

(1997) 12 MAD CK 0035
In the Madras High Court

M. Palanivelu

APPELLANT

Vs

P.V. Dhandapani, Proprietor, Veerappah Transport and
Another

RESPONDENT

Date of Decision : 29-12-1997

Acts Referred:

Citation : (1998) 2 MLJ 11

Hon'ble Judges : S.S. Subramani, J

Bench : Division Bench

Judgement

S.S. Subramani, J.—Petitioner seeks the issuance of a writ of mandamus or any other appropriate writ, order or direction in the nature of a

writ, forbearing the 2nd respondent from proceeding any further with the timing conference as notified in R. No. 73335/E2/95, dated 28.4.1997 to

fix timings in respect of 1st respondent's vehicle MSQ.7297 plying on the route Kilputhupattu to Madurantakam varied upto Gorimedu, and thus

render justice.

2. In the affidavit filed in support of the writ petition, it is said that the petitioner herein is a stage carriage operator, operating among others an

inter-State permit plying on the route Palankulathur to Pondicherry (via.) Tindivanam, Marakkanam. The said route is included in the inter-State

agreement entered into between the States of Tamil Nadu and Pondicherry, and the Primary Authority is the State Transport Authority, Tamil

Nadu (2nd respondent herein). It is said that the first respondent herein is also a stage carriage operator operating one of his stage carriages on the

route Kilputhupattu to Madurantakam (via) Marakkanam and Tindivanam. For that vehicle he made an application for extension of the route upto

Gorimedu. It was allowed by second respondent by its proceedings dated 29.10.1985. Though the variation was granted as early as on

29.10.1985, it was not implemented because the said variation was granted on the approved scheme route. The first respondent, without

disclosing the above fact, filed W.P. No. 12929 of 1995, after a period of ten years, for a mandamus to implement the order of variation, pursuant

to which a timing conference was fixed on 13.6.1997 by the second respondent. It is said that the petitioner herein is not a party to that writ

petition and, therefore, he was not in a position to raise his objections before this Court. It is further said that the permit itself has not been granted

after the introduction of the new Motor Vehicles Act and the renewal granted under the old Motor Vehicles Act has expired. Therefore, the permit

is a non-est in law, so also the variation. It is also said that the first respondent has not complied with Rule 216(3) of the Tamil Nadu Motor

Vehicles Rules, in that, on grant of variation, first respondent has not produced the Registration Certificate of the vehicle together with the Fitness

Certificate so as to make entries of variation in the permit, within a period of four months from the date of grant of variation. Therefore the variation

stands revoked and nothing survives. It is further submitted that insofar as the varied route, namely, Madurantakam to Gorimedu is concerned, only

renewal of stage carriage permit has been granted and the first respondent had not made any application for fresh permit as required under law

after the introduction of Act 59 of 1988. It is said that since the permission granted under the Repealed Act had expired, first respondent has to

apply afresh u/s 72 of the new Act in accordance with the procedures laid down under Sections 70 and 71 of the new Act, for the grant of a stage

carriage permit. Since the first respondent has applied only for renewal of the permit, and has not applied for any fresh permit under the new Act,

he is not entitled to have the timing conference to ply his bus on the varied route. It is further said that when the very permit is non-est after the

expiry of the remaining period under the New Act, the variation which is incidental cannot have independent place to survive. No permit can

survive under the new Act unless a separate application is made thereunder. Second respondent has therefore no jurisdiction to proceed further

with the variation. It is for the above reasons, petitioner has filed this writ petition for the reliefs stated above.

3. Counter-affidavit has been filed by both the respondents.

4. In the counter-affidavit filed by the first respondent, it is said that in view of the order passed in W.P. No. 12929 of 1995, giving directing to the second respondent herein to fix a timing conference to implement the earlier order, this writ petition is not maintainable. It is further said that it was due to the policy of the Government, all renewals, variations, etc., were kept pending until Act 41 of 1992 came into force, and after that, those orders were implemented only by direction of this Court. In this case also, since the second respondent did not implement the order of variation passed in 1985, first respondent had to move this Court for implementing the same. It is further said that since the order of variation dated 29.10.1985 has become final, petitioner cannot be aggrieved by the same. He has not filed any appeal against that order. That order also stands validated by Section 10 of Act 41 of 1992. It is also said that permit has been granted to him from 27.6.1988 to 26.6.1993 pursuant to the order of the State Transport Appellate Tribunal, Madras and from 27.6.1993 to 26.6.1998 under Act 41 of 1992, having retrospective effect from June, 1976. According to the first respondent, the bar alleged by the petitioner under Rule 216(3) of the Tamil Nadu Motor Vehicles Rules is also not applicable in this case, since the first respondent was not called upon to produce documents. It is said that he has submitted his permit along with his application dated 21.8.1984. Pursuant to order of this Court, a timing conference has been fixed, but the same could not be proceed with in view of orders of this Court.

5. Second respondent has filed a counter wherein it is said that even though the order granting variation was passed on 29.10.1985, the same could not be implemented in view of the judgment of the Supreme Court in Pandiyan Roadways Corporation Ltd. Vs. M.A. Egappan, . Now he is bound to implement the order in W.P. No. 12929 of 1995 dated 1.11.1996. The judgment of the Supreme Court (referred to supra) did not permit granting of renewals on routes where there are approved schemes.

6. I heard learned Counsel for all the parties.

7. Learned Counsel for petitioner relied on the decision reported in Gajraj Singh etc. Vs. The State Transport Appellate Tribunal and others etc., , wherein the Apex Court has considered as to what is the effect of repeal of the

old Motor Vehicles Act on the introduction of the new Act, and how the permits granted under the old Act have to be considered. Learned Counsel for the petitioner submitted that in view of the recent decision of the Apex Court, whatever may be the right of the petitioner under the old Act, it stands abrogated, since the first respondent has not obtained a new permit under the new Act. It was further submitted by learned Counsel that at the time when the old Act was repealed, there was no application for renewal pending and, therefore, first respondent cannot get a renewal from 1993 to 1998, on the basis of which he has sought for a timing conference. The next argument advanced by learned Counsel for petitioner was that the variation of permit was granted as early as in 1985 and the same will have to be endorsed in the Registration Certificate on production of various documents. Rule 208 of the old Tamil Nadu Motor Vehicles Rules provided four months time for production of the documents, and if within that time the documents are not produced, the permit already granted shall stand revoked. Under Clause (d) of Rule 208. Rule 163(b) is made applicable in regard to counter-signature and the production of Registration Certificate and other documents. In view of the said provision, namely, Rule 208(d) read with Rule 163 (b), it was submitted that the variation already granted in 1985 stands revoked. It is automatic. Similar is the provision under Rule 216(3) of the new Motor Vehicles Act.

8. As against the said contention, learned Counsel for first respondent submitted that the earlier order of variation was granted with notice to the petitioner herein, and he has not challenged it, and it has become final. First respondent has not been called upon to produce the document and, therefore, the deeming revocation as argued by learned Counsel for petitioner is not correct. Apart from the same, it is further contended that u/s 10 of the Tamil Nadu Act 41 of 1992, permit already granted must be deemed to be valid and, therefore, the first respondent is entitled to ply his stage carriage on the varied route. There is no necessity for a fresh permit as contended by learned Counsel for petitioner.

9. Learned Additional Government Pleader only submitted that the earlier order granting variation of permit could not be implementation in view of the decision of the Apex Court in Pandiyan Roadways Corporation's case AIR

1987 S.C. 958. In that decision, it was declared by the Supreme Court that if any portion of the route for which a permit is granted is covered by a Draft Scheme, permit shall not be granted. In view of the said declaration by the Supreme Court, the variation of the permit which passes through an approved scheme was not implemented, and only because of the decision of this Court in W.P. No. 12929 of 1995, it is bound to consider the implementation of the said order.

10. After considering the rival submissions of all the parties, I feel that the case of the petitioner requires consideration.

11. The decision reported in Gajraj Singh etc. Vs. The State Transport Appellate Tribunal and others etc., , according to me, is an argument which

the first respondent cannot answer. There is no argument by learned Counsel for the first respondent regarding Section 10 of the Tamil Nadu Act

41 of 1992. What is the scope of that Act has come for consideration in the decision reported in Tmt. T.P.K. Thilagavathy v. The Regional

Transport Authority, Periyar District, Erode and Ors. J. T. (1994) 7 S. C. 643, wherein their Lordships have declared that the legal position said

in Pandiyan Roadways Corporation Ltd. Vs. M.A. Egappan, is correct and the same does not require any reconsideration. Regarding Section 10

of Act 41 of 1992 also, Their Lordships considered its effect, in para 9 of the judgment, and held that the purport of Section 10 is only to protect

those operators who have been issued permits between 1976 and 30th June, 1990, and not to depart from the interpretation placed by the Apex

Court in Pandiyan Roadways Corporation's case. Their Lordships further said that the Legislature while protecting the past mistakes of the

Government has taken care not to repeat them in future. It was further said that a provision which was legislatively dead on 30th June, 1990 could

not be deemed to be alive for purpose of grant of permit because of the expression "the date of publication of this Act in the Tamil Nadu

Government Gazette", appearing in that provision. According to me, that decision is also not going to help the first respondent in any way. If so,

what is the effect of the provisions of the new Act. The new Act came into force on 1st July, 1989. In para 47 of the judgment in Gajraj Singh 's

case, it was held thus:

We, therefore, hold that grant of renewal of the stage carriage permit should

necessarily be preceded by a grant of a permit to stage carriage u/s

72, in accordance with the procedure laid down in Sections 70 and 71. This should be made before the expiry of the period prescribed in the

permit granted under the Repealed Act. Therefore, for stage carriage permits granted under Chapter IV of the Repealed Act, if they stand to

expire or expired after 1st July, 1989, without any pending application for renewal having been made u/s 58 as on 1st July, 1989, fresh

applications u/s 70 should be filed and after consideration u/s 71, permits be obtained as per law u/s 72....

Admittedly in this case, no application has been filed by the first respondent under the new Act. The argument of learned Counsel for first

respondent mainly relying on Act 41 of 1992 is misplaced. Regarding an application u/s 10 of Act 41 of 1992, in the decision in Cheran Transport

Corporation Ltd., Coimbatore Vs. Regional Transport Authority, Coimbatore and others, in para 13, it has been held thus:

...All that Section 10 provides is that the orders passed granting permits or renewal, etc. under the provisions of Motor Vehicles Act, 1988 are

deemed to have been passed in accordance with the provisions of the Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992. The said

Section 10 does not validate any permit which was initially invalid. It is a provision which continues the permits, etc. which had been validly granted

under the old Act. As no valid permit could have been granted to respondent 2 from the route Coimbatore to Kottur, the provisions of Section 10

cannot give a right to respondent 2 to get the permit when it had only six marks. When there was only one permit to be given for (sic) said route

and the marks obtained by the appellant were much more than that of the respondent. In our opinion, the Appellate Tribunal had rightly upheld the

order of the Regional Transport Authority granting the stage carriage permit to the appellant and in not renewing the permit of respondent 2.

In this case, no permit has been granted under the new Motor Vehicles Act. Therefore, there is no application of Tamil Nadu Act 41 of 1992.

12. The argument on the basis of Rule 208 of the old Act corresponding to new Rule 16 of is also well-founded. The argument of learned Counsel

for first respondent is that he was not called upon to produce the documents and, therefore, the Rule cannot apply has no merit. Even under the old

Act, the provisions were similar. While considering this Rule, a learned Judge of this Court has held follows, in Anna Transport Corporation Ltd.

Salem, v. S. Shanmugham and Ors. W.P. Nos. 11841 and 11856 of 1989 dated 20.7.1994:

I have carefully considered the submissions of the learned Counsel appearing on either side. The decision of Bakthavatsalam, J. is one wherein

there was no objection or challenge to the implementation of the variation on the ground of violation of Rule 208(d) of the Rules and it is only for

the first time before this Court while challenging fixation of timing, a challenge came to be made which the learned Judge repelled by holding that it

is not given to the objector in that case to do so on the facts of the case when there was no such objection earlier before the timing conference. A

plea has been raised in this case even at the initial stage contending that in view of the automatic cancellation of the order of variation for non-

compliance of Rule 203(d) read with Rule 163(b) of the rules, the question of holding a timing conference for implementing the same does not

arise. Consequently, it becomes necessary for this Court to adjudicate upon the issue and the claim of the petitioner cannot be rejected summarily

as in the other case decided by Bakthavatsalam, J. Viewed thus, I am of the view that the decision reported in A.M. Jayaraman v. The Secretary

to the Regional Transport Authority, Periyar District, Erode 1984 W.L.R. (S.N.) 31, squarely applies to the case on hand and is very much

binding on me. Consequently, the orders of the second respondent in so far as they hold that they have no other go but to implement the orders of

variation cannot be sustained. It is not as though the second respondent has to declare the orders passed by the tribunal to be valid or to cancel the

same. The order of variation permitted or granted in favour of the applicants have to be followed up by subsequent procedure envisaged under

Rule 208(d) of the Rules, and on failure to pursue such contemplated formalities within the stipulated time, the statutory rule itself comes into

operation and the orders passed permitting variation could stand automatically revoked on account of the default clause in Rule 208(d) of the

Rules. In the light of the above, the impugned orders are quashed on this only ground, The objections about the maintainability of the writ petitions,

in my view, cannot be sustained. It is by now well settled that once this Court entertained the writ petition and allowed it to be pending on the file

of this Court, it would be unjust to reject the same when the matter comes up for final hearing unless it is for extraordinary circumstances. In these

cases, I do not find any such circumstances warranting the rejection of the writ petitions on the ground of failure of the petitioner-Corporation to

avail of the alternative remedy. In the result, the writ petitions shall stand allowed as prayed for. No costs.

13. In view of the said decision, it has to be held that the order granting variation stands revoked automatically. Therefore, there is no question of

convening of timing conference as requested in the counter filed by the first respondent. In the writ petition filed by the first respondent, the

petitioner is not a party. What is the impact of failure of the first respondent to produce the documents under the provisions of new Motor Vehicles

Act within the stipulated time was not stated in that writ petition. That writ petition was filed suppressing material facts. On the basis of the order

obtained by the first respondent by suppressing material facts timing conference cannot be held, that too, when there is no valid permit at all.

Consequently, this Court declares that there is no valid permit for the first respondent, and the order dated 29.10.1985 cannot be implemented on

the date on which he filed W.P. No. 12929 of 1995. As per the interim Order passed in the present writ petition, a timing conference has been

convened, but the decision taken during that timing conference has not been implemented. Consequently, second respondent though he convened

the timing conference, is prohibited from implementing the same. The writ petition is allowed to the extent indicated above. No costs. Connected

W.M.Ps. are closed.