



W.P.(MD) No.14467 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.07.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.14467 of 2024

and

W.M.P.(MD) Nos.12714 & 12717 of 2024

S.Ashokan

... Petitioner

Vs.

- 1.The Regional Transport Authority,
Trichy District, Trichy.
- 2.The Regional Transport Officer,
Tiruchirappalli (West),
Trichy District.
- 3.The Assistant Commissioner of Police,
Traffic Wing, North Trichy.
- 4.The Divisional Manager,
Tamil Nadu State Transport Corporation
(Kumbakonam) Ltd.,
DM City, Trichy District.
- 5.The General Manager,
Tamil Nadu State Transport Corporation
(Kumbakonam) Ltd.,
Trichy District.

... Respondents



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Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records calling for the records pertaining to the impugned order passed by the first respondent vide his Proceedings in R.No.92285/A2/2012, dated 11.07.2019 rejecting the petitioner's application dated 26.10.2004 seeking variation of permit condition and diversion of the route in respect of the Stage Carrier bearing Registration No.TN 45 BA 8682 plying on the route Srirangam to Keelakurichi (via), West Boulevard Road instead of East Boulevard Road and for other reliefs.

For Petitioner : Mr.A.C.Asaithambi

For R1, R2, R4 & R5 : Mr.S.P.Maharajan
Special Government Pleader

For R3 : Mr.A.Albert James
Government Advocate (Crl. Side)

ORDER

Mr.S.P.Maharajan, learned Special Government Pleader, takes notice for the first, second, fourth and fifth respondents. Mr.A.Albert James, learned Government Advocate (Crl. Side), takes notice for the third respondent.

2. With the consent of the learned Special Government Pleader for the first, second, fourth and fifth respondents and learned Government



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Advocate (Crl. Side) for the third respondent, this Writ Petition is taken up for final disposal at the time of admission as the petitioner has an alternate remedy before the State Transport Appellate Tribunal under Section 89 of the Motor Vehicles Act, 1988.

3. It appears that the petitioner has filed an application for change of route permit under Section 80(3) of the Motor Vehicles Act, 1988 as early as 26.10.2004. It is submitted that on 17.03.2005, notice of hearing was issued to the petitioner. Despite the same, no order was passed. Therefore, the petitioner was constrained to move this Court in W.P.(MD) No.167 of 2012 which came to be disposed of 17.09.2012. By the said order dated 17.09.2012, this Court had passed the following order:-

“4. In spite of number of opportunities, no counter has been filed. The averments made in this writ petition therefore, go unrebutted. It is thus proved that the stage carriage permit granted to the petitioner is not workable, and taking note of the request of the petitioner, the process for diversion of route has already been started in the year 2005, but no final decision has been taken.

5. For the reasons stated, this writ petition is allowed. A writ in nature of mandamus is issued directing the respondents to take a final decision on the request of the petitioner for change of stage carriage permit route for plying the vehicle, within a



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period of three months of the date of receipt of a copy of this order.

6. Till the final decision is taken, the petitioner shall be allowed to continue to ply the vehicle on diverted route. No costs. Consequently, the connected Miscellaneous Petition is closed.”

4. Since nothing has been progressed further, the petitioner had thereafter filed W.P.(MD) No.3353 of 2019 for the following relief:-

“For issuance of a writ of Mandamus, forbearing the respondents 4 & 5 [Divisional Manager & General Manager of Tamil Nadu State Transport Corporation Limited] or their men or their agents from interfering or creating any trouble the operation of petitioner's Stage Carriage bearing registration No.TN 45 BA 8682 while plying on the route Chathiram Bus Stand (via) West Boulevard Road instead of East Boulevard Road.”

5. By an order dated 22.02.2019, the said Writ Petition was disposed of with the following observations:-

“7.Heard Mr.A.C.Asaithambi, learned counsel appearing on behalf of the petitioner and Mr.D.Muruganantham, learned Additional Government Pleader on behalf of the respondents 1 to 3 and Mr.D.Sivaraman, learned counsel appearing on behalf of the respondent 4 & 5.



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8. *It is not in dispute that there is an Order dated 17.09.2012 in W.P.(MD) No.167 of 2012, permitting the petitioner to continue plying the bus in the diverted route, till the respondents 1 & 2 take a final decision on his application requesting for diversion of route. It is also admitted by the respondents that till date, the application submitted by the petitioner for change of route has not been considered and disposed of on merits by the respondents 1 & 2, eventhough, a specific direction was given by this Court on 17.09.2012 in W.P.(MD) No.167 of 2012, directing the respondents 1 & 2 to dispose of the application submitted by the petitioner, within a period of 3 months from the date of receipt of a copy of the said order.*

9. *It is now the case of the petitioner that the respondents 4 & 5, are now preventing / objecting the use of the diverted route by the petitioner's vehicle, despite this Court by the aforesaid order dated 17.09.2012 in W.P(MD) No.167 of 2012 has permitted the petitioner to use the diverted route till the disposal of the application submitted by him for change of Stage Carriage permit route.*

10. *In view of the order dated 17.09.2012 in W.P(MD) No.167 of 2012, permitting the petitioner to operate the Stage Carriage vehicle in the diverted route, the respondents 4 & 5 cannot now object / prevent the movement of the petitioner's Stage Carriage vehicle in the*

11. *For the aforesaid reasons, it is the considered view of this Court that once the application filed by the petitioner to change the Stage Carriage permit route is disposed of by the first and second respondents, the entire dispute will be resolved.*



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12. In the light of the above observations, this Court directs the first respondent to consider and dispose of the application submitted by the petitioner for change of Stage Carriage permit route for his vehicle bearing registration TN-45-S-6892, within a period of 8 weeks from the date of receipt of a copy of this order, after giving an opportunity to all the transport operators who are operating in that route and till the disposal of the application submitted by the petitioner for transfer of Stage Carriage permit route, the Writ Petitioner is permitted to operate in the diverted route namely, Chathiram Bus Stand (via) West Boulevard Road instead of East Boulevard Road and the respondents 4 & 5 shall not interfere with the said operation.

13. With the aforesaid direction, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

14. Post the matter on 26.04.2019, for reporting compliance.”

6. Now, the impugned order has been passed pursuant to the aforesaid order of this Court dated 22.02.2019 in W.P.(MD) No.3353 of 2019. The operative portion of the impugned order reads as under:-

“It is submitted that the deviation of the route amounts to variation of permit and as per the provision under section 80 of Motor Vehicles Act 1988 the application for variation of permit is to be treated as an application for grant of permit. As per the provisions made section 6 (4) of Tamil Nadu (Special



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Provisions) Act 41 of 1992 there is a total ban to issue stage carriage permit to any private operators.

However as per the direction of the Honourable Madurai Bench of Madras High Court a hearing of all the operators concerned, including the Tvl. Tamilnadu State Transport Corporation Ltd., Trichy have been conducted on 02.07.2019.

During the hearing held on 02-07-2019

*The Permit holder of the town bus
(via) West Boulevard road
Main Guard Gate to Gandhi Market.*

As per the statutory provisions has to be rejected.

Hence, I, the Regional Transport Authority, Tiruchirappalli, in exercise of the powers conferred on me under section 80(3) of Motor Vehicles Act 1988 read with section 6(4) of Tamil Nadu Motor Vehicles (Special Provisions) Act 41/1992, do hereby reject the application for variation of permit filed by the applicant in respect of bus TN 45 S 0682 plying on the route as detailed above.”

7. The learned counsel for the petitioner would submit that under similar circumstances, this Court has passed an order in W.P.(MD) No. 6877 of 2019 on 28.08.2023 by quashing the similar order with the following observations:-



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“20. On perusing the order dated 31.12.2012 and 02.02.2019, this Court is of the considered opinion that the respondent have stated that same reason for declining the plea of the petitioner. As far as the traffic congestion is concerned based on the Advocate Commissioner’s Report dated 25.07.2023, this Court had held that there is traffic congestion since the market is not shifted. Hence the respondents cannot cite the 3310 trips and decline the petitioner’s claim. As far the explanation of “variation” is concerned, the issue was already considered in W.P.12083 of 2010, wherein vide order dated 25.09.2012 it is held as under:

“13. The Tamil Nadu Motor Vehicles (Special Provisions Act), 1992 and The Tamil Nadu Motor Vehicles (Special Provisions) Rules, 1995 gives jurisdiction to the statutory authority to consider the application for variation. Explanation was inserted for the purpose of giving more clarity to the concept of variation. Merely because the Explanation was taken away it cannot be said that the authority has become powerless to consider the application for variation. Explanation to Rule 4 contains nine instances to be treated as variation. Merely because those instances were taken away subsequently by way of amendment, it cannot be said that the jurisdiction itself was taken away. So long as Section 6(2) of the Act and Rule 4 are in the statute book, it is open to the Regional Transport Authority to consider the application for variation.

14. The Regional Transport Authority proceeded as if, the moment the Explanation is taken away, it would foreclose its authority to consider the application for variation. It is to be



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buses in course via EB Road have not raised such difficulties. But as per Advocate Commissioner's report none of the private operators are plying their buses in the EB Road.

22. A feeble attempt was made by the respondents stating that there is no public representation warranting the need to impose any restriction on the operation of bus service on this stretch of EB Road. Moreover, due to shifting of market and also the police officials had taken steps to regulate the traffic on the above said route there is no traffic congestion as alleged. But as stated supra when there is traffic congestion in East Boulevard Road and when the market is still functioning in the East Boulevard Road as stated in the Advocate Commissioner's report, then there is no need for any public representation.

23. For the reasons stated supra the impugned order is liable to be quashed and accordingly, the impugned order, dated 02.02.2019 is hereby quashed. Consequently, the respondents are directed to grant permission to the petitioner to ply his vehicle via West Boulevard Road on onward journey and via. Market, Madurai Road on the return journey.

24. With these observations, this Writ Petition is allowed. No costs. Consequently, W.M.P. (MD)Nos.5487, 5488 of 2019 are closed and W.M.P(MD)No.6224 of 2019 is allowed"

8. Considering the fact that a favourable order has been passed by this Court in W.P.(MD) No.6877 of 2019 on 28.08.2023, I am inclined to



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grant partial relief to the petitioner at this stage by staying the operation of the impugned order for a period of 60 days from today subject to the petitioner filing statutory appeal under Section 89 of the Motor Vehicles Act, 1988 with the State Transport Appellate Tribunal. The petitioner shall file appeal within a period of 30 days from today.

9. Since the impugned order is dated 11.07.2019, the State Transport Appellate Tribunal shall entertain the appeal and dispose of the same on merits and in accordance with law.

10. Stay of the operation of the impugned order shall come to an end at the 61st day from today, subject to the further orders to be passed by the Appellate Tribunal. In case the petitioner is able to convince the Appellate Tribunal, the Appellate Tribunal may pass such orders.

11. Consequently, the first and second respondents shall permit the petitioner to run the Stage Carriage bearing Reg.No.TN 45 BA 8682 on the diverted route via West Boulevard Road instead of East Boulevard Road for a period of 60 days from today.



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WEB COPY 12. In the result, this Writ Petition stands disposed of. No costs.

Consequently, connected Miscellaneous Petitions are closed.

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Index: Yes/ No

Neutral Citation: Yes / No

Speaking Order / Non-Speaking Order

JEN

Copy To:

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C.SARAVANAN, J.

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