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W.P.No.9093 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.08.2024

PRONOUNCED ON : 03.10.2024

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.9093 of 2011
and M.P.Nos.1 & 2 of 2011

V.Jayaprakash

... Petitioner

-Vs-

1. The State of Tamil Nadu,
Rep. by its Secretary,
Home (Transport) Department,
Fort St. George,
Chennai – 600 009.
2. The Union Territory of Pondicherry,
Rep. by its Secretary,
Home (Transport) Department,
Puducherry.
3. The State Transport Authority,
Chepauk,
Chennai – 5.
4. N.Gopalakrishnan

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the first respondent made in G.O.Ms.No.118 Home (Transport III) dated 18.02.2011 as published in the Tamil Nadu Government Gazette



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Extraordinary in Part II Section 2 dated 18.02.2011 and quash the same so far as it pertains to the inclusion of the route of the fourth respondent namely Pondicherry to Cuddaore via Reddichavadi found at Sl.No.24 in Annexure II to the Supplementary Reciprocal agreement.

For Petitioner : Mr.M.Palani
For Respondents
For R1 & R3 : Mr.N.Naveen Kumar
Government Advocate
For R2 : Mr.V.Vasanth Kumar
Additional Government Pleader (Pondy)
For R4 : Mr.S.Radha Gopalan

ORDER

This writ petition has been filed challenging the order passed by the first respondent in G.O.Ms.No.118 Home (Transport III) Department dated 18.02.2011, insofar as it relates to the inclusion of the route of the fourth respondent viz., Pondicherry to Cuddalore viz Reddichavadi found at Sl.No.24 in Annexure II to the supplementary reciprocal agreement.

Facts of the case :

2. The petitioner is the stage carriage operator in Pondicherry. He owned stage carriage bearing registration No.PY-01-V-7479 by permit inter-State route Pondicherry to Cuddalore. It is covered by the inter-State agreement arrived between the government of Puducherry and



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Tamil Nadu in the year 1985. The petitioner is a protected operator on the inter-State route in terms of Tamil Nadu Act 41 of 1992 and Area Approved Scheme published by the government of Tamil Nadu. The fourth respondent herein obtained an inter-State permit in respect of route Pondicherry to Cuddalore on transfer, from one Kaliamoorthy. The said Kaliamoorthy was operating the said route from Pondicherry to Cuddalore New Town Bus stand or Pondicherry to Kuruvinatham Colony.

3. Originally, the said Kaliamoorthy was granted permit to ply stage carriage on the route Pondicherry to Kannikoil. In the said route 3 kms distance from Kattupalayam to Reddichavadi situated in the State of Tamil Nadu. Therefore, he submitted application for variation involving extension of the route from Kannikoil to Kuruvinatham Colony via., Cuddalore New Town Bus stand. The State Transport Authority, Pondicherry, granted the said variation under the impression that the variation is only an intrastate route, as both the terminals of the route, lies in Pondicherry and the portion of the route lying in Tamil Nadu is only 15.08 kms, as such no counter signature was necessary as contemplated under Section 63(1) of the Old Act. It was challenged before the State



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Transport Appellate Tribunal, Pondicherry in Appeal Nos.180 & 162 of 1986. In the said appeals, the said Kaliamoorthy restricted the route up to Cuddalore on the ground that part of the extended route from Maruthadu to Kuruvinatham Colony was not motorable. Accordingly, the appeals were partly allowed by an order dated 27.05.1987 and granted the extension of the route restricting it upto Cuddalore.

4. Therefore, without obtaining counter signature from the Tamil Nadu authorities and without paying tax to the Tamil Nadu authorities, the predecessor of the fourth respondent cannot operate the route upto Kuruvinatham Colony. Therefore, he made an application for counter signature before the third respondent on 19.05.1987 and on receipt of the same, the third respondent directed the applicant viz., the predecessor of the fourth respondent, to produce the order of the State Transport Authority, Pondicherry, copy of the permit, registration certificate, fitness certificate and insurance certificate for making necessary endorsement, by its communication dated 11.06.1987.

5. However, the said Kaliamoorthy approached the State Transport Appellate Tribunal, Pondicherry, in I.A.No.767 of 1987 in



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Appeal Nos.162 & 180 of 1986 seeking the relief of permit him to operate on the varied route as per the proceedings of the State Transport Authority, Pondicherry dated 28.01.1986. Though the appeals were already disposed of, the Appellate Tribunal had entertained the said application and ordered as prayed for, in the application filed by the predecessor of the fourth respondent, by an order dated 06.07.1987 and order to maintain status quo. It was subsequently made absolute.

6. Thereafter, the said Kaliasmoorthy made an application to modify the variation granted by the State Transport Appellate Tribunal, Pondicherry, and on receipt of the same, the State Transport Authority, Pondicherry, by its communication dated 08.12.1987, directed him to get counter signature from the Tamil Nadu Transport Authority for modified route as the route is not covered by the inter-State agreement. However, he made representation dated 07.05.1990 to the State Transport Authority, Pondicherry, to make necessary entries in his permit so as to get counter signature from the Tamil Nadu Transport Authorities. However, it was returned by an order dated 07.06.1990, on the ground that it could not carry out the variation entries in the permit unless the State Transport Authority, Tamil Nadu grants concurrence to the



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variation as granted by the State Appellate Tribunal, Pondicherry. But once again by an order dated 07.04.1993, the State Transport Authority, Pondicherry, implemented the order of the Appellate Tribunal without obtaining concurrence of the State Transport Authority, Tamil Nadu. Accordingly, the said route became an inter-State route and he is liable to pay tax to both States.

7. On the other hand, it was challenged before this Court in W.P.No.8570 of 1993 and this Court by an order dated 22.06.1993 dismissed the writ petition. Aggrieved by the same, writ appeals were filed in W.A.No.1107 of 1993 and W.A.No.173 of 1997 in respect of demand of tax. While pending the writ appeals, the fourth respondent stepped into the shoes of his predecessor and transferred the permit in his favour. This Court by an order dated 19.09.1997, permitted the fourth respondent to operate inter-State route on payment of tax to both States and also permitted to operate till finalization of next inter-State agreement. Accordingly, the third respondent by its proceedings dated 17.03.2004, accorded counter signature in favour of the fourth respondent to operate inter-State route on payment of tax due to the State of Tamil Nadu.



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8. Aggrieved by the counter signature granted in favour of the fourth respondent, the petitioner challenged the same in W.P.Nos.10428 & 10358 of 2004 on the ground of lack of jurisdiction and it affects the petitioner's interest as the entire sector from Pondicherry to Cuddalore forms part of the petitioner's route in between his route to the distance of 24 kms. While pending the writ petition, the first and second respondents included the route of the fourth respondent in the supplementary agreement which is impugned in this writ petition and also published in the government gazette in both States on 18.02.2011.



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Rival Contentions of Counsels :-

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9. The learned counsel appearing for the petitioner submitted that the route of the fourth respondent is included in the inter-State agreement for extraneous consideration though the said counter signature accorded by the third respondent is totally illegal and without jurisdiction and it is hit by Tamil Nadu Act, 41 of 1992. Though the variation was granted in the year 1987 as inter-State route by the State Appellate Tribunal, but the same was counter signed by the third respondent only on 17.03.2004 that too in pursuant to the order passed by this Court. The reason for inclusion of private operators route in the inter-State agreement is that a person from other States who obtained the grant of permit or variation and counter signature from the third respondent on or before, 30.06.1990 but not found in the principal agreement alone are permitted to be included in the inter-State agreement, because the government of Tamil Nadu brought a legislation to protect the existing small bus operators who are operating on the approval scheme/notified route and obtained those permits in between 04.06.1976 to 30.06.1990, who are high by such approved scheme.

9.1. He further submitted that on or after 01.07.1990, the Act



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prohibits grant of any new permit on the notified route. Therefore though the fourth respondent obtained counter signature on 17.03.2004, it is hit by the Tamil Nadu Act 41 of 1992. Therefore, the first and second respondents have no jurisdiction and erred in validating the order which is nullity and non est in the eye of law by including in the supplementary agreement. Further, the draft supplementary notification under Section 88(5) of the Motor Vehicles Act, 1988 (hereinafter referred to as “the MV Act”) was published on 18.12.2009 fixing the date of hearing with reference to the objections received by it on 25.01.2010. The hearing was taken place on 25.01.2010 and the enquiry was conducted by the then Home Secretary by named S.Malathi. Subsequently, she was transferred from the Home Department and posted as Commissioner of Vigilance, Administrative Reforms. After hearing the then Home Secretary reserved the order. After her transfer, the order of final agreement was passed on 18.11.2010 by the present incumbent. It is a settled law that such an order which is heard by one authority and passed order by another authority is in gross violation of principle of natural justice and non-est in the eye of law.

10. The third respondent filed counter and the learned Government Advocate appearing for the respondents 1&3 submitted that



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the variation referred to by the petitioner has not been included and does not find place in the inter-State agreement between Tamil Nadu and Puducherry in G.O.Ms.No.118 Home Department dated 18.02.2011. The third respondent could not grant concurrence for the counter signature of permit for the varied route. However, the original route has been included in the supplemental reciprocal agreement between the State of Tamil Nadu and Puducherry.

10.1. The first draft supplemental agreement was notified in G.O.Ms.No.1079, Home department dated 18.12.2009 as required under Section 88(5) of the MV Act. After publication of notification, issued notice to submit representations, objections and suggestion, if any before the first respondent and also to conduct enquiry. The petitioner also submitted objections. Accordingly, the enquiry was conducted on 25.01.2010 in which many stage carriage operators/representatives and other members of the public attended the hearing and raised objections. Finally, the first respondent passed order on 18.02.2011 in G.O.Ms.No.118, Home Department for publication of the final supplemental reciprocal agreement between the State of Tamil Nadu and Puducherry under sub Section (6) of Section 88 of the MV Act.



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11. The fourth respondent filed counter and the learned counsel appearing for the fourth respondent submitted that the petitioner cannot challenge the inclusion of a route in the inter-State agreement since the petitioner has no locus standi to object the same and he cannot be regarded as a person aggrieved. The two State governments are involved and entered into the inter-State agreement. Therefore, the operator cannot challenge the inclusion of a route for the reason that inclusion or non-inclusion is an essential matter to be considered between the two governments on the principles of reciprocity and other factors. Therefore, the existing operator cannot have any say that the particular route could not include in the inter-State agreement or question the principles on which the route is included or not. The consequence of inclusion of a route in inter-State agreement is automatic grant of countersignature of permit and exemption from payment of double tax i.e., to countersigning State.

11.1. She further submitted that in fact, though no hearing is statutorily provided for entering into a final agreement, the operators are heard in connection with the draft reciprocal agreement and ultimately it



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is the order of the government and therefore the government is entering into an agreement under Section 88(5) of the MV Act. Further, the existing operators cannot take up overlapping in a scheme route to persons or inter-State operator. They are getting permit or countersignature when the route as such is covered in the inter-State agreement. Further it is public interest that matters and it is not vexatious personal interest of rival operators, which tantamount to the principle that governs the administration of MV Act viz., public interest alone.

11.2. Therefore, once the route is included in the inter-State agreement, it protects that said route and permit from saving clauses in nationalization schemes. She further submitted that a batch of writ petitions were filed challenging the inter-State agreement entered between the Union Territory of Puducherry and the State of Tamil Nadu. This Court by an order dated 26.11.2019 dismissed all the writ petitions with directions to seek consideration for inclusion of their route in any subsequent inter-State agreement that may be conceived or entered into by and between the governments. Aggrieved by the same writ appeals were filed in W.A.No.335 of 2020 etc., batch and the same was also dismissed by confirming the order passed by the learned Single Judge, by



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an order dated 08.07.2020. In fact, the fourth respondent herein is one of the party in W.P.Nos.9094 & 9095 of 2011. Therefore, the writ petition itself is not maintained and liable to be dismissed.

12. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

Discussions:

13. This Court already dismissed a batch of writ petitions in W.P.No.26278 of 2007 etc., batch, by an order dated 27.11.2019 including the present writ petition. However, liberty was granted to all the petitioners to seek consideration for issuance of stage transport carriage permit or any other permit as permitted by law in any other subsequent inter-State agreement that may be conceived or entered into by and between the governments. Subsequently, insofar as the present writ petition is concerned, the order was recalled and delinked the present writ petition by an order dated 03.12.2019.

14. Further, the petitioner already challenged the grant of



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countersignature in favour of the fourth respondent in W.P.Nos.10428 and 13058 of 2004. While pending the writ petitions, the inter-State agreement was entered between the State of Tamil Nadu and Puducherry in G.O.Ms.No.118 Home Department dated 18.02.2011, thereby extended the route and included in the inter-State agreement and the fourth respondent is permitted to operate the buses on the extended between Puducherry to Cuddalore viz Kannikoil. Therefore, the above writ petitions were dismissed as infructuous with liberty to challenge the inclusion of the said extension of route of the fourth respondent in the inter-State agreement between the government of Tamil Nadu and Puducherry by a separate proceedings.



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15. Though the said order was challenged in W.A.No.2009 of 2012, the Hon'ble Division Bench of this Court by an order dated 08.10.2014 recorded that already the petitioner filed this present writ petition (writ petition number wrongly mentioned as W.P.No.9091 of 2011 instead of W.P.No.9093 of 2011) and disposed the appeal with liberty to raise all grounds legal contention in the present writ petition. Therefore, this writ petition is very much maintainable.

Validation of permit :-

16. The petitioner is a stage carriage operator in the Union Territory of Puducherry, operating his stage carriage on the inter-State route Puducherry and Cuddalore. This route is covered by an inter-State agreement between the Government of Puducherry and Tamil Nadu in the year 1985 and the said agreement was also published in Puducherry government gazette dated 19.04.1985. The fourth respondent is the transferee of the permit from one Kaliamoorthy, who was earlier operating on the route Puducherry to Kannikoil. In the said route a distance of 3 kms from Kattupalayam to Reddichavadi though lies in Tamil Nadu, the counter signature from the neighbouring State is dispensed with as required under Section 88(1) of the MV Act. It is



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relevant to extract the provisions under Section 88(1) of the MV Act as

follows :-

“88.Validation of permits for use outside region in which granted-Except as may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region shall not be valid in any other region, unless the permit has been countersigned by the Regional Transport Authority of that other region and a permit granted in any one State shall not be valid in any other State unless countersigned by the State Transport Authority of that other State or by the Regional Transport Authority concerned;

Provided further that where both the starting point and the terminal point of a route are situate within the same State, but part of such route lies in any other State and the length of such part does not exceed sixteen kilometres, the permit shall be valid in the other State in respect of that part of the route which is in that other State”

17. While being so, the original permit holder made an application for variation, involving extension of the route from Kannikoil to Kuruvinatham Colony via Cuddalore. The State Transport Authority, Puducherry, granted permission for variation by the proceedings dated



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28.01.1986 under the impression that both the terminus of the route lies in the Union Territory of Puducherry and only a distance of 15.8 kms lies in Tamil Nadu territory, it does not attract the second proviso to Section 88(1) of the MV Act. It was challenged before the State Transport Appellate Tribunal, Pondicherry, in Appeal Nos.162 & 180 of 1986. However, while pendency of those appeals, the original permit holder filed a memo stating that he is not pressing his application seeking extension from Cuddalore to Kuruvinatham Colony and restricted upto Cuddalore. Accordingly, the appeals were allowed and restricted the extension up to Cuddalore by an order dated 27.05.1987. Therefore, it requires the counter signature from the State of Tamil Nadu in terms of Section 88(1) of the MV Act.

18. Accordingly, the original permit holder filed application for want of counter signature on 18.05.1987. In the said application, the original permit holder directed to produce the proceedings granting extension upto Cuddalore. The State Transport Authority, Puducherry, by its proceedings dated 07.04.1993, implemented the order passed by the Appellate Tribunal and granted variation as Pondicherry to Cuddalore though the Tamil Nadu State Transport Authority did not give



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concurrency. However, the original permit holder apprehended that he might be demanded tax by the State Transport Authority of Tamil Nadu, challenged the said order dated 07.04.1993 in W.P.No. 5870 of 1993 and the same was dismissed by this Court.

19. Aggrieved by the same, the original permit holder filed appeals in W.A.Nos.1107 of 1993 and 173 of 1997. During the pendency of the writ appeals, the fourth respondent stepped into the shoes of the original permit holder. Based on the directions issued in the writ appeals, the Tamil Nadu State Transport Authorities granted counter signature, enabling the fourth respondent to operate on the inter-State route viz., Puducherry to Cuddalore by the proceedings dated 17.03.2004. As stated supra, it was challenged by the petitioner in W.P.Nos.10428 & 13058 of 2004. While pending the writ petition, the variation route of the fourth respondent was included in the inter-State agreement dated 18.02.2011. Therefore, this Court by an order dated 10.04.2012, dismissed the writ petition in W.P.Nos.10428 & 13058 of 2004, with liberty to challenge the agreement insofar as its inclusion of the route of the fourth respondent.

20. The learned counsel appearing for the petitioner mainly



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raised the following contention :-

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(i) The fourth respondent is not a saved operator under the modified Area Approved Scheme dated 17.11.1999, the inclusion of the route of the petitioner in the Inter-State Agreement is illegal, as the Inter-State Agreement cannot over ride the Area Approved Scheme, approved under Section 100 of the Motor Vehicles Act, 1988.

(ii) The direction issued by this Court to grant counter signature on the Area Approved Scheme runs against Section 104 of Chapter VI and section 88(5) and 88(6) of the Motor Vehicles Act which deals with the Inter-State Agreement.

(iii) Once the route/area is nationalized under Chapter VI of the Act, no permit shall be granted either by way of fresh permit or variation, as law propounded by the Hon'ble Supreme Court in catena of decisions and therefore the direction issued by this Court to grant counter signature in favour of the fourth respondent on the Area Approved Scheme is without jurisdiction.

(iv) The direction issued by the Hon'ble Division Bench to grant counter signastusre is hit by the Inter-State Agreement dated 19.04.1985 under which only two vehicles are permitted with 38 singles on the route Puducherry to Cuddalore.



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(v) The draft Inter-State Agreement was published under Section 88(5) of the MV Act was heard by one Authority and the order, approving the same was passed by another Authority and therefore the same is hit by the principles of natural justice.

Inter-State agreement & overriding effect:-

21. The route in question overlaps on the area approved scheme in respect of Cuddalore district that was published on 17.11.1999, which is modified Area Approved Scheme. Accordingly, the State transport undertakings of other States, the private operators of Tamil Nadu whose permits are protected by Tamil Nadu Act 41 of 1992 and the permit of the stage carriage operators on the inter-State route whose routes are covered by the inter-State agreement on that date were permitted to operate. The saving clause saves those inter-State operators who are already granted with the permit and covered by the inter-State agreement and operating on that date. It does not permit any future operator to be covered by the inter-State agreement. Further when there is conflict in between the approved scheme published under Section 68D of the old Act, which is corresponding to Section 100 of the present Act and inter-State agreement published under Section 88(16) of the Act, which occurs



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Chapter V of the Act, the approved scheme prevails over the inter-State agreement and therefore the inter-State agreement is contrary to the terms of the approved scheme.

22. In order to substantiate this contention, the learned counsel appearing for the petitioner relied upon the judgment of the Hon'ble Supreme Court of India reported in **2016 (8) SCC 402** in the case of **G.T.Venkataswamy Reddy vs. State Transport Authority** as follows :-

"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."

23. Even before the above Constitution Bench judgment, a case identical to the present case was arose before the Hon'ble Supreme Court of India reported in **1970 (1) SCC 541** in the case of **T.N.R. Reddy Vs. M.S. Trans. Authority**, wherein the Hon'ble Court held as follows:

"16. Regarding the third point we were unable to appreciate how an inter-State agreement overrides the provisions of Chapter IV-A. The inter-State agreement is not



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law and to hold that an inter-State agreement overrides Chapter IV-A would be to completely disregard the provisions of Section 68-B of the Act which provides that "the provisions of this Chapter and the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in Chapter IV of this Act or in any other law for the time being in force or in any instrument having effect by virtue of any such law". In this connection reference was made to Article 162 and Article 298 of the Constitution. But we were unable to appreciate what relevance these articles have to the point at issue. Assuming that a State has power to enter into agreement with another State in exercise of its executive powers under Article 162 and under Article 298 it can carry on trade or business, we are unable to see what light these facts throw on the question before us."

24. This judgment was later followed by the Hon'ble Supreme Court of India in a subsequent judgment reported in **(1973) 1 SCC 357** in the case of ***S. Abdul Khader Vs. Mysore Revenue Appellate Tribunal***, as follows:

"6. The next point on which a great deal of emphasis has been laid on behalf of the appellant is that



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an inter-state route comes into existence by virtue of an agreement between the States through which the route passes. The main provisions in that respect are to be found in Section 63 of the Act. Any scheme of nationalisation of a route by a State, as approved under Section 68-D cannot override the inter-state agreements in respect of the inter-state routes. This Court has in T.N. Raghunatha Reddy v. Mysore State Transport Authority (1970) 1 SCC 541 answered this question in the negative. It has been held that the inter-state agreement is not law and to hold that an inter-state agreement overrides Chapter IV-A would be to completely disregard the provisions of Section 68-B of the Act. In other words, a scheme of nationalisation approved under Section 69-D would prevail over an inter-state agreement in respect of an inter-state route."

25. A similar view is echoed by the Hon'ble Supreme Court in the judgment reported in **AIR 1990 SC 412** in the case of **R. Raghuram Vs. P.Jayarama Naidu**, as follows:

"5. 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 the Chapter IV of the Act the scheme



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approved under Chapter IV-A prevails over it."

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26. Therefore, the Scheme being a law, having overriding effect by virtue of Section 98 of the Motor Vehicles Act, it prevails over not only the inter-State agreement but also other laws which are in force which are inconsistent with other law. Therefore, inclusion of the route of the fourth respondent in the inter-State agreement is without authority of law, as his route is not saved under the area approved scheme. Therefore, when there is an approved scheme, unless the approved scheme permits, no permit shall be granted contrary to the terms of the approved schemes and also no such permit can be granted either by way of variation, including additional singles, as law laid down by the Hon'ble Supreme Court of India.

27. The inter-State agreement is contemplated under Section 88(5) and 88(6) of the MV Act. Section 88(5) of the MV Act contemplates draft agreement and Section 88(6) of the MV Act contemplates final agreement. Initially when both the governments agreed to reach an inter-State agreement, such proposal is published in the government gazette of both governments, inviting objections and



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fixing the date of hearing. Section 88(6) of the MV Act contemplates after receipt of the objections, hearing of the same. Before arriving at any inter-State agreement in the manner referred to above or if there is an agreement which contemplates number of vehicles and number of singles to be operated, the State transport authority cannot grant any permit or entertaining any application for the grant of permit in the inter-State route in the absence of an inter-State agreement and even if there is an inter-State agreement, above the number of vehicles and number of singles prescribed therein.

28. In this regard, the learned counsel appearing for the petitioner submitted that these two provisions are the subject matter of interpretation before the Hon'ble Supreme Court of India reported in **(1999) 8 SCC 364** in the case of **Ashwani Kumar Vs. Regional Transport Authority**, in which the Hon'ble Supreme Court of India held as follows:

"6... Inter-State route under the scheme of the Acts has to be reciprocal and cannot be unilaterally created by one State or an authority in the State. The State Governments concerned are supposed to deliberate and decide the routes to be opened as inter-State routes by



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determining the number of trips each route was to have and prescribe other conditions for the smooth functioning of the Act to achieve its objective which is claimed to be a social welfare legislation.

7..In the absence of the existence of an inter-State route, the authorities under the Act were not justified in granting the permits to the appellants. The existence of permits depends upon the reciprocal agreements between the States covered by the route which admittedly did not exist in the instant case. The orders of the authority granting permit in favour of the appellants were thus without jurisdiction."

29. An inter-State route under the Scheme of the Act has to be on reciprocal and cannot be unilaterally created by one State or Authority in the State. This principle was approved by a three Judge Bench of the Hon'ble Supreme Court in the decision reported in **(2004) 11 SCC 207** in the case of **A. Venkatakrishnan Vs. State Transport Authority, Kerala** which reads as follows:

"Therefore, before an inter-State route in respect whereof a permit is sought to be granted is determined, the question of filing any application therefor by a person before the State Transport Authority of his State would not arise unless an agreement in relation thereto has



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been entered into by the States concerned and the routes as also the number of trips are fixed thereunder. We are, therefore, of the opinion that the State Transport Authority of one State would have no jurisdiction to entertain an application for grant of an inter-State route, particularly when Section 80 of the Act will have no application in relation thereof unless an agreement is entered into by the State concerned."

30. Thus it is clear that no inter-State permit can be granted unless there is an inter-State agreement in respect of the route or if there is an inter-State agreement, no additional vehicles or additional singles can be granted above the maximum specified therein. Therefore, the inclusion of variation route of the fourth respondent in the inter-State agreement is bad in law and it is clear violation of the provisions of Sections 88(5) and 88(6) of the MV Act.

Violation of principles of natural justice:

31. Insofar as the violation of principles of natural justice is concerned, the objections for the draft inter-State agreement was heard by the then Principal Secretary to Government, Home Department dated 21.05.2010. Thereafter, the said Principal Secretary was transferred and



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another person was appointed as new Home Secretary. The new Secretary passed an order thereby approved the draft agreement. In this regard, the learned counsel appearing for the petitioner relied upon the judgment of the Madurai Bench of this Court in ***W.P.(MD).No.2893 of 2011*** dated ***18.04.2018*** in the case of ***P.T.Mahalingam Vs. Government of Tamil Nadu***, which reads as follows:-

"17. The predominant contention of the writ petition is that the authority who heard the matter shall pass orders. One person hears and other person passes an order is violative of principles of natural justice. The Hon'ble Supreme Court in the case of GULLAPALLI NAGESWARA RAO VS. A.P. STATE ROAD TRANSPORT CORPORATION reported in 1959 Supp (1) SCR 319 at paragraph No.31 observed as under:

The second objection is that while the act and the Rules framed thereunder impose a duty on the State Government to give a personal hearing, the procedure prescribed by the Rules impose a duty on the Secretary to hear and the Chief Minister to decide. This divided responsibility is destructive of the concept of judicial hearing. Such a procedure defeats the object of personal hearing. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear up his doubts during the course of the arguments and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and



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another decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure.

18. The Hon'ble Supreme Court in the case of RASID JABED AND OTHERS V. STATE OF UTTAR PRADESH reported in (2010) 7 SCC 781 at paragraph No.51 observed as under:

"That a person who hears must decide and that divided responsibility is destructive of the concept of judicial hearing is too fundamental a proposition to be doubted. This settled principle has also been highlighted by this Court in GULLAPALLI NAGESWARA RAO but based on such principle the limited authority of hearing given to the hearing Authority by the State Government cannot be treated as enlarged in its scope. A delegate must confine his activity within four corners of the powers invested in him and if he has acted beyond that, his action cannot have any legal sanction unless ratified by the delegator."

Therefore, it is clear case of violation of principals of natural justice and the order impugned in this writ petition cannot be sustained, insofar as it relates to variation route of the fourth respondent.

32. It is also seen that the petitioner, from the beginning, objected the variation route of the fourth respondent. The batch of writ



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petitions were filed challenging the government order in G.O.Ms.No.118

Home (Tra -III) Department dated 18.02.2011, on the ground of non-inclusion of their variation route. Whereas, the petitioner filed the present writ petition challenging the inter-State agreement in G.O.Ms.No.118 Home (Tra -III) department dated 18.02.2011, insofar as it relates to inclusion of variation route of the fourth respondent, entered into the supplemental agreement. Therefore, the issue in this present writ petition is completely different from other writ petitions, which were dismissed by this Court by an order dated 27.11.2019. Therefore, this Court by an order dated 03.12.2019, recalled the order passed in this writ petition and delinked from the batch of writ petitions, on the ground that there are variation in facts between this writ petition and other writ petitions in that batch.

Conclusion :

33. In view of the above discussions, the inclusion of the fourth respondent's route in the inter-State agreement is illegal and without jurisdiction. Accordingly, the government order in G.O.Ms.No.118 Home (Transport III) dated 18.02.2011 is hereby quashed so far as it pertains to the inclusion of the route of the fourth respondent namely Pondicherry to Cuddalore via Reddichavadi found at Sl.No.24 in Annexure II to the



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Supplementary Reciprocal agreement.

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34. Accordingly, the Writ Petition stands allowed.

Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

03.10.2024

Index : Yes/No

Speaking/Non Speaking order

Neutral Citation : Yes/No

rts



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W.P.No.9093 of 2011

G.K.ILANTHIRAIYAN. J.

rts

To

1. The Secretary,
State of Tamil Nadu,
Home (Transport) Department,
Fort St. George,
Chennai – 600 009.
2. The Secretary
Union Territory of Pondicherry,
Home (Transport) Department,
Puducherry.
3. The State Transport Authority,
Chepauk,
Chennai – 5.

ORDER IN
W.P.No.9093 of 2011
and M.P.Nos.1 & 2 of 2011

03.10.2024