



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2017

C O R A M

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THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.(MD)No.1198 of 2017

Vinod

... Petitioner

Vs.

The Regional Transport Officer,
Marthandam,
Kanyakumari District.

...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent to release the petitioner's Omni Bus Registration bearing No.KL 37A 7079 which was seized on 31.12.2016.

For Petitioner : Mr.A.C.Asaithambi
For Respondent : Mr.S.Sades Kumar,
Additional Government Pleader.

O R D E R

This Writ Petition has been filed for the issuance of Writ of Mandamus, directing the respondent to release the petitioner's Omni Bus Registration bearing No.KL 37A 7079 which was seized on 31.12.2016.

2.Heard Mr.A.C.Asaithambi, learned counsel appearing for the petitioner and Mr.S.Sades Kumar, learned Additional Government Pleader, who takes notice on behalf of the respondent.

3.This Court, order dated 15.11.2017 in W.M.P.(MD)No.4357 of 2017 in W.P.(MD)No.5413 of 2017 passed interim order, which reads as follows:-

"The Petitioner is the owner of the Omni bus bearing Registration No.KL 37A 7079, registered in the State of Kerala. The said vehicle of the Petitioner was stopped and checked at Thukalay on 31.12.2016. It was then noticed that the vehicle did not have special permit to enter into the State of Tamil Nadu, which was in violation of Section 88 (1) of the Motor Vehicle Act, 1988. Hence, the said vehicle was seized and handed over to the Kotticode Police Station in Tamil Nadu, and tax and penalty was levied for that vehicle for the quarter ending 31.12.2016 in terms of the



Circular of Transport Commissioner bearing No.78/96, as per details shown below:-

Tax for 49 seats @ Rs.3,500 per seat	- Rs.1,71,500
Penalty	- <u>Rs.1,71,500</u>
Total Tax	- <u>Rs.3,43,000</u>

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2.The petitioner had remitted a sum of Rs.1,71,500/- (Rupees One Lakh Seventy One Thousand and Five Hundred only) vide Chalan No.M.9102084 on 09.01.2017 at the Regional Transport Office in Marthandam and the remaining sum of Rs.1,71,500/- was due from him. In such circumstances, a show cause notice bearing Memo No.00250/A3/17 dated 13.01.2017 was issued by the Respondent calling upon the Petitioner to remit the aforesaid sum of Rs.1,71,500/- due from him at once, failing which it was informed that action will be taken to sell that vehicle in public auction to realize that amount.

3.At that stage, the petitioner had filed the Writ Petition bearing W.P.(MD)No.1198 of 2017 before this Court seeking a direction to the respondent to release that vehicle belonging to him. This Court, at the time of admission on 31.01.2017 in W.P.(MD)No.1198 of 2017 passed the following order:-

"This Writ Petition has been filed, seeking to direct the respondent to release the petitioner's Omni Bus Registration bearing No.KL 37A 7079 which was seized on 31.12.2016.

2.Admit. Issue Rule Nisi, call for records in eight weeks. In addition, Mr.K.P.Krishna Doss, learned Government Advocate takes notice for the respondent.

3.The respondent is directed to release the Omni Bus of the petitioner, bearing Regn.No.KL-37-A-7079 forthwith, subject to the following conditions:

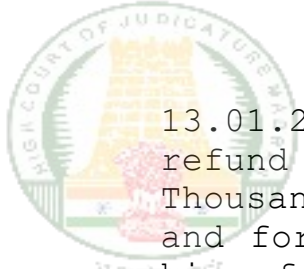
i)The petitioner shall deposit 25 % of the balance amount in addition to the amount already paid and the said payment will be subject to the outcome of the result in this Writ Petition;

ii)The respondent is directed to get the original R.C.Book from the petitioner, issue an acknowledgment in respect thereof and based on such acknowledgment, the petitioner is permitted to operate the bus in the permitted route; and

iii)The petitioner shall not alienate the vehicle till issue is resolved finally."

In pursuance thereof, the petitioner had remitted a sum of Rs.42,875/- to the respondent on 07.02.2017 and the said vehicle was released to him vide Proceedings in Na.Ka.No.06802/A3/2016, dated 07.02.2017.

4.Thence after, the petitioner has filed this Writ Petition bearing W.P.(MD)No.5413 of 2017 before this Court, challenging the order bearing Memo No.00250/A3/17, dated



13.01.2017 and has sought for consequential direction to refund the sum of Rs.2,14,375/- (Rupees Two Lakhs Fourteen Thousand Three Hundred and Seventy Five only) paid by him and for return of the original Registration Certificate of his aforesaid vehicle, which had been handed over to the Respondent in terms of interim order dated 31.01.2017 passed by this Court.

5.The Petitioner on 13.11.2017 has filed an additional affidavit stating that he is ready to deposit the remaining sum of Rs.1,28,625/- (Rupees One Lakh Twenty Eight Thousand Six Hundred and Twenty Five Only) with the Respondent and seeks for the return of the original Registration Certificate of his vehicle, without prejudice to his contention in this Writ Petition challenging the correctness of the impugned order and refund the amounts collected from him pursuant to that impugned order. The learned counsel for the petitioner further states that the Petitioner would file another affidavit of undertaking before the respondent to the effect that his aforesaid vehicle will not again enter into the State of Tamil Nadu without the special permit, and that the aforesaid vehicle as well as its Original Registration Certificate shall be produced, whenever required by the Respondent or by this Court.

6.The learned Additional Government Pleader appearing for the Respondent submits that there is no other impediment for return of the original Registration Certificate of the vehicle to the Petitioner, if the aforesaid remaining sum of Rs.1,28,625/- and other dues, if any, are remitted by the Petitioner.

7.Having due regard to the fact that the original Registration Certificate of the vehicle of the Petitioner had been directed by this Court in the order dated 31.01.2017 in W.P.(MD)No.1198 of 2017 to be taken by the Respondent for the sole purpose of ensuring collection of the remaining sum of Rs.1,28,625/- due from him as per the impugned order dated 13.01.2017, this Court hereby directs that in the event of the Petitioner remitting the aforesaid remaining sum of Rs.1,28,625/- and all other dues to the Respondent and filing the affidavit of undertaking mentioned supra on or before 30.11.2017, the original Registration Certificate of the said vehicle taken from the Petitioner pursuant to the interim order dated 31.01.2017 in W.P.(MD)No.1198 of 2017, shall be immediately returned to him under acknowledgment.

8.It is made clear that the interim order passed today in this Writ Petition is without prejudice to the rival contentions of the Petitioner as well as the Respondent ~~regarding the challenge to the correctness of the impugned order and refund of the amounts collected in pursuance thereof.~~



9. This Writ Miscellaneous Petition is disposed of accordingly."

4. In view of the aforesaid order, the learned counsel for the petitioner seeks permission of this Court to withdraw the Writ Petition and he has also made an endorsement to that effect.

5. Recording the submission and endorsement made, this Writ Petition is dismissed as withdrawn. No costs.

Sd/-
Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar

To

The Regional Transport Officer,
Marthandam,
Kanyakumari District.

+1cc to Special Government Pleader, SR.No. 87032

W.P. (MD) No. 1198 of 2017

MYR
JM/MR KKR/SAR 2/27.11.2017/4P/3C