



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on
Pronounced on

05.08.2022
09.11.2022

CORAM:

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

C.R.P.No.907 of 2022

and C.M.P.No.1600 & 1690 of 2022

A.M.Vijayammal

... Petitioner

Vs.

1. State Transport Authority,
Chepauk,
Chennai – 600 005.

... first respondent

2. Tamilnadu State Transport Corporation,
(Villupuram Division III) Limited,
Kancheepuram.
second

... objector/
Respondent

Civil Revision Petition is filed under Article 227 of Constitution of India
against the order of the learned State Transport Appellate Tribunal, Chennai in
M.V.Appl.No.01/2021 dated 14.12.2021.



For Petitioner : Mrs.S.Radha Gopalan
for Mr.K.Hariharan

For Respondent-1 : Mr. E.Vijay Anand
Additional Government Pleader
2: Mr. K.J.Sivakumar

ORDER

This Civil Revision Petition has been preferred challenging the order of the learned State Transport Appellate Tribunal dated 14.12.2021 made in M.V. Appeal No.1 of 2021.

2. The above appeal was preferred by the petitioner before the Tribunal against the order of the first respondent / State Transport Authority made in proceedings in R.No.E3/67141/2008 dated 30.11.2020 rejecting the application for counter signature for the variation granted by the State Transport Authority, Andhra Pradesh at erstwhile Hyderabad, now at Vijayawada in respect of the vehicle bearing Reg. No.TN-73-Z-2907 since replaced by TN-23-AZ-9707 plying on the route 'Tirupati' to 'Arakkonam'. And the Appeal was dismissed by confirming the order of the State Transport Authority. Aggrieved over the same, this Civil Revision Petition has been



3. The brief facts which are necessary for the disposal of this petition are as follows:

The petitioner is an inter-state operator operating her stage carriage TN-73-Z-2907 lastly replaced by TN-23-AZ-9707 plying on the inter-state route Tirupati to Arakkonam via Renigunta, Puttur, Nagari, and Tirutanni and the vehicle is permitted to do five singles on the route as per the inter-state agreement and these five singles alone have been countersigned by the first respondent periodically. The petitioner was granted with one additional vehicle in the same route by the primary authority (i.e) State Transport Authority, Hyderabad, involving variations to include one more vehicle with two additional singles on the very same permit. The State Transport Authority, Hyderabad granted the request outside the purview of inter-state agreement on double point tax vide proceedings in R.No.12649/E1/84 dated 25.06.1985.

3.1. Consequent to the variation granted by the primary authority, the petitioner approached the first respondent for grant of countersignature of the said variation. The petitioner had also filed a Writ Petition in W.P. No.14038



of 1989 and got a direction on 06.03.1990 to consider the application. On consideration, the countersignature for variation of permit was rejected by the first respondent.

3.2 Aggrieved by the order of rejection, the petitioner filed an application before the Tribunal in M.V. No.194/1990 and the Tribunal by its order dated 05.12.1990 allowed the appeal with a direction to grant variation.

3.3. The objector / Tamil Nadu State Transport Corporation, Kancheepuram has filed a Writ Appeal in W.A. No.1675/2000 and challenged the order of the Tribunal. This Court vide its order dated 16.10.2006 made in W.A. No.1675 of 2000, set aside the order of the Tribunal with an observation that granting of countersignature on the basis of the orders of the State Transport Appellate Tribunal, Chennai is illegal.

3.4 Aggrieved by the said order, the petitioner filed a Special Leave Petition in SLP No.18958/2006. Vide an interim order dated 27.11.2006, status quo was ordered till the decision of the Constitutional Bench in C.A. No.4480/1998 and batch. In the meanwhile, the State Transport Authority,



Andhra Pradesh has renewed basic permit for a further period of five years from 31.12.2008 to 30.12.2013 in respect of vehicle bearing Reg. No.TN-23-S-9000 and permitted it to ply on the route 'Tirupati' to 'Arakkonam' on double point tax. The application for countersignature of the above said permit was also rejected by the first respondent. However, permission was granted to ply on the route on temporary permit subject to the disposal of SLP pending before the Supreme Court.

3.5 Aggrieved by the order of rejection, the appellant filed an appeal before the State Transport Appellate Tribunal, in A.No.18/2009. Vide an order dated 30.10.2009 and the order of the Objector Corporation was set aside and a direction was issued to comply the orders of the Supreme Court. After C.A. No.4480/1998 was disposed, the first respondent ordered to stop the vehicle and intimated the same to the permit holder. In the meantime, C.A. No.10441/2017 in S.L.P. No.18958/2006 filed by the petitioner was allowed on 09.08.2017 and in the said appeal, the following order was passed:

“ We are very afraid that it is very difficult to agree with the reasoning of the High Court. The only real ground given is public interest which is



not a ground for condonation of delay. It is clear that the Writ Petition was filed way beyond time and we therefore set aside the judgment of the High Court and restore that of STAT on this ground alone. Accordingly, the Appeal is allowed.”

3.6 However, it is held by the Hon'ble Supreme Court in C.A. No.4480/1998 that the existing operator cannot increase the number of trips when the approval scheme is in force and overlapping of the notified route is not permissible. Consequently, the first respondent authority rejected the application for countersignature for the permit granted by the State Transport Authority, Andhra Pradesh, at erstwhile Hyderabad and now at Vijayawada in respect of TN-73-Z-2907 since replaced by TN-23-AZ-9707 for plying on the route 'Tirupati to Arakkonnam', by holding that the individual is not entitled to vary the initial permit conditions.

3.7 Aggrieved by the said order, an appeal has been preferred before the State Transport Appellate Tribunal, Chennai in M.V.Appeal No.1/2021 and the same was also dismissed on 14.12.2021. Aggrieved over the same, this Civil Revision Petition has been preferred.



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4. Mrs.S.Radha Gopalan, the learned counsel for the petitioner submitted that the countersignature which was granted by the Tribunal in Appeal No.194/1990 was confirmed by the Supreme Court in C.A. No.10441 of 2017 arising out of SLP (C) No.18958/2006 dated 09.08.2017 and the present renewal is only pursuant to the grant of counter signature which was confirmed by the Supreme Court; in the order of the Supreme Court dated 09.08.2017, it has been specifically observed that the judgment of Constitutional Bench in ***G.T. Venkataswamy Reddy Vs. State Transport Authority and others*** reported in ***(2016) 8 SCC 402*** is awaited and that has been delivered on 19.07.2016; the order in C.A. No.10441 of 2017 dated 09.08.2017 was passed subsequent to the above judgment and hence while allowing the Civil Appeal in C.A. No.10441/2017, the Supreme Court is aware of the earlier judgment rendered in ***G.T. Venkataswamy Reddy's*** case; hence the Tribunal ought to have followed the judgment of the Supreme Court held in C.A. No.10441/2017. On the other hand, the Tribunal relied on the judgment of the ***G.T. Venkataswamy Reddy's*** case, which is fundamentally wrong; since the Tribunal and the State Transport Authority, Chennai are parties to the Civil Appeal in C.A. No.10441/2017, they are bound by its order



and that would amount to the disobedience of the order of the Supreme Court; if the respondents are aggrieved by the order of the Supreme Court in C.A. No.10441 of 2017, they would have taken appropriate proceedings to set aside the same and cannot violate the orders.

4.1 When the Tribunal allowed the appeal in Appeal No.194/1990, it was observed that the petitioner's predecessor's name was found place in the approved scheme and therefore, even as per the judgment of the Hon'ble Supreme Court held in ***G.T. Venkataswamy Reddy's*** case, the petitioner is only a protected operator. The appropriate provision applicable to the petitioner's case is Section 88 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') and not Section 83 of the Act; the judgment of the Supreme Court held in C.A. No.4480 of 2019 dated 19.07.2016 is not applicable to the facts of the present case. The Approved Nationalised Scheme is no more in force in Tamil Nadu. In Tamil Nadu, the Modified Area Approved Scheme was published in the year 1995, followed by another Modified Approved Area Scheme in the year 1997 and another modification in the year 1999; a new comprehensive scheme which was introduced in the year 2011 in G.O.Ms.No.136, Home (Transport-III) dated 23.02.2011 was



published in Tamil Nadu Government Extraordinary Gazette No.69 dated 23.02.2011 and the same was challenged before the High Court in W.P. (MD)No.2893 of 2011 and by the order of the High Court dated 18.04.2018, the same was set aside; it is observed in the said order that the Tamil Nadu Government should re-do the exercise after complying the principles of natural justice.

4.2 The Writ Appeal filed challenging the above said order in W.A.(MD) No.13/2020 was also dismissed on 07.01.2020; so in the present situation, there is no approved scheme so far as the State of Tamil Nadu is concerned; in such context, the question of applying the Approved Scheme does not arise; so it is wrong on the part of the Tribunal to rely upon the judgment of the Supreme Court held in C.A. No.4480/1998 dated 19.07.2016; viewed from any angle, the order of the Tribunal is liable to be set aside.

5. Mr. E.Vijay Anand, the learned Additional Government Pleader appearing for the first respondent submitted that on the request made by the applicant to renew the counter-signature of permit as directed by the State Transport Appellate Tribunal, Chennai, personal hearing was given on



06.01.2010; the permit holder had obtained interim stay for a period of two weeks; the petitioner had made an application for renewal for a period of five years and the same was kept pending till the disposal of SLP; temporary permissions were granted for a period of 90 days and the Writ Petition was disposed with a direction to consider the application for renewal of temporary permission; the last temporary permit was granted up to 19.11.2016; the Constitutional Bench of the Hon'ble Supreme Court, after analysing all the issues involved in these cases has rendered a judgment in C.A. No.4480 of 1998 on 19.07.2016 which is applicable to the facts of the present case as well; hence the first respondent authority ordered to stop the vehicle and intimated it to the permit holder.

5.1. The Constitutional Bench of the Hon'ble Supreme Court has answered the issue of variation of permits in *G.T.Venkataswamy Reddy's* case (cited supra) and it is held that the grant of variation under Section 57(8) of the Act will be as good as grant of new permit; once a scheme is formulated under Section 68D of the Act and approved under Section 68D (3) of Chapter IV-A, then all permits in the route / area covered in C.A. No.4480 of 1998 will get frozen by virtue of operation of Section 68FF of the Act; increase in the



number of trips of vehicle which were being run under the existing exempted permit under a scheme will amount to grant of a new permit and it is not permissible under Section 68 FF of the Act; even if there is an inter-state agreement under Section 63 of the Act, for increasing the number of trips, such an agreement cannot override the provisions of Chapter IV-A by virtue of Section 68B of the Act; hence, it is correct for the first respondent / State Transport Authority to reject the countersignature for variation permit.

6. The short and long point for consideration is whether the respondents are right in rejecting the application for countersignature by relying on the judgment held in ***G.T.Venkataswamy Reddy's*** case (cited supra). Before proceeding to the merits of the case, it is essential to extract the proposition of law laid down in ***G.T.Venkataswamy Reddy Vs. State Transport Authority & Ors*** in ***C.A. No.4480/1998*** dated ***19.07.2016***. In the above case, the Hon'ble Supreme Court has held as under:

“Even if there is an interstate agreement under Section 63 of the Act for increasing the number of trips, such an agreement cannot override the provisions of Chapter IV-A by virtue of Section 68B of the Act. Section 63 being in Chapter IV of the Act, the Scheme approved under Chapter IV-A will prevail over it.



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The Approved Scheme will exclude the operation of other stage carriage services on the Route / Area covered by the Scheme, except those whose names are mentioned in the Scheme and to the extent to which such exception is allowed.”

7. The petitioner who is an inter-state operator was operating her stage carriage TN-73-Z-2907 lastly replaced by TN-23-AZ-9707 by getting permit to do five singles on the route as per the inter-state agreement. There is no problem in getting countersignatures for the above said five vehicles. The vehicles are being operated in the inter-state route between 'Tirupati to Arakkonam via. Renikunda, Puttur, Nagari and Tiruttani'. The petitioner was granted permission to ply one more additional vehicle in the same route by the primary authority i.e. State Transport Authority, Hyderabad. In view of the variation to include one more vehicle in the permit, the petitioner had approached the first respondent for countersignature but the said petition was rejected by the first respondent vide proceedings in R.No.111298/E3/1987 dated 26.04.1990. The first respondent / State Transport Authority had chosen to reject the request for countersignature on the following grounds:

i) According to Section 72(2) of the Act, the Regional Transport



Authority could grant permit to a stage carriage alone and the above provision in the Motor Vehicles Act is clear and more than one vehicle cannot be allowed in a permit.

ii) Under Section 57(8) of the Act, there is a provision for variation of condition on permit by way of increasing the number of vehicles in the case of contract carriage, whereas under Section 80(3) of the Act except the variation specifically mentioned under Section 80(3) of the Act, no other variation can be allowed.

iii) The sector of the above route from Tirutani to Tirupati overlapped the Approved Scheme route 'Madras to Tirupati' and therefore the variation by inclusion of additional vehicle cannot be permitted.

8. The petitioner challenged the same by way of filing an appeal before the State Transport Appellate Authority in A.No.194/1990 and the said appeal was allowed. The learned Presiding Officer of the Appellate Tribunal has observed that the provision under Section 72(2)(i) of the Act should be read along with Section 70 of the Act in order to get the complete understanding of



the provisions. Reference was made to Section 70(1)(b) of the Act, which states about the type and seating capacity of each such vehicle for which application for permit is made. The meaning was inferred from the conjoint reading of these two provisions and that it conveys the inclusion of more than one vehicle in a permit. So it is held that the understanding of the first respondent / State Transport Authority that a permit cannot include more than one vehicle is fundamentally wrong. Even under Section 72(2)(i) of the Act, it has been specifically stated about the permit issued for one or more vehicles with conditions.

9. Regarding the scheme for operating the inter-state stage carriers, it is observed that the State Transport Authority did not notify its objection and given an opportunity to the petitioner to meet out this point before the authority. Because the petitioner had contended before the Appellate Tribunal that the names of his predecessor's in interest were enrolled in the Scheme and even the Scheme itself had allowed more than five operators to operate their buses overlapping their route.

10. The petitioner and her brothers have got the buses from their father



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subsequent to his death. Since the petitioners and her brothers were minors at the time of death of their father and they were under the guardianship of their other brothers and hence the permit was transferred in their names under the guardianship of their brothers and the names of the other brothers found place in the Scheme. It is needless to state that after the petitioner and her other minor sibling attained majority, the guardianship ought to have been removed and the petitioner and her other then minor siblings' names should have been recognised as individual permit holders like that of their brothers. Even for the sake of argument, if it is claimed that the permit arrangement comes under the Scheme, then also, the petitioner is covered under the scheme.

11. In view of the above stated reasons, the Appellate Tribunal had reversed the rejection order of the State Transport Authority. By virtue of the above said order, the petitioner was able to get the countersignature from time to time and renewed her permit in the denoted sector. In this regard, the first respondent has also issued proceedings in R.No.E3/53197/90 dated 23.08.2000.

12. All of a sudden, the State Transport Corporation had filed a Writ



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Petition in W.P. No .14769 of 2000 by challenging the order of the Appellate Tribunal dated 05.12.1990 before this Court. Vide an order dated 30.08.2000, the said Writ Petition was dismissed solely on the ground that the petition was filed with an inordinate delay of ten years. But the said order was challenged by way of filing a Writ Appeal in W.A. No.1675/2000 and the same was allowed by the Division Bench of this Court. While allowing the Writ Appeal, the Division Bench of this Court had observed that the variation of conditions of permit by including the additional vehicle granted to the petitioner is without jurisdiction and it is prohibited by Section 104(1) of the Act read with the provisions of the Scheme.

13. The said order was challenged by the petitioner by way of preferring a Special Leave Petition before the Supreme Court which was dealt in C.A. No.10441 of 2017. The said petition was allowed and the Supreme Court has restored the order of the State Transport Appellate Tribunal. As of now, in view of the above order passed by the Supreme Court, the order which is now in force is the order of the State Appellate Tribunal made on 05.12.1990 in A.No.194 of 1990. Even while the appeal was pending before the Supreme Court by way of various applications filed by the petitioner, the permit was



being extended and the petitioner continued to operate her trips. But contrary to the order of the Supreme Court passed in C.A. No.10441 of 2017, the first respondent / State Transport Authority had once again rejected the application for countersignature vide its proceedings in R.No.E3/67141/2008 dated 30.11.2020. When the petitioner filed the appeal before the State Transport Appellate Tribunal in M.V. Appeal No.1 of 2021, the State Transport Appellate Tribunal overlooked the order of the Supreme Court made in C.A. No.10441 of 2017. The State Appellate Tribunal was influenced by the order of Supreme Court passed in C.A. No.4480 of 1998 (***G.T.Venkataswamy Reddy's*** case (cited supra)) and had chosen to confirm the rejection order of the first respondent authority.

14. In the beginning of the discussion itself, it has been stated that in the ***G.T.Venkataswamy Reddy's*** case (cited supra), the Supreme Court has held that if there is an inter-state agreement under Section 63 of the Act for increasing the number of trips, the said agreement cannot override the provisions of Chapter IV-A by virtue of Section 68 of the Act. It is further held that the Scheme approved under Chapter IV-A will prevail over Section 63 of the Act. The State Transport Appellate Tribunal was guided by the above said



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preposition and held that the law laid down in ***G.T.Venkataswamy Reddy's*** case (cited supra) is squarely applicable to the case of the petitioner. But the fact remains that the Supreme Court while dealing with the petitioner's appeal in C.A. No.10441 of 2017 was conscious about the judgment of Constitution Bench of the Supreme Court in ***G.T.Venkataswamy Reddy's*** case (cited supra). In fact, there is an explicit reference made in paragraph '4' of the order of the Supreme Court dated 09.08.2017 made in C.A. No.10441 of 2017. The Supreme Court got convinced to allow the appeal on some other grounds and restored the order of the State Appellate Tribunal.

15. Subsequent to the above order of the Supreme Court, the respondents have got no other say except to abide by the orders of the Supreme Court. If for any reasons, the respondents thought that the Supreme Court had overlooked that the petitioner should be subjected to any scheme and that the variation in the permit is in violation of the agreement if any, they ought to have filed a review petition and reverse the judgment of the Supreme Court. As on today, the order of the Supreme Court made in C.A.No.10441 of 2017 is final and binding as against the petitioner.



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16. So far as the scheme in the state of Tamil Nadu is concerned, even in **G.T.Venkataswamy Reddy's** case (cited supra), the Hon'ble Supreme Court has held that TN Act 41 of 1992 published on 31.07.1992 do not apply to the other State operators. Subsequent to the said Act, the Government of Tamil Nadu has introduced another Scheme in the year 1995. Yet another Scheme was introduced in the year 1999 and in this scheme mini buses were introduced. The Modified Scheme (1999) was further modified to provide transport facilities to the rural public. However, on 23.02.2011, the Government of Tamil Nadu introduced a new comprehensive scheme for the entire Tamil Nadu instead of having a scheme for each district. By introducing a new comprehensive Scheme in the year 2011, the old Scheme (1999) got modified. But the comprehensive Scheme (2011) was challenged before this Court in W.P. No.2893 of 2011. The said Writ Petition was allowed by an order dated 18.04.2018, wherein the following observation have been made.

“ ...

27. In view of the above, this Court is of the considered opinion that the impugned order passed in G.O. Ms.No.136, Home (Transport III) dated 23.02.2011 as published in Tamil Nadu Government Extra-ordinary Gazette No.69, dated 23.02.2011 is not sustainable in the eye



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of law and accordingly, set aside. The respondents shall re-do the exercise in compliance with principles of natural justice.”

17. As on today, there is no scheme in force in Tamil Nadu. In fact it cannot even be presumed that when a new scheme is held to be invalid, the old scheme will automatically get revived. In the recent judgment of this Court dated 01.08.1992 held in W.P. No.30386 of 2008, it is held as under:

“11. This Court would have followed the earlier order passed in the batch of writ petitions, which has been referred supra and remanded the matter back to the file of the 2nd respondent. However, no useful purpose will be served in undertaking that exercise since the second respondent will not be able to consider the case of the petitioner in the absence of any scheme in force today. Even though, this Court directed the respondents to re-do the exercise and to come up with a scheme, till date, the said exercise has not been done.

12. In view of the above discussion, the impugned order passed by the first respondent, dated 13.11.2008 is hereby set aside. The petitioner is permitted to ply the mini bus in the existing route. As and when any scheme is introduced / notified by the respondents, it will be left open to the respondents to deal with the renewal of the permit in line with the new scheme. Till then, the renewal of the permit to the petitioner can be granted as was done during the pendency of this writ



petition.”

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18. The above judgment of this Court would make it clear that as on today, in the State of Tamil Nadu, there is no scheme in force. It is needless to state that the constitutional judgment of the ***G.T.Venkataswamy Reddy's*** case (cited supra) is applicable only when there is a Scheme and if there is any scheme, the scheme will prevail over the inter-state agreement. The entitlement of adding one more vehicle in the permit has already been held to be acceptable by the order of the State Appellate Tribunal dated 08.12.1990 made in A.No.194 of 1990 and the same has been upheld by the Supreme Court also in C.A. No.10441 of 2017. In fact the overriding effect has been approved by the State Appellate Tribunal in its order dated 08.12.1990. Since the petitioner's case has to be governed only by virtue of the order of State Appellate Tribunal dated 08.12.1990, upheld by the Supreme Court in C.A.No.10441 of 2017, the respondent authorities are bound to accord countersignature as ordered by the Tribunal in A.No.194 of 1990. If the Government introduces any other Scheme at any future point of time, then the Scheme will govern the matters of permit. So long as there is no such scheme, the petitioner is entitled to enjoy the benefit of order of State Transport



Appellate Tribunal made in A.No.194 of 1990 dated 08.12.1990, which has been upheld by the Supreme Court in C.A. No.10441 of 2017.

19. Since the impugned order of the Tribunal is in total contradiction to the order of the Supreme Court in C.A. No.10441 of 2017, which upheld the order of the Tribunal made in A.No.194 of 1990, the impugned order is liable to be set aside.

20. In the result, the Civil Revision Petition is allowed and the impugned order in M.V.Appeal No.01/2021 passed by the learned State Transport Appellate Tribunal, Chennai is hereby set aside. No costs. Consequently, connected miscellaneous petitions are closed.

09.11.2022

Index: Yes / No

Speaking order / Non-speaking order

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R.N.MANJULA, J.,

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To:

1. The State Transport Authority,
Chepauk,
Chennai – 600 005.
2. The Public Prosecutor,
Chennai.

Pre-delivery order made in
C.R.P.No.907 of 2022

09.11.2022