

IN THE HIGH COURT OF JUDICATURE AT MADRAS
[Special Original Jurisdiction]

W.P No. 4314 of 2019

Coonoor Consumer Protection Association,
No. 57-60, YMCA,
Mount Road,
Coonoor,
The Nilgiris – 643 102.
rep. by its President.

.... Petitioner

Vs

1. The Secretary,
Home (Transport VI) Department,
Fort St. George,
Chennai – 09.

2. The Regional Transport Officer,
Udhagamandalam,
The Nilgiris.

3. The Managing Director,
Tamil Nadu State Transport Corporation (Coimbatore) Ltd.,
Mettupallayam Road,
Coimbatore – 43.

4. The General Manager,
Tamil Nadu State Transport Corporation (Coimbatore) Ltd.,
Udagamandalam Division,
Central Bus stand,
Udagamanadalam,
The Nilgiris,

... Respondents

AFFIDAVIT OF THE S. MANOGARAN

I, S. Manogaran, Son of K.H. Sundaran, Hindu, aged about 63 years, and residing at 11/140, Kodari Village and post, The Nilgiris District, now temporarily come down to Chennai, do hereby solemnly affirm and sincerely states as follows:-

1. I am the President of the petitioner association and as such I am well acquainted with facts of this case from the office files. I have not filed any other case or writ petition for the same relief which is sought hereunder. My Aadhar Number is 7825 2744 1849.

2. This public interest litigation is filed for the benefit of the general public of the Nilgiris District. There is no personal interest is involved. This writ petition is filed only out of the funds of the petitioner association. I am aware that any of the information furnished hereunder, if it is found to be incorrect I am liable for all consequences. The funds for the present petition is by way of member subscription of the association.

3. I submit that petitioner is a Society registered under Tamil Nadu Societies Registration Act, with the registration No. 171 of 2002, has taken up many of the consumer issues in the Nilgiris District. The present writ petition is pertaining to illegal and excess charging by the 3rd and 4th respondents, which is happening for more than a decade. The petitioner states that earlier, this petitioner association filed W.P No. 19225 of 2018 seeking for a direction to forbear the 3rd and 4th respondents from collecting fare excess than the rate fixed by the 1st respondent vide G.O (Ms) No. 48, Home Department dated 28.01.2018. The said writ petition was disposed by this Hon'ble Court by an order dated 07.08.2018, directing this petitioner association to make a representation and the respondents were directed to provide appropriate reply to our representation.

4. I submit that as per the above order of the Hon'ble Court representation dated 04.09.2018 was submitted to the respondents herein. By way of reply to the said representation the 2nd respondent by his order dated 11.10.2018 had categorically admitted that as ordered in G.O (Ms) No. 48, Home Department dated 28.01.2018 fare in respect of TNSTC Buses in Nilgiris duly approved in ordinary service category for which permit was issued by them. In spite of this categorical admission by the 2nd respondent, who is the competent Authority that there was no Express Service permit was issued to any of the buses of the 3rd and 4th respondents, the 4th respondent vide his impugned order dated 13.09.2018 making an attempt to justify their illegal action of collecting excess fare on totally unsustainable grounds. The reasons stated by the 4th respondent are illegal and contrary to the provisions of Motor Vehicles Act. hence this present writ petition.

4. It is submitted that the Nilgiris, which is popularly known as Queen of Hills is to the extent of -2545 sq.kmts. Majority of the native people are residing in more than 500 small villages, which are scattered throughout the District. Because of its hilly terrain, bicycle, two wheelers, bullockcarts etc., which are common mans' mode of transport at plains, cannot be used here for the purpose of transport. By and large, the general publics are depending upon only the buses operated by the 3rd & 4th respondents, for thier transport facilities. No

private stage carrier is operating in this District. Therefore, the 4th respondent is the monopoly operator throughout the District. Every road within this district are already classified as “Ghat Road” within the meaning of Motor Vehicles Act 1988. Therefore, whenever there is a fare revision the 1st and 2nd respondent themselves are fixing 20% extra than the fares applicable to the plains. The rationale behind 20% additional cost for the Ghat Road by itself is questionable, hence the petitioner association is reserving its right to challenge such a fixation by way of a separate writ petition.

5. It is submitted that though this grievance is more than a decade old, before referring to the earlier developments, it will be pertinent to mention the present scenario subsequent to the recent revision of fare effected by the 1st and 2nd respondents during January 2018. The 1st respondent vide G.O.Ms. No. 34 dated 19.01.2018 had revised the fare for their stage carriers operating throughout state. Subsequently, vide G.O.Ms. No. 48, dated 28.01.2018, there was a marginal reduction in the fare. As per Notification - III issued under the said Government Orders, 58 paise per k.m is the fare fixed for their stage carriers plying as “Ordinary Service” on roads in plains, provided that for a minimum distance of 10 kilometers a fare not exceeding Rs. 6.00 may be charged. As per clause 2, the fare for the Ghat Roads will be 20% addition to the basic fare fixed for the plains. Further, the minimum distance of 10 kms is reduced as 6 kms for the Ghat Road.

6. It is submitted that as per the information furnished by the 2nd respondent on 27.04.2018 under the Right to Information Act, number of stage carriages permits issued to the 4th respondent Branch is 349. The 2nd respondent had categorically admitted that all these carriages are “Ordinary services” as defined under the provisions of Motor Vehicles Act and no permit was granted for any “Express Service”. Same stand was once again reiterated by the 2nd respondent by their present order dated 11.10.2018. Further the 2nd respondent also issued the revised Fair Chart to the various routes. The fare chart as approved by the 2nd respondent will prove that fare fixed by them is strictly as per G.O (Ms) No. 48 dated 28.01.2018, with the 20% additional cost as applicable to the “Ghat Roads” for “Ordinary Service”

7. It is submitted that to establish that the 3rd & 4th respondents are regularly charging excess fare I myself had travelled on various routes in the month of May 2018 and the tickets issued by the 4th respondent are produced hereby which may be treated as part and parcel of this affidavit. On 23.05.2018, I had travelled between Aravankadu and Coonoor in a bus bearing no. T.N. 38 N 2881,

which is an “ordinary service” as per the statement of the 2nd respondent (S.No. 106 of the list dated 27.04.2018). The distance between Aravankadu and Coonoor is 6.7 kmts. and the fare approved is Rs. 7/-. Whereas the 4th respondent had charged Rs. 11 and collected the same. On 24.05.2018, I had travelled between Ooty and Coonoor in their stage carriage bearing No. TN. 38 N 2849, which is an “ordinary service” as per the statement of the 2nd respondent (S.No. 100). The distance between Ooty and Coonoor is 20 Kms. and the approved fare is Rs. 16/-. Whereas the 4th respondent issued a ticket for Rs. 20/- and collected the same amount. On 27.05.2018, I had travelled between Ooty and Aravankadu in their stage carriage bearing No. TN 38 N 2368, which is an “ordinary service” as per the statement of the 2nd respondent (S.No. 58) The distance between Ooty and Aravankadu is 14.3 kms. and fare approved is Rs. 11/-. Whereas, the 4th respondent issued a ticket for Rs. 14/- and collected the same. On 05.06.2018, I had travelled between Mettupalayam and Coonoor in their stage carriage bearing No. TN 38 N 2966, which is an “ordinary service” as per the statement of the 2nd respondent (S.No. 111) The distance between Mettupalayam and Coonoor is 34.3 kms. and fare approved is Rs. 25/-, whereas, 4th respondent issued a ticket for Rs. 32/- and collected the same.

8. It is submitted that details as above mentioned will establish beyond doubt that the 3rd and 4th respondents are collecting excess fare, thus unfairly enriching themselves, throughout the last decade. The magnitude of this unjust enrichment may be explained in the following terms. From the above details it is obvious that every passenger is made to pay a minimum of Rs.4.00/- extra on his every trip of journey. At an average a bus carries not less than 40 passengers in a trip. Therefore the excess collection by a particular bus on its single trip is not less than Rs.160/-. That particular bus may ply minimum of 10 single trips a day. Therefore in a particular date the excess collection by a particular bus may not be less than Rs.1,600/-. Admitted by the 2nd respondent there are 349 stage carriers are operated by the 4th respondent. Therefore in a particular day excess collection by the 4th respondent may be less than Rs. 5,58,400/-(1,600 X 349). Accordingly for a month the excess collection may be around Rs.1,67,52,000/-. At the above rate, for a year the excess collection may Rs.20,10,24,000/-. This illegal enrichment is continuously happening for the last 10 years.

9. It is further submitted that because of their shy nature and ignorance the native people of this District did not protest against this illegal and excess

charging, though it is happening during the entire last decade. Moreover the general public are handicapped with a disadvantage that they cannot use bicycle and bullockcarts which is the common men mode of transport in the plains. There is no private bus operator also. Therefore the native people have no other option than to solely depend upon the buses of the 4th respondent alone. However, by the year 2010 when this issue was taken up by the petitioner association protest were held and representations were made but there was no proper response from the 3rd and 4th respondent. It was only after repeated protest and agitations the 3rd and 4th respondents made an attempt to justify their action by stating that their stage carriages are “Express Services” therefore they are entitle to charge extra. Though the 3rd and 4th respondents are claiming that their fleets are Express Service none of their bus had the display of approved fare chart as well as the route map which is mandatory under the provisions of the Act.

10. It is further submitted that on the other hand it was the clear stand of the 2nd respondent by their letter dated 11.02.2013, that they have not permitted any Express Bus Service to be operated within the Nilgiris District. In the above circumstances, the 2nd respondent by the proceedings dated 19.12.2013 addressed to the 3rd respondents had specifically stated that all the routes within the Nilgiris District is within 80 kms, equally, the criteria of 25 kms between the successive stops also cannot be made applicable to any of the buses operating from Nilgiris District to neighbouring Coimbatore, Tirupur, Erode and Mettupalayam. Therefore, for all the buses operating in the Nilgiris District express charge should not be collected and any violation will be viewed seriously. In spite of these instructions, the 4th respondent continued to collect excess charges.

11. It is submitted that under those circumstances having left with no other option a consumer complaint was filed before the District Consumer Disputes Redressal Forum, Nilgiris in C.C. No. 1 of 2014, alleging that excess charging by the 4th respondent will amount to Unfair Trade Practice. After an elaborate trial, the District Forum by its order dated 14.11.2014 had found that the 3rd respondent is indulging in excess charging, hence, they had committed Unfair Trade Practice. Accordingly, my complaint was allowed and the 3rd & 4th respondents were made to pay compensation, though nominally. The appeal filed by the 3rd respondent before the State Forum was also dismissed.

12. It is further submitted that inspite of all the above the 3rd & 4th respondents continued to charge excess rate, than what was duly approved by

the 1st and 2nd respondents. Representations were made continuously. Whenever the matter was represented, the 3rd and 4th respondents are only diverting the issue. It was only in the above circumstances as above mentioned the W.P No.19225 of 2018 was filed by this petitioner Association. Whereas the said writ petition was disposed at the admission stage directing this petitioner association to submit a representation and the respondents were directed to provide appropriate reply to our representation. Accordingly representation dated 04.09.2018 was submitted to the respondents herein along with the copy of the order passed by this Hon'ble Court. By way of reply to the said representation the 2nd respondent by his order dated 11.10.2018 had categorically admitted that as ordered in G.O (Ms) No. 48, Home Department dated 28.01.2018 fare in respect of TNSTC Buses in Nilgiris duly approved in ordinary service category for which permit was issued by them. In spite of the above categorical admission by the 2nd respondent, who is the competent Authority to fix the fare that there was no Express Service permit was issued to any of the TNSTC buses in the Nilgiris District, the 4th respondent vide his impugned order dated 13.09.2018 is attempting to justify their illegal action on false and unsustainable reasons. The statement of the 4th respondent that their bus bearing No. TN38 N 2881 is plying between Ooty to Madurai is deliberately false. As per the stage carriage permit issued by the 2nd respondent the said bus is to ply between Coimbatore to Ooty. Similarly the remaining statements were also deliberately false and misleading.

I submit that against that order of the 4th respondent dated 13.09.2018 we have no other alternative efficacious remedy than to approach this Hon'ble High Court under Article 226 of the Constitution of India for the following among other

GROUND

- a) The action of the respondents charging excess fare than the fare as it is fixed by the 1st and 2nd respondents vide G.O.(Ms.) No. 48 Home Department dated 28.01.2018 is illegal and violative of Article 14 & 21 of the Constitution of India.
- b) The excess charging by the 3rd & 4th respondents is violative of Section 67 of the Motor Vehicles Act 1988 wherein the 1st respondent alone is empowered to fix the fares for the stage carriages.
- c) The 2nd respondent, the Competent Authority to fix the fare for the Stage carriages of the 3rd and 4th respondents by its proceedings dated

11.10.2018 had categorically admitted that as per G.O.(Ms.) No. 48 dated 28.01.2018, fare in respect of TNSTC Buses in Nilgiris duly approved in ordinary service category for which permit was issued by them. Therefore the reason stated by the 4th respondents in the impugned order that as per G.O (Ms) No. 640 dated 16.07.2010, express fare is collected for the buses plying more than 80 Kms. is illegal and unsustainable.

- d) The further reasons stated by the 4th respondent that as per the wishes and convenience of the general public of the Ooty region the buses are being stopped at every point is violative of various provision of the Tamil Nadu Motor Vehicle Act and Tamil Nadu Motor Vehicle Rules, 1989.
- e) The statement of the 4th respondent that the fare is collected in accordance as per the Government order is false the fact that they are charging excess than what was fixed by the 2nd respondent was clearly demonstrated along with the supporting tickets.
- f) Right from the year 2013 it is the specific stand of the 2nd respondent that they have not issued any "Express Service" permit to any of the stage carriages of the 4th respondent by its earlier proceedings dated 19.12.2013 as well as that of 27.04.2018. The 2nd respondent confirmed that all the 349 stage carriages are only "Ordinary Services". Therefore charging the express fare is illegal and unjust.
- g) The Fare Chart issued by the 2nd respondent on 21.02.2018 also confirms that the entire fleet of stage carriages of the 4th respondent are only ordinary services. Hence, excess charging is illegal.
- h) The District Consumer Dispute Redressal Forum, Nilgiris in C.C. No. 1 of 2014 had categorically found that the 4th respondent is charging fare in excess than what is legally fixed, hence, they have committed Unfair Trade Practice, therefore 3rd & 4th respondents, made liable to pay adequate compensation. The appeal filed by the 3rd respondent in F.A.Sr. No. 386 of 2015 was also dismissed.
- i) The excess charges being collected by the 3rd respondent is very substantial and at an average it is not less than Rs. 4/- on every ticket.

Therefore, the total extent of unjust enrichment by the 3rd respondent is very substantial and it will amount to fraud on public.

13. It is submitted that this unjust enrichment by the 3rd respondent is perpetuated over the last decade. Every travelling passenger are made to pay the excess amounts, which is against the spirit of a welfare state. All representations were in vain. The public protest were simply ignored. I am advised to submit that the petitioner have a prima facie case to succeed in the writ petition. Therefore in view of the public interest it is just and necessary that the 3rd & 4th respondents must be restrained forthwith from charging fare which is in excess than the fare fixed by the 1st respondent Government.

14. For the reasons stated in the above paras, it is therefore prayed that this Hon'ble Court may be pleased to issue an order of interim injunction restraining the 3rd & 4th respondents from collecting any rate in excess than the rate fixed by the 1st respondent in Notification No. III, in G.O.(Ms.) No. 48, Home (Transport -VII) Department, dated 28.01.2008 in so far as the Ghat Roads within the Nilgiris District pending disposal of the above writ petition and thus render justice.

For the reasons stated in the above paras it is therefore, most humbly prayed that this Hon'ble Court may be pleased to issue a appropriate writ, order or direction and in particular issue a writ in the nature of CERTIORIFIED **MANDAMUS** after calling for the records of the 4th respondent in his proceedings No. 1091am(N)/TNSTC/or/2008 and quash the order dated 13.09.2018 and subsequently issue appropriate direction forbearing the 3rd & 4th respondents from collecting fare in excess than the rate fixed by the 1st respondent in Notification No. III, in G.O.(Ms.) No. 48, Home (Transport -VII) Department, dated 28.01.2018 for their buses at Nilgiris District and pass such other orders or direction this Hon'ble Court may deem fit and necessary under the circumstances of this case and thus render justice.

Solemnly affirmed at Chennai
on this day of Dec, 2018
and signed his name in my
presence

BEFORE ME

ADVOCATE : CHENNAI

