

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2015

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.22351 of 2015
and M.P.No.1 of 2015

Subin Jacob

[Petitioner]

Vs

1 The State of Tamil Nadu
Rep. by Secretary
Home (Transport) Department
Fort St. George Chennai-9.

2 The Regional Transport Officer
Salem(West) Salem District

3 The Motor Vehicle Inspector Grade-I
Regional Transport Office
Salem(West) Salem District

[Respondents]

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records of the third respondent in respect of the petitioner vehicle bearing Registration No.KL 06 G 8855 culminating in the impugned Vehicle Inspection Record No.440726 dated 18.7.2015 and quash the same.

For petitioner : Mr.N.Karthikeyan

For respondents : Mr.A.Kumar, SGP

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O R D E R

Heard the learned counsel for the petitioner and Mr.A.Kumar, learned Special Government Pleader, who took notice for the respondents and with their consent, the main writ petition itself is

taken up for disposal.

2. This writ petition has been filed by Subin Jacob, seeking a writ of certiorari, to call for the records of the 3rd respondent in respect of the petitioner's vehicle bearing Registration No.KL 06 G 8855, culminating in the impugned Vehicle Inspection Record No.440726 dated 18.7.2015 and to quash the same.

3. In the said impugned order dated 18.07.2015, the Motor Vehicles Inspector Grade I, the 3rd respondent herein, after stating that the petitioner's vehicle, having valid permit from 14.07.2015 to 12.08.2015, while proceeding from Bangalore to Kottiyam, was stopped and checked and while noticing the following alleged violations:-

- (i) Original R/C Book and Permit original and original Insurance certificate not produced at the time of checking
- (ii) The vehicle plied with 36 Adult passengers and individual fair collected against permit condition
- (iii) PUC certificate not produced at the time of checking
- (iv) Fitness certificate not produced at the time of checking".

has detained the vehicle at RTO Salem (west) for the above reason. Aggrieved by the same, the petitioner has come to this Court.

4.1 Learned counsel for the petitioner finding fault with the approach adopted by the 3rd respondent, submitted that the petitioner being the owner of the Ashok Leyland Bus bearing Registration No.KL 06 G 8855, has obtained permit for the said bus from the Regional Transport Authority, Idukki in Permit No.P.Co.6/108/2015, having validity for all fit roads in Kerala State except those prohibited by any law in force and valid for the period from 12.02.2015 to 11.02.2020. He would further submit that the petitioner's vehicle is also having the seating capacity of 37 in number. While so, the petitioner, being a tourist operator, has organized a tour starting from Idukki to Bangalore enroute Palakkad-Coimbatore-Salem-Bangalore and return in the same route. It is his further submission that the petitioner claims to have obtained permit for the said bus for the said tour from the Regional Transport Authority, Idukki in Special Permit No.P.Sp.6/80/2015 dated 14.07.2015.

4.2 Therefore, learned counsel appearing for the petitioner would submit that when the permit obtained by the petitioner is valid

throughout India without counter signature of any other Regional/State Transport Authority for a valid period commencing from 14.07.2015 to 12.08.2015, the 3rd respondent ought not to have detained the vehicle.

4.3 According to the learned counsel for the petitioner, the further claim of the petitioner is that after starting the tour programme on 14.07.2015 around 08.00 p.m. from Idukki, the vehicle entered Tamil Nadu border at K.G.Chavadi Checkpot, Coimbatore District and was checked and thereafter, it was permitted to proceed further. This is evident from the seal in the Special Permit. Subsequently, the petitioner's vehicle proceeded to Bangalore via Salem, and again, on return, starting from Bangalore on 17.07.2015, his vehicle was stopped at the Omalur Tollgate Checkpost, salem at around mid night. As a result, the 3rd respondent has off loaded all the passengers and seized the vehicle and also issued the Inspection Record bearing No.440726 dated 18.07.2015, the impugned order, mentioning four reasons for detention of the vehicle.

4.3 According to the learned counsel for the petitioner, as far as the 1st ground cited for detention of the vehicle viz., Original R/C Book and Permit original and original Insurance certificate not produced at the time of checking is concerned, even though the crew in the bus, in order to satisfy the 3rd respondent, by producing the order of this Court made in W.P.No.16671 of 2015, wherein it has been specifically mentioned that the very same vehicle was seized and released, submitted that the original records were retained by the Motor Vehicle Inspector at K.G.Chavadi Checkpost, Coimbatore District and therefore, the Original R/C Book and Permit original and original Insurance certificate could not be produced. Similarly, with regard to the 3rd and 4th grounds for detention of the vehicle, viz., non production of PUC certificate and Fitness certificate, the crew of the vehicle explained to the 3rd respondent that all these documents were also in the custody of the Motor Vehicle Inspector, K.G.Chavadi, Coimbatore, and according to the learned counsel for the petitioner, as far as the 2nd ground for the detention of the vehicle viz., The vehicle plied with 36 Adult passengers and individual fair collected against permit condition is concerned, the crew of the vehicle further explained that the allegation with regard to collection of individual fair against the permit condition also cannot be put against the petitioner as he has not collected individual fair.

4.4 According to the learned counsel, in any event, on the basis of the reasoning given by the 3rd respondent in the impugned order that the petitioner has committed compoundable offence, even after making an offer to pay the compounding fee, the 3rd respondent has

refused to release the vehicle by accepting the compounding fee.

4.5 In this background, the contention of the learned counsel for the petitioner is that when the 3rd respondent has taken a specific and categorical stand in the impugned detention order that the petitioner has committed an offence which is compoundable in nature, he has no authority to detain the vehicle, resultantly causing unimaginable hardships to the passengers and also to the owner of the vehicle. Further, according to him, when this Court has already in the writ petition in W.P.No.16671 of 2015 dated 15.06.2015 has directed the respondents to release the vehicle forthwith to the petitioner subject to the result of the said writ petition, as the alleged offence is compoundable in nature, when the said order copy dated 15.06.2015 made in W.P.No.16671 of 2015 was produced by the crew in the bus, the respondent ought not to have detained the vehicle. It is on these basis, the learned counsel has prayed for immediate release of the vehicle on payment of compounding fee.

5. Mr.A.Kumar, learned Special Government Pleader appearing for the respondents, refuting the above allegations submitted that the 3rd respondent, who has got every right to intercept any vehicle going through the State, has rightly stopped the vehicle and on further demand from the crew of the petitioner's vehicle for production of Original R/C Book and Permit original and original Insurance certificate, PUC certificate, Fitness certificate, none of them were produced. According to him, on further enquiry, it was found that the driver of the vehicle has collected individual fairs as against the permit. It is the contention of the learned Special Government Pleader that when the petitioner has got permit which is valid from 14.07.2015 to 12.08.2015, the crew of the vehicle should possess all the vehicle documents viz., Original R/C Book and Permit original and original Insurance certificate, PUC certificate and fitness certificate. Since none of the documents was produced by the petitioner, the 3rd respondent has rightly detained the vehicle.

6. But, this Court is not able to find any justification in the arguments advanced by the learned Special Government Pleader appearing for the respondents. The reason is that a perusal of the impugned order shows that at the time of interception of the vehicle, the following documents are not available:-

- (i) Original R/C Book and Permit original
- (ii) Original Insurance certificate
- (iii) PUC certificate and
- (iv) Fitness certificate

and further it was noticed that individual fair was collected against permit condition from 37 passengers and hence the detention order was issued. But, on a further reading of the impugned order, it is

crystal clear that the 3rd respondent has stated that the offence committed is compoundable in nature. Therefore, the 3rd respondent could have released the vehicle on receipt of the compounding fee offered by the petitioner. However, the 3rd respondent has not done it.

7. As the petitioner has come forward to pay the compounding fee, this Court, hereby directs the 3rd respondent to accept the compounding fee to be quantified by him on production of the order copy and on receipt of the compounding fee from the petitioner, the 3rd respondent is directed to release the vehicle forthwith.

The writ petition is disposed of with the above direction. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

1 The Secretary
The State of Tamil Nadu
Home (Transport) Department
Fort St. George Chennai-9.

2 The Regional Transport Officer
Salem(West) Salem District

3 The Motor Vehicle Inspector Grade-I
Regional Transport Office
Salem(West) Salem District

1 CC to the Government Pleader, SR.No. 38046

NM (CO)
PSI (27.07.2015)

W.P.No.22351 of 2015