



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.12197 of 2020

and

W.M.P.(MD)No.10476 of 2020

P.Radhika

... Petitioner

-Vs-

1.The Regional Transport Authority/District Collector,
Theni,
Theni District.

2.The Regional Transport Officer,
Regional Transport Office,
Theni,
Theni District.

... Respondents

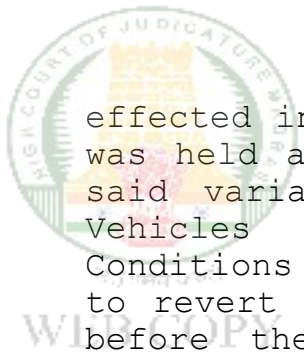
PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the respondents to permit the petitioner to ply his stage carriage bus bearing Registration No.TN 60 AA 9570 on the varied route Periyakulam to Kumuli (via) Theni, Bodi, Thevaram, Palayam, Cumbum and Gudalur in the light of new variation permit issued by the second respondent in his proceedings in R.No.1027/A2/2006, dated 30.09.2009 by considering the petitioner's representation dated 11.08.2020 within the period that may be stipulated by this Court.

For Petitioner	: Mr.S.A.Ajmal Khan Senior Counsel for M/s.Ajmal Associates
For Respondents	: Mrs.M.Rajeswari Government Advocate

ORDER

Heard the learned Senior Counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents.

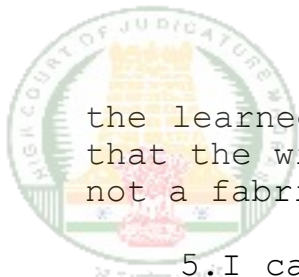
2.The petitioner is a stage carriage operator. The petitioner is presently plying the petition mentioned bus from Periyakulam to Kumuli through a particular route. The case of the petitioner is that the original permit holder namely One K.A.Rathinam was granted variation route by the proceedings of RTA, Theni vide proceedings in R.No.1027/A2/1996, dated 25.04.1996. Based on the variation



effected in favour of the original permit holder, timing conference was held and the proceedings were also issued. Subsequently, the said variation permit was cancelled under the Tamil Nadu Motor Vehicles (Special Provisions) (Cancellation of Variation of Conditions of Permit) Act, 1996 and all the grantees were directed to revert to their original routes and timings. This was challenged before the Madras High Court which by order dated 08.10.2003 declared that the Tamil Nadu Motors Vehicle (Special Provisions) (Cancellation of Variation of Conditions of Permit) Act, 1996, was unconstitutional. The permit was transferred from Thiru.K.A.Rathinam to Thiru.P.Ponnuchamy with effect from 16.12.2004. Thiru.P.Ponnuchamy's permit was transferred to one V.T.Kumaravel with effect from 25.08.2008. Thiru.V.T.Kumaravel applied to the authorities for implementation of the variation route and timings. Since his request was not accepted, he filed W.P.(MD) No.10291 of 2008 for directing the authorities to permit him to ply his stage carriage through the variation route. The said writ petition was disposed of by order dated 30.07.2009 by directing the authority to pass orders on his request. Pursuant to the direction given by this Court, an order dated 30.09.2009 was issued in his favour. It is stated that due to political pressure, Thiru.V.T.Kumaravel was not allowed to ply his stage carriage in the variation route. It is also stated that his signatures were obtained in the blank papers. When he transferred the permit in 2014, the petitioner herein stepped into his shoes. The petitioner states that she was also not allowed to operate on the variation route and that necessitated filing of the present writ petition.

3.The second respondent has filed a detailed counter affidavit. The second respondent states that the original permit holder Thiru.K.A.Rathinam was operating his stage carriage from Periyakulam to Kumuli. It is true that variation of the route was granted. But the same was cancelled by the enactment of Tamil Nadu Motor Vehicles (Special Provisions) Act, 1996. The respondent would state that even though the said enactment was struck down and the variations were restored, the permit holders did not operate the stage carriage on the variation routes. The permit changed hands and one Thiru.V.T.Kumaravel had become the permit holder in the year 2008. It is true that he presented an application to the first respondent for permitting him to ply the vehicle in the varied route. But he changed his mind and submitted a letter dated 15.09.2009 requesting that the variation sought for by him need not be implemented.

4.The contention of the learned Government Advocate is that when the petitioner obtained transfer of the permit, the stage carriage was not being plied in the varied route. In the counter affidavit, in Paragraph No.9, it is also stated that Thiru.V.T.Kumaravel the petitioner's transferrers applied in terms of Right to Information Act, 2005 and obtained copies of the



the learned Government Advocate, is sufficient circumstance to show that the withdrawal was actually made by Thiru.V.T.Kumaravel. It is not a fabricated letter as claimed by the petitioner.

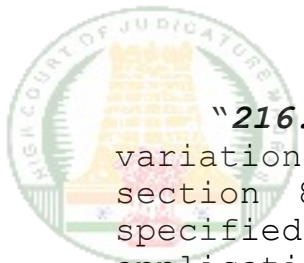
5.I carefully considered the rival contentions and went through the materials on record. There can be no doubt that the variation was sought for by the original permit holder and the same was also granted vide proceedings of RTA, Theni on 25.04.1996. The move of the Government of Tamil Nadu to nullify the variation by passing the said enactment came to nought following the Judgment made in W.P.Nos.23854 of 2001, etc, (R.Srinivasan Vs. State of Tamil Nadu). Even though the Act was struck down, still the permit holder could not operate on the variation route. Therefore, the petitioner's transferor Thiru.V.T.Kumaravel filed W.P.(MD)No.10291 of 2008 for directing the official respondents to permit him to ply his stage carriage through varied route. The said writ petition was disposed of on 30.07.2009 in the following terms.

"5.Accordingly, the petitioner is required to submit necessary application for permit variation to the first respondent under Rule 216 of the Tamil Nadu Motor Vehicles Rules, within a period of two weeks from the date of receipt of a copy of this order and the first respondent on receipt of the said application, is directed to consider the same on merits and pass orders in accordance with law within a period of twelve weeks thereafter."

6.In terms of the aforesaid direction, the petitioner's transferor submitted an application on 24.08.2009 and recommendatory note was put up on 22.09.2009. Eventually, order in favour of Thiru.T.V.Kumaravel was issued on 30.09.2009.

7.The learned Senior Counsel would point out that if as claimed by the respondents, a letter was issued by Thiru.V.T.Kumaravel on 15.09.2009 for non-implementation of the variation, then, the proceedings would have been dropped then and there and no further steps would have been taken thereafter. From the signatures affixed in the note submitted to RTA would show that it was processed on 18.09.2009, 22.09.2009, 29.09.2009 and 30.09.2009.

8.Of-course, I cannot disregard the stand of the respondents that Thiru.V.T.Kumaravel had submitted a letter dated 24.07.2013 under Right to Information Act, 2005 and asked for copy of the withdrawal letter dated 15.09.2009 and that the same was furnished by the Public Information Officer, office of the second respondent vide proceedings dated 20.08.2013. Be that as it may, the fact remains that the variation order passed on 30.09.2009 by the first respondent has not been modified till date. Rule 216 of the Tamil Nadu Motor Vehicles Rules deals with application for variation of conditions of permit. It reads as follows:-



"216. Permit - variation.- (1) Every application for variation of conditions of permit under sub section (3) of section 80 shall be in Form PVA accompanied by the fee as specified in the Table under rule 279. On receipt of the application referred to in sub-rule (1) the Transport Authority may in its discretion vary the permit or any of the conditions thereof. The Transport Authority granting the application for variation shall call upon the holder of the permit to produce, within four months from the date of receipt of the order sanctioning the variation, the permit, the registration certificate of the vehicle together with valid certificate of fitness and proof for payment of current tax under the Tamil Nadu Motor Vehicles Taxation Act, 1974 (Tamil Nadu Act 13 of 1974) so as to make entries of variation in the permit and then fix a date for convening a timings conference where necessary. If the permit holder fails to produce the aforesaid document within the aforesaid period of four months, the transport authority shall revoke the sanction for the variation. The Transport Authority may delegate to its secretary the powers conferred on it under sub-rule (3) in cases where the variation is sanctioned by the Secretary. The powers referred to in sub-rule (3) shall also be exercisable by the appellate or revisional authority, as the case may be, in cases where orders sanctioning variations are passed by such authority."

9. In the case on hand, the statutory authority had issued a variation permit. It is holding good as on date. So long as the variation permit is holding good, certainly, the permit holder is obliged to ply only on the variation route. If the authority had taken steps to revoke the order dated 30.09.2009 issued in favour of Thiru.V.T.Kumaravel giving effect to the variation order passed in the year 1996, then, it would be a different matter altogether. That is why, when the matter was listed on the earlier occasion, I posed a specific question to the learned Government Advocate. Today, when the matter was taken up for hearing, it is submitted that the order dated 30.09.2009 has not been revoked till date. Therefore, the petitioner is definitely entitled to mandamus as sought for. However, I must make it clear that allowing of this writ petition will not come in the way of the respondents from taking appropriate steps in accordance with law.

10. This writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

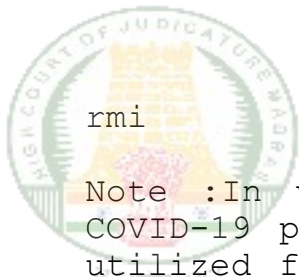
Sd/-

Assistant Registrar(Records)

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Sub Assistant Registrar(CS)



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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

1.The Regional Transport Authority/District Collector,
Theni,
Theni District.

2.The Regional Transport Officer,
Regional Transport Office,
Theni,
Theni District.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-13212[F] dated 24/03/2021)

+1 CC to M/s.SPL GP (SR-13592[F] dated 25/03/2021)

W.P.(MD)No.12197 of 2020

and

W.M.P.(MD)No.10476 of 2020

23.03.2021

SSS(CO)

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