



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.01.2022

CORAM

THE HON'BLE MR. JUSTICE M.SUNDAR

W.P(MD)No.23214 of 2021

and

W.M.P. (MD)Nos.19640 & 19642 of 2021

WEB COPY

S.Rajendra Prasad

... Petitioner

-Vs-

1.The State Transport Appellate Tribunal,
Chennai - 600 104.

2.The Regional Transport Authority,
Nagercoil,
Kanyakumari District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 1st respondent in M.V.Appeal No.14 of 2021 dated 13.09.2021 and quash the same as illegal and to permit to operate the petitioner's Mini Bus (Via) Hindu College, Beach Road Junction within the stipulated period by this Court.

For Petitioner : Mr.H.Velavadhas

For Respondents : Mr.M.Lingadurai,
Special Government Pleader

O R D E R

In the captioned matter, Mr.H.Velavadhas, learned counsel on record for writ petitioner and Mr.M.Lingadurai, learned Special Government Pleader who has accepted notice on behalf of both the respondents are before this virtual Court. Owing to the narrow compass on which the matter turns, the main writ petition was taken up and heard out with the consent of learned counsel on both sides.

2. The proceedings made by this Court in the earlier listing on 10.01.2021 reads as follows:

'The subject matter of captioned main writ petition is stage carriage permit for two mini buses bearing Registration Nos.TN 74 Y 6327 and TN 21 AX 2799 [hereinafter 'said permits' for the sake of convenience and clarity]. Writ petitioner holds the said permits.

2.Mr.H.Velavadhas, learned Counsel for writ petitioner submits that said permits are for plying aforementioned two mini buses from Anna bus stand to CTM Puram and back from CTM Puram to Anna bus stand in



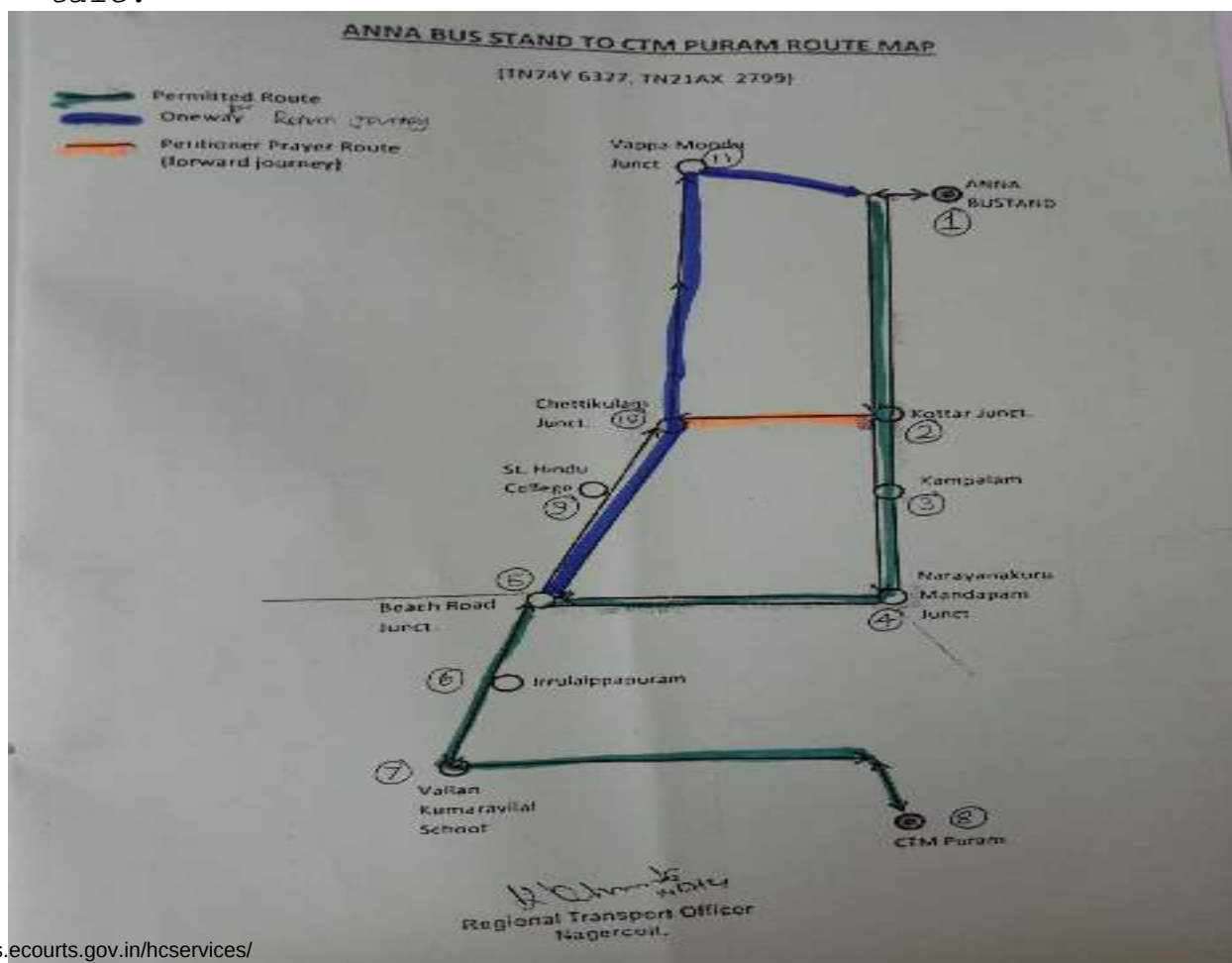
Nagercoil, Kanyakumari District. In other words, Anna bus stand - CTM Puram - Anna bus stand is the two way route. To be noted, this Court is informed that said permits are for two way operation between Anna bus stand and CTM Puram.

WEB COPY

3. This Court is informed that pending said permits a part of the return journey was made one way.

4. The writ petitioner appears to have approached this Court by way of a Writ Petition in W.P.[MD]No.11806 of 2018 and obtained an interim order in W.M.P.[MD] Nos.10474 and 14295 of 2018 therein by virtue of which the writ petitioner appears to have been plying in a slightly modified route (owing to return journey being made one way) via Chettikulam junction and Hindu College. This Court is informed that this writ petition came to be disposed of on 13.07.2020. However neither the interim order nor the final order in the said writ petition and WMPs therein have been placed before this Court.

5. Be that as it may, the following sketch is tell tale:





6. The green marked route is the original two way route. Owing to the route being made one way from Beach Road junction (5) the return journey was to be made through 5, 9, 10 & 11 to reach 1. This Court is informed that by virtue of the aforementioned interim order, the writ petitioner was plying both ways using the orange marked portion between 2 & 10 (orange marked portion).

7. Post disposal of writ petition the second respondent has rejected writ petitioner's request for altered route primarily on the ground that 3 & 4 viz., Kampalam and Narayanakuru Mandapam junction will remain unserved. Writ petitioner assailed these proceedings / orders of second respondent in the State Transport Appellate Tribunal [hereinafter 'said Tribunal' for the sake of convenience and clarity] by way of a statutory appeal under Section 89(1)(a) of 'the Motor Vehicles Act, 1988' [hereinafter 'MV Act' for the sake of convenience and clarity] vide M.V. Appeal No.14 of 2021 and said Tribunal vide order dated 13.09.2021 dismissed writ petitioner's appeal confirming the order of second respondent dated 17.03.2021. Contending that the writ petitioner is aggrieved by the order of said Tribunal captioned main writ petition has been filed.

8. A perusal of the impugned order of Tribunal brings to light that it is imperative to look at the aforementioned interim order and order of this Court in the aforementioned W.P.[MD]No.11806 of 2018 and W.M.P.[MD]Nos.10474 and 14295 of 2018 thereat. Ideally the writ petitioner should have filed it along with the writ petition but prima facie as an element of larger public interest appears to be involved this Court deems it appropriate to direct the Registry to put up the case file pertaining to W.P.[MD]No.11806 of 2018 and W.M.P.[MD]Nos.10474 and 14295 of 2018 thereat i.e., all papers including interim order and orders therein in the next listing.

9. List in the admission Board a fortnight hence.

10. List on **24.01.2022.**

3. The above proceedings shall read as an integral part and parcel of this order.

4. In the aforementioned proceedings, the factual matrix, the crux and gravamen of the lis as well as the trajectory the matter has taken thus far have been captured.



5. Pursuant to aforementioned proceedings the entire case file in W.P.(MD)No.11806 of 2018 has been placed before this Court by the Registry. This Court had the benefit of perusing the same.

6. To be noted, the short forms and short references used in the earlier proceedings will continue to be used in the instant proceedings also.

7.A careful perusal of the impugned order of the Tribunal bring to light that the Tribunal (first respondent) has referred to the earlier writ petition i.e., W.P.(MD)No.11806 of 2018, the WMPs therein and an interim order but there is no mention about the date, nature of interim order or nature of final order made by this Court. The references made in one sentence contained in paragraph 4 reads as follows:

'4.....The reason made by the appellant that after obtaining an interim order in WMP (MD)No.10474 and 14295 of 2018 in W.P.(MD)No.1186 of 2018, he has been operating the mini bus via Chettikulam junction on the forward journey and the travelling public are accustomed to the pattern.....'

8. For the sake of ease of reference, this Court deems it appropriate to extract and reproduce entire paragraph 4 of the impugned order of the Tribunal dated 13.09.2021 in M.V.Appeal No.14/2021. It reads as follows:

'4.On careful verification of the record, it reveals that, there is no impediment for the appellant to ply his vehicles in the forward journey which is his actual route. His request for fixation of forward journey if allowed would curtail two stages (viz) Kambalam and Narayana Guru Mandapam where he is supposed to ply. The reason made by the appellant that after obtaining an interim order in WMP (MD) No.10474 and 14295 of 2018 in W.P.(MD)No.1186 of 2018, he has been operating the mini bus via Chettikulam junction on the forward journey and the travelling public are accustomed to the pattern. But no request seems to be received from the general public to alter the route, in fact if the appellant is allowed to alter the route, the same will affect the interest of travelling public who are hitherto boarding the bus in Kambalam, Narayanaguru Mandapam, for the forward journey. The interest of travelling public is most important and it should alone be taken into consideration for fixation or alternation of any



route. The reason stated for the fixation of alternate route seems to be not satisfactory.'

(underlining made by this Court for ease of reference)

9. Whenever an earlier order, more particularly an order made by a superior Court in the hierarchy of Court is referred to, it is necessary that there is some discussion about the same. Though there is no equivalent of Article 141 of the Constitution of India with regard to the High Courts, the orders made by the High Courts are binding on all subordinate Courts and Tribunal in that State over which that High Court exercises jurisdiction. This position is well settled and a lead case law is **East India Commercial Co. Ltd., Calcutta Vs. Collector of Customs, Calcutta** reported in **AIR 1962 SC 1893**. Therefore, the discussion is not just necessary but imperative.

10. For the sake of convenience and clarity, this Court deems it appropriate to extract and reproduce the entire final order dated 13.07.2020 made by another Hon'ble Single Judge in W.P(MD)No.11806 of 2018 and the same reads as follows:

'Heard the learned counsel on either side.

2. The petitioner was granted permit to operate his vehicles mentioned in the petition through a particular route. Following the declaration of a part of the route as one way, the petitioner was asked to ply his vehicles through another route. To this effect, the impugned order came to be passed. The same is under challenge in this writ petition.

3. The writ petition was entertained and it is seen that the interim order was also granted.

4. I am of the view that in the very nature of things, the respondent must take a call in the matter. It is not known as to whether the route in question continues to remain as one way. Therefore, the petitioner is directed to submit a fresh representation to the respondent within a period of two weeks from the date of receipt of a copy of this order. The respondent is directed to pass orders on the same on merits and in accordance with law within a period of eight weeks, thereafter. Till then the interim order passed by this Court shall continue.

5. The learned counsel appearing for the writ petitioner submitted that the Transport Commissioner had issued a circular bearing letter No.90919/E2/2000 dated 29.11.2000. He further submitted that the said circular is still holding good. The first respondent shall pass orders by bearing in mind the mandate set out in the circular.

6. With the above direction, this writ petition is



disposed of. No costs. Consequently, connected miscellaneous petitions are closed.'

Paragraph 4 of the aforementioned order says that the interim order already granted by another Hon'ble predecessor judge will continue. That interim prayer (as culled out from the case file) reads as follows:

'To grant an interim injunction restraining the respondent from men and their agent not to interfere the petitioner's Mini Buses bearing registration Nos.TN74 K 6327 and TN21 AX 2799 are operating the route Anna Bus Stand to CTM Puram viz, Indu College, Beach Road Junction, Irullappapuram, Vallankumaravilai, Keezha Vannanvilai, N.G.O. Colony, Keezha Kunchanvilai pending disposal of the above writ petition.'

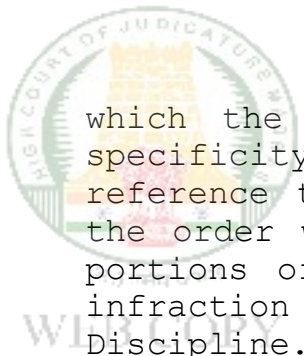
The order made on 31.05.2018 by another Hon'ble judge qua aforementioned interim prayer is as follows:

*'There shall be an order of interim injunction for a period of 8 weeks from today.
Notice.'*

11. There are two facets to this aspect of the matter, namely (a) judicial discipline and (b) a precedent. In this case, it is not just a precedent, but a direct order of a higher / superior court in this very matter. The second facet turns on the celebrated Padma Sundara Rao case being a judgment rendered by a Constitution Bench of Hon'ble Supreme Court in Padma Sundara Rao Vs. State of Tamil Nadu reported in (2002) 3 SCC 533 wherein Hon'ble Supreme Court declared the law as to how a precedent has to be referred to. Relevant paragraph in Padma Sundara Rao case is paragraph 9 which reads as follows:

'9.Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom British Railways Board v. Herrington, (1972) 1 All ER 749 (HL)]]. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.'

12. In the case on hand, the manner in which order dated 13.07.2020 in W.P.(MD)No.11806 of 2018 and W.M.Ps thereat has been referred to rather casually in the impugned order is clearly a infraction of both the aforementioned facets. Judicial discipline demands that the order of the higher / superior Court more so when it pertains to that very matter is set out with clarity. The manner in



which the Tribunal is following it should also be set out with specificity and that should lead to the conclusion. A casual reference to the case number alone without even giving the date of the order with neither excerpted portions nor reference to relevant portions of the order of the higher / superior court is clearly a infraction qua the first facet of the matter i.e., Judicial Discipline. For the self same reason complete absence of any mention about the factual details and directives / observations of the order of the higher / superior court in W.P.(MD)No.11806 of 2018, is an infraction of *Padma Sundara Rao* principle.

13. Learned Special Government Pleader on instructions submitted that pursuant to the aforementioned final order, writ petitioner made a fresh application and an order came to be made by the second respondent on 17.03.2021 and on such order being made, the interim order ceased to operate, there may be little difficulty (no difficulty) in accepting this submission but a discussion in this regard by the Tribunal is imperative.

14. Another aspect of the matter is, the Tribunal has proceeded on the basis that no request ('seems') to have been received from the general public. This is set out in paragraph 4 of the impugned order of the tribunal which has been extracted and reproduced elsewhere supra in this order. No request 'seems' to have been received is clearly in the realm of conjectures and surmises. This by itself makes the impugned order unstable. There may be a finding on preponderance of probabilities but there cannot be a finding in the realm of surmises and conjectures.

15. In the light of the aforementioned two reasons, this Court deems it appropriate to set aside the impugned order of the Tribunal and remand the matter back to the tribunal to consider the appeal afresh keeping in mind the observations made by this Court in this order as well as the observations made by another Hon'ble Single Judge vide order dated 13.07.2020 made in W.P.(MD)No.11806 of 2018.

16. The following order is made:

a) impugned order of the first respondent dated 13.09.2021 made in M.V.Appeal No.14 of 2021 is set aside;

b) the first respondent shall take up the statutory appeal of the writ petitioner i.e., M.V.Appeal No.14 of 2021 afresh, hear out the same *de novo*, decide the same as expeditiously as the business of the first respondent would permit but in any event within a time frame of three months from today. In other words, it shall be decided on or before



c) the first respondent Tribunal is directed to hear the matter *de novo* on merits keeping in mind the observations made by this Court but all questions on merits are left open for both sides so that regarding other aspects (other than observations made by this Court) the Tribunal is neither stifled nor fettered by this order of this Court.

17. Captioned writ petition is disposed of in the aforesaid manner. Consequently captioned WMPS are disposed of as closed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsm

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 State Transport Appellate Tribunal,
Chennai - 600 104.

2.The Regional Transport Authority,
Nagercoil,
Kanyakumari District.

+1 CC to M/s.SPL.GP (SR-2376[F] dated 25/01/2022)

W.P(MD)No.23214 of 2021 and
W.M.P. (MD)Nos.19640 & 19642 of 2021
24.01.2022

RD(08.02.2022) 8P 4C