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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2022

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THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).No.24502 of 2022
and
W.M.P.(MD).No.18572 of 2022

A.Swamiappan ... Petitioner

Vs.

1.The Secretary,
Regional Transport Authority,
Karur.

2.R.Karthickraja ...Respondents

(R-2 impleaded vide Court order dated 29.11.2022 in W.M.P.(MD).No.18946 of 2022 in W.P.(MD).No.24502 of 2022)

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the proceedings of the respondent in R.No.10961/B2/2022 dated 27.06.2022 to the effect that the application of the petitioner for revision of timings cannot be considered and to quash the same.

For Petitioner : M/s.Radha Gopalan
for Mr.K.Hariharan
For R-1 : Mr.M.Ramesh,
Government Advocate.
For R-2 : Mr.M.Palani

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ORDER

The Writ petition is filed challenging the order of the 1st Respondent dated 27.06.2022, whereby, the petitioner's application for revision of timings has been rejected/refused.

2. The petitioner is a stage carriage operator having permit issued by the Regional Transport Officer, Karur to ply on the route “Karur to Tiruchirapalli” via Mayanur in respect of vehicle bearing Registration No.TN 47 AM 1805 and the permit is valid till 16.04.2026. It is submitted by the petitioner that prior to the year 2005, the petitioner was operating with a departure time at 3.55 PM from Trichy to Karur. In the year 2005, the Transport Corporation was issued with a permit from Trichy to Coimbatore via Karur fixing the departure time at 3.55 PM. In view of overlapping of the departure time, it is submitted by the petitioner that there was change of timing from 3.55 PM to 3.14 PM. Admittedly, the said timing was not fixed nor any endorsements made in terms of Rule 248 of the Tamil Nadu Motor Vehicles Rules, which prescribes the procedure for fixing the timing. It is submitted that based on the oral undertaking/request/direction, the petitioner started to depart from Trichy at 3.14 PM. This, according to the petitioner, was being followed for over 17

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years. Whileso, the 2nd Respondent/ R.Karthickraja has filed a Writ Petition in W.P.(MD).No.7747 of 2022 seeking for Mandamus directing the Regional Transport Officer, Trichy to conclude the proceedings in No.12006/A2/2022 dated 06.04.2022 issued pursuant to his representation after calling for the Inspector report. The said Writ Petition was disposed of vide order dated 22.04.2022, wherein, this Court was pleased to observed as under :

> *"3. Today, it is informed that the Inspector has also given a report on 18.04.2022, which was received by the office of the first respondent on 22.04.2022. The report indicates breach of permit condition by the driver of the vehicle bearing Registration No.TN-47-AM-1805. Therefore, appropriate orders has to be passed after issuing notice to the fifth respondent. In case, the official respondents are of the view that the matter has to be decided by some other authority, it is open for the first respondent to transfer the file to such other authority, who is competent to pass appropriate orders. Be that as it may, the notice shall be issued to the fifth respondent before appropriate orders are passed by the jurisdictional competent authority. Such order shall be passed preferably within a period of three months from the date of receipt of copy of this order."*

3. It is submitted by the learned counsel for the petitioner that the petitioner had submitted a representation on 22.04.2022 to consider his

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application dated 04.05.2005 for revision of timings, which is kept pending. Pursuant to the orders of this Court, the impugned order came to be passed on 27.06.2022, wherein, the 1st Respondent, while concluding that the question of revision of schedule of time to any existing private stage carriage operator does not arise, set-out the following reasons / grounds:

a) That the petitioner, after submitting the application for change of timing on 04.05.2005, has been carrying on its operation without having its timing changed and not following up with the Respondent over the last 17 years for taking action on the said application.

b)That the sector from Trichy to Karur is fully served with transport facilities both by STU and private operators nor is any request received from the residents in and around the above sector for additional transport facilities or change of timings.

c)That in terms of the Government Communication dated 19.12.2003, applications for revision of timings and variation permit conditions to the private operators cannot be entertained.

d)In terms of Section 80(3) of Motor Vehicles Act 1988, any variation of permit shall be treated as grant of new permit.

e) In terms of Section 6(4) of Motor Vehicles (Special provision) of Act 41 of 92, no new permit shall be granted to any person in a route covered by an

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approved scheme.

f)That for variation of permit conditions by way of variation of time, G.O.Ms.No.718, H (Tr.II) Department dated 18.05.1995 provides for the procedure.

g)After introduction of Act 19 of 96 (An act to cancel certain variations of conditions of permit granted under the TNMV (Special Provisions) Act 1992) with effect from 03.07.1996, no grant of new permits, (or) variation of permit conditions (or) revision of timing to private operator is admitted, so far throughout Tamil Nadu.

It was thus stated on the basis of above reasons/grounds, the question of revision of schedule of time to any existing private stage carriage operators does not arise at present.

4. Thereafter, the Writ Appeal filed by the petitioner challenging the order of the learned Single Judge in W.P.(MD).No.7747 of 2022 dated 22.04.2022 was dismissed by the Division Bench of this Court vide order dated 23.08.2022 after observing as under:

> *"11. ....However, the appellant was operating his bus by starting his bus at 15.14 hours just few minutes earlier to the time slot allotted to the Writ Petitioner. When this illegality is*

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pointed out and a representation was also made by the Writ Petitioner, this Court has rightly directed the first respondent to conclude the proceedings after hearing the Writ Petitioner as well as the appellant herein. Therefore, the order of learned Single Judge is perfectly in order.

...13.It is also noted that the appellant had earlier submitted an application, dated 06.04.2005 seeking to alter the existing timing for the bus operated by the appellant. It is to be seen that the existing timing, as it was allotted to the appellant, was at 15.55 hours. Even before the representation to revise the timings was submitted in 2005, the appellant has now admitted that he was operating the bus with the revised timing at 15.14 hours. The appellant has achieved what he wanted to achieve by a representation that was submitted in 2005. Therefore, serious prejudice is caused to the Writ Petitioner and the appellant has unnecessarily filed the present appeal even though the appellant is also entitled to be heard, as there is a direction by a learned Single Judge to hear appellant before passing final order.

14.This Court is, therefore, unable to find any error or illegality in the order of learned Single Judge. Since it is represented by the appellant that the appellant's timing was altered unofficially without an order at the instance or intervention of the State Transport Corporation, it is open to the first respondent to consider the grievance of the appellant as against the State Transport Corporation. The first respondent is now directed to pass final orders after hearing all the parties

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concerned within a period of four weeks from the date of receipt of a copy of this order."

Further the Division Bench also rejected the petitioner's contention of lack of locus standi on the part of the impleaded second respondent and had proceeded to hold that the second respondent has locus standi to maintain the earlier writ petition.

5. It is submitted by the learned counsel for the 2nd Respondent that the petitioner departure time was fixed at 3.14 PM, however, admittedly the petitioner has been departing from 3.55 PM and that no one including the Transport Corporation can operate its vehicle without fixation of timing in terms of Rule 248 of Tamil Nadu Motor Vehicles Rules, even if permits have been issued. It is submitted that the petitioner has been operating without having its timings approved/fixed in the manner set out in Rule 248 of the Tamil Nadu Motor Vehicles Rules and that though the order of the Division Bench is subsequent to the impugned order, there is no reference to the impugned order in the order of Division Bench. As a matter of fact, a perusal of order of the learned Single Judge which is confirmed by the Division Bench shows that both the learned Single Judge and the Division Bench has observed

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that the respondent shall put the petitioner on notice and hear all the parties concerned.

6. It is submitted by the learned counsel for the petitioner that the impugned order suffers from the following infirmities:

(i)While the learned Single Judge has directed the official respondent to pass orders after issuing notice to the petitioner herein, however, no notice was issued to the petitioner before the impugned order came to be passed. The impugned order has severe civil consequences on the petitioner and thus the petitioner ought to have been put on notice even therein.

(ii) Secondly, it is submitted by the petitioner that the impugned order is arbitrary, insofar as it places reliance on Act 19 of 1996, which is held to be invalid by the Division Bench of this Court in the case of ***R.Srinivasan Vs. State of Tamil Nadu, represented by Secretary, Home Department, Chennai and another*** reported in ***2003 (4) CTC 12***, which reads as under:

> *"**17.** In view of the above discussions, we declare the Tamil Nadu Motor Vehicles (Special Provisions) (Cancellation of Variation of Conditions of permit) Act, 1996 is unconstitutional, ultra vires and void. Consequently, there will be a direction to the Regional Transport Authority concerned to permit each of the petitioners to operate their stage carriage services on the respective varied*

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routes as per the earlier orders passed pursuant to Act 41 of 1992. Accordingly, all the writ petitions are allowed and the relief prayed in each of the writ petition is granted."

(iii) Thirdly, it is submitted that the impugned order proceeds on the basis that Section 80(3) of Motor Vehicles Act, 1988 would get attracted even in respect of change of time. However, a reading of Section 80(3) of the Motor Vehicles Act would show that the same may not apply to a case of change of timing for the circumstances covered by the said sub section is set out expressly therein.

"*(3) An application to vary the conditions of any permit, other than a temporary permit, by the inclusion of a new route or routes or a new area or by altering the route or routes or area covered by it, or in the case of a stage carriage permit by increasing the number of trips above the specified maximum or by the variation, extension or curtailment of the route or routes or the area specified in the permit shall be treated as an application for the grant of a new permit: Provided that it shall not be necessary so to treat an application made by the holder of stage carriage permit who provides the only service on any route to increase the frequency of the service so provided without any increase in the number of vehicles: Provided further that,—*

(i) in the case of variation, the termini shall not be altered and the distance covered by the variation shall not exceed twenty-four kilometres;

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(ii) in the case of extension, the distance covered by extension shall not exceed twenty-four kilometres from the termini,

and any such variation or extension within such limits shall be made only after the transport authority is satisfied that such variation will serve the convenience of the public and that it is not expedient to grant a separate permit in respect of the original route as so varied or extended or any part thereof."

It was submitted a reading of the above provision that while deeming certain variations to conditions of the permit and grant of a new permit, it does not include change of fixation of timing and thus the impugned proceedings invoking Section 80(3) of the Motor Vehicles Act, 1988 is bad. Thus the impugned proceedings appears to proceed on a misconception.

7. It is the case of the petitioner that if he had been put on notice, he could have possibly submitted objections and putforth his case raising the above aspects which could have made a material difference to the conclusion that the 1st respondent had arrived at. This Court finds that there is merit in the submission of the learned counsel for the petitioner that inasmuch as even the Division bench of this Court, while confirming the order of the learned Single Judge had directed the 1st Respondent to pass orders, had clearly stated that orders shall be passed after hearing all the parties. The relevant portion of the

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order reads as follows:

> *"14. ....The first respondent is now directed to pass final orders after hearing all the parties concerned within a period of four weeks from the date of receipt of a copy of this order."*

8. In view of the above, this Court is of the view that the impugned order is liable to be set aside for not putting the petitioner on notice thereby violating the principles of natural justice. The matter is remanded back to the 1st Respondent to pass orders after affording the petitioner reasonable opportunity of being heard and after issuing notice to the second respondent. It is open to the second respondent to putforth his submissions in the event, any objections or submissions are made, the same shall be taken into account and orders shall be passed on merits and in accordance with law within a period of eight (8) weeks from the date of receipt of a copy of this order. The 1st respondent shall take into account the observations of the Division Bench of this Court.

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9. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

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Internet : Yes/ No
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To

The Secretary,
Regional Transport Authority,
Karur.

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MOHAMMED SHAFFIQ, J.

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