

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/04/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION No.36675 OF 2002

AND

WPMP.NO.8759 OF 2002

P. Samiappa Gounder,  
Prop: P.S.G. Transports,  
27, Majid Street,  
Kangayam 638 701. .. Petitioner

-Vs-

1. The Regional Transport Authority,  
Erode.

2. The State Transport Appellate Tribunal,  
Chennai 600 104. .. Respondents

Petition filed under Article 226 of the Constitution of India for  
issuance of a Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.R. Thyagarajan  
Senior Counsel for  
Mr.C.S. Prakasa Rao

For Respondents 1-2 : Mr.P. Chandrasekaran  
Special Govt. Pleader

For Intervenor : Mr.S.C. Palanisamy

:J U D G M E N T

The facts giving rise to the present writ petition are as follows :-

Notification under Section 57(2) of the Motor Vehicles Act, 1939 had been issued inviting applications for the grant of additional stage carriage permit on the route Kangayam to Kodumudi. Applications were filed, by several persons including the present petitioner and Thirumalai Transport Service, (hereinafter referred to as [the intervenor] for convenience). The present petitioner had filed W.P.No.2920 of 1 984 seeking for a writ of mandamus, which was disposed of with a direction to the Regional Transport Authority to consider and dispose of the applications in accordance with law. Pursuant to

the order passed in W.P.No.5289 of 1984, filed by one of the existing operators, an order was passed indicating that the applications, may be considered but decision should not be implemented till final decision. It is stated that the Regional Transport Authority had taken a decision on 9.5.1984 to grant permit to the present intervenor. Ultimately, W.P.No.5289 of 1984 was dismissed with a direction to the Regional Transport Authority to give effect to its decision. However such decision could not be given effect to due to change of personnel in the meantime and the successor Regional Transport Authority fixed date on 22.1.2006 for personal hearing. The present petitioner filed W.P.No.13719 of 1986 seeking for writ of mandamus, which was allowed on 30.11.1993 and a direction was issued to the Regional Transport Authority to issue permit within the stipulated period. Since such direction was not complied with, Contempt Appln.No.75 of 1994 was filed and pursuant to the order passed in the said contempt application, temporary permit was issued on 6.5.1994 and after convening a timing conference, pucca permit was issued on 7.6.1994.

2. The present petitioner filed W.A.No.1048 of 1995 and Cheran Transport Corporation Limited filed W.A.No.1049 of 1995 against the order of the learned single Judge in W.P.No.13710 of 1986. The present petitioner had also filed W.P.No.13688 of 1994 seeking for a direction to the Regional Transport Authority to issue certified copy of the proceedings relating to grant of permit to the present intervenor. Ultimately on 28.6.1996, both the writ appeals were allowed and the proceedings of the Regional Transport Authority were held to be nullity. While considering, it has been observed in the writ appeal :

□ . . . Further, the route in respect of which the permit is granted to the petitioner overlaps the notified route on which the appellant in W.A.No.,1049 of 1995 is operating being the State Transport Corporation. Once a protective umbrella of Section 10 of Tamil Nadu Act 41 of 1992 is not available, the petitioner will not be entitled to seek the permit on the route overlapping the nationalised permit. . . .□

3. As a result of the aforesaid decision, stage carriage permit which had been issued to the present intervenor stood withdrawn. The connected writ petition filed by the present petitioner seeking grant of certified copy was dismissed with the following observation :

□ . . . In the light of the judgment rendered today in W.A.Nos.1048 and 1049 of 1995 holding that the proceedings of the Regional Transport Authority in question issuing the permit is a nullity, the prayer made in the writ petition does not survive. The writ petition is accordingly dismissed. . . .□

4. Thereafter the present petitioner made a representation to the respondent No.1 to consider and pass orders on the remaining applications. Since the representation had remained undisposed of, the petitioner filed W.P.No.18703 of 1998 for issuing a writ of mandamus and the High Court by order dated 30.11.1998 issued a direction to the first respondent to consider the application. The first respondent thereafter observed that when the

permit had been granted in favour of the intervenor and the intervenor had plied his vehicle,

□ . . . all the other applications stood rejected. Of course, the orders of the High Court by the single judge were set aside by the High Court in Writ appeal. But when the Regional Transport Authority announced the grant of permit and when the permit was actually issued to applicant, the applications of others stood rejected.

There is no question of reconsideration of the balance applications.

The petitioner is, therefore, informed that the Regional Transport Authority has nothing to proceed and to issue any order in the matter.□

This was communicated by a Memo dated 23.4.1999. Thereafter, the petitioner filed Appeal No.311 of 1999. The Appellate Authority, the respondent No.2, under the impugned order dated 22.4.2002, has held that by virtue of Section 7 of Act 41/92, the appeal was liable to abate and accordingly the appeal was dismissed.

5. Learned counsel for the petitioner has submitted that since the petitioner was awarded the highest marks at the time of consideration, it was the duty of the first respondent to consider and issue permit to the petitioner and the respondents 1 & 2 have exercised their jurisdiction illegally by not considering the application on untenable grounds.

6. A counter has been filed on behalf of the respondent No.1 justifying the action of the respondents.

7. The intervenor has filed an application for being impleaded as a party on the ground that it was one of the applicants and is a necessary party.

8. Since the permit issued in favour of the intervenor had been quashed in writ appeal, and the matter became final, the intervenor has no further right in the matter. Therefore, there is no necessity of impleading the intervenor and the application is accordingly rejected.

9. So far as the contention of the writ petitioner is concerned, in my opinion the orders passed by the respondents 1 & 2 appear to be legally correct, though not happily worded. The grant of permit and subsequent issuance of permit in favour of the present intervenor automatically had the effect of rejection of all other applications, including that of the present petitioner. It is apparent that the present petitioner possibly wanted to file appeal and since certified copy was not being granted, W.P.No.13688 of 1994 had been filed. Unfortunately the said writ petition was also dismissed. The fact remains that the present petitioner did not file any appeal against the deemed refusal of the Regional Transport Authority. Moreover, while deciding W.A.Nos.1048 & 1049 of 1995 and quashing the grant of permit in favour of the present intervenor as nullity, no specific direction had been given by the Division Bench to consider and decide other applications. On the other hand, the observation of the Division Bench in paragraph 16, which has already been extracted, goes to suggest that in view

of the Act 41/1992 nothing further was to be done. As was observed by the Division Bench, once the protective umbrella of Act 41/1 992 was not available, the petitioner would not be entitled to seek the permit on the route overlapping the nationalised permit. The observation which was made in the context of one of the applicants, in whose favour permit granted was found nullity, applies with full vigour in respect of others, including the present petitioner. Therefore, the communication made by the first respondent was valid and proper. The Appellate Authority of course was not technically right in observing that the appeal had abated. However, this technical inaccuracy in the order passed by the appellate authority would not clothe the petitioner with any right.

10. For the aforesaid reasons, I do not find any merit in this writ petition, which is accordingly dismissed. There will be no order as to costs.

Index : Yes

Internet : Yes

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To

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2. The State Transport Appellate Tribunal,  
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