



CRP. No.51 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRP. No. 51 of 2022

Rathnamma

...Petitioner

Vs.

- 1.The State Transport Authority,
Chepauk, Chennai - 5.
2. Tamil Nadu Transport Corporation (Salem) Limited.
Dharmपुरi.

...Respondents.

PRAYER : This Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order passed by the learned State Transport Appellate Tribunal in M.V.Appeal No. 04/2021 dated 23.12.2001 rejecting the appellant's application for renewal of permit in respect of inter-state stage carriage bearing Registration No. TN/L-3557 plying on the route "Malur to Krishnagiri" via. Bagluar, Hosur and Sholangiri e.t.c., place for a period of five years from 01.06.2016 to 31.12.2020 and allow this Civil Revision Petition with costs.



For Petitioner : Ms.Radha Gopalan

For R1 : Mr.A.Edwin Prabakar, Special Government
pleader assisted by V.Jeevagiridharan AGP

For R2 : Mr.K.Kathireasan

ORDER

This petition has been filed to set aside the order passed by the State Transport Appellate Tribunal in M.V.Appeal No. 04/2021 dated 23.12.2001 rejecting the appellant's application for renewal of permit in respect of inter-state stage carriage bearing Registration No. TN/L-3557 plying on the route "Malur to Krishnagiri" via. Bagluar, Hosur and Sholangiri e.t.c., place for a period of five years from 01.06.2016 to 31.12.2020.

2. The brief facts of the case as follows:

One C.P. Anjaiah, Hosur, was the holder of the stage carriage permit No. 150(18)/1964 for the interstate route ' Malur to Krishnagiri (via) Bagalur, Hosur and Shoolagir. Thereafter, the said route was included in the inter state route agreement entered into between the State of Tamil Nadu and Karnataka vide SI.No. 7 of appendix- II of G.O(MS) No. 1173 Home(Tr.III)dept, dated 30.04.1976. The said Anajaiah was died on 22.11.1977 and permit was transferred to his legal heir/son



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P.A.Sathyanaryana and the permit was renewed for further period of five years from 01.01.1981 to 31.12.1985 subject to condition that the permit so renewed shall ceased to be effective on the date of approval of nationalisation scheme over the inter state route Malur to krishnagiri was approved in G.O.Ms. No. 1393, Home Tr.III Department dated 12.06.1987 i.e., after ten years of publication of draft scheme on 21.06.1977. As per Section 100(4) of Motor Vehicles Act, where scheme is not published as an approved scheme in the official Gazette within a period of one year from the date of the proposal, the proposal shall be deemed to have lapsed. Since the scheme was approved after ten years from the date of proposal hence objected the same. Furthermore, as per the nationalisation scheme G.O MS. No. 1393 only one permit granted to Tamil Nadu state Transport Corporation (Salem) Limited, Dharmapuri on the inter state route Malur to krishnagiri via (via) Bagalur, Hosur and Shoolagiri including other party entire route.

3. Aggrieved over the same, challenging the said nationalisation scheme of the inter state route Malur to Krishnagiri the said Sathyanarayana filed WP. No. 15872 of 1988 before this Court, wherein this Court granted interim stay and also directed that the petitioner get fixing fresh timings



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from the Secretary, STA, subject to payment of fees for fresh timing and permit was granted. Thereafter, on 21.01.1989 said Sathyanaryana died, his legal heir Rahnamma substituted herself as second petitioner in W.P No. 15872 of 1988. Thereafter, temporary permits were issued, in view of the status quo temporary permit was in force. In the meanwhile, the petitioner filed the application for the renewal of permit but the same was not considered by the Authorities. So she filed the writ of mandamus and got direction to dispose her renewal application by the authority on 21.12.2010. Thereafter, she was running vehicle on 07.06.2016 and it met with an accident so she filed the application for replacing the vehicle, after obtaining order from the Court vehicle was replaced. Since her renewal application was not disposed hence she filed writ petition in WP No. 2084 of 2019 praying to direct the respondent to consider her request and also for granting temporary permit. Accordingly, this Court directed the authorities to consider the application, she submitted that renewal application for the period from 01.01.2016 to 31/12/2020 but the said application rejected by the respondent on the ground that petitioner cannot claimed herself as saved operator. Aggrieved that order she preferred an appeal in M.V. Appeal No. 4 of 2021, the state Transport appellate Tribunal while pending appeal she



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obtained temporary direction for running the vehicle but his appeal was dismissed on 23.02.2021 by holding that temporary permit granted in favour to the petitioners predecessor was cancelled from the date of publication of the scheme as per G.O. MS No. 1393 dated 12.06.1987. Therefore as per Section 99(2) of M.V Act prohibits granting permit after publication of the scheme under Section 100 of M.V Act. Therefore, no permit can be permitted after passing said scheme. Furthermore, challenging the said scheme writ petition filed by the petitioner's predecessor in W.P No. 1587 of 1988 was dismissed for non prosecution on 21.08.1998 . Therefore as on date scheme was not challenged. Furthermore, the State Government Dharmapuri District vide G.O MS No. 741 to 760 transport department dated 23.05.1995 and notified as per the section 10 of the Act in the gazette the said scheme cover all the district observing all the rules the appellate authority held that valid permit was not granted to the appellant during the period of 04.06.1976 to 03.06.1980. Furthermore, in respect of said route which was included in the inter state route agreement entered into between the Tamil Nadu and Karnataka as per G.O M.S No. 1173/ dated 30.04.1973 for the observations of one bus with four singles but the appellant was granted temporary permit under Section 87(1)(d) of M.V Act 1988 so she



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has not saved operator under Act 41 of 1992 thereby held that first respondent rightly rejected the application of renewal and thereby appeal was dismissed. Aggrieved over the said order now the petitioner filed this revision petition.

4. The learned counsel for the petitioner submitted that the Tribunal has erred in holding that approved scheme dated 12.06.1997 is binding on the appellant ignoring the fact that in the approved scheme published in the Tamil Nadu Gazette dated 06.08.1975 wherein appellant's predecessor C.P.Anjaiah finds a place in serial No. 130 hence he is protected operator without appreciating the said fact the Tribunal dismissed the said appeal as such is unjust and liable to be set aside. Further, he would argues that the tribunal failed to consider the plea raised by the appellant that she is saved operator and entitled to run the vehicle as her predecessor's name found place in the serial No. 130 of approved scheme to that effect the learned counsel for the the petitioner pointed out that the observation made by the Division Bench of this Court thereby the petitioner is protected operator without considering the order passed by this court in WP No. 33222 of 2023 dismissed the appeal as such is erroneous one. Further, he submitted that as per Act 41 of 1992 if permit holder had operated vehicle for the period from



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04.06.1976 to 30.06.1990 the crucial period enunciated under 41 of 1992

the permit holder is a saved small bus operator as laid down under Section 3 and 6 of the Act 41 of 1992 but the learned Tribunal failed failed to note the periods of the Act 41 of 1992 which protected the operators who was issued with permit between 04.04.1976 to 30.06.1990. Further, he submitted that when the petitioner is having valid permit upto 31.02.1995 as a saved operator since primary permit was issued by the State Transport authorities which was not been properly appreciated by the tribunal and the same is liable to be set aside. Further, he would submitted that Tribunal has erroneously concluded that for the period of 04.06.1976 to 30.06.1990 she was granted that temporary permit thereby she is not saved operator under Act 41 of 1992 as such is illegal since because after the death of original permit holder in the year 1977 the permit was transferred to his son Sathyanarayana. Thereafter, his legal heir present petitioner is having valid pucca permit during the crucial period enunciated under Act 41 of 1992 even after she continuously running the bus as per order passed by this Court but all these legal proposition were not been properly appreciated by the Tribunal thereby the same is illegal and liable to be set aside.



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5. Further would contend that even the tribunal failed to take note of the observation made by this court in the writ petition filed by her depend upon status as saved small bus operator she has been recognised by the respondent by proceedings dated 05.09.2017 thereby she is entitled for the protection under Act of 41 of 1992. Even then tribunal under Act 41 of 92 the renewal order given by the authorities not been properly appreciated by the Tribunal erroneously gave findings that it is only temporary permit and also route has already been included in the centre state agreement. Once the route has been included as per the approved scheme the existing operators are saved operators. Therefore, the renewal of existing permit which was in existence prior to 1970, Since then the route was included in the Centre State permit the petitioners is entitled for the renewal but tribunal erroneously rejected the application by confirming findings given by the authorities as such is unjust and liable to be set aside. Further, also submitted that merely permit has been granted to state transport corporation, the renewal of the permit in favour of the petitioners cannot be rejected for the reason that the petitioner has been a operator prior to 1973 and this route is included in the Centre State Agreement. Hence, she prayed to set aside



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the order passed by the State Transport appellate tribunal.

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7. The learned counsel for the respondent submitted that original permit holder was one C.P.Anjaiah holder of the State carriage permit for the inter state route "Malur to Krishnagiri" via. Bagluar, Hosur and Sholangiri e.t.c., The said route was included in the inter state agreement entered between Tamil Nadu and karnataka as per the G.O(MS) No. 1173 Home(Tr.III)dept, dated 30.04.1976 for the operation of one bus four singles as per scheme which was occupied and operated by the Tamil Nadu State Transport corporation (Salem) and the same was published in Gazette dated 21.06.1977 thereby Anjaia who was permitted to operate that route, granted in favour of the State Transport corporation. Aggrieved that private permit holder C.P.Anjaiah filed the writ petition **No. 147/1972** before this Court against the draft scheme for nationalisation of the inter State route but he died on 22.11.1977 due to which the said permit was transferred to his legal heir/Sathyanarayana and the same was renewed for the period of five years from 01.01.1981 to 31.12.1985 subject to condition that permit so



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renewed shall ceased to be effective on the date of approval of the scheme.

Accordingly, the State nationalisation scheme on the inter state route "Malur to Krishnagiri" via. Bagluar, Hosur and Sholangiri e.t.c. was approved in G.O.Ms. No. 1393, Home Tr.III Department dated 12.06.1987 and published in gazette on 21.12.1988 with formal approval from the Central Government. Therefore, from the date of the approval the renewal of the permit was stands automatically cancelled. Thereafter, the said Sathyanarayana filed the Writ Petition in 15832 of 1988 challenging the said scheme and obtained interim direction of this court that he was permitted to operate fresh timing. Accordingly, temporary permit was issued to the petitioner from time to time continued the service till 02.03.1997 and the certificate was expired on 11.04.1997. Thereafter, due to non prosecution on the side of the petitioner said writ petition 15832 of 1988 was dismissed by this Court on 21.08.1998 and against that order the petitioner has not made any appeal before the appellate forum on such nationalisation scheme in G.O.Ms. No. 1393, Home Tr.III Department dated 12.06.1987 hold good and the permit granted to Tamil Nadu State Transport Corporation (Salem) limited Dharmapure on the inter state "Malur



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to Krishnagiri" became impeccable. Except State Transport other private persons were excluded from operating in the said route thereby the State alone entitled to operate the bus in the said route under the inter state agreement. Further, also contended that appellant had not holding state carriage permit during the crucial period from 04.06.1976 to 30.06.1990 to become saved operator under Tamil Nadu Motor Vehicles Act 1992. Therefore, the permit which was not renewed after 31.12.1985 may not renewed as per section 81(2) of Motor Vehicle Act as a matter of right order the automatic one as claimed by the petitioners thereby she is not entitled to taking shelter as saved operator under Act 41 of 1992. Therefore, the learned counsel for the respondent submits that order passed by the Tribunal is well reasoned needs no interference. He prays to dismiss this petition as no merits.

8. Further, he pointed out that during the period of 1982 to 2016 near about 18 years no application was made to operate the said route under the temporary permit after obtained as per the order this Court. Therefore, the renewal of the said carriage permit after long 18 years period as such is not permissible since because said state carriage permit ceased to be effective with effect from 31.12.1985 for renewal of route, new rules in Tamil Nadu



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as per schemes formulated in the year 1995 - 1997 & 1999. Further in the absence of valid State Carriage permit renewal of the permit claimed by the petitioners as such as per the Act 41 of 1992 is not permissible in law and the same was rightly appreciated by the Tribunal needs no interference prayed to dismiss this petition as no merits.

9. Considering the submissions on either side and also on perusal of records, it is an admitted fact that one Anjaiah hosur hold inter state carriage permit No. 150(18)/1964, which was issued by the Regional Transport authorities, Dharmapuri, for a period of 3 years from 01.01.1964 to 31.12.1967, to operate one stage carriage on the inter state route from "Malur to Krishnagiri" Via., Bagalur, Hosur and Shoolagiri and subsequently the said permit was renewed for every three years from time to time till 21.12.1980. Further, it is also undisputed fact that the said inter state route from "Malur to Krishnagiri" was included in the inter state agreement entered between the Tamil Nadu and Karnataka as per the G.O (MS). No. 1173 Home (Tr.III) Dept, dated 30.04.1973 for the operations of one bus with four singles. Thereafter, the draft scheme for nationalisation of the inter state "Malur to Krishnagiri" was formulated and



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published in Tamil Nadu Government Gazette No. 192, dated 21.06.1977.

Since in the said scheme only one bus was permitted to operate for the said inter state route and the same was allotted to **State Transport Corporation, Dharmapuri**. Hence, the said permit holder filed the writ petition against the said draft scheme of nationalisation but due to his demise in the year of 1977 the said state permit was transferred to this legal heir Sathyanaryana and the permit was renewed for further period from 01.01.1981 to 31.12.1985 subject to the condition that permit so far renewed shall ceased to be effective on the date of approval on Nationalisation scheme. Accordingly, the said scheme was approved in G.O. M.S No. 1393 Home Department dated 12.06.1987 and published in Tamil Nadu Gazette NO. 49, dated 21.12.1988. Therefore, according to the respondent Authorities on the date of approval of the national scheme, the renewal of the said permit ceased to be effective. But the contention of the petitioner is that said Sathyanarayana challenged the said nationalisation scheme by filing writ petition before this court in W.P No. 15872 of 1988 obtained interim stay and as per direction of the Court fresh timings was allotted to the permit holder. Thereafter, the temporary permit was issued after demise of the said



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Sathyanarayana to his wife/Rathanamma/petitioner herein, she continued the same by the interim order passed by this Court but as rightly pointed out by the respondent counsel the said writ petition in W.P. No. 15872 of 1988 was dismissed for non prosecution on 21.08.1998. **Therefore, the interim order passed for the temporary permit came to end on the date of dismissal of the said writ petition.** Admittedly, the petitioner has not made any appeal against the order said dismissal order. Therefore, the formulation of the nationalisation scheme is in force till date and not been challenged by the petitioner. But again another writ petition was filed on 10817/1998 as there was notice was issued by the Authorities petitioner again obtained interim protection. Then after long period of 18 years petitioners filed the application before the State Transport authorities in the year of 2016 to grant temporary permit to that effect he got direction from this Court subsequently temporary permit was issued and extended on various dates finally in writ petition No. 2084/2019 this Court directs the respondent to consider the renewal of her permit but the same was rejected by the State Transport corporation as per the nationalisation scheme dated 21.12.1988 the permit of the petitioner became infructuous so she is not entitled for the



renewal.

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10. But according to the petitioner she is saved operator under Tamil Nadu Act 41 of 1992 though she is entitled for permit renewal for the period she prayed in that application. Further, the learned counsel pointed out the observation of the division bench of this Court as well as the other writ petitions her temporary permit was availed by her. But the the respondent relied the judgement in the case of Cheran Transport corporation Vs. Regional Transport Authority Coimbatore and others reported in 1996(7) SCC 343:

The decision in the case of [Chinnaswamy's case \(supra\)](#) was sought to be relied in the subsequent case of [S.V. Sivaswami Vs. Motor Transport \(Firm\)](#), 1990(3) SCR 802. In [Sivaswami's case \(supra\)](#) also by reason of the interim orders which were passed by the High Court, both the parties were allowed to operate on the same route. A common request was made in this Court that an order similar to one in [M. Chinnaswamy's case \(supra\)](#) be passed and both the parties be allowed to operate on the said route. This Court in [Sivaswami's case \(supra\)](#) (to which one of us was a party) referred to the observations made in [Chinnaswamy's case \(supra\)](#) as well as another similar order which had been passed in Civil Appeal No. 136 of 1980, and observed as follows:

"With respect, we are unable to accept this common request made to us in the present case. It is obvious from the above quoted orders on which the common request is based that in none of them, any point of law was considered or decided and the order permitting both the claimants to operate on the route, even though the permit to be granted was only one, was made without adverting to the legal implications of such an order. In the first place, grant of a permit is to be made primarily with reference to



the object of serving the interests of the general public and it cannot be treated as a dispute relating to grant of a permit between the rival claimants only. It is not in the nature of a lis for adjudication of conflicting interests of private individuals alone. It is, therefore, not a matter which can be decided merely on the basis of an agreement between the two rival claimants who alone out of several claimants remain in the lis at this stage. The question of grant of permit is to be decided primarily by the R.T.A. having regard primarily to the interests of the general public and other prescribed relevant factors. That apart, under [Section 47 \(3\)](#) of the Motor Vehicles Act, 1939, the R.T.A. is first required to determine the number of stage carriages for the route and then to grant permits according to that determination made earlier. Grant of any permit in excess thereof was not permissible without first making a fresh determination and increasing the number, if necessary. It is, therefore, obvious that an order of this kind cannot be made unless the grant of a permit to both the rival claimants would be within the limit fixed by the R.T.A. at the relevant time. There is nothing in any of these above quoted orders to indicate that this aspect was even adverted to or that there was material to indicate that the consent order so made was within the limit fixed by the R.T.A."

9.1. Further he relied the another judgement reported in 2003 SCC online Mad 298

32. The Tamil Nadu Motor Vehicles Act (Special Provisions) Act, 41 of 1992 has been interpreted by the Supreme Court in T.P.K. Thilagavathy's case and there can be no grant at all in favour of the writ petitioner as well. Any amount of renewal or interim orders, pending proceedings as per interim order which enabled the petitioners to continue their operation pending the proceedings before the State Transport Undertaking or pending revision petitions or pending the proceedings will not help the petitioners nor they could make novel claim on that basis. The pronouncement of the Supreme Court in [Cheran Transport Corporation Ltd., Vs. Regional Transport Authority](#), reported in 1 996 (7) SCC 343, is a death knell to the petitioners' claims.



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The judgment which clearly indicates that renewal based on the interim order which include the petitioner to continue operations while pending proceedings will not help the petitioner not entitled to claim on the basis of section 10 of the M.V Act.

11. The said provision of sections 10 does not valid any permit which was initially invalid. coming to the facts of present case, that the permit granted to the petitioners was ceased to be effective from the date of approval of the scheme from 26.12.1988 therefore obtaining interim order plying with the said permit by the petitioner would not sufficient to conclude that she had valid pucca permit in order to come under the category of saved operator. But as per the contention of the petitioner that after demise of the original permit holder Anjaia his successor Sathyanaryana and thereafter she succeeding the possession of the permit from the deceased was holding such carriage permit during the crucial period of 04.06.1976 to 30.06.1990 thereby she claimed herself as saved operator as permitted under Tamil Naud Motor Vehicle Act 41 of 1992

12. As per the Act 41 of 1992 saved operators are those who had operate their vehicle continuously for the entire crucial period on



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04.06.1976 to 30.06.1990 as enunciated under the provisions of 3 and 6 of Tamil Nadu Motor Vehicle Act. The case in hand the original permit holder Anjaiah has been issued permit valid upto three years from 01.01.1964 to 31.12.1967. Further, renewed upto date 31.12.1980, but the original permit holder died on 22.11.1977, thus he cannot be considered as saved operator under 41 of 92 Act So also his successor Sathyanarayana also holding the said carriage permit on the said route after 31.12.1985. Therefore, the present petitioner Rathinam legal heir of the Sathyanarayana after his demise 21.01.1989 was not holding any (lien) as saver operator since his predecessor was not holding said carriage permit continuously during the crucial period of 04.06.1976 to 30.06.1990 therefore, the present petitioner as well as her predecessor in title not holding valid permit during the entire period as enunciated under the Act i.e 04.06.1976 to 30.06.1990. Hence, the claim of renewal of permit by the petitioner is liable to be rejected and the same was rightly rejected by the Transport Authorities as well Tribunal confirmed the same which needs no interference of this Court. After formulation of the provision during the life time of the sathyanarayana the permit was renewed for the further period of 5 years from 01.08.1981 to 31.12.1985 subject to the condition that permit so far renewed was ceased to



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be effective on the date of approval of the scheme and the same was approved as per the GO MS No. 1393 published in Gazette 21.12.1988.

Therefore from the date of the said approval renewal of the permit was automatically stands ceased. Therefore, neither Sathyanarayana nor his legal heir/petitioner herein not holding any valid permit. Though operated the bus only based on the interim order of this court alone, which would not confer any valid right of claim renewal of the permit as matter of right to that effect authorities relied by the respondents clearly applicable to the facts of the present case . Furthermore, as per the scheme in the year 1995 to 1999 the new permit is banned in the state that Tamil Nadu and the same was rightly observed by the tribunal which needs no interference of this Court. Accordingly, this petition is dismissed. No Costs. Consequentially, connected miscellaneous petition is closed.

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