

(2011) 01 MAD CK 0301

In the Madras High Court

Case No : Writ Petition (MD) No. 10800 of 2009 and M.P. (MD) No's. 1 to 3 of 2009

K. Velusamy

APPELLANT

Vs

The Regional Transport Authority, The State Transport
Appellate Tribunal, P. Muthalraj and The Tamil Nadu State
Transport Corporation, Limited

RESPONDENT

Date of Decision : 22-01-2011

Acts Referred:

Citation : (2011) 01 MAD CK 0301

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : C.R. Krishnamoorthy, for the Appellant; S.C. Herold Singh, GA for RR1, 2 and 4 and A.C. Asaithambi, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner who is a Transport Operator, has filed the present writ petition, seeking to challenge an order of the second Respondent State Transport Appellate Tribunal, Chennai, dated 11.9.2009 made in M.V.RP. No. 62 of 2005 and seeks to set aside the same.

2. In the writ petition, this Court ordered notice to the Respondents and granted an interim stay on 27.10.2009. The court found prima facie that the Tribunal did not assign any valid reason and merely incorporated the arguments of the contesting Respondents. The fourth Respondent, i.e. Tamil Nadu State Transport Corporation filed a vacate stay application in M.P.(MD) No. 3 of 2009 together with supporting counter affidavit, dated 18.11.2009. The third Respondent had also filed a vacate stay application in M.P.(MD) No. 2 of 2009 together with a counter affidavit, dated 27.11.2009 and also supporting documents. In view of those two applications, the main writ petition itself was taken up for final disposal.

3. The case of the Petitioner was that he was operating buses with two mini bus permits in the opposite directions from Kalugumalai to Thiruvengadam (via) Athipatti, Ramalingapuram, etc. The permission was dated 4.5.2005. After a survey by the Transport department, it was found that the total length of route was 17.2 Kms., in which served sector is 3.8 Kms and unserved sector is 13.4 kms. A personal hearing was conducted by the Regional Transport Authority, Tirunelveli on 25.2.2005. Thereafter, mini bus routes were granted. The routes given to the Petitioner were within the norms prescribed in the Government Order. As against the grant of permit, the third Respondent had filed a petition before the second Respondent in R.P. No. 62 of 2005. The second Respondent without any justification allowed the revision petition and set aside the order of the first Respondent and remitted the matter for fresh disposal to the first Respondent to have a joint inspection on the route along with the Petitioner, third Respondent and the objector Tamil Nadu State Transport Corporation (fourth Respondent).

4. The ground taken by the Petitioner was that the report of the Motor Vehicle Inspector, his sketch and break up figures have shown that the served sector was only 3.8 kms., which is less than 4 Kms. Further, the third Respondent is a Town bus operator operating from Tirunelveli to Thiruvengadam, via Kayathar, Kuruvikulam etc. on the main route. He is no way connected with the mini bus route of the Petitioner. The fourth Respondent Tamil Nadu State Transport Corporation also plying in a different route and there is no connection with the case of the Petitioner. The tribunal without examining these facts, by an ipse Dixie order set aside the permission given and further directed for a joint inspection. The tribunal recorded that a perusal of page No. 15 in the file showed that the served sector was 4 Kms. and the unserved sector was 12 Kms. The Transport Corporation had filed an objection which showed the served sector was 12 Kms. and hence it objected to the grant of mini bus permit. Without taking note of the objections made by the fourth Respondent and the sketch, permission was granted and the order came to be passed. The documents produced by the fourth Respondent showed that the served sector exceeds 4 Kms.

5. In the counter affidavit filed by the fourth Respondent supported by documents clearly showed that the served area exceeds 4 Kms. It is necessary to extract the following passages found in paragraphs 10 and 11 of the counter affidavit of the fourth Respondent, which reads as follows:

10.... Moreover the Petitioners Mini bus permit was granted in TNSTC operational routes beyond 10 Kms which is detailed below.

S.No.

Vehicle No.

Route Course

Served area

Served Kms.

1

TN72N0719

Kovilpatti-Athipatti

Kovilpatti,Athipatti

1.8

2

TN72N0650 TN72N0383

Thirunelveli-Sankarankoil (Via) Kazhugumalai

Kasilingapuram, Ayyalpulipatti, Ganapathipatti, Kuruvikulam

5.8

3

TN72N0115

Kovilpatti-Kurichankulam (Via) Thiruvengadam

Pudhupatti, Vellakulam Bus stop

2.8

4

TN72N0719

Kovilpatti-Athipatti

Kazhugumalai Bus stand-Bazzar

0.2

Total

10.6

Further the Petitioner himself accepted that TNSTC Buses are plying on different routes having common sector which is a served portion area of their Mini Buses route length. It is clearly proved that granting of above 2 Mini Bus permits are against the law.

11..... The route length between Ramalingapuram - Kuruvikulam (Via) Ganapathipatti, Ayyalpulipatti, Kasilingapuram, etc is purely served area b y our TNSTC Buses and related permit copies are enclosed for kind perusal.

6. The counter affidavit filed by the third Respondent and the sketch showed that the served sector was approximately 11.30 kms which is clearly against the norms prescribed by the Government. Therefore, the Petitioner cannot take advantage of the report of the Motor Vehicle Inspector and the order passed by the first Respondent without taking into account the ground reality and the objections raised by the operators in the served sector. The order of the State Transport Appellate Tribunal is legally valid and does not call for any interference. By the joint inspection, the Petitioner will not lose anything. On the other hand, if the inspection showed that he is within 4 Kms of served sector, he can always retain his permit.

7. In this context, it is necessary to refer to the judgment of the Supreme Court in *C. Kasturi and others, etc. Vs. Secretary, Regional Transport Authority and another etc.,* . The following passage found in paragraph 14 may be usefully extracted below:

14. It would, thus, be clear that once a notified draft scheme has been approved and published, the private operators operate their services on the notified route strictly in accordance with the scheme only and within the exceptions engrafted there under. By necessary implication, the "town service" as defined in Rule 282(2)(ii) has to be read subject to the scheme in Chapter IV-A of the repealed Act. If so read, clauses 2, 3 and 4 are to operate as an exception and they provide only a right to overlap not more than 8 kms in the notified route. Otherwise, the town service will cease to be town service and would get transformed into a mofussil route and the private operator would run his stage carriage along the line of the notified route which is impermissible. When so read, though under Rule 282(2)(ii) town service extends up to 8 kms from the municipal limits, that does not give any right to a holder of a town service stage carriage permit to run his vehicle beyond 8 kms on the notified route nor does it extend to 8 kms overlapping on the notified route from municipal limits. The memo is an administrative instruction issued by the Government which cannot have an overriding effect on the scheme since the scheme by itself is law unless the scheme is duly and legally modified under the provisions of the repealed Act or the 1988 Act according to law. The stage carriage holders of permits stand excluded and thereby the private operators cannot operate on the notified area or route overlapping more than 8 kms on the notified route.

(Emphasis added)

8. In the light of the above, the writ petition will stand dismissed. No costs. Consequently, all the miscellaneous petitions stand closed as unnecessary.