CHERAN TRANSPORT CORPORATION LTD. COIMBATORE

v.

REGIONAL TRANSPORT AUTHORITY
COIMBATORE AND ORS.

JANUARY 19, 1996

[J.S. VERMA AND B.N. KIRPAL, JJ.]

Motor Vehicles Act, 1939/Motor Vehicles Act, 1988/Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992:

S.48/s.70/s.10—Application for renewal of stage carriage permit by a private transport operator—Counter application by State Transport Undertaking for stage carriage permit for the same route—Regional Transport Authority applying marking system and granting permit in favour of State Transport Undertaking on the basis of more marks obtained by it—High Court by interim orders allowing both the claimants to ply stage carriages on the route—Later while deciding the matter finally, High Court allowing both operators to ply stage carriages on the route on the ground that travelling public became accustomed to such pattern of service for a number of years—Held Private operator cannot be allowed to continue to ply its vehicle on the route—There being only one permit to be given for the route, State Transport Undertaking having obtained more marks was rightly granted permit—Private operator having got less marks could not have been given a valid permit and as such cannot claim protection under s.10.

The Regional Transport Authority, Coimbatore, while considering the claim of respondent No. 2, a private transport operator, for renewal of the stage carriage permit for the route Coimbatore to Kottur for a further period of five years from 1978, and the counter-claim of the appellant, a State Transport Undertaking, for grant of Stage carriage permit for the same route, applied marking system and determined 11 marks for the appellant and 6 marks for respondent no. 2. It rejected the renewal application of the latter and granted the permit in favour of the appellant. The Tribunal while upholding the order observed that the grant of permit in favour of the appellant was in public interest. In the revision petition filed by respondent no. 2, the Madras High Court granted interim orders, as a result of which both the appellant as well as respondent no. 2

continued to ply their vehicles on the route. Later, while deciding the revision petition finally, the High Court allowed both the claimants to ply their stage carriages on the same route, holding that since respondent no. 2 had been permitted to operate continuously for a period of 10 years along with the appellant, and the travelling public was accustomed to such pattern of service for a number of years, the same should not be disturbed. Aggrieved, the State Transport Undertaking filed the present appeal. Similarly, the other appeals were filed in identical circumstances.

It was contended for the appellant that since there was only one permit, the High Court should not have allowed respondent no. 2 also to continue to ply the stage carriage on the same route for the reasons indicated by it. Respondent no. 2, on the other hand, contended that by virtue of s.10 of the Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992, the permit earlier granted to it, stood renewed.

Allowing the appeals, this Court

HELD : 1. The mere fact that the travelling public had been using the carriages run by the appellant and respondent no. 2 can, by itself, not be a ground for allowing the said respondent to continue to ply the carriage. [789-A]

S.V. Sivaswami v. *Motor Transport (Firm),* [1990] 3 SCR 802, relied on.

M. Chinnaswamy v. *Dhandayuthanpani Roadways,* AIR (1977) SC 2095, distinguished.

2.1 Section 10 of the Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992 does not validate any permit which was initially invalid. It is a provision which continues the permits etc. which had been validly granted under the old Act. As no valid permit could have been granted to respondent no. 2 from the route Coimbatore to Kottur, the provisions of section 10 cannot give a right to respondent no. 2 to get the permit when it had secured six marks, under the marking system. [789-F-G]

2.2 When there was only one permit to be given for the route under consideration and the marks obtained by the appellant were much than that of respondent the Appellate Tribunal had rightly upheld the order of the Regional Transport Authority granting the stage carriage permit to the appellant and in not renewing the permit of respondent no. 2. [789-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1401-04 of 1996.

From the Judgment and Order dated 28.8.90 of the Madras High Court in C.R.P. Nos. 1852-54 and 1886 of 1982.

A.V. Rangam for the Appellant.

S. Srinivasan and Vineet Kumar (NP) for the Respondents.

The Judgment of the Court was delivered by

KIRPAL, J. Leave granted.

The challenge in these appeals by special leave is to the common judgment of the Madras High Court in Civil Revision Petition Nos. 1852-54 & 1886 of 1982 which set aside the order of the State Transport Appellate Tribunal (which in turn confirmed the order of the Regional Transport Authority) (hereinafter referred to as 'the Tribunal') granting stage carriage permits to the appellant.

Since all these appeals involve a common question of law, it is sufficient to give in detail the facts relating to the case of respondent no. 2 N.T. Arasu.

Respondent No. 2 was an existing operator for the route Coimbatore to Kottur. On the expiry of the permit, it applied for renewal for a further period of five years w.e.f. 10.4.1978. The appellant herein, which is a State Transport Undertaking in the state of Tamilnadu made a counter application for the grant of a stage carriage permit for the said route in its favour.

The Regional Transport Authority applying its marking system. determined the marks as 11 marks for the appellant herein and 6 marks for respondent no. 2 which was a private operator. The said Authority, accordingly, rejected the renewal application of Respondent no. 2 and granted the permit in favour of the appellant.

The Tribunal vide its order dated 31.3.1982. while dismissing the appeal filed by respondent no. 2 upheld the grant of a stage carriage permit in favour of the appellant, after considering various questions involved on merits. It came to the conclusion that the grant of the stage carriage permit

in favour of the appellant was in the public interest.

Being aggrieved by the aforesaid order. the respondent filed Revision Petition before the Madras High Court and, by virtue of the interim orders which were passed both the respondent no. 2 as well as the appellant herein continued to ply their vehicles on the route in question.

The said Revision Petition came up for hearing and was ultimately decided by the judgment dated 28.8.90 of the High Court. The learned Single Judge came to the conclusion that inasmuch as respondent no. 2 had been permitted to operate continuously for a period of ten years along with the appellant herein the Revision petition should be allowed. It was not disputed that the appellant had more marks than the respondent no. 2 but the learned judge referred to the decision of this Court in *M. Chainaswamy* v. *Dhandayuthanpani Roadways,* AIR 1977 S.C. 2095 and observed that when travelling public was accustomed to a particular pattern of service for a number of years, that should not be disturbed lightly. It was, accordingly, directed that the *status quo* of both the parties would continue, the affect of which was that both were allowed to ply their stage carriages on the same route.

Challenging this aforesaid judgment, it has been contended that as there was only one permit which had to be issued the High Court erred in directing that both the appellant and respondent no. 2 could ply their stage carriages on the same route primarily on the ground that for a period of ten years, respondent no. 2 had been operating the said route and the travelling public had become accustomed to it. This can be no ground, it was submitted for the Court directing that instead of one, both the carriers could ply their stage carriages.

The decision in the case of *Chinnaswamy's* case (supra) was sought to be relied in the subsequent case of *S.V. Sivaswami* v. *Motor Transport (Firm),* [1990] 3 SCR 802. In *Sivaswami's* case (supra) also by reason of the interim orders which were passed by the High Court, both the parties were allowed to operate on the same route. A common request was made in this Court that an order similar to one in *M. Chinnaswamy's* case (supra) be passed and both the parties be allowed to operate on the said route. This Court in *Sivaswami's* case (supra) (to which one of us was was a party) referred to the observations made in *Chinnaswamy's* case (supra) as well as another similar order which had been passed in Civil Appeal No. 136

of 1980, and observed as follows:

> "With respect, we are unable to accept this common request made to us in the present case. It is obvious from the above quoted orders on which the common request is based that in none of them, any point of law was considered or decided and the order permitting both the claimants to operate on the route, even though the permit to be granted was only one, was made without adverting to the legal implications of such an order. In the first place, grant of a permit is to be made primarily with reference to the object of serving the interests of the general public and it cannot be treated as a dispute relating to grant of a permit between the rival claimants only. It is not in the nature of a lis for adjudication of conflicting interests of private individuals alone. It is, therefore, not a matter which can be decided merely on the basis of an agreement between the two rival claimants who alone out of several claimants remain in the lis at this stage. The question of grant of permit is to be decided primarily by the R.T.A. having regard primarily to the interests of the general public and other prescribed relevant factors. That apart, under Section 47(3) of the Motor Vehicles Act, 1939, the R.T.A. is first required to determine the number of stage carriages for the route and then to grant permits according to that determination made earlier. Grant of any permit in excess thereof was not permissible without first making a fresh determination and increasing the number, if necessary. It is, therefore, obvious that an order of this kind cannot be made unless the grant of a permit to both the rival claimants would be within the limit fixed by the R.T.A. at the relevant time. There is nothing in any of these above quoted orders to indicate that this aspect was even adverted to or that there was material to indicate that the consent order so made was within the limit fixed by the R.T.A."

In this case the grant of permit to respondent no. 2 is challenged by the appellant. In *Chinnaswamy's* case (supra) it was a consent order which was passed but that consent of the parties is lacking in the present case. Apart from that there was only one permit which was to be given and the Regional Transport Authority and the Tribunal, having determined that the marks of the appellant were more than that of respondent no. 2, had rightly come to the conclusion that the route could be awarded only to the

appellant. Following the ratio of *Sivaswami's* case (supra), it must be held that the mere fact that the travelling public had been using the carriages run by the appellant and the respondent no. 2 can, by itself, not be a ground for allowing the said respondent to continue to ply the carriages.

Counsel for the respondent then submitted that the respondent no. 2 has been granted renewal of the permit upto 6.11.1996. while referring to Section 10 of the Tamil Nadu Vehicles (Special Provision) Act, 1992, it was sought to be contended that because of the said provision, there can be no challenge to the permit of the said respondent which has now been renewed. The Section 10 reads as under:

> "Notwithstanding anything contained in Chapter V or VI including Section 98 of the Motor Vehicles Act, 1988 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."

We fail to appreciate as to how the said provision can be of any assistance to the said respondent. All that Section 10 provides is that the orders passed granting permits or renewal etc., under the provisions of Motor Vehicles Act, 1988 are deemed to have been passed in accordance with the provisions of the Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992. The said Section 10 does not validate any permit which was initially invalid. It is a provision which continues the permits etc. which had been validly granted under the old Act. As no valid permit could have been granted to respondent no. 2 from the route Coimbatore to Kottur, the provisions of Section to cannot give a right to the respondent no. 2 to get the permit when it had only six marks. When there was only one permit to be given for the said route and the marks obtained by the appellant were much more than that of respondent in our opinion, the appellate Tribunal had rightly upheld the order of the Regional Transport Authority granting the stage carriage permit to the appellant and in not renewing the permit

of the respondent No. 2.

For the aforesaid reasons, these appeals are allowed and the judgment of the Madras High Court in C.R.P. Nos. 1852-54 and 1886 of 1982 which is under appeal, is set aside and the decision dated 31.3.1982 of the Tribunal is restored. The appellant will be entitled to costs throughout.

Appeals allowed.