

**(1995) 02 MAD CK 0018**

**In the Madras High Court**

**Case No :** W.A. No"s. 1498 to 1500 of 1994, 104 and 105 of 1995 in C.M.P. No"s. 2075 to 2077, 2111 and 2113 of 1995

Tvl. Associated Bus Services and Another

APPELLANT

Vs

Tvl. S.M.M.S. Motor Service and Others

RESPONDENT

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**Date of Decision :** 14-02-1995

**Acts Referred:**

Motor Vehicles (Amendment) Act, 1992 — Section 10, 3, 4, 5, 6

**Citation :** (1995) 02 MAD CK 0018

**Hon'ble Judges :** K.A. Swami, C.J.;Raju, J

**Bench :** Division Bench

**Advocate :** V.T. Gppalan, for R.S. Ramanujam, for the Appellant; S. Parthasarathy, for 1st Respondent (Caveator) in W.A. No. 1498/94 and C.M.P. No. 2075/94, M. Krishnappan, for 1st Respondent in W.A. Nos. 1499/94 and 104/95 and C.M.P. Nos. 2076/94 and 2111/95, A. Jinasanen, for 1st Respondent in W.A. Nos. 1500/94 and 105/95 and C.M.P. Nos. 2076/94 and 2113/95 and R. Muthukumaraswamy, Government Pleader for 3rd Respondent, for the Respondent

**Final Decision :** Dismissed

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**Judgement**

K.A. Swami, C.J.—The only point that arises for consideration in these appeals is as to when Act 41 of 1992 came into force and the

applications for grant of permits were pending, whether such applications were saved by reason of Section 10 of the Act or they stood abated by

reason of Section 7 thereof?

2. Facts necessary for the purpose of deciding this point are as follows: A stage carriage permit was granted by the Regional Transport Authority,

Periyar, on 25.8.1986. It was set aside by the State Transport Appellate Tribunal on 14.12.1990 and the applications were remitted to the

Regional Transport Authority for fresh consideration as per the provisions of the

new Act. The Writ Petition was filed on 30th April, 1991.

However, it came to be posted for admission on 10.11.1993. After notice to the Respondents, it was heard and decided on 23.2.1994. Learned

single Judge has dismissed the Writ Petition. Act 41 of 1992 came into force on 31.7.1992.

3. Sections 7 and 10 of Act 41 of 1992 are as follows:

7. Pending applications, and appeals for grant of new permits to abate: Notwithstanding anything contained in any law for the time being in force,

every application for grant of new permit on a notified route and all appeals arising therefrom or relating thereto, made or preferred before the date

of publication of this Act in the Tamil Nadu Government Gazette and pending before any court with any officer, authority or tribunal constituted

under the Motor Vehicles Act, on the said date, shall abate.

10. Validation: Notwithstanding anything contained in Chapter V or VI including Section 98 of the Motor Vehicles Act, all proceedings taken for

the grant of and all orders passed granting permits or renewal or transfer of such permits or any variation, modification, extension or curtailment of

the route or routes specified in a stage carriage permit during the period commencing on the 4th day of June 1976 and ending with the date of the

publication of this Act in the Tamil Nadu Government Gazette shall, for all purposes, be deemed to be and to have always been taken or passed in

accordance with the provisions of this Act as if this Act had been in force at all material times.

4. It may be pointed out that Act 41 of 1992 was enacted to make certain special provisions in respect of permits for stage carriage under the

Motor Vehicles Act, 1988 and in relation to the schemes and routes notified under Chapter VI of that Act and to provide for matters connected

therewith. Section 3 provided for grant of permits under certain circumstances notwithstanding the draft scheme or an approved scheme in force

covering the route or area in respect of which the applications for grant of stage carriage permit are made. Section 4 made the existing permits

valid. Section 5 gave overriding effect to the provisions contained in Sections 3, 4 and 6 over those contained in Chapters V and VI of the Motor

Vehicles Act and also Section 98 thereof. Section 6 dealt with renewal or variation of the permits. Section 7, as already extracted, dealt with

pending applications and appeals for grant of new permits to abate. Section 8 provided for making of the Rules and Section 9 provided for

construction of reference to Motor Vehicles Act, 1939. Section 10 validated the permit granted between the period 4th June, 1976 and

31.7.1992.

5. The contention of the Appellants is that as Section 10 of Act 41 of 1992 makes the proceedings initiated for grant of permit and also the permit

granted or renewed between the period 4th June, 1976 and 31.7.1992 valid and as the present proceedings for grant of stage carriage permit fall

within the aforesaid period as there was a grant made by the Regional Transport Authority, the fact that the Tribunal set aside and remitted the

matter to the Regional Transport Authority for grant of permit did not make any difference, as the grant was made or at any rate the proceedings

was pending on the date the Act came into force.

6. A reading of Section 7 of the Act clearly points out that the applications for grant of new permit on a ratified route and the appeals arising

therefrom relating thereto, would abate on the coming into force of Act 41 of 1992. As a result of the order of the State Transport Appellate

Tribunal, the permit granted in favour of the Appellant was set aside on 25.8.1986 and the application was remitted for fresh consideration under

the new Act Therefore, on 31.7.1992 what was pending, was only the application filed by the Appellant for grant of a stage carriage permit on a

route, which overlapped the notified route. Such as application, having regard to the clear wordings contained in Section 7 of Act 41 of 1992,

stood abated.

7. We shall now consider, whether Section 10 of the Act can be of any help to the Appellants. A close reading of the provisions contained in

Section 10 of the Act would disclose that what is validated by Section 10 of the Act is the grant of permits or the renewal of permits or the transfer

of such permits or any variation, modification, extension or curtailment of the route granted on the date, Act 41 of 1992 came into force, when on

the date and Act came into force, if the permit was not subsisting and was set aside by the process known to law, it is not possible to hold that

there was a grant of permit. If the interpretation, which learned senior counsel, Shri V.T. Gopalan wants to place on Section 10 of the Act, is

accepted, Section 7 of the Act would be rendered otiose, because the Section deals with pending proceedings. In the event the interpretation is

accepted, Section 10 also will take into its fold, without there being a subsisting grant, the proceedings pending. Therefore, we are of the view that

as the grant was not subsisting on the date the Act 41 of 1992 came into force, Section 10 was not available to the Petitioner/Appellant as it did

not apply to cases where the grant of permit or renewal or transfer of permit or variation, modification, extension, curtailment did not subsist.

8. Learned senior counsel has also placed reliance on a decision of the Supreme Court in T.P.K. Thilagavathy v. The Regional Transport

Authority, Periyar District, Erode and Ors. Civil Appeals Nos. 540-542 of 1994 dated 29th November 1994. The relevant portion of the

judgment is found in page 16 which is as follows:

One Loganathan along with nine others, had applied for permit which overlapped notified route. He died on 7th December, 1987. His wife

Samiyathal was brought on record. On 11th January, 1988 permit was granted in her favour. Against this order various persons filed appeal and

on 28th January, 1992 a consent Memo was filed before the appellate authority who granted the permit in accordance with the Consent Memo not

only in favour of Samiyathal but others as well. Validity of this order was challenged by the State Undertaking in the High Court. It was held that

since the effect of accepting the Consent Memo was to permit grant of fresh permits in favour of persons other than Samiyathal in 1992 it was

violative of the provisions of the Act. Consequently, the petition filed by the undertaking was allowed and the permit granted in favour of others on

basis of Consent Memo was set aside. But the order granting permit to Samiyathal being of 1988, the Writ filed by the undertaking against this

order was dismissed. In S.V. Sivaswami Servai Vs. Hafez Motor Transport (Firm) and others,, it has been held that addition of permit on

agreement was not permissible. Therefore, the High Court did not commit any error of law in allowing the Writ Petition of the Undertaking and

quashing the permits granted on Consent Memo. Since we have agreed with the decision of the High Court that no permit could have been granted

after 30th June, 1990 the order passed by the High Court allowing the Writ Petition of the undertaking against persons other than Samiyathal dies

not suffer from any error of law.

From the aforesaid extract of the judgment of the Supreme Court, it is clear that the grant made in favour of one Loganathan which name to be

transferred in favour of Samiyathal, was subsisting. The challenge to it by the State Transport Undertaking was unsuccessful. Therefore, the permit

had the benefit of Section 10 of the Act. That being so, it is not possible to apply the aforesaid ratio of the judgment of the Supreme Court to the

cases on hand.

9. Learned Counsel has also brought to our notice the orders passed by learned single Judges of this Court in M. Ramasamy v. The State

Transport Appellate Tribunal and Ors. W.P. Nos. 3509 and 3510 of 1991 dated 24.11.1992, K. Joseph Packiaraj v. The Regional Transport

Authority and Ors. W.P. Nos. 1175 and 4300 of 1993 dated 9.9.1993, V. Sengottuvel v. Anna Transport Corporation Ltd. C.R.P. No. 2684 of

1987 dated 1.2.1994, C. Ganesan v. The Managing Director, TVL. Annai Sathya Transport Corporation C.R.P. 2757 of 1987 dated 2.2.1994

and Tmt. S. Palaniammal v. R. Premavathy C.R.P. 2518 of 1988 dated 15.2.1994. In the light of the interpretation on Section Nos. 7 and 10 of

the Act, we do not consider it necessary to go into the correctness of these decisions.

10. For the reasons stated above, the Writ Appeals are not admitted and the same are dismissed. The C.M.Ps. are also dismissed. However, we

make no order as to costs.