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C.R.P.(NPD).Nos.2232, 2239, 2242, 2246, 2247 & 2250 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.(NPD).Nos.2232, 2239, 2242, 2246, 2247 & 2250 of 2023 &
C.M.P.Nos.13553, 13602, 13609, 13625, 13626 & 13658 of 2023

C.R.P.(NPD).No.2232 of 2023

1.P.Kumaresan

2.K.Malarvizhi

... Petitioners

-Versus-

1.S.G.R.Sridhar

2.The Regional Transport Authority

Salem.

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order of the Appellate Tribunal made in M.V.Appeal No.2 of 2023 dated 04.05.2023.

C.R.P.(NPD).No.2239 of 2023

1.P.Kumaresan

2.K.Malarvizhi

... Petitioners

-Versus-



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- 1.Selva Vinayaga Transport,
Rep. by M.Chinraj Partner, Kandan Complex,
No.12, Chittu Koil Street,Salem – 636 001.
- 2.The Regional Transport Authority
Salem. ... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order of the Appellate Tribunal made in M.V.Appeal No.4 of 2023 dated 04.05.2023 in reversing the well considered order of the Regional Transport Authority, Salem made in R.No.A4/41621/2022, dated 30.01.2023.

C.R.P.(NPD).No.2242 of 2023

- 1.P.Kumaresan
- 2.K.Malarvizhi ... Petitioners

-Versus-

- 1.Sri Dhandayuthapani Transport Ltd.,
Rep. by S.Varadappan, Proprietor,
No.300, KRC Compound,
Gugai, Salem.
- 2.The Regional Transport Authority



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... Respondents

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Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order of the Appellate Tribunal made in M.V.Appeal No.3 of 2023 dated 04.05.2023 in reversing the well considered order of the Regional Transport Authority, Salem made in R.No.A4/41621/2022, dated 30.01.2023.

C.R.P.(NPD).No.2246 of 2023

1.P.Kumaresan
2.K.Malarvizhi

... Petitioners

-Versus-

1.T.A.Kathirvel
2.The Regional Transport Authority

Salem.

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order of the Appellate Tribunal made in M.V.Appeal No.8 of 2023 dated 04.05.2023 in reversing the well considered order of the Regional Transport Authority, Salem made in R.No.A4/41621/2022, dated 30.01.2023.



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C.R.P.(NPD).No.2242 of 2023

1.P.Kumaresan
2.K.Malarvizhi

... Petitioners

-Versus-

1.Shanthi Giridharan
2.The Regional Transport Authority
Salem.

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order of the Appellate Tribunal made in M.V.Appeal No.5 of 2023 dated 04.05.2023 in reversing the well considered order of the Regional Transport Authority, Salem made in R.No.A4/41621/2022, dated 30.01.2023.

C.R.P.(NPD).No.2242 of 2023

1.P.Kumaresan
2.K.Malarvizhi

... Petitioners

-Versus-

1.T.Praveen Kumar
2.The Regional Transport Authority
Salem.

... Respondents



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Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order of the Appellate Tribunal made in M.V.Appeal No.7 of 2023 dated 04.05.2023 in reversing the well considered order of the Regional Transport Authority, Salem made in R.No.A4/41621/2022, dated 30.01.2023.

For Petitioner : Mr.M.Palani

For Respondent 1 : Ms.Radha Gopalan

*For Respondent 2 : Ms.Amirtha Poongodi
Dhinakaran*

COMMON ORDER

This batch of civil revision petitions challenge the order of the State Transport Appellate Tribunal at Chennai in Motor Vehicle Appeal Nos. 2 to 5, 7 and 8 of 2023 dated 04.05.2023. The Civil revision petitioners are the town bus operators, who were the representees before the Regional Transport Authority at Salem and were arrayed as respondents 2 and 3, hereinafter referred to as Elampillai Sector operators, before the State Transport Appellate Tribunal.

2. The history of this case goes back to 1988. In the town of Salem, there



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was originally only one bus stand, which was styled “Victoria Bus Stand”. Due to congestion and in order to improve the convenience of the public, another bus stand was established at a location called Achuvan Eri. This was designated as a new bus stand for the Mofussil Buses. In order to implement the creation of the new bus stand, notices were issued in terms of Section 48(3)(xxi) of the Motor Vehicles Act of 1939. This was issued to all the operators in the sector. The first round of litigation commenced immediately.

3. Appeal No.288 of 1989 was presented before the State Transport Appellate Tribunal. By order dated 30.09.1989, the notices that were issued under Section 48(3)(xxi) were set aside and the Regional Transport Authority was directed to take fresh steps in accordance with Section 72(2)(xxii) of the new Motor Vehicles Act, which had come into force by then. In obedience to the directions given by the State Transport Appellate Tribunal, fresh notices were issued to all the operators under Section 72(2)(xxii) of the new Motor Vehicles Act, 1988.

4. Pursuant to the said notice, representations were received from the bus operators by the Regional Transport Authority. Few of them filed writ petitions



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before the High Court in lead case W.P.No.2900 of 1990. By an order dated

30.09.1991, the writ petitions were dismissed. It was ordered that the mofussil bus operators should continue to operate as they were doing earlier until the conditions were varied under Section 72(2)(xxii) of the Motor Vehicles Act. In the further batch of cases in W.P.Nos.5029 to 5032 of 1991, etc., a direction was given to the Regional Transport Authority, Salem, to dispose of the representations made by the petitioners therein after giving them due opportunity.

5. In compliance with the directions given by this court in the writ petitions, the Regional Transport Authority at Salem heard 8 operators and 2 associations representing the bus owners. On 14.05.1993, another meeting was conducted with all the stakeholders, and a decision was taken whereby the town buses were to operate from the old bus stand and the mofussil buses were to ply from the new bus stand.

6. The request of the mofussil bus operators that they be permitted to terminate their services at the new bus stand, which could include permission to reach the new bus stand via the old bus stand was considered and rejected.



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The ground of rejection being that it is likely to create chaos and confusion amongst those using the public services. Therefore, the Regional Transport Authority decided to confirm the decision taken in the meeting. This led to a few operators filing appeals before the State Transport Appellate Tribunal yet again.

7. The Tribunal by order dated 12.11.1993 came to a conclusion that shifting of a bus stand was for the purpose of relieving congestion inside the town and therefore, confirmed the order of the Regional Transport Authority, Salem. The orders passed on 12.11.1993 were put in challenge before this court in a batch of writ petitions in W.P.No.22264 of 1993, etc. All the writ petitions were clubbed together and were heard by Honorable Mr. Justice D.Raju (as his Lordship then was) and a decision came to be rendered on 03.08.1994. After hearing various stakeholders, the court came to the following factual conclusion:

“1. The order of the second respondent was passed in purported exercise of Section 72(2)(xxii).

2. As the new bus stand is within the salem town limits and since the permit mentioned the terminus as only as Salem and not any particular place, there can be no



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grievance for the operators, if they are directed to go to the new bus stand for the same does not amount to variation in condition of permit.

3. The regulation of the Regional Transport Authority is in accordance with law and does not require interference.”

8. The Authority was given liberty to take steps in accordance with law not necessarily involving Section 72(2)(xxii), varying the conditions of permit. At the time of passing the order, the operators in the Elampillai sector were omitted to be considered in the proceedings before the Regional Transport Authority, Salem dated 17.05.1993.

9. Therefore, a separate order was issued on 01.07.1993. The Regional Transport Authority, Salem, by that proceedings had ordered that the course of route for the Siddharkoil-Elampillai sectors had not been included in the proceedings dated 17.05.1993. Hence, he passed an order that all Mofussil stage carriers operating their buses bound for Elampillai via Siddharkoil should commence their route from the new bus stand and ply through 4 routes namely Chatiram, Milk Market, Lorry Stand, Thirumagal Theatre and then ply on the route authorized in the permit.



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10. Alleging that this amounted to change in their permits without resorting to the procedure under Section 72(2)(xxii), appeals were filed before the State Transport Appellate Tribunal at Chennai. These appeals were taken on file as Appeal No.484 of 1993 etc. These appeals came to be allowed in the following terms:

“It is highly surprising that without following the usual procedure or notice to the concerned bus authorities, the lower authority has passed the impugned order thereby varying the conditions of permit of the appellants business.... No opportunity was given to them to make their representations, either in writing or in person before the Regional Transport Authority. The Regional Transport Authority has straightaway passed an order varying the conditions of permit. The transport authority who proposed to varying the condition of the existing permit should adopt the usual and legal procedures before issuing directions to the operators.”

11. Consequent to this conclusion, State Transport Appellate Tribunal remanded the matter to the Regional Transport Authority, Salem with a direction to adopt the procedures as contemplated under the provisions of the



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Motor Vehicles Act, 1988, and give a reasonable opportunity of hearing to the operators. The authority was further directed to examine the matter in detail and pass suitable orders keeping in mind the clarifications issued in W.P.No.22264 of 1993 (Justice D.Raju's order). Thereafter, the Regional Transport Authority, Salem considered the matter and passed an order afresh. This was in Proceedings B2/44709/81/87, dated 11.04.1997.

12. In the said order, the Regional Transport Authority had stated that the issue before him was only to regulate the traffic in terms of Section 115 of the Motor Vehicles Act 1988 and not one which falls under Section 80(3) of the Motor Vehicles Act. He further found that variation of permit conditions are dealt with under Chapter V, whereas traffic regulations are dealt under Chapter VIII. Taking cue from the last portion of the order passed by Justice D.Raju, he rejected the argument of Elampillai sector operators and confirmed the order of the Regional Transport Authority passed on 01.07.1993 holding that the buses bound for Elampillai sector must ply in the following routes:

New bus stand - Pallapatti Road - Meyyanur Road - Three Roads -
Thirumagal Theatre - Siddarkoil and vice versa.

13. In order to come to this conclusion, the Regional Transport Authority



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invoked the powers under Section 115 of the Motor Vehicles Act read with Rule 370 of the Motor Vehicle Rules. This led to one more challenge before the State Transport Appellate Tribunal in Appeal No.521 of 1997 etc. By an order dated 11.10.2001, the Tribunal came to the conclusion that it is the case of variation of original route granted in the permit and hence, Section 115 of the Motor Vehicles Act has no application. He further held that as notices had not been issued to the existing operators, the Authority could not have invoked Section 115. He held that as the Tribunal, previously in Appeal.No.484 of 1993 etc., had observed that the procedure under Section 72(2)(xxii) had to be followed and as it had not been followed, the orders were liable to be set aside. Accordingly, he remitted the matter to the Regional Transport Authority for fresh disposal, after adopting the procedures contemplated under Section 72(2)(xxii) of the Motor Vehicles Act.

14. Seemingly aggrieved by the said order, writ petitions were filed before this court by Elampillai Sector operators in W.P.Nos.38288 and 38289 of 2002. This court dismissed the writ petitions on 25.09.2003, holding that the petitioners cannot have any grievance against the order of remand. After a lapse of seven years, another order came to be passed in W.P.No.36639 of 2002



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on 24.02.2010. The learned Single Judge following the orders passed by Mr. Justice K. Govindarajan in W.P.Nos.38288 and 38289 of 2002, dismissed the writ petition.

15. It seems despite the orders that were passed by the Appellate Authority, which was confirmed by this Court, the Regional Transport Authority did not pass any orders. The private respondent one Kumaresan, operator of M.K.S Bus Service, gave a representation to the Regional Transport Authority, bringing to his notice that the mofussil bus operators, despite a direction to operate their bus from the new bus stand, continue to operate the same from the old bus stand. This complaint was lodged on 09.09.2022.

16. Taking cognizance of this complaint, notices were issued to all the Elampillai Sector operators for the hearing on 17.10.2022. After conducting the hearing, an order was passed on 30.01.2023 directing the Mofussil bus operators to commence their operation from new bus stand and halt there itself. By the said order, the Regional Transport Authority permitted the town bus operators to ply from the old bus stand and halt there itself. He further directed that the Mofussil bus operators with permits to ply from Salem towards



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Elampillai via Siddharkoil should ply from the new bus stand with taking the following route in the Salem City.

“New bus stand - towards Chatiram - Milk Market -
Lorry stand - Thirumagal Theatre - and then towards
Elampillai and beyond”

This was challenged before the State Transport Appellate Tribunal at Chennai in M.V.Appeal.No.2 to 5, 7 and 8 of 2023.

17. The grievance of the appellants was that the procedure contemplated under Section 72(2)(xxii) of the Motor Vehicles Act, 1988 read with rule 245(12)(f) of the Tamil Nadu Motor Vehicle Rules had not been followed. They would rely upon the judgment of this Court in W.P.No.36639 of 2002 dated 24.02.2010. They would allege that no hearing was conducted between 2001 till the impugned order was passed. They would further allege that the permits have been renewed till 21.09.2025 for plying from Salem to Jalakandapuram via Siddharkoil, Elampillai, etc, and the impugned order dated 30.01.2023 is contrary to the order of the Tribunal passed previously in the years 1997 and 2001.



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18. The learned Appellate Authority clubbed all the appeals together and came to the conclusion that since the State Transport Appellate Tribunal on two previous occasions had directed the Regional Transport Authority to pass an order in accordance with Section 72(2)(xxii) which were also confirmed by the High Court in W.P.No.36639 of 2002 and since those orders have not been followed, they are liable to be set aside. She further directed that as the order of the State Transport Appellate Tribunal had been confirmed by the High Court, the only remedy available to the authority is to seek fresh directions before the High Court in case it faces any difficulties, and it was not open to the Regional Transport Authority to bypass the procedure. On these findings, she set aside the order dated 30.01.2023, and left it open to the Regional Transport Authority to initiate fresh proceedings as per the requirements of the present scenario.

19. The town bus operators have challenged these orders by way of these revisions.

20. I heard Mr.M.Palani for the civil revision petitioners, and Mrs.Radha Gopalan for the Elampillai sector operators and private operators, and Ms.Amirtha Poonkodi Dinakaran for the official respondent.



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21. Mr.M.Palani would submit that the Regional Transport Authority at Salem had conducted an enquiry under Section 72(2)(xxii) to consider the interests of all mofussil bus operators, not on one occasion, but on three occasions. He would state that following the provisions of the old Motor Vehicles Act and later the provisions of Motor Vehicles Act, 1988, notices were issued on 23.06.1989, 05.09.1989 and 14.05.1993. In pursuance of those hearings, an order was passed on 17.05.1993. By oversight, Elampillai sector operators had been omitted. However, he would add that these very operators were heard prior to the order being passed on 17.05.1993. He would state that as the Elampillai sector operators had been left out by oversight, it was rectified by an order dated 01.07.1993.

22. Relying upon the judgment of Mr. Justice D.Raju in W.P.No.22264 of 1993, Mr.M.Palani would state that the High Court had held that by creation of a new bus stand in Salem Town, there is no variation in the permit granted to the Elampillai sector operators. He would attack, albeit indirectly, the order of the Tribunal dated 11.10.2001 as being contrary to the order passed by Mr.Justice D.Raju on 03.08.1994.



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23. Dehors this submission, Mr.M.Palani would submit that the authority need not resort to Section 72(2)(xxii) of the Motor Vehicles Act, since there was no stipulation in their permits that the buses would have to terminate in the old bus stand. In other words, his argument is that the Tribunal by its orders of the years 1997 and 2001 cannot confer jurisdiction on an authority to pass the order under a Section, when the Section itself is inapplicable. He would finally point out that in terms of Section 96(2)(xxi) of the Motor Vehicles Act, there is a power vested in the authority to prohibit the picking up and setting down of the passengers at places other than the notified stands. This being the position, he would argue that the impugned order needs interference and the order has to be set aside.

24. Mrs.Radha Gopalan would submit that the impugned order of the State Transport Appellate Tribunal need not be interfered with, since on two occasions the Tribunal had directed the Regional Transport Authority to pass orders in accordance with Section 72(2)(xxii) and that not having been done, the impugned order cannot be interfered with. She would then urge that no hearing was conducted before the order dated 30.01.2023, i.e., the order of the



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Authority passed on 30.01.2023 deserves to be set aside for violation of principles of natural justice. She would add that the Regional Transport Authority had relied upon the orders dated 01.07.1993 and 11.04.1997, which had been previously set aside by the State Transport Appellate Tribunal, while passing the order on 30.01.2023 and therefore, it cannot be sustained.

25. Mrs.Radha Gopalan would state that even assuming the order passed on 11.10.2001 is contrary to law, as the same had not been challenged, it cannot be set aside as even void order requires to be set aside in a manner known to law. She would then point out that from 2010 to 2022, the civil revision petitioners had not objected to the usage of the old bus stand by the Elampillai sector operators and therefore, the revisions suffer from delay and laches and request the same to be rejected. She would state that the order dated 30.01.2023 which was set aside by the State Transport Appellate Tribunal, if it is given effect to, would amount to alteration of route and therefore necessarily resort would have to be made to Section 72(2)(xxii). She would then invite the attention of this court to Section 115 of the Motor Vehicles Act and would point out that since no Gazette notification had been issued by the authority vis-a-vis mandating the mofussil bus operators to terminate plying at the new



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bus stand, it cannot be enforced as any traffic regulation in terms of Section 115 which requires such a Gazette notification.

26. Ms.Amrita Poonkodi Dinakaran would submit that the state authorities would comply with any direction that would be given by this Court.

27. I have heard the counsels on either side. I have carefully perused the records.

28. The undisputed facts are the Commissioner of Salem Corporation found that the city was growing in an exponential manner leading to an explosion of vehicular population as well as degradation of the road conditions. Therefore, he applied for approval of a new bus stand at Achuvan Eri, situated within the Salem town. Finally, in terms of the then existing Motor Vehicles Act, a Gazette notification was issued on 15.07.1988. The consequent result of this notification was that the Regional Transport Authority had to decide as to where the mofussil buses had to terminate and as to where the town buses would have to halt. In his wisdom, the Regional Transport Authority would resort to the proceedings relating to variation of permits under the old Motor



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Vehicles Act, 1939. This proceeding was set aside by the Tribunal. Yet again,

he issued notices in terms of Section 72(2)(xxii) under the new Motor Vehicles Act for hearing all the concerned operators. He heard the operators and came to the conclusion that the town buses (those plying within the city of Salem) would terminate at the old bus stand, namely Victoria Bus Stand and the Mofussil Buses, who have an easy access to the Salem - Omalur road through bypass, would terminate at the new bus stand. This in effect was to enforce the decision dated 28.06.1989. That came to be challenged before the Tribunal and the Tribunal came to the conclusion on 12.11.1993 that the shifting of old bus stand and the consequential regulatory orders are only to help in reduction of congestion inside the Salem town.

29. At the time of issuing the order, the Regional Transport Authority had, by administrative lapses, not included the course of route for Siddharkoil – Elampillai sector. Therefore, he passed an order for buses operating in this sector on 01.07.1993. This was put to challenge before the Tribunal which set aside and remitted the matter with a direction to the Regional Transport Authority to pass orders keeping in mind the procedures contemplated under



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the Motor Vehicle Act and also the directions passed by this court in

W.P.No.22264 of 1992.

30. Yet again, the Authority passed an order on 11.04.1997 giving directions that the buses operating on the Mofussil sector, including Elampillai, Siddharkoil etc., should start only from the new bus stand. This was challenged again before the State Transport Appellate Tribunal. The State Transport Tribunal had passed an order on 11.10.2001 setting aside the order dated 11.04.1997 and remitted the matter to the authority for fresh disposal.

31. Though the appeals had gone in favour of the Elampillai sector operators, for reasons not known or maybe in order to continue the existing operation from the old bus stand, they challenged the orders before this court in writ proceedings. The writ petitions came to be dismissed on 25.09.2003 and 24.02.2010. In pursuance thereof, no action was initiated by the Regional Transport Authority. By letter / representation dated 09.09.2022 given by the civil revision petitioners, the proceedings remitted to the Regional Transport Authority by the State Transport Appellate Tribunal was revived.



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The present civil revision petition is not barred by delay and laches

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32. Mrs.Radha Gopalan would contend that the petitions are not maintainable on account of long lapse of time from 2001 to 2023. Her argument is that as the matters continue to lie as they stood, after the order of remand, the objections given in 2022 are hit by the principle of laches.

33. The origin of the concept of laches is in the Roman maxim. - *'vigilantibus non dormientibus jura subveniunt'* (The law serves one who is vigilant and not one who is dormant). The very meaning of the word laches means slackness or negligence, or not doing any act. It applies where a particular party who has to perform a particular act keeps quiet and does not enforce his right, then he cannot turn around subsequently and plead that his right has been trampled upon and therefore, seek assistance of the court. Laches, by the very nature of things, apply to enforcement of a right in a person. There can be no laches in performance of duties.

34. As per the Hohfeldian principle of rights and duties, every right has corresponding duty and vice versa. The civil revision petitioners do not have a



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right to prevent a person from operating in a bus route. If they were to interfere with the operation of the bus, they would be acting contrary to the law. I do not understand how laches apply in the present case for a simple reason that it was the second respondent, who should have taken steps, to comply with the directions given by the State Transport Appellate Tribunal as confirmed by the orders of this Court. It was his duty to implement the directions. When he has failed to perform the duty, that does not mean a right has been created in favour of the Elampiillai sector operators. The argument of laches though tantalizing, I am not willing to accept the same. The principle of laches or acquiescence would apply where a person keeps quiet when his rights have been trampled upon and not when there is a failure of statutory authority to perform his duties. Every day that the Regional Transport Authority failed to comply with the directions of this Court gives a cause of action to revive the proceedings in a representation.

35. I find that in this case it was the failure of the Regional Transport Authority in not implementing the order of remand passed by the State Transport Appellate Tribunal. Being private citizens, the civil revision petitioners had given a reminder to the Authority to perform his duties.



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Therefore, I will reject the argument of Mrs.Radha Gopalan that the action of the petitioners is hit by principle of laches.

**Change of bus stand does not necessarily imply variation
of permit under section 72(2)(xxii)**

36. Now turning to the merits of the case, I have to see whether the impugned order varies the permit conditions of Elampillai sector operators. I had requested Mrs.Radha Gopalan to produce the permits on the basis of which they are operating. She has been kind enough to produce the permits before me. Similarly, I requested Ms.Amirtha Poonkodi Dinakaran to produce the original files relating to the permit. She also produced the same.

37. The permit states that the route the petitioner must take is from Salem to Jalakandapuram in the case of Mr. SGR Sridhar. With respect to Dhandayuthapani Transports Private Limited, it only reads Salam to Mettur. Similarly for Selva Vinayaga Transports, it is from Mettur to Tiruchengode. For Shanthi Giridharan, it is from Salem to Salem via Siddharkoil, etc to Tharamangalam. The other permit in favor of Dhandayuthapani Transports Private Limited is from Namagiripet to Jalakandapuram. In the permit in favour of T.Praveen Kumar, it is stated as Salem to Erode. In none of these permits,



has it been stated, the termini as the Victoria Old Bus stand.

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38. Mrs.Radha Gopalan relies upon a Division Bench Judgment in W.P.No.17464 of 2004 etc., dated 22.12.2006 to state change of bus stand means change of permit conditions. Mrs.Radha Gopalan would place heavy emphasis on this judgment to state that the High Court had directed in that case that in case of shifting of a bus stand, the authorities would have to follow the requirements of Section 72(2)(xxii).

39. A careful perusal of the facts of that case would show how it is inapplicable to the facts of the present case. Originally, Madurai had only one bus stand by name Periyar bus stand. Subsequently, another bus stand was created called Anna bus stand. This bus stand catered to the needs of the travellers from Trichy, Sivaganga and Ramnad. Subsequently, finding increase in traffic, the Commissioner had decided to have an integrated bus stand, known as Mattuthavani bus stand. The Regional Transport Authority passed a consequential order to the effect that all the buses should use Mattuthavani bus stand as termini. The operators at Thirumangalam and Virudhunagar challenged the same stating that this amounts to a variation of their permit condition. They argued Section 72(2)(xxii) had not been complied with and the



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impugned order has to be set aside. The State Transport Appellate Tribunal was convinced with the submission and allowed the matter and remanded the same to the Regional Transport Authority, Madurai. In the facts of that case, the termini was not stipulated in the permit as Madurai City, but it specifically stated that they were required to go to Palanganatham bus stand from Kappalur. Such a specific mentioning of the bus stand is not available in our case.

40. This position is being relied upon by Mrs.Radha Gopalan to contend that as the new bus stand had been created in Salem, this judgment would be applicable to the facts of this case in all forces. Going through the facts, I find that the Division Bench had specifically found that the original permit condition required them to go to Palanganandam bus stand from Kappalur. That portion of the route was deleted and the parties were called upon to take a new route.

41. I would have applied the aforesaid judgment to the facts of the present case had the permit of the Elampillai Sector operators specifically stated that they will have to terminate at the Victoria bus stand. If such a condition had been imposed and the Regional Transport Authority without



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resorting to Section 72(2)(xxii), had directed them to go to the new bus stand, which I have to add here that by virtue of pendency of the litigation, has now become the old bus stand, it could have been argued that there is a change or variation in the permit. That is not the situation in the present case.

42. Furthermore, in paragraph 15 of the said judgment, the Division Bench finds that if a bus had to start from Trichy and terminate at Madurai, the route remains the same and merely because there is a change in the bus stand at Trichy or Madurai, it cannot be said that the route is changed. The Bench would also add that by virtue of change of the bus stand, if a bus is required to travel on a road not envisaged in the permit, to that extent, it can be said the route is changed. When the permits of the Elampillai sector operators do not specify the termini to be the old bus stand, the order directing the mofussil buses to halt at the new bus stand at Salem cannot be seen as an order varying the permit.

43. Applying the Division Bench judgment referred to by Mrs.Radha Gopalan, I have to come to the conclusion that there is no alteration in the



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permit and hence the requirement of Section 72(2)(xxii) does not apply.

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**An order of the court cannot restrict the power otherwise
available to a statutory authority**

44. Facing this difficulty, Mrs.Radha Gopalan would point out that the orders of the State Transport Appellate Tribunal of the years 1997 and 2001 had specifically directed the Regional Transport Authority, Salem to resort to Section 72(2)(xxii) and those orders having attained finality, it is not open to the Regional Transport Authority to resort to any other provision. She would rely upon the judgment of the Supreme Court rendered in *Anita International v. Tungabadra Sugar Works Mazdoor Sangh, (2016) 9 SCC 44*, particularly upon the paragraph Nos.54 and 55 of the said judgment, in order to press on this point.

45. It is settled principle of law that the order of the court cannot confer jurisdiction on an authority. The court only interprets the statute as it stands. Neither by consent nor acquiescence or through the order of the court, an authority can be empowered to exercise a jurisdiction which does not otherwise apply to the facts of the case.



46. Here I will very usefully refer to the judgment cited by Mr. Palani in

State of M.P. v. Nerbudda Valley Refrigerated Products Co. (P) Ltd., (2010) 7

SCC 751. Though the facts are not similar to the facts of the present case, laying down the position of law, the Supreme Court held as follows.

“when a matter is remitted to the original authority to decide the issue, the said authority must be allowed to take a decision one way or the other in accordance with the statutory provisions, the rules and regulations applicable to the same. There cannot be any restriction to pass an order in such a way dehors to the statutory provisions or regulations/instructions applicable to the case in particular.”

47. This clear and categorical dictum of the Supreme Court holds while remanding the matter to an authority, the Court cannot impose restrictions on the exercise of that power which the authority is otherwise empowered to exercise under the statute on remand. It is here that I would take strength from the view of Mr.Justice D.Raju in W.P.No.22264 of 1993 etc, dated 03.08.1994. The learned Judge in paragraph 21 had held as follows:

“The further question that requires to be considered is as to whether in substance and in reality the order impugned involves any variation of the conditions of permit



or curtailment of the route specified therein to the detriment of the petitioners so as to deny them any benefits or rights flowing from out of the permits granted to them in respect of their stage carriages. The Tribunal, while dealing with this aspect of the matter specifically adverted to the fact that so far as the permits granted to the mofussil bus operators are concerned, the same is with reference to the starting point from a place outside the Salem limit with the other termini specified as Salem only and not any particular place or locality in Salem. This specific factual finding was not challenged by producing copies of the respective permits or any other material demonstrate before this court that the real position is not so and that part from mentioning the terminus as Salem there is also particulars or details of the route to be adhered to within the Salem town limits or that any details relating to the particular bus stand are found mentioned in such permits. Consequently with the statutory notification issued under the Act notifying the new bus stand to be the only bus stand for stationing the stage carriages of the mofussil bus operators coming into Salem, from where only the buses have to commence and /or terminate their journey, the petitioners have to necessarily use the new bus stand as their halting place or bus stand to commence and also conclude their trips or journey and they have no right to claim to the contrary. Consequently, so long as the new bus stand is also within the Salem town limits which alone is



said to have been specified as the termini in the permits granted in favour of the petitioners, the alleged grievance of curtailment of a portion of the route not only pales into insignificance, but vanishes in air as a plea made in mere despair.”

48. The view that flows out of this paragraph is that as long as the new bus stand is within the Salem town and as long as there is no bus stand specified as the termini in the permit, the bus operators cannot have a grievance that they are now being called upon to halt their buses at a different location. Sadly this clear and categorical exposition of law by the learned judge had not been considered by the State Transport Appellate Tribunal while disposing of the appeals in 1997 and 2001.

49. I have already found Section 72(2)(xxii) of the Motor Vehicles Act does not apply to the facts of the case as there is no alteration in permit, since the permit itself does not state that halting point must be the old bus stand, but only states the halting point as Salem Town. Applying the judgment of Mr.Justice D.Raju to the facts of the present case, which relates to the very same factual scenario, I have to conclude that the direction to the authority to exercise the power only under Section 72(2)(xxii), when he is otherwise empowered to give directions in terms of the Act, is not only contrary to the



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Motor Vehicles Act, but also to the judgment of this Court, which had not been taken note of in the year 2001. This does not put an end to the litigation.

The Regional Transport Authority is empowered to specify a new termini bus stand under Rule 245(i)

50. The order of the Regional Transport Authority had been passed on 30.01.2023 and I have to find out whether the said order is supported by any provision of law under the Motor Vehicles Act.

51. At this stage, Mr.M.Palani would invite my attention to the Constitution Bench Judgment of the Supreme Court reported in *Municipal Board v. State Transport Authority, AIR 1965 SC 458*. The case arose under the old Motor Vehicles Act, which is more or less *in pari materia* with the new provisions. The Court had to interpret whether there was a power in the authority to fix the halting place of vehicles, though it had not been specifically declared in the Act. Interpreting Section 68(2)(r) of the old Motor Vehicles Act, which is identical to Section 96(2)(xxi) of the new Motor Vehicles Act, the court held as follows.

“19. It is equally clear to us that the “control of transport vehicles” with which Chapter IV purports to



deal should reasonably be expected to contain provisions for fixation of places where the transport vehicles may commence their journey or terminate their journey, that is, the fixation of bus stands. When therefore we find in Section 68(2)(r) the specific clause about “prohibiting the picking up and setting down of passengers ... at places other than duly notified stands,” it is reasonable to think that the word “stand” was used there to mean “bus stands” in the sense of places where services terminate or commence. The scheme of the sub-section clearly shows that bus stands have first to be notified and regulatory orders can, and have to be issued thereafter. In the nature of things, the power to issue the necessary notification is implied in the provision.

52. A reading of the Constitution bench makes it clear that the Government has the power to frame the rules with respect to picking up or setting down of passengers at duly notified stands and also to prohibit picking up and setting down passengers at places other than duly notified stands. In terms of this provision read with proviso to Rule 245(i) of the Tamil Nadu Motor Vehicle Rules, the Regional Transport Authority has the power to fix the route which has to be taken by a bus operator in order to reach the halting stand. Therefore, I am able to trace the power of the Regional Transport



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Authority to specify different bus stand for mofussil buses under Rule 245(i).

By virtue of the said provision, he was entitled to direct the route that has to be taken by the Elampillai Sector Operators.

53. In this regard, I must refer to the judgment of this Court in ***Rajapalayam New Bus Stand Vyaparigal Munnetra Nala Sangam vs. State of Tamil Nadu and Ors., W.P(MD).No.417 of 2011 dated 07.06.2011.*** Though that case was set in a slightly different circumstances, the principle of law laid down in that case has specific application to the present case. In the aforesaid case, this court when faced with a direction of the Regional Transport Authority appointing different termini bus stands for the town buses and mofussil buses laid the test of “public convenience” and held as follows:

“ As per the order of the Division Bench of this Court referred to above, the paramount importance is given only to the public at large whose convenience is to be taken into consideration. Here, the order only states that modification insofar as it relates to the town buses and mofussil buses still continue to be operated from the new bus stand. Further, Rule 245(d) of the Tamil Nadu Motor Vehicles Rules empowers the Regional Transport Authority to notify the stand as a public stand for a particular class of public service vehicles for which the



scheme was approved and under clause (e), the local authority may apply to the Regional Transport Authority for approval of the use of that stand for the purpose of picking up or setting down passengers of public service vehicles and the order approving the use of the public stand with or without modification shall remain in force for three years or such shorter period and Clause (h) also specifies the Regional Transport Authority may notify separate stand for stage carriage services or contract carriage services and under Clause (I), it is stated that when a public stand within the limits of the local authority has been notified by the Regional Transport Authority, any public service vehicle of that class for which the stand is intended shall make use of that stand for purposes of stationing the vehicle for picking up or setting down passengers. Therefore, the Rule specifically says that the Regional Transport Authority, in accordance with the necessity or need of the public and the convenience, can notify different areas for different buses. In this case, the local public request has been considered and the authority has duly passed orders in accordance with law. The petitioner is not able to pin point any infirmity in the impugned order. Even otherwise, the petitioner has not given any reason as to how the petitioners are affected and no individual has come forward with the details and nothing has been



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mentioned in the affidavit and on this score also, the writ petition is not maintainable.”

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54. This makes it clear that the test to specify a different bus stand by the authority is that of “public convenience”. In the present case, as the new bus stand had been constructed and notified only for the purpose of avoiding congestion and to facilitate public convenience, the order of the authority directing mofussil bus operators to halt at the new bus stand cannot be found fault with and the same would not amount to variation of permit under Section 72(2)(xxii).

55. To reiterate this, it is because the permit does not state the termination point as the old bus stand, but as Salem town, the Authority is empowered to specify a different bus stand within the limits of the Salem town. This puts an end to the submission of Mrs.Radha Gopalan that there is an alteration of route that has to be taken by Elam Pillai Sector Operators pursuant to the order impugned before the State Transport Appellate Tribunal dated 30.01.2023.

56. It is always open to the Regional Transport Authority to fix a



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different bus stand for town & mofussil buses if the termini remains constant.

This is based on the ground situation as assessed by the Regional Transport Authority and that being the subjective satisfaction based on the objective criterion, this is not susceptible to judicial review unless and until it is contrary to the statute and rules made thereunder or is *per se* arbitrary.

57. The learned State Transport Appellate Tribunal has been swayed by the orders passed by its predecessors in the years 1997 and 2001. It had ignored the orders passed by this Court in W.P.No.22264 of 1993 etc., dated 03.08.1994. This renders the order liable to be interfered with by me in exercise of my powers under Article 227 of Constitution of India.

58. The State Transport Appellate Tribunal had failed to appreciate that while dismissing the writ petitions filed by the operators challenging the order dated 12.11.1993, this court had specifically permitted the Regional Transport Authority to take steps in accordance with laws to regulate the traffic and to ensure, if need be, by prohibition of mofussil bus service from using any particular road or roads within the town limit not necessarily invoking the powers under Section 72(2)(xxii). Therefore, the endeavour of the State



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Transport Appellate Tribunal should have been to see whether the Regional Transport Authority has the powers other than those specified under Section 72(2)(xxii) to prohibit the mofussil bus operators from taking a particular route inside the Salem town. I have found that the power is available under Section 96(2)(xxi) read with Rule 245(i) of the Motor Vehicle Rules and therefore, the orders of the State Transport Appellate Tribunal necessarily would have to be interfered with.

An opportunity of hearing was not afforded before the appropriate authority before the order dated 30.01.2023

59. It is here that I have to take note of the argument of Mrs.Radha Gopalan that the Elampillai sector operators were not given any notice prior to the order passed on 30.01.2023. The State Transport Appellate Tribunal, being the last fact finding authority under the Motor Vehicles Act, has come to a conclusion after perusal of the records that the Regional Transport Authority had sent notices on 26.09.2022 to all the operators concerned, to appear for the personal hearing. The hearing was fixed on 17.10.2022 and completed on 18.10.2022. The State Transport Appellate Tribunal returned a finding that all the Elampillai sector operators, who were the appellants before the State Transport Appellate Tribunal, had appeared for the hearing on 18.10.2022 and



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have signed the attendance sheet. The State Transport Appellate Tribunal had also come to the conclusion that written representations were given by the Elampillai sector operators which shows that there is not only compliance of principles of natural justice at the time of hearing, but also their written representations had been received. It was only thereafter the orders came to be passed on 30.01.2023.

60. The State Transport Appellate Tribunal had, before arriving at the conclusion that there has been a compliance of principles of natural justice, gone through the original Regional Transport Authority records, and in fact, in the order, the learned Judge specifically recorded the page numbers on which notices were sent and also that the attendance sheets had been signed.

61. It is not disputed that the State Transport Appellate Tribunal is the last fact finding authority under the Motor Vehicles Act. However, in order to satisfy myself on the aspects of hearing, I called for the original records of the hearing that took place on 18.10.2022. Ms.Amirtha Poonkodi Dinakaran was kind enough to produce the records of the hearing that took place on 18.10.2022.



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62. While perusing the records, it became apparent that though hearing was conducted prior to the passing of the order on 30.01.2023, the said hearing was conducted by the Regional Transport Officer and not the Regional Transport Authority. This results in a material irregularity and a violation of principles of natural justice, for the Regional Transport Authority, who is empowered to pass the order, did not hear them, but it was the Regional Transport Officer who had heard them and had put up a note for approval before the Regional Transport Authority. It is fundamental principle of Administrative Law that the person who hears must decide. When the power is vested with the Regional Transport Authority, he ought to have heard the “representees” and the Elampillai Sector operators before passing the order. Since that procedure was not adopted, the finding of the Tribunal has to be interfered with.

Decision

63. In the light of the above discussion, all the **revisions are allowed**. The orders passed by the State Transport Appellate Tribunal in Appeal Nos.2 to 5, 7 and 8 of 2023 dated 04.05.2023 are set aside. The proceedings before



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the second respondent/ Regional Transport Authority in R.No.A4/41621/2022

is revived holding that there is no necessity for the Regional Transport Authority to invoke provisions under Section 72(2)(xxii). He has the powers under Rule 245(i) of the Tamil Nadu Motor Vehicle Rules. Prior to passing the order, he must come to a conclusion that the directions given are satisfying the requirements of public convenience test. The proceedings dated 30.01.2023 are set aside for want of compliance of principles of natural justice. The matter is remitted to the file of the Regional Transport Authority, Salem to hear the Elampillai Sector operators as well as any other persons who might be interested in the proceedings. The proceedings are revived only for granting hearing to the mofussil bus operators before the Regional Transport Authority, Salem. Costs throughout. The connected M.Ps. are closed.

64. By consent of all the parties including the Regional Transport Authority, Salem, the date of hearing for hearing the petitioners as well as the Elampillai Sector operators will be on or before 22.07.2024. The authority shall pass an order on or before 29.07.2024. He shall report compliance of this order to this Court on 31.07.2024.



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65. Call the matter for reporting compliance on 31.07.2024.

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12.07.2024

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Index : yes / no

Neutral Citation : yes / no

Speaking / Non Speaking Order



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