



W.P.No.9217 of 2010

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.07.2022

PRONOUNCED ON : 18.08.2022

CORAM:

THE HON'BLE MR.JUSTICE S.SOUNTHAR

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The Management
Tamilnadu State Transport Corporation
(Kumbakonam) Ltd,
Regional Office,
Karaikudi,
Sivaganga District,
Rep. by its General Manger.

...Petitioner

vs.

- 1.M.Shajahan
Proprietor,
Ajmeer Bus Service,
71G, Munichalai Road,
Madurai.
- 2.The Regional Transport Authority,
Sivagangai.
- 3.R.Sonai,
Proprietor,
Senthamarai Transport,
Plot No.788, Annai Nagar,
Madurai.



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4.The Tamilnadu State Transport Corporation Limited,
Ramanathapuram

5.The Presiding Officer,
State Transport Appellant Tribunal,
Chennai-600 104.

6.S.Elangovan
(R6 Impleaded vide Order Dt.22.07.2022 made in
W.M.P.No.8006 of 2020 in WP.9217 of 2010 by SSJ)

7.R.S.Tamilselvan
(R7 Impleaded vide Order Dt.22.07.2022 made in
W.M.P.No.16966 of 2022 in WP.9217 of 2010 by SSJ)
..Respondents

Prayer: This Writ petition has been filed under Article 226 of the Constitution of India to issue writ of certiorarified calling for records pertaining to the 5th respondent relating to judgment dated 12.01.2010 in M.V.Appeal No.198 of 2009, quash the same and issue consequential directions to the 2nd respondent to issue route permit to the petitioner on Madurai, Paramakudi Sector in lien of private operators.

For Petitioner	: Mr.Sathya Gandhi
For R1	: M/s.S.Radha Goplan M/s.P.Vedavalli
For R2	: M/s.M.Jayanthi Additional Government Pleader
For R3	: Dismissed



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For R4 : Notice Service awaited
For R5 : Tribunal
For R6 : G.P.Bhargavi
For R7 : T.Padmanabhan

ORDER

The petitioner corporation has filed this writ petition assailing the order dated 12.01.2010 passed by State Transport Appellate Tribunal, Chennai, directing 2nd respondent to grant stage carriage permit to 1st respondent herein for plying bus service in the route from Paramakudi to Madurai.

2. This writ petition arises out of a half century old litigation. Originally the predecessor of 1st respondent namely one Naina Mohamed, was granted permit to ply the stage carriage from Paramakudi to Madurai. The said order was challenged by one K.A.Natarajan, the predecessor of 3rd respondent herein, before the State Transport Appellate Tribunal and the said appeal was allowed by order dated 18.07.1967 and permit was granted to said K.A.Natarajan. The said



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order was assailed by above said Naina Mohamed in W.P.No.2278 of 1967 before this Court. By virtue of interim order passed in C.M.P.No.9852 of 1967, both Naina Mohamed (predecessor of 1st respondent) and K.A.Natarajan (Predecessor of 3rd respondent) were allowed to ply their buses on the above said route. Ultimately, this Court by order dated 18.07.1967 set aside the order passed by the State Transport Appellate Tribunal and confirmed the order passed by the 2nd respondent herein, whereunder permit was granted to Naina Mohamed.

3. The order passed in the writ petition was challenged by K.A.Natarajan in Writ Appeal No.519 of 1969 and the same was allowed. The order passed in writ Appeal was challenged by above said Naina Mohamed before the Hon'ble Apex Court in Civil Appeal No.98 of 1975. The Hon'ble Apex Court by order dated 23.07.1975 set aside the order passed in writ appeal and remanded the matter back to the State Transport Appellate Tribunal with direction to hear the case afresh, consider the relevant factors having bearing upon public interest as highlighted under Section 47 of Motor Vehicles Act and dispose of the same. The Hon'ble Apex Court also directed maintenance of *status quo*



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pending appeal before the State Transport Appellate Tribunal. Thereafter, the State Transport Appellate Tribunal (hereinafter referred as STAT) had taken up the appeal afresh and dismissed the appeal on sole ground that draft scheme was published in the meantime and hence the appeal was not maintainable. The said order was questioned by K.A.Natarajan, in C.R.P.No.2553 of 1976 before this Court and the Revision was allowed directing the State Transport Appellate Tribunal to rehear the appeal and decide it on merits. Thereafter, the appeal was taken up by the State Transport Appellate Tribunal and the same was allowed on 02.02.1979 and consequently the order granting permit to Naina Mohamed was set aside and permit was granted to K.A.Natarajan. The said order was challenged by the Naina Mohamed in C.R.P.No.1122 of 1979 before this Court. The said C.R.P. was allowed on 25.11.1981 by setting aside the order passed by STAT and remanded the matter back for fresh consideration. It was also observed in the said order that appeal should be kept pending till the finalization of the scheme. Both Naina Mohamed and K.A.Natarajan were permitted to continue the transport operations during the pendency of the appeal.



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4. Thereafter, the Tamilnadu Motor Vehicles Act 41 of 1992 came into force on 31.07.1992 and the permits which were granted during the period from 04.06.1976 to 30.06.1990 had been validated. The Government also published approved modified District Area Scheme for Sivaganga, Ramanathapuram and Madurai Districts with provision to continue the operation by private operators, who were already operating services, and protected by Act 42 of 1992. In these circumstances, the 1st respondent filed an application before the 2nd respondent for grant of pucca permit to him and the same was rejected by 2nd respondent 17.07.2001. Assailing the said order, the 1st respondent filed a Revision Petition in C.R.P.No.58 of 2001 before STAT. The Motor Vehicle Appeal No.2060 of 1966 filed by K.A.Natarajan (predecessor of 3rd respondent) which was already pending before STAT and the Revision Petition No.58 of 2001 filed by 1st respondent were taken up for consideration jointly by STAT. By that time, the 3rd respondent herein came on record as a successor in interest and his name was substituted as appellant in the place of K.A.Natarajan, in M.V.Appeal.No.2060 of 1966. The Tribunal by order dated 17.07.2001 allowed the appeal filed by 3rd respondent



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and also Revision Petition filed by 1st respondent by holding that there cannot be any impediment to grant permit in their favour in the provisions of New Motor Vehicles Act, 1988 especially in the light of Section 217 (A) inserted by Act 27 of 2000. After holding so, the Tribunal held that both 1st and 3rd respondents were entitled to permit to ply stage carriages in the above mentioned Paramagudi to Madurai route. The STAT proceeded to observe that the 1st respondent is entitled to get pucca permit subject to other conditions prescribed by New Motor Vehicles Act.

5. Even after disposal of the Revision petition filed by the 1st respondent in his favour, the 2nd respondent did not give effect to the order passed by STAT and hence the 1st respondent filed a writ petition in W.P.No.2946 of 2009 seeking direction to 2nd respondent to implement the order of STAT dated 17.07.2008 by granting pucca permit in his favour. This Court by order dated 27.08.2009 directed the 2nd respondent to implement the order passed by STAT dated 17.07.2008. Thereafter, the 2nd respondent had taken up the matter and passed an order on 07.10.2009 rejecting the request of the 1st respondent



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to grant pucca permit to him by holding that even though 1st respondent had been operating his services for more than 34 years under temporary permits, on the strength of interim orders, his request for pucca permit at that juncture should be treated as the one for grant of new permit and the same was not permissible in view of provisions of Section 104 of Motor Vehicles Act and the existence of area scheme of nationalisation. The said order was passed by the 2nd respondent on the basis of objection made by the writ petitioner. Assailing the said order passed by the 2nd respondent, the 1st respondent herein filed an appeal in Motor Vehicle Appeal No.198 of 2009 before STAT. By impugned order said appeal was allowed by STAT and aggrieved by the same, the writ petitioner has come up with this writ petition.

6. Heard the arguments of counsel for the petitioner, counsel for the contesting 1st respondent and the learned Government Advocate for 2nd respondent and also counsel for respondents 6 and 7 who are successor in interest of respondents 1 and 3 respectively. The respondents 6 and 7 were impleaded by order dated 22.07.2022 in W.M.P.Nos.8006 of 2020 and 16966 of 2022 and they made an endorsement in the writ



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petition that they are not filing any pleadings and the same is recorded.

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7. The learned counsel for the petitioner submitted that the order passed by the STAT is liable to set aside on the ground that as per Section 7 of Tamilnadu Act 41 of 1992, all the application for grant of permit covering approved scheme areas pending before authority as on 31.07.1992 stood abated on publication of the said act (31.07.1992). The learned counsel also submitted that even though 1st respondent had been operating his services for the past 54 years, the same was only by virtue of interim orders passed by Courts/Tribunals and hence he cannot be treated as an existing permit holder. He further submitted that in view of provisions of Section 104 of Motor Vehicles Act 1988, grant of fresh permit to any private operator is not permissible.

8. The 2nd respondent filed a counter wherein it was brought to the notice of the Court that impugned order passed by the STAT was already implemented by 2nd respondent by granting permit to 1st respondent by his proceedings dated 10.03.2010. It was further stated that the writ petitioner had filed this writ petition subsequent to the implementation of



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the impugned order but he failed to challenge the order passed by 2nd respondent dated 10.03.2010 whereunder pucca permit was granted to 1st respondent. It was also submitted by the 2nd respondent in his counter that provisions of Act 41 of 1992 validates the permits granted to private operators, whether permanent or temporary, during the period between 04.06.1976 to 30.06.1990 even if the routes were covered by any draft scheme or approved scheme. It was also submitted that permit granted to 1st respondent is based on the application made in the year 1966 and at that point of time, the route in question was not covered by any draft scheme or approved scheme and so the provisions of Section 104 of New Motor Vehicles Act is not applicable to this case. It was also submitted that the writ petitioner and 4th respondent were not applicants at that point of time.

9. The learned counsel for the contesting 1st respondent submitted that the writ petitioner is not entitled to question the grant of permit in favour of 1st respondent as he failed to challenge the order passed by STAT on 17.07.2008 wherein it was clearly held that 1st respondent was entitled to pucca permit. The learned counsel by taking me to the order



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dated 17.07.2008 submitted that the 1st respondent has been operating in the route from 1966 and hence he should be treated as existing operator and he cannot be treated as an applicant for new permit. She further submitted when STAT in its order dated 17.07.2008 categorically held that 1st respondent was entitled to pucca permit subject to other conditions prescribed under New Motor Vehicles Act and the said order has not been challenged by the writ petitioner and therefore it has become final. The 2nd respondent without understanding the scope of the order dated 17.07.2008 erroneously held that 1st respondent should be treated as an applicant for grant of new permit and hence in view of the prohibition under Section 104 of Motor Vehicles Act, his request could not be considered. By impugned order the STAT set aside the order of the 2nd respondent and held that the 2nd respondent misunderstood the earlier order passed by the Tribunal dated 17.07.2008. The Tribunal in the impugned order categorically held that the 1st respondent had not applied for grant of new permit but he had requested grant of permit only on the basis of his existing operation from 1966 onwards. The Tribunal set aside the Regional Transport Authority order mainly on the ground, he failed to understand the earlier order passed by the Tribunal dated



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17.07.2008 wherein it was held 1st respondent was entitled to pucca permit by virtue of his existing operation from 1966 and said order has become final. The learned counsel mainly contended that writ petitioner having failed to challenge the order passed by STAT holding that 1st respondent was entitled to pucca permit is not entitled to challenge the consequential or subsequent order which give effect to the earlier order and hence prayed for dismissal of the writ petition.

10. The perusal of the impugned order make it clear that the STAT set aside the order passed by the 2nd respondent dated 07.10.2009 mainly on the ground that he failed to understand its earlier order dated 17.07.2008 wherein it was clearly held that 1st respondent was entitled to pucca permit. As per the admitted case of the parties, the 1st respondent has been plying the stage carriages in Paramakudi to Madurai route from the year 1966. Originally pucca permit was given to his predecessor in the year 1966. It was challenged by predecessor of 3rd respondent and in the long drawn legal battle spanning over more than 4 decades both of them were allowed to operate the stage carriages in the above said route. The State Transport Appellate Tribunal by order dated 17.07.2008 held



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that 1st respondent was entitled to grant of pucca permit subject to other conditions prescribed by New Motor Vehicles Act. The relevant observations of the State Transport Appellate Tribunal is as follows:

"25. The learned counsel for the both Regional Transport Authority grantee and State Transport Appellate Tribunal Grantee would contend that Hon'ble High Court and Apex Court laid down the principles as already stated in several rulings and on that basis, they requested to grant permits to both the appellant and the respondent. Further, they contended that both the appellant and the respondent names are included in the Annexure II of the scheme and Section 7 of Act 41/1992 will not be applicable to the facts of the case and they were protected under Section 10 of the Act 41/1992 and hence, requested to grant permits to both the appellants and the respondent.

26. Further, on perusal of the this Tribunal's judgment pronounced in this appeal on 2-2-79, this Tribunal has elaborately discussed about the merits of the appellant and the respondent. In the above said judgment, this Tribunal considering the workshop of both the appellant and the respondent and number of buses



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operated by them and punishment against the parties and the history sheet of both parties and finally concluded that the order of the Regional Transport Authority was set aside and the permit was granted to the appellant. There is no reason to disagree with the above said findings. But in this case, as contended by the counsel of both the appellant and respondent, merits need not be considered since the old Act was repealed and new Act was came into force and no such qualifications are prescribed in the new Act."

*"29. **Point No.(iv) and (v):** In view of the findings for point No. (i), (ii) and (iii), the appeal is to be partly allowed and the pucca permit already granted to the appellant is confirmed and the appeal is disposed of accordingly. The Revision petition is allowed and the revision petitioner is entitled to get the pucca permit subject to other conditions prescribed by New Motor Vehicles Act, 1988 and these point Nos.(iv) and (v) are answered accordingly."*

11. Therefore in its earlier order dated 17.07.2008, the Tribunal had opined that provisions of new Motor Vehicles Act is not an impediment for grant of pucca permit to the 1st respondent. In fact, the



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Tribunal had given a positive finding that in the light of Section 217 A introduced by amending Act 27 of 2000 to Motor Vehicles Act, 1988, the 1st respondent is entitled to pucca permit. The petitioner who was arrayed as 4th respondent in the said Revision Petition No.58 of 2001 before STAT, failed to challenge the said order and allowed the same to become final. Hence, the finding of the State Transport Appellate Tribunal that 1st respondent is entitled to pucca permit by virtue of his existing operations from the year 1966 had become final. After holding that the first respondent is entitled to grant of pucca permit and provisions of New Motor Vehicles Act 1988 would not be an impediment for grant of pucca permit, the Tribunal held the 1st respondent is entitled to get permit by satisfying the other conditions. The scope of the order passed by the Tribunal was misunderstood by the 2nd respondent and he proceeded to consider the very same issue again and erroneously held that by virtue of Section 104 of Motor Vehicles Act 1988, the 1st respondent is not entitled to pucca permit. First of all, the 2nd respondent order is bad for the reason it failed to take into consideration the categorical finding of the Tribunal that 1st respondent is entitled to pucca permit notwithstanding coming into force of New Motor Vehicles Act, 1988 by



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virtue of his existing operations. The finding of the STAT is binding on the 2nd respondent unless it is set aside in the manner known to law. Therefore, the 2nd respondent erred in proceeding to decide the issue afresh again. The 2nd respondent's order is erroneous on proved set of facts. Admittedly, the 1st respondent has been operating the services in Paramakudi to Madurai route from 1966 and hence, he cannot be treated as an applicant for fresh permit. Originally, his predecessor was granted permit in the year 1966 and the same was entangled in litigation and by virtue of interim orders passed by the various Courts, he was allowed to operate for more than 4 decades. Therefore, by no stretch of imagination, the 1st respondent can be treated as a fresh applicant for new permit under the New Motor Vehicles Act, 1988.

12. When the order of the 2nd respondent was challenged in appeal before STAT, the Tribunal rightly pointed out its earlier order dated 17.07.2008 and held the 2nd respondent is not entitled to treat the 1st respondent as an applicant for new permit notwithstanding its clear finding in earlier order. Consequently, the order of the 2nd respondent was set aside by the Tribunal and 2nd respondent was directed to grant



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pucca permit. The writ petitioner who failed to challenge the earlier order dated 17.07.2008, wants to challenge the present impugned order dated 12.01.2010. Having accepted the finding of the Tribunal that 1st respondent was entitled to pucca permit in the earlier order dated 17.07.2008, the writ petitioner is not entitled to canvas that question by challenging consequential order dated 12.01.2010. It is also brought to the notice of this Court that in pursuance of impugned order pucca permit was granted to 1st respondent by 2nd respondent in his proceedings dated 10.03.2010. The said order is also not challenged by the writ petitioner in the manner known to law. Subsequent to the implementation of the impugned order, the writ petitioner has come up with the writ petition. The perusal of the affidavit filed in support of the writ petition make it clear it was sworn only on 26.03.2010 subsequent to implementation of the impugned order. Having failed to challenge the earlier order of the Tribunal dated 17.07.2008 holding that 1st respondent is entitled to pucca permit notwithstanding coming into force of New Motor Vehicles Act 1988, the writ petitioner is not entitled to challenge the subsequent impugned order that too after implementation

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of the same. Therefore, the writ petition is devoid of any merit and the same is dismissed accordingly. In the facts and circumstances of the case, there is no order as to costs.

18.08.2022

Index : Yes / No
Internet : Yes/ No
Speaking/Non-speaking Order
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To

- 1.The Regional Transport Authority,
Sivagangai.
- 2.The Tamilnadu State Transport Corporation Limited,
Ramanathapuram
- 3.The Presiding Officer,
State Transport Appellant Tribunal,
Chennai-600 104.

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