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C.R.P.No.2803 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.2803 of 2021

and

CMP.No.20340 of 2021

G.A.Sanjay
S/o.G.M.Aswatha Reddy
Prop.Jai Bharath Motor Service
Gunjur Village and P.O.,
Varthur via Bangalore-560 087.

... Petitioner

Vs.

State Transport Authority
Chepauk, Chennai-600 005

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order passed by the State Transport Appellate Tribunal in M.V. Appeal No.30 of 2020 dated 02.08.2021 confirming the order of the respondent made in R.No.10897/E4/2020 dated 03.06.2020 granting renewal of counter signature of permit in respect of State Carriage bearing Registration No.KA-01/AH-8388 plying on the inter-state route “Bangalore to Hosur” via Madiwala, Attibele and Hosur to perform six single trips per day by one vehicle instead of eight singles as granted by the primary authority viz., STA,



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Karnataka for a further period of five years from 03.06.2020 to 02.06.2025 for the portions lying in Tamil Nadu on single point tax.

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For Petitioner : Mrs.Radha Gopalan
Senior Counsel
for G.P.Bhargavi

For Respondent : Mr.A.Edwin Prabakar
Special Government Pleader

ORDER

The Civil Revision Petition is filed challenging the order passed by the State Transport Appellate Tribunal, Chennai in M.V. Appeal No.30 of 2020.

2. The petitioner herein is a stage carriage operator on the inter-state route “Bangalore to Hosur” via Madiwala, Attibele. Originally, the petitioner was permitted to ply six singles per day. As per the 3rd Reciprocal Agreement between the Governments of Tamil Nadu and Karnataka on inter-state transport of stage carriages under the Motor Vehicles Act in G.O.Ms.No.16, Home Prohibition and Excise (Transport III) Department, dated 07.01.2008 the petitioner has been permitted to ply two additional singles in addition to

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the 6 singles. The said two additional singles were included subject to the disposal of W.A.No.2381 of 2001 on the file of this Court. The permit was subsequently renewed in the year 2010 for five years from 03.06.2010 to 02.06.2015. Again, on 17.04.2015, the permit was renewed from 03.06.2015 to 02.06.2020. The same was counter signed by State Transport Authority, Chennai on 13.05.2015. Thereafter, by order dated 15.05.2020, the Additional Commissioner for Transport and Secretary, KSTA, Bangalore renewed the permit for further period of five years from 03.06.2020 to 02.06.2025. When the same was placed before the Tamil Nadu State Transport Authority for counter signature, the said authority allowed only six singles instead of eight singles. Aggrieved by the same, the petitioner preferred an appeal in M.V. Appeal No.30 of 2020 before the State Transport Appellate Tribunal, Chennai. The said appeal was dismissed confirming the order passed by the respondent. Aggrieved by the same, the petitioner is before this Court.

3. Mrs.Radha Gopalan, the learned Senior Counsel for the petitioner submitted that renewal in respect of two singles was refused on the ground that there is a scheme route. The learned Senior Counsel by taking this Court



to Section 6 of Special Provisions Act (Act 41 of 1992) submitted that operators who were granted permits from the year 1976 to 1990 were allowed to operate. The learned Senior Counsel further submitted that the respondent failed to take into consideration the reciprocal agreement dated 07.01.2008 entered between the States of Tamil Nadu and Karnataka where under both the Governments had agreed to grant two more additional singles. Therefore, the action of the respondent in granting renewal of permit only for six singles is illegal and arbitrary. The learned counsel by referring to Section 81 sub-section 4 of Motor Vehicles Act submitted that the order passed by the respondent without giving an opportunity of hearing to the petitioner was bad. In support of her contentions, the learned senior counsel relied on the judgment of the Hon'ble Apex Court in the case of ***G.T.Venkataswamy Reddy Vs State Transport Authority and others reported in (2016) 8 SCC 402.***

4. Per contra, the learned Special Government Pleader appearing for the respondent would submit that grant of two additional singles in favour of the petitioner by G.O.Ms.No.16, Home Prohibition and Excise (Transport III) Department dated 07.01.2008 was subject to result of W.A.No.2381 of 2001



filed by the petitioner before this Court and the said writ appeal was disposed with direction to continue the benefit in favour of the petitioner till disposal of Civil Appeal No.4480 of 1998 on the file of Supreme Court of India. The said Civil Appeal No.4480 of 1998 was dismissed by the Hon'ble Apex Court on 19.07.2016 by holding that any increase in the number of trips/singles cannot be permitted in respect of an area or route covered by an approved scheme as it would amount to grant of a new permit to operate one more stage carriage which is not permissible under Section 68 FF of Motor Vehicles Act. Therefore, it is the submission of the learned Special Government Pleader that original order increasing two singles in favour of petitioner was subject to the result of W.A.No.2381 of 2001 to which the petitioner was a party. Therefore, he himself was aware of the order passed in writ appeal and the same is binding on him. Therefore, the question of hearing the petitioner before passing the impugned order would not arise.

5. It is not in dispute that the petitioner is an inter-state stage carriage operator plying inter-state route from Bangalore to Hosur via., Madiwala, Attibele. Originally, he was granted to ply six singles. Subsequently, in a 3rd



Reciprocal agreement entered between the Governments of Tamil Nadu and Karnataka, he was granted two additional singles apart from existing six singles by order dated 07.01.2008 in G.O.Ms.No.16.

6. Annexure H to said G.O.Ms.No.16 would make it clear that two additional singles permitted for the petitioner is subject to the disposal of W.A.No.2381 of 2001 on the file of this Court. The said W.A.No.2381 of 2001 was disposed of by this Court by making following observation:-

“3. It is thus agreed that the present appeal be disposed of with the following directions:

1.The interim direction continuing at present would continue to enure to the benefit of the appellant till such time as the Civil Appeal is decided by the Hon'ble Supreme Court.

2. The result of the Civil Appeal would govern the rights of the parties before us thereafter”



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7. The Civil Appeal referred to in the above said order is C.A.No.4480 of 1998 on the file of Hon'ble Apex Court. The said Civil Appeal was disposed laying down the following legal propositions. The paragraph 50 of the said judgment passed by the Hon'ble Apex Court in C.A.No.4480 of 1998 (reported in 2016 8 SCC 402) reads as follows:-

“Having analysed the above referred to decisions and the statutory provisions, before rendering our final answer to the question referred to this Constitution Bench, it will be worthwhile to make a reference and list out the legal propositions which we are able to discern based on our detailed consideration in this reference:

(a) Chapter IV-A supersedes any inconsistent provisions in Chapter IV.

(b) The policy of the Legislature is clear from Section 68C that the State Transport Undertaking may initiate a scheme for the purpose of providing an efficient, adequate, economical and properly coordinated road transport service to be run and operated by the State Transport Undertaking in relation to any area or route or portion thereof. It may



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do so if it is necessary in the public interest.

(c) Grant of variation under Section 57(8) will be as good as grant of a new permit.

(d) Section 57(8) is controlled by Section 68FF falling under Chapter IV-A, by virtue of the superseding effect of Section 68B also falling under Chapter IVA.

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

(f) The effect of Section 68FF can be altered / modified / cancelled only in the manner as provided for under Section 68E and in no other manner.

(g) By virtue of the above, either a grant of a new permit or the variation of an existing permit of private operator cannot be ordered in respect of an area or route covered by an Approved Scheme.

(h) Increase in the number of trips or vehicles which were being run under the existing exempted permit under a Scheme will amount to grant of a new permit to operate one more Stage Carriage which is not permissible under Section 68FF.



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(i)The proposition of law, laid down by this Court in 'JAYARAM' impliedly stood overruled in 'ADARSH TRAVELS'.

(j)The economy and coordination, two of the factors, which govern the Approved Scheme, will be seriously infringed if the variation is to be granted of the existing permit condition.

(k) Even if there is an interstate 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 68B of the Act. Section 63 being in Chapter IV of the Act, the Scheme approved under Chapter IV-A will prevail over it.

(l)The Approved Scheme will exclude the operation of other stage carriage services on the Route / Area covered by the Scheme, except those whose names are mentioned in the Scheme and to the extent to which such exception is allowed.

(m)The provisions in Chapter IV-A are devised to override the provisions of Chapter IV and it is expressly so enacted, the provisions of Chapter IV-A are clear and complete regarding the manner and



effect of the “takeover” of the operation of a road transport service by the State Transport Undertaking in relation to any Area or Route or portion thereof (ADARSH TRAVELS).

(n) A necessary consequence of those provisions is that no private operator can operate his vehicle on any part or portion of a notified area or notified route unless authorized so to do by the term of the scheme itself. He may not operate on any part or portion of the notified Route or Area on the mere ground that the permit as originally granted to him covered the notified Route or Area (ADARSH TRAVELS)”.

8. A reading of above judgment would make it clear that increase in the number of trips or vehicles which were being run under the existing exempted permit under the scheme would amount to grant of a new permit to operate one more stage carriage and the same is not permissible under Section 68 FF (under Section 104 of new Act). Even if there is an inter-state agreement 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(cannot override Chapter VI of new Act by virtue of Section 98 of new Act).



Therefore, the permit granted to the petitioner under additional inter-state reciprocal agreement in the year 2008 cannot override the scheme approved under the Act. Under original permit, the petitioner was allowed to ply only six singles and the same was saved by the scheme. However, granting two additional singles in the year 2008 would amount to grant of new permit as per the decision of the Hon'ble Apex Court in the case law cited above. The inter-state agreement will not prevail over the scheme approved under the Act. Under the scheme in operation, permits of the existing operators are saved. However, issues of new permits are not at all permissible. Therefore, grant of two additional singles in the year 2008 subsequent to coming into force of scheme is not permissible as it would amount to grant of new permit. The respondent by following the law laid down by the Hon'ble Apex Court in ***C.A.No.4480 of 1998 reported in 2016 8 SCC 402*** rightly came to the conclusion that petitioner is not entitled to counter signature for two additional singles. The said decision of the respondent was confirmed by the State Transport Appellate Tribunal by relying on the case law cited above. Therefore, the petitioner has not made out any case for interfering with the impugned order.



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9. The learned Senior Counsel for the petitioner also submits that as on today there is no scheme in force in view of quashing of the scheme framed for entire State by this Court in W.P.No.2893 of 2011 on 18.04.2018. However, while considering this effect of quashing of 2011 scheme , the Division Bench of this Court in W.A.No.222 of 2017 observed as follows:-

“24. Once we conclude that the 2011 scheme is only a modification of the 1999 schemes, once the modification is struck down the 1999 scheme will automatically stand revived. If the 1999 schemes stand revived they would govern the grant of permits. Therefore, we are in entire agreement with the submissions of the learned Advocate General in this regard. Hence, we see no merit in the challenge to the order of the Writ court; the Writ Appeal will stand dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed”.



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10. As per the said observation of the Division Bench in W.A.No.222 of 2017, though 2011 scheme was quashed, the old scheme of 1999 got revived and the same would govern the grant of permits. As per 1999 scheme, no new permits are allowed in the routes governed by the scheme. There is no dispute that petitioner's route is governed by 1999 scheme. The Hon'ble Apex Court in C.A.No.4480 of 1998 categorically held that increase in number of trips by virtue of inter-state agreement cannot override the approved scheme. Therefore, no private operator can operate his vehicle on any part or portion of the notified area or notified route unless authorised to do so by the terms of the scheme itself. The petitioner's right to ply six singles was saved by the scheme itself and subsequent increase in two additional trips by inter-state agreement in the year 2008 is untenable in law as it would amount to grant of new permit.

11. The order impugned only seeks to give effect to order passed by Hon'ble Apex Court in Civil Appeal No.4480 of 1998 cited supra and the petitioner was party to the same. Hence, order passed in said Civil Appeal is binding on the petitioner. Therefore, the submission by learned Senior Counsel



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regarding failure to give any opportunity before passing impugned order is without any substance. Any opportunity to petitioner would be an empty formality in view of binding order passed by Hon'ble Apex Court, as rightly contended by learned Government Pleader.

12. In view of discussions made earlier, the Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

No costs.

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Internet : Yes / No
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To

The State Transport Appellate Tribunal, Chennai.



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