Supreme Court of India
Thilagavathy vs Regional Transport Authority on 29 November, 1994
Equivalent citations: 1995 SCC (1) 456, JT 1994 (7) 643
Author: R Sahai
Bench: Sahai, R.M. (J)

PETITIONER:
THILAGAVATHY

Vs.

RESPONDENT:
REGIONAL TRANSPORT AUTHORITY

DATE OF JUDGMENT29/11/1994

BENCH:
SAHAI, R.M. (J)
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SAHAI, R.M. (J)
AHMADI A.M. (CJ)
HANSARIA B.L. (J)

CITATION:
1995 SCC (1) 456 JT 1994 (7) 643
1994 SCALE (5)32

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by R.M. SAHAI, J.- What arises for consideration in these appeals directed against judgment and order of the High Court of Madras is whether the provisions of the Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992 (Act No. 41 of 1992) (hereinafter called 'the Act') prohibiting grant of any permit overlapping whole or part of the notified route after 30-6-1990 is invalid and ultra vires being violative of Article 14 for creating two classes among small operators by arbitrarily providing cut-off date and what is the ambit and scope of Section 10 and whether the decision of this Court in Pandiyan Roadways Corpn. Ltd. v. M.A. Egappan1 requires reconsideration.

2.In the State of Tamil Nadu the State Government after addition of Chapter IV-A in the Motor Vehicles Act, 1939 framed various schemes in 1976 nationalising different routes. The effect of publication of the draft scheme was that the private stage carriage operators were excluded from

operating on any part of it. But on various routes there were bifurcations; and the State Transport Authorities issued new permits and renewed existing permits for these routes which in course of its journey traversed part of the notified route, under the impression that exclusion of private operators under the Scheme was partial only. It was challenged by State Transport Undertaking (in brief "the Undertaking") and its claim was upheld and such permits which overlapped even a portion of the nationalised route were declared invalid. One of such permit-holders who was an operator on a non notified route, while getting its permit renewed, got permission to ply on a route part of which overlapped notified route, approached this Court and in Pandiyan Roadways1 the decision of the High Court was upheld and it was held that in view of the decision given by the Constitution Bench in Adarsh Travels Bus Service v. State of U.P2 the permits granted by the State to stage carriage operators which overlapped any part of the notified route were invalid. The Court held that only those operators were entitled to ply on part of notified routes who were permitted to do so by the scheme itself. The effect of this decision was that large number of permits of private operators, nearly 4000, were rendered invalid. To meet this extraordinary situation, when 4000 vehicles run by small operators (each having not less than 5 permits) were in danger of going off the road, which was oppressive not only to the operators but it exposed the public to great hardship and inconvenience and made it wellnigh impossible either for the State or the Undertaking to replace the vehicles which involved an expenditure of nearly Rs 300 crores, the State issued Government Order No. 2222 in 1987 to the authorities to renew permits of such operators and requested the Undertaking not to oppose it. It also introduced a Bill (L.A. Bill No. 42 of 1987), the object of which was to "grant permits to small operators ... to ply their stage carriage on any portion of the area or route covered by the draft schemes or the approved schemes". The Bill was assented to by the President, as well, 1 (1 987) 2 SCC 47 : AIR 1987 SC 958 : (1987) 2 SCR 391 2 (1985) 4 SCC 557 : AIR 1986 SC 319 but it was not published, consequently it never came into force. In the meantime the Motor Vehicles Act, 1939 was repealed by Parliament and Motor Vehicles Act, 1988 (Act No. 59 of 1988) came into force from 1-71989. It permitted pending schemes to be published and approved within one year after expiry of which it was to lapse. The schemes, therefore, had to be approved on or before 30-6-1990. In the State there were 800 schemes which had been published and were pending approval. Out of these 251 schemes were approved between 22-6-1990 and 30-6-1990. Chapter VI of the new Act contains similar provisions as were in Chapter IV-A of the repealed Act. The effect of approval of the schemes under the new Act and the interpretation placed by this Court in Pandiyan Roadwaysi was that no private operator could ply on part of notified route and the Government Order No. 2222 of 1987 had to be withdrawn. The Government, therefore, issued Government Order No. 1794 in August 1990 withdrawing the earlier order issued in July 1987 in wake of the judgment in Pandiyan Roadways,. It was followed by an Ordinance issued on 8-10-1990 repealing L.A. Bill No. 42 of 1987. The small operators, thus, once again were faced with the difficulty in which their vehicles were likely to become stationary. They, therefore, filed different batch of writ petitions seeking by one, mandamus from the Court to direct the State to publish the L.A. Bill No. 42 of 1987 and by other, challenged validity of the Government Order issued in 1990 withdrawing earlier Government Order of 1987. The petitions were dismissed on 9-10-1990. On 24-1-1991 Tamil Nadu Motor Vehicles (Special Provisions) Repeal Act, 1991 was passed repealing L.A. Bill No. 42 of 1987. The operators numbering approximately 4000 who had been granted permits overlapping notified route after 1976 approached this Court through their association known as Federation of Operators' Association by way of two Writ Petitions Nos. 361 and 365 of

1991 under Article 32 of the Constitution of India for different relief with same objective in which an interim order was passed and doubt was expressed on Pandiyan Roadways'. The State Legislature, in these circumstances, enacted the impugned Act which came into force on 31-7-1992.

3.Due to the uncertainty prevailing in the State as a result of different orders issued by the Government from time to time, the transport authorities appear to have issued permits to private operators even after 1987. But when the Act came into force in July 1992 with eleven sections it provided that Sections 1 to 5 and 8 to 1 1 were deemed to. have come into force on 4-6-1976 and ceased to be in force on 30-6-1990. The Act placed complete embargo on issue of fresh permits after 30-6-1990. Therefore, its validity was challenged by those operators who had been issued permits after 30-6-1990. The principal attack was founded on absence of any Justification for classifying the operators in two classes one, those to whom permits had been granted till 30-6-1990 and others, to whom permits were issued after that date. It was claimed that the basic purpose of the enactment being to protect the interests of small operators, the classification amongst them by taking 30-6-1990 as cut-off date was arbitrary and against legislative objective and purpose. The prohibition in the Act against grant of any new permit was challenged as it was contrary to the policy pursued by State Government from 1976 onwards and it was claimed that the very purpose of the Act by which the Legislature intended to perpetuate its earlier policy of permitting small operators to ply on overlapping notified routes would stand frustrated. Validity of Section 7 abating the proceeding for grant of permit was also assailed. The High Court did not find any merit in any of the submissions. It was held that the cut-off date as 30-6- 1990 was rational as the Motor Vehicles Act of 1939 having been repealed and the new Act having come into force from 1- 7-1989 with a provision that the schemes pending on the date when the Act came into force would be valid only for one year, namely, up to 30-6-1990 unless they were approved and published, the State Legislature, keeping the provisions of the Central enactment in view, considered it appropriate to fix the cut-off date from the date the time to get the schemes approved, lapsed. The High Court held that even under the new Act Chapter VI provides for the same scheme as was earlier provided by Chapter IV-A. Therefore, when the Legislature enacted Act 41 of 1992 it, while protecting those in whose favour permits were granted before the decision was given in Pandiyan Roadways1, accepted the interpretation placed by this Court by prohibiting grant of any new permit overlapping even part of notified route from 1990 onwards. Nor did the Court find any merit in the submission that by virtue of Section 10 the permits granted even on or after 1-7-1990 and till the date when the Act was passed or thereafter were valid. Aggrieved by the decision given by the High Court on various sets of petitions filed by operators who had applied and were granted permits on or after 1-7-1990 both on intra and inter-State route, these appeals have been filed. The writ petitions, as stated earlier, have been filed by those operators who were granted permits between 1976 and 1990. In fact these petitions have been rendered infructuous after enactment of Act No. 41 of 1992.

4.Validity of the Act was assailed, but halfheartedly, by the learned counsel for the appellants who are the stage carriage operators to whom permits had been granted for plying either on intra or inter-State routes on or after 1-7-1990, obviously because invalidity of the Act does not advance their cause. Even otherwise, from the Statement of Objects and Reasons and the provisions in the Act it is clear that the Legislature intended, in public interest, to remove the sudden hardship to common public due to decision rendered by this Court in Pandiyan Roadways1. But State Legislature having

accepted the interpretation placed by this Court in Pandiyan Roadways1, except for those to whom permits were granted earlier, the appellants cannot claim to be treated similarly and placed in that class of operators who were granted permits before 1-7-1990. In our opinion the State Legislature, in keeping with the decision given by this Court that such a scheme as was in dispute was for complete exclusion of private operators, rightly provided that no permit could have been granted after the Scheme was granted approval under the new Act. That explains the reason for cut-off date as the schemes were approved under the new Act in June 1990 only. Therefore, on interpretation placed by this Court, the authorities could not have granted any permit which overlapped any part of notified route. The cut-off date, therefore, was not violative of Article 14.

5.Prior to adverting to various provisions of the Act and whether Section 10 could be so interpreted as empowering the transport authorities to issue fresh permits even after 30-6-1990 and whether such permits could be held to be valid under Section 10 it appears appropriate to deal with the submission advanced on behalf of the appellants which in effect was that Pandiyan Roadways1 required reconsideration. It was urged that the principle laid down by the Constitution Bench in Adarsh Travels2 was not applicable to the schemes framed in the State of Tamil Nadu and, therefore, the decision given in Pandiyan Roadways1 based on Adarsh 7ravels2 was not correct. The learned counsel urged that in Adarsh Travels2 a private operator was excluded wholly from operating on any part of the notified route as there was no protection even to existing operators, whereas in Pandiyan Roadways' the Court was concerned with a scheme which excluded a private operator from the notified route except to the extent it was permitted by the scheme itself. The learned counsel urged that the schemes framed in the State of Tamil Nadu excluded private stage carriage operators from operating, on "end-to-end" basis only on any nationalised route. It was submitted that the scheme itself having permitted plying on notified route and even picking and setting down passenger from notified route, the authorities did not commit any error in granting permits and such grant was not contrary to the scheme and if such interpretation is given as was done in Pandiyan Roadwaysl then it would result in not only inconvenience to the public but would be contrary to the provisions of the Motor Vehicles Act itself.

6.To appreciate the controversy, it appears appropriate to refer to one of the routes which was known as "Udumalpet Erode Route", which came up for consideration in Pandiyan Roadways1 . This Scheme was notified in 1973. It was published under sub-section (2) of Section 68-D of the Motor Vehicles Act, 1939. Schedule I to the Scheme reads as under:

1 . Area or route in relation Udumalpet to Erode with to which the scheme is prepared. shuttle trips between Erode and Tiruppur.

2. Whether operation by the State To the exclusion of other Transport Undertaking shall be to persons as described in the exclusion of other persons or item 3 below otherwise.

3.If the operation shall be to the exclusion of the other persons:

(i)Whether such exclusion shall To the complete exclusion complete or partial of other person inrespect of permits covering the entire route referred to in Item 1 above.(emphasis ours)

(ii) Whether it is proposed to Yes.

allow other persons to operate buses as on sector of the routes covered by the scheme.

(iii) Whether it is proposed to allow Yes.

other persons to pick up or drop passengers between any two places on the route covered by the scheme.

Clause (5) of Schedule 11 gives the number of stage carriages. Clauses (a) and (b) of it are extracted below:

(a)Number of stage carriages now As detailed in Annexure I. by other persons.

(b)Number of stage carriages to be permitted -do- to be operated by other persons and the duration.

Annexure I contains particulars of those private operators who were operating on the route on the date the Scheme was notified. The Scheme was prepared under Section 68-C of the old Act which permitted a State Transport Undertaking to prepare a scheme for running and operating services in an area or route to the exclusion, complete or partial, of other persons. Sub-clause (i) of clause (3) of the Scheme clearly provided that the Scheme was to complete exclusion of other persons from entire route in question. Therefore, no operator could apply for a permit on notified route nor the transport authority could grant it. The exclusion was thus absolute and complete. Clauses (ii) and (iii) were added in the Scheme to enable existing operators to ply their vehicles. Protection to such operator was limited to the extent that their permits were renewable. A combined reading of sub-clauses (i), (ii) and (iii) of clause (3) of the Scheme with Annexures I and II of the Schedule indicates that the private operators of specific category were permitted to operate on sectors of the routes and it were they alone who were permitted to pick up and set down passengers between any two places on the route covered by the Scheme. It did not contemplate grant of any new permit to any other operator overlapping the notified route. Even though it was not a Scheme like the one which came up for consideration before this Court in Adarsh Travels2 yet the exclusion was complete so far operators other than those who were mentioned in sub-clauses (ii) and (iii) were concerned. The Scheme having been framed under Section 68-C, the validity of which was not challenged, it could not have been construed as a scheme precluding an operator from "end-to-end" route only. The misconception arising out of an erroneous understanding of the Scheme due to sub-clauses (ii) and (iii) was rightly corrected by this Court. We respectfully agree with the enunciation of law in Pandiyan Roadways1.

7. Reverting to the provision of the Act, it is slightly unusual legislation as it came into force in July 1992 yet, except Sections 6 and 7, the remaining provisions of the Act are deemed to have come into force in 1976 and ceased to operate after 30-6-1990. The Act thus seeks to achieve dual objective one, legislatively protecting those operators who were granted permits after 1976 under misconception by the transport authorities that the Scheme excluded other operators from "end-to-end" route only by fictionally enabling the transport authority to have issued permits

notwithstanding any provision in the Scheme framed by the Undertaking. Two, it prohibited grant of any new permit after 30-6-1990 which overlapped whole or part of notified route, that is, the Legislature while accepting the interpretation placed by this Court on construction of Scheme prepared under Section 68-C legislatively removed the hurdle in grant of permits on notified route ill past, validated the grant so made but prohibited any grant in future. Sections 3, 4, 5 and IO are directed towards regularising and validating the permits granted between 1976 and 30-6-1990, whereas Sections 6 and 7 achieve the latter objective. Section 3 is the main section. Its sub-sections (1) and (2) empower a Regional Transport Authority to grant, renew or vary conditions of permit of a small operator, which, according to the explanation to the section, means any stage carriage operator holding not more than five stage carriage permits, to ply on a notified route or part of it notwithstanding anything contained in any draft scheme. Sub-section (3) of Section 3 provides that during the period the permit referred to under sub-section (1) or (2) was in force the draft scheme shall stand modified to that extent. Sub-section (4) makes the provisions of Chapter V of the Act applicable to grant, renewal or variation of permit. Section 5 provides that Sections 3, 4 and 6 shall have effect notwithstanding anything inconsistent therewith contained in Chapters V and VI including Section 98 of the Motor Vehicles Act. Section 10 validates the grant of permit retrospectively. Section 3 thus created power in the transport authority to grant, renew, vary or alter permit from 1976 and Section 10 validated such grant notwithstanding anything to the contrary in the new Act. There was no challenge by the State Transport Undertaking to these provisions by which the grant of permits in favour of the operators between 1976 and 1990 has been permitted and validated.

8. Section 6 like Section 3 has four sub-sections. Sub- sections (1) to (3) deal with renewal of permit or modification of condition therein in accordance with same procedure as applied to renewal or variation under Chapter V of the Act. But sub-section (4) debars the authority from issuing any fresh permit. It reads as under:

> "Notwithstanding anything contained in this Act no new permit shall be granted under this Act to any person on any route covered by an approved scheme."
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> This section unlike other sections comes in operation from 30-6-1990. Thus from 30-6-1990 the Regional Transport Authority is not empowered to grant any new permit to any operator overlapping whole or part of notified route. But so far permits, grant of which has been validated by 30-6-1990, would be renewable under this section even after 30-6- 1990. The effect of Section 6, therefore, is that those operators who were granted permits between 1976 to 30-6-1990 would be entitled to seek renewal but the authorities would not be entitled to grant fresh permit after that date. Validity of even sub-sections (1) and (2) was not challenged by the Undertaking. And sub-section (4) cannot be challenged by the appellants as it is in keeping with Chapter VI of the new Act. It is further reinforced by Section 7 which abates all proceedings pending for grant of permit on a notified route before any authority or court in appeal.
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> 9. But what has created confusion is Section 10 which reads as under:

> "10. Notwithstanding anything contained in Chapters 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."

(emphasis supplied) The section is not happily worded. Literally read it may clash with subsection (4) of Section 6 of the Act. Reliance was placed on the expression " and ending with the date of the publication of this Act in the Tamil Nadu Government Gazette". It was urged that this clearly indicated that any permit granted between 4-6-1976 and the date of publication of the Act, namely, 31-7-1992, would be valid. According to the learned counsel the High Court committed an error of law in dismissing the writ petitions filed by the appellants on basis that their permits having been granted or countersigned after 30-6-1990 were invalid and contrary to the Scheme of the Act. A superficial reading of Section 10 does give an impression that the operation of the Act for purposes of grant of permit stood extended not only up to 30-6-1990 but up to 31-7-1992. But that would be in the teeth of sub-section (4) of Section 6 and Section 3 itself. The purport of the Act was to protect those operators who had been issued permits between 1976 and 30-6-1990 and not to depart from the interpretation placed by this Court. The Legislature while protecting the past mistakes of the Government has taken care not to repeat it in future. This is not discrimination but accepting the decision given by this Court. Further it is a validating provision. In absence of it the action of the authorities granting permits which was legislatively made permissible by Sections 3 and 4 would not have been saved. It too ceased to operate from 30-6-1990 in view of sub-section (3) of Section 1 which reads as under:

> "The provisions of the Act (except Sections 6 and 7) be deemed to have come into force on the 4th June, 1976 and remain in force up to and inclusive of the 30th June, 1990 and Section 6 shall be deemed to have come into force on the 1st July, 1990. "

A provision which was legislatively dead on 30-6-1990 could not be deemed to be alive for purpose of grant of permit because of the expression "the date of publication of this Act in the Tamil Nadu Government Gazette" appearing in the provision. The High Court thus did not commit any error in dismissing the writ petition of those operators whose claim for new permit after 30-6-1990 was rejected by the authorities.

10. One Loganathan along with nine others had applied for permit which overlapped notified route. He died on 7-10- 1987. His wife Samiyatha1 was brought on record. On 11-1- 1988 permit was granted in her favour. Against this order various persons filed appeal and on 28-1-1992 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 v. Hafez Motor Transport (Firm)3 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 30-6-1990, the order passed by the High Court allowing the writ petition of the Undertaking against persons other than Samiyathal does not suffer from any error of law.

11. For these reasons all these appeals fail and are dismissed. The writ petitions on the other hand have become infructuous after coming into force of the new Act. They are dismissed as such.

12. Parties shall bear their own costs.