
(2016) 11 MAD CK 0153

MADRAS HIGH COURT (MADURAI BENCH)

Case No: Suo Motu W.P.(Md). No.20030 of 2016

The Registrar (Judicial)

APPELLANT

Vs

The Principal
Secretary, Home
Department

RESPONDENT

Date of Decision: Nov. 15, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226
- Motor Vehicles Act, 1988 - Section 2(7), Section 67

Citation: (2017) 1 ACC 51 : (2016) 2 AnWR 703

Hon'ble Judges: Mr. S. Nagamuthu and Mr. M.V. Muralidaran, JJ.

Bench: Division Bench

Advocate: Mr. R. Muthukumarasamy, Advocate General, Assisted by Mr. M.K. Subramanian, Government Pleader, Assisted by Mr. M. Govindan, Special Government Pleader, for the Respondent Nos. 1 to 4; Mr. Isaac Mohanlal, Senior Counsel, for the Amicus Curiae; Mr. R. Nate

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. This is a Suo Motu Public Interest Litigation, initiated by this court based on a News Report in "Dinamani", a Tamil Daily, that the Tamil Nadu Contract Carriage Owners' Association had enhanced the individual fares for the passengers to travel in the contract carriages operated within the State of Tamil Nadu. The report further indicated that the Government of Tamil Nadu had instructed these operators to announce the individual fares for the passengers to travel in their contract carriages. The said report also stated that since different fares were collected by the operator, according to their whims and fancies, in order to maintain uniformity and consistency, this decision, by the Association fixing uniform individual fares, was taken applicable for the deepavali season between

27.10.2016 and 31.10.2016 and thereafter, the usual individual fares fixed by the contract carriage operators shall be collected. On going through the said news report, since it was felt by us that by fixing/enhancing the individual fares for the passengers to travel in these contract carriages, the contract carriage operators are practically operating these buses like stage carriages, we thought it fit to initiate a Suo motu Public Interest Litigation. That is how, we took up the issue and the same came up for hearing before this court on 18.10.2016.

2. The learned Special Government Pleader, accepted notice for the respondents 1 to 4 and made appearance. He took time to get instructions from the respondents 1 to 4. Considering the importance and complexity of the issue involved in this litigation, we requested the learned Senior Counsel Mr. Isaac Mohan Lal to assist the Court, as Amicus Curiae. The matter was accordingly adjourned to 19.10.2016.

3. When the matter came up for hearing on 19.10.2016, the learned senior counsel Mr. M. Vallinayagam made an oral request to implead the "Madurai Omni Bus Owners" Association, Represented by its President" as a respondent in the case. Since, he had been instructed by the counsel engaged by the said Association, conceding to the request, we impleaded the said Association as the ififth respondent to this litigation.

4. We heard the learned counsel on either side and the Amicus Curiae, on 19.10.2016. The learned Special Government Pleader submitted that he had instructions from the State Transport Authority, Chepauk, Chennai, in writing. Referring to such written instructions, the learned Special Government Pleader submitted that for the contract carriages operated within the State of Tamil Nadu, the State Government has not fixed either minimum or maximum fares. Thus, it was made clear that these contract carriage operators were free to fix any amount either as contract fee for the bus hired as a whole or individual fares for the passengers. When we asked the learned Special Government Pleader as to why the Authorities under the Act have not taken any action against these contract carriage operators, he submitted that since the Government had not fixed any fares either individual fare for passengers or the fare for the bus as a whole, the transport, the revenue and the police authorities are helpless to control the fare charged by the contract carriage operators. He further submitted that at least in some cases, against the contract carriage operators for collecting individual fares from the passengers, action was taken and permits were cancelled. But, such orders were set aside by the State Transport Appellate Tribunal holding that collecting individual fares from the passengers would not amount to any violation of the provisions of the Motor Vehicles Act and this is yet another reason for the authorities to stop taking action.

5. Mr. Isaac Mohanlal, the learned Senior Counsel, Amicus Curiae, referred to the express provision contained in Section 67 of the Motor Vehicles Act, 1988, which mandates that it is the obligation of the State Government to issue appropriate directions by means of notification in the official gazette to fix fares, including the minimum and maximum, for the contract carriages. He further submitted that as per Section 74(2)(vi),

while granting permission for the contract carriages, the Regional Transport Authority, may, subject to any rules that may be made under the Act, attach to the permit any one or more of the following conditions, namely:- (i) that the vehicles shall be used only in a specified area or on a specified route or routes; (ii) that except in accordance with specified conditions, no contract of hiring, other than an extension or modification of a subsisting contract, may be entered into outside the specified area; (iii) the maximum number of passengers and the maximum weight of luggage that may be carried on the vehicles, either generally or on specified occasions or at specified times and seasons; (iv) the conditions subject to which goods may be carried in any contract carriage in addition to, or to the exclusion of, passengers. Obviously, the State Government has not issued any such notification under Section 67 of the Act.

6. Mr. M. Vallinayagam, the learned Senior Counsel was fair to concede that the Government has such power under the above said provision to fix the fare for the contract carriages. But, according to him, since the Government has not so far fixed any fare for these contract carriages, it became necessary for all Omni Bus Operators" Association to fix the individual fares for these Omni Buses for the year 2015-16 in order to, at least, maintain uniformity among the contract carriage operators. He further submitted that it was only as per the fares announced by the association, the contract carriage operators in the State have been collecting individual fares from the passengers. He further submitted that considering the demand and the other relevant facts, in the year 2015-16, the All India Omni Bus Operators" Association had fixed the individual fares for the passengers travelling in these contract carriages and further submitted that considering the hike in the salary of employees, escalation in fuel and oil prices, toll plaza charges and the other State road taxes, it became absolutely necessary for the association to hike the individual fare by 10% for the year 2015-16.

7. Mr. Isaac Mohanlal, the learned Senior Counsel, by making reliance on a Judgement of a Division Bench of the Bombay High Court in Public Interest Litigation No.149 of 2011 between Sahyog Trust through Secretary Ms. Rama Sarode v. The State of Maharashtra [Order dated 16.07.2014], submitted that by considering the scope and ambit of Section 67 of the Motor Vehicles Act, the Bombay High Court issued certain directions. The learned Senior Counsel further made reliance on certain Judgements of the Hon"ble Supreme Court in order to substantiate his submissions that this Court has jurisdiction to entertain the litigation in question in the larger interest of public and to issue necessary directions to the Government, as done by the Bombay High Court.

8. After having heard these submissions, this Court passed an elaborate interim order on 19.10.2016 itself. In that the following directions were issued:-

(i) The Deepavali festival season for the year 2016 shall be 27.10.2016 to 31.10.2016.

(ii) During this festival season, viz., between 27.10.2016 to 31.10.2016, the respondents shall ensure that only the existing fare announced by All Omni Bus Owners Association

for the year 2015-2016 is collected by the operators. In other words, the enhanced fare, as announced by the Association for this year, shall not be implemented.

(iii) For the non-festival season i.e., upto 26.10.2016 and on or after 01.11.2016, the respondents shall ensure that the Omni Bus operators collect fares only in the existing rate, as announced by All Omni Bus Owners Association for the year 2015-2016, without any further enhancement.

(iv) It is further directed that if already tickets have been sold out by the Omni Bus Transport Operators for any travel to be undertaken between 27.10.2016 to 31.10.2016, the excess fare collected shall be refunded to the respective passengers, at the time when the passengers board the Omni bus.

(v) As undertaken before this Court, the 5th respondent / Omni Bus Owners' Welfare Association shall furnish the details of fare fixed for ordinary seasons announced by All Omni Bus Owners Association for the year 2015-2016 to the Special Government Pleader.

(vi) It is further directed that the Transport Commissioner, and the respective Regional Transport Authorities, the District Collectors, the Commissioner of Police and the Superintendent of Police of every District shall be responsible to enforce this order meticulously. They shall take every steps to ensure that no excess fare is collected in violation of this interim order by the Omni bus operators.

(vii) It is further directed that wide publicity of spirit of this order shall be made by the Government in print and electronic media so that the consumers shall have the benefit of this order.

(viii) It is made clear that if it is brought to the notice of this Court that this order has been violated in any manner by any one, the respective District Collector / Commissioner of Police / Superintendent of Police and the State Transport Commissioner will be held personally responsible and they will have to face appropriate legal action, including the proceedings for contempt.

(ix) The Registry shall forward a copy of this order, along with a copy of details of the fares fixed by the All Omni Bus Owners Association for the year 2015-2016, to the Home Secretary to the Government of Tamil Nadu, who shall forward a copy of this order to all concerned for being obeyed.

(x) It is made further clear that this interim order shall be in force till 04.11.2016. The Registry shall list this matter on 04.11.2016 for further orders."

9. It was made clear to the parties as well as to the general public that the said interim order should not be construed as though this court had affirmed the alleged right of the contract carriage operators to fix the individual fare for the passengers travelling in these

contract carriages.

10. Subsequent to the above order, a Review Application was filed by the Government in Review Application (MD).No.39 of 2016. When that matter came up for hearing, Mr. R. Muthukumaraswamy, the learned Advocate General, appeared for the State. When we wanted him to address on the issue of maintainability of the Review Application as against the interim order, he submitted that such application for review was not maintainable. However, he requested the Court to clarify the earlier interim order dated 19.10.2016. According to the learned Advocate General, the contract carriage operators have got no right or power to fix the individual fares for the passengers to travel in the contract carriages. He further submitted that in the interim order, since this court had allowed the Omni Bus Operators to collect individual fares from the passengers during Deepavali festival season, it was likely to be abused by the contract carriage operators as though this court had upheld the right of the omni bus operators to collect individual fares. On considering the submissions made on either side, this Court, by order dated 25.10.2016, while holding that the Review Application was not maintainable, clarified that the said interim order was only by way of interim measure, for the period between 25.10.2016 and 31.10.2016 alone and it should not be, at any rate, construed that this court had approved the individual fare fixed for the passengers by the contract carriage operators.

11. When this matter, thereafter, came up for hearing on 04.11.2016, the Regional Transport Officer, Madurai [North], filed a compliance report on behalf of the respondents 1 to 4, wherein he reported that during deepavali season, a total number of 16181 contract carriages were checked by the official respondents and as many as 2507 check reports were issued and 25 buses were detained, which were run by the operators in violation of the provisions of the Motor Vehicles Act and the Rules thereunder. He further reported that a sum of Rs. 34,15,600/- was collected by the Authorities, as compounding fee, from these contract carriage operators for the violations committed by them. He further reported that a sum of Rs.3,02,180/- was collected towards tax and a sum of Rs.8,67,150/- has been proposed to be collected as compounding fee, besides a sum of Rs.26,46,800/- towards tax. He further reported that 91 contract carriage operators were found demanding excess fares, for which action was taken against them. He also reported that excess fares collected from 1233 passengers were refunded by the contract carriage operators, which accounted to Rs. 2,08,540/-. The said report was received on file and the matter was again adjourned to 11.11.2016, on the request of the learned Special Government Pleader for the appearance of the learned Advocate General.

12. During pendency of this litigation, a Miscellaneous Petition in W.M.P.(MD).No.14984 of 2016 was filed by the Tamil Nadu Omni Bus Operators' Association seeking to implead the said Association, represented by its President, as a party to this litigation and the same was allowed on 04.11.2016. The said Association was, accordingly, impleaded as sixth respondent to the litigation. Similarly, one M/s. K.P.N. Travels (India) Limited, Represented by its Managing Director, filed a miscellaneous petition in

W.M.P.(MD).No.15534 of 2016 to implead the said company as a party to the litigation. The said Miscellaneous Petition was allowed, on 11.11.2016 and the said company was, accordingly, impleaded as seventh respondent to the litigation.

13. In the counter affidavit filed by the Regional Transport Officer, Madurai North, on behalf of respondents 1 to 4, it is stated, inter alia, that as per the definition of the "contract carriages" as made in the Motor Vehicle Act, 1988, the public travelling in omni bus engage the bus as a whole on contract basis to pick up them from one place and drop them in another place, as per the contract already entered into between the operators of the omni buses and the group of the travelling public. It is further stated that the fares for omni buses have not been so far determined by the State Government. It is also stated that if the individual fares are fixed for the passengers travelling in contract carriages, then, the very definition of the "contract carriages" would be contradicted. It is also stated that as per Rule 85(9) of the Central Motor Vehicles Rules, 1989, the permit holder of a contract carriage shall not operate the same as a stage carriage. It is mainly contended that neither the Act nor any Judgement of the Supreme Court contemplates the individual fares for the passengers travelling in the contract carriages and thus, the individual fares fixed for the passengers by the contract carriage operators are not valid in law.

14. The respondents 5 to 7 have not filed any separate counter affidavits. However, the learned counsel appearing for them requested that the affidavits filed in support of their respective Miscellaneous Petitions to implead themselves as parties could be treated as their counter affidavits. The said requests were accepted by this court.

15. In the affidavit filed by the sixth respondent, in Paragraph No.5, it is stated that the very question with regard to fixation of fare came up before the First Bench of Principal Seat of this Court in W.P.No.29882 of 2013, in which the Division Bench, by order dated 22.06.2016, was pleased to give directions to the State Government to issue necessary Government Order.

16. The seventh respondent, in his affidavit, treated as counter, inter alia, has contended as follows: The seventh respondent is a registered company carrying on its business as travel agent and contract carriage operator in the State of Tamil Nadu, Andhra Pradesh, Karnataka, Kerala and the Union Territory of Puducherry. The company is in existence for more than 30 years. The seventh respondent company has got licences in all the States mentioned above. It is further stated that the said company books vehicles for transporting tourist parties to several States by using buses with All India Permits covering those States. Since tax is paid to more than one State, the fares charged by the omni bus operators will be higher than the buses, which have got permit to ply within one State only. It is also stated that the charges collected for the use of the vehicle as a whole for a party of tourist will depend entirely on the type of vehicle used. It is further contended that fixing fares in common may not be correct and different set of fares will have to be fixed depending upon the type of permit and the type of the bus.

17. Finally, we heard Mr. Isaac Mohanlal, the learned Senior Counsel/the Amicus Curiae, Mr. R. Muthukumaraswamy, the learned Advocate General for the respondents 1 to 4, Mr. M. Vallinayagam, the learned Senior Counsel appearing for the fifth respondent, Mrs. S. Radhagopalan, the learned counsel for the sixth respondent and Mr. R. Natesan, the learned counsel appearing for the seventh respondent, on 11.11.2016.

18. In his oral submission made before this court, the learned Advocate General submitted that these contract carriage operators have got no right to fix individual fares for the passengers who travel in these contract carriages and thus, the announcement made by the Contract Carriage Bus Operators Association, fixing/enhancing the individual fares for the passengers, is illegal.

19. The learned Senior Counsel appearing for the respondents 5, 6 and 7 have also got no controversy over the said legal position. In this regard, we may refer to Section 67 of the Motor Vehicles Act, 1988, which reads thus:-

67. Powers to State Government to control road transport. 67½ (1) A State Government, having regard to -

(a) the advantages offered to the public, trade and industry by the development of motor transport.

(b) the desirability of coordinating road and rail transport,

(c) the desirability of preventing the deterioration of the road system, and

(d) the desirability of preventing uneconomic competition among holders of permits, may, from time to time, by notification in the Official Gazette, issue directions both to the State Transport Authority and Regional Transport Authority-

(i) Regarding the fixing of fares and freight (including the maximum and minimum in respect thereof) for stage carriages, contract carriages and goods carriages :

(ii) regarding the prohibition or restriction, subject to such conditions as may be specified in the direction, of the conveying of long distance goods traffic generally, or of specified classes of goods carriages ;

(iii) regarding any other matter which may appear to the State Government necessary or expedient for giving effect to any agreement entered into with the Central Government or any other country relating to the regulation of motor transport generally, and in particular to its co-ordination with other means of transport and the conveying of long distance goods traffic.

Provided that no such notification in respect of the matters referred to in clause (ii) or clause (iii) shall be issued unless a draft of the proposed direction is published in the

official gazette specifying there in a date being not less than one month after such publication, on or after which the draft will be taken into consideration and any objection or suggestion which may be received has, in consultation with the State Transport Authority, been considered after giving the representatives of the interests affected an opportunity of being heard.

(2) Any direction under sub-section (1) regarding the fixing of fares and freights for stage carriages, contract carriages and goods carriages may provide that such fares or freights shall be inclusive of the tax payable by the passengers or the consignors of the goods, as the case may be, to the operators of the stage carriages, contract carriages or goods carriages under any law for the time being in force relating to tax on passengers and goods."

20. A plain reading of sub-section (1)(d) of Section 67 of the Act, as extracted above, would go to show that it is for the State Government to issue directions both to the State Transport Authority and the Regional Transport Authorities, by means of a notification in the Official Gazette fixing fares, including maximum and minimum thereof, for contract carriages also. But, admittedly, the Government of Tamil Nadu has not issued any such notification, so far, fixing the fares, including maximum and minimum thereof, for the contract carriages.

21. In the above said scenario, according to Mr. M. Vallinayagam, the learned Senior Counsel, since there is freedom for the contract carriage operators to fix fares for a bus as a whole and since such a fare is fixed by means of mutual agreement between the party, who engages the bus and the operator, there cannot be a limit in respect of such fares. He further submitted that during festival seasons, since there is a huge demand from the travelling public, the contract carriage operators have to fix the fare on contract on the higher side. Mr. M. Vallinayagam, the learned Senior Counsel for the fifth respondent and Mr. R. Natesan, learned counsel for the seventh respondent, further fairly conceded that these contract carriage operators have got no right to fix individual fares for the passengers who travel in these contract carriages.

22. However, Mr. R. Natesan, the learned counsel for the seventh respondent, would submit that under Rule 234 of the Tamil Nadu Motor Vehicles Rules, 1989, every owner of the public service vehicle, has got right to authorize a canvasser/agent, who has been licensed in FORM ACL from the Regional Transport Authority or its Secretary. He would further submit that these agents only sell the tickets and furnish daily return showing particulars in Form C.P. of fare collected from each of a group of travellers, the particulars of journey and the particulars of the contract carriage, contracted for the journey to the Regional Transport Authority who issued the licence. The learned counsel would further submit that thus, the tickets, by collecting individual fares, are sold only by the agents and not by the contract carriage operators.

23. Mr. Issac Mohanlal, the learned Amicus Curiae, submitted that a contract carriage can never be equated to a stage carriage and so, individual fares cannot be fixed for the passengers who travel in these contract carriages. But, hitherto, the practise appears to be that these contract carriage operators fix individual fares only for the passengers who travel in these buses, which, according to him, is illegal. He would refer to a Judgement of a Division Bench of Bombay High Court in Public Interest Litigation No.149 of 2011 between Sahyog Trust through Secretary Ms. Rama Sarode v. The State of Maharashtra [Order dated 16.07.2014], wherein the Bombay High Court, under similar circumstances, directed the Government to appoint an Expert Committee to make appropriate recommendations and has further issued a direction to the Government to notify the fares for contract carriages so as to avoid contract carriage operators from illegally fixing individual fares and collecting the same.

24. Mr. R. Muthukumaraswamy, the learned Advocate General, would submit that though it is true that so far the Government of Tamil Nadu had not issued any notification fixing fares for these contract carriages, as required under Section 67 of the Motor Vehicles Act, the Government is now prepared to fix fares for the contract carriages, based on the report from the experts and notify the same.

25. We have considered the above submissions, carefully.

26. From the narration of facts, which we have thus far made and from the submissions made by the learned counsel for the parties, including the learned Amicus Curiae, it is crystal clear that the contract carriage operators cannot fix individual fares for the passengers who travel in these contract carriages. In this regard, it is suffice for us to refer to the judgement of the Hon"ble Supreme Court in Roshan Lal Gautham v. State of U.P., AIR 1965 SC 991, wherein the Hon"ble Supreme Court has held as follows:-

"The contract carriage is engaged for the whole of the journey between two points for carriage of a person or persons hiring it but it has not the right to pick up other passengers on route. The State carriage, on the other hand runs between two points irrespective of any prior contract and it is boarded by passengers en route who pay the fare for distance they propose to travel."

27. Nirmala Jagdishchandra Kabra v. Transport Commissioner, (1997) 9 SCC 227, was a case, wherein a Writ Petition was filed by an agent, who had hired a vehicle on contract from the carriage permit holder seeking an appropriate order holding and declaring that the authorities had no legal right or power or authority to either seize or detain his vehicle solely on the allegation of collection of individual fare from the passengers at the starting point of journey, without picking up and dropping of passengers en-route. It was contended that the petitioner, an authorised agent, was collecting individual fares from passengers from one destination to another and that the vehicle was not used as a tourist vehicle hired to one group of passengers. The said contention was rejected and the Writ Petition was dismissed by the High Court. While dismissing the Special Leave Petition

filed against the said order, the Hon"ble Supreme Court has held as follows;-

"It is contended by Shri. Arun Jaitley, learned Senior counsel for the petitioner, that the petitioner has taken the vehicle on hire basis from the owner of the vehicle who had the permit for contract carriage of the passengers from one destination to another. They are not collecting any individual fare en route by picking up or setting down the passengers. They are picking up passengers from one place and taking them for tour to the other destination and, therefore, it is a "contract carriage" within the meaning of Section 2(7) of the Act. It is not a stage carriage permit but one of contract carriage and, therefore, the view taken by the High Court is not correct in law. It is true that if the holder of the vehicle obtains a contract carriage, the owner may carry a passenger or passengers for hire or reward on contract, whether express 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 person authorised by him in this behalf on a fixed or an agreed rate or sum. In other words, the very permit which grants the contract for carriage of the passengers should contain the names of the passengers should contain the names of the passengers to carry from one destination to another destination without picking up or setting down en route for hire or reward but when the holder of a permit is another and permits them to carry the passengers and makes the contract dehors those mentioned in the list of passengers enclosed to the permit as contract carriage and takes the passengers from one destination to another, even without picking up or setting down en route the necessary consequence would be that the vehicle has been or is being used as a stage carriage but not a contract carriage. Under those circumstances, obviously, the authority had rightly detained the vehicle for the contravention of the conditions of the permit. Therefore, the mandamus, as sought for, was rightly refused by the High Court. The learned counsel sought reliance on a Judgement of the Madras High Court in N. Krishnasami Chetty v. Licensing Officer, Dy. Transport Commissioner and Secretary , RTA, AIR 1988 Mad 274 : (1987) 2 MLJ 156. The learned Judges have not correctly appreciated the legal position. Therefore, it is not correct in view of the above law. It is accordingly overruled."

28. Approving the view taken in these two Judgements, in State of Andhra Pradesh v. B. Noorulla Khan, reported in 2004 (6) SCC 194, the Hon"ble Supreme Court has held that neither permit holder nor the agent could fix individual fare for the passengers. Thus, the law has been well settled by the Hon"ble Supreme Court in a catena of decisions that fixing individual fares for the passengers who travel in the contract carriages is illegal and, therefore, the authorities are duty bound to take appropriate legal action against such violators.

29. But, the authorities in this State have been swayed by a overruled Judgement in S. Krishnasami Chetty and others v. The Licensing Officer, AIR 1988 Mad 274 : (1987) 2 MLJ 156, wherein a learned Single Judge of this Court has held as follows:-

"It is not the case of the respondent that the vehicles of the petitioners picked up other passengers en route, so as to come within the mischief of the above ratio. As we could see from the definition of "contract carriage" as per Section 2(3) of the Act, by the collection of separate fares from the passengers it would not lead to the deduction that the vehicle has been used as a stage carriage and not as a contract carriage. The statement in the impugned order that the petitioners have not disputed that the passengers had not contracted to use the vehicle as a whole is not a correct statement, because as already noted that the petitioners have been uniformly and consistently contending that their vehicles had been hired to the Travel Agents as a whole for fixed sums of money. Even before this Court that is the stand expressed by the petitioners. This stand has not been rebutted by the respondent by filing any counter-affidavit, In the said circumstances, I am obliged to accept the case of the petitioners that their vehicles were hired to the Travel Agents as a whole for a fixed sum of money. As already noted, there is no allegation that in between the two points, the vehicles of the petitioners picked up other passengers, which may take the plying of the vehicles of the petitioners outside the purview of "contract carriages" and it could be stated that the vehicles plied as "stage carriages". For the above reasons, I am not able to uphold the orders impugned in these writ petitions and accordingly these writ petitions are allowed."

30. We apprehend that the argument of the learned counsel appearing for the stage carriage operators before this Court was also on the same lines as held by this Court in Krishnasami Chetty's case. The above said Judgment of this Court, as we have seen, has been overruled by the Hon'ble Supreme Court in Nirmala Jagdishchandra Kabra v. Transport Commissioner, (1997) 9 SCC 227. Either in ignorance of the over ruling or pretending to be ignorant, the Authorities, under the Motor Vehicles Act, in this State have allowed the contract carriage operators to commit illegality by collecting exorbitant individual fares with impunity. Virtually, the illegality has been allowed to be perpetuated.

31. From the Judgments of the Hon'ble Supreme Court, cited supra, it is crystal clear that even an agent cannot fix individual fares for the passengers and make collection of such individual fares from the passengers. In other words, what could not be done by a contract carriage operator cannot be done by his agent also. Therefore, neither the contract carriage operator nor his licensed agent could fix individual fare for the passengers who travel in the contract carriages.

32. The learned counsel for the seventh respondent made reliance on an order of a Division Bench of this Court in R. Gobika v. The State of Tamil Nadu, rep. by its Principal Secretary Home (Transport) Department and others, [W.P.No.29822 of 2013 dated 22.06.2016]. That was a public interest litigation seeking to raise the issue of overcharging by private bus operators, specifically, over the week ends, contrary to the rate fixed by Government Orders issued by the State Government from time to time. The Division Bench, having considered the rival submissions, held that public purpose would be served by ensuring that the rate be displayed at prominent place inside the bus itself to avoid any doubt. The Division Bench further directed that necessary Government

Order may be issued in this behalf and Transport Commissioner shall comply with the same. So far as the contract carriages in this State are concerned, since there has been no such fares notified by the Government of Tamil Nadu, as required under Section 67 of the Motor Vehicles Act, there is no occasion for these operators to display the fares. Thus, the said order of the Division Bench does not address the issue involved in the instant case.

33. The learned Advocate General brought to the notice of this Court that hitherto, as against some contract carriage operators, for having collected individual fares from the passengers, action was taken under the Act and the permits were also cancelled. Many such orders passed were challenged before the State Transport Appellate Tribunal, Chennai and the State Transport Appellate Tribunal, Chennai, in ignorance of the settled position of law, in some cases, held that collection of individual fares in the contract carriage buses will not lead to the conclusion that the vehicles had been operated as stage carriages. Taking such a view, the State Transport Appellate Tribunal, in many cases, has even interfered with the orders of cancellation of permits passed by the Transport Authorities. Unfortunately, those orders were not challenged. The learned Advocate General would submit that because of such kind of orders, the authorities became reluctant to take action under Section 86(5) of the Motor Vehicles Act against contract carriage operators. The learned Advocate General has produced a copy of one such order made in M.V. Appeal No.74 of 2013, dated 07.01.2014. In our considered view, all such orders passed by the Transport Appellate Tribunal, Chennai, are contrary to the Judgments of the Hon"ble Supreme Court, referred to above and these orders of the State Transport Appellate Tribunal cannot be taken as an impediment for the authorities to take action, in case, the authorities under the Motor Vehicles Act, find that the contract carriage operators have collected individual fares from the passengers.

34. As we have already stated, since, for decades, this illegality to fix individual fares for the passengers to travel in the contract carriages has been allowed to be committed with impunity by the contract carriage operators and since so far the Government has not obtained any report from the experts and to notify the fares for the contract carriages, as required under Section 67 of the Motor Vehicle Act, we deemed it absolutely necessary for this Court, in Public Interest, to appoint an Expert Committee to make necessary recommendations so that the Government shall notify the fares for the contract carriages, as per Section 67 of the Act. When this was expressed by this Court, the learned counsel appearing for the respondent Nos.4 to 7 conceded for the said course. The learned Advocate General submitted that the Government is prepared to issue necessary notification under Section 67 of the Act.

35. In our considered view, such an Expert Committee being constituted should be headed by a Former Judge of this Court and it shall have place for expert from various fields. The said Committee shall also afford opportunity for the Government and various Associations of Contract Carriages Operators and have regard to various relevant factors, including those indicated in Section 67 of the Act itself.

36. Having regard to all these aspects, we dispose of this Suo Motu Writ Petition with the following directions:-

(1) The Government of Tamil Nadu and the other Authorities of the Government, such as, Authorities of the Transport Department, Revenue and the Police shall not permit contract carriage operators or their agents to fix/collect individual fares for/from the passengers traveling in the contract carriages and they shall take appropriate legal action against the violators.

(2) The State Government shall issue a necessary Government Order within a period of two weeks from today, constituting the following Committee of Experts. The Committee shall consists of

(i) The Hon"ble Mr. Justice K.N. BASHA, Former Judge of the High Court of Madras ி½ Chairman,

(ii) The Transport Commissioner, Government of Tamil Nadu, Chepauk, Chennai ி½ Ex officio Member

(iii) The Director, Institute of Road Transport, Tharamani, Chennai ி½ Ex officio Member.

(iv) The Joint Secretary, Home [Transport] Department, Government of Tamil Nadu, Secretariat, Chennai - ி½ Ex officio Member.

(v) The Joint Secretary, Finance Department, Government of Tamil Nadu, Secretariat, Chennai - Ex officio Member ி½

(3). The Committee shall have its sitting at the Office of the Transport Commissioner or at any other suitable place of convenience, as fixed by the Committee.

(4). The date of Meeting of the Committee shall be fixed by the Chairman of the Committee and the first such Meeting shall be held within a period of seven days from the date of issuance of Government Order.

(5). The Government shall provide a Steno-Typist and an Assistant and the other necessary facilities for the functioning of the Committee.

(6). The Committee shall afford sufficient opportunity for various Associations of the Contract Carriage Operators in the State to explain their views.

(7). The Committee shall issue public notice in two dailies one in English and the other in Tamil about the sitting of the Committee and calling for suggestions, if any, in writing.

(8). The Committee shall make its recommendations regarding fixing of fares [including the maximum and minimum in respect thereof] for contract carriages having regard to various relevant factors, including the factors, indicated in Section 67 of the Motor

Vehicles Act.

(9). The Committee shall submit a detailed recommendations to the Government, within a period of four months from the date of first sitting of the Committee.

(10). On receipt of such recommendations from the Committee, the State Government shall consider the same and after complying with the procedure contemplated in the proviso to Sub-Section (i) of Section 67 of the Act and pass appropriate orders issuing directions to the State Transport Authority and the Regional Transport Authorities regarding the fares [including the maximum and minimum in respect thereof] for contract carriages by issuing a notification in the Official Gazette, within a period of twelve weeks, thereafter.

(11). It is directed that after such notification is issued by the State Government, the contract carriage operators and the agents/canvassers engaged by them shall be bound by the fares so notified by the Government.

(12). Until such notification is issued by the Government of Tamil Nadu, the Contract Carriage Operators shall operate the contract carriages by strictly complying with the provisions of the Motor Vehicles Act, 1988, the Central Motor Vehicle Rules, 1989 and the Tamil Nadu Motor Vehicles Rules, 1989.

(13). The initial honorarium for the Chairman of the Committee-Hon"ble Mr. Justice K.N.BASHA, Former Judge of this Court, is fixed as Rs.5,00,000/- [Rupees Five Lakhs only], which shall be paid by the Government of Tamil Nadu and the same shall be included in the Government Order constituting the Committee.