



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.04.2021

Pronounced on : 21.04.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP (MD)No.11358 of 2020

Shanmuga Sundaram

... Petitioner

Vs.

1. The Regional Transport Authority,
Trichy West, Trichy.

2. A.Raman

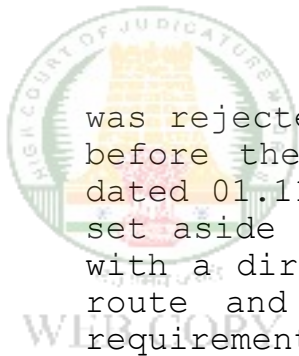
(R2 is impleaded vide court order dated
24.02.2021 in WMP(MD)No.10194 of 2020 in W.P.
(MD)No.11358 of 2020 by GRSJ)

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order of the respondent dated 18.06.2020 in R.No.105630/A2/2005 and quash the same and consequently direct the respondent to grant mini bus permit to the petitioner in the route namely Puthanaham to Karuppur.

For Petitioner	: Mr.K.Govindarajan
For Respondents	: Mr.M.Rajarajan, Additional Government Pleader for R1. Mr.B.Prahalad Ravi for R2

ORDER

The writ petitioner applied for permit to operate mini bus from Puthanatham to Kaulpannai on 04.12.2002. Since the Regional Transport Authority did not pass any order on the said application, the petitioner filed W.P.(MD)No.1786 of 2003 and by order dated 22.01.2003, the authority was directed to pass appropriate orders in accordance with law on the said application. Probably foreseeing some difficulties, the petitioner submitted an application seeking permit for a modified route that is from Puthanatham to Kadaiyitthampatti. By order dated 28.07.2003, the said application



was rejected. Aggrieved by the same, the petitioner filed an appeal before the State Transport Appellate Tribunal, Chennai. By order dated 01.11.2004, the appeal was allowed and the rejection order was set aside and the matter was remitted to the file of the authority with a direction to consider the petitioner's request to modify the route and in the event of modified route satisfying the legal requirement to grant permit. The reason for passing the said order was because even though the authority was quite clear that the modification application has been filed, what was considered and rejected was the application for the original route. This was characterized by the Tribunal as a clear case of non-application of mind.

2.The remand order with the aforesaid direction passed by the Tribunal was put to challenge by the second respondent herein in W.P.No.37200 of 2004. The said writ petition was dismissed on 07.05.2005 and the High Court directed the Regional Transport Authority to consider the petitioner's application for grant of permit. The authority came to the conclusion that the overlapping served sector exceeded the prescribed limit of 4 kms. The road condition was also characterized as not fit at certain point. In that view of the matter, the application came to be rejected vide order dated 07.02.2008. Questioning the same, the petitioner filed M.V.Appeal No.57 of 2008 before the State Transport Appellate Tribunal, Chennai. The appeal was allowed by order dated 03.09.2009 and the order of the Regional Transport Authority, Trichy was set aside. The matter was remitted for fresh consideration with permission to curtail the route so as to bring the served sector within the norms. Availing the said liberty, the petitioner filed an application for modifying the route from Puthanatham to Karuppur.

3.In the meanwhile G.O. Ms. No.136 Home (Transport III) Department dated 23.02.2011 was issued and a new comprehensive scheme was issued. The petitioner's application was once again rejected vide order dated 30.05.2011 by referring to G.O. Ms. No.136, dated 23.02.2011. Questioning the same, the petitioner filed M.V.Appeal No.57 of 2011 before the State Transport Appellate Tribunal, Chennai. The petitioner also filed W.P.(MD)No.5614 of 2012 questioning the G.O. One Mahalingam had also filed W.P.(MD) No.2893 of 2011 challenging the new scheme. By order dated 18.04.2018, the said Government Order was quashed. W.P.(MD)No.5614 of 2012 filed by the petitioner was closed by recording the fact that the issue has already been settled. W.A.(MD)No.13 of 2020 filed by the Government was also dismissed by the Hon'ble Division Bench vide order dated 17.01.2020.

4.In view of these developments, by order dated 11.04.2019, M.V.Appeal No.57 of 2011 was allowed and the rejection order was set aside by the Tribunal and the matter was remitted for fresh consideration. It was noted that since the new comprehensive scheme has been quashed by the High Court, the earlier 1999



scheme alone continued to prevail. Following the order passed by the Tribunal, the petitioner's application was once again taken up. In fact hearing notices were also issued to all the interested parties. Since there was no progress, the petitioner filed W.P.(MD) No.19846 of 2019, challenging the deferment of the proceedings. By order dated 06.12.2019, the Regional Transport Authority was directed to pass orders on merits and in accordance with law within a specified period. Pursuant to the aforesaid direction, the petitioner's application for grant of mini stage carriage permit was once again taken up. After hearing the concerned parties including the second respondent, the impugned order came to be passed once again rejecting the petitioner's request. Questioning the same, this writ petition came to be filed.

5. Heard the learned counsel on either side.

6. The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. He submitted that the petitioner has been fighting for his rights for almost 19 years and that this is a fit case in which the petitioner should be permitted to move the Writ Court without exhausting the alternative remedy of appeal.

7. Per contra, the learned Additional Government Pleader for the first respondent submitted that the writ petition deserves to be dismissed in the light of the reasons set out in the impugned order. According to the learned Additional Government Pleader, the overlapping distance is above the prescribed limit of 4 kms in the served sector and therefore no interference is called for.

8. The learned counsel for the second respondent submitted that the writ petition is not maintainable in view of the availability of the appeal remedy. He would submit that strong and convincing reasons have been set out in the impugned order. Since they are primarily factual in nature, it is not for the Writ Court to interfere with the same. The learned counsel for the second respondent relied on the decision of the Hon'ble Division Bench of this Court in **Tamilnadu State Transport Vs. C.Durai and the Secretary, (2005) 1 MLJ 435**, wherein, it has been held that writ petition should not be ordinarily entertained, when there is an alternative remedy.

9. I carefully considered the rival contentions and went through the materials on record. The objection regarding non-exhaustion of the alternative remedy has no merit. Even in the decision relied on by the learned counsel for the second respondent, it was held that no writ petition should ordinarily be entertained, when there is an alternative remedy, except in very rare cases for some compelling reason. Recently, the Hon'ble Division Bench of this Court by order dated 18.02.2021 in W.A.No.493 of 2021 (Mahindra and Mahindra vs. Joint Commissioner (CT) Appeals and another) clarified the legal



position in the following terms:-

"...there are certain broad parameters, within which, the Court has to exercise its jurisdiction under Article 226 of The Constitution of India, which read as hereunder :

(i) if there is unfairness in the action of the Statutory Authority;

(ii) if there is unreasonableness in the action of the Statutory Authority;

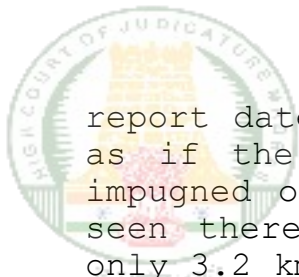
(iii) if perversity is writ large in the action taken by the Authority;

(iv) if the Authority lacks jurisdiction to decide the issue and

(v) if there has been violation of the principles of natural justice, the Court will step in and exercise its jurisdiction under Article 226 of The Constitution of India."

10. In the light of this authoritative pronouncement, the maintainability of the writ petition cannot be challenged. The only burden cast on the petitioner is to show that his case comes within the aforesaid parameters.

11. In view of the quashing of G.O. Ms. No.136, dated 23.02.2011 by the High Court, the petitioner's application will have to be considered only in terms of the earlier scheme. The petitioner's application was rejected on the ground that in the modified route sought for by the petitioner, a distance of 8.2 kms comes under sector. But the aforesaid reason assigned by the authority is not predicated on any material. Even as per the objection of TNSTC, the served sector is only for a distance of 3.2 kms. An impression has been generated as if a mini bus bearing Registration No. TN 49 7677 is plying on the modified route. The said bus is owned by one Maria Pushpam. The petitioner applied under Right to Information Act and obtained the details of her permit. It is seen that the permit of said Maria Pushpam pertains to the route from Sukkampatti to Silambampatty (via) Sellampatty, Selanayakkanpatty, Kanaivaipatti, Pungunisipatty, Puthanatham High School, Marungapurai Road, Puthanatham, Karuncholapatty Pirivu, Karuncholapatty, Maniyankurichi Road and Maniyankurichi. It is obvious that the said permit route pertains to a different route and there is no relation whatsoever to the modified route. Likewise it is not known as to how the rights of the second respondent will be violated. The second respondent is having stage carriage moffussil bus permit to ply from Vedachandur to Trichy (via) Ayyalur, Puthanatham and Manaparai with IST between Vendasandur to Vaiyampatty (via) Ayyalur. Therefore, the second respondent may not even have *locus standi* to oppose the petitioner's request. That is why, in the first instance, the Motor Vehicle Inspector Grade-I, Trichy submitted a report dated 17.05.2005 mentioning that the total length of the route is 11.8 kms and that the served sector is only 3.2 kms. But a revised



report dated 28.01.2007 was obtained and it was made it appear that as if the length of the served sector is 6.7 kms. But in the impugned order, the stand of TNSTC has been set out and it can be seen therefrom that the route covered by the government buses is only 3.2 kms. In other words, according to TNSTC, the served sector is only 3.2 kms. If that be so, there cannot be any impediment for granting the permit sought for by the petitioner. The details obtained by the petitioner under Right to Information Act shows that the permit of Maria Pushpam pertains to some other route. The second respondent cannot consider himself as an aggrieved party at all. In these circumstances, I come to the conclusion that the reason given by the first respondent for rejecting the petitioner's application is perverse. There is absolutely no material to show that the length of the served sector is 8.2 kms. From the available materials, one can infer that the length of the served sector is only 3.2 kms. That is well within the norm of 4 kms set out in the existing scheme. When the conclusion and approach of the authority is found to be perverse and unreasonable, certainly the aggrieved party is entitled to move the Writ Court notwithstanding the availability of alternative remedy. More than any thing else, the petitioner has been successively knocking the doors of the appellate authority right from the year 2004. The application was given way back in the year 2002 and it had suffered rejection on several occasions. On each occasion, the petitioner moved the appellate authority and the appellate authority set aside the rejection order and remanded the matter.

12. In view of the reasons set out above, the order impugned in the writ petition is quashed and the writ petition is allowed and the first respondent is directed to issue mini bus stage carriage permit to the petitioner for the modified route within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (AE)

// True Copy //

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Sub Assistant Registrar (CS-)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

The Regional Transport Authority,
Trichy West, Trichy.

+1 CC to Mr.B.PRAHALAD RAVI, Advocate (SR-17083[F]dated 22/04/2021)
+1 CC to Mr.K.GOVINDARAJAN, Advocate (SR-17114[F] dated 22/04/2021)

W.P. (MD) No.11358 of 2020
21.04.2021

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