

(2013) 03 MAD CK 0107
In the Madras High Court
Case No : Writ Petition No. 4219 of 2013

M.P. Devendran

APPELLANT

Vs

The Secretary, Regional Transport Authority Salem

RESPONDENT

Date of Decision : 14-03-2013

Acts Referred:

Citation : (2013) 2 CTC 505 : (2013) WritLR 1120

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : T. Padmanabhan, for the Appellant; R. Rajeswaran, for the Respondent

Final Decision : Allowed

Judgement

V. Dhanapalan J.

1. A Mini Bus operator has come before this Court by filing this writ petition praying for a direction to the respondent to convene the timing

conference in accordance with Rule 248 of the Tamil Nadu Motor Vehicles Rules with respect to the petitioner's Mini Bus TCA 325 on the route

Omalur Bus Stand to Chinnathirupathi (via) Ramana Hospital, Bye Pass Road, Asian Paints etc., According to the petitioner, he is a permit holder

of mini bus on the route Omalur Bus Stand to Chinnathirupathi (via) Ramana Hospital, Bye Pass Road, Asian Paints etc., granted by the first

respondent on 08.02.2006, vide proceedings in R. No. 17329/A4/2005. As per the condition, the petitioner has produced the Registration

Certificate of the vehicle, bearing Registration No. TCA 325 along with Insurance Certificate, Fitness Certificate and Tax Receipts. Since the

timing conference was not convened, the petitioner earlier filed a writ petition

before this Court in W.P. No. 25081 of 2007 and the same was disposed of on 25.07.2007 directing the respondent to convene that the said writ petition was disposed of with a direction to the first respondent to implement the order of the second respondent dated 08.02.2006 and 09.01.2006 hold the timing conference with reference to the provisions of the statute, and the rules framed thereunder and pass orders within a period of eight weeks from the date of receipt of a copy of this order and it was also made clear that the first respondent shall consider as to whether the petitioner has fulfilled his obligations contemplated under Rule 181 of the Tamil Nadu Motor Vehicles Rules (for short, "the Rules"). Thereafter, the petitioner made a repeated personal requests to the respondents to conduct the timing conference, which was not considered and therefore, he made a representation on 25.12.2012, requesting the respondents to convene the timing conference. As there is no action on the part of the respondents, this writ petition has been filed by the petitioner.

2. The first respondent has filed a counter affidavit stating inter alia that the second respondent-Regional Transport Authority, Salem issued proceedings for the new grant of permit for Mini Bus in the name of the petitioner herein on 08.02.2006, with a direction to produce the

Registration Certificate together with the valid Fitness Certificate, Insurance Certificate and evidence for payment of tax, within a period of three

months from the date of receipt of the above proceedings, failing which, the above said sanction will be revoked under Rule 181(1) of the Rules.

After issuing the above proceedings for the new grant of permit for Mini Bus, as per the direction of this Court in W.P. Nos. 25081 and 25082 of

2007, dated 25.07.2007, notice for timing conference scheduled to be held on 26.09.2007 was also issued to the petitioner in R. No.

17329/A1/2005, dated 05.09.2007 and others concerned in this regard. In the meanwhile, Salem District Bus Owner's Association had filed writ

petition in W.P. No. 21917 of 2005 before this Court, seeking for a direction to permit them so as to enable them to participate in the route survey

joint-inspection to be conducted by the Secretary, Regional Transport Authority, Salem and thereafter, direction was also issued by the Court

accordingly on 05.07.2005.

3. While so, the Tamil Nadu State Transport Corporation Ltd., Salem has raised

objections on 17.05.2005, stating that the total length of the above said proposed Mini Bus route is 16.2 Kms. In this route, a distance of 7.6 Kms is already served by the existing services. Only a distance of 8.6 Kms lies in the unserved Sector and that the road condition from Kanjanaickenpatty Colony Pirivu to Kanjanaickenpatty Cross Road for a length of 0.3 Kms, is not fit for Mini Bus operation. It is further submitted that a notice was issued on 05.09.2007 to conduct a timing conference on 26.09.2007, but it was adjourned to 09.02.2010 and 07.03.2011 and that the delay is due to administrative reasons and the matters relating to objections raised by the State Transport Corporation Ltd., Salem had not been finalised.

4. It is also stated in the counter if the petitioner is willing to accept for operating the said Mini Bus to the distance of 4 Kms of served sector and the distance of 16 Kms of unserved sector, there cannot be objection from other priority operations to ply on the said route, as per G.O. Ms. No. 1530/Home(Tr.III) Department, dated 17.11.1999, and therefore, the first respondent prayed for dismissal of the writ petition.

5. The crux of the arguments of learned counsel for the petitioner is that under Rule 248 of the Rules, there is an obligation on the part of the respondents to convene the timing conference; even though earlier this Court directed them to convene the timing conference and thereafter, a notice of timing conference was also issued, it was not done and therefore, unless a direction is issued to the respondents, they will not discharge their duties and responsibilities.

6. On the other hand, the learned Special Government Pleader submitted that due to administrative reasons, and as objections were raised by the State Transport Corporation Ltd., Salem, timing conference could not be convened.

7. On the above background of pleadings, I have heard the learned counsel for the parties.

8. It is seen that the petitioner has been granted with a permit for operating Mini Bus on the route Omalur Bus Stand to Chinnathirupathi (via) Ramana Hospital, Bye Pass Road, Asian Paints etc., vide proceedings in R. No. 17329/A4/2005 dated 08.02.2006. As per the condition in the order, the petitioner has also produced the Registration Certificate of the Vehicle

Bearing Registration No. TCA 325 along with Insurance

Certificate, Finance Certificate and Tax Receipts. The petitioner claims that he has satisfied the requirements and therefore requested the

respondents to convene timing conference and finally made a representation on 25.12.2012 with a request to the respondents to convene the

timing conference.

9. It is relevant to notice Rule 248 of the Rules, which reads as follows:-

248. Stage Carriage fixing Schedule of timing.-

(1) The Transport Authority may, if no schedule of timings is already fixed or approved for a stage carriage or a service of a stage carriages on any

route, either on its own motion or on an application made to it in writing, by a general or special order, fix and approve a schedule of timings for

the particular stage carriage or the service of stage carriages in consultation with the applicant and the persons providing transport facilities on the

route or sectors thereof and while approving a schedule of timings on an application made to it in writing, it may approve the scheme with such

modification as it deem necessary. It shall not be necessary for the Transport Authority to send individual notice of the timings conference to the

operators concerned and it shall be sufficient compliance of this provision, if the notice giving the existing and proposed schedule of timings and the

time, date and place at which the subject will be discussed, is affixed on the notice board of the Transport Authority and copies of the notice sent

to the applicant and the concerned S.T.U. and bus owners Association of the district through which the route passes:

Provided that in case of stage carriages of State transport Undertakings tentative timings may be fixed by the Transport Authority without following

the procedure laid down in the sub-rule in case of introduction of the stage carriages on temporary permit.

10. As per Rule 248, the transport authority, either on its own motion or on an application made to it in writing, shall fix and approve a schedule of

timings for the particular stage carriage or the service of stage carriages in consultation with the applicant and the persons providing transport

facilities on the route or sectors thereof and while approving a schedule of timings on an application made to it, it may approve the scheme with

such modification as it deems necessary.

11. Based on the above Rule, in the instant case, the first respondent, who is the authority, has to consider the application of the petitioner for fixing of timing conference. The stand of the first respondent in the counter is that after the direction of this Court and also considering the objections raised by the Tamil Nadu State Transport Corporation on 17.05.2005, and on taking into account the various factors involved in the route, a notice was issued on 05.09.2007 to conduct timing conference on 26.09.2007, and it was adjourned to 09.02.2010 and 07.03.2011 and it is also stated that the delay was due to administrative reasons and as objections were raised by the State Transport Corporation, Salem, it could not be finalised.

12. When the Rule permits an authority to act in accordance with law, even assuming that there is an objection raised by any Transport Corporation, it is the duty of the authority to consider the objections in time and act as per law. It is unfortunate to state that the first respondent has not disclosed the nature of the reasons for not convening the timing conference and also in view of the objections raised by the State Transport Corporation. There is no justification for the Authority concerned to keep the matter pending without proceeding further.

13. The timing conference is one factor for the proper operation and location of the route, which has to be taken into consideration by the authority in accordance with law within a time frame. Even though this Court directed them to convene the conference and thereafter, a notice of timing conference was also issued, but it was not done. Even after a direction of this Court, the authority has not acted on the direction issued by this Court and the notice was kept pending from 05.09.2007 onwards.

14. When the statute prescribes the scheme of timing conference and the purpose for which it has been done for regulating the operations of the vehicles/buses, it is incumbent upon the authority to act in accordance with law. Scheme is a method to be evolved by the authority. With such a view, the legislature has intended to frame the rules. The rule provides for keeping the timing in order to have a good regulatory mechanism. When such is the rule, even after a direction by this Court, it is not for the respondent to say that it is only for administrative reasons, fixing of timing conference could not be done. There is a limitation for every action and such an

action is not done in this case. It shows the lethargic attitude of the respondents in not discharging their duties. Therefore, the reason adduced by the authority in not convening the timing conference is not acceptable and the mandamus, as sought for by the petitioner, has to be issued.

15. In the light of the above stated position, this Court is of the considered opinion that the first respondent shall act on the provisions of Rule 248

of the Tamil Nadu Motor Vehicles Rules, within a period of two weeks from the date of receipt of a copy of this order and convene the timing

conference without any further delay. While doing so, the first respondent shall take into consideration Rule 181 of Rules and also take note of the

objections made by the authority / person and pass orders in accordance with law. With the above observations and directions, this Writ Petition is

allowed. No costs.