

(2006) 11 MAD CK 0182

Madras High Court

Case No: Writ Appeal No. 224 of 2001

R. Thangavelu Proprietor
Pakshiraja Transport

APPELLANT

Vs

The Regional Transport
Authority, The State Transport
Appellate Tribunal, Santharam
Transports and Cheran
Transport Corporation Now
known as Tamil Nadu State
Transport Corporation
(Coimbatore Division II) Ltd.

RESPONDENT

Date of Decision: Nov. 30, 2006

Acts Referred:

- Motor Vehicles Act, 1939 - Section 68
- Motor Vehicles Act, 1988 - Section 80(1), 80(2)

Hon'ble Judges: S. Tamilvanan, J; P. Sathasivam, J

Bench: Division Bench

Advocate: M. Krishnappan, for the Appellant; P. Subramanian Govt. Advocate for R.1, C.R. Krishnamurthy, for R.3 and V.R. Kamalanathan for R.4, for the Respondent

Final Decision: Dismissed

Judgement

P. Sathasivam, J.

The above writ appeal is directed against the order of the learned Judge dated 16.10.2000 made in W.P.No.21318 of 1993, in and by which the learned Judge following the earlier judgement in Associated Bus Service, Tvl. v. SMMS Motor Service 1995 WLR 454, dismissed the writ petition.

2. Heard Mr. M. Krishnappan, learned Counsel for the appellant, Mr. P. Subramanian, learned Government Advocate for the first respondent, Mr. C.R. Krishnamurthy, learned Counsel for the third respondent and Mr. V.R.

Kamalanathan, learned Counsel for the 4th respondent.

3. Even at the outset, Mr. M. Krishnappan, learned Counsel for the appellant submitted that the learned Counsel for the petitioner who appeared before the learned single Judge had inadvertently informed that the Division Bench judgement in *Associated Bus Service, Tvl. v. SMMS Motor Service* 1995 WLR 454 is applicable and the same is the answer to the relief sought for. He therefore submitted that the said decision has no application to the facts of the petitioner's case and seeks permission to argue the writ petition on merits. He also pleaded that it is due to mistake on the part of the counsel, the above statement was made. In view of the specific request and of the fact that the learned Judge has not gone into the merits of the claim of both parties, we permitted Mr. M. Krishnappan, to argue the matter afresh on merits.

4. According to the petitioner, the Regional Transport Authority, the then Periyar District at Erode, called for applications for the grant of Stage Carriage Permit to ply on the route, Tirupur Bus Stand to Dalavaipalayam. There were 16 applicants received including that of the writ petitioner, and the Regional Transport Authority, Erode by order dated 23.12.1985 granted the permit to the writ petitioner.

5. Aggrieved by the grant of permit to the writ petitioner, seven appeals were filed before the State Transport Appellate Authority (in short "STAT"), Madras in appeal Nos.23, 33, 39, 48, 50, 61 and 76 of 1988. The STAT, at the first instance, considered five appeals, except Appeal Nos.23 and 75 of 1988 and by common order dated 27.07.1990, confirmed the grant of permit made in favour of the writ petitioner and remitted back the applications of the appellants to the Regional Transport Authority (in short "RTA"), Erode for reconsideration under the provisions in Section 80(2) of the Motor Vehicles Act, 1988.

6. Then the appeal numbers 23 and 75 of 1988 were taken up for consideration and the STAT, by common order dated 29.11.1990, set aside the grant of permit made in favour of the writ petitioner and remanded all the applications, including that of the writ petitioner to the RTA for reconsideration under the provisions of the new Motor Vehicles Act, 1988 (in short "M.V. Act").

7. The Tribunal, relying upon the draft scheme for the route Tirupur Bus Stand to Dalavaipalayam published in the Tamil Nadu Government gazette dated 15.03.1985, held that the permit was granted to the writ petitioner when the draft scheme was pending finalisation and hence as per the provisions of Section 68-F(1-D) of the Motor Vehicles Act, 1939, no permit could have been granted. The Tribunal also went into the merits of the matter relating to the workshop of the petitioner and interfered with the grant of permit. Questioning the same, the petitioner has filed WP.No.21318 of 1993.

8. The materials placed before us show that the route questioned is covered by an approved modified area scheme for Coimbatore and Erode Revenue Districts

published in Tamil Nadu Government Gazette, Extra-ordinary Issue No.863 dated 18.11.1999 and it overlapped the approved scheme as listed in the Annexure I.

9. The learned Counsel for the Transport Corporation relied on the decision of this Court in the case of Associated Bus Service, Tvl. v. SMMS Motor Service 1995 WLR 454. In that case, the Regional Transport Authority granted permit to Tvl. Associated Bus Service, Dharapuram to ply on the route Dharapuram to Kundadam in the hearing held on 25.08.1986. Against the said order, the Transport Corporation (then Cheran Transport Corporation Ltd.,) filed appeal No.89 of 1988 before the STAT. Similarly, other unsuccessful applicants also filed appeal Nos.64 and 83 of 1988. The STAT, by its order dated 14.12.1990, allowed the above appeals and set aside the order of the RTA granting permit to Tvl. Associated Bus Service with direction to consider the applications filed u/s 80(1) of the M.V. Act, 1988 of the appellants as well as the respondent therein, in the light of the provisions of the M.V. Act. Against the order of the STAT, dated 14.12.1990, Tvl. Associated Bus Service filed W.P.Nos.20010 to 20012 of 1993, which were ultimately dismissed by this Court by order dated 23.02.1994. By the said order, this Court confirmed the order of STAT made in Appeal Nos.64, 83 and 89 of 1999 dated 14.12.1990, wherein the Tribunal set aside the permit granted to Tvl. Associated Bus Service on the route, Dharapuram to Kundadam and remanded the matter back to RTA for fresh consideration. Against the order of the learned single Judge made in W.P.Nso.20010 to 20012 of 1993 dated 23.02.1994, Tvl. Associated Bus Service filed Writ Appeal Nos.1498 to 1500 of 1994 and the Division Bench of this Court by judgement dated 14.02.1995 1995 WLR 454, dismissed the writ appeals holding that as a result of the STAT order, the permit granted in favour of the appellant was set aside and the application was remitted back for fresh disposal under the Act and therefore, as on 31.07.1992, i.e., the date of publication of the Tamil Nadu Act 41/92 what was pending was the application filed by the appellant for the grant of stage carriage permit on the route, which overlapped the notified route. The Division Bench held that as the grant was not subsisting on that date when the Act 41/92 came into force, Section 10 of the said Act was not applicable to the petitioner/appellant therein as it did not apply to cases where the grant of permit or renewal or transfer of permit or variation, modification, curtailment did not subsist.

10. As rightly pointed out by the respondents, in both the cases, viz., in 1995 WLR 454 (cited supra) and the present case, the STAT set aside the permit granted by the RTA to private operators and remanded the matter to RTA for fresh disposal in accordance with M.V. Act, 1988 and there was no permit in favour of private operators at the time when the Act 41/92 came into force. In the case on hand, though the RTA granted permit to the petitioner R. Thangavelu on 23.12.1985, subsequently the same was set aside by the STAT on 29.11.1990. Therefore, as rightly pointed out, on the date of publication of the Act 41/92, i.e., on 31.07.1992, there was no permit in favour of R. Thangavelu and his application for grant of stage carriage permit was pending before RTA for consideration. Therefore, we are of the

view that the order of the learned single Judge made in W.P.Nos.20010 to 20012 of 1993 dated 23.02.1994, as confirmed by the Division Bench in W.A.Nos.1498 to 1500 of 1994, 104 and 105 of 1995 dated 14.02.1995 squarely applies to the present case, since both are similar kind of cases involving identical points. Probably, for that reason, when W.P.No.21318 of 1993 came up for hearing on 16.10.2000, learned Counsel for the petitioner, viz., Mr. V.A. Sadagopan, who is conversant with the Motor Permit matters fairly stated across the bar that the matter is covered decision rendered against the petitioner by this Court in 1995 WLR 454 (cited supra) and accepting the same, learned single Judge, rightly dismissed the writ petition.

11. As discussed and observed earlier, the issues involved in the routes, "Dharapuram-Kundadam" and "Tiruppur Bus Stand-Dhalavaipalayam" cases are identical and we are satisfied that the above referred Division Bench decision 1995 WLR 454 squarely applies to the present case and we do not find any error in the order of the learned single Judge dated 16.10.2000. No doubt, Mr. M. Krishnappan, learned Counsel for the appellant has brought to our notice the inconsistency in the orders of the STAT dated 27.07.1990 and 29.11.1990. However, we are concerned with the common order dated 29.11.1990 by the STAT, Madras in Appeal Nos.23 and 75 of 1988. In such circumstances, it is not for this Court to go into the order dated 27.07.1990 and it is open to the petitioner / appellant to work out his remedy in the manner known to law as against the order dated 27.07.1990, if he is so advised.

Under these circumstances, we are unable to accept the contentions raised by the learned Counsel for the appellant. Consequently, the appeal fails and the same is dismissed. No costs.