

(2000) 09 MAD CK 0017

In the Madras High Court

Case No : Writ Petition No's. 14615 of 96 and 14997 of 1998 and W.M.P.Nn. 21486 of 2000

M. Selvaraj

APPELLANT

Vs

The Regional Transport Authority, Tiruchirapalli and another

RESPONDENT

Date of Decision : 08-09-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 104, 68

Citation : (2001) 1 ACC 389 : (2000) 4 CTC 596 : (2000) WritLR 818

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : Mr. V.T. Gopalan, for Mr. T.D. Vasu and Mr. N. Gopalakrishnan, for the Appellant; Mr. S. Gopinathan, Government Advocate, Mr. R.P. Kabilan, for the Respondent

Judgement

1. The petitioner in W.P.No.14615 of 96 challenges the order of the 2nd respondent relating to Revision Petition No.41 of 1995 dated 30.4.96

confirming the order of the first respondent made in R.No.A2/2095/95 dated 4.9.95. The very same petitioner in W.RNo.14997 of 98 challenges

the order of the first respondent in R.No.2095/A2/95 dated 11.9.98 and also prays for direction to the first respondent to issue temporary permit

to operate on the Trichy Town Service route 27-D Court to Theerambalayam to the petitioner with the timings already enjoyed by him before the

stoppage of service.

2. The petitioner herein made an application for the grant of a stage carriage permit for the town service route Court to Theerampalayam. The first

respondent herein, by an order dated 4.9.95, rejected the said application on the ground that as per Sections 6 and 7 of the Tamil Nadu Act 41 of

1992, his application was not maintainable and the first respondent cannot grant new permit without the approval of the State Government as

required u/s 68(3)(a) of the Motor Vehicles Act, 1988. Against the said order, the petitioner filed Revision Petition No.41 of 1995 before the

second respondent herein and the second respondent by an order dated 30.4.96 dismissed the revision and confirmed the order passed by the first

respondent. Against the said order, the petitioner has filed W.P.No.14615 of 96.

3. Even at the outset, Mr. V.T. Gopalan, learned senior counsel for the petitioner, fairly states that in view of Section 6(4) of the Tamil Nadu Act

41 of 1992, there was a total prohibition for grant of stage carriage permit to private operators other than the transport undertakings in the

approved scheme area and hence the impugned orders of both the authorities cannot be faulted with. In the light of the total prohibition for grant of

stage carriage permit to any person on any route covered by approved scheme in view of Tamil Nadu Act 41 of 92, I do not find any error or

infirmity in the impugned orders; consequently Writ Petition No. 14615 of 96 is liable to be dismissed and accordingly dismissed.

4. The case of the petitioner in W.P.No.14997 of 98 is briefly stated hereunder:- The first respondent in the said writ petition invited applications

for grant of stage carriage permit on the route Court to Theerambalayam in the Trichy Town Service. Number of persons including one K.M.

Mohamed Yusuf and M/s. Thunaivan Bus Service have applied. After consideration of the claims of all the applicants the first respondent passed

orders on 30.12.86 granting the permit in favour of Yusuf. Accordingly, the said grantee Yusuf started plying the vehicle in the aforesaid route from

the year 1987. Aggrieved by the afore-said orders M/s Thunaivan Bus Service, who was one of the applicants filed an appeal before the State

Transport Appellate Tribunal challenging the order of the first respondent herein. The State Transport Appellate Tribunal allowed the said appeal

on 2.11.89 on the ground that application by Yusuf without the fee was not competent. The said Yusuf challenged the said order in

W.P.No.15352 of 89 which was dismissed by this Court. The further appeal in W.A.No.1056 of 1989 was also dismissed by this Court.

Thereafter the matter was taken up on appeal before the Supreme Court. The Supreme Court after entertaining the said appeal, issued orders

directing both M/s Thunaivan Bus Service and Thiru Yusuf to operate on the route taking into account the fact that Thiru Yusuf had been operating on the route from 1987. When the matter was pending before the Supreme court, Yusuf offered to transfer the - permit in respect of the above route in-favour of the petitioner. After observing all the formalities, the first respondent issued orders on 6.6.91 transferring the aforesaid permit in favour of the petitioner. The petitioner had been plying vehicle in the aforesaid route from 1991. By order dated 12.10.93, the Supreme Court dismissed the appeal. However, the Supreme Court observed that in view of the new Motor Vehicles Act. 1988, it was open to the appellant therein to file a fresh application and pursue his remedies if so advised. AS per the observation made by the Supreme Court, the petitioner made an application before the respondent on 17.1.94 in the prescribed form for the grant of a permit to ply a stage carriage on the Town Service Court to Theerambalayam. By Order dated 4.9.95, the first respondent rejected his application on the ground that as per Section 6 and 7 of the Tamil Nadu Act 41 of 1992, he cannot grant the permit, against which he preferred a Revision before the State Transport Appellate Tribunal and the same was dismissed, Against the Tribunal's order, the petitioner filed W.P.No.14615 of 96. Thereafter, he applied for a transport permit on 21.11.94 u/s 104 of the Motor Vehicles Act. Ultimately the first respondent passed the impugned order rejecting the request of the petitioner for grant of temporary permit stating that the earlier request of grant of pucca permit has been rejected by the first respondent as well as the State Appellate Tribunal, against which he has filed Writ Petition No.14997 of 98.

5. First respondent has filed a counter affidavit wherein it is stated that the Government have notified the area in G.O.Ms.No, 752, Home (Transport-III) Department dated 23.5.95 for the entire Revenue District of Tiruchirapalli and according to Section 6(4) of Act 41 of 1992, no new permit can be granted under the Act to any person covered by the approved scheme. Further, in Civil Appeal No. 1758 of 86 the Supreme Court has held that no private operator can operate his vehicle on any part (or) portion or a notified route (or) area unless authorised to do so by the terms of the scheme itself. Further, inasmuch as pucca permit application was rejected by the Regional Transport Authority, the question of

issue of temporary permit does not arise. Therefore, the respondents are justified in rejecting the application of the petitioner for temporary permit.

6. The second respondent Transport Corporation has also filed a counter affidavit reiterating the same stand.

7. Mr. V.T. Gopalan, learned senior counsel for the petitioner by drawing my attention to Proviso to Section 104 of the Motor Vehicles Act,

1988, would contend that the impugned order of the first respondent cannot be sustained. He further contended that the first respondent authority

has erred in rejecting the claim of the petitioner for grant of temporary permit under the said Proviso when the second respondent Government

undertaking has not come forward to provide additional service on the route in question. On the other hand, learned Government Advocate as well

as learned counsel for the second respondent Transport Corporation would contend that in view of Tamil Nadu Act 41 of 1992 and in view of the

fact that the ""area scheme"" which is applicable for the entire revenue district of Tiruchirapalli prohibits the grant of stage carriage permit to private

operators except State Transport undertakings, the impugned order of the first respondent cannot be faulted with.

8. I have carefully considered the rival submissions.

9. There is no dispute that the Government of Tamil Nadu have published a scheme called ""Area Scheme"" for the entire revenue district of

Tiruchirapalli, which prohibits the grant of stage carriage permits to private operators except State Transport Undertakings. In view of Tamil Nadu

Act 41 of 1992 which came into force from 31.7.92, particularly as per Section 6 (4) of the said Act, no new permit shall be granted to any

person on any route covered by approved scheme. There is no dispute with regard to the above legal position. However, it is the case of the

petitioner that as per Proviso to Section 104 of the said Act, the first respondent has got ample power to grant temporary permit and the rejection

of his application saying that once the petitioner is not entitled for pucca permit equally he cannot be granted temporary permit. In order to

appreciate the rival contentions, it is useful to refer Section 104 of Tamil Nadu Act 41 of 1992:-

Section 104. Restriction on grant of permits in respect of a notified area or notified route:- Where a scheme has been published under sub-section

(3) of Section 100 in respect of any notified area or notified route, the State Transport Authority or the Regional Transport Authority, as the case may be, shall not grant any permit except in accordance with the provisions of the scheme. Provided that where no application for a permit has been made by the State Transport undertaking in respect of any notified area or notified route in pursuance of an approved scheme, the State Transport Authority or the Regional Transport Authority, as the case may be, may grant temporary permits to any person in respect of such notified area or notified route subject to the condition that such permit shall cease to be effective on the issue of a permit to the State transport undertaking in respect of that area or route.

According to Mr. V.T. Gopalan, learned senior counsel for the petitioner, the authority namely the first respondent herein failed to consider the above mentioned proviso and he has not given any finding whether any need arise -for grant of temporary permit to any person in respect of notified area or notified route. The perusal of the impugned order shows that this aspect has not been considered by the first respondent. The only reason given by the authority is that..."I hold that the request for the grant of Temporary permit is part and parcel of the grant and the reasons given by this Authority for rejection on 04.09.95, remains unchanged,,,

It is clear that the request of the petitioner for grant of temporary permit has not been considered, particularly, in the light of Proviso to Section 104 of the Act. Though no private operator be permitted to ply their vehicles in the notified scheme area, the need of granting temporary permit considering the grievance of the travelling public has not at all been considered by the authority.

10. Now I shall refer the decisions cited by Mr. V.T. Gopalan, learned senior counsel for the petitioner. The first decision is in the case of The Madhya Pradesh State Road Transport Corporation Vs. The Regional Transport Authority, Raipur, . The question raised in that case relates to scope and interpretation of Section 62 (c) of the Motor Vehicles Act, 1939. While considering the grant of temporary permit for four months under Section, 62 (c) of the Old Act, Their Lordships have observed that however, it has to be accepted that expectations of the public for these transport facilities atleast on the existing two routes have been aroused and have

created a particular need which has to be met temporarily till regular operations are introduced.

11. In Smt. Praveen Ansari and Others Vs. State Transport Appellate Tribunal, Lucknow and Others, , while considering Section 68-F (1-C) of 1939 Act which is similar to Section 104 of 1988 Act, Their Lordships have observed as follows:- (para 4)

4...Section 68-F (1-C) appears to have been introduced to meet with the situation arising out of the inability of the Corporation to obtain all

available temporary permits. Section 68-F (1-C) caters to such a situation where a scheme has been published and, therefore, the Corporation

would be entitled to temporary permits till the approved scheme is published, yet if the Corporation is unable to provide service by obtaining all

requisite temporary permits, the State Transport Authority or the Regional Transport Authority as the case may be, in exercise of power conferred

specifically upon it by Section 68-F (1-C) can grant temporary permits to persons other than the Corporation to operate vehicles on the route for

which the scheme is published till modified or approved scheme is published.

Para 7. The State Transport Authority, the State Transport Appellate Tribunal and the High Court fell into an error by interpreting Section 68-F

(1-C) only to mean that even though there are 7 vacancies and the Corporation applied for only 3 temporary- permits, once the Corporation made

an application for temporary permits not for the full strength but something short of it there was no power left in the State Transport Authority to

grant temporary permits to any one else. Obviously Section 68-F (1-C) does not admit of such a construction. The State Transport Authority has

power under sub-section (1-C) to grant temporary permit to any person in respect of the area or the route or part thereof specified in the scheme.

The expression ""any person"" would comprehend any person even other than the Corporation. One has to read Section 68-F (1-A) and Section

68-F (1-C) harmoniously. If the Corporation applies for temporary permits undoubtedly the State Transport Authority cannot grant permit to any

one else if the Corporation has applied for all the permits. But Section 68-F (1-C) clearly envisaged a situation where application for a temporary

permit is not made u/s 68-F (1-A) by the Corporation and there is felt need for providing transport service on the route in question.

Para 8. Now if cannot be gainsaid that there were 7 vacancies for temporary permits -because the strength was increased from 13 to 20. The State Transport Authority is the proper authority to decide the strength of vehicles to be plied on a route, If the Corporation is willing to operate vehicles to the maximum strength undoubtedly the State Transport Authority will have to grant permit to the Corporation u/s 68-F (1-A) to the exclusion of others. But if the Corporation was unable to provide, vehicles for the optimum strength fixed by the State Transport Authority the remaining permits will have to be granted to any other person willing to obtain temporary permit and ply vehicle because in respect of the remaining strength there would be no application by the Corporation and Section 68-F (1-C) would be squarely attracted. In interpreting the provisions of Chapter IV-A of Motor Vehicles Act 1939 it is undoubtedly true that the Corporation enjoys a preferential treatment in the matter of obtaining permits. The authority under the Act must not ever lose sight of the fact that the primary consideration must be the service available to the travelling public. While interpreting the provisions of the Motor Vehicles Act undoubtedly the competing claims between the Corporation and the other private operators may be examined with reference to the provisions of the Act. But the overall consideration namely the service is for the benefit of the travelling public should never be overlooked for a moment.

12. The very same proviso to Section 104 of the Motor Vehicles Act, 1988 was considered by the Division Bench of Allahabad High Court in

Sanjeev Kumar and others Vs. State Transport Authority, U.P. and another, . Their Lordships after considering the decision of the Supreme Court

in Smt. Praveen Ansari and Others Vs. State Transport Appellate Tribunal, Lucknow and Others, have held as follows:-

Para 7. When a Scheme is framed for providing efficient, adequate, economical and properly co-ordinated road transport service on a route, it is

obligatory on the State Transport Undertaking to provide all services specified in the Scheme. If it fails to do so, the very purpose of the Scheme

will be frustrated. Therefore, proviso to Section 104 has to be interpreted in the same manner in which provisions of sub-Section (1-C) of Section

68-F of the old Act were interpreted by the Supreme Court in the case of Smt. Praveen Ansari, AIR 1951 SC 516, with the result that if the

Corporation is unable to provide vehicles for maximum strength fixed by the Scheme, proviso to sub-section (4) will be immediately attracted and

the concerned transport authority has to grant temporary permit to private operator against the remaining services.

13. In Goutham Kumar v. State Transport Authority, 1996 AIHC 3439, S.M. Ali Mohamed. J., after considering Proviso to Section 104 of the

Motor Vehicles Act, 1988 as well as the decisions of the Apex Court namely (i) The Madhya Pradesh State Road Transport Corporation Vs. The

Regional Transport Authority, Raipur, ; (ii) Smt. Praveen Ansari and Others Vs. State Transport Appellate Tribunal, Lucknow and Others, and

other decisions, has arrived at the following conclusion:-

Para 8.....A reading of the proviso to Section 104 of the Act it is clear that there is no prohibition for a private transport operator to apply for a

temporary permit in respect of any notified area or notified route in pursuance of an approved scheme, and the State Transport Authority or the

Regional Transport Authority as the case may be, may grant temporary permit to any person in respect of such notified area or notified route

subject to the condition that such permit shall cease to be effective on the issue of a permit to the State Transport Undertaking in respect of that

area or route. In view of the proviso to Section 104 of the Act, there is force in the contention of the learned senior counsel, Mr. V.T. Gopalan, to

the effect that there is no prohibition, for a private transport operator, to apply for a temporary permit on a scheme route as long as the public

sector undertakings do not exceed the maximum number provided under the sanctioned schemes....

.... In my considered view, there is no bar for the State Transport Authority from considering the application made by the private transport

operators on merits and in accordance with law by taking into account the paramount consideration of public interest as pointed out by the

Supreme Court in the case referred to above.....

Para 8.....-There is no prohibitions of grant of temporary permit to fill up the stop-gap arrangement when the State Transport Undertakings fail to

operate the maximum number of the vehicles fixed by the actual terms of the scheme by the private operator as the paramount interest of the

travelling public has to be taken into consideration as observed by the Supreme

Court in Cases referred to above. The proviso contained in Section 104 of the Motor Vehicles Act, 1988, is to achieve the said purpose. As the grant of a temporary permit under the proviso to Section 104 of the Motor Vehicles Act, 1988 is in terms of the actual scheme made u/s 100 of the Act, and the application for grant of permit is not a grant of new permit under Tamil Nadu Act 41 of 1992, I am of considered view that sub-section (4) of Section 6 of Tamil Nadu Act 41/92 will not get attracted to an application made by a private operator for grant of temporary permit under proviso of Section 104 of the Motor Vehicles Act, 1988. There is force in the contention of Mr. V.T. Gopalan, the learned senior counsel appearing for the petitioner that in the absence of any specific exclusion u/s 104 of the Motor Vehicles Act, the provisions of the concerned scheme is paramount and the terms of the scheme itself provide for the maximum number of vehicles to ply in the scheme route and as long as the maximum number is not executed by the State Transport Undertakings there is no bar for a private transport operator to apply for temporary permit.

14. All the above referred decisions support the contention raised by the learned senior counsel for the petitioner. It is not the view of this Court that the authority is bound to issue temporary permit in a Scheme area as and when any person files an application. As observed by Their Lordships in the above referred decisions, if State Transport Undertaking fails to provide vehicles for the maximum strength fixed under the Scheme, then proviso to Section 104 is attracted and the concerned Transport Authority has to consider the claim of the private operators for grant of temporary permits against the remaining services. In other words, if application is made by any person for grant of temporary permit in a notified Scheme area, the Authority has to consider the need and to ascertain whether the State Transport Corporation has provided all services specified in the Scheme and if it fails to provide vehicles for the maximum strength as fixed in the Scheme then the Transport Authority has to consider the grant of temporary permits to private operators against the remaining services in terms of proviso to Section 104. Inasmuch as the said course has not been followed by the Regional Transport Authority, first respondent herein, the impugned order dated 11.9.98 is quashed. The

first respondent is directed to restore the application of the petitioner for grant of temporary permit and consider the same as observed above and

pass appropriate orders after notice to the parties concerned within a period of eight weeks from the date of receipt of a copy of this Order. Writ

Petition No. 14997 of 98 is allowed to the extent, mentioned above. No costs. W.M.P.No.21486 of 2000 is closed.