



W.A.(MD)No.698 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 04.02.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

**W.A.(MD)No.698 of 2020
and
C.M.P.(MD)Nos.4514 and 4515 of 2020**

Madurai Omni Bus Travels Owners Welfare
Association (A Registered Society),
Through its President and Secretary,
6D, Shopping Complex,
Periyar Bus Stand,
Madurai - 625 001.

... Appellant / Petitioner

Vs.

- 1.The Secretary to Government of Tamil Nadu,
Transport Department, Fort St.George,
Chennai - 600 009.
- 2.The District Collector,
Collectorate, Madurai.
- 3.The Commissioner of Police,
(Madurai City),
Office of the Commissioner of Police,
South Chithirai Street, Madurai.
- 4.The Joint Commissioner of Police (Traffic),
Madurai City,



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Office of the Commissioner of the Police,
Madurai.

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5.Regional Transport Officer,
Regional Transport Office,
Madurai (Central), Madurai.

... Respondents / Respondents

Prayer : Writ Appeal filed under Clause XV of Letters Patent, to allow the writ appeal by setting aside the order dated 27.08.2019 passed in W.P.(MD).No.23309 of 2015 on the file of this Court.

For Appellant : Mr.V.Meenakashisundaram

For Respondents : Mr.Veerakathiravan,
Addl. Advocate General
Assisted by Mr.K.Balasubramani,
Spl. Government Pleader for R1, R2 & R5.
Mr.Albert James,
Govt. Advocate (Crl. Side) for R3 & R4.

JUDGMENT

(Judgment of the court was delivered by G.R.Swaminathan, J.)

The Regional Transport Authority / District Collector issued notification bearing Na.Ka.No.3157/2014/Amu2 dated 28.11.2014 and published in Madurai District Gazette dated 09.12.2014 prohibiting entry of omni bus plying to other cities / towns from entering into Madurai city limits. Questioning the said notification, the appellant association filed W.P.(MD)No.23309 of 2015. The learned Single Judge by an elaborate



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order dated 27.08.2019 dismissed the writ petition. Challenging the same, this writ appeal has been filed.

2.The learned counsel for the appellant association reiterated all the contentions set out in the memorandum of grounds of writ appeal. He took us through the definitional clauses pertaining to “contract carriage, omni bus, public service vehicle and stage carriage” and Section 74 of the Motor Vehicles Act, 1988 and contended that the members of the appellant association are holders of contract carriage permits and that therefore, they are entitled to ply their omni buses through any permitted route and there cannot be a blanket ban on such operations. He heavily relied on the decision of the Hon'ble Division Bench of this Court reported in **2004 Writ L.R. 3 (Tamil Nadu Omni Bus Owners Association Vs. State of Tamil Nadu)**. He pointed out that when a similar restriction was sought to be introduced on the plying of omni buses in the city of Chennai, the Hon'ble Division Bench came to the conclusion that there would not any justification in imposing total restriction and that it would be unreasonable, arbitrary and violation of Article 14 of the Constitution of India. He called upon this Court to set aside the impugned order and allow the writ appeal as prayed for.



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3.The learned Additional Advocate General on the other hand submitted that before establishing omni bus stand, stakeholders were duly consulted. He submitted that the notification impugned in the writ petition is traceable to be power conferred under Section 115 of the Motor Vehicles Act, 1988. He took us through the order passed by the learned Single Judge and contended that only after due and proper application of mind, the ban was imposed on the omni buses from entering the city limits. He submitted that it was only for the safety and convenience of the general public and there is no malafides or arbitrariness in the said decision. He called upon this Court to sustain the order of the learned Single Judge and dismiss the writ appeal.

4.We carefully considered the rival contentions and went through the materials on record. Section 2(7), 2(29), 2(31), 2(35) and 2(40) of the Motor Vehicles Act are as follows:-

*“2(7) “**contract carriage**” means a motor vehicle which carries a passenger or passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any*



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person authorised by him in this behalf on a fixed or an agreed rate or sum—

(a) on a time basis, whether or not with reference to any route or distance; or

(b) from one point to another, and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes—

(i) a maxicab; and

(ii) a motor cab notwithstanding that separate fares are charged for its passengers;

*(29) “**omnibus**” means any motor vehicle constructed or adapted to carry more than six persons excluding the driver;*

*(31) “**permit**” means a permit issued by a State or Regional Transport Authority or an authority prescribed in this behalf under this Act authorising the use of a motor vehicle as a transport vehicle;*

*(35) “**public service vehicle**” means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motorcab, contract carriage, and stage carriage;*

*(40) “**stage carriage**” means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey;”*



5. Section 77 of the Motor Vehicles Act, 1988 reads as follows:-

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“77. Application for goods carriage permit.—An application for a permit to use a motor vehicle for the carriage of goods for hire or reward or for the carriage of goods for or in connection with a trade or business carried on by the applicant (in this Chapter referred to as a goods carriage permit) shall, as far as may be, contain the following particulars, namely:—

- (a) the area or the route or routes to which the application relates;*
- (b) the type and capacity of the vehicle;*
- (c) the nature of the goods it is proposed to carry;*
- (d) the arrangements intended to be made for the housing, maintenance and repair of the vehicle and for the storage and safe custody of the goods;*
- (e) such particulars as the Regional Transport Authority may require with respect to any business as a carrier of goods for hire or reward carried on by the applicant at any time before the making of the application, and of the rates charged by the applicant;*
- (f) particulars of any agreement, or arrangement, affecting in any material respect the provision within the region of the Regional Transport Authority of facilities for the transport of goods for hire or reward, entered into by the applicant with any other person by whom such facilities are provided, whether within or without the region;*
- (g) any other particulars which may be prescribed.”*



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6.No doubt, the members of the appellant association are holders of contract carriage permits and they are entitled to ply their buses through the permitted routes. As per statutory scheme of Motor Vehicles Act, 1988, permit is subject to the power conferred on the authority under Section 115 of the Motor Vehicles Act, 1988. It reads as follows:-

“115. Power to restrict the use of vehicles.—The State Government or any authority authorised in this behalf by the State Government, if satisfied that it is necessary in the interest of public safety or convenience, or because of the nature of any road or bridge, may by notification in the Official Gazette, prohibit or restrict, subject to such exceptions and conditions as may be specified in notification, the driving of motor vehicles or of any specified class or description of motor vehicles or the use of trailers either generally in a specified area or on a specified road and when any such prohibition or restriction is imposed, shall cause appropriate traffic signs to be placed or erected under section 116 at suitable places:

Provided that where any prohibition or restriction under this section is to remain in force for not more than one month, notification thereof in the Official Gazette shall not be necessary, but such local publicity as the circumstances may permit, shall be given of such prohibition or restriction.”



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7.The aforesaid statutory provision confers powers on the authority to prohibit the driving of motor vehicles of any specified class in a specified area. The authority after taking into account the ground reality had taken a decision that plying of omni buses through the city limit of Madurai would pose inconvenience to the general public and also endanger their safety. When the executive after taking into account the relevant materials has arrived such conclusion, it would not be open to the Writ Court to impeach or doubt the wisdom of the said decision. It is all the more so because the statutory provision empowers the authority to prohibit the driving of a class of motor vehicles in a specified area. The expression “*area*” has been defined in Section 2(1) of the Motor Vehicles Act, 1988. It is as under:-

“2(1) “area”, in relation to any provision of this Act, means such area as the State Government may, having regard to the requirements of that provision, specify by notification in the Official Gazette;”

8.In this case, the authority has taken Madurai as a specified area in which plying of omni buses cannot be permitted. When prohibitive power has been conferred on the authority, it would not be open to the

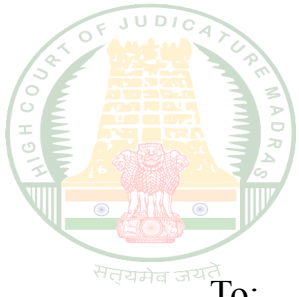


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Writ Court to restrict the reasonable exercise of such power. Of Course, the Hon'ble Division Bench in the decision reported in **2004 Writ L.R. 3 (Tamil Nadu Omni Bus Owners Association Vs. State of Tamil Nadu)** had held that absolute ban on the plying of omni buses in the city of Chennai would be unreasonable. Even after a careful reading of the aforesaid decision, we are not able to find any legal basis for arriving at such a conclusion. The learned Single Judge had elaborately discussed the aforesaid decision of the Hon'ble Division Bench and distinguished the same on facts. We endorse the approach adopted by the learned Single Judge. Interference with the said order is not warranted and the writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(G.R.S. J.) & (M.J.R. J.)
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NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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