BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 01.02.2017

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBBIAH**
**AND**
**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

W.A.[MD].No.1217 of 2016
and
C.M.P(MD).No.8045 of 2016

Minor S.Santhanavetrivel,
Rep by Father & Guardian,
D.S.Senthilvel,
69, Muthuramalingapuram, EB Main Road,
Pykara, Madurai 625 004. : Appellant

Vs.

1.The Joint Transport Commissioner,
Cum Appellate Authority,
Madurai.

2.The Regional Transport Officer,
Madurai (North), Madurai 7. : Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 21.07.2016 made in W.P.(MD).No.12805 of 2016, on the file of this Court.

**Prayer in WP(MD). 12805/ 2016 :**

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records relating to the R.No. 3669/A2/2015 dated 07.05.2016 passed by the 1st Respondent herein, quash the same and direct the 2nd Respondent to refund the fine amount as already paid.

For Appellant : Mr.M.Kalyanasundaram
Senior Counsel
For Mr.T.Padmanaban

For Respondents : Mr.S.Chandrasekar
Government Advocate

**JUDGMENT**
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[Judgment of the Court was made by **R.SUBBIAH, J.**]



This Writ Appeal has been filed as against the order dated 21.07.2016 made in W.P.(MD).No.12805 of 2016.

2. The case of the appellant before the learned Single Judge is that he is having a Spare Bus bearing Registration No.TN-58-AF-2291. The appellant has been given permit, which is valid up to 06.02.2017. The Motor Vehicle Inspector/Grade-II, Enforcement Wing, Coimbatore, on 21.10.2015, at about 03.10 A.M, in front of Sulur Aero Coimbatore, seized the vehicle on the following violations:-

1. "the vehicle is covered by spare bus permit to ply in place of route buses of the permit holder in the event of temporary break down etc. No evidence was produced to prove that the vehicle is permitted to ply on the route Coimbatore to Madurai. But at the time of check, the vehicle was proceeding from Coimbatore to Madurai with 57 passengers. Thus, the vehicle was operated on an unauthorized route without a valid permit.
2. Trip sheet was not maintained and produced for verification.
3. The driving license was not carried and produced for verification.
4. A.V.T.form not carried by the driver.
5. Four dazzling head lamp were fitted in the vehicle.
6. Multi-tone air horn was fitted in the vehicle.
7. Fitness certificate was not carried and produced for verification.
8. Insurance certificate was not carried and produced for verification.
9. The driver was not in the prescribed uniform.
10. Fare has been collected from individual passengers and the vehicle was operated unauthorisedly from Coimbatore to Madurai as an express omnibus."

3. The appellant, immediately, gave an explanation, on 23.10.2015, stating that the vehicle was actually sent to work shop for carrying out repair works in Pollachi. Since the workshop at Pollachi was closed for pooja holidays and the vehicle developed some repairs, the driver had taken the vehicle to Coimbatore and returned to Madurai empty. At that time, the vehicle was checked by the officials of the respondent on the ground that the passengers were carried by collecting individual fare. But, no tickets were issued to the passengers to travel in the vehicle in question. Since the said vehicle was not released, the appellant filed W.P.(MD).No.19886 of 2015 to release the vehicle. The learned Single Judge of this Court, by order dated 02.11.2015, directed the Transport Authority to release the vehicle, by collecting payment of Rs.60,000/-.

4. The Regional Transport Authority, Madurai, by his proceedings dated 04.11.2015, imposed punishment, suspending the permit for 30 days with an option to compound the offence for Rs.9,000/- in lieu of suspension under Section 86(1) of Motor Vehicles Act, 1988, read with Rule 206 of the Tamil Nadu Motor Vehicle Rules, 1989 and the appellant paid the said amount. Accordingly, the appellant remitted the said amount, on 04.11.2015. Thereafter, the appellant filed an appeal before the first

respondent seeking to refund the said amount. The first respondent, by his proceedings, dated 07.05.2016, finding that the permit holder/appellant has used the spare bus as a contract carriage Omnibus for hire and stated that the provision of the said act is attracting payment of additional tax, held that the appellant is liable to pay additional tax of Rs.1,52,625/-. Challenging the said order, the appellant filed W.P.(MD).No.12805 of 2016 and for a consequential direction to the second respondent to refund the fine amount already paid.

5. The learned Single Judge of this Court, by order dated 21.07.2016, has dismissed the Writ Petition. Aggrieved over the same, the appellant has come up with this Writ Appeal.

6. The only submission made by the learned counsel for the appellant is that the impugned order was passed, without affording opportunity of hearing to the appellant. Had the opportunity of hearing been granted to the appellant, he would have put forth his contentions and in that event, the impugned order might not have been passed. In this regard, the learned counsel for the appellant relied upon the Judgment of this Court in **A.Sadiq, Vs. The Regional Transport Officer, [W.P.No.2035 of 2005, dated 04.03.2008].**

7. The learned Government Advocate for the respondents opposed the prayer of the appellant stating that as per Rule 10-A of the Tamil Nadu Motor Vehicle Rules, 1989, there is no provision to give personal hearing to him. Therefore, the learned Government Advocate sought for dismissal of the Writ Appeal.

8. We have considered the above submissions and keeping in mind the said submissions made on either side, we have carefully gone through the materials available on record.

9. In our considered view, before passing the order, the first respondent should have followed the principles of natural justice. In similar circumstances, in the case of **A.Sadiq, Vs. The Regional Transport Officer, [W.P.No.2035 of 2005, dated 04.03.2008]**, it has been held as follows:-

> "In similar circumstances, this Court, following the order made in W.P.No.26422 of 2003, daed 22.09.2003, has set aside the demand of tax on the ground that there is violation of the principles of natural justice. The decision relied on by the learned counsel for the petitioner in W.P.No.36152 of 2003 is applicable to the facts of the present case to the limited extent that the petitioner was not given any notice to put forth his objections".



10. Following the same, the order dated 21.07.2016 made in W.P.(MD).No.12805 of 2016, passed by the learned Single Judge and the also impugned order dated 07.05.2016 passed by the first respondent are set aside and the matter is remitted back to the first

respondent for fresh consideration, after affording on opportunity of hearing to the appellant and thereafter pass appropriate orders on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this Judgment. It is made clear that this Court has not expressed any opinion on the merits of the case and it is for the first respondent to decide the issue purely on merits.

11. The Writ Appeal is disposed of on the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-I)

/TRUE COPY/

Sub Assistant Registrar

To

1.The Joint Transport Commissioner,
Cum Appellate Authority,
Madurai.

2.The Regional Transport Officer,
Madurai (North), Madurai 7.

+1 cc to MR.T.Padmanaban, ADVOCATE, SR NO:5440
+1cc to M/S.THE SPECIAL GOVERNMENT PLEADER, SR NO: 5698

NB
SVA/BS/16.02.2017/4P/5C

JUDGMENT MADE IN
W.A.[MD].No.1217 of 2016
01.02.2017