

In the High Court of Judicature at Madras

Dated : 20.10.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.35941 of 2016

R.Rathinasamy

...Petitioner

Vs

1.The Registering Authority-cum-
Secretary, Regional Transport
Authority (Tirupur North),
Tirupur-3.

2.The Assistant Registering Authority
(MVI), Grade-1, Tirupur North,
Tirupur-3.

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Mandamus directing the first respondent to accord permission allowing the replacement of the vehicle bearing Regn.No.TN-23-N-0414 by another new vehicle as per application dated 4.10.2016 of the petitioner notwithstanding the pendency of a decision pursuant to memo dated 27.9.2016 of the first respondent.

For Petitioner : Mr.T.Padmanabhan
For Respondents : Mr.S.Diwakar, SGP

ORDER

Mr.S.Diwakar, learned Special Government Pleader accepts notice for the respondents. Heard both. By consent, the writ petition itself is taken up

for final disposal.

2. The petitioner seeks a direction to the first respondent to grant permission to replace the vehicle bearing Regn.No.TN-23-N-0414 with another new vehicle by considering his application notwithstanding the pendency of the show cause notice dated 27.9.2016. The said cause notice came to be issued pursuant to an application given by the petitioner for renewal of fitness certificate for the vehicle bearing Regn.No.TN-23-N-0414. The said show cause notice has been issued under Section 55(5) of the Motor Vehicles Act, 1988, wherein the allegation made is that the chassis number of the vehicle does not tally with the records. The petitioner is yet to submit their reply. In the meantime, the petitioner thought fit to replace the vehicle itself and had given an application dated 4.10.2016, which is now pending before the first respondent.

3. The first respondent has given written instructions to the Government Pleader vide letter dated 18.10.2016, from which, it is seen that after the direction issued in W.P.No.32058 of 2016, the Motor Vehicles Inspector concerned inspected the vehicle and found certain discrepancies, based on which, the first respondent issued the show cause notice dated 27.9.2016 and the matter is now pending for adjudication.

4. In the meantime, since the petitioner has sought for replacement of the vehicle, this court is of the view that the application for renewal of the vehicle can be considered separately de hors the fact that the said show

cause notice is pending against the petitioner in respect of an application for renewal of fitness certificate. This observation is made in spite of the fact that if an application for replacement is considered, then the issue as to whether the petitioner should be granted renewal of fitness certificate as per the earlier application itself will become academic. However, if there is any fraud or illegality committed by the petitioner, the mere grant of permission to replace the vehicle will not efface the illegality. Hence, this Court is of the view that both the applications should be processed simultaneously and the application for replacement of the vehicle need not be kept pending solely for the reason that the show cause notice dated 27.9.2016 is pending.

5. To ensure that the provisions of the Statute are strictly adhered to, the writ petition is disposed of with the following directions :

"(i) The petitioner is directed to submit a reply to the show cause notice dated 27.9.2016 within a period of one week from the date of receipt of a copy of this order.

(ii) On receipt of the reply, the first respondent shall consider the same, afford an opportunity of personal hearing and take a decision on the show cause notice.

(iii) Without prejudice to the above direction, the first respondent is directed to consider the petitioner's application for replacement of the vehicle dated 4.10.2016 and pass orders on merits and in accordance with law.

T.S.SIVAGNANAM,J

RS

(iv) It is open to the first respondent to have a common personal hearing both on the explanation to the show cause notice as well as with regard to the application for replacement of the vehicle. But, separate orders shall be passed by the first respondent on the same and

(v) The above exercise shall be complied with within a period of two weeks from the date of receipt of a copy of this order."

No costs.

20.10.2016

Internet : Yes

To

- 1.The Registering Authority-cum-Secretary, Regional Transport Authority (Tirupur North), Tirupur-3.
- 2.The Assistant Registering Authority (MVI), Grade-1, Tirupur North, Tirupur-3.

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