

(2003) 06 MAD CK 0023

In the Madras High Court

Case No : Writ Petition No's. 15354 and 15355 of 1995

K. Jagannathan, Proprietor

APPELLANT

Vs

The Regional Transport Authority South Arcot, presently
Regional Transport Authority, The State Transport Appellate
Tribunal and Thanthai Periyar Transport Corporation Ltd.

RESPONDENT

Date of Decision : 18-06-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 06 MAD CK 0023

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : V.T. Gopalan, SC, for Radha Gopalan, for the Appellant; V. Velumani, AGP for R1 and V.R. Kamalanathan, for R3, for the Respondent

Final Decision : Dismissed

Judgement

E. Padmanabhan, J.—W.P. No.15354/95 has been preferred by petitioner .K. Jag Nathan, Proprietor, M/s. Dhanalakshmi Roadways

praying for the issue of a writ of certiorarified mandamus calling for the records relating to the order dated 12.10.95 of the State Transport

Appellate Tribunal passed in Appeal No.13/73-A4, quash the same and direct the first respondent herein to forbear from interfering with the

operation of service of the bus TCZ 9099 on the route Tiruvannamalai to Cuddalore via Tatchampet, etc., covered by the permit R.

No.A2/29388/94 dated 13.12.1994 (Permit No. PSP/32/VPM/94, which is valid upto 4.2.2000) and thus render justice.

2. The very same petitioner has also filed W.P. No.15355/95 against the same respondents seeking for the issue of a Writ of Declaration declaring

that the petitioner is entitled to ply his stage carriage TCZ 9099 on the varied

route Tiruvannamalai to Cuddalore viz Tatchampet, etc., as per permit issued and renewed in R. No.A2/29388/94 dated 13.12.94 upto 4.2.2000 (Permit No. PSP/32/VPM/94, which is valid upto 4.2.2000) and thus render justice.

3. With the consent of either side, these two writ petitions were consolidated and ordered to be taken up. Though the 3rd respondent has been moving for vacating the interim orders and trying for earlier disposal of the writ petitions, as the papers were not traceable despite reconstruction on three different occasions, the writ petitions could not be disposed of earlier. Even as of today also, the original papers are not traceable and on the basis of reconstructed papers, these two writ petitions are taken up for final disposal.

4. Heard Mr. V.T. Copeland, learned senior counsel appearing for M/s. Radar Copeland for the petitione, Ms. V. Velumani, learned Additional Government Pleader appearing for the first respondent and Mr. V.R. Kamalanathan, learned counsel appearing for the 3rd respondent. The facts leading to both the writ petitions are common.

I. CASE OF THE PETITIONER :

5. The first respondent, the Regional Transport Authority, South Arcot District, invited applications for the grant of stage carriage permit to ply on the route Cuddalore New Town to Tirukkoilur via Nellikuppam, Panruti, etc., by notification issued u/s 37 (2) of The Motor Vehicles Act, 1939 in R.No.A1.64926/70. The petitioner submitted his application, besides 13 others also applied for grant of the said permit. The applications were invited under The Motor Vehicles Act, 1939, by notification dated 25.07.1992 and the applicants were heard in the meeting convened on 31.10.72 by the first respondent. The first respondent granted permit in favour of one P.Perumal Padayachi and rejected all the other applications including that of the petitioner. The petitioner preferred Appeal No.13/73 before the State Transport Appellate Tribunal, being aggrieved by the said proceedings of the Regional Transport Authority dated 31.10.72 impleading the grantee as well as the Regional Transport Authority. Two others, whose applications for grant were rejected, by the proceedings of the Regional Transport Authority, namely, Mr.K.Dhandapani and Smt.G.Saraswathi preferred Appeal Nos. 15 and 32 of 1973 respectively before

the State Transport Appellate Tribunal.

6. The State Transport Appellate Tribunal dismissed all the appeals as having abated in terms of the Tamil Nadu Act 13 of 1973. Being aggrieved

for rejection of appeals, the petitioner and two others preferred civil revision petition before this Court. The Civil Revision Petitions came to be

allowed in the light of the earlier judgment of the Division Bench of this Court declaring the provisions of Tamil Nadu Act 13 of 1973 as

unconstitutional and remitted the appeals to the State Transport Appellate Tribunal for fresh consideration. Subsequently, the Tamil Nadu Act 13

of 1973 has been declared valid by the Supreme Court. When the appeals were taken up for disposal consequent to the said remit order of this

Court. The Regional Transport Authority grantee, Perumal Padayachi has failed to produce the vehicle pursuant to the grant made in his favour and

as a result of which the grant was revoked by the Regional Transport Authority. As such the Tribunal had to consider only the claims of three

remaining appellants, before it, for the grant of the permit.

7. The State Transport Appellate Tribunal by order dated 7.11.74 held that the petitioner herein has superior claims, than the other two appellants

and allowed the appeal preferred by the petitioner in Appeal No.13/73 and directed grant of permit in favour of the petitioner and, consequently,

dismissed the appeals preferred by the said Mr.K.Dhandapani and Mrs.Saraswathi. The said two appellants Mr.K.Dhandapani and

Mrs.Saraswathi, preferred CRP Nos.367 and 78 of 1975 respectively on the file of this Court challenging the dismissal of their appeals by

impleading the writ petitioner herein as a party respondent in the said civil revision petition. The order passed by the State Transport Appellate

Tribunal in Appeal No.13/73 on 7.11.74 has not been challenged and has been allowed to become final, though the petitioner was impleaded as

one of the respondent in the appeals preferred by Mr.K.Dhandapani and Mrs.Saraswathi as well as in the Civil Revisions.

8. CRP No.78/75 was disposed of by this Court by order dated 27.4.76. The civil revision petition was allowed with a direction to the State

Transport Appellate Tribunal to consider the question of relevancy of the judgment of the criminal courts against the conductor and the question of

experience of the petitioner in operating a public carrier from 1971 and pass

orders. This Court did not disturb the other findings recorded by the State Transport Appellate Tribunal. This Court in the revision further directed that the writ petitioner herein, who was the first respondent in those appeals was permitted to operate till final orders are passed by the State Transport Appellate Tribunal. This Court also disposed of CRP No.367/75 on 16.1.79 following the earlier order dated 27.4.76 made in CRP No.78/75. The operative portion of the order reads thus :-

.....Since the petitioner's attack is also based on the same grounds, this revision also has to be allowed and it is accordingly allowed with a direction to the Tribunal to consider the relevancy of the judgment of the criminal court against the conductor of the 1st respondent and the question of experience of the petitioner in operating a public carrier from 1964. The Tribunal will dispose of the matter afresh in the light of the orders passed today and the one rendered on 27.04.75. There will be no order as to costs.....

9. In effect, this Court set aside the order passed in Appeal Nos. 15 and 32/73 and remitted those appeals alone for fresh consideration in view of the grant already ordered in favour of the petitioner by the State Transport Appellate Tribunal. But the State Transport Appellate Tribunal without reference to the specific orders and directions issued by this Court in the civil revision petitions remanding the connected two appeals, also ordered revival of all the three appeals including Appeal No.13/73 preferred by the petitioner. While the appeals were pending, the Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992 (Tamil Nadu Act 41 of 1992) came into force with effect from 31.7.92.

10. Section 6 of the Act bars grant of new permits under the Tamil Nadu Act 41 of 1992 to any person or any route covered by an approved scheme. Section 7 of the Act further provides that all applications and appeals for grant of new permits shall abate. While applying Section 7 of the Act, the State Transport Appellate Tribunal by order dated 3.2.93 dismissed the Appeal Nos. 13, 15 and 32 of 1973 as abated in terms of Section 7 of The Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992. The State Transport Appellate Tribunal also by order dated 12.10.95 held that Appeal No.13 of 1973 stands abated.

11. It is contended that there is no jurisdiction at all to revive or consider Appeal

No.13/73 as the order already passed has reached finality in the absence of revision. In the place of Perumal Padayachi, the petitioner was transposed. Though the earlier two appeals were disposed, Appeal

No.13/73 was kept pending for some time. The 3rd respondent also impleaded itself as a party respondent in the said appeal.

12. In the meantime the permit for the route in question in respect of the bus TCZ 9099 expired on 5.2.90 and the petitioner applied for renewal of

the said permit for a period of five years from 5.2.90. The Regional Transport Authority rejected the said renewal application by proceedings

dated 20.12.90. Challenging the same, the petitioner preferred R.P. No.5/91 before the State Transport Appellate Tribunal. The State Transport

Appellate Tribunal by order dated 3.2.93 allowed the said revision petition overruling the objections raised by the 3rd respondent and directed

renewal of the said permit for a further period of five years after holding that the provisions of Tamil Nadu Act 41 of 1992 enables grant of such

renewal. The petitioner's permit was renewed for a further period of five years from 5.2.90. The proceedings of renewal has also become final.

13. At that stage, the petitioner filed W.P. No.176/94 for the issue of a writ of mandamus directing the Tribunal to forbear from hearing and

disposing of Appeal No.13/73 u/s 7 of the Tamil Nadu Act 41 of 1992. The writ petition was admitted on 5.1.94 and stay was granted. However,

on a later date, the petitioner withdrew the writ petition as the petitioner was advised that the petitioner could raise the question of jurisdiction

before the State Transport Appellate Tribunal on the restoration of his Appeal No.13/73 and disposal of the same. Thereafter, the Tribunal once

again took up Appeal No.13/73 and various contentions were advanced on behalf of the petitioner as well as the 3rd respondent. It was also

pointed out that the 3rd respondent was neither an applicant nor an objector at any stage of the proceedings and was also not a party to the remit

order. It was also contended before the State Transport Appellate Tribunal that the said Tribunal has acted without jurisdiction in restoring Appeal

No.13/73, though the appeal was not the subject matter of any pending or further proceedings or a revision petition. It was claimed by the

petitioner that the petitioner has been substituted in the place of Perumal Padayachi, the Regional Transport Authority grantee by the subsequent

orders.

14. In the civil revision petitions, this Court directed the State Transport Appellate Tribunal to consider two points and pass final orders -

i) The question of relevancy of the judgment of the criminal courts against the conductor ;

ii) The question of experience of the petitioner in operating a public carrier from 1971.

It is contended that the order granting permit in favour of the petitioner has been allowed to become final and hence, it is not liable to be reopened.

The Tribunal, it is contended, has no jurisdiction to restore Appeal No.13/73. That apart, nothing survives to be considered pursuant to the remit

order after the dismissal of the two appeals viz., Appeal Nos.15 and 32/73. It is also contended that the grant in favour of the petitioner

tantamount to grant of a fresh permit under The Motor Vehicles Act, 1988. Without reference to these contentions and the objections raised, the

Tribunal dismissed the appeal preferred by the petitioner by the proceedings, which is impugned in these writ petitions.

15. It is contended that the orders passed by the Tribunal bristles with illegalities, suffer with illegality and error of jurisdiction apparent on the face

of the record. It is also contended that the grant in favour of the petitioner for renewal of earlier permit under the provisions of The Motor Vehicles

Act, 1988 for the period 5.2.90 to 4.2.95 and 5.2.95 to 4.2.2000 tantamount to fresh grant of permit in favour of the petitioner for the route in

question under The Motor Vehicles Act, 1988 and, therefore, the order passed in the CRP Nos. 78 and 367 of 1975 will no longer survive nor

the Appeal No.13/73 is liable to be reopened. It is contended that the third respondent was an objector to the renewal of the permit for the period

5.2.90 and the renewal was granted by the Tribunal by order dated 3.2.93 made in R.P. No.5/91 overruling the objections of the 3rd respondent-

Corporation and the said renewal would amount to grant of fresh permit under the provisions of The Motor Vehicles Act, 1988. The impugned

proceedings of the Tribunal suffers with illegality, misdirection and error apparent on the face of the record and the impugned proceedings are

liable to be quashed.

16. While filing the above writ petition challenging the proceedings of the State

Transport Appellate Tribunal, the petitioner has also prayed for a writ of declaration declaring that he is entitled to ply his stage carriage TCZ 9099 on the varied route Tiruvannamalai to Cuddalore under permit already renewed on 13.12.94 for the period ending with 4.2.90 on the same grounds.

II. CASE OF THE 3rd RESPONDENT :

17. It is contended that the Regional Transport Authority, South Arcot District, invited applications for grant of a stage carriage permit to ply on the route Cuddalore NT to Tirukkoilur by issue of notification u/s 57 (2) of The Motor Vehicles Act, 1939 and the petitioner was one of the applicants along with thirteen others. The Regional Transport Authority by order dated 25.7.92 granted permit in favour of one Perumal Padayachi and rejected remaining 13 applications. As against the rejection of his applications, the petitioner preferred Appeal No.13/73 before the State Transport Appellate Tribunal, besides two others, namely, K.Dhandapani and Mrs.Saraswathi also preferred Appeal Nos. 15 and 32 of 1973 respectively. All the three appeals were dismissed as abated in terms of the Tamil Nadu Act 13 of 1973. As against the dismissal, the petitioner therein and two others preferred civil revision petitions before this Court. This Court by a common order, set aside the orders passed by the State Transport Appellate Tribunal and remitted the matter for de novo consideration. The original grantee, Perumal Padayachi failed to produce the vehicle, though grant has been made in his favour and, therefore, the said grant was revoked by the Regional Transport Authority.

18. The State Transport Appellate Tribunal by order dated 7.4.74 granted permit to the petitioner herein by allowing his appeal No.13/73 by dismissing the other two connected appeals preferred by Mr.K.Dhandapani and Mrs.Saraswathi. The said Mr.K.Dhandapani and Mrs.Saraswathi preferred CRP Nos.367 and 78 of 1975. Both the revision petitions were allowed on 27.4.76 and the matter was remitted to the State Transport Appellate Tribunal to consider the following two questions and pass orders on merits:-

- i) The question of relevancy of the judgment of the criminal courts against the conductor ;
- ii) The question of experience of the petitioner in operating a public carrier from

1971.

This Court also directed continuance of operation by the writ petitioner. The appeals were pending before the State Transport Appellate Tribunal

and in the meanwhile Tamil Nadu Act 41 of 1992 came into force with effect from 31.7.92 and in terms of the said special enactment, the appeals

abated. The 3rd respondent was impleaded in Appeal No.13/73.

19. The petitioner moved W.P. No.176/94 praying this Court to issue a writ of mandamus directing the State Transport Appellate Tribunal to

forbear from disposing of Appeal No.13/73 in terms of Section 7 of Tamil Nadu Act 41 of 1992. This Court granted interim stay of further

proceedings in the said Appeal No.13/73. However, the petitioner withdrew the writ petition and the writ petition was dismissed as withdrawn.

20. The Tribunal by order dated 12.9.95 pursuant to the remand order passed in CRP No.78/75, dismissed Appeal No.13/73 as abated u/s 7 of

Tamil Nadu Act 41 of 1992. Challenging the said order dated 31.7.92 the present writ petition has been preferred.

21. It is pointed out that in CRP No.78/75, this Court considered all the aspects and various submissions made by the petitioner in CRP Nos.78

and 367 of 1975 and disposed of those revision petitions. This Court also considered the merit of the petitioner's claim for grant and the grant

made in favour of the petitioner. After consideration of those aspects, this Court remitted the entire matter and it is not open to the petitioner to

contend that the order passed in Appeal No.13/73 has become final and it cannot be reopened or reagitated.

22. Though there was no occasion for the petitioner to prefer a revision as against the order passed in Appeal No.13/73 by the State Transport

Appellate Tribunal, the remit order passed by this Court would mean all the appeals preferred in relation to the grant is at large and the claims

made by the various claimants have to be examined on merits and according to law. It is a fact that all the appeals were restored by the State

Transport Appellate Tribunal. In those appeals also, the 3rd respondent herein was impleaded as a party respondent.

23. On 18.7.92 a joint memo was filed by the three appellants to the effect that grant of permit made in favour of the petitioner in Appeal

No.13/73 be confirmed and the appellant in the other two appeals have no

objection for grant of an additional permit on the same route in favour of the two appellants. However, the State Transport Appellate Tribunal by order dated 31.11.73 dismissed all the three appeals, namely, Appeal Nos. 13, 15 and 32 of 1973 as abated. It is untenable to contend that the restoration of Appeal No.13/73 is illegal. As per the order passed in CRP No.78/75, the Tribunal restored all the appeals and kept the same pending. During the pendency, Tamil Nadu Act 41 of 1992 came into force. The said Tamil Nadu Act 41 of 1992 was upheld by the Supreme Court in T.P.K.Tilakavathy's case. The State Transport Appellate Tribunal held that all the three appeals stand abated in terms of Tamil Nadu Act 41 of 1992.

24. The petitioner having failed to challenge the order passed in CRP No.78/75, it is not open to him to contend that Appeal No.13/73 should not have been reopened or that the order passed in Appeal No.13/73 should not have been set aside or recalled. The petitioner is operating in the light of the interim orders passed by this Court and the same will not confer any valid right. The 3rd respondent has prayed for dismissal of the writ petition. The 3rd respondent also contended that the declaration prayed for by the petitioner is unsustainable in law and not maintainable and no case has been made out for the grant of relief of declaration also.

25. Common arguments were advanced in both the writ petitions by Mr.V.T.Gopalan, learned senior counsel appearing for the petitioner and the same was resisted by Mr.Kamalanathan, learned counsel appearing for the 3rd respondent.

26. The points that arise for consideration in these two writ petitions are :-

A) Whether the order of the State Transport Appellate Tribunal is liable to be quashed as illegal and suffer with material misdirection and error apparent on the face of the record, besides being in excess of jurisdiction ?

B) Whether the application of appeal proceedings in respect of grant of permit Cuddalore to Tirukkoilur via Nellikuppam stands abated in terms of The Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992 ?

C) Whether the revival of appeal by the State Transport Appellate Tribunal sustainable?

D) Whether the writ petitioner is entitled to the relief of declaration prayed for ?

E) To what relief, if any, the petitioner is entitled to in both the writ petitions ?

27. There is no dispute about the notification issued by the Regional Transport Authority inviting applications with respect to the route Cuddalore

New Town to Tirukkoilur u/s 57 (2) of The Motor Vehicles Act, 1939. The Regional Transport Authority granted permit in favour of one Perumal

Padayachi and the remaining 13 applications including that of the petitioner were rejected on merits. The petitioner preferred Appeal No.13/73

before the State Transport Appellate Tribunal, while Mr.K.Dhandapani and Mrs.Saraswathi preferred Appeal Nos. 15 and 32 of 1973

respectively against the rejection of their application for grant of permit. Pending the appeals, Tamil Nadu Act 13 of 1973 came into force and,

consequently, the appeals came to be disposed of as abated. The Tamil Nadu Act 13 of 1973 was declared unconstitutional by a Division Bench

of this Court. But the Supreme Court upheld the constitutional validity of Tamil Nadu Act 13 of 1973. Therefore, the abatement of the appeals in

terms of Tamil Nadu Act 13 of 1973 will stand, but in the meanwhile certain proceedings have taken place.

28. It is also not in dispute that the route in question is covered by an approved scheme and neither the grant in favour of Perumal Padayachi nor

the grant by the State Transport Appellate Tribunal in favour of the petitioner is saved by inclusion in Annexure-II of the approved scheme. The

State Transport Appellate Tribunal ordered grant of permit in favour of the petitioner, while the other two appeals came to be dismissed. The said

Mr.K.Dhandapani and Mrs.Saraswathi preferred CRP Nos.367 and 78 of 1975 respectively. This Court by a common order dated 27.4.76

allowed both the revision petitions and remitted the matter for de novo consideration by the State Transport Appellate Tribunal. Consequent to the

remit order, the State Transport Appellate Tribunal restored all the three appeals, namely, Appeal No.13/73 preferred by the petitioner herein as

well as Appeal Nos.15 and 32 of 1973 preferred by the said K.Dhandapani and Mrs.Saraswathi. While the appeals were pending, pursuant to the

orders passed in the revision petition, the petitioner herein was allowed to operate on the route by virtue of the directions and, consequently,

temporary permits were granted to enable the petitioner to operate on the route.

29. While the three appeals, Appeal Nos. 13, 15 and 32 of 1973 were pending,

the Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992, (Tamil Nadu Act 41 of 1992) came into force on 31.7.92. The Tribunal by order dated 12.9.95 concluded that all the pending applications for grant of permit, which includes the appeals as well, will stand abated in terms of Section 7 of The Tamil Nadu Act 41 of 1992.

30. To consider the material points, it is essential to refer to the order passed in CRP No.78/75 on 27.4.76. In CRP No.78/75, the present petitioner is the first respondent, while the Regional Transport Authority grantee was the 2nd respondent. Ramanujam, J., (as he then was) by order dated 27.4.76 in CRP No.78/75 held thus:-

..... The Tribunal considered the rival claims of the various appellants before it and ultimately granted permit to the first respondent herein. The decision of the tribunal has been challenged in this revision petition on various grounds.

We are not concerned in this case with the claims of other appellants before the tribunal except the petitioner and the respondent herein.

* * * * *

Before me, the learned counsel for the petitioner raises two contentions:- (1) the tribunal is in error in stating that there is no proof of the petitioner's experience as lorry operator for the period 1961 to 1967 when no other competing applicants disputed her experience as lorry operator. (2) The order of the tribunal is vitiated in that it has failed to consider the relevant material produced by the petitioner against the first respondent in the form of judgments of criminal courts convicting the conductors of the first respondent for the offence of overload and for non-issue of tickets to passengers.

* * * * *

At the same time, I am not however inclined to agree with the learned counsel for the respondent that the conviction of the drivers and conductors can, at no time, be considered by the Regional Transport Authority or the Tribunal in considering applications for the grant of permit.

* * * * *

In this case, though this point was urged before the Regional Transport Authority, as well as the Tribunal, they have not considered this aspect at

all. It may be that they merely proceeded to decide the qualifications of the rival claimants on the basis of their history sheets. If the Tribunal had considered the convictions of the conductor of the first respondent and had held that the evidenciary value of the convictions is practically nil as against the first respondent and that having regard to the fact that the first respondent has an unblemished record for a long number of years and that the Regional Transport Authority has not chosen to initiate proceedings against the operator u/s 60 on the basis of the convictions of the conductors they have to be ignored, then it can be said that there has been a consideration of the relevancy of the convictions. In such a case, this Court may not interfere with the view of the Tribunal, as what weight is to be given to a particular circumstance or factor is exclusively a matter for the Tribunal. But, unfortunately, in this case the Tribunal has not referred to this aspect of the case, though it is admitted by the counsel for the first respondent that the matter was argued at length before the Tribunal. The Tribunal is therefore, in error in not considering a relevant circumstance which was put forward and elaborately argued before it.

The civil revision petition is, therefore, allowed with a direction to the Tribunal to consider (1) the question of relevancy of the judgments of the Criminal Courts against the conductor (2) the question of experience of the petitioner in operating a public carrier from 1971 and pass final orders.

31. Identical order has been passed in CRP No.367/75 preferred by K.Dhandapani by Ramanujam, J., (as he then was), while following the order in CRP No.78/75. The learned Judge also held that the writ petitioner herein, who is the first respondent in CRP No.367/75 as well as 78/75 was permitted to continue operation till final orders are passed by the State Transport Appellate Tribunal. It should not be forgotten that only one route was notified for which there were a number of applicants. It was initially granted in favour of one Perumal Padayachi by the Regional Transport Authority which was revoked consequent to non-production of vehicle. On appeal it was granted in favour of K.Jagannathan, the writ petitioner herein, while disposing of appeals preferred as against the order of the Regional Transport Authority in respect of the said one permit. The other two applicants, namely, K.Dhandapani and Mrs.Saraswathi, preferred separate

revision petitions insofar as their claims for permit have been negatived by the Regional Transport Authority as well as the State Transport Appellate Tribunal. In the revision petition, no objection has been raised by the present writ petitioner to the effect that the order passed in his appeal has become final and, therefore, in the said two revision petitions, there is no occasion nor warrant for remand. The finding that the proceeding relate to one and the same permit in respect of which three persons claimed permit in their favour and this Court after considering the rival contentions advanced by the revision petitioners as well as the first respondent, K.Jagannathan, who is the petitioner herein, as already pointed out, considered the validity of the grant of permit in favour of the said Jagannathan and remitted the matter back to the State Transport Appellate Tribunal as two of the aspects of the matter, namely, the conviction of the conductors and the experience of the petitioner has not been considered. Therefore, the Tribunal has rightly restored all the three appeals.

32. The entire order passed by the State Transport Appellate Tribunal stand set aside on merits and the matter was remitted back to the said State Transport Appellate Tribunal for fresh consideration. If in the revision petitions this Court has declined to interfere with the grant already made in favour of the petitioner, the same should have been made clear, but the entire matter has been remitted back with a direction to consider the petitioner's disqualification as well. This would mean that all the three appeals have to be revived and considered on merits. The view taken by the Tribunal in this respect deserves to be sustained as without restoring all the three appeals, the claim of the writ petitioner as well as the other two appellants before it cannot be considered on merits. Therefore, the contention that the State Transport Appellate Tribunal misdirected itself and acted with illegality in restoring all the three appeals and considering the appeals on merits cannot be countenanced. In fact, the petitioner has also not challenged the orders passed in the said two revision petitions by this Court by moving the higher Court, namely, the Supreme Court, nor it has been contended by the petitioner in the said civil revision petitions that the order granting permit in favour of the petitioner has become final and it is not liable to be interfered nor there is any occasion to consider the claim of the writ petitioner as well as two other applicants on merits, much less,

de novo by the State Transport Appellate Tribunal. Much water has flown under the bridge and the petitioner has allowed the order passed in the

revision petitions to become final and, therefore, it cannot be contended that the restoration of Appeal No.13/73 is an illegality or a misdirection.

Hence, point ""C"" is answered accordingly.

33. Taking up the next point for consideration, there is no dispute that the route in question is covered by an approved scheme and the operation

on the notified route is prohibited and it is not as if the permit in question, which was initially granted in favour of Perumal Padayachi is excluded by

including the same in Annexure-II to the approved scheme. There is no dispute in this respect.

34. It is well settled, as has been held by the Supreme Court in Pandiyan Roadways Corporation Ltd. Vs. M.A. Egappan, wherein the Apex

Court following the earlier pronouncement in Adarsh Travels Bus Service and Another Vs. State of U.P. and Others, laid down that an operator,

though granted permit and variation thereof is not entitled to operate as the operator is not protected by the approved scheme itself, nor he could

be permitted to operate on any sector of the notified route in question in terms of Sections 68 C, D and FF of the Act. The Supreme Court in this

respect held thus :-

..... There is no justification to limit the application of Section 68-F(1-D) of the Act to only applications for fresh permits or their renewal and to

leave out applications for variation of a permit by the inclusion of the route or a portion of the route in respect of which a scheme is published. The

fact that the applicant is the holder of a permit to operate a stage carriage on another route whose variation he is seeking by the inclusion of a route

or a part thereof in respect of which a scheme is published u/s 68-C of the Act ought not to make any difference. The principle underlying Section

68-F(1-D) of the Act is that the number of services on such a route should be frozen on the publication of a scheme u/s 68-C of the Act. It is not,

however, necessary for us to pursue the applicability of Section 68-F(1-D) of the Act in the present case any further since it is brought to our

notice that the very same route is the subject-matter of the approved scheme published u/s 68-D of the Act on June 30, 1976 to which we have

already adverted. The approved scheme, as mentioned earlier, excludes the

operation by others of stage carriage services on the above mentioned route Madurai to Kumuli except those whose names are mentioned in Annexure II attached thereto. The respondent is not protected by any provision in the approved scheme itself. He cannot be permitted to operate on any sector of the notified route in question in view of the provisions contained in Sections 68-C, 68-D and 68-FF of the Act. The effect of these provisions has been summarised by a Constitution Bench of this Court in *Adarsh Travels Bus Service v. State of U.P.* Chinnappa Reddy, J. speaking for the Constitution Bench observed at page 566 (para 7)

thus:

7. A careful and diligent perusal of Section 68-C, Section 68-D(3) and Section 68-FF in the light of the definition of the expression "route" in

Section 2(28-A) appears to make it manifestly clear that once a scheme is published u/s 68-D in relation to any area of route or portion thereof,

whether to the exclusion, complete or partial of other persons or otherwise, no person other than the State Transport Undertaking may operate on

the notified area or notified route except as provided in the scheme itself. A necessary consequence of these provisions is that no private operator

can operate his vehicle on any part or portion of a notified area or notified route unless authorised so to do by the terms of the scheme itself. He

may not operate on any part or portion of the notified route or area on the mere ground that the permit as originally granted to him covered the

notified route or area.

5. In view of the above observation we have to hold that in the instant case the respondent is not entitled to operate his stage carriage on the

notified route or a portion thereof even though he may have been granted variation of his permit to operate on a sector of the notified route.

35. The Supreme Court in the same pronouncement while repelling the contention held that on the entire route notified or any part thereof no

person other than those mentioned in Annexure-II could operate a stage carriage service. The Supreme Court further held thus :-

6. We do not agree with the contention urged on behalf of the respondent that on a true construction of the scheme only persons who are

operating their stage carriages under permits issued in respect of the entire route from Madurai to Kumuli alone have been excluded under the

approved scheme and not those who are operating between any two places on the notified route or between any place lying outside the notified

route and a place on the notified route even though they may be operating on a portion of the notified route. We are firmly of the view that on the

entire notified route between Madurai and Kumuli or any part thereof apart from the State Transport Undertaking no person other than those

mentioned in Annexure II to the approved scheme can operate a stage carriage service. We, therefore, direct the respondent not to operate his

stage carriage on the sector in respect of which he has obtained the variation of his permit.

In the light of the above pronouncement of the Supreme Court, there could be no operation, no permit could be granted in respect of any

operation of the route, which is covered by a scheme. In the present case, the Tamil Nadu Act 13 of 1973, which was quashed by the Division

Bench of this Court has since been reversed by the Supreme Court and the effect of the said Tamil Nadu Act 13 of 1973 cannot be brushed aside.

36. The grant made in favour of Perumal Padayachi by the Regional Transport Authority on 25.7.92 has been set aside by the State Transport

Appellate Tribunal and the State Transport Appellate Tribunal has directed grant of permit in favour of the present writ petitioner by its order

passed in Appeal No.13/73, while dismissing the two other Appeal Nos.15 and 32 of 1973. The State Transport Appellate Tribunal, while setting

aside the grant made in favour of Perumal Padayachi, directed grant of permit in favour of the writ petitioner on 7.4.74. By orders passed in CRP

Nos.367 and 78 of 1975 on 27.4.76, it follows that the grant made in favour of the writ petitioner, K.Jagannathan also stands set aside and the

orders of the State Transport Appellate Tribunal passed in Appeal Nos. 15 and 32 of 1973 as well as by implication order in Appeal No.13/73

stands set aside and the entire matter relating to the grant of permit on the Cuddalore-Tirukkoilar route was at large. In fact, Ramanujam, J., (as he

then was), while allowing the revision petitions, CRP Nos. 367 and 78 of 1975 directed issue of temporary permit in favour of the writ petitioner,

which would mean that the grant in favour of the writ petitioner has been set aside and the entire matter has been remitted back for de novo

consideration.

37. In the meanwhile, Tamil Nadu Act 41 of 1992 came to be published on 31.7.1992. On the date when Tamil Nadu Act 41 of 1992 came to be

published, there was no grant either in favour of the writ petitioner or in favour of the other two, namely, K.Dhandapani and Mrs.Saraswathi. It is

not in dispute that the route in question is covered by an approved scheme. In the circumstances, the Tribunal below held that all the three appeals

including that of the petitioner, which has been revived and reopened, abated. Challenging the same, the present writ petition has been filed.

38. The validity of Tamil Nadu Act 41 of 1992 has been upheld by the Supreme Court in T.P.K.Tilakavathy's case. On the date when Tamil

Nadu Act 41 of 1992 came into force, in terms of Section 7, any application for grant of new permit on a notified route and all appeals arising

therefrom relating thereto made or preferred before the commencement of Tamil Nadu Act 41 of 1992 and pending before any Court or with any

officer, authority or Tribunal constituted under The Motor Vehicles Act on the date of application shall abate. The saving provision, namely,

Section 11 will have no application to the facts of the present case.

39. The validating provision, namely, Section 10 also will not come to the rescue of the petitioner. Section 5 of the Act provides that the provisions

of Sections 3, 4 and 6 shall have effect notwithstanding anything inconsistent therewith contained in Chapter V and VI including Section 98 of The

Motor Vehicles Act, 1988.

40. Even in terms of Section 4 of the Act, the existing permits are valid for the period for which such permits were granted or renewed or valid. In

this case, the permit granted in favour of the petitioner has already been set aside and the matter was at large consequent to the remand order

passed by this Court in the two revision petitions. That apart, the revival of the appeal preferred by the petitioner and others and taking the appeals

for consideration has not been challenged and the earlier writ petition has also been withdrawn. The cumulative effect of it would be that the grant

in favour of the petitioner by the State Transport Appellate Tribunal stands set aside and the matter has been remitted for fresh consideration by

the State Transport Appellate Tribunal. This would mean that the petitioner has no permit at all on the date when Tamil Nadu Act 41 of 1992

came into force or for being saved u/s 4 read with Section 11 of the Act and the

route is covered by approved scheme. It is therefore clear that in terms of Section 7, as has been held by the State Transport Appellate Tribunal, all the three appeals including the appeal preferred by the petitioner herein stand abated in terms of Section 7 of Tamil Nadu Act 41 of 1992. There is no escape from this position.

41. Any adjustment sought to be made out between the petitioner and the other two appellants before the State Transport Appellate Tribunal will not save the position and all, the pending appeal also abate. The Regional Transport Authority granted permit in favour of Perumal Padayachi and the same has also been set aside by the State Transport Appellate Tribunal, while allowing the petitioner's appeal and dismissing the other two appeals preferred by K.Dhandapani and Mrs.Saraswathi. The said Perumal Padayachi has also allowed the proceedings to become final.

42. Mr. V.T.Gopalan, learned senior counsel contended that the remission has to be confined only in respect of the two appeals preferred by the two unsuccessful appellants in Appeal Nos. 15 and 32 of 1973. Such a contention cannot be countenanced at all. If such a contention has to be accepted, it would mean that there is no purpose or meaning in this Court allowing the revision and remanding the matter for de novo consideration in respect of the same route for which the writ petitioner and two others were fighting by preferring separate appeals before the State Transport Appellate Tribunal. The orders being consequential and route being one, this contention cannot be sustained as has already been held above.

43. The learned senior counsel relied upon the pronouncement of the Supreme Court in Mohan Lal Vs. Anandibai and Others, the pronouncement of the Calcutta High Court in Scientific Instruments Co. Ltd. Vs. Collector of Customs (Valuation Section) and Another, and the pronouncement of the Gauhati High Court in THE HEIRS OF NARAYAN CHANDRA DAS, SHRIMATI NABIN BALA DAS & OTHERS VS. BENI MADHAB DAS & OTHERS reported in AIR 1975 GAU 70. These pronouncements have no application to the facts of the present case and they are clearly distinguishable on facts.

44. The attention of this Court is drawn to the pronouncement of the Supreme Court in Orient Papers and Industries Limited and Another Vs. Tashildar-Cum-Irrigation Officer and Others, where the Apex Court had occasion

to consider the effect of open remand without restricting the scope of enquiry and as a result of such remand it was legally permissible for the authority concerned to examine all questions arising thereto. In

this respect, Rajendra Babu, J., speaking for the Bench, held thus :-

9. Though the various points on which the order made by the Irrigation Officer were challenged in the appeal on the basis of non-consideration of

the question whether the point at which the water was lifted by the appellant was within the reservoir, entire order made by the Irrigation Officer

was set aside and there was an open remand. When the scope of enquiry after remand was not restricted by the appellate authority, it was

certainly permissible by the Irrigation Officer to examine all questions arising thereto. Therefore, we find absolutely no merit in the first contention

urged on behalf of the appellant and it is accordingly rejected.

Following the above pronouncement, the contention advanced by Mr.V.T.Gopalan, learned senior counsel cannot be countenanced.

45. On the facts of the case it is clear that there is no escape and the order passed by the State Transport Appellate Tribunal deserves to be

sustained and the contentions advanced by the writ petitioner cannot be countenanced.

46. In the result, on point ""A"" this Court holds that the order passed by the State Transport Appellate Tribunal is not liable to be interfered and all

the contentions advanced in this respect cannot be countenanced and they are answered against the petitioner. On point ""B"", it is clear that the

appeal in respect of route, Cuddalore to Tirukkoilur stands abated as it is covered by a scheme. In terms of Section 7 of The Tamil Nadu Act 41

of 1992, the appeal by the writ petitioner, which is pending on the crucial date stands abated and no exception could be taken to the view of the

State Transport Appellate Tribunal. Point ""C"" is also answered against the petitioner. On point ""D"", this Court holds that the petitioner is not

entitled for the writ of declaration prayed for as no right has accrued to him and there was no permit at all in his favour and the appeal, which was

pending on the date when Tamil Nadu Act 41 of 1992 came into force, abated statutorily, which provision gives a fatal blow to the petitioner's

claim. In the result, all the contentions advanced by the writ petitioner fails and the writ petitions are dismissed. The parties shall bear their

respective costs.