



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.08.2021

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)No.4369 of 2019

and

W.M.P(MD) .Nos.3474 and 3475 of 2019

(Through Video Conference)

B.Nagalingam

.. Petitioner

Vs.

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

2.The Secretary,  
Regional Transport Authority,  
Theni, Theni District.

3.Tamil Nadu State Transport  
Corporation (Madurai) Ltd.,  
Madurai,  
Dindigul Region,  
Dindigul.

..Respondents

**Prayer:** Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the State Transport Appellate Tribunal, Chennai-600 104, dated 02.01.2019 made in M.V.Appeal No.46 of 2015, quash the same and consequently direct the 1<sup>st</sup> respondent herein to grant temporary permit to the petitioner to run bus service from Periyakulam to Sothuparai.

For Petitioner : Mr.A.C.Asaithambi

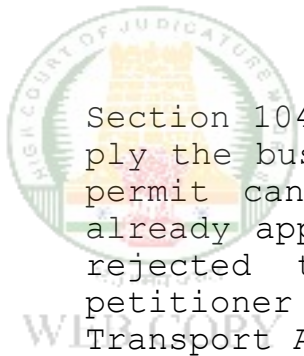
For Respondent Nos.1 & 2 : Mr.D.Ghandiraj  
Government Advocate

For Respondent No.3 : Mr.J.Senthil Kumaraiah  
Standing Counsel

### **ORDER**

Prayer sought for herein is for a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the State Transport Appellate Tribunal, Chennai-600104, dated 02.01.2019 made in M.V.Appeal No.46 of 2015, quash the same and consequently, direct the 1<sup>st</sup> respondent herein to grant temporary permit to the petitioner to run bus service from Periyakulam to Sothuparai.

2.That in respect of a notified route between Periyakulam bus stand to Sothuparai, it is a case of the petitioner that, there has been no buses plying by any one much less the Tamilnadu Transport Corporation, Madurai Division as claimed by them. Therefore, as per



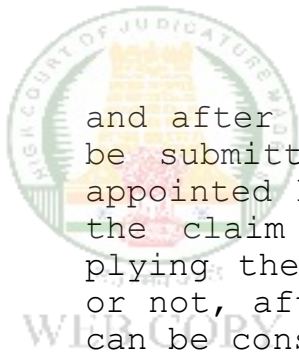
Section 104 of the Motor Vehicles Act, the petitioner since wants to ply the bus in the route by way of temporary permit, such temporary permit can be given to the petitioner. In this context, he had already approached the Regional Transport Authority concerned, who rejected the claim of the petitioner, as against which the petitioner filed appeal in M.V.Appeal No.46 of 2015 before the State Transport Appellate Tribunal.

**3.**The Tribunal, after hearing both sides, has rejected the said appeal, by order dated 02.01.2019. Challenging the same, the present writ petition has been filed with the aforesaid prayer.

**4.**Heard Mr.A.C.Asaithambi, learned counsel appearing for the petitioner, who would submit that, eventhough it was claimed by the third respondent Transport Corporation, who was the objector before the Tribunal, that it had got a permit and it is plying buses in the particular route, no such operation is taken place and no such buses are plied by the third respondent. He also pointed out that, though it was the claim of the third respondent that 58 trips are being operated, the Tribunal has recorded at paragraph No.12 of the order that the Transport Corporation, as per the letter addressed to the first respondent, has stated that 16 trips are being operated from Periyakulam Branch to Sothuparai. This contradiction itself has exposed that no buses are being plied in the particular route.

**5.**When that being the factual position, according to the learned counsel for the petitioner, temporary permit can be given to the petitioner under the provisions of the Motor Vehicles Act, especially, under Section 104, where it has been made clear that, if no application for a permit has been made by the State Transport undertaking in respect of any notified area or notified route in pursuance of an approved scheme, the State Transport Authority or the Regional Transport Authority, as the case may be, may grant temporary permits to any person, in respect of such notified area or notified route subject to the condition that such permit shall be cease to be effective on the issue of a permit to the State Transport undertaking in respect of the notified area or notified route.

**6.**Relying upon the aforesaid provisions, that is, Section 104 of the Motor Vehicles Act, the learned counsel for the petitioner has vehemently contended that, though it was claimed by the third respondent Transport Corporation that they are plying the buses, but in practical, no such buses are being plied in the said route, and therefore, they are not entitled to stall the claim made by the petitioner to get temporary permission under Section 104 of the Motor Vehicles Act. In this context, if at all, it is the claim of the third respondent that they are plying the buses in the route, since it is stoutly denied by the petitioner, certainly, in order to ascertain the same, the Court can appoint an Advocate Commissioner



and after ascertaining the truth from the field by way of report to be submitted in this regard, by the Advocate Commissioner to be appointed by the Court, the issue can be concluded, as to whether the claim made by the third respondent that they are regularly plying the buses in the route concerned, is the correct statement or not, after ascertaining the said fact, the plea of the petitioner can be considered, he contended.

7.Per contra, the learned Government Advocate appearing for the respondents 1 and 2 would submit that, it is not merely on the basis of any oral submission or written affidavit filed by both sides, the issue was decided by the Tribunal in the impugned order, instead, the Tribunal has called for report from the Regional Transport Authority, that is, the first respondent herein, and after having obtained the report as well as the trip sheets and other copy of the permit, in order to substantiate the claim of the third respondent, filed before the Tribunal, the Tribunal had come to the conclusion that the claim made by the petitioner is untenable, because the petitioner is not entitled to get any temporary permit on the route concerned, where already regular permit had been given to the third respondent, pursuant to which, they are plying the buses regularly. Therefore, the learned Government Advocate would seek indulgence of this Court to reject this writ petition.

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

9.The issue raised in the writ petition is in a very narrow compass. Whether, in the particular route, that is, between the Periyakulam and Sothuparai, since it is a notified route, the permit given to the third respondent is being utilised properly by the third respondent by plying the buses, is the only question. In this context, the Tribunal has called for a report from the first respondent, and also in order to substantiate the contention of the third respondent, they have also filed the trip sheets as well as the copy of the permit given to them to establish or to substantiate that they are running 16 trips per day. This aspect, having been considered by the Tribunal, it has recorded the same and passed the following order:

"12.On perusal of the file also the Divisional Manager, Tamil Nadu State Transport Corporation Limited, Theni, by letter dated 12.02.2015, addressed to the Regional Transport Officer has stated that 16 trips are being operated from Periyakulam Branch and to substantiate the same, he has also enclosed the trip sheets, copy of permit. In order to consider the situation as on date, this Tribunal called for report from the Regional Transport Officer, Theni regarding the



operation of buses by the Transport Corporation from 15.10.2018 to 10.11.2018, number of trips operated daily and trip sheets. The Regional Transport Officer also submitted the report on 19.11.2018 along with the report of the Motor Vehicle Inspector, Grade I, Theni, the vehicle particulars, timings, and trip sheets etc. On perusal of the same, it is evident that the Tamil Nadu State Transport Corporation Limited is operating the vehicles in the route in question.

13.In the grounds of memorandum of appeal the appellant has stated that no such service is provided in the said route as alleged in the impugned order. But to substantiate the said averment, no document or evidence was produced either before the Regional Transport Authority or before this Tribunal. The documents which have been produced by the Tamil Nadu State Transport Corporation which has been recorded in the usual course of their business is having more probative value. From the above, it is evidence that the State Transport undertaking is operating the vehicle on the said route. Thus, the contention of the learned counsel for the appellant has no force.

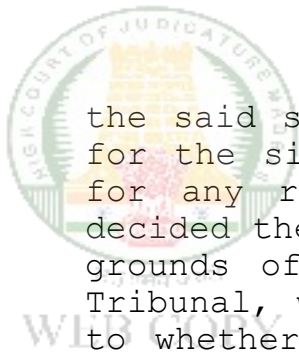
14.On perusal of the above said provisions of Motor Vehicles Act and rulings cited reveals that the appellant is not entitled for grant of temporary permit since the State Transport Undertaking is providing services on the said route in question as prescribed in the scheme. From the above said discussions, I am of the view that the contentions of the appellant cannot be accepted and hence the order passed by the respondent/Regional Transport Authority is valid in law, no interference is required by this Tribunal and this point is answered accordingly.

**15.Point No. (ii) :**

In view of the findings for point No.(i), the order of the respondent is to be confirmed and the appeal is to be dismissed and this point is answered accordingly.

In the result, the appeal is dismissed and the order of the Regional Transport Authority, Theni, Theni District, made in Proceedings R.No.40857/A4/2012 dated 05.02.2015 is confirmed."

**10.**As against the said findings recorded by the Tribunal, eventhough it is contended by the learned counsel for the petitioner that, the said findings given by the Tribunal is not based on any recorded submissions submitted either by the first respondent or by the third respondent and in order to verify the same, the Advocate Commissioner has to be appointed, this Court is not impressed with



the said submission made by the learned counsel for the petitioner for the simple reason that, if at all the Tribunal has not called for any report from the first and third respondents and simply decided the issue, based on the affidavits and counter affidavits or grounds of appeal and statements filed by the parties before the Tribunal, we can explore the possibility of extracting the truth as to whether the third respondent is running the buses, pursuant to the permit given to them in the concerned route.

**11.** However, here in the case in hand, the report was called for by the Tribunal from the Regional Transport Officer, who had given the said report and the same has been considered by the Tribunal and the Tribunal has recorded that in order to substantiate the claim of the third respondent, they have enclosed the trip sheets and copy of the permit. It is not the report of one day, infact, it is a report for the period between 15.10.2018 to 10.11.2018 and during the period, after verifying the same, the Regional Transport Officer seems to have given the report on 19.11.2018. After perusal of the same, the Tribunal has held that it is evident that the Tamilnadu State Transport Corporation Limited is operating the vehicles in the route in question. The Tribunal also has recorded that in order to substantiate the contention raised by the petitioner, who was the appellant before the Tribunal, no document or evidence was produced either before the Regional Transport Authority or before the Tribunal.

**12.** When these evidences were produced before the Tribunal, having considered the same, since the Tribunal has come to the conclusion that the third respondent Transport Corporation have been running the buses in the route concerned, this Court find no contra evidences available before this Court to take a different view than the one that has been taken by the Tribunal.

**13.** In that view of the matter, the impugned order, in the considered opinion of this Court, is to be sustained, accordingly, the same is sustained. Hence, this writ petition fails, and accordingly, this writ petition is dismissed. However, there shall be no orders as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

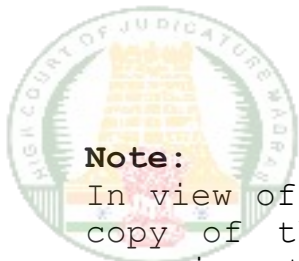
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Sub Assistant Registrar(CS)

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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,  
Theni,  
Theni District.

2.The Secretary,  
Regional Transport Authority,  
Theni, Theni District.

3.Tamil Nadu State Transport  
Corporation (Madurai) Ltd.,  
Madurai,  
Dindigul Region,Dindigul.

+1 CC to M/s.K..APPADURAI, Advocate (SR-26213[F] dated 13/08/2021)

+1 CC to M/s.SPL GP (SR-26068[F] dated 12/08/2021)

**W.P. (MD)No.4369 of 2019**

**11.08.2021**

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