



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.09.2021

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THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P(MD) Nos.7000 & 7001 of 2019

and

W.M.P (MD) Nos.5581 & 5582 of 2019

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Kombiah Devar

... Petitioner in both WPs

Vs.

The Regional Transport Authority,
Cum District Collector,
Tirunelveli District,
Tirunelveli.

... Respondent in both WPs

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the State Transport Appellate Tribunal at Chennai in R.No.923 of 2017 & R.No.922 of 2017, respectively, against the order passed by the respondent in proceedings R.No.67282/A2/2016 and R.No.74105/A2/2016, respectively, dated 31.01.2017, cancelling the permit of Mini Bus bearing Registration Nos.TN 59 N 0299 and TN 45 N 0126, respectively, on the route Kalakkad (Meera Theatre) to Mela Sadaiyamaankulam (Via) West Kesavaneri, East Kesavaneri, Kallidai, Chidambarapuram, Perumalkulam, Athichaperi, Ameer Jamal Hr.Sec School & Sri Govindaperi, quash the same and to direct the respondent to permit the petitioner to ply his vehicle.

In both Wps:

For Petitioner : Mr.T.Padmanabhan

For Respondent : Mr.D.Ghandiraj
Government Advocate

COMMON ORDER

In these two writ petitions, since the issue raised by the petitioner is one and the same, with the consent of the learned counsel appearing for the parties, these Writ Petitions are heard together and disposed of by this common order.

2.As against the cancellation of Mini bus permit by order of the Regional Transport Authority, dated 31.01.2017, in respect of two Mini buses, that is, TN 45 N 0126 and TN 59 N 0299 belongs to the petitioner, which were plying in the route between Kalakadu (Meera Theatre) to Melasadayammankulam, Tirunelveli District, the petitioner preferred appeals before the State Transport Appellate Tribunal in R.No.922/17 and R.No.923/2017. In fact, those appeals



were filed with a delay of 152 days. Initially, the said appeals were not entertained and they were returned, therefore, the petitioner had preferred writ petition before this Court, and after getting orders to resubmit the appeals before the Tribunal with application to condone the delay, accordingly, when the petitioner preferred appeals, seeking to condone the delay and to entertain the appeals and decide the same on merits, those appeals at the condone delay stage itself, in R.No.922/17 and R.No.923/2017, were rejected by the Tribunal through the common impugned order, dated 01.11.2018.

3. In the impugned order, the Tribunal has stated that, as per Sub Rule 3 of Rule 157 of Tamil Nadu Motor Vehicles Rules, 1989 (in short 'the Rules'), the provisions of the Limitation Act, 1963, will not be applicable to appeals filed under this Rule, therefore, Section 5 application cannot be entertained by the Tribunal, accordingly, the delay of 152 days in filing the appeals also cannot be condoned, and on that ground, the appeals at the threshold, were rejected through the impugned orders. Challenging the same, the present Writ Petitions have been filed.

4. Mr. T. Padmanabhan, learned Counsel appearing for the petitioner, would submit that, though there is no power vested with the Tribunal, in view of Sub-Rule 3 of Rule 157 of the Rules, such kind of powers is always available to this Court inherently, while deciding the issue under Article 226 of the Constitution of India.

5. In this context, the learned counsel appearing for the petitioner has relied upon an order passed by the writ Court in similar circumstances in W.P. (MD). Nos. 14446 and 14447 of 2011, in the matter of **Ms. Selvi Vs. The Regional Transport Authority, Theni District, Theni**, dated 09.03.2012. In the said order, the writ Court has passed the following direction:

"The petitioner seeks liberty to file an appeal against the impugned order dated 20th July, 2011. According to the petitioner, the impugned order was received on time. The same was misplaced and as such, she failed to file an appeal within the statutory period. Therefore, she was constrained to file the Writ Petitions.

2. The petitioner is permitted to file an appeal before the appropriate authority against the impugned order and in the event of filing any such appeal within a period of one week from the date of receipt of a copy of this order, the same shall be entertained by the appellate authority and orders should be passed on merits.

3. The Writ Petitions are disposed of with the above observation. No Costs. Consequently,



connected miscellaneous petitions are closed."

6.Heavily relied upon this order, the learned counsel would seek indulgence of this Court to issue a similar order to the Transport Appellate Tribunal to entertain the appeals filed by the petitioner, and decide the same on merits.

7.Per contra, Mr.D.Ghandiraj, learned Government Advocate appearing for the respondent, on instructions, would submit that, when the Tribunal is not empowered to entertain any application to condone the delay under Section 5 of the Limitation Act, in view of the non-applicability of the same, as per Sub-Rule 3 of Rule 157 of the Rules, such kind of condone delay petition cannot be entertained by the Tribunal.

8.Therefore, within the limitation period, as prescribed, the appeals ought to have been filed, therefore, beyond which, if any such appeals have filed before the Tribunal, it has to be rejected, and therefore, the Tribunal, through the impugned order, has rejected the said appeals, ofcourse, rightly, and therefore, the said order need not be interfered with, he contended.

9.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.

10.No doubt, under Rule 157(3), the provisions of the Limitation Act, 1963, would not be made applicable to the appeals filed under the said Rule, therefore, such kind of application under Section 5 of the Limitation Act, filed by the appellant/petitioner herein, the Tribunal may not be in a position to entertain the same and decide, as to whether, there is a plausible reason available for the appellant/petitioner to file such an appeal with a delay, and accordingly, to condone the delay.

11.However, this Court feel that insofar as the right of appeal remedy available to the aggrieved party, as whose permit has been cancelled or whatever the grievance arising out of the orders to be passed by the Regional Transport Authority, the final fact finding statutory Appellate Authority is the State Tribunal, before whom, if an appeal is filed, that should be decided on merits, therefore, such kind of appeals cannot be rejected at the threshold, merely on the ground that the appeals had been filed with some delay on the ground that, such kind of delay cannot be condoned by the Tribunal.

12.Merely because the embargo put against the Tribunal to condone the delay in entertaining the appeal, which is filed belatedly, ofcourse with plausible reasons to accept the condone the delay, the valuable right of the parties to agitate the issue before



the Appellate Tribunal itself is get vitiated, and that kind of destructive procedure, cannot be expected to be made in a Rule, which, in the considered view of this Court, would travel beyond the scope of the main Act, under which, such kind of appellate remedies are provided.

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13.In this context, in the order referred to above, a learned Judge of this Court has entertained such a writ petition and given a direction to the State Transport Appellate Tribunal, to receive and decide the appeal filed belatedly on merits, and according to the learned counsel for the petitioner, those orders were complied with and appeals were entertained, pursuant to the direction and orders passed by the writ Court.

14.Therefore, for all these reasons, this Court feels that the appeals filed, of course, with a delay of 152 days, can very well be entertained and the same can be decided on merits, and without deciding the main issue on merits, if it is rejected at the threshold on the condone delay stage, that would render the parties remediless and, that kind of situation cannot be permitted to prevail.

15.Therefore, for all these reasons, this Court is inclined to dispose of these writ petitions with the following order:

"that the impugned orders passed by the respondent is set aside, and the delay of 152 days, caused in filing the appeals by the petitioner is also condoned, and as a sequel, there shall be a direction to the Tribunal to entertain the appeals, and decide the same, on merits and in accordance with law. Hence, it is for the petitioner to file or resubmit the appeal papers within two weeks from the date of receipt of a copy of this order to the Tribunal, and on receipt of the same, needful as indicated above, shall be undertaken by the Tribunal."

16.With these directions, both the Writ Petitions are disposed of accordingly. However there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

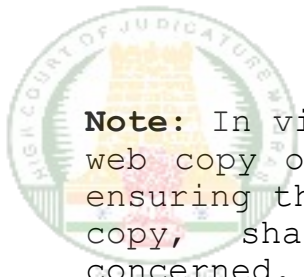
Assistant Registrar (A.D.II)

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Sub Assistant Registrar(CS)

PJL



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.

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To

The Regional Transport Authority,
Cum District Collector,
Tirunelveli District,
Tirunelveli.

+1 CC to M/s.T.PADMANABHAN, Advocate (SR-29051[F] dated 14/09/2021)

+1 CC to M/s.SPL. GP (SR-29118,SR-29117[F] dated 15/09/2021)

W.P(MD)Nos.7000 & 7001 of 2019
14.09.2021

RD(28.10.2021) 5P 4C