

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02/08/2006

CORAM:
THE HONORUABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA
and
THE HONOURABLE MR.JUSTICE P.MURGESEN

W.A. (MD) No.135 of 2006
W.A. (MD) No.136 of 2006

R. Shanmugaiah ... Appellant in
both the W.As.

VS.

1.P.S.Lakshmanakumar

2.Regional Transport Authority,
Virudhunagar District,
Virudhunagar.

3. The State Transport Appellate Tribunal, High Court Campus, Chennai-600 104. ... Respondents in both the W.As.

W.A.No.135/2006: Writ Appeal under Clause 15 of Letters Patent against the order of the learned single Judge, dated 29.03.200, made in W.P.No.10481/2005.

W.A.No.136/2006: Writ Appeal under Clause 15 of Letters Patent against the order of the learned single Judge, dated 29.03.200, made in W.P.No.10482/2005.

For Appellant ... Mr.M.Palani

For Respondent ... Mr.M.Ajmal Khan
No.1

For Respondent ... Mr.R.Janakiramulu,
No.2 Spl.Govt.Pleader.

: JUDGMENT
F.M. IBRAHIM KALIFULLA, J

These two writ appeals arise out of the common order, dated 29.03.2006, passed by the learned Single Judge in W.P.Nos.10481 and 10482 of 2005. In W.P.No.10481/2005, the appellant herein challenged the order of the third respondent, dated 18.11.2005 passed in I.A.No.455/2005 in R.P.No.112/2005. The challenge in W.P.No.10482/2005 was the order of the third respondent, dated 28.10.2003 passed in Appeal No.1409/2002.

2.The real issue involved in these writ appeals pertains to the grant of mini bus permit in favour of the first respondent for the route Sivakasi Pandiyan Complex to Vilampatti. According to the appellant, the said grant of permit in favour of the first respondent by the proceedings, dated 18.10.2004/07.07.2005, pursuant to the order of the third respondent, dated 28.10.2003, in Appeal No.1409 of 2002 was contrary to the approved modified scheme for Virudhunagar District made in G.O.Ms.No.1546, Home (Transport-III) Department, dated 17.11.1999.

3.The brief facts which are required to be stated are that the appellant, who is also a mini bus operator, is operating a mini bus bearing Regn.No.TN-67 P 3091 on the route Sivakasi Pandian Complex to Poolavoorani and the length of the route is stated to be 9.8 k.m. The appellant filed R.P.No.112/2005 on the file of the third respondent challenging the proceedings of the second respondent in R.No.14261/A5/D2, dated 18.10.2004, granting a mini bus permit in favour of the first respondent on the route Sivakasi Pandian Complex (Standard Fire Works) to Vilampatti. The appellant also filed I.A.No.455/2005 seeking stay of the operation of the order, dated 18.10.2004. The said I.A. was resisted on behalf of the first respondent contending that the order dated 18.10.2004 was signed on 07.07.2005, that the said order came to be issued pursuant to the orders of the third respondent, dated 28.10.2003 in Appeal No.1409/2002 which order of the third respondent having become final, the appellant cannot seek to challenge the consequential order of the second respondent dated 18.10.2004/07.07.2005. The third respondent Tribunal, by its order dated 18.10.2005, accepted the stand of the first respondent and held that there was no scope for granting stay as prayed for by the appellant. It was in the above stated circumstances, the appellant is stated to have filed W.P.No.10482/2005 as against the earlier order of the third respondent dated 28.10.2003 passed in Appeal No.1409/2002, while challenging the present order of the third respondent, dated 18.10.2005 passed in I.A.No.455/2005 in R.P.No.112/2005 in W.P.No.14081/2005.

4.Writ Appeal No.135/2005 concerns the order passed in I.A.No.455/2005 in R.P.No.112/2005 which order was confirmed by the learned Single Judge in W.P.No.10481/2005. The writ appeal No.136/2006 concerns the Tribunal's earlier order, dated 28.10.2003 passed in Appeal No.1409/2002 which was also confirmed by the learned Single Judge in the common order dated 29.03.2006 passed in W.P.Nos.10482/2005.

5.Assailing the orders of the learned Single Judge as well as that of the Tribunal, Mr.M.Palani, learned counsel appearing for the appellant, at the outset, contended that the issue involved in W.A.No.136/2006 can be examined in the first instance since the disposal of the writ appeals would depend upon the outcome of the challenge relating to the order of the third respondent, dated 28.10.2003, passed in Appeal No.1409/2002. In other words, since the subsequent order of the third respondent, dated 18.10.2005, in I.A.No.455/2005 in R.P.No.112/2005 was depended upon the correctness or otherwise of the order, dated 28.10.2003, passed in Appeal No.1409/2002, the correctness of that order can be examined in the first instance.

6.Assailing the order dated 28.10.2003 in Appeal No.1409/2002, learned counsel for the appellant submitted that under the scheme the grant of a mini bus permit can be made only where no stage carriage services are provided upto a route length not exceeding 20 kms. with an overlapping distance not exceeding 4 kms. where such stage carriages are operating, that the appellant is already operating a mini bus on the route Sivakasi Pandian Complex to Poolavoorani upto a route length of 9.8 kms., that the grant made in favour of the first respondent by the order, dated 28.10.2003 was for the route Sivakasi Pandian Complex to Vilampatti which is overlapping on the existing route of the appellant upto a length of 8.7 kms. and therefore the grant so made under the orders of the third respondent is liable to be set aside. Learned counsel then contended that even before the grant was made the first respondent had entered into an agreement, dated 12.07.2005 to sell the said grant in favour of a third party and therefore on the ground of trafficking in trade the grant is liable to be set aside. The learned counsel also raised a contention based on Sections 99 and 102 of the Motor Vehicles Act (hereinafter called as "the Act") and contended that there is a further proposal for modification of the modified scheme, dated 17.11.1999, in the notification dated 1.6.2005 and by virtue of Section 99 of the Act, unless and until the proposed modification is finally decided, no grant under the existing modified scheme dated 17.11.1999 could have been granted. The learned counsel for the appellant relied upon the decisions reported in

(i)2000(7) SCC 552 (M.S.Jayaraj vs. Commissioner of Excise, Kerala and others)

(ii)2005(3) SCC 683 (Sai Chalchitra vs.Commissioner, MeerutMandal and others)

(iii)1992(2) SCC 620 (Ram Krishna Verma and others vs. State of U.P. And others)

(iv)2006 (1) SCC 275 (State of Orissa v. Md.Illiyas)

(v)2005 (4) SCC 391 (A.P.State Road Transport Corporation vs. Regional Transport Authority and another)

- (vi)AIR 2002 SC 1230 (K.Shekar vs. V.Indiramma and others)
- (vii)AIR 2004 SC 2317 (N.Bhargavan Pillai vs. State of Kerala)
- (viii)AIR 1996 SC 1661 (U.P.Jal Nigam vs. Prabhat Chandra Jain)
- (x)Unreported Judgment, dated 04.10.1993 made in W.A.No.978/1993
- (xi)2003 WLR 46 at 53 (N.Muthukrishnan vs. D.Pushpam & another);
and
- (xii)1996 (8) SCC 314 (C.Kasturi and others vs. Secretary,
Regional Transport Authority and another).

7.As against the above submissions, Mr.M.Ajmalkhan, learned counsel appearing for the first respondent, at the outset contended that the writ petition challenging the order dated 28.10.2003, having been filed after a delay of more than two years, is liable to be dismissed on the sole ground of laches. On the submission based on the scheme, namely that the sector was already operated upon by a stage carriage of the appellant, the learned counsel would contend that the operation of a mini bus which was granted under the scheme dated 17.11.1999 would not fall within the category of existing stage carriage operation as any contrary stand would negate the very purport of the scheme itself which is meant for grant of mini bus permits in the rural area and therefore the said submission is not legally sustainable. As far as the submission made based on Sections 99 and 102 of the Act, learned counsel would contend that a modification of any scheme is made under Section 102 of the Motor Vehicles Act whereas the operation of Section 99 would relate to the introduction of a scheme at the initial stage and therefore the stipulation contained in Section 99 as regards the in operation of a scheme will not apply to any proposal for modification.

8.As regards the submission relating to trafficking on permits, the learned counsel contended that the so-called agreement, dated 12.07.2005, relied upon by the appellant was a forged one, that such a stand was not even raised in the affidavit filed in support of the writ petition and the agreement suffers from very many defects and therefore no reliance can be placed on the forged agreement in order to hold that the first respondent had any agreement with any one for selling the permit as claimed by the appellant.

9.The learned counsel lastly contended that the appellant has no locus standi to question the grant made in favour of the first respondent. According to the learned counsel, so long as the second respondent was convinced that under the Scheme, dated 17.11.1999, the first respondent is entitled for the grant of permit, the appellant as an existing mini bus operator has no right to challenge the said grant. The learned counsel relied upon the decisions reported in (1992) 1 SCC 168 (Mithilesh Garg and others vs. Union of India and others),

unreported judgment of a Division Bench of this Court dated 23.12.2005 passed in W.A.No.459/2005 etc. batch and the order of Justice E.Padmanabhan, dated 28.07.2000 in W.P.Nos.19067 to 19069 of 2000 etc. batch.

10.By way of reply to the submissions made by the learned counsel for the first respondent, Mr.M.Palani, learned counsel appearing for the appellant contended that there was no delay on the part of the appellant in challenging the grant made in favour of the first respondent, since as soon as the appellant came to know about the grant at the time when his revision petition in R.P.No.112/2005 was heard by the third respondent, he took all steps to challenge the order dated 28.10.2003. Learned counsel relied upon the decision of the Hon'ble Supreme Court reported in AIR 2002 SC 1230. By relying upon three Division Bench decisions of this Court reported in 2003 WLR 46 (N.Muthukrishnan v. D.Pushpam and another), judgment dated 04.10.1993 in W.A.978/1993 and the judgment dated 04.03.2004 in W.A.No.1987 to 1993 of 2003 and a Division Bench decision of Karnatka High Court reported in AIR 1999 Kant. (D.L.Sadashiva Reddy v. P.Lala Sheriff), the learned counsel contended that the appellant as a sector operator is entitled to challenge the grant in favour of the first respondent before the statutory forum.

11.Having heard the learned counsel for either parties, at the outset, we wish to steer clear of the preliminary objections raised on behalf of the first respondent on the ground of laches and locus standi before going to the core question involved in the matter.

12.As far as laches is concerned, the appellant, in his affidavit filed in support of the writ petition, has explained as to how the appellant was able to get the certified copy of the order dated 28.10.2003 and that immediately thereafter the appellant has filed the present writ petition. The appellant was not a party to the proceedings in Appeal No.1409/2002 before the third respondent. In fact, the said appeal was preferred by the first respondent as against the rejection of his mini bus permit application by the second respondent. Only after the first respondent was issued with the grant by proceedings dated 18.10.2004, which was stated to have been signed by the second respondent on 07.07.2005 and thereafter when the appellant preferred R.P.No.112/2005 before the third respondent the appellant is said to have been made aware of the earlier order of the third respondent, dated 28.10.2003 passed in Appeal No.1409/2002, that too in the counter filed by the first respondent in the stay application of the appellant in I.A.No.455/2005 in R.P.No.112/2005. In fact, this contention seem to have been not seriously raised before the learned Single Judge at the time when the writ petition was argued. In any event, since we are satisfied with the reasons mentioned by the appellant which prevented him from challenging the order, dated 28.10.2003 passed in Appeal No.1409/2002 at the earliest point of time, we do not find any inaction on the part of the appellant in order to reject his claim in the writ petition on the ground of laches.

13.1.As far as locus standi is concerned, we find that the decision of the Division Benches relied upon by the learned counsel for the appellant fully support his stand. In the decision dated 04.10.1993 in W.A.No.978/1993, the Division Bench has held that in cases where the grant of stage carriage permit is contrary to the terms of a scheme or by way of illegal exercise of power in granting permits, it is not possible to hold that a grant of permit cannot at all be challenged in a writ petition under Article 226 or 227 of the Constitution at the instance of even a third party. The Division Bench has held in paragraph 2 of the judgment that it cannot be laid down as a rule of law that a petition under Article 226, challenging the grant of a stage carriage permit cannot at all be maintained, though the Division Bench ultimately took the view that there was no infirmity in the permit granted to the party concerned in order to set aside the same.

13.2.In the decision reported in 2003 WLR 46(N.Muthukrishnan v.D.Pushpam & another), at 54, the Division Bench had held that there is no absolute bar for an existing operator to maintain a writ petition under Article 226 of the Constitution in challenging the grant on the ground of either the violation of the provisions of the Act or Rules or the same is contrary to the orders issued by the Government.

13.3.Again in the judgment, dated 04.03.2004, passed in W.As.1987 to 1993 of 2003, the Division Bench took the view that inasmuch as the appellants, who are the operators of particular routes known as served sectors for the purpose of the case and the grant was made in respect of served sectors, as existing operators they should be necessarily considered as aggrieved persons and consequently they have every locus standi to question the grant.

13.4.In the Division Bench decision of the Karnataka High Court, reported in AIR 1999 Kant. 5 (D.L.Sadashiva Reddy v. P.Lala Sheriff), in paragraph 15, it has been held as under:

"A reading of Section 90 of the Act of 1988 makes it clear that any order of the Regional Transport Authority or the State Transport Authority, whether it be grant of a permit or assignment of timings, can be called in question by an aggrieved operator and the order can be demonstrated to be either illegal or improper. It follows that a rival operator on making allegations which prima facie demonstrates a grievance which calls for examination, is entitled to have his revision examined on merits in accordance with law and he cannot be thrown out at the threshold on the ground that he has no grievance. When once the tribunal exercises the power to examine the order impugned, it is needless to state that it has to examine the order as to whether it is improper or illegal and has to decide the matter on merits. In the circumstances, the order of the learned single Judge, rejecting the Writ Petitions cannot be sustained."

13.5.Having regard to the above consistent ruling of this Court and in view of the fact that the appellant has raised a

substantial legal contention as regards the grant of the present mini bus permit, which, according to him, conflicts with the very terms of the Scheme, dated 17.11.1999 and the appellant being an existing operator covered by the Scheme, we are convinced that the appellant is entitled to question the grant made in favour of the first respondent. Therefore, the said objection raised on behalf of the first respondent is also rejected.

14.As far as the objection raised on behalf of the appellant on the ground that the first respondent wanted to traffic in permits and therefore the same is liable to be set aside, we do find any acceptable material in support of the said contention. As rightly pointed out by the learned counsel for the first respondent, the reliance placed upon the alleged agreement, dated 12.07.2005, cannot be accepted for the purpose of holding that the first respondent had entered into such an agreement with a third party to sell the permit granted by the second respondent in the order dated 18.10.2005/07.07.2005. When the signature found in the xerox copy of the said agreement, dated 12.07.2005, is disputed by the first respondent, it will be highly unsafe to place any reliance on the said document in order to accept the contention of the appellant that the first respondent wanted to sell of the permit even before it was put into operation. As rightly contended by the learned counsel for the first respondent, this contention, not having been raised before the learned Single Judge, it is not open to the appellant to raise it for the first time before the Division Bench. For all the above reasons, we do not find any merit in the said contention and therefore the said contention of the appellant is rejected.

15.As far as the argument of the learned counsel for the appellant based on Sections 99 and 102 of the Act is concerned, Mr.M.Palani, learned counsel for the appellant stated across the bar that the appellant is not pressing the said contention in these appeals. Therefore, we do not propose to delve deep into the said contention.

16.1.The only other point to be considered is as to whether the grant now made in favour of the first respondent can be sustained irrespective of the fact that the said grant pertaining to the route Sivakasi Pandiyan Complex to Vilampatti is already covered by a stage carriage service upto a route length of 8.7 kms. and thereby hit by the prohibition imposed in the Scheme itself. As far as the said contention is concerned, while the appellant would contend that an existing mini bus operation is also a stage carriage service, according to the learned counsel for the first respondent, a mini bus operation cannot be equated to a regular stage carriage service and therefore the prohibition imposed in the scheme will not apply to the existing mini bus operation in the sector.

16.2.To appreciate the respective contentions of the parties, the relevant part of the approved modified scheme, dated 17.11.1999, needs extraction which is to the following effect.

"To complete exclusion of other persons other than the State Transport Undertakings of other States, the existing permits of small operators protected under the Tamil Nadu Motor Vehicles (Special Provisions) Act 1992 (Tamil Nadu Act 41 of 1992), the permits of single carriage operators covered by Inter-State Agreements and the permits of mini bus operators to operate in the rural areas of the District where no stage carriage services are provided upto a route length not exceeding 20 Kms. with an overlapping distance not exceeding 4 Kms. on the route where stage carriages are operating.

Explanation I.-- For the purpose of the scheme "rural Area" means any area not included in--

- (i) Chennai Metropolitan Development Area notified under the law for the time being in force;
- (ii) Any Municipal Corporation;
- (iii) Any Municipality; and
- (iv) Any Township constituted under any law for the time being in force.

Explanation II.--Over lapping distance includes urban areas also."

16.3. This is an area scheme meant for the entire Virudhunagar District. Under the scheme, provision has been made for providing operation, both regular as well as mini buses, in the Mofussil/Ordinary/Express/Jeep Stage Carriage/Passenger-cum-Goods Carriage, Metropolitan/City/Town Mini Bus. The maximum number of mini bus by private operators was prescribed as of 250.

16.4. When the terms of the scheme for the grant of mini bus permit is closely analysed, we find that grant of such mini bus permit is to operate in the rural areas of the district where no stage carriage services are provided upto a route length not exceeding 20 Kms. The permissible distance limit of overlapping on the routes where stage carriages are already operating has been restricted to 4 Kms. The maximum route length has been prescribed as 20 Kms. The grant is meant for private operators to the complete exclusion of other persons, other than

- (a) State Transport Undertakings of other States;
- (b) the existing permits of small operators protected under the Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992 (Tamil Nadu Act 41 of 1992);
- (c) the permits of stage carriage operators covered by Inter-State Agreements;
- (d) the permits of mini bus operators.

16.5. At this juncture, it is relevant to note that the scheme, dated 17.11.1999, was the subject matter of challenge in a batch of writ petitions in W.P.Nos.19067 to 19069 of 1999, etc. batch and by order, dated 28.07.2000, the learned Single Judge of this Court

has upheld the validity of the Notification. It is stated that the order of the learned Single Judge is under challenge and the matter is pending before the Division Bench.

16.6. To appreciate the core question involved and in order to arrive at a just conclusion to the point raised in these writ appeals, we have to examine the position whether the mini bus permit granted to the appellant in the route Sivakasi Pandian Complex to Poolavoorai for a route length of 9.8 kms. can be held to be a stage carriage service. While examining the said issue, we find that under section 2(40) of the Act a 'stage carriage' has been defined to mean as under.

"2(40). 'stage carriage' means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey."

16.7. Though the term 'mini bus' has not been defined under the Act, there is a specific definition of a 'mini bus' under Rule 3(o) of the Tamil Nadu Motor Vehicles Rules 1989 (hereinafter referred as "the Rules"). The said definition is to the following effect.

"3(o) 'Mini-bus' means a stage carriage constructed on a wheel base of not exceeding 390 cms. and carrying or adapted to carry more than six passengers but not more than twenty-five passengers excluding the driver and the conductor."

16.8. Though the term 'stage' has not been defined in the Act or in the Rules, in the recent decision of the Hon'ble Supreme Court reported in (2005) 4 SCC 391 (A.P.SRTC v. Regional Transport Authority), the Hon'ble Supreme Court has in fact has stated what is meant by "stages". In paragraph 17 of the said decision, the Hon'ble Supreme Court has stated as under.

"17. Long routes are divided into various stages for purposes of fixing fares from one stage to the next stage and the carriages which run on the routes for hire are called stage carriages. A route or a service may have several stages. Each stage will be the distance on the route from the preceding stage to the next stage. The stages are fixed in order to fix the fare for convenience of the passengers from the preceding point to the next point. Passengers have to pay fare only for the particular distance traveled by them and not for the entire route. Town service, on the other hand, as the words suggest, is normally a shorter route since it operates within the town itself."

16.9. A conjoint reading of the above referred to statutory provisions and the decision of the Hon'ble Supreme Court wherein the purpose of fixing stages for a stage carriage service has been stated, leads us to hold that a mini bus is nothing but a stage carriage service. In other words, a mini bus satisfies the definition of a

'stage carriage' as defined under Section 2(40) of the Act, apart from the fact that Rule 3(o) of the Rules specifically means a mini bus as a stage carriage. As between a regular stage carriage and a mini bus, the only difference is that in respect of a mini bus the maximum number of passengers permissible has been determined as 25, while the minimum is six which is common both for a regular as well as a mini bus. It cannot be disputed that a mini bus operation being a stage carriage has to necessarily operate its vehicle in the route permitted for it in between the various stages determined. Therefore, all the parameters which are prescribed in respect of a regular bus while operating in a permitted route such as the prescription of fares, the starting point and the destination, minimum prescribed number of passengers permissible, the prescribed number of maximum numbers of passengers permissible, the number of stages fixed in between the permitted route are all common and applicable to a mini bus as well. The statutory definition contained in Rule 3(o) of the Rules, defining a 'mini bus' to mean a stage carriage, further strengthens the position that a mini bus operation can only be considered as a stage carriage service and cannot be distinguished from a stage carriage operated with a vehicle of larger passenger capacity when it comes to the question of whether such services is a stage carriage service; or can it be called as any other service under the provisions of the Act. To put it differently, a mini bus operation though by virtue of the definition contained in Rule 3(o) of the Rules has got a restricted number of passengers to be carried at a maximum level, as far its operation in a route is concerned, it is nothing but a stage carriage service.

16.10. Therefore, the irresistible conclusion can only be that a mini bus service is also a stage carriage service in its operation in a permitted route. When such a conclusion is an irresistible one, based on the provisions of the Act and the Rules as well as the decision of the Hon'ble Supreme Court, we are left with no other option except to hold that a 'stage carriage service' would take within its fold the operation of all types of carriages in any particular route when such carriages are being operated covering different stages in that particular route providing transport facilities for all those who wish to avail the service as passengers.

17. Once we reach the above said conclusion and when we apply the said principle to the facts of this case, it is common ground that the grant of a mini bus permit under the scheme dated 17.11.1999 would be permissible among other excluded categories only if there is no 'stage carriage service' provided as on the date when such a grant is to be made. The relevant part of the scheme reads to the effect that a grant of a mini bus permit is for the purpose of operating in the rural areas of the district where no stage carriage services are provided. The highlighted part of the expression used in the scheme makes it abundantly clear, as on the date, when the grant is considered to be made, there should be no stage carriage service in operation in that route. If the grant on hand is tested on the above terms contained in the scheme, we find that as on the date of the grant, namely 18.10.2005/07.07.2005, the appellant was already operating in the very

same route, namely Sivakasi Pandian Complex to Poolavoorani which covers a route length of 9.8 Kms. while the grant made in favour of the first respondent for the route Sivakasi Pandian Complex to Vilampatti overlaps to an extent of 8.7 kms. The permissible overlapping under the scheme is a distance not exceeding 4 kms. Therefore, the grant in favour of the first respondent is clearly hit by the prohibition contained in the scheme.

18.The contention made on behalf of the first respondent that a mini bus service cannot be equated to an operation of a regular bus is not appealing to us for more than one reason. In the first place, the operation of a stage carriage service, as held by us, is not dependant upon the nature of vehicle operated in the service. The stage carriage service having been defined in categoric terms under the provisions of the Act and the only difference as between a regular bus and a mini bus operating in a stage carriage service is only the capacity of the passengers to be carried in the vehicle, in our opinion, a distinction sought to be made in respect of a stage carriage service operated by a mini bus and a regular bus would directly conflict with the statutory provision, namely the definition clause of a stage carriage under Section 2(40) of the Act, as well as, a mini bus which has been defined to mean as a 'stage carriage' as defined under Rule 3(o) of the Rules.

19.It is a well known canon of construction that Court cannot embark upon a construction of a provision which would run contrary to the statutory prescription. It will have to be held that the rule of construction *noscitur a sociis* would apply to the case on hand. The said construction means "the meaning of a word is to be judged by the company it keeps". In the famous decision of Privy Council, reported in (1879) 5 AC 63 (*Angus Robertson v. George*), at page 69, it has been held "it is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them". The said principle has been applied by the Hon'ble Supreme Court in the decisions reported in AIR 1955 SC 604 (*M.K.Ranganathan v. Govt. Of Madras*) at page 609 and AIR 2004 SC 1426 (*Ahmedabad Pvt.Primary Teachers Association v. Administrative Officer*) at 1432. In the decision of the Hon'ble Supreme Court reported in AIR 1955 SC 604, His Lordship GAJENDRAGADKAR,J has interpreted the said rule in the following words.

"This rule, according to MAXWELL, means that when two or more words which are susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general. The same rule is thus interpreted in Words and Phrases. 'Associated words take their meaning from one another under the doctrine of *noscitur a sociis*, the philosophy of which is that the meaning of the doubtful word may be ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim *ejusdem generis*'."

20. Applying the above rule to the case on hand, the meaning of the word 'mini bus' having been defined under Rule 3(o) as a 'stage carriage' and in the light of the very word 'stage carriage' having been defined under Section 2(40) of the Act, the term mini bus cannot be given a different meaning when it comes to the question of examining the position whether a mini bus operation in a route would fall within the definition of 'stage carriage'. In our humble opinion, applying the rule of construction *noscitur a sociis*, the term mini bus will have to be judged by the meaning of the word which is adjunct to it in the definition clause contained in Rule 3(o) of the Rules which definitely states that it is a 'stage carriage'. Therefore, we are unable to accept the contention of the learned counsel for the first respondent that a mini bus operation has to be held to be an operation which is distinct and different from a stage carriage service, as under the provisions of the Act, there is only one service in so far as the 'stage carriage' is concerned which is a service which has been defined as 'stage carriage' under Section 2(40) of the Act whether such a 'stage carriage service' is operated either by a mini bus or by any other bus.

21. Under Rule 248 of the Tamil Nadu Motor Vehicles Rules, which is meant for fixation of schedule of timing, a reference is made only to a 'stage carriage' on any route. The contention of the learned counsel for the appellant that if the arguments of the first respondent is to be accepted, namely that stage carriage services mentioned in the scheme would only mean regular stage carriage service, then there would be no scope at all for fixing any schedule of time for mini bus permits. In other words, according to the learned counsel for the appellants, the provision for fixing schedule of timings as provided under Rule 248 is common to 'stage carriages' whether it is an express service or mini bus service or regular bus service. Similarly, the provisions contained in Sections 70, 71 and 72 of the Act for making an application for a stage carriage permit, the procedure of Regional Transport Authority in considering such an application for stage carriage permit and the grant of stage permits are all common and there is no separate provision for the grant of stage carriage for a mini bus and a regular bus.

22. When we reach such a conclusion, without any scope for contradiction, we have to necessarily hold that the existing operation of the appellant in the route Sivakasi Pandiyan Complex to Poolavoorai has to be held as a 'stage carriage service' as provided as on the date when the grant for the first respondent for the route Sivakasi Pandiyan Complex to Vilampatti was considered and since admittedly the said considered route overlaps to an extent of 8.7 kms. Of an existing 'stage carriage service' and since the grant of such a service is specifically prohibited under the terms of the scheme itself, such a grant as made in the impugned proceedings, dated 18.10.2006/07.07.2005 is invalid in law. For the very same reason, the earlier order of the Tribunal dated 28.10.2003 passed in Appeal No.1409/2002 was also not sustainable and the same is liable to be set aside.

23. In this context the decision relied on by the learned counsel for the appellant reported in (2005) 4 SCC 391 supports the case of the appellant. In that case, the scheme related to mofussil service. It was to operate to the complete exclusion of all other persons holding stage carriage permits for the proposed routes, except to the extent specified in the Note mentioned in the Scheme. Note No.II, under the said scheme, specifically excluded the existing Town Services operating on the notified routes. In the said appeal, respondent No.3 applied for fresh town service permit which was rejected by the Regional Transport Authority. The State Transport Tribunal however directed the permit to be granted, which was upheld by the Full Bench of the Andhra Pradesh High Court. An argument was put-forth on behalf of the third respondent that if future applicants are excluded, Town Service would suffer resulting inconvenience to the public. The Hon'ble Supreme Court held that such an argument was not tenable and that the State Government knows what is suitable for public service. The Supreme Court also held that the State Government has the power to modify the Scheme in case of need and if any step is required to be taken for that purpose the State Government can always modify the scheme which is provided under the Act. The Supreme Court also held that the term 'service' has got a wider connotation which would cover both mofussil and town service.

24. Applying the ratio laid down in the said decision to the facts of this case and countering the submissions made on behalf of the first respondent that if operation of a mini bus granted under the scheme itself is to be treated as a stage carriage service that would prohibit the grant of any further mini bus permit and thereby render very many mini bus permits granted in different routes as invalid, it will have to be held that it is well known principle that two wrongs do not make one right. Reliance can be placed upon the the decision reported in (2003) 5 SCC 437 - (Union of India vs. International Trading Co.) in support of the said principle. Merely because such permits have been granted in violation of the terms of a scheme it cannot be held that on that ground the permit granted in favour of the first respondent should be sustained. As held by the Hon'ble Supreme Court in the decision in (2005)(4) SCC 391, if the terms of the scheme would work against the grant of permits to mini bus operators under the scheme, it is for the State Government to invoke Section 102 of the Act and resort to appropriate modification of the scheme. In fact, the present scheme itself is an approved modified scheme for Virudhunagar District. Therefore, on that score, there is no scope for sustaining the grant made in favour of the first respondent.

25. Learned counsel for the first respondent relied upon the decision reported in (1992) 1 SCC 168 (Mithilesh Garg v. Union of India) to contend that permits can be granted to all applicants irrespective of number of persons already operating in the route. However, the said decision came up for consideration in the subsequent decision reported in (1992) 2 SCC 620 (Ram Krishna Verma and others vs. State of U.P. and others) and the Hon'ble Supreme Court has dealt with the said decision as under in paragraph 14 of the judgment.

"14.It is true as contended by Shri Salve that in Mithilesh Garg v. Union of India this court held that the liberal policy of grant of permits under Section 80 of the Act is directed to eliminate corruption and favouritism in the process of granting permits, eliminate monopoly of few persons and making operation on a particular route economically viable and encourage healthy competition to bring about efficiency in the trade. But the free ply is confined to grant of permits under Chapter V of the Act. By operation of Section 98 of the Act, Chapter VI overrides Chapter V and other law and shall have effect notwithstanding anything inconsistent therewith contained in Chapter V or any other law for the time being in force or any instrument having effect by virtue of such law. The result is that even under the Act the existing scheme under the repealed Act or made under Chapter VI of the Act shall have overriding effect on Chapter V notwithstanding any right given to private operators in Chapter V of the Act. No corridor protection to private operators is permissible."

Therefore, the decision reported in (1992) 1 SCC 168 also does not help the case of the first respondent.

26.In the judgment reported in (1996) (8) SCC 314 (C.Kasturi and others v. Secretary, Regional Transport Authority and another), after referring to various earlier decisions, the Hon'ble Supreme Court has held that once a notified draft scheme is approved and published, the private operators have to operate their services on the notified route strictly in accordance with the scheme only and within the exceptions engrafted thereunder. Therefore, strict implementation of the scheme has been repeatedly stressed by the Hon'ble Supreme Court in the above referred decisions as well as the other decisions referred to therein.

27.Learned counsel for the first respondent relied upon a Division Bench decision of this Court, dated 23.12.2005, rendered in W.A.(MD)Nos.459 to 463 of 2005 etc. batch for the proposition that the Regional Transport Authority cannot refuse to grant permit on the ground that route is saturated. In paragraph 11, while dealing with the said issue, the Division Bench has held as under.

"11.Therefore, where this decision does not whittle down the power of the State to fix the maximum number of permits to be granted, it supports the contentions of the petitioners that the Regional Transport Authority cannot refuse to grant permits on the ground the route is saturated. This because the scheme does not envisage it and there is nothing in the Rule which confers such discretion on the Regional Transport Authority."

In the above said decision, the Division Bench was not concerned with the interpretation to be given to the terms contained in the present modified scheme, dated 17.11.1999, as dealt with by us. In fact, the Division Bench had no occasion to deal with such an issue in the said

decision and therefore the same does not also advance the case of the first respondent.

28.The learned counsel for the first respondent relied upon the order of Justice E.Padmanabhan, dated 28.07.2000, rendered in W.P.NOs.19067 to 19069 of 1999, etc. batch, wherein the present modified scheme came to be upheld by the learned Judge. Learned counsel, by referring to paragraph 87 of the said order, contended that a distinction has been made by the learned Judge as between a mini bus and a regular stage carriage and therefore the grant of a mini bus permit should not be equated to that of a regular stage carriage service. Since we have elaborately dealt with the said issue while holding that such a construction is not permissible under the provisions of the Motor Vehicles Act, we are unable to accept the stand of the learned counsel for the first respondent based on the order of the learned Single Judge referred to above.

29.As far as the order of the learned Single Judge impugned herein is concerned, we find that the learned Judge was of the view that holding of number of mini bus permits, both by the appellant and by the first respondent, by itself would deprive the appellant to challenge the grant made in favour of the first respondent. In fact, the learned Single Judge failed to consider the question of law raised by the appellant as regards the embargo created under the terms of the scheme for the grant of a mini bus permit when already stage carriage permit by way of grant of mini bus permit was operating in the route and where the overlapping existed beyond the permissible limit of 4 kms. Therefore, the order of the learned Single Judge cannot be sustained and the same is liable to be set aside.

30.In view of our conclusions, we hold that Writ Appeal No.136/2006 preferred against the order in W.P.No.10482/2005, dated 29.03.2006, should succeed and consequently, while setting aside the order of the learned Single Judge, the order of the third respondent dated 28.11.2003 passed in Appeal No.1409/2002 is also set aside. Since the basis of the grant of permit, dated 18.10.2004 in proceedings No.42681/A5/2002, was the order of the third respondent, dated 28.10.2003 in Appeal No.1409/2002, the said order has no legs to stand and consequently the order of the third respondent Tribunal, dated 18.10.2005, passed in I.A.No.455/2005 in R.P.No.12/2005 is also set aside. While holding that the appellant is entitled for stay as prayed in I.A.No.455/2005 in R.P.No.112/2005, we hasten to add that in the light of the fact that the very basis of the grant made in favour of the first respondent, dated 18.10.2004/07.07.2005 in proceedings No.42681/A5/2002 and the order dated 28.11.2003 in Appeal No.1409/2002 itself cannot stand we direct the third respondent Tribunal to pass appropriate orders in R.P.No.112/2005.

29.Both the Writ Appeals stand allowed. No costs. Connected WAMP(MD)Nos.190 and 191 of 2006 are closed.

To:

1.Regional Transport Authority,
Virudhunagar District,
Virudhunagar.

2.The State Transport Appellate
Tribunal, High Court Campus,
Chennai-600 104.

□