



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.02.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No.18607 of 2020

and

WMP (MD) No.15559 of 2020

S.Syed Abdul Khader

... Petitioner

Vs.

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

2.The Regional Transport Officer,
Office of the Regional Transport
Officer, Virudhunagar,
Virudhunagar District.

... Respondents

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 pertaining to the impugned order passed by the 1st respondent made in R.No.11852/A2/2017, dated 28.03.2019 and quash the same as illegal and consequently direct the respondents to follow the principle laid down in the Common Judgement in W.A.(MD).Nos.203 and 204 of 2015 dated 27.06.2017 and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner : Ms.Radha Gopalan
for Mr.A.C.Asaithambi

For Respondents : Mr.M.Sricharan Rangarajan
Additional Advocate General
assisted by Mrs.Srimathy
Special Government Pleader

O R D E R

Heard the learned counsel on either side.

2.The petitioner was a holder of stage carriage permit. He was authorised to ply his vehicle bearing Registration No.TDA 6579 from Madurai to Abiramam. The permit was valid upto 31.05.2000. The petitioner submitted an application dated 30.10.1998 for surrender of the permit. In Column No.10 of Form A.C.C, it is mentioned that the reasons have been given in the letter attached therewith.

<https://hcservices.ecourts.gov.in/hcservices/>

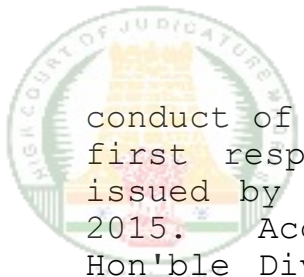


However, in the typed set of papers, the said letter has not been enclosed. Be that as it may, the petitioner submitted a letter on 03.11.1998 for withdrawal of his surrender application. However, the petitioner's request for withdrawal was rejected by the Regional Transport Authority, Virudhunagar vide order dated 03.03.2004. The petitioner questioned the same by filing Appeal No.221 of 2004 before the State Transport Appellate Tribunal, Chennai. The Tribunal vide order dated 04.02.2009 dismissed the appeal and confirmed the order passed by the original authority. Challenging the same, the petitioner filed WP(MD)No.19749 of 2014. He also filed WP(MD) No.19750 of 2014 questioning the order dated 09.11.1998 whereby the surrender was accepted. Both the writ petitions were taken up together and vide order dated 05.12.2014, the writ petitions came to be dismissed. The learned Judge took note of the fact that even though the Tribunal passed the order on 04.02.2009, the writ petition came to be filed in the year 2014. Since the conduct of the petitioner suffered from laches, the learned Judge thought it fit to non-suit him on that ground.

3. Aggrieved by the order passed by the learned single Judge, the petitioner filed WA(MD)Nos.203 and 204 of 2015. The writ appeals were allowed by order dated 27.06.2017 and the order passed by the learned Single Judge were set aside. The Regional Transport Authority, Virudhunagar District, Virudhunagar was directed to accept the petitioner's application for cancellation of his surrender application and consider the same and pass appropriate orders restoring the stage carriage permit in his favour in accordance with law. Pursuant to the said direction passed by the Hon'ble Division Bench, the Regional Transport Authority, Virudhunagar District, Virudhunagar took up the matter but vide order dated 22.09.2017 rejected the request of the petitioner for restoration of his bus permit. This led to the initiation of Contempt Petition (MD)Nos.347 & 348 of 2018. The petitioner also filed WP(MD)No.5633 of 2018 questioning the said order. When the writ petition as well as the contempt petitions were listed before the Hon'ble Division Bench, the officer who passed the order appeared in person before the court and made an endorsement that he is withdrawing the order dated 22.09.2017. Thereupon, WP(MD)No.5633 of 2018 was dismissed as infructuous. The contempt petitions were also closed. The authority was directed to pass a fresh order taking into account the spirit of the judgment in WA(MD)Nos.203 and 204 of 2015.

4. The matter was taken up for consideration once again and by the impugned order dated 28.03.2019, the Regional Transport Authority, Virudhunagar District, Virudhunagar once again rejected the petitioner's application for withdrawal of his surrender application dated 30.06.1998. This order is impugned in this present writ petition.

5. The learned counsel for the petitioner severely faulted the



conduct of the first respondent. Her primary contention is that the first respondent completely misconstrued the nature of direction issued by the Hon'ble Division Bench in WA(MD)Nos.203 and 204 of 2015. According to her, it was a positive direction issued by the Hon'ble Division Bench for restoration of the petitioner's permit. She would also point out that the order impugned in the present writ petition is a virtual repetition of the earlier order dated 22.09.2017 passed by the very same authority and which was withdrawn by him before the Hon'ble Division Bench. She called upon this court to set aside the impugned order and ensure that the order passed by the Hon'ble Division Bench in the aforesaid writ appeals is honored in letter and spirit.

6.The respondents have filed a detailed counter affidavit opposing the prayer made in the writ petition. The learned Additional Advocate General appearing for the respondents would contend that the impugned order does not call for any interference. He placed considerable emphasis on the expression "in accordance with law" occurring in the aforesaid order passed in the aforesaid writ appeals. If the authority was totally deprived of any discretion, the Hon'ble Division Bench need not have employed the expressions "consider", "pass appropriate orders" and "in accordance with law" etc., He drew the attention of this Court to the conduct of the petitioner. He would point out that the writ petitioner merely obtained permission for stoppage of the vehicle from 29.05.1998 to 15.10.1998. Though he had given an application for further stoppage for the period from 16.10.1998 to 04.11.1998, he had not obtained any permission in terms of Rule 172 (6) of the Tamil Nadu Motor Vehicles Rules, 1989. It is evident from the record that the vehicle itself was scrapped on 25.09.1998. Thus, on the date when the application for cancellation of the surrender application was submitted, the vehicle itself was not in existence. He drew my attention to the relevant provisions of the Motor Vehicles Act as well as the Rules framed thereunder to drive home the point that the petitioner is clearly guilty of violation of the permit conditions. This vital and relevant fact was not placed for consideration of the Hon'ble Division Bench. Therefore, he wanted this Court to non-suit the petitioner not only by finding that the impugned order is correct both in law as well as on facts but also by taking note of the petitioner's conduct.

7.I carefully considered the rival contentions and went through the materials on record. The basic facts are not in dispute. The petitioner did give the application for surrender of bus permit on 30.10.1998. He submitted an application on 03.11.1998 for withdrawal of the earlier surrender application. The authority declined to accept the petitioner's request for withdrawal/cancellation of surrender application. But this rejection order passed by the authority on 09.11.1998 was specifically set aside by the Hon'ble Division Bench when it passed the order on 27.06.2017. The Hon'ble Division Bench had set aside the order on 27.06.2017 by the learned Single Judge and it also allowed the



writ appeals. The authority was specifically directed to accept the petitioner's application for cancellation of his surrender application. Of course, the Hon'ble Division Bench had also observed that the authority will consider the same and pass appropriate orders in accordance with law. But these expressions cannot be viewed in isolation.

8.As rightly observed by the subsequent Division Bench which disposed of the Cont P(MD)Nos.347 & 348 of 2018 on 15.11.2018, the spirit of the order passed by the Hon'ble Division Bench was that the petitioner should be restored with the stage carriage permit. In fact, as rightly pointed out by the learned counsel for the petitioner, in Para No.17 of the Hon'ble Division Bench order dated 27.06.2017, it has been observed that the writ petitioner should not be denied the permit on technicalities. When the Hon'ble Division Bench had categorically directed that the petitioner's application for cancellation of the surrender application will be accepted, it was clearly not open to the first respondent to observe that he will not do so. The operative portion of the impugned order reads that the application for withdrawal of surrender application could not be considered. In my view, the first respondent had chosen to interpret the judicial order which was clearly not open to him. Therefore, I have no hesitation to set aside the impugned order. It is accordingly set aside. The first respondent is directed to restore the petitioner's bus permit.

9.But the issue cannot rest there. The learned Additional Advocate General is absolutely right in his contention that the conduct of the petitioner leaves much to be desired. The petitioner had submitted an application for stoppage of the vehicle for a given period namely, 29.05.1998 to 15.10.1998. The petitioner had informed the authority that his vehicle has developed major engine repairs. The petitioner was obliged to obtain permission from the authority for stoppage of the vehicle as contemplated under Section 172 of the Tamil Nadu Motor Vehicle Rules, 1989. But at the end of the period, the petitioner should have resumed the operation of the vehicle. If he was unable to do so, he should have obtained extension of the permission for further period. It is true that the petitioner had applied for permission for further stoppage for the period from 16.10.1998 to 04.11.1998. It appears that no formal permission was granted by the authority. This is because, a new development had taken place. The petitioner had change of heart. He had decided to throw up his hands. He informed the authority that since his route collection was rather poor, he could not afford to operate and that he wanted to surrender the permit itself. Based on the said request made by the petitioner on 30.10.1998, the authority deputed the Motor Vehicle Inspector to make a physical verification. The said Inspector submitted a report on 31.10.1998 stating that the vehicle itself had been scrapped on 25.09.1998 and the shell of the vehicle alone was found in the workshop.



10. I posed a specific question to the learned counsel for the petitioner as to whether the applicant is obliged to possess the vehicle on the date when he applies for permit or when he seeks renewal of the permit. The learned counsel for the petitioner drew my attention to Rule 181 & 194 of the Tamil Nadu Motor Vehicle Rules to submit that possession of the vehicle is not necessary. I fully endorse the said contention. But then, these two Rules may not come to the rescue of the petitioner. As rightly pointed out by the learned Additional Advocate General, this is not a case of submitting an application for grant of permit in the first instance or seeking renewal of the bus permit. Assuming for a moment that on 03/11/1998, the petitioner's application for cancellation of the surrender application is accepted, the petitioner ought to have had a road worthy vehicle. If not, he ought to have had permission for extending the period of stoppage of vehicle. Neither was the case. A careful reading of the scheme of the Act does not indicate that during the currency of permit, the permit holder can be allowed to be without possession of the vehicle. In fact, Section 55 of the Motor Vehicles Act, 1988 makes the position clear. Section 55(1) and (2) of the Act reads as under :

"(1) If a motor vehicle has been destroyed or has been rendered permanently incapable of use, the owner shall, within fourteen days or as soon as may be, report the fact to the registering authority within whose jurisdiction he has the residence or place of business where the vehicle is normally kept, as the case may be, and shall forward to that authority the certificate of registration of the vehicle.

(2) The registering authority shall, if it is the original registering authority, cancel the registration and the certificate of registration, or, if it is not, shall forward the report and the certificate of registration to the original registering authority and that authority shall cancel the registration."

11. In the case on hand, it is clear that the petitioner had not obtained the permission of the authority for scrapping the vehicle. The petitioner in the earlier round had not pointed out that the vehicle was not available and the petitioner submitted an application for cancellation on 03.11.1998. Thus, the Hon'ble Division Bench did not have the occasion to consider this aspect of the matter. But unfortunately or fortunately, the authorities also did not deem it necessary to move the very same Hon'ble Division Bench for review. Since no review application has been filed and the order passed by the Hon'ble Division Bench in the aforesaid writ appeals attained finality, the same will have to be given effect to as such. As a result, the petitioner has to be restored with his earlier permit. But then, violation of the permit conditions has now been brought to the notice of the court. Therefore, even while



directing the first respondent to restore the petitioner's original permit, liberty is given to the first respondent to take action in accordance with law for violation of the permit conditions which appear to have been committed. I make it clear that it should be construed as if I have given a finding that the petitioner has violated the permit conditions. It is for the authority concerned to take action as per law and it is for the petitioner to defend the same. The issue as to whether the petitioner violated the permit conditions shall be dealt with independently on its own merits. The proviso to Section 86(1) of the Act contemplates that opportunity will have to be given to the petitioner to furnish his explanation. The authority cannot take it as if there is a direction to initiate action against the petitioner. If the authority decides to take action as per Section 86(1) of the Act, then due process must be adhered to.

12. The writ petition is allowed with the aforesaid direction and liberty. Consequently, connected miscellaneous petition is closed. No costs.

Sd/

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

skm

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,
Virudhunagar, Virudhunagar District.
2. The Regional Transport Officer,
Office of the Regional Transport
Officer, Virudhunagar,
Virudhunagar District.

+1 CC to M/s.SPL GP (SR-7206[F] dated 25/02/2021)

W.P. (MD) No.18607 of 2020
23.02.2021

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