



WP(MD). No.11165 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date : 15/05/2024

CORAM

THE HON'BLE MR.JUSTICE K.RAJASEKAR

WP(MD). No.11165 of 2024

B.Nagalingam

... Petitioner

v.

**1.The Regional Transport Authority,
Theni, Theni District**

**2.M/s.Theni Bus Owners Association
Rep. by its Secretary
U.A.R.Tahir Hussain**

... Respondents

**(2nd respondent was impleaded
vide order dated 15.05.2024 in
WMP(MD) No.9957/2024)**

PRAYER :- Writ Petition, filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the respondent vide his proceedings in R.No.30212/A3/2023 dated 21.03.2024 and quash the same as illegal and consequently direct the respondent to rehear the grant of stage carriage permit on the route Periyakulam Bus Stand to Sothuparai.

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For Petitioner : M/s.A.C.Asaithambi

For Respondent : Mr.M.Ramesh for R1
Government Advocate
Mr.J.Nandhakumar for R2

ORDER

Heard the learned counsel for the petitioner, Mr.S.Ramesh, learned Government Advocate, who takes notice for the respondent No.1 and Mr.J.Nanthakumar, for the respondent No.2.

2.Challenging the impugned order of the first respondent dated 21.03.2024, rejecting the petition seeking route permit under Section 80 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') for running the stage carriage bus from Periyakulam Bus Stand to Sothuparai and for a consequential direction to the 1st respondent to rehear the petitioner to grant of stage carriage permit on the said route, this writ petition has been filed.



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3.The case of the petitioner is that originally his father was holding a route permit for running the stage carriage bus and subsequently by way of family partition, the permits were transferred to the paternal uncle of the petitioner. When the petitioner's father made an application for grant of stage carriage permit for Periyakulam Bus Stand to Sothuparai route, the same was rejected by the Regional Transport Authority (hereinafter referred to as R.T.A) and by way of appeal, the petitioner's father approached the State Transport Appellate Tribunal, Madras (hereinafter referred to as Appellate Tribunal) and in appeal, the matter was remanded back to the respondent authority for reconsideration and the same was again rejected. Subsequently the petitioner's father filed writ petition in WP No.8098/1994 and this Court disposed the said writ petition with liberty to the petitioner therein to make application for grant of temporary permit under Section 104 of the Motor Vehicles Act, 1988. In the interregnum, the petitioner's father died on 06.12.2012 and the petitioner herein has filed an application to the respondent seeking temporary permit under Section 104 of the Act for the same route, which was also rejected. Against the rejection, the petitioner also filed an



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appeal before the Appellate Tribunal and the appeal was allowed directing the respondent to consider grant of temporary permit. However, the authority has not granted temporary permit and rejected the application. Thereafter, one more writ petition was filed by him before this Court in WP No.4369/2019 and the same was dismissed on 11.08.2021, against which, an appeal in WA(MD)No.1037/2023 is filed and is pending before this Court.

4. While so, the petitioner has filed another application dated 31.07.2023 before the R.T.A, Theni, for granting regular permit for five years for the very same route , ie., Periyakulam Bus Stand to Sothuparai. This was taken up for consideration by the first respondent and as such the impugned order came to be passed, challenging the same, the petitioner is before this Court.

5. The learned counsel for the petitioner submits that it is true that earlier, the petitioner's father as well as the petitioner herein have approached this Court seeking permit for the very same route, which were dismissed. However, the impugned proceedings came to be passed,



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wherein, no proper opportunity was given to the petitioner for submitting his case and the representation was also dismissed on the ground that the petitioner has submitted defective application and no opportunity was given to rectify the same. Hence, on these grounds, he would submit that the impugned order is liable to be set aside.

6. The learned Government Advocate for the first respondent submits that this is a third round of litigation. Earlier, the petitioner's father submitted application for the very same route, appeal was also filed before the Tribunal, after dismissal of appeal, writ petition was also filed and dismissed. In the second round, the petitioner's application was rejected and the same was challenged and the writ petition was also dismissed and an intra Court appeal is still pending with regard to temporary permit. He would submit that now, the petitioner has once again raised a new cause of action by claiming permanent permit for the very same route, in spite of the fact that the route in which the petitioner claims is the scheme route, which is prohibited for issuance of any private permit for such carriage. Hence, the claim of the petitioner in



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claiming the permit for the very same route is bad in law and prays for dismissal.

7. I have considered the rival submissions and perused the materials available on record.

8. The following facts are admitted by the parties;

(a) As per Section 104 of the Act, the route between Periyakulam Bus Stand to Sothuparai covered by the scheme for stage carriage in the Theni District and the approved schemes are as follows:

i). Approved scheme for the route " Dindigul to Cumbum" notified in G.O. Ms. No. 3055, Home, dated 21.11.1973.

ii). Approved scheme for the route "Periyakulam to Theni" notified in G.O Ms No. 1475.Home, dated 25.6.1990.

ii) Approved Modified scheme covering the area comprising entire revenue district of Theni notified in G.O. Ms. No. 1535, Home (Tr III) Department dated 17.11.1999.



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9. Section 104 of the M.V. Act prohibits issuance of new permit to any person on any route covered approved scheme. Section 104 of the M.V. Act reads as follows:

“104. Restriction on grant of permits in respect of a notified area or notified route. Where a scheme has been published under sub-section (3) of section 100 in respect of any notified area or notified route, the State Transport Authority or the Regional Transport Authority, as the case may be, shall not grant any permit except in accordance with the provisions of the scheme:

Provided that where no application for a permit has been made by the State transport undertaking in respect of any notified area or notified route in pursuance of an approved scheme, the State Transport Authority or the Regional Transport Authority, as the case may be, may grant temporary permits to any person in respect of such notified area or notified route subject to the condition that such permit shall cease to be effective on the issue of a permit to the State transport undertaking in respect of that area or route”.

As per Section 104, once the scheme has been approved and notified, right to ply stage carriage by private operators on the notified area,



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routes, portions thereof is totally frozen. The petitioner has not sought for any permit for a new route, which is not covered under any scheme.

Since there is a total bar on issuance of permit, R.T.A is barred from granting any permit on that route except in accordance with the scheme.

Already the petitioner's application seeking grant of temporary permit for the very same route has been rejected by the R.T.A and this Court in WP

No.4369/2019, agreed with the same, with the following reasons:

“11. However, here in the case in hand, the report was called for by the Tribunal from the Regional Transport Officer, who had given the said report and the same has been considered by the Tribunal and the Tribunal has recorded that in order to substantiate the claim of the third respondent, they have enclosed the trip sheets and copy of the permit. It is not the report of one day, infact, it is a report for the period between 15.10.2018 to 10.11.2018 and during the period, after verifying the same, the Regional Transport Officer seems to have given the report on 19.11.2018. After perusal of the same, the Tribunal has held that it is evident that the Tamilnadu State Transport Corporation Limited is operating the vehicles in the route in question. The Tribunal also has recorded that in order to substantiate



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the contention raised by the petitioner, who was the appellant before the Tribunal, no document or evidence was produced either before the Regional Transport Authority or before the Tribunal.

12. When these evidences were produced before the Tribunal, having considered the same, since the Tribunal has come to the conclusion that the third respondent Transport Corporation have been running the buses in the route concerned, this Court find no contra evidences available before this Court to take a different view than the one that has been taken by the Tribunal.

13. In that view of the matter, the impugned order, in the considered opinion of this Court, is to be sustained, accordingly, the same is sustained. Hence, this writ petition fails, and accordingly, this writ petition is dismissed. However, there shall be no orders as to costs. Consequently, connected miscellaneous petitions are closed.”

9.1. In WP(MD) No.8815/2004 filed by the petitioner's father, it is observed as follows:

“...In view of Section 7 of the Act 41 of 1992, an application for grant of new permit on a notified route



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preferred before the date of publication of the Act stands abated and therefore the relief cannot be granted.”

It has reached finality.

10. The Hon'ble Apex Court, while considering the validity of Section 104 of M.V. Act, in ***U.P. State Roadways Transport Corporation, Lucknow Vs. Anwar Ahmed and others*** reported in (1997)

3 SCC 191, has observed as follows:

“7. It would, therefore, be seen that where the scheme has been published under sub-section (3) of Section 100 in respect of any notified area or notified route, the State Transport Authority or the Regional Transport Authority, as the case may be, shall not grant any permit except in accordance with the provisions of the scheme. Thus, the appellant-Corporation has the exclusive right or monopoly to ply their stage carriages and obtain the required permit as per the scheme. The proviso gives only a limited breath of life, namely, until the Corporation puts the vehicles on the notified routes as per the scheme, temporary permits may be granted to private operators. Thereby, it would be clear that temporary inconvenience to travelling public is sought to be averted till the permits are taken and vehicles



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are put on the route by the appellant. Therefore, the temporary permits will have only limited breath of life. Private operators are attempting to wear the mask of inconvenience to travelling public to infiltrate into forbidden notified area, route or portion thereof to sabotage the scheme. The permits were taken by the appellant and the vehicles are put on the route in terms of the scheme. Therefore, the direction given by the High Court at the pain of contempt is obviously illegal. It is stated by Shri V.R. Reddy, Additional Solicitor General, on instruction that the appellant is prepared to take all the permits required on the routes.

8. But the crucial question is whether a new route can be introduced by fusing two notified routes and temporary permits sought to be obtained on carved-out route? This device is obviously impermissible to enter into frozen area or route or portion thereof through backdoor. The scheme is law by itself and until it is varied according to law, no private operator has any right to camouflage any device to obtain temporary permits. Under these circumstances, action taken by the respondents to obtain temporary permits is obviously ultra vires and authorities have no jurisdiction to grant such permits. The altered or modified routes are



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contrary to the approved scheme, since they have been occupied by two notified routes and to be operated as per the scheme.”

11. The Apex Court, in ***M.Madan Mohan Rao and others Vs. Union of India and others*** reported in ***AIR 2002 SC 2647***, while deciding the validity of notification of the scheme under Section 100 of the M.V. Act, issued by Government of A.P, has once again reiterated in paragraph 26 that no private operator can operate his services on any part or portion of notified area or route, unless authorised under the scheme.

Paragraph 26 of the judgment reads as follows:

"26. The position is well settled that no private operator can operate his services on any part or portion of a notified area or notified route unless authorised so to do by the terms of the scheme itself. A Constitution Bench of this Court in the case of Adarsh Travels Bus Service v. State of U.P. [(1985) 4 SCC 557] construing the provisions of Sections 68-C, 68-D(3) and 68-FF, which are pari materia to Sections 99, 100 and 104 of the Motor Vehicles Act, 1988, held : (SCC pp. 566-67, para 7)



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“7. A careful and diligent perusal of Section 68-C, Section 68-D(3) and Section 68-FF in the light of the definition of the expression ‘route’ in Section 2(28-A) appears to make it manifestly clear that once a scheme is published under Section 68-D in relation to any area or route or portion thereof, whether to the exclusion, complete or partial of other persons or otherwise, no person other than the State transport undertaking may operate on the notified area or notified route except as provided in the scheme itself. A necessary consequence of these provisions is that no private operator can operate his vehicle on any part or portion of a notified area or notified route unless authorised so to do by the terms 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.” ”

12. As observed by the Apex Court in the judgments cited supra and the order passed by this Court in the Writ Petition filed by the petitioner earlier, categorically declares that, the private operator like the petitioner is not entitled to get any permit as a matter of right. They can seek temporary permit under the proviso to Section 104 if the State



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Transport Undertaking has not come forward to operate the stage carriage or not made any application for permit. Admittedly, the route for which permit is applied is a notified route and the State Transport Corporation is also running sufficient buses for the general public, on this ground also, the application of the petitioner is liable to be rejected. Further, it has already been held in previous proceedings that the petitioner is not entitled for temporary permit, the question of granting regular permit for the very same route does not arise.

13. In the said circumstances, finding that there is no merit in the prayer in the writ petition, the writ petition stands dismissed. No costs.

15.05.2024

NCC : Yes/No
Index : Yes/No

RR

To

1.The Regional Transport Authority,
Theni, Theni District

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K.RAJASEKAR, J.

RR

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