



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2024

CORAM

THE HON'BLE Mr. JUSTICE **C.V.KARTHIKEYAN**

W.P.No.14967 of 2024
and
W.M.P.No.16250 of 2024

R.Baranidharan

.. Petitioner

Vs.

The State Transport Authority,
Government of Puducherry,
Transport Department,
Union Territory of Puducherry,
100 Feet Road, Mudaliarpeta,
Puducherry.

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in the Minutes of the Meeting held on 27.11.2019 in so far as it relates to substituting the proceedings of the respondent dated 19.12.2001 to the effect that the permit should stand in his/her name for a minimum period of three years and if any transfer of permit within the said period of three years is preferred then the permit will be liable for cancellation and to quash the same and directing the respondent to receive the transfer application of the petitioner dated 02.05.2024 for transferring of



permit in respect of petitioner's stage carriage PY-01-DB-8480 plying on the route "Pondicherry to Karaikal" from the name of the petitioner in the name of Ms.Rogini Rajesh which was returned on 13.05.2024 and dispose of the same in accordance with law.

For Petitioner .. Ms.S.Radha Gopalan
For M/s.Bhargavi Gopalan

For Respondent .. Mr.R.Sreedhar,
Additional Government Pleader.

ORDER

This Writ Petition has been filed in the nature of a Certiorarified Mandamus seeking records of the respondent, the State Transport Authority, Puducherry, in the Minutes of the Meeting held on 27.11.2019 so far as it relates to substituting the proceedings of the respondent dated 19.12.2001 to the effect that the permit should stand in the name of the individual in whose name the permit stood for a minimum period of three years and if any transfer of permit is sought within the period of three years, then the permit itself will be liable for cancellation. The petitioner is deeply aggrieved by the stipulation that the permit should stand in the name of the holder of the permit for a minimum period of three years and seeks to quash the same.

2.In the affidavit filed in support of the writ petition, it had been stated



that the petitioner is a stage carriage operator with permit to ply an inter-state route from Pondicherry to Karaikal via., Cuddalore, Portonova, Chidambaram, Mayiladuthurai, Kollumangud and Nedungadu. There are also shuttle trips between Chidambaram and Karaikal. It is covered by an Inter-State Agreement dated 12.04.1985. The permit in the name of the petitioner is valid till 31.05.2025. The Fitness Certificate of the vehicle is valid till 19.10.2025. The Insurance of the vehicle was valid till 12.08.2024. I am confident that it would have been renewed by this time. This permit was originally held by one P.Lakshmanan. Thereafter, it was transferred to the name of the petitioner by the respondent, by proceedings dated 08.02.2023. The said transfer of permit was also countersigned by the State Transport Authority, Chennai by proceedings dated 28.03.2023.

3.The petitioner, however, found it economically difficult to maintain the service. He therefore, sought to transfer it again in the name of Rogini Rajesh who was residing at Karaikal. A joint application dated 02.05.2024 was filed in accordance with Rule 78(i) of the Pondicherry Motor Vehicles Rules, 1989 and necessary fees had also been paid. The transfer application was returned by the officer of the respondent by stating that in the minutes



of the State Transport Authority of Union Territory of Puducherry dated 27.11.2019, it had been stipulated that there could be no transfer of permit within a period of three years. The petitioner obtained the permit on 08.02.2023 / 28.03.2023. He had made an application seeking transfer on 02.05.2024 after a period of one year. The restriction, however, imposed by the respondent was that such transfer cannot be even applied for a period of three years.

4.The respondent relied on the proceedings of the meeting dated 27.11.2019. By that proceedings, they had altered the time period which was in existence from 2001 onwards and which had been brought into effect by proceedings dated 19.12.2001. On and from 19.12.2001 till 27.11.2019, the period was one year. This was increased to three years. The resolution copy had been produced before this Court. The reason for such increase in the time period has not been stated. The only obvious reason which could be inferred is to prevent frequent transfers of permit. There was an inherent suspicion that frequent transfers would indicate that it was trafficking in permits. In order to curb such frequent transfer / trafficking in the permits, the period, according to the respondent had been increased from one year to



three years. The alternate which could have been imposed by the respondent is to restrict the number of transfers. But increasing the number of years within which a transfer cannot be sought, defies logic. It could have been increased from one year to one year and six months. It could have been increased from one year to two years. It could have been increased from one year to four years or even to five years. There must be a reason given for this particular increase of the time period or stipulation from one year to three years.

5. On the side of the petitioner, it had been urged that the substantial provisions under the Motor Vehicles Act, 1988, namely Section 82, wherein a transfer of permit is permissible as a concept, does not indicate any time limit or a particular period for which the permit should be retained by the holder before he could seek transfer. Section 82 of the Motor Vehicles Act, 1988 is as follows:

“82. Transfer of permit.—(1) Save as provided in subsection (2), a permit shall not be transferable from one person to another except with the permission of the transport authority which granted the permit and shall not, without such permission, operate to confer on any person to whom a vehicle covered by the permit is transferred any right to use that vehicle in the



manner authorised by the permit.

(2) Where the holder of a permit dies, the person succeeding to the possession of the vehicle covered by the permit may, for a period of three months, use the permit as if it had been granted to himself: Provided that such person has, within thirty days of the death of the holder, informed the transport authority which granted the permit of the death of the holder and of his own intention to use the permit: Provided further that no permit shall be so used after the date on which it would have ceased to be effective without renewal in the hands of the deceased holder.

(3) The transport authority may, on application made to it within three months of the death of the holder of a permit, transfer the permit to the person succeeding to the possession of the vehicles covered by the permit:

Provided that the transport authority may entertain an application made after the expiry of the said period of three months if it is satisfied that the applicant was prevented by good and sufficient cause from making an application within the time specified.”

6.Rule 78 of the Pondicherry Motor Vehicle Rules, 1989 is also relevant. That relates to transfer of permit. It is thus seen that as a concept, a



permit could be transferred owing to various reasons as stated by the transferrer and it should be accepted by the transferee. If it is in an interstate stage carriage operation, then both the authorities of the Union Territory of Puducherry and the State of Tamil Nadu should permit such transfer.

7. The petitioner is running the bus from Pondicherry to Karaikal. It has to travel through Districts in Tamil Nadu. Therefore, both the authorities will have to countersign the said permit. When the application was lodged with the respondent, the application had been returned stating that minutes had been passed on 27.11.2019 increasing the years within which the transfer to be made from one year to three years. But however, Rule 78 of the Pondicherry Motor Vehicle Rules, 1989, does not stipulate any such time period. Rule 78 is as follows:

“78. Transfer of permit.--- (1) Where the holder of a permit desires to transfer the permit to some other person under sub-section (1) of section 82, he shall together with the person to whom he desires to make the transfer, make a joint application in Form P.Tr.A. to the State Transport Authority by which the permit was issued, setting forth the reasons for the proposed transfer.

(2) On receipt of an application under sub-rule (1), the



State Transport Authority may require the holder and the other party to state in writing whether any premium, payment or to other consideration arising out of the transfer, is to pass or has passed between them and the nature and amount of any such premium, payment or other consideration.

(3) Without prejudice to any other penalties to which the parties may be liable, the State Transport Authority may declare void any transfer or a permit made upon such application and thereupon such transfer shall be void and of no effect, if after such enquiry as it thinks fit, the State Transport Authority is satisfied that any matter stated to it under sub-rule (2) of any material particular in the application, was false.

(4) The State Transport Authority may, summon both the parties to the application to appear before it and may, deal with the application as if it were an for a permit.

(5) (i) If the State Transport Authority is satisfied that the transfer of a permit may properly be made, it shall call upon the holder of the permit may properly be made, it shall call upon the holder of the permit in writing to surrender within seven days of the receipt of the order the permit and shall likewise call upon the person to whom the permit is to be transferred to pay a sum of one thousand rupees in respect of stage carriages and contract carriages and one hundred rupees in respect of goods carriages as transfer fee and surrender any permit held by him.

(ii) Upon receipt of the permit and the prescribed fee, the State Transport Authority shall make the necessary endorsement



therein and return the permit to the transferee.

(iii) The State Transport Authority making a transfer of a permit as aforesaid may endorse the permit with the words "Transfer of permit valid for", inserting the name of the authority by which the permit has been countersigned with effect from the date of transfer.

(iv) Unless the permit has been endorsed as provided in clause (iii), the countersigned shall be of no effect after the date of transfer.

(v) An application for the transfer of countersignature permit shall be made in writing of the State Transport Authority, along with a fee of fifty rupees."

8. The State Transport Authority could regulate the functioning of the licence holders or the permit holders. They can prevent frequent transfers. The issue whether such transfer could be considered to border on trafficking had come up for discussion before a Division Bench of this Court in ***N. Sathianathan Vs. B.K.P.M. Amaravathi Ammal and others*** reported in ***(1964) 1 Mad LJ 140***. The Division had an occasion to examine the import of the word 'trafficking'. Paragraph Nos.10 and 11 are extremely instructive. They are as follows:



“10. Now the word “trafficking” In connection with permits has not been defined, either in the Motor Vehicles Act or in the rules framed thereunder. The ordinary dictionary meaning of the word “trafficking” gives a fairly accurate idea of its import. Murray's New English Dictionary defines it as:

To carry on a trade in, to buy and sell; often with a sinister implication; used in disparaging sense, or in sense of dealing considered improper.

11. We may also refer to the use of phrases like slave traffic, opium traffic, trafficking in men's lives, and so on. The terms will cover a case where there are repeated sales conducted as a business, that is a profit motive. In a commodity, whose sales would be Improper or would carry a stigma. No doubt, as pointed out by the learned Judge, the Motor Vehicles Act, itself allows for transfer of stage carriage permits in certain contingencies. Therefore, the mere fact of the transfer of permit in such, without further evidence, may not carry any stigma to satisfy the test of trafficking Section 59(1) says:

“Sava at provided in S. 01, a permit shall not be transferable from one person to another except with the permission of the transport authority which granted the permit and shall not without such permission operate to confer on any person to whom a vehicle covered by the permit is transferred any right



to use that vehicle in the manner authorised by the permit.”

9. Thereafter, in paragraph Nos.12 & 13, the Division Bench had also examined the scope of Section 61. They are as follows:

“12. Section 61, to which the saving clause refers, provide for the user of a permit by the successor-in-title, of the permit holder on the latter's death, for a period of three months, provided that within 30 days of the death of the holder, he has informed the transport authority of the death. After this period of grace, the successor-in-title has necessarily to get orders recognising the transfer under S. 59 of the Act. Now if a transfer is made in the normal circumstances of business, or through the exigencies of the death of the operator, obviously it will be a bona fide transfer. But when sales of buses along with the transfer of the permits are resorted to repetitively when the normal course of business of the operators does not demand it, and the sales are effected with the clear motive of making a profit by such transfers it is obvious that the operator is taking an undue advantage of his position, as a permit holder, to make profits on sales of his permits. This will attract the stigma of trafficking, and it will not be desirable to prefer him, as he had shown himself to be a person who as abused the permits granted to him.



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13. Again, it is a matter of ordinary knowledge that when a permit is transferred to another person, only the transferor and the transferee will be interested in the transfer, and they are expected to apply to the Regional Transport Authority for recognizing the transfer. There is no direction in section 59 of the Act that the Regional Transport Authority should hold an elaborate enquiry or should give notice to the other operators on the route or to the public, before giving his sanction to the transfer. There is also no rule that the applicant should give information about the prior sales. On the application, the Regional Transport Authority makes only a rough and ready enquiry. No doubt, if his enquiry was comprehensive and sufficiently penetrating, it might be possible for him to discover that there was a profit motive in the application for transfer of the permit or that there were previous sales of a similar character, and hence the application was not bona fide. On the other hand, the Regional Transport Authority at that stage might not have had the facilities for making a detailed investigation or might have failed to make it for one reason or other. But, as pointed out already, these transfers could have gone without challenge by other interested persons at the time of their recognition under S. 59(1) of the Act, and the Regional Transport Authority should not be blamed if he had dealt with the application in a routine manner, without a searching enquiry. There is no appeal provided against his decision in such cases, because no one at that stage



could be deemed as aggrieved by his order.”

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10.It had been held that whether the transfer amounted to trafficking is a question of fact. If the respondent are of the opinion that owing to the second transfer of the permit, it could be termed as a trafficking, then they must enter into a discussion on facts and render a findings on facts. But unfortunately, the impugned order does not provide such reasons. The application had been returned only on the ground that transfer of permit had been sought within a period of three years and that the minutes of 27.11.2019 had increased the time seeking such transfer of permit from one year to three years. I find no rationale in that particular increase. That particular increase has actually been challenged in this Writ Petition. The respondent have every right to regulate, but they may go back to the Drawing Board and provide the reasons for restricting the period within which the transfer of permit could be sought by the holder of the permit.

11.So for as this particular amendment is concerned increasing the period from one year to three years, since no reasons had been given for the same except for stating that it is to prevent trafficking of permits and there is no factual finding returned that the petitioner has indulged in trafficking of



permit, I hold that the return of the application lacks bonafide and that the application will have to be reconsidered in manner known to law and in accordance with the provisions of law and the Rules governing the same. Accordingly, this Writ Petition stands allowed to that extent. No costs. Consequently, connected Miscellaneous Petition is closed.

12.The respondent may once again take on file the joint application given by the petitioner and the transferee and pass appropriate orders. The respondent is always at liberty to re-examine the issue of time limit within which transfer of permit could be sought, but when they stipulate any time period, let them give necessary reasons as to why they are stipulating such time limit.

13.The learned Government Pleader on behalf of the respondent requests eight weeks time within which the application of the petitioner would be processed. It should be processed within a period of eight weeks from the date of receipt of a copy of this order.



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19.12.2024

Index: Yes/No
Neutral Citation: Yes/No
Speaking Order: Yes/No

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To

The State Transport Authority,
Government of Puducherry,
Transport Department,
Union Territory of Puducherry,
100 Feet Road, Mudaliarpeta,
Puducherry.

C.V.KARTHIKEYAN,J.

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