(2006) 12 MAD CK 0203

In the Madras High Court

Case No : Writ Appeal No''s. 429 and 476 of 2002, W.P. No''s. 8146 and 8147 of 2002 and WAMP No. 861 of 2002

R. Venkata Varada Reddiar — APPELLANT

Vs

The State Transport Authority, The Pondicherry Tourism and Transport Development Corpn. Ltd. and The Secretary, The State Transport Authority
M. Husman Vs State Transport Authority and Pondicherry Tourism and Transport Development Corpn. Ltd.
V. Vijayasekaran Vs State Transport Authority, Union Territory of Pondicherry, The Secretary, State Transport Authority, Union Territory of Pondicherry and Pondicherry Tourism and Transport Development Corpn. — RESPONDENT

Date of Decision : 22-12-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 63, 87, 87(1), 88, 88(1)
Pondicherry Motor Vehicles Rules, 1989 — Rule 65A(1)

Citation : (2006) 12 MAD CK 0203

Hon'ble Judges : S. Tamilvanan, J;P. Sathasivam, J

Bench : Division Bench

Advocate : M. Krishnappan, in WA. 429/2002 and M. Palani, in WA. 476/02 and for P1 in WP. 8146 and 8147/02, for the Appellant; K.K. Sashidharan, Spl. Govt. Pleader in for R1 and R3 in WA. 429/02 and for R1 in WA. 476/02 and R. Thiyagarajan, SC for T. Arulraj, for the Respondent

Judgement

P. Sathasivam, J.—Since the issue raised in all these matters is one and the same, they are being disposed of by the following common Judgment.

2. a) One R. Venkata Varada Reddiar, petitioner in W.P. No. 17959 of 2001, aggrieved by the Common Order of the learned single Judge, dated 20.02.2002, rejecting his request to quash the regular permits issued in favour of the Pondicherry Tourism and Transport Development Corporation Limited (hereinafter referred to as ''PTDC''), has filed Writ Appeal No. 429 of 2002.

b) Questioning the very same order of the learned single Judge, one M.Husman, petitioner in W.P. No. 18401 of 2001, has filed W.A. No. 476 of 2002.

c) Aggrieved by the order of the State Transport Authority, Pondicherry, dated 24.08.2001, granting 2 Interstate Permits in favour of PTDC, one V. Vijayasekaran, Proprietor of M/s. Sri Raman Roadways, Pondicherry, has filed W.P. Nos. 8146 and 8147 of 2002.

3. For convenience, we shall refer the case of R. Venkata Varada Reddiar-petitioner in W.P. No. 17959 of 2001.

According to him, he is a stage carriage operator, operating three route buses and one spare bus. The permits have been issued by first respondent/the State Transport Authority, Pondicherry. The permits are included in the Interstate Agreement, entered into between the State of Tamil Nadu and Pondicherry, published in the gazette dated 19.04.1985.

The first respondent granted two regular stage carriage permits as pucca permits in favour of the 2nd respondent/PTDC, by proceeding dated 24.08.2001. The 2nd respondent was directed to obtain counter-signature from the State Transport Authority, Chennai, for the portion lying in Tamil Nadu and also to operate on Double Point Tax. After obtaining the counter-signature from the State Transport Authority, Chennai, the 2nd respondent produced the vehicles before the first respondent and consequently, the State Transport Authority, Pondicherry, issued necessary permit in respect of two vehicles on tentative timings by proceedings dated 11.09.2001. The petitioner, being an Operator, covering the entire route now being operated by the 2nd respondent, aggrieved against the grant of permit in favour of the second respondent and also by fixing the tentative timings for the operation by the second respondent, challenged the orders of R-1 and R-3, dated 24.08.2001 and 11.09.2001 respectively on the ground that they are illegal, contrary to the provisions of the Act and also against the judgment of the Supreme Court in Ashwani Kumar and Another Vs. Regional Transport Authority Bikaner and Another, .

4. The General Manager of the Pondicherry Tourism and Transport Development Corporation, filed a counter affidavit, stating that the Writ Petition is not maintainable since there is an effective remedy available by way of Appeal u/s 89 or Revision u/s 90 of the Motor Vehicles Act. The temporary permit already issued u/s 87(1) is valid and cannot be questioned. Further, because of public agitation, the Station House Officer, Thirubhuvanai Police Station, Pondicherry, reported to the Joint secretary (Revenue) cum Additional District Magistrate, Pondicherry, regarding the rush of commuters on Pondicherry-Villupuram route especially collie workers and industrial workers during morning and evening hours, whereupon, immediate action was taken by the Government of Pondicherry and the Managing Director of the 2nd respondent-Corporation was directed to immediately apply for permits, and in compliance thereof, temporary permits were applied for and obtained.

Regarding the Interstate Agreement, it is stated that it does not restrict that any further permit particularly in favour of public Transport Corporation should not be issued in the same route namely, Pondicherry-Villupuram route on Double Point Tax. Even otherwise, under Clause VI of the Interstate Agreement, dated 09.03.1985, after mutual agreement between the State of Tamil Nadu and Pondicherry, any clause can be amended or a new one added to it at any stage, accordingly, in the meeting dated 21.11.1998 between the Government of Tamil Nadu and the Government of Pondicherry, it was agreed to operate on the routes between the States in 1:4 ratio. Following the said agreement, the first respondent, issued two permits to the 2nd respondent to ply on the same route on payment of Double Point Tax. It is specifically stated that, by the Judgment of the Supreme Court cited by the petitioner, what is contemplated is that no permit can be issued to a new route without the concurrence of both the States to be operated on single point tax system, whereas, in the present case, the route between Pondicherry and Villupuram is already existing even as admitted by the petitioner by the agreement entered in 1985 itself. It is only in the existing route, two permits have been issued by the 1st respondent, as such, it is absolutely valid u/s 88(1) of the Motor Vehicles Act.

Even with regard to the timings, under Proviso to Rule 65-A(1) of the Pondicherry Motor Rules, 1989, it is the prerogative of the Regional Transport Authority, Pondicherry, to fix the timings according to the convenience of the public.

5. Similar averments have been made in other two writ petitions/writ appeal.

6. Heard Mr. M. Krishnappan and Mr. M. Palani, learned Counsels for the appellants and writ petitioners; Mr. K.K. Sashidharan, learned Special Government Pleader for Government of Pondicherry; and Mr. R. Thiyagarajan, learned Senior Counsel for Pondicherry Tourism and Transport Development Corporation Limited.

7. Mr. Krishnappan and Mr. Palani, learned Counsels appearing for the private Operators, contended that the grant of permit in favour of the PTDC is outside the purview of the agreement, consequently, the authority would have no jurisdiction to create a new route and grant the same. They further contended that the existence of permit would depend upon reciprocal agreement between the States and, since the permits do not exist in the Interstate Agreement, the Authority will have no jurisdiction to grant the same. According to them, the learned single Judge misconstrued the Agreement and the terms made therein. They further argued that once the permit mentioned in the Agreement having been granted and exhausted, the present permit cannot be in respect of an existing route coming within the purview of the Interstate Agreement.

8. On the other hand, Mr. K.K. Sashidharan, learned Special Government for the Government of Pondicherry, and Mr. R. Thiyagarajan, learned Senior Counsel appearing for PTDC, submitted that, as per Clause-VI of the Agreement, no ceiling/limit is prescribed inasmuch as the reciprocating States are at liberty to

add or alter any clause in the agreement, and that, in view of Section 88 of the Motor Vehicles Act, 1988, the authority is well within its power in granting permit in favour of the PTDC. They further contended that all the relevant aspects have been correctly appreciated by the learned Judge, hence, there is no ground for interference.

9. Under Sub-section (7) of Section 88 of the Motor Vehicles Act, notwithstanding anything contained in sub-Section(1) of the said Section, a Regional Transport Authority of one region may issue a temporary permit u/s 87 of the said Act to be valid in another region or State with the concurrence, given generally or for the particular occasion, of the State Authority of that other State as the case may be. In view of the same, the temporary permit already issued u/s 87(1) is valid and cannot be questioned.

10. With regard to the grant of additional permits in favour of the second respondent, in the counter affidavit, the General Manager of PTDC has highlighted that because of the public agitation, the Station House Officer, Thirubhuvanai Police Station, Pondicherry, reported to the Joint Secretary (Revenue) cum Additional District Magistrate, Pondicherry, about the rush of commuters on Pondicherry-Villupuram route especially coolie workers and industrial workers during morning and evening hours, resulting in miscreant activities, whereupon, action was taken by the Government of Pondicherry and the Managing Director of PTDC was directed to apply for permits immediately. Accordingly, temporary permits were applied for and obtained and, after expiry of temporary permits, sensing the need, permanent permit has been issued by the Authority on condition that it must be countersigned by the State Government of Tamil Nadu, which according to the respondents, was validly done. Admittedly, even in the absence of agreement, counter signature will validate the permit issued to the 2nd respondent-Corporation. Inasmuch as those permits have been granted on condition of payment of Double Point Tax, we are of the view that there is no violation of law or any specific provision of Motor Vehicles Act, thus, the rival contention relating to the same is liable to be rejected.

11. Coming to the Interstate Agreement entered into between the Government of Tamil Nadu and the Government of Pondicherry in the year 1985, it is seen that both the Governments agreed thereby as to the number of permits to be issued by them for the routes mentioned in the said agreement on single point tax. As rightly pointed out by the learned Counsels appearing for the respondents, it does not restrict the issuance of permits particularly in favour of Public Transport Corporation in respect of the same route, viz., Pondicherry-Villupuram route, on double point tax. On a perusal of the various Clauses in the Agreement, we find that under Clause - VI as well as the Appendix to the Agreement, the parties/States are free to amend or add any clause at any stage after mutual agreement between them. It was brought to our notice that, in the meeting, dated 21.11.1998, between the Government of Tamil Nadu and the

Government of Pondicherry, it was agreed to operate on the routes between the States in the ratio of 1:4, ie., Pondicherry-one vehicle and Tamil Nadu-four vehicles. It was pointed out that, following the said agreement only, the first respondent issued two permits to PTDC to ply on the same route on payment of Double Point Tax. In those circumstances, we are of the view that the claim of the petitioners that there is no bilateral agreement between the two Governments cannot be accepted at all.

12. It is true that, as per the decision of the Supreme Court in Ashwini Kumar''s case, no permit can be issued in respect of a new route without the concurrence of both the States to be operated on Single Point Tax system. In the case on hand, it is demonstrated before us that the route between Pondicherry and Villupuram is an existing route in view of the agreement entered in 1985 itself. In other words, it is only in respect of the existing route, two permits have been issued by the first respondent in favour of PTDC. In such circumstances, it is valid u/s 88(1) of the Act.

13. As pointed out by the respondents, Section 88 of the Motor Vehicles Act deals with the power to issue permits in respect of Interstate Routes. Insofar as the State of Tamil Nadu and the Union Territory of Pondicherry are concerned, both the Governments have entered into a reciprocal agreement as provided u/s 63 of the Act for the purpose of controlling the plying of transport vehicles on interstate routes. As said earlier, the said Agreement was published in the Gazette of Pondicherry dated 19.04.1985. The Agreement provides that there should be parity of permits on interstate routes as mentioned in clause-1 of the agreement. It also provides that, if any violation arises on the interstate routes, such aspect will be decided by the respective State Transport Authorities by mutual agreement.

14. As rightly pointed out by the learned Judge, the provisions of Section 88 of the Motor Vehicles Act have to be construed in the light of the object of the enactment. Motor Vehicles Act was enacted taking note of the increase in the number of both commercial and personal vehicles in the country, to encourage the adoption of high technology in the automative sector, to cater to the needs of passengers and freight, to improve the road safety standards and to exercise some control over the Pollution Control matters and to fix the parameters where the private and public sectors can co-exist. In addition to the same, the need and convenience of the travelling public is of paramount importance. In Ashwani Kumar''s case, the Supreme Court held that existence of a route is a condition precedent for exercise of the power under sub-Section(1) of Section 88 of the Act. Their Lordships further held that Interstate route under the scheme of the Act has to be reciprocal and cannot be unilaterally created by one State or an Authority in the State. It was further held that the concerned State Governments are supposed to deliberate and decide the routes to be opened as interstate routes by determining the number of trips each route to have and prescribe other conditions for the smooth functioning of the Act to achieve its objective

which is claimed to be a social welfare legislation. Their Lordships also held that, in the absence of existence of interstate route, the authorities under the Act were not justified in granting the permits to the appellants therein. Thus, it is clear from the said decision that the existence of permit depends upon the reciprocal agreements between the States covered by the route.

15. It is brought to our notice that the Tamil Nadu State Transport Corporation Limited, Villupuram Division No. 1, are plying 4 buses from Villupuram to Pondicherry on payment of Double Point Tax in pursuance of the Interstate Agreement. By virtue of the said Agreement, the State Transport Authority, Pondicherry, issued two permits to PTDC to ply on the same route on Double Point Tax. As rightly held by the learned Judge, the said agreement of 1985 does not bar or prevent the issuance of any further permit beyond the number mentioned therein. The decision of the Supreme Court relied on by the petitioner has no application to the issuance of permits in respect of existing routes but it is applicable only to new routes and, because of the said reason, the learned Judge rightly concluded that the permits are valid and issued in exercise of the power conferred under the Motor Vehicles Act.

16. It is also brought to our notice that the petitioner was fully aware that several private fleet owners are plying their buses from Pondicherry to other parts of Tamil Nadu only on payment of Double Point Tax. Admittedly, the private operators did not choose to challenge the permits issued in their favour since they are well aware of the fact that, in the agreement, there is no restriction for the issuance of permits with regard to the existing route by the State Transport Authority, Pondicherry. We are satisfied that the State Transport Authority has the power to issue any number of permits particularly for the sake of public by virtue of the Interstate Agreement. It is brought to our notice that, after 1985 agreement, Tamil Nadu State Transport Corporation is running 75 vehicles on payment of Double Point Tax over and above what is contained in the said Agreement.

17. As observed in the earlier paragraphs, Clause-VI of the Agreement enables the State of Tamil Nadu and the Pondicherry Government to amend or add new clause in the agreement or appendix to the Agreement at any stage after mutual discussion and agreement. As rightly observed by the learned Judge, the number of permits covered in the agreement is not a precondition but the main prerequisite for the issuance of permits is the existence of an interstate route. For the sake of argument, even if we accept that the permits issued are outside the scope of the agreement, the point is clear that pending finalisation of the inter-state agreement for which mutual discussion has already taken place, the Regional Transport Authority is free to exercise its powers u/s 88 of the Act provided there exists an inter-state route and parity is also maintained. In those circumstances and in view of the details available in the Interstate Agreement, we are satisfied that the permits issued in favour of PTDC were validly issued and the objection of the private operators cannot stand. As rightly pointed out by the

learned Judge, in Ashwani Kumar''s case, permits were granted by the Regional Transport Authority, Bikaner, in respect of a route not covered in the agreement or in respect of a route where the State Transport Undertaking was already playing its stage carriages.

18. We have already observed that as per Section 88, there must be an Agreement between the States and also an inter-state route. We reiterate that Courts have held that inter-state route under the scheme of the Act has to be reciprocal and cannot be unilaterally created by one State or an authority in the State and that the State Governments concerned are supposed to deliberate and decide the routes to be opened as inter-State routes by determining the number of trips each route was to have and prescribe other conditions for the smooth functioning of the Act to achieve its objective which is claimed to be a social welfare legislation. We are satisfied that absolutely there is no ground to quash the regular permits issued in favour of PTDC and the contrary contentions raised are liable to be rejected.

19. In view of the above discussion, the Writ Appeals and the Writ Petitions are liable to be dismissed, accordingly dismissed. No costs. Connected Miscellaneous Petition stands closed.