

(1993) 11 MAD CK 0013

In the Madras High Court

Case No : Writ Petition No"s. 14872, 14873, 16230, 16231, 17507 and 17508 of 1993

Navaneetham P. and Others

APPELLANT

Vs

The Regional Transport Authority and Another

RESPONDENT

Date of Decision : 09-11-1993

Acts Referred:

Constitution of India, 1950 — Article 14
Motor Vehicles Act, 1939 — Section 2(28A), 57(2), 68C, 68D(1)
Motor Vehicles Act, 1988 — Section 100, 100(2), 103, 104, 43(3)
Tamil Nadu Government Business Rules, 1978 — Rule 24, 3
Tamil Nadu Government Gazette Extraordinary Act, 1977 — Section 3
Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992 — Section 11, 6(4), 7

Citation : (1993) 11 MAD CK 0013

Hon'ble Judges : A.R. Lakshmanan, J

Bench : Single Bench

Advocate : R. Krishnamoorthi, for Pandyan Roadways Corporation for A. Jinassenan and V.T. Gopalan, for C.R. Krishnamurthy, for the Appellant; V.R. Rajasekaran, Government Advocate for Government of Tamil Nadu, for the Respondent

Final Decision : Dismissed

Judgement

A.R. Lakshmanan, J.—For the sake of convenience, the parties are referred to as they are arrayed in W.P. Nos. 16230 and 16231 of 1993.

2. W.P. Nos. 16230 and 16231 of 1993 were filed by M/s. Pandyan Roadways Corporation (hereinafter referred to as PRC) to call for the

records of the 1st Respondent/State Transport Appellate Tribunal, made in Appeal Nos. 15 and 16 of 1993 dated 11.6.1993 and quash the

same. The 3rd Respondent in these writ petitions are the Petitioners in W.P. Nos. 14872, 14873, 17507 and 17508 of 1993.

3. On 28.10.1992, the 2nd Respondent/Regional Transport Authority, Kamarajar District at Virudhunagar, conducted a hearing for the grant of a

stage carriage permit in respect of the route Sathur Bus Stand to Pudur and after hearing the arguments of the 3rd Respondent, rejected the

request on the ground that the entire sector of the route is well served and there are no public representations for the provision of additional bus

facilities on the route in question. Aggrieved against the said order, the 3rd Respondent herein filed Appeal Nos. 15 and 16 of 1993 before the 1st

Respondent, who, by order dated 11.6.1993, allowed the appeals on the ground that no approved scheme route overlaps the route in question.

4. According to PRC, no notice was served on them before passing the orders either by the 2nd Respondent or by the 1st Respondent to verify

the fact of the existence of an approved scheme and that the 1st Respondent granted the prayer in favour of the 3rd Respondent since it was

represented before the 1st Respondent that the route for which the permit has been applied for is not overlapped by an approved scheme route.

According to PRC, the route in question is covered by an approved scheme viz., Sathur Bus Stand to Kovilpatti Lakshmi Mills, which has been

approved in G.O. Ms. No. 1259, Home Transport (D) Department, dated 22.6.1990. Even though the said scheme was originally quashed by the

High Court, subsequently by order dated 16.4.1993, the Supreme Court validated the aforesaid scheme in favour of PRC. In the said scheme, the

portion covering from Sathur Bus Stand to Irukkankudi Vilakku is covered by another approved scheme viz., (sic)arai to Tiruchendur, which was

approved by the Government in G.O. Ms. No. 1830, Home, dated 23.7.1974.

5. According to PRC, based on the approved schemes and as per the provisions contained in Chapter VI of the Motor Vehicles Act, 1988, and

the Supreme Court judgments reported in Adarsh Travels Bus Service and Another Vs. State of U.P. and Others, and Pandiyan Roadways

Corporation Ltd. Vs. M.A. Egappan, and as per the provisions contained in Section 6(4) of the Tamil Nadu Motor Vehicles (Special Provisions)

Act 41 of 1992, the 3rd Respondent is not entitled to get any new permit overlapping an approved scheme. This is the gist of the submissions

made in the two writ petitions filed by PRC.

6. The contesting 3rd Respondent filed a common counter affidavit stating that

the routes mentioned in the affidavit viz., Sathur Bus Stand to Kovilpatti Lakshmi Mills approved on 22.6.1990 and the route Madurai to Tiruchendur approved on 29.7.1974, do not on their terms prohibit the grant of the permit in question in favour of the 3rd Respondent and as regards Sathur Bus Stand to Kovilpatti Lakshmi Mills, there is no such thing as Annexures I and II so as to invoke the judgment of the Supreme Court reported in Pandiyan Roadways Corporation Ltd. Vs. M.A. Egappan, .

The terms of the scheme Sathur Bus Stand to Kovilpatti Lakshmi Mills do not exclude the grant of a permit to a private operator on the sectors of the said route, in that, Clause 4 and 5 of Schedule II to the said Scheme, which are the exclusionary clauses mainly relate to the complete exclusion of other persons operating on the portion of the route excepting the State Transport Undertakings of the State. It is further stated that even the overlapping portion mentioned in the affidavit between Sathur Bus Stand and Erukkangudi Vilakku is only of a negligible distance of 0.5. k.m. and that too within the municipal limits of Sathur, and the said distance will have to be excluded in view of the decision of this Court rendered in W.A. Nos. 114 and 115 of 1971 dated 26.4.1971. Even otherwise, the distance of 0.5 km. as against the total length of the routes 27 and 30 kms., which can only be regarded as trifle, which in law, will not take note of as per the decision reported in K. Chinnappu v. M. Mariappa Chettiar (1978-2-M.L.J. 329). As regards the other notified route Madurai to Tiruchendur, it is stated, the terms of exclusion would not take within its ambit of town service and the permits of the routes in question granted to the 3rd Respondent being town service, cannot be said to be barred by such schemes in view of the decision of this Court in W.P. No. 3584 of 1976 dated 22.11.1976.

7. W.P. Nos. 14872 and 14873 of 1993 were filed by the respective 3rd Respondent forbearing the 2nd Respondent/Secretary, Regional Transport Authority, Kamarajar District at Virudhunagar, from convening the timing conference as notified in R. Nos. 16711/A3/93 and 16705/A3/93 with respect to the 3rd Respondent's stage carriage (PRC) on the route Sathur to Pudur. The Petitioners in the above writ petitions who are 3rd Respondent in W.P. Nos. 16230 and 16231 of 1993, applied for grant of stage carriage permit on the town service route from

Sathur Bus Stand to Pudur via Irukkangudi, Nenmani, etc. before the 2nd Respondent, who rejected the application on 7.1.1993 on the ground

that the entire sectors of the route are well served by adequate city services and that there are no public representation for the provision of

additional bus facilities on the sectors of the route. Likewise, the Petitioner in W.P. No. 14873 of 1993 applied for the grant of a stage carriage

permit on the town service route from Sathur to Nagalapuram outer via Irukkangudi, Nenmani, etc., before the 1st Respondent, which was

rejected on the same ground. The respective 3rd Respondent filed Appeal Nos. 15 and 16 of 1993 before the 1st Respondent/State Transport

Appellate Tribunal, who granted the prayer in favour of the 3rd Respondent herein on the route in question on 11.6.1993. The 1st Respondent

herein has directed the respective 3rd Respondent to produce the vehicles with valid records within a period of six months from the date of receipt

of the said order. While so, the 2nd Respondent herein has sent a notice to the President, Kamarajar District Bus Owners Association,

Virudhunagar, intimating that a timing conference is to be convened on 11.8.1993 by the 2nd Respondent with respect to a stage carriage vehicle

to be produced by the PRC on the identical route Sathur to Pudur on the strength of the alleged temporary permit.

8. W.P. Nos. 17507 and 17508 of 1993 were again filed by the respective 3rd Respondent in W.P. Nos. 16230 and 16231 of 1993, for a

mandamus directing the 2nd Respondent/Secretary, Regional Transport Authority, Kamarajar District at Virudhunagar, to convene the timing

conference and to fix timings for the respective 3rd Respondent's vehicles TML 8190 and TML 2308 in order to ply on the route Sathur to

Nagalapuram outer and Sathur Bus Stand to Pudur respectively by way of issuance of permits.

9. All the above writ petitions were taken up together at the request and consent of all parties. Mr. R. Krishnamurthi, learned Senior Advocate

appeared on behalf of PRC, for and on behalf of Mr. A. jinasenan, Mr. V.T. Gopalan, learned Senior Advocate appeared for the respective 3rd

Respondent for and on behalf of M/s. C.R. Krishnamurthi and T. Padmanabhan, and Mr. V.R. Rajasekaran, learned Govt. Advocate appeared

for the State.

10. Mr. V.T. Gopalan; learned Senior Counsel for the respective 3rd Respondent would submit that as to whether an approved scheme precludes the grant of a permit overlapping the notified route to a private operator has to be found on a consideration of the specific terms of such approved scheme. In this connection, he would refer to the decision reported in Adarsh Travels Bus Service and Another Vs. State of U.P. and Others, and would invite my attention to paragraphs 1, 6 and 16 of the said judgment. It is stated in paragraph 1 of the said judgment that the answer to the question really turns on the terms of the scheme rather than on the provisions of the statute. In paragraph 6, again it is reiterated that no person other than the State Transport Undertaking may operate on the notified area or notified route except as provided in the scheme itself. The result 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 and that he may not operate on any part or portion of a notified route or area on the mere ground that the permit as originally granted to him covered the notified route or area. Strong reliance was placed on the observations of the Supreme Court in paragraph 16 of the said judgment. It is useful to extract that paragraph, which runs as follows:

We are, therefore, unable to see any merit in any of the Civil Appeals since none of the schemes placed before us contain any saving clause in favour of operators plying or wanting to ply stage carriages on common sectors. On the other hand we found that invariably there is a clause to the following effect: No person other than the State Government Undertaking will be permitted to provide road transport services on the routes specified in paragraph 2 or any part thereof. In the face of a provision of this nature in the scheme totally prohibiting private operator from plying stage carriages on a whole or part of the notified routes, it is futile to contend that any of the Appellants can claim to ply their vehicles on the notified routes or part of the notified routes. All the Appeals and Special Leave Petitions are therefore dismissed, with costs which we quantify at Rs. 2,500/- in each. All the interim orders of this Court which enabled the Appellants to operate their vehicles on notified routes or part of notified routes or which enabled the Appellants to apply for and obtain permits to so operate, with or without the so-called corridor restrictions are hereby

vacated.

11. It is, therefore, clear from the observations of the Supreme Court in paragraph 16 of the judgment cited above that none of the schemes placed before the Supreme Court contained any saving clause in favour of operators plying or wanting to ply stage carriage on common sectors. On the other hand, the Supreme Court found that invariably there is a clause to the effect that no person other than the State Transport Undertaking will be permitted to provide road transport services on the routes specified in paragraph 2 or any part thereof. In the face of the provision of this nature in the scheme totally prohibiting private operators from operating stage carriages on a whole or part of the notified routes, the Supreme Court has observed that it is futile to contend that any of the Appellants before it can claim to ply their vehicles on the notified routes or part of the notified routes and on that ground, dismissed all the appeals and the Special Leave Petitions.

12. Before considering the submissions made by Mr. V.T. Gopalan, it is beneficial to extract the relevant portion of the approved scheme made in

G.O. Ms. No. 1259, Home (Transport-D), dated 22.6.1990:

Whereas the Pandiyan Roadways Corporation Limited prepared and published the scheme relating to the route Sathur Bus Stand to Kovilpatti

Lakshmi Mills u/s 68-C of the Motor Vehicles Act, 1939 (Central Act IV of 1939) at page 89 of Part VI Section 3(b) of the Tamil Nadu

Government Gazette Extraordinary, dated 10th August, 1983 And whereas no objection with reference to Sub-section (1) of Section 68-D of the

said Act (Section 100 of the Motor Vehicles Act, 1988) (Central Act 59 of 1988) to the said scheme has been received by the Secretary to

Government of Tamil Nadu in the Home Department, who is empowered to exercise the powers of the State Government u/s 100 of the Motor

Vehicles Act, 1988 (Central Act 59 of 1988) in pursuance of the Rule 24 of the Tamil Nadu Government Business Rules, 1978:

Now therefore, I.R. Nagarajan, Secretary to Government of Tamil Nadu in the Home Department hereby approve the said Scheme under Sub-

section (2) of Section 100 of the Motor Vehicles Act, 1988 (Central Act 59 of 1988).

Schedule I

Area or route in relation to which the scheme is proposed.

Sattur Bus Stand to Kovilpatti Lakshmi Mills (via) Sattur Bazaar, Nallichatram and Kovilpatti Bus Stand touching Periyaodaipatti and sectors there of in Sattur Town Service.

Schedule II

1. Route (Starting point and terminus with important intermediate stations and route length) or portion thereof with distance. Sattur Bus Stand to

Kovilpatti Lakshmi Mills (via) Sattur Bazaar, Nallichatram and Kovilpatti Bus Stand touching Periaodaipatti and sectors thereof in Sattur (Town

Service) Total length 24.8 Kms.

13. Referring to the above terms of the approved scheme for the abovesaid town service route Sathur Bus Stand to Kovilpatti Lakshmi Mills, Mr.

V.T. Gopalan would submit that the proposed scheme route has been described in Schedule Las well as in Clause I of Schedule II as Sathur Bus

Stand to Kovilpatti Lakshmi Mills via. Sathur Bazaar, Nallichatram and Kovilpatti Bus Stand touching Periyaodaipatti and sectors thereof in Sathur

(Town Service). According to Mr. V.T. Gopalan, learned Senior Counsel, the said clause authorised the State Transport Undertaking, for whose

benefit the scheme has been approved, to apply for permits u/s 103 of the Motor Vehicles Act not only for the said route from terminus to

terminus but also for the sectors thereof.

14. To find out whether the said scheme is to the exclusion, complete or partial or otherwise of other persons, one has to consider the terms of

Clauses IV and V of the said scheme, which are extracted herein below:

Clause IV

Maximum and minimum number of vehicles proposed to be operated in each route by the State Transport Undertaking to the exclusion complete

or partial or otherwise of other persons.

To the complete exclusion of other persons operating on the entire route except the State Transport Undertakings of this State.

(a) Maximum number... 15 (fifteen)

(b) Minimum number.. 1 (one)

(c) Type..

Semi-saloon, single deck, (d) Seating capacity-Maximum. 85 (eighty five) Minimum. 15 (fifteen) Clause V

Maximum and Minimum Number of trips proposed to be performed on each route by the State Transport Undertaking to the exclusion, complete

or partial or otherwise of other persons.

To the complete exclusion of other persons operating on the entire route, except the State Transport Undertakings of this State.

Maximum..

270 trips on the main route, 30 shuttle trips on

Sathur Kovilpatti Sector, minimum.

12 single on the main route, 2 shuttle trips on Sathur Kovilpatti sector.

15. In respect of the said clauses, it has only been stated to the complete exclusion of other persons operating on the entire route except the State

Transport Undertaking of this State. Therefore, it is contended by the learned Senior Counsel appearing for the contesting 3rd Respondent, in

respect of exclusion of the other persons, it has been clearly stated that such exclusion will be in respect of other persons operating on the entire

route. Such exclusion, in my view, will not apply to sectors of the said route. It is very clear in not so expressly stating that other persons will be

precluded even in sectors thereof or part thereof. Therefore, it cannot be said that the private operators operating on sectors of the said notified

route are excluded by Clauses IV and V. A comparison of Clauses IV and V of the above said approved scheme with the exclusion clause set out

in paragraph 16 of the judgment of the Supreme Court referred to above will clearly bring out the crucial absence of the words in part thereof in

Clauses IV and V of the above said approved scheme in question dated 22.6.1990. Therefore, in my view, there is no bar consequent upon the

said scheme for the grant of the permit in question which overlaps the said notified route only for a distance of 0.5 KM from Sathur Police Station

(Irukkangudi vilakku) to Sathur Bus Stand.

16. It has been held by a Division Bench of this Court in W.A. No. 1083 of 1992 etc., that a scheme in a given route would also include the

sectors thereof, without considering the latter terms of the exclusion clause in the scheme questioned in this case as projected herein. Further, the

provisions of the Tamil Nadu Act 41 of 1992, particularly Section 11 of that Act, are, ""shall be in addition to, and not in derogation of any other

law..."" and as such, the principles of interpretation of an approved scheme, as laid down in the earlier judgments, shall be made applicable to find

out the nature of exclusion clauses as any other interpretation of Sections 6(4) and 7 of the said Act will be vocative of Section 11 of the said Act.

I am of the view that these aspects of the matter have not been gone into in the above said Division Bench judgment of this Court holding that an

approved scheme in a given route would include sectors thereof also.

17. Mr. V.T. Gopalan would further urge that even otherwise, the so called overlapping is only for a distance of 0.5 KM, which being a trifle,

cannot be countenanced in law. Further, the said 0.5 KM from Sathur Police Station to Sathur Bus Stand is within the municipal limits and it is

always a salutary principle to exclude the distance from zero point in the given place to the bus stand for the simple reason that the bus stand is

variable and there could be several bus stands in a town. Three judgments of our High Court have been relied on by the learned Senior Counsel

for the said proposition and they are W.P. No. 926 of 1967 dated 17.6.1969 (Alagiriswami, J., as he then was), W.A. Nos. 114 and 115 of

1971 dated 26.4.1971 (K. Veeraswami, C.J., and Raghavan, J) and K. Chinnappu v. M. Mariappa Chettiar (1978-2-MLJ, 329 (S. Mohan,

J., as he then was).

18. this Court, in W.P. No. 926 of 1967 was concerned with the town service and according to the understanding of the parties regarding the

relevant rules, a town service route cannot exceed 24 K Ms. and in that case, its length is 24 K Ms and 194 feet. On this ground, the variation

granted by the Regional Transport Authority was set aside by the State Transport Appellate Tribunal. A writ petition was filed to quash the order

of the Tribunal. A. Alagiriswami, J., as he then was, while considering the contentions held as follows:

The principle of jurisprudence that law does not take note of trifles would have been enough for the State Transport Appellate Tribunal to hold that

the variation granted in this case is valid. There is the further fact that as consequence of the judgment of the Supreme Court in Sri Rama Vilas

Service v. Raman and Raman Pvt. Ltd. (1968-2-M.L.J., 39, S.C.) it is now clear

that Section 48(3) of the Motor Vehicles Act does not automatically become part of the permit. Therefore, the variation which was before the amendment of the Clause (xxi) is not bad in law. The decision of the State Transport Appellate Tribunal thus suffers from an error apparent on the face of the record, The writ petition is allowed and the order of the State Transport Appellate Tribunal is set aside. As the State Transport Appellate Tribunal has disposed of the case only technically, the Tribunal will restore the case to its file and dispose of it afresh on the merits. There will be no order as to costs in the writ petition.

19. The second decision relied on by Mr. V.T. Gopalan, learned Senior Counsel for the contesting 3rd Respondent viz., W.A. Nos. 114 and 115 of 1971 arose out of the variation granted by the Regional, Transport Authority of the route Tuticorin to Vembur via Karukuchalai, etc., which involved a curtailment according to the authority of the route from Tuticorin to Kulathur via., Karukuchal in respect of the bus in question. The original authority over ruled the objection that the variation exceeded the limit of 24 kms. prescribed by the Proviso to Section 43(3)(xxi). In rejecting the objection, the Regional Transport Authority had referred to the distance as given by the Divisional Engineer namely 14 miles 7 furlongs, that is to say, 23.8 Kms. for the route Tuticorin to Kulathur via. Tharuvaikulam, etc. The Motor Vehicles Inspector also gave the distance as 23,9 Kms. His report was in May, 1968, whereas that of the Divisional Engineer was in November 1968. The authority found that by granting the variation, there Would be a certain reduction in the number of trips though in a relatively congested sector, but there would be, in another sense, an increase in a relatively poorly served sector. In its view, this would provide a shorter route for the people from Vem-bur to Kulathur to go to Tuticorin. In the light of the facts, the Regional Transport Authority was of the opinion that the variation was in public interest. The State Transport Appellate Tribunal reversed the order of the Regional Transport Authority. Palaniswami, J., declined to interfere with the Tribunal's order. An appeal was preferred against the said order. It was contended by the Appellant before the Division Bench that the Tribunal was not right in the way it disposed of the matter on the question of distance. Accepting the argument of the Appellant, the Division Bench was inclined to

accept the report of the Motor Vehicles Inspector, since, according to the Division Bench, that should be given weight. In the concluding portion of

the judgment, the Hon'ble Judges of the Division Bench have observed thus: "The proviso, which we referred to above, only says that a route shall

not be varied so as to alter the distance covered by the original route by more than 24 Kms. and any variation within the limit shall be made only

after the Regional Transport Authority is satisfied that such variation would serve the public convenience and that it was not expedient to grant a

separate permit in respect of the original route as to-varied or any part thereof. The Regional Transport Authority went by the zero mile at either

terminus of the route. We think it was right in viewing in that way. There is no indication in the proviso that in computing the distance for its purpose

one should travel beyond the zero mile of the particular town or village. The route is generally as between two named places and the zero mile at

each place, which is a fixed point, would be a good starting point and a terminus for a route in calculating its distance. There is no warrant in the

proviso to add to it the distance upto the bus stand beyond the zero mile in a village or town. On that view, we are unable to agree with the

Tribunal. Its order, therefore, in so far as it relates to the distance, is set aside.

20. The third decision relied on by the learned Senior Counsel for the contesting 3rd Respondent is that of S. Mohan, J (as he then was) reported

in K. Chinnappu v. M. Mariappa Chettiar (1978 2 MLJ 329) wherein the learned judge has observed as follows:

On a careful consideration of the above arguments, I am of the view that there is great substance and justice in what the Learned Counsel for the

Respondent contends. Section 2(28-A) of the Motor Vehicles Act, 1939, defines the "route" as meaning a line of travel which specified the

highway which may be traversed by a motor vehicle between one terminus and another. The definition of "road length" is contained under Rule

3(n) which means the actual distance of any road as a physical track. Neither of these definitions could in any way affect the construction with

regard to the calculation of the distance for the conferment of jurisdiction upon the authority is from zero point. It is not necessary that actually the

bus should travel through that route. Looked at this point of view, there is no question of imaginary or artificial consideration being imported under

such construction. On the contrary, it appears to be an eminent, rule of construction, which will obviate many difficulties. For instance in a city or

town if there are more than one bus stand concerning the same route and if it is to be calculated from terminus to terminus as per the route, on

which the bus travels, certainly the distance may vary. One bus stop may lie very near, while the other may lie in the interior of the city or town, as

the case may be. Therefore, the calculation from zero point is a salutary principle which has to be adopted in this case. The ratio of Writ Appeal

Nos. 114 and 115 of 1971 though rendered prior to the amendment will still hold good notwithstanding the amendment of the law.

21. In my opinion, all the three decisions referred to above are directly on the point at issue and I am inclined to follow and apply the test laid

down in the above three rulings to the case on hand. I, therefore, hold that even assuming that there is overlapping, it is only for a distance of 0.5

Km, which being a trifle, cannot be countenanced in law. As rightly pointed out by Mr. V.T. Gopalan, the said 0.5 Km from Sathur Police Station

to Sathur Bus Stand is within the municipal limits and it is always a salutary principle to exclude the distance from zero point in the given place to

the bus stand for the simple reason that the bus stand is variable and there could be several bus stands in a town, as laid down by a Division Bench

of this Court in W.A. Nos. 114 and 115 of 1971 and by S. Mohan, J., as he then was, in the decision reported in K. Chinnappu v.M.

Mariappa Chettiar (1978 2 MLJ 329). Any other interpretation, in my view, would be unreasonable besides being arbitrary and violative of

Article 14 of the Constitution, in that, without resorting to the provisions of Chapter VI of the Motor Vehicles Act, a State Transport Undertaking,

in collusion with the municipality, could shift a bus stand to a different place in such a way that the private operators would necessarily have to

traverse on portions of the approved schemes thus bringing about an automatic extinction of their services.

22. Alternatively also, inasmuch as the Regional Transport Authority is yet to issue the permit pursuant to the order of the State Transport

Appellate Tribunal in favor of the respective 3rd Respondent, who are willing for a direction to the Regional Transport Authority in the writ

petitions filed by them to conform to Section 104 of the Motor Vehicles Act by issuing the permit in favor of the respective 3rd Respondent only

up to Sathur Police Station by excluding the overlapping portion of 0.5 KM from Sathur Police Station to Sathur Bus Stand, and for such a

course, PRC, in my considered opinion, can have no objection at all and when the permit has been issued for a route not overlapping any notified

route, the PRC cannot have any locus stand and be considered as an aggrieved person to object to such a grant of permit.

23. The above conclusion of mine is fortified by two judgments of the two learned single Judges of this Court. M. Srinivasan, J., in his well

considered judgment reported in Tvl. Pattukkottai Azhagiri Transport Corporation Ltd. Vs. Tvl. V.K. Velayutham and Sons., Imperial Motor

Service and Others, held that the Transport Corporation (Petitioner in that case) cannot make any complaint against the grant of permit to a route

which does not fall within the area of the scheme and that the grant of permit to the 1st Respondent therein with the curtailment as directed by the

3rd Respondent therein, cannot be objected to by the Petitioner therein. The learned Judge has further held that the power was available to the

2nd Respondent to grant permit with such modifications as were necessary and the same power is undoubtedly available to the Appellate

Authority viz., the 3rd Respondent therein. The learned judge has also held that it is settled law that the powers of the Tribunal are co- extensive

with those of the Regional Transport Authority and in exercise of the said power u/s 72(1) of the Act, the 3rd Respondent/Appellate Authority has

curtailed the permit by suitable modification, thereby excluding the overlapping portion. It is also observed in that judgment that in view of the

curtailment of the permit and exclusion of the overlapping portion, the notified scheme is not in any manner affected and the route for which permit

is now directed to be granted by the Appellate Authority falls entirely outside the area of the scheme and hence, the Petitioner therein viz.,

Transport Corporation, cannot have any grievance against the same. In the concluding portion, the learned judge has held that there is absolutely

no failure of justice and in fact, justice has been done by the Appellate Authority in directing issue of permit with curtailment, thus excluding the

negligible overlapping portion of 0.2 KM between Vellore Bus Stand and Officers Line and that the Appellate Authority has also taken care to

issue a direction that the bus of the 1st Respondent therein shall stop with Officers Line and shall not enter the Vellore Bus Stand on any account.

While observing thus, the learned Judge has dismissed the writ petition filed by the Transport Corporation.

24. The above judgment of M. Srinivasan, J., was referred to before J. Kanakaraj, J., by the Respondent in W.P. No. 8250 of 1992, which was

filed by Cheran Transport Corporation, Coimbatore. The judgment in that case was delivered by J. Kanakaraj, J., on 14.10.1992. The above was

a case of grant of permit to the 1st Respondent therein for a stage carriage. The Cheran Transport Corporation, being one of the applicants, filed

Appeal No. 74 of 1988 before the State Transport Appellate Tribunal against the said grant in favour of the 1st Respondent A.M. Nanjappan.

The main contention raised before the Tribunal was that as the route Bhavani to Vellitiruppur was covered by an approved scheme published in

respect of the route Coimbatore to Bhavani on 31.7.1968, no permit could be granted to the 1st Respondent in respect of the sector Bhavani to

Vellitiruppur. Other contentions were also raised before the Tribunal. The Tribunal, on merits, held that the reasons given by the Regional

Transport Authority for preferring the 1st Respondent were justified. However, the Tribunal found that the route in question overlaps an approved

scheme upto a distance of six Kms. from Bhavani to Jambai Pirivu, and proceeded to say that this obstacle can be removed by modifying the grant

and curtailing the said overlapping portion. Consequently, the permit was granted from Jambai Pirivu to Vellitiruppur. The Tribunal also directed

the Regional Transport Authority to consider the application of the Cheran Transport Corporation afresh in the light of Tamil Nadu Act 12 of 1973

and Tamil Nadu Amendment Act 17 of 1984. It is against the said order of the Tribunal, the writ petition was filed in this Court by the Cheran

Transport Corporation.

25. Before J. Kanakaraj, J., the only point that was argued was, the Tribunal had no jurisdiction to curtail the route and confirm the grant of permit

in respect of a route which was not notified u/s 57(2) of the Motor Vehicles Act, 1939. It was further argued that the Tribunal had no jurisdiction

to curtail the route and grant the permit for a different route than the route for which applications were called for. Reliance was also placed on a

judgment of the Allahabad High Court reported in Parshotam v. The State Transport Appellate Authority (1978 T.A.C. 428). The argument of the

learned senior counsel for the Petitioner so made was adequately answered by Mr. V.T. Gopalan, Learned Counsel for the 1st Respondent in that

case. Reliance was also placed on the judgment of M. Srinivasan, J., reported in Tvl. Pattukkottai Azhagiri Transport Corporation Ltd. Vs. Tvl.

V.K. Velayutham and Sons., Imperial Motor Service and Others, . J. Kanakaraj, J., in considering the argument of Mr. V.T. Gopalan and

following the judgment of M. Srinivasan, J. referred to above, has held as follows:

Srinivasan, J., has elaborately considered the very aspect of the curtailment by the Tribunal and observed as follows:

Section 72(1) of the Act enables a Regional Transport Authority to grant stage carriage permit in accordance with the application or with such

modifications as it deems fit. The power was available to the 2nd Respondent to grant permit with such modifications as were necessary and the

same power is undoubtedly available to the Appellate Authority viz., the 3rd Respondent. It is settled law that the powers of the Tribunal are co-

extensive with those of the Regional Transport Authority vide N. Sambandam v. S. Khader Sheriff and Ors. AIR 1966, Mad 1). It is in exercise of

the said power u/s 72(1) of the Act, the 3rd Respondent has curtailed the permit by suitable modification thereby excluding the overlapping

portion.

It is pointed out on behalf of the Petitioner that the judgment of my learned Brother Srinivasan, J., is the subject matter of an appeal. However, so

long as the judgment holds the file and so long as I am in respectful agreement with the views expressed by the learned judge, I am bound to apply

the same. In this view of the matter, the only contention raised before me falls. Consequently, the writ petition is dismissed. There will, however, be

no order as to costs.

26. In the concluding portion of the judgment it was pointed out by my learned brother J. Kanakaraj, J., that in respectful agreement with the views

expressed by M. Srinivasan, J., in the decision reported in Tvl. Pattukkottai Azhagiri Transport Corporation Ltd. Vs. Tvl. V.K. Velayutham and

Sons., Imperial Motor Service and Others, he dismissed the writ petition. I am also of the same view as that of J. Kanakaraj, J. I am of the view

that if the Regional Transport Authority is directed to issue the permit to the respective 3rd Respondent excluding the overlapping portion as stated

above, there is no question of even the provisions of the Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992, coming in the Way. The

provisions of Tamil Nadu Act 41 of 1992 were brought into force only for the purpose of validating certain grant of permits, renewals and

variations, which were made between the period 4-6-1976 and 30.6.1990, and also to permit the grant of renewals and variations only to private

operators even after 30.6.1990 notwithstanding that their routes overlapped the notified routes. It is only the grant of permit to any person on any

route covered by an approved scheme beyond 30.6.1990 which is prohibited u/s 6(4) of the said Act and Section 7 of that Act provides for

abatement of such applications. It is not as if that the provisions of Act 41 of 1992 lay down any different law from that provided under Chapter

VI of the Motor Vehicles Act, 1988, but, on the other hand, it only reiterates the provisions of Chapter VI of the Motor Vehicles Act, 1988, in

respect of grant of fresh permits alone. Therefore, even in the absence of Sections 6(4) and 7, no new permit can be granted to private operators

on a route overlapping a notified route u/s 104 of the Motor Vehicles Act, 1988. In the face of such subject, Section 7 of Act 41 of 1992 cannot

apply to a case where the application is modified excluding the overlapping portion in respect of the grant of a permit, as in the instant case, if the

overlapping portion is excluded while issuing the permit, thus fully complying with the spirit and intendment of the said provisions of Act 41 of 1992

viz., no new permit can be granted overlapping the notified route.

27. In answer to the above arguments of Mr. V.T. Gopalan, Mr. R. Krishnamoorthi, learned senior counsel for PRC would submit that the scheme

is not maintainable in view of Section 7 of Tamil Nadu Act 41 of 1992. He would submit that in terms of the said provision, all applications,

appeals, etc. in relation to a claim of the grant of a permit overlapping an approved scheme and pending on the date of the commencement of the

publication of the Act would abate. The Act was published on 31.7.1992. The order of the Regional Transport Authority was on 28.10.1992 and

the applications of the contesting 3rd Respondent were pending on the date of publication of the Act and hence, Mr. R. Krishnamoorthi would

submit, that Section 7 of the Act will be a bar for the application to survive. Strong reliance was placed on the Division Bench judgment of this

Court in W.P. No. 19048 of 1992, etc. batch dated 30.4.1993. That judgment was a very short one and hence, the same is reproduced

hereunder:

In these three writ petitions, the Regional Transport Authority refused to grant permit in favour of the 1st Respondent in W.P. Nos. 19048 and

20238 of 1992, who is the 3rd Respondent in W.P. No. 19998 of 1992. But, on appeal, the State Transport Appellate Tribunal granted permit

with a restriction. When the appeal was pending, Tamil Nadu Act 41 of 1992 came into force with effect from 31.7.1992 in so far as Section 7 is

concerned. We have held in W.P. No. 1221 of 1991, etc. batch, on 30.4.1993 that Section 7 of the Act came into force on 31.7.1992, the date

on which the Act was published. By virtue of Section 7 of the Act, all pending proceedings for grant of permits including the appeals abated.

2. However, the 1st Respondent herein filed an application I.A. No. 784 of 1992 before the Appellate Tribunal on 7.9.1992 praying for

amendment of the original application for grant or permit by restricting the route from Ariyalur to Tittakudi, a distance of 48 Kms. Thus, the 1st

Respondent wanted to exclude the overlapping portion. Granting the amendment, the Tribunal also granted the permit on the footing that there was

no portion of the said route overlapping the notified route.

3. The objection taken in the writ petitions is that on the date when the application for amendment was filed, there was no appeal in the eye of law.

By virtue of Section 7 of Act 41 of 1992, there was a statutory abatement of the appeal and nothing survived. Hence, the amendment ought not to

have been allowed. We agree with the contention and hold that the appeal had abated on 31.7.1992 and it was not open to the Tribunal to amend

the application and consequently grant permit for a restricted route.

4. In the circumstances, the writ petitions are allowed. The order of the Tribunal dated 29.9.1992 granting permit to the 1st Respondent is

quashed. There will be no order as to costs.

28. Referring to the above judgment, Mr. R. Krishnamoorthi would submit that the Division Bench has dealt with a similar situation and held that

such appeal had abated on 31.7.1992 and it was not open to the Tribunal to entertain the application projected by the 3rd Respondent to amend

the main application and consequently grant permit to restricted route. In this

view, it is contended that the application of the 3rd Respondent, which was pending on 31.7.1992, would abate and if at all, the 3rd Respondent would have to make a fresh application for the grant of permit over the non-scheme route.

29. I am unable to appreciate or accept the above said contention of Mr. R. Krishnamoorthi. In my opinion, a Division Bench of this Court in

W.P. No. 19048 of 1992 held that an amendment of the application pertaining to overlapping portion could not be allowed in view of the statutory

abatement provided u/s 7 of Tamil Nadu Act 41 of 1992. However, an earlier judgment in this behalf rendered by one of the learned judges of the

said Division Bench reported in Tvl. Pattukkottai Azhagiri Transport Corporation Ltd. Vs. Tvl. V.K. Velayutham and Sons., Imperial Motor

Service and Others, (M. Srinivasan, J.) which was followed by J. Kanakaraj, J., in W.P. No. 8250 of 1992 dated 14.10.1992, have not been

adverted to at all. In those judgments it has been held that an application can always be amended and if the Regional Transport Authority has such

a power then, equally, the Appellate Tribunal also will have the same power in permitting such amendment. Further, when an application is

amended, such amendment relates back to the date of application and as such, there can be no statutory abatement as held in the said judgment of

the Division Bench dated 30.4.1993. Further, I am, of the view, that no exception can be taken to make an application by way of an amendment

so as not to conflict with the provisions of Chapter VI of the Motor Vehicles Act, 1988, or even the provisions of Tamil Nadu Act 41 of 1992 by

excluding the grant of permit on a portion of a notified route or an approved scheme route. I am also unable to accept the argument of Mr. R.

Krishnamoorthi, learned senior counsel for PRC, that the application of the contesting 3rd Respondent got statutorily abated and that they would

have to make a fresh application for the grant of permit over the non-scheme route. In my view, asking the contesting 3rd Respondent to, apply

again by excluding the overlapping portion is nothing but an empty formality, which does not sub serve any public interest. Above all, all these

aspects have neither been adverted to nor considered in the said Division Bench judgment dated 30.4.1993. I prefer to follow the judgment of M.

Srinivasan, J., reported in Tvl. Pattukkottai Azhagiri Transport Corporation Ltd.

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and Others, which is a well considered judgment and which is also followed by J. Kanakaraj, J., in W.P. No. 8250 of 1992.

30. I am also unable to accept the contention of Mr. R. Krishnamurthi, learned senior counsel for PRC, raised at the time of hearing for the

following reasons. The ground on which the grant of permit in favour of the respective 3rd Respondent is challenged is that the route for which the

permit has been sought for and granted in their faveur overlaps an approved scheme made in G.O. Ms. No. 1259, Home, dated 22.6.1990.

Though originally the Regional Transport Authority had rejected the application for grant of permit in favour of the respective 3rd Respondent, the

State Transport Appellate Tribunal had made the grant on the ground that there is no approved scheme overlapping the route in question. It is an

admitted fact that in the present proceedings, the route in question overlaps the approved scheme to an extent of 0.5 KM. Therefore, the factual

terms on which the grant had been made by the Tribunal viz., the route in question does not overlap any approved scheme, is a mistake of fact.

However, both the parties were directed to advance arguments on the merits of the case ignoring the factual finding of the Tribunal, In fact, both

parties have done so.

31. Strong reliance was placed by Mr. R. Krishnamurthi, learned Senior Counsel for PRC, in the judgment reported in Adarsh Travels Bus

Service and Another Vs. State of U.P. and Others, followed by the decision reported in Pandiyan Roadways Corporation Ltd. Vs. M.A.

Egappan, . According to Mr. R. Krishnamoorthi, having regard to the admitted position that the route in question overlaps an approved scheme,

the grant Would be liable to be set aside on the basis of the principles laid down by the Supreme Court in the above two judgments.

32. In answer to the above arguments of Mr. R. Krishnamurthi, Mr. V.T. Gopalan, learned senior Counsel appearing for the contesting 3rd

Respondent would submit that the route overlaps only a small sector and the scheme in question relied upon by PRC cannot be a bar to the grant

of permit. I have also distinguished the judgment of the Supreme Court on the specific facts and circumstances of the case and of the scheme itself.

I have elaborately considered the arguments of Mr. V.T. Gopalan in paragraphs

supra. The judgment of the Supreme Court reported in Adarsh

Travels Bus Service and Another Vs. State of U.P. and Others, , relied on by Mr. R. Krishnamurthi, learned senior counsel for PRC, is no doubt

specific to the effect that once a scheme is approved, which contains a clause excluding all the persons operating on the entire route, no other

person could be granted any permit to operate on even a sector covered by the scheme.

33. The case on hand stands slightly on a different footing. Hence, considering the submissions referred to in detail in paragraphs supra, and

following the judgments of our High Court referred to earlier, the claim of the contesting 3rd Respondent, in my view, should be upheld. On the

submissions of Mr. V.T. Gopalan, learned Senior Counsel for the respective 3rd Respondent that the overlap, etc. is only 0.5 Km and that it

would amount to trifle and that the law should not take note of trifle, Mr. R. Krishnamurthi, learned senior counsel for PRC would, submit that this

question is no longer res integra and that the Supreme Court, in the decision reported in Adarsh Travels Bus Service and Another Vs. State of U.P.

and Others, and in Pandiyan Roadways Corporation Ltd. Vs. M.A. Egappan, has clearly held that once a scheme is approved, no permit could be

granted to any portion or a sector of the scheme route unless it is authorised by the scheme itself. The argument of Mr. V.T. Gopalan, learned

Senior Counsel for the contesting 3rd Respondent on this point has been elaborately discussed by me in paragraphs supra and for the reasons

stated therein, I am unable to accept the contention of Mr. R. Krishnamoorthi on this ground.

34. For the foregoing reasons, W.P. Nos. 16230 and 16231 of 1992 filed by PRC to quash the order of the Tribunal, are dismissed. The

authorities concerned are directed to issue permit in favour of the respective 3rd Respondent only upto Sathur Police Station by excluding the

overlapping portion of 0.5 Km from Sathur Police Station to Sathur Bus Stand. This shall be done within two weeks from the date of production

of a copy of this order by the respective 3rd Respondent.

In view of the direction given to the authorities directing them to grant permit to the respective 3rd Respondent as indicated above, W.P. Nos.

14872 and 14873 of 1993 are allowed and a mandamus as prayed for will issue.

It is seen from the affidavits filed in support of W.P. Nos. 17507 and 17508 of 1993, that the contesting 3rd Respondent, who is the Petitioner in

these writ petitions, have to produce the valid records as directed by the State Transport Appellate Tribunal in respect of their vehicles TML8190

and TML 2308, and that the authorities may be directed to implement the order of the Tribunal. Hence, a direction is issued to the concerned

authority to convene the Timing Conference within two weeks from the date of production of a copy of this order by the respective 3rd

Respondent and fix the timings for the buses belonging to the 3rd Respondent in order to ply on the route in question as indicated above. There will

be no order as to costs.