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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 02.12.2022	Delivered on 22.12.2022

CORAM

THE HONOURABLE MR.**JUSTICE R.SUBRAMANIAN**

AND

THE HONOURABLE MR.**JUSTICE K.KUMARESH BABU**

Writ Appeal No.222 of 2017
and CMP No.3775 of 2017

M.Ananda Kumar ..Appellant/Petitioner

Vs.

1. The Regional Transport Authority,
   Krishnagiri

2. The State Transport Appellate Tribunal,
   High Court Campus,
   Chennai 600 104. .. Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, against the order passed by this Court dated 07.09.2016 made in W.P.No.2056 of 2011.

For Appellant : Mr. M.Krishnappan, Senior Counsel
for Mr.T.Padmanabhan

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For Respondents : Mr. R.Shunmugasundaram
Advocate General Asst. by
Mr.V.Manoharan,
Addl. Government Pleader, for R1

R2 - Tribunal

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

This Appeal is at the instance of the petitioner in WP No.2056 of 2011 challenging the dismissal of the said Writ Petition, in which he sought for relief of Certiorarified Mandamus seeking to quash the rejection of his Application for grant of permit for operating a stage carriage in the route Berigai to Anchetti via: Nagalur, Hosur, Kelamangalam and Denkanikotta, by the Regional Transport Authority, Krishnagiri, and affirmed by a State Transport Appellate Tribunal.

2. The claim of the appellant before the Writ Court was that the approved modified Scheme made under Section 102 of the Motor Vehicles Act, 1988, published in the Government Gazette on 17.11.1999 for Dharmapuri District will not apply to Krishnagiri District which was formed on 09.02.2004 by carving out certain areas of Dharmapuri District. It was

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the further contention that in the absence of a separate Scheme for Krishnagiri District Section 6(4) and section 7 of *Tamil Nadu Act 41 of 1992,* viz. Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992, are not applicable and as such there is no bar for grant of permits.

3. Reliance was also placed on Section 80 of the Motor Vehicles Act, 1988, which provides for grant of permit and imposes an obligation on the Regional Transport Authority or any prescribed Authority to not ordinarily refuse the grant of permit. The essential contention before the Writ Court as could be seen from the pleadings is that a scheme framed for composite Dharmapuri District, could not be applied for the new District, namely Krishnagiri on and from the date of its bifurcation, viz. 09.02.2004. Hence in the absence of any Scheme framed under Section 102 of the Motor Vehicles Act, the Authorities constituted under Section 66 of the Motor Vehicles Act, for issuing permit, cannot refuse permit on the ground that the route is covered by a Scheme framed under Section 102. It was also contended that a separate modified Scheme for Dharmapuri District was notified on 01.06.2005 and it did not fructify into an approved Scheme as it was allowed to lapse due to efflux of time.

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4. This was resisted by the Government contending that the Scheme that was published in 1999 for the composite Dharmapuri District, would continue to apply to areas which were brought under Krishnagiri District, from the date of formation of Krishnagiri District, viz. 09.02.2004. It was the further contention of the Government that the bifurcation by itself would not nullify the Scheme. The Writ Court concluded that the argument rests on a fallacy and there cannot be a vacuum. The Writ Court also relied upon the judgment of the Division Bench in ***The Regional Transport Officer, Tirupur Region and another v. R.Muthulakshmi and another*** made in W.A.Nos.1660 and 1661 of 2009 dated 20.11.2009, wherein the very same contention, with reference to a newly created District that was advanced in respect of Tirupur District which was carved out of Coimbatore District, was repelled by the Division Bench concluding that the bifurcation of the District by itself will not make a Scheme inapplicable to the bifurcated areas of the Original District constituted as a new District. While doing so, the Division Bench held as follows:

"The District of Coimbatore consisted of Tirupur Sub-

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Division. For the whole area of Coimbatore District, including the Sub-Division/Town of Tirupur, the Government issued G.O.Ms.No.1532, dated 17.11.1999, giving certain guidelines to issue mini stage carriage permits. After bifurcation of the erstwhile District of Coimbatore, carving out Tirupur as a separate District, if the State Government has not issued any fresh guidelines for the newly created District of Tiruppur, we are of the view that the earlier guidelines contained in G.O., dated 17.11.1999 will be applicable for the said area, as it was in vogue before bifurcation, till the new guidelines are issued by the State."

Hence taking note of the legal provision that prevailed, the Writ Court dismissed the Writ Petition, hence this Appeal.

5. As far as the conclusion of the Writ Court based on the Division Bench is concerned not much can be argued as the conclusions of the Division Bench were binding on the Writ Court. We are also in entire agreement with the pronouncement of the Division Bench in ***The Regional***

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Transport Officer, Tirupur Region and another v. R.Muthulakshmi and another.

6. Certain subsequent developments and the inaction on the part of the Government had provided some ammunition for the appellant to agitate the question once over again. As per the Scheme of the Motor Vehicles Act, 1988 and the Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992, once there is an approved Scheme framed under Section 102 of the Motor Vehicles Act, 1988, the same has to be followed and all permits which are issued should be as per the said scheme.

7. It was open to the Government to modify the approved Scheme invoking the powers under Section 102 of the Motor Vehicles Act. The last approved Scheme for the composite Dharmapuri District was under G.O.Ms.No.1529 dated 17.11.1999, this modified the earlier Scheme that was published on 04.09.1997. The area of operation of the Scheme approved on 17.11.1999 was the entire Revenue District of Dharmapuri which, in its sweep, included the Revenue District of Krishnagiri also. It must be pointed out at this juncture that the bifurcation of Dharmapuri District into two new Districts, viz. Krishnagiri and Dharmapuri, did not

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involve any other area from the neighbouring Districts, thus there can be no over lapping of schemes in respect of the areas that were constituted into two new Districts.

8. As we had already pointed out if nothing had happened after 17.11.1999, it would have been a very simple task for us to have confirmed the judgment of the Writ Court. We shall now deal with the developments that had taken place subsequent to the dismissal of the Writ Petition by the Writ Court. The last approved modified scheme for the Revenue District of Dharmapuri was on 17.11.1999. By G.O.Ms.No.569 dated 18.11.2003, Dharmapuri District was divided into two Districts, viz., Dharmapuri with Headquarters at Dharmapuri and Krishnagiri with Headquarters at Krishnagiri. The Dharmapuri District comprised of the five Taluks, viz. Dharmapuri, Pennagaram, Palacode, Pappireddipatti and Harur. The Krishnagiri District comprised of five Taluks, viz. Krishnagiri, Pochampalli, Uthangarai, Hosur and Denkanikottai. Thereafter on 01.06.2005 a draft modification of the approved modified scheme for Krishnagiri District modifying certain provisions of the scheme framed on 17.11.1999 was put in place on 01.06.2005 in G.O.Ms.No.418 Home (Transport III).

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9. This was challenged in a batch of Writ Petitions, however, recording the statement of the Advocate General that the Government had taken a policy decision not to go on with the said Government orders issued on 01.06.2005, the Writ Petitions were dismissed. Though the Government order in G.O.Ms.No.418 Home (Transport III) was not specifically mentioned in the order dismissing the Writ Petitions dated 12.12.2006, it is now conceded that the said modification was not persued and it was allowed to lapse. It is thereafter the petitioner along with others applied for new permits. While things stood thus, even during the pendency of the Writ Petition in WP No.2056 of 2011, the Government introduced a new comprehensive scheme for the entire State on 23.02.2011 vide G.O.Ms.No.136 Home (Transport III).

10. This attempted new scheme was to modify the approved area schemes framed in the year 1999. An attempt was also made to consolidate the entire State into one area and have a single scheme for the entire State. This was challenged by various Operators and the Madurai Bench of this Court set aside the Scheme on 18.04.2018. The said judgment of the Writ

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Court setting aside the Scheme was affirmed by the Division Bench on 07.01.2020 and a further Appeal to the Hon'ble Supreme Court was also dismissed. Therefore, the new attempted scheme is no longer alive.

11. Mr.M.Krishnappan, learned Senior Counsel appearing for the appellant would submit that once a new scheme was framed, the old scheme stood effaced and the striking down of the new scheme will not automatically revive the old scheme. The consequence, according to him, is that there is no valid scheme framed under Sections 99 to 102 of the Motor Vehicles Act, for the State of Tamil Nadu as of today. Therefore, according to the learned Senior Counsel, the Authorities are bound to follow Section 80 of the Act, which imposes an obligation on them to not to refuse permits ordinarily. According to the learned Senior Counsel, while grant is the rule, refusal is an exception.

12. Reliance is also placed by the learned Senior Counsel on the judgment of this Court in ***S.Mahendran v. The State Transport Appellate Tribunal***, made in WP No.30386 of 2008, dated 01.08.2022, wherein the Writ Court had held that once the old scheme is substituted by the new

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scheme, the old scheme ceased to exist and it will not get automatically revive, once the new scheme is held to be invalid. Our attention is also drawn to the judgments of the Hon'ble Supreme Court in ***B.N.Tewari v. Union of India and others,*** reported in ***AIR 1965 SCC 1430*** and ***Firm A.T.B.Mehtab Majid and Co. v. State of Madras and another,*** reported in ***AIR 1963 SCC 928***, which have been referred to and relied upon by the this Court while deciding ***S.Mahendran***'s case, supra.

13. The sum and substance of the submissions of Mr.M.Krishnappan, learned Senior Counsel appearing for the appellant is that once the old scheme is substituted by the new scheme and the new scheme is set aside or held to be invalid the old scheme will not revive and hence there is a total vacuum which would enable the Road Transport Authorities to grant permits without any restriction and the position as of today is survival of the fittest.

14. Contending contra, the learned Advocate General would submit that the Writ Court was perfectly justified in dismissing the Writ Petition since the position as of that date was covered by the judgment of the

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Division Bench in ***The Regional Transport Officer, Tirupur Region and another v. R.Muthulakshmi and another***. As regards the contention of Mr.M.Krishnappan, learned Senior Counsel appearing for the appellant based on the subsequent developments, viz. the introduction of the new scheme, the striking down of the new scheme by this Court and the effect of the judgment of the Writ Court in ***S.Mahendran***'s case, where it was held the old scheme will not stand revived because the new scheme is struck down, the learned Advocate General would submit that the reliance placed by the Writ Court in ***S.Mahendran's*** case on the two judgments of the Hon'ble Supreme Court may not be correct. The learned Advocate General would submit that no doubt a scheme framed under Sections 99 to 102 of the Motor Vehicles Act, 1988, is deemed to have the force of law, it cannot assume the position of a statutory Enactment or statutory Rules.

15. Drawing our attention to the notification of the new scheme, the learned Advocate General would contend that the new scheme introduced in 2011, vide G.O.Ms.No.136 dated 23.02.2011 is a comprehensive scheme to further modify the approved modified area schemes published in the year 1999. Once it is a modification and not

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substitution, if the modification is held to be invalid the original would revive. The learned Advocate General would submit that both the decisions of the Hon'ble Supreme Court in ***Firm A.T.B.Mehtab Majid and Co. v. State of Madras and another,*** reported in ***AIR 1963 SCC 928***, and ***B.N.Tewari v. Union of India and others,*** reported in ***AIR 1965 SCC 1430,*** relied upon by this Court in ***S.Mahendran's*** case in support of the conclusion that once a new Rule or Enactment is held to be invalid, the old Rule or Enactment which was substituted by the new Rule or Enactment will not stand revived may not apply to a modification.

16. In ***Firm A.T.B.Mehtab Majid and Co. v. State of Madras and another,*** reported in ***AIR 1963 SC 928***, the Hon'ble Supreme Court considered an amendment to the Madras General Sales Tax (Turnover and Assessment) Rules, 1939. While considering as to whether upon invalidation of the Rule which substituted the old Rule, the old Rule would stand revived, the Hon'ble Supreme Court in paragraph 20 of the Judgment observed as follows:

"20. It has been urged for the respondent that if the impugned Rule be held to be invalid, old Rule 16

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gets revived and that the tax assessed on the petitioner will be good. We do not agree. Once the old Rule has been substituted by the new rule, it ceases to exist and it does not automatically get revived when the new Rule is held to be invalid."

17. In ***B.N.Tewari v. Union of India and others,*** reported in ***AIR 1965 SCC 1430***, the same position was reiterated in respect of the carry forward Rules regarding reservation. We have no quarrel with the proposition of law that once a Law or the Rule having a statutory force is substituted by a new Law or Rule that the old Law or Rule would stand effaced and the same will not get automatically revived, if the substitute is declared to be invalid.

18. As rightly pointed out by the learned Advocate General, what was attempted by the new comprehensive scheme framed in 2011 was not a substitution but a modification. According to OXFORD concise dictionary ***Modification means "to change slightly".*** As per Black's Law Dictionary modification means "**a change to something: an alteration or**

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amendment".

Normal meaning of Substitution is ***'to replace'.*** According to Black's Law Dictionary ***substitution*** means

"**a designation of a person or thing to take the place of another person or thing**".

(or)

"**the process by which one person or thing takes a place of another person or thing**".

The words modification and substitution have different connotations. What applies to substitution will not necessarily extend to modification. Therefore, according to the learned Advocate General, the dictum in ***S.Mahendran's*** case had proceeded on the footing that the new scheme published in 2011 is a substitute to the old schemes that were in existence and therefore, it would have the effect of effacing the old schemes which is factually incorrect.

19. The learned Advocate General would further argue that the Government order issued on 23.02.2011 clearly states that the new Scheme would be in modification of the old Scheme. Therefore, according to him, the Writ Court when it decided ***S.Mahendran's*** case

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fell in error in concluding that the old schemes that were in force as on 23.02.2011, will not stand revived upon the modification being struck down. Therefore, according to the learned Advocate General, the striking down of the modification will revive the old Scheme and the Authorities will have to necessarily act as per the old scheme as if there is no modification.

20. We have considered the rival submissions.

21. The main contention that was raised by the petitioner before the Writ Court stands answered by the judgment of the Division Bench in ***The Regional Transport Officer, Tirupur Region and another v. R.Muthulakshmi and another*** ‘s case. We are also in agreement with the Division Bench as regards the sweep of the Scheme that was framed for the undivided Dharmapuri District. The Scheme that was framed in 1999 for the undivided Dharmapuri District will apply to Krishnagiri District also as the attempt made by the State Government to have a separate modified scheme for Krishnagiri District in the year 2005 did not fructify and the same was allowed to lapse. Therefore, the scheme of the year 1999 will continue to apply to Krishnagiri District also.

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22. We have to deal with the submissions of the learned Senior Counsel with regard to the subsequent developments also. If we agree with the conclusion of Hon'ble Mr.Justice N. Anand Venkatesh, in ***S.Mahendran's*** case and hold that upon introduction of the new scheme in the year 2011 vide G.O.Ms.No.136 dated 23.02.2011, the old Schemes will get effaced and they will not revive upon the new scheme being invalidated by the Court, the essential consequence would be that there will be a vacuum. We do not think that we should favour such a situation. Unfortunately, the Hon'ble Mr.Justice N. Anand Venkatesh, had proceeded on the basis that the new scheme is substituted to the old schemes and therefore, applying the law relating to substitution concluded that if the substitute is held to be invalid, the substituted will not revive. Of course both the decisions of the Hon'ble Supreme Court relied upon by Hon'ble Mr.Justice N. Anand Venkatesh, in ***S.Mahendran's*** case, support the view taken by the Hon'ble Judge.

23. We are unable to persuade ourselves to agree with the said view, inasmuch as the new scheme brought out in the year 2011 specifically

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states that it is only a modification of the old Scheme and not a substitution. If it is a modification, the existing scheme is not effaced, its only tinkered with or altered a little. If the alteration of the tinkering is taken away the original as it stood before the alteration or tinkering will exist. This is akin to the difference between a repealing enactment and the amending enactment. While something that is repealed will require a statutory intervention for its revival, something that is amended will revive if the amendment is set aside.

24. To draw an analogy, we may refer to Section 6 of the Hindu Succession Act, which was recently amended making daughters also co-parcerners. Assuming that the amendment is challenged and the challenge is up held, its only the amendments introduced that would go out of the statute, the original Section would prevail. If we are to conclude that once the amendments are struck down the original provision will also stand effaced, the same would lead to anomalous situation and absolute lawlessness. We therefore, conclude that 2011 scheme being a modification of the earlier schemes will not have the effect of effacing the old schemes and upon the modifications being struck down, the old schemes would stand revived. With

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great respect we conclude that the decision in ***S.Mahendran's*** case, is wrongly decided.

25. Once we conclude that the 2011 Scheme is only a modification of the 1999 Schemes, once the modification is struck down the 1999 Scheme will automatically stand revived. If the 1999 Schemes stand revived they would govern the grant of permits. Therefore, we are in entire agreement with the submissions of the learned Advocate General in this regard. Hence we see no merit in the challenge to the order of the Writ Court, the Writ Appeal will stand **dismissed**. There shall be no order as to costs. Consequently the connected miscellaneous petition is closed.

(R.SUBRAMANIAN, J.) (K.KUMARESH BABU, J.)

22.12.2022

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To

1. The Regional Transport Authority,
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2. The State Transport Appellate Tribunal,
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R.SUBRAMANIAN, J.
and

K.KUMARESH BABU, J.

(jv)

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