



W.P.Nos.8255 and 8306 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.8255 and 8306 of 2011
and M.P.Nos.1, 2 and 2 of 2011

W.P.No.8255 of 2011:-

A.Shivakumar

... Petitioner

-Vs-

1. The Union Of India,
Represented By The Secretary,
Ministry Of Transport
& Shipping Central Secretariat,
New Delhi.
2. The State Of Karnataka,
Represented By The Secretary To Government,
Home (Tr) Department,
Bangalore, Karnataka State.
3. The State Of Tamilnadu,
Represented By The Secretary To Government,
Home (Tr) Department, Fort St. George, Chennai-9.
4. The State Transport Commissioner,
Chepauk, Chennai-5.
5. The State Transport Authority,
M.S.Building, Bangalore, Karnataka State.
6. The Regional Transport Authority,



W.P.Nos.8255 and 8306 of 2011

Krishnagiri.

... Respondents

W.P.No.8306 of 2011:-

P.Murugesan

... Petitioner

-Vs-

1. The Union Of India,
Represented By The Secretary,
Ministry Of Transport
& Shipping Central Secretariat,
New Delhi.
2. The State Of Karnataka,
Represented By The Secretary To Government,
Home (Tr) Department,
Bangalore, Karnataka State.
3. The State Of Tamilnadu,
Represented By The Secretary To Government,
Home (Tr) Department, Fort St. George,
Chennai-600 009.
4. The State Transport Authority,
Chepauk, Chennai-600 005.
5. The State Transport Authority,
M.S.Building, Bangalore, Karnataka State.
6. The Regional Transport Authority,
Krishnagiri.

... Respondents

Common Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the letter No.79921/E4/2011 dated 30.12.2010 of the State Transport Authority, Chepauk, Chennai-5, the 4th respondent herein and quash



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the same and direct the State Transport Authority to implement the order dated 07.05.2007 under Sec.88(1) Second Proviso Motor Vehicles Act 59/1988.

In W.P.No.8255 of 2011

For Petitioner : M/s Meenakshi Ganesan
For R3, R4
and R6 : Mr.N.Naveen Kumar
Government Advocate

In W.P.No.8306 of 2011

For Petitioner : No appearance
For R3, R4
and R6 : Mr.N.Naveen Kumar
Government Advocate

COMMON ORDER

These writ petitions have been filed challenging the order passed by the fourth respondent dated 30.12.2010, thereby directed the State Transport Authority shall not grant any permit except in accordance with the scheme.

2. The petitioners were granted Enclave permit under Section 88(1) of Second Proviso of the Motor Vehicles Act, 1988 for a period of five years and thereafter, it was renewed for another five years. Finally, it was renewed from 2008 to 2013. The said renewals were granted by State Transport Authority, Karnataka. Accordingly, the petitioners have been operating on the route in question from the date of enclave permit. However, the modified Area Scheme



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for Dharmapuri district in G.O.Ms.No.1529 (Home) (Transport III) dated 17.11.1999 was not in force at the time of permit which was granted in favour of the petitioners. Therefore, the said right cannot be ousted by an inter-state scheme.

3. For the grant of enclave permit in the Central Act under Section 88(1) of the Second Provision, no objections could be raised by a rival in business or competitor. The policy of the Central Act is liberalization of grant of permits and the permits are open for all. The enclave permits of the petitioners overlaps the Area Scheme and cannot operate on the portion lying in Dharmapuri district in wrong. The enclave permits are governed by the Inter-state agreements between the two States, as early as in the year 1973, where tax exemption is granted and the same provisions continues in 1988 Act also. However, the buses of the petitioners were interfered by the Regional Transport Officer, Hosur without any check report or charge memo and called upon the petitioners to submit explanations. Therefore, the petitioners approached this Court in various writ petitions and the same were dismissed.

4. Further, the petitioners submitted representation and in the reply it was stated that as per Section 104 of the Motor Vehicles Act, 1988, where a



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scheme has been published under Sub Section (3) of Section 100 of the Motor Vehicles Act, 1988, in respect of any notified area or notified route, the State Transport Authority or the Regional Transport Authority, as the case may be, shall not grant any permit except in accordance with the scheme. Now, the State Transport Authority, Karnataka has granted enclave permits.

5. A perusal of counter filed by the respondents 3, 4 and 6 and also the submissions made by the learned Government Advocate appearing for the respondents 3, 4 and 6 revealed that though the petitioners were granted enclave permit to the stage carriage by the Karnataka State Transport Authority, Bangalore so as to ply on the route Baklipura to Bangalore and back via Sarapura, the Tamil Nadu State Border covering a portion of the route in Tamil Nadu area approved scheme was published during the year 1997. Accordingly, the above enclave permit route via Sarapura falls within the area of an approved scheme of Dharmapuri District. The entire area of the then Dharmapuri District was covered and modified by the approved area scheme as published in G.O.(Ms).No.1529, Home (Transport III) Department dated 17.11.1999.

6. Subsequently, the Government of Tamil Nadu had published a comprehensive modified approved area scheme for the entire Tamil Nadu in G.O.(Ms).No.136, Home (Transport III) Department, dated 23.02.2011.



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Accordingly, a portion of the enclave route of Bakilpura to Bangaluru falls within the Dharmapuri District. Therefore, no private operator can be permitted to operate their buses in Tamil Nadu except those who are included in the area scheme. As against the permit granted by the State Transport Corporation, Bangalore, the State Transport Corporation Limited, Salem and State Express Transport Corporation Limited, Chennai filed revision petitions in R.P.No.1048 and 1058 of 1998 before the Karnataka State Transport Appellate Tribunal, Bangalore on the ground that the route in Tamil Nadu overlaps the approved area scheme of Dharmapuri Revenue District. Both the petitions were allowed by an order dated 30.03.1999.

7. Aggrieved by the same, some of the private operators similar to the petitioners have challenged by way of writ petitions before the Karnataka State Transport Appellate Tribunal, Bangalore and the same were also dismissed. It was also confirmed by the Hon'ble Division Bench of Karnataka High Court and also confirmed by the Hon'ble Supreme Court of India.

8. Thus, it is clear that the provisions under Section 88(1) of Motor Vehicles Act, 1988 cannot be read in isolation and it has to be read along with Sections 100(3) and 104 of Motor Vehicles Act, 1988. Thereafter, on the



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representation submitted by the petitioners, the Transport Commissioner, Chennai rejected the request made by the petitioners, on the ground that the petitioners have no *locus standi* to operate their buses inside Tamil Nadu.

9. In view of the above, this Court finds no infirmity or illegality in the order passed by the fourth respondent and the writ petitions are devoid of merits and are liable to be dismissed.

10. Accordingly, these writ petitions are dismissed. Consequently, connected Miscellaneous petitions are closed. There shall be no order as to costs.

21.08.2024

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No
mn

G.K.ILANTHIRAIYAN. J.

mn

To

1. The Secretary,
The Union Of India,
Ministry Of Transport



W.P.Nos.8255 and 8306 of 2011

& Shipping Central Secretariat,
New Delhi.

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Represented By The Secretary To Government,
Home (Tr) Department,
Bangalore, Karnataka State.
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Represented By The Secretary To Government,
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