows:-

6.There is no complaint of infringement of any of their statutory rights. Their only effort is to stop the new operators from coming in the field as competitors. We see no justification in the petitioners' stand. More operators mean healthy-competition and efficient transport system. Overcrowded buses, passengers standing in the aisle, persons clinging to the bus doors and even sitting on the rooftop are some of the common sights in this country. More often one finds a bus which has noisy engine, old upholstery, uncomfortable seats and continuous emission of black smoke from the exhaust pipe. It is, therefore, necessary that there should be plenty of operators on every route to provide ample choice to the commuter public to board the vehicle of their choice and patronize the operator who is providing the best service. Even otherwise the liberal policy is likely to help in the elimination of corruption and favouritism in the process of granting permits. Restricted licensing under the old Act led to the concentration of business in the hands of few persons thereby giving rise to a kind of monopoly, adversely affecting the public interest.'

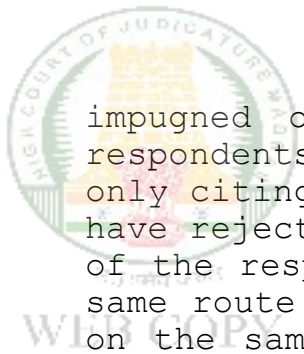
11.Thus, in my opinion, the third reason cannot be countenanced. The other three reasons cited in the impugned order are that;

(i)the length of the road is between 4.5 to 4.75 meters and therefore, it will be very difficult to pick up and set down the passengers as there will be heavy traffic jam if permit is granted;

(ii)to turn the vehicle to ply on the opposite direction, the vehicle has to cross more than 4.0 kms on the served sector as there is no facility to make 'U' turn in the route sought for by the petitioner and the terminal point is always busy with frequent public movement; and

(iii)already three mini buses and one Transport Corporation bus are being operated in the route.

12.Perusal of record shows that the petitioner has been fighting for long time for getting mini bus permit and has filed writ petitions on eight occasions and has also approached the State Transport Appellate Tribunal, Chennai, twice at the instance of this Court's directions on the ground of availability of alternative remedy. Despite the positive direction given by this Court and the Tribunal, the respondents are not granting permit to the petitioner driving her from pillar to post from 2006 onwards. Though the petitioner is agitating before this Court from 2006 onwards, for the



impugned order which were not at all found and raised by the respondents despite the joint inspection conducted till 2019 and only citing the inspection reports of the year 2020, the respondents have rejected the petitioner's application. It is the admitted case of the respondents that already three mini buses are plying on the same route apart from one transport corporation bus. Thus, harping on the same grounds which were already negatived by this Court in the petitioner's earlier writ petitions, the respondents have raised the above three hyper-technical grounds in the impugned rejection order. Thus, in my considered opinion, the impugned order is liable to be set aside and the writ petition is liable to be allowed as prayed for.

13. Accordingly, the impugned order passed by the 1st respondent herein in Proc.in.No.32675/A1/2017 dated 14.12.2020, is quashed and the 1st respondent is directed to grant mini bus permit to the petitioner for the route Thenkasi Thomson School (Sakkadai Palam) to Agarakattu Bus Stop, within a period of four weeks from the date of receipt of a copy of this order.

14. With the above direction, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2021

Sub Assistant Registrar(CS)

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To

1) The Regional Transport Authority,
Tenkasi.

2) The Regional Transport Authority,
Tirunelveli.

3) The Regional Transport Officer,
Tenkasi.

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-29615[F] dated 20/09/2021)

order made in

W.P(MD)No.5378 of 2021

Dated : 17.09.2021

SE (CO)

GC/JGB(17.11.2021) 6P 5C