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C.R.P.No.269 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :	26.03.2024
PRONOUNCED ON :	04.06.2024

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.No.269 of 2022
and C.M.P.Nos.1317 & 1319 of 2022

Tmt.A.M.Kalaivani Ammal (deceased)

1. A.M.Munirathnam Mudaliar

2. A.M.Naveen

3. A.M.Latha

4. A.Anu Revathi

5. A.M.Saravanan

.. Petitioners

Versus

1. State Transport Authority
Chepauk, Chennai 600 005

2. Tamil Nadu State Transport Corporation,
(Salem) Limited,
Dharmapuri Division,
Salem Salai, Bharathipuram,
Rep. by the General Manager,
Dharmapuri.

3. N.Sababathy Nadar

.. Respondents



C.R.P.No.269 of 2022

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order of the learned State Transport Appellate Tribunal, Chennai in M.V.Appl.No.93/2019 dated 22.12.2021.

For Petitioners : Mrs.Radha Gopalan
for Mr.K.Hariharan

For R-1 : Dr.S.Suriya,
Additional Government Pleader

For R-2 : Mr.K.Kathiresan

For R-3 : Mr.M.Palani

ORDER

Challenging the order of the learned State Transport Appellate Tribunal, Chennai made in M.V.Appl.No.93/2019 dated 22.12.2021, the appellant has preferred the present revision.

2. Brief facts that are required for the disposal of the civil revision petition are as follows:-

2.1. Initially, one Inter State stage carriage Permit, in the route 'Bangalore to Hosur' to ply 2 singles, was granted to the predecessor of the appellant,



C.R.P.No.269 of 2022

namely Thiru.Rajasekaran. The said Rajasekaran was operating a stage carriage bearing Registration No.TDL 2345 on the Inter State route 'Bangalore to Hosur', as per the Inter State Agreement, which was entered into between the States of Tamil Nadu and Karnataka, vide Sl.No.4 Appendix II in G.O.Ms.No.1178, Home dated 30.04.1973. While the primary Authority being the State Transport Authority, Karnataka, the countersigning authority was the State Transport Authority, Tamil Nadu.

2.2. The primary Permit was issued by the State Transport Authority, Karnataka and the same was counter signed by the State Transport Authority, Chennai and the same was valid upto 30.09.1986. Subsequently, the primary Authority / State Transport Authority, Karnataka granted variation of permit by way of additional trips i.e. from 2 Single to 4 Single Trips and also inclusion of one more vehicle in the Permit, through the above additional 2 Single trips, which were not covered under the Inter State Agreement. Hence, the application for the counter signature of Permit came to be rejected by the Countersigning Authority/ State Transport Authority, Tamil Nadu, on the ground that the said variation is not included in the Inter State Agreement vide R.No.17216/E4/1985 by order dated 26.12.1985.



C.R.P.No.269 of 2022

2.3. Aggrieved by the rejection of counter signature, the predecessor of the Appellant filed an appeal in App.No.73/1986 and an interlocutory application seeking interim directions in I.A.No.216/1986 before the State Transport Appellate Tribunal, Chennai (hereinafter called as the 'Tribunal') and the Tribunal, by its order dated 18.03.1986 rejected the request made by the appellant seeking interim directions and dismissed the I.A.No.216/1986. Against the said order of dismissal of I.A., the predecessor of the Appellant filed a Civil Revision Petition in C.R.P.No.1259/1986 and a C.M.P.No.5547/1986 seeking interim directions before this Court, whereby this Court by its order, dated 06.05.1986 directed the authority to grant temporary Permit for the said additional vehicle and Singles, on payment of double point tax till the disposal of the C.R.P.No.1259/1986.

2.4. Meanwhile, the Permit was transferred to the name of Tmt.G.Kavitha Gopinath and then again transferred to the present appellant Tmt. Kalaivani Ammal. This Court, disposed of the above civil revision petition pending in C.R.P.No.1259/1986 with a direction to the Tribunal to dispose of Appeal No.73/1986 on or before 31.03.1998, pursuant to which, the Tribunal also dismissed the appeal on 31.03.1998, confirming the order of dismissal of I.A.No.216/1986.



C.R.P.No.269 of 2022

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2.5. Aggrieved by the order of the Tribunal, the permit holder filed W.P.No.5117/1993 before this Court in order to obtain a direction to maintain continuity of service. Accordingly, temporary permits were granted for 90 days periodically on payment of double point tax upto 12.05.2002. But the said writ petition came to be dismissed by this Court on 01.03.2002. Against which, Writ Appeal in W.A.No.750 of 2002 was filed and the same also came to be dismissed on 25.07.2002 on the ground that similar question was pending before the Hon'ble Apex Court in C.A.No.6306 of 1998. Against which, the petitioner filed C.A.No.3606/2002 before the Hon'ble Apex Court and the Hon'ble Apex Court granted interim directions in favour of the appellants on 12.02.2007.

2.6. Accordingly, the pucca permit for the route Bangalore to Hosur (via) Madivala, Chandapura, Anaikal, Thali and Denkanikottai was countersigned by the first respondent upto 30.09.2011 to perform additional vehicle on double point tax. In the meantime, in the year 2008 the varied route was included in the Agreement entered into between the two States viz., State of Karnataka and State of Tamil Nadu as Sl.No.7, Annexure H, Part-I, with rider that the Sl.No.7 one additional bus with 4 singles subject to the disposal of C.A.No.3606/2002 on the file of Hon'ble Supreme Court and pursuant to the same, the State Transport



C.R.P.No.269 of 2022

Authority, Tamil Nadu countersigned the permit upto 30.09.2011 on single point tax.

2.7. Aggrieved by the same, the petitioner preferred App.No.93 of 2019 before the Tribunal and pending appeal, interim directions have been granted for plying of the vehicle and for issuance of temporary permits till the disposal of the appeal. Ultimately, the said appeal was dismissed by the Tribunal by its order dated 22.12.2021, against which the present Civil Revision Petition has been filed.

2.8. While the appeal was pending, Tmt.Kalaivani Ammal died and her legal heirs were brought on record before the Tribunal. During the pendency of the Civil Revision Petition, the Permit was transferred from the name of deceased Tmt.Kalaivani Ammal to the name of Mr.A.M.Munirathinam Mudaliar, one of the legal heirs of Tmt.Kalaivani Ammal. While so, the Permit was also renewed for a period from 01.10.2021 to 30.09.2026, which the Tribunal failed to consider while rejecting the application filed by the petitioner and erroneously passed an order in M.V.Appl.No.93/2019, dated 22.12.2021.



C.R.P.No.269 of 2022

3. According to the learned counsel for the petitioner, the reasoning given by the respondent State Transport Authority, Tamil Nadu is that, even if there is an Inter-State Agreement, under Section 88 of Chapter V of the Act, for increasing the number of trips, such an Agreement cannot override the provisions of Chapter VI and further, relied on the judgment of the Hon'ble Supreme Court made in C.A.No.4480/1998. Further, as the Civil Appeal filed by the petitioner was dismissed as withdrawn without any liberty, the order of the Transport Authority, rejecting the petitioner's application for additional trips has become final. Therefore, even if this is included in the Agreement, the same cannot override the Scheme. Therefore, the same cannot be granted and hence, the application filed by the petitioner came to be rejected.

4. Adding further, the learned counsel for the petitioner raised the following contentions against the order passed by the State Transport Appellate Tribunal, Chennai in M.V.Appl.No.93/2019 dated 22.12.2021 and they are as under:-

(a) During the pendency of the Civil Revision Petition, the petitioner has preferred Civil Appeal against the rejection of the countersignature of the variation. Though the State Transport Authority, Karnataka has been throughout granting renewal of the variation, the countersignature was rejected in 1986 on



C.R.P.No.269 of 2022

the ground that this variation is not included in the inter-state agreement entered into between the State of Karnataka and State of Tamil Nadu. Subsequently, in 2008, the variation has been included in the inter-state Agreement. Therefore, the reason for which the countersignature was rejected is no longer available to the State Transport Authority, Tamil Nadu as the variation is included in the inter-state Agreement. Hence the State Transport Authority, Tamil Nadu ought to have granted countersignature of the variation soon as the same is included in the inter-state agreement.

(b) As regards the reliance placed by both State Transport Authority, Tamil Nadu as well as the Tribunal that Chapter V over rides Chapter VI and therefore, even though the route is included in the inter-state Agreement since there is an approved Scheme of the year 1999, no variation can be granted. For that, they relied on the judgment of the Hon'ble Supreme Court in Civil Appeal No.4480 of 1998 dated 19.7.2016. ***G.T. Venkataswamy Reddy vs. State Transport Authority and others*** reported in (2016) 8 SCC 402.

“51.11. 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 68-B of the Act. Section 63 being in Chapter IV of the Act, the Scheme approved under Chapter



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C.R.P.No.269 of 2022

IV-A will prevail over it.

51.12. 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" .

Therefore, if as per the Approved Scheme an operator is saved, then the Authority cannot reject the countersignature on the ground that as per the Approved Scheme no countersignature can be granted. According to the learned counsel for the petitioner, in the present case, the 1999 Scheme itself specifically permits and protect the operators whose routes are included in the inter-state agreement since the petitioner's four additional singles with one more vehicle is permitted under the supplemental agreement.

(c) As per Approved Area Scheme, 1999 , 'To the complete exclusion of other persons other than the State Transport Undertakings of other States, the existing permits of small operators protected under the Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992 (Tamil Nadu Act 41 of 1992, the permits of stage carriage operators covered by Inter-State Agreements and the permits of mini bus operators to operate in the rural areas of the District where no stage carriage services are provided up to a route length not exceeding 20



C.R.P.No.269 of 2022

Kms. with an overlapping distance not exceeding 4 kms on the routes where stage carriage are operating'. Since the Scheme itself allows the operators whose routes are included in the inter-state Agreement, as pursuant to 2008 inter-state Agreement, the petitioner's variation is included, and therefore, according to the learned counsel for the petitioner, the petitioner is a saved operator as per the judgment of the Hon'ble Supreme Court in **G.T. Venkataswamy Reddy's** case supra, whereby he should be granted with countersignature of variation i.e., one additional vehicle with 4 additional singles.

(d) Furthermore, the learned counsel stated that the Supplemental Reciprocal Agreement was entered into between both the States on 1.1.2008 after taking into consideration the mileage which each State is intended to operate and then only the agreement has come into effect. Therefore, while publishing the Supplemental Reciprocal Agreement, both the States have arrived at the distance that has to be operated by both the States, number of bus and singles that are to be included in the agreement. So, when the petitioner's additional vehicle with four singles was included in the Supplemental Reciprocal Agreement, which itself goes to show that it is only entered into after both the States have agreed for the same. Therefore, to reject the grant of counter



C.R.P.No.269 of 2022

signature is highly illegal and cannot be countenanced. The reliance placed on the judgment of the Hon'ble Supreme Court **AIR 2018 SC 5354** at Page 271:

"8. There cannot be any dispute that the Scheme is unilateral, whereas the reciprocal agreements are bilateral. Despite the availability of Scheme, the Union Territory of Chandigarh and the State of Punjab have consciously entered into a reciprocal agreement permitting the non-A.C. buses, for which the State of Punjab had issued permits prior to 1966 and it continued to be renewed by the State of Punjab to operate in the Union Territory of Chandigarh. It has also come in the affidavit of the State of Punjab that such mileage has been taken into consideration for the mileage entitlement of the Union Territory of Chandigarh, in the reciprocal agreement which has come into effect on 04.06.2008. Therefore, unless the reciprocal agreement is superseded by a fresh agreement or unless there is a new scheme framed by the Union Territory of Chandigarh specifying the provisions to the contrary, the buses operated by the appellant, which had permits issued prior to 1.11.1966 and so long as they are renewed by the State of Punjab, the Union Territory of Chandigarh cannot refuse counter signature for the reason that the permits already issued in 1966 had outlived its life after five years of the reorganization. The overriding effect provided in Section



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C.R.P.No.269 of 2022

98 of the said Act operates only in case of an inconsistency on a legal position. There is no such situation in the present case. On the contrary, the reciprocal agreement is on mutually beneficial terms."

The learned counsel for the petitioner insisted that unless the Supplemental Reciprocal Agreement is superseded by another Agreement and unless a new Scheme is framed, the countersigning authority cannot refuse to grant countersignature. Overriding effect provided under Section 98 of the Motor Vehicles Act operates only in case of an inconsistency on a legal position.

(e) In so far as the withdrawal of the Civil Appeal before the Hon'ble Supreme Court, it can be seen that the Civil Appeal was filed in 2003 and the interim order was granted in the year 2007. So, at that time when the petitioner preferred the Civil Appeal before the Hon'ble Supreme Court, the variation was not included in the inter-state Agreement and only subsequent to the filing of Civil Appeal, the variation was included in the inter-state Agreement. Therefore, once as per the 1999 Scheme, if the route is covered by inter-state Agreement they are saved and protected operators under the Scheme. Therefore, the learned counsel would vehemently contend that as the petitioner's route is covered by the inter-state Agreement, he is a saved operator from 2008, therefore, he is automatically entitled for countersignature and this is the reason why he has



C.R.P.No.269 of 2022

withdrawn the civil appeal. This has not been dealt with by the Tribunal though the same was raised in the grounds of appeal before the Tribunal.

5. Learned counsel for the petitioner relied upon the judgments made in ***G.T.Venkataswamy Reddy vs. State Transport Authority and others*** reported in (2016) 8 SCC 4025; and ***Ambala Bus Syndicate Private Limited vs. Chandigarh Administration and others*** reported in (2019) 12 SCC 685.

6. Concluding her arguments, the learned counsel submitted that by inclusion of the route in the inter- state Agreement, the petitioner has become a saved operator under the Approved Area Scheme for the Dharmapuri District dated 17.11.1999. The said Scheme is only unilateral whereas the Agreement is bilateral and therefore, as per ***Ambala Bus Syndicate Private Limited's*** case (cited supra), as there is no inconsistent agreement, and the same holds good, both the Governments knowing fully well have entered into the Agreement and therefore they cannot turn around and take a different stand. Moreover, withdrawal of the Civil Appeal is only pursuant to the inclusion of the variation in the inter-state Agreement, which is subsequent factor of filing Civil Appeal in 2008. The respondents cannot consider the same as a defective ground against the petitioner and hence, the learned counsel for the petitioner prayed for



C.R.P.No.269 of 2022

allowing the civil revision petition by granting renewal of countersignature, thereby safeguarding the interest of justice.

7. Per contra, Mr.M.Palani, learned counsel appearing for the third respondent made the following submissions:-

7.1. The Civil Appeal filed by the petitioner herein, along with the similar cases, came up for hearing before the Constitution Bench of the Hon'ble Supreme Court and the Hon'ble Supreme Court after hearing all parties concerned, resolved the conflict arising in between the Tamil Nadu case and Karnataka case and approved the judgment arising from the State of Tamil Nadu namely ***Pandian Roadways vs. M.A.Eagapen's*** case reported in (1987) 2 SCC 47 and overruled the judgment of Karnataka High Court rendered in Jayaraman's case reported in (1984) Supp. SCC 244 and rendered the following findings:-

“51.5. Once a scheme formulated under Section 68-D gets approved under Section 68-D(3) of Chapter IV-A, then all the permits in the route/area covered by the scheme will get frozen by virtue of operation of Section 68-FF.

51.8. Increase in the number of trips or vehicles which were being run under the existing exempted permit under a scheme will amount of grant of a new permit to operate one more stage carriage which is not permissible under section 68-FF.



C.R.P.No.269 of 2022

51.11. 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 68-B of the Act. Section 63 being in Chapter IV of the Act, the Scheme approved under Chapter IV - A will prevail over it."

As stated herein above, the petitioner's case is a leading case and based upon the fact of the petitioner's case, the law is laid down by the Hon'ble Supreme Court of India, as aforesaid. The Hon'ble Supreme Court after laying down the law referred the matter to the regular Bench to dispose the concern Civil Appeal in accordance with Law laid down by the Constitutional Bench.

7.2. Learned counsel for the third respondent further submits that in pursuant to the direction given by the Constitutional Bench, the petitioner's case was listed for hearing before the regular Bench of Hon'ble Supreme Court on 22.09.2016, wherein the petitioner's case was dismissed as withdrawn on the said date. According to the learned counsel for the third respondent, the petitioner did not withdraw her case simply, but tried her best to persuade the Hon'ble Supreme Court and argued the case on merits. On sensing the mood of the Hon'ble Supreme Court, the petitioner withdrew the Civil Revision Petition and accordingly the Hon'ble Supreme Court dismissed the civil appeal as



C.R.P.No.269 of 2022

withdrawn. After dismissal of the Civil Appeal as withdrawn, the petitioner made an application before the Tamil Nadu Transport Authority for renewal of countersignature in respect of 4 more singles with addition of one vehicle on the route Bangalore to Hosur for the period from 01.10.2016 to 30.09.2021. The Authority rejected the same on the ground in as much as the Civil Appeal filed on the file of Hon'ble Supreme Court of India is dismissed as withdrawn, the application for the renewal of countersignature in respect of 4 singles with one vehicle is not maintainable.

7.3. He further added that it is settled law that once a ligation is withdrawn then there is an end of the matter and no further litigation can be initiated after withdrawal of the case. In the light of the law laid down by the Hon'ble Supreme Court, the learned counsel for the third respondent submits that as the petitioner voluntarily withdrew the Civil Appeal pending on the Hon'ble Supreme Court again digging open the same issue subsequently is nothing but abuse of process of court and vexatious litigation. Hence, the order of the Authorities below, rejecting the application for renewal of countersignature on the basis withdrawal of the Civil Appeal before the Hon'ble Supreme Court is well founded and does not need any interference of this Court and prayed for dismissing the Civil Revision Petition.



C.R.P.No.269 of 2022

8. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials placed before this Court.

9. It is true that proviso to Section 104 states that temporary permit can be granted to the private operator on notified route if no application for permit, in pursuance of the approved Scheme, has been made by the State Transport Undertaking. But this proviso cannot be read in isolation. According to Sections 99 and 100 of the Act, routes are nationalised *"for the purpose of providing an efficient, adequate, economical and properly co-ordinated transport service."* If the Corporation is unable to provide all road transport services specified in the Scheme, temporary permits can be granted to private operators in respect of those services regarding which Corporation has not applied for permits.

10. In the inter-State Agreement entered between the State of Tamil Nadu and the State of Karnataka as mentioned above, one Inter State stage carriage Permit, in the route 'Bangalore to Hosur' to ply 2 singles, was granted on the Inter State route 'Bangalore to Hosur', as per the Inter State Agreement. As there is inclusion of the route in the inter- state Agreement, the petitioner has become a saved operator under the Approved Area Scheme. The said Scheme is unilateral, whereas the Agreement is bilateral. Therefore, as per *Ambala Bus Syndicate*



C.R.P.No.269 of 2022

Private Limited's case (cited supra), there is no inconsistent agreement between the two States and the same holds good. Both the State Governments knowing fully entered into the Agreement and therefore, they cannot turn around and take a different stand. Withdrawal of the Civil Appeal is only pursuant to the inclusion of the variation in the inter-state Agreement. The respondents cannot reject the petitioner's application on such grounds.

11. For the above reasons, the Civil Revision Petition stands allowed, thereby setting aside the order passed by the respondent State Transport Appellate Tribunal in M.V.Appeal No.93/2019, dated 22.12.2021. No costs. Consequently, connected miscellaneous petitions are closed.

04.06.2024

Index : Yes / No

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Neutral Citation: Yes / No

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C.R.P.No.269 of 2022

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- To:
1. The State Transport Authority
Chepauk, Chennai 600 005
 2. The General Manager,
Tamil Nadu State Transport Corporation,
(Salem) Limited,
Dharmapuri Division,
Salem Salai, Bharathipuram,
Dharmapuri.
 - 3) The Section Officer,
V.R.Section, High Court, Madras.



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C.R.P.No.269 of 2022

J.NISHA BANU, J.,

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Order made in
C.R.P.No.269 of 2022

Dated:
04.06.2023