



W.A.(MD)Nos.1708 and 1738 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 03.12.2024

DELIVERED ON : 27.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE **RMT.TEEKAA RAMAN**
and
THE HONOURABLE MR.JUSTICE **N.SENTHILKUMAR**

W.A.(MD)Nos.1708 and 1738 of 2021
and
C.M.P.(MD)Nos.7297 and 7378 of 2021

W.A.(MD)No.1708 of 2021:-

A.Raman

... Appellant

-vs-

1.Shanmugasundaram

2.The Regional Transport Authority,
Trichy West, Trichy.

...Respondents

Prayer: This Writ Appeal is filed under Clause XV of Letters Patent, to set aside the order passed in W.P.(MD)No.11358 of 2020, dated 21.04.2021 on the file of this Court.



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For Appellant	:Mr.M.Palani
For R1	:Mr.J.Anand Kumar
For R2	:Mrs.D.Farjana Ghousia Special Government Pleader

W.A.(MD)No.1738 of 2021:-

The Regional Transport Authority,
Trichy West, Trichy.

... Appellant

-VS-

1.Shanmugasundaram

2.A.Raman

...Respondents

Prayer: This Writ Appeal is filed under Clause XV of Letters Patent, to set aside the order passed in W.P.(MD)No.11358 of 2020, dated 21.04.2021 on the file of this Court.

For Appellant	:Mrs.D.Farjana Ghousia Special Government Pleader
For R1	:Mr.J.Anand Kumar
For R2	:Mr.M.Palani

COMMON JUDGMENT

[Judgment of the Court was made by **N.SENTHILKUMAR, J.**]

Aggrieved by the order passed in W.P(MD)No.11358 of 2020, dated 21.04.2021, the first and second respondents in the Writ Petition had filed W.A(MD)Nos.1738 and 1708 of 2021, respectively.



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2.For the sake of convenience, the status of the parties are referred as Writ Petitioner and respondents, as referred in the Writ Petition.

3.The Writ Petitioner had filed the above Writ Petition challenging the impugned proceedings passed by the first respondent in R.No.105630/A2/2005, dated 18.06.2020. The case of the Writ Petitioner is that he had applied for permit to operate minibus from Puthanatham to Kaulpannai on 04.12.2002. As no order was passed by the first respondent, a Writ Petition was filed in W.P.No.1786 of 2003 and a direction was issued to the authority to consider the same.

4.Thereafter, the Writ Petitioner had filed an application seeking permit for a modified route from Puthanatham to Kadaipitchampatti. The authority had rejected the said application on 28.07.2003. Aggrieved by the same, the Writ Petitioner had filed an appeal before the State Transport Appellate Tribunal and the said appeal was allowed on 01.11.2004 with a direction to the first respondent to consider the modified route. The said remand order of the State Transport Appellate Tribunal was challenged in W.P.No.37200 of 2004 and the same was



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dismissed on 07.05.2005. The first respondent at the time of considering the application of the Writ Petitioner had concluded that there was a overlapping served sector, which exceeded the permitted limit of 4 km.

5.In the meanwhile, G.O.(Ms)No.136, Home (Transport III) Department, dated 23.02.2011, was issued and a new comprehensive scheme was issued. The Writ Petitioner's application was once again rejected on 30.05.2011 by referring the aforesaid Government Order. Again, the Writ Petitioner had filed a Writ Petition in W.P.(MD)No.5614 of 2012 challenging the said Government Order. The said Writ Petition was came to be closed by referring that the said Government Order was already quashed in W.P.(MD)No.2893 of 2011. After several round of litigations, as per the direction of this Court in W.P.(MD)No. 19846 of 2019, the Writ Petitioner's application for grant of minibus stage carriage permit was once again taken up and vide impugned order in the Writ Petition, the Writ Petitioner's request was came to be rejected. Hence, the Writ Petitioner has challenged the impugned order in the present Writ Petition.



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6.The learned Single Judge after hearing the Writ Petitioner and the respondents had allowed the Writ Petition by considering the case of the Writ Petitioner that the distance sought by the Writ Petitioner, which comes to an extent of 8.2 kms under sector, but, as per the objection of the Tamil Nadu State Transport Corporation, the served distance was analysed and found that it is only 3.2 km. A reliance was made based an impression was created, as if a minibus bearing Reg.No.TN-49 7677 is plying on the modified route. However, by way of an information received under the Right to Information Act, the Writ Petitioner had found that one Mariya Pushpam is having a permit from Sukkampatti to Silambampatty (via) Sellampatty, Selanayakkanpatty, Kanaivaipatti, Pungunisipatty, Puthanatham High School, Marungapurai Road, Puthanatham, Karuncholapatty Pirivu, Karuncholapatty, Maniyankurichi Road and Maniyankurichi and found that the route referred in the information with regard to the minibus having Reg.No.TN-49 7677, has no relevance to the route sought by the Writ Petitioner.

7.The learned Single Judge further observed that the second respondent also plying a bus having stage carriage moffussil bus permit from Vedachandur to



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Trichy (via) Ayyalur, Puthanatham and Manaparai with IST and that the second respondent has no *locus standi* to oppose the grant of permit in favour of the Writ Petitioner. The learned Single Judge further noted that a report, dated 17.05.2009, was submitted by the Grade-I Motor Vehicle Inspector, who reported that the total length of the route is 11.8 km and that the length of the served sector is only 3.2 km and in a revised report, dated 28.01.2007, it was made clear the length of served sector is 6.7 km. The learned Single Judge had noted that the permit in favour of Mariyam Pusha pertains to some other route in which the second respondent is not an aggrieved person and on that basis, the learned Single Judge had directed the first respondent to issue minibus stage carriage permit, as requested by the Writ Petitioner in the modified route. Aggrieved by the said order, the respondents in the Writ Petition have filed the above Writ Appeals.

8.Mr.M.Palani, learned Counsel appearing for the appellant in W.A.(MD)No.1708 and the second respondent in W.A.(MD)No.1738 of 2021 submitted that a draft Government Order for a scheme was brought in vide G.O. (Ms)No.338, dated 13.06.2024, Home (Transport-I) Department. In view of the present draft new scheme, the Writ Petitioner cannot claim as a matter of right to



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seek for a permit to ply the minibus in the route as requested.

9.The learned Counsel had also relied upon Sections 90, 99(2) and 100 of the Motor Vehicles Act, 1988, which specifically state that a permit has valid only for a period of ten years and the application which was made by the Writ Petitioner on 04.12.2002 and the same was came to an end on 04.12.2022 and therefore, the claim of the Writ Petitioner cannot be granted, as the permit itself is valid only for a period of ten years.

10.The learned Counsel further contended that the modified approval scheme is applicable only for the minibus and the total extent of distance should be less than 20 km on the unserved rural area. In the impugned order, which was challenged before the Writ Court, the original authority had noted that a permit was sought for the route from Puthanatham to Karuppur, which was challenged on the ground that served sector was 6.7 km, which has exceeded the permissible level of 4 km. The original authority in the said impugned order has considered the distance, which is extracted hereunder:

“When this route was inspected by them, they found that the entire route on which mini bus permit was sought for, was covered



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by the served sector as follows:

- 1.Puthanaham to Karuppur (via) Ellappatti 8.2 km
Nallaponnampatti, Ponnusangampatti,*
- 2.Puthanatham – Ellappatti 1.6 km]
Karuppur – Vadakkapatti 1.6 km] Route served by
Total 3.2 km] Govt.Buses.*
- 3.Puthanatham to Karuppur
(via) Ellappatti, Nallaponnampatti and
Ponnusangampatti 8.2 km
(This entire route is served by another mini bus
TN49/7677 (DMT) doing 12 singles daily)*

Hence they stated that the entire modified route is already served sector; and that if it is granted, the applicants whose applications were already rejected in the Trichirappalli zone would make modified applications requesting mini bus permits and that would create a wrong precedence; and that by this private buses would interfere in the running of Government buses and would cause loss of revenue to the State Transport Undertaking.”

11.The learned Counsel pointed out that in Sl.No.3, the route, which is sought by the Writ Petitioner from Puthanatham to Karuppur, travels to 8.2 km. Under the Act, the unserved sector for the ply of minibus is permissible only to a distance of 4 km, whereas, the impugned order, which was challenged before the Writ Court, makes it clear in Sl.No.3 that the distance is 8.2 km.

12.The learned Counsels for the appellants would contend that the writ petition is not maintainable as there is an effective and efficacious alternative



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remedy available to the writ petitioner by way of appeal as against the orders of the Regional Transport Authority before the State Transport Appellate Tribunal and hence, the writ petition is not maintainable and relied upon the judgment of this Court in ***R.Shanmugaiah vs. P.S.Lakshmanakumar and another***, reported in ***2007 Writ Law Reporter 832*** and the decision of the Honourable Supreme Court in ***Assistant Commissioner of State Tax and others vs. Commercial Steel Limited***, reported in ***(2022) 16 SCC 447*** with regard to the maintainability of the writ petition without availing or exhausting the alternative remedy, except when the writ petition falls within the exceptional circumstances. The relevant paragraph in the aforesaid decision, namely, ***Assistant Commissioner of State Tax***'s case is extracted hereunder:

“10 The respondent had a statutory remedy under Section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances where there is:

- (i) a breach of fundamental rights;*
- (ii) a violation of the principles of natural justice;*
- (iii) an excess of jurisdiction; or*



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(iv) *a challenge to the vires of the statute or delegated legislation.*”

13.It remains to be stated that the Division Bench of this Court, by Judgment dated 26.11.2016, in W.A.No.1814 of 2013 (***Regional Transport Authority vs. Kannusamy***) has taken a view that the State cannot file appeal against the order of the Regional Transport Authority and dismissed the writ appeal.

14. After hearing the learned counsel on either side and perusing the materials available on record, we find that as per Sections 92, 99(2) and 100 of the Motor Vehicles Act, 1988, the grant of permit to the minibus operators is confined to 4 Kms., and the authority by calculating the distance claimed by the writ petitioner, which close to 8.2 Kms., is against the rule as contemplated under Section 92(2), 99 and 100 of the Motor Vehicles Act, 1988.

15. When the Act contemplates that permit could be given for plying



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of mini bus only on the served sector, there cannot be a deviation or extension beyond the Act. While so, the conclusion arrived at by the learned Single Judge with regard to the distance whether it is 3.2 Kms., is disputed by the appellants herein, which is a disputed question of fact, which cannot be adjudicated by the Writ Court. Had an appeal been filed by the writ petitioner before the State Transport Appellate Tribunal, the Tribunal would have examined the witness, called for a report and attempted to ascertain the correctness of distance, whether it is 3.2 Kms., or 8 Kms., which is disputed by the writ petitioner and asserted by the appellants.

16. Admittedly, the writ petitioner has not filed any appeal before the State Transport Appellate Authority, who could have examined the witnesses, called for a report and attempted to ascertain the correctness of the distance as to whether it is 3.2 kms. or 8 kms., which is disputed by the writ petitioner and asserted by the appellants. Without filing appeal before the State Transport Appellate Authority, he has directly filed the present writ petition.



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17. In other words, without availing effective and efficacious alternative remedy by filing an appeal before the State Transport Appellate Authority, wherein a District Judge is a member, the writ petitioner has directly filed the writ petition. The reason assigned by him is that due to covid pandemic, he could not file the appeal.

18. We have taken note of the orders passed by the Honourable Supreme Court with regard to extension of time limit and exclusion of limitation period in respect of the said period in *Sagufa Ahmed and Others Vs. Upper Assam Plywood Products Private Limited and Others*, reported in (2021) 2 SCC 317.

19. Even in the extended period of time given by the Honourable Supreme Court in the above cited decision, the appeal time was also expired. In other words, the statutory period for filing an appeal against the order of the Regional Transport Authority was also over and the extended time given by the Honourable Supreme Court for the covid pandemic period was also over. Thereafter only, the writ petitioner filed the writ petition and hence, we find that



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without availing or exhausting the alternative remedy, the writ petitioner filed the writ petition.

20. We have also perused the orders of the learned Single Judge.

21. We find that the factual position of this case does not fall under any of the Clauses (i) to (iv) of the decision of the Honourable Supreme Court in the case of *Assistant Commissioner of State Tax* (cited supra), which are extracted above. Hence, this Court is satisfied that the facts of the case and the contentions of the writ petitioner do not fall under any of the exceptional circumstances, wherein the Honourable Supreme Court has permitted for filing a writ petition, without availing the alternative remedy and hence, we are inclined to vacate the said finding passed by the learned Single Judge in the order dated 21.04.2021 in W.P.(MD) No.11358 of 2020 and to hold that the plea of the writ petitioner does not fall under any of the exceptional circumstances and hence, the writ petition has been filed without exhausting or availing the alternative remedy and he allowed the matter to be time barred as prescribed under the Act and furthermore, as extracted supra, even the period of limitation extended by the



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Honourable Supreme Court in the wake of covid pandemic as stated in the above cited case has also been expired and thereafter only, he filed the writ petition and hence, we find that viewing from any angle, the writ petition is not maintainable. Since the writ petitioner has not availed the alternative remedy and slept over the matter and thereafter only he has knocked at the doors of this Court under Article 226 of the Constitution of India, his contentions cannot be countenanced.

22. Yet another point is that in the writ petition, there is an order of the Regional Transport Authority, wherein he has referred to the disputed questions of facts based on the field report. When the permit itself is valid for a period of ten years, which was lapsed on 04.02.2022, the period of plying the mini bus on the modified sector has already been lapsed and the same cannot be revived or modified in view of the Government Order No.338, dated 13.06.2024.

23. The writ petition has been filed only for a direction to issue mini bus stage carriage permit to the writ petitioner for the modified route. Hence, the direction issued by the learned Single Judge in this regard is hereby set aside.



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24. For the foregoing reasons,

- (i) W.A.(MD) No.1708 of 2021 by the Regional Transport Authority is dismissed as not maintainable, on the ground that the State cannot file any appeal as decided in *Mahindra's* case.
- (ii) When there are disputed questions of facts, the same cannot be decided in a writ petition under Article 226 of the Constitution of India.
- (iii) The Original Authority, namely, Regional Transport Authority is the competent person to decide the served and non-served sectors and accordingly, the Regional Transport Authority has given a factual finding and the same was disputed by the writ petitioner and hence, the Writ Court cannot sit over the decision of the original authority to decide the disputed factual issues, which were settled by the Regional Transport Authority based upon the field report.



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- (iv) W.A.(MD) No.1738 of 2021 filed by one Raman is allowed and the order dated 21.04.2021, passed in W.P.(MD) No.11358 of 2020, is set aside and the said writ petition i.e. W.P.(MD) No.11358 of 2020 is hereby dismissed.
- (v) No costs.
- (vi) Consequently, connected miscellaneous petitions are closed.

[T.K.R., J.] [N.S., J.]
27.01.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

cmr/krk

To

The Regional Transport Authority,
Trichy West, Trichy.



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RMT.TEEKAA RAMAN, J.
and
N.SENTHILKUMAR, J.

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Judgment made in
W.A.(MD)Nos.1708 and 1738 of 2021

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