

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.36960 of 2017

ORDER:

This writ petition, under Article 226 of the Constitution of India is filed seeking verbatim the following relief:

“...to issue a Writ, Order or Direction more particularly one in the nature of WRIT OF MANDAMUS to declare the seizure of the petitioner's vehicle (Contract Carriage Bus) bearing Registration no.AP 04 TW 0298 vide Check Report No.TS828/ Oct.2017/ 3909 dated 31-10-2017 by the 3rd respondent as illegal, arbitrary and unconstitutional and contrary to the provisions of the Motor Vehicles Act and consequently direct the 2nd respondent herein to forthwith release the vehicle in favour of the petitioner and pass such other order or orders as are deemed fit and proper in the circumstances of the case.”

2. I have heard the submissions of *Sri B.Chandra Sekhar*, learned counsel appearing for the petitioner, learned Government Pleader for Transport (TS) appearing for the respondents 1 to 3, and of learned Government Pleader for Transport (AP) appearing for the 4th respondent. I have perused the material record.

3. The case of the petitioner is this: 'The petitioner obtained District wide Contract carriage permit, vide permit No.PC No.AP004/ 822/ PC/ 2014 under Rule 174(3) of A.P. Motor Vehicles Rules in respect of contract carriage bus aforementioned. The same is valid up to 14.03.2019. He has paid quarter ending tax of Rs.40,000/- for the quarter ending 31.12.2017. He applied to the 4th respondent for temporary permit for the said vehicle to visit tourist places, namely, Jammalamadugu to Annavaram, Bhadrachalam, Srisailam and back to Jammalamadugu. The said respondent issued temporary permit with the validity period from 28.10.2017 to 03.01.2017. As in the temporary permit, the concerned seat clerk has not typed the places Srisailam and Bhadrachalam, an

endorsement was later made in the said permit under signature and seal. While crossing Palvoncha check-post, the 3rd respondent checked the vehicle and stated that the vehicle is not having valid permit and seized the vehicle on 31.10.2017 under check report no.TS828/ Oct.2017/ 3909 *inter alia* alleging that certain records were not produced. The petitioner is prepared to pay admitted tax in a sum of Rs.14,000/- (i.e., Rs.350/- per seat X 40 seats) as per G.O.Ms.No.140, dated 12.08.2002. The said notification under the said GO was also adopted by the State of Telangana after the bifurcation of the States. The respondents 3 and 4 have to collect the afore-stated tax and release the seized vehicle. But, they are not doing so and had high-handedly, illegally and arbitrarily detained the vehicle. Hence, the writ petition is filed.

4. Learned counsel for the petitioner while reiterating the pleaded case of the petitioner submitted as follows: 'The temporary permit, a copy of which is filed along with the material papers, discloses the true facts which are stated by the petitioner. The check report also discloses that no compounding fee is payable and that the vehicle is kept at Palvoncha check-post. The vehicle, which is kept at a place open to sky, is being exposed to Sun, rain and inclement weather and is getting spoiled. Any, Telangana State Tax other than the tax which the petitioner is prepared to pay is not payable. Palvoncha check-post is a common integrated check-post. Hence, the vehicle may be directed to be released.'

5. Per contra, learned Government Pleader would submit that unless there is compliance of the omissions pointed out in the check report, the vehicle cannot be released. He would further submit that even according to the averment in the writ petition, the petitioner preferred an appeal, dated 01.11.2017, to the Secretary, Regional Transport Authority and that therefore, he has to approach the appellate authority for disposal of his appeal and that the writ petition is not maintainable.

6. However, in reply, learned counsel for the petitioner submitted that though the petitioner is having valid permit and is willing to pay the tax as per the relevant GO, the vehicle is being illegally detained and that no appeal has been entertained and that it is specifically pleaded in paragraph (5) of the writ petition that when the petitioner approached the 2nd respondent along with an application, dated 01.11.2017, under Rule 448 (b) of the Motor Vehicle Rules, the 2nd respondent did not consider the said application and has not received the same and hence, the question of approaching the said authority with a request to dispose of the appeal, which is not entertained does not arise.

7. I have given earnest consideration to the facts and submissions.

8. Having regard to the submissions and without expressing any views on the merits of the matter, this Court, at this stage, finds that in the facts and circumstances of the case, the vehicle can be released to the petitioner after imposing necessary conditions as release of the seized vehicles by the Magistrates or the authority concerned is a rule and the rejection is an exception. Powers of the Court and authority concerned, wherever and whenever exercisable, are to be properly and promptly exercised to see that vehicles are not kept for a long time, that is, for more than fifteen days to one month at the police station or a public office or a check post or the Court house, in any case. Keeping any vehicle idle in an open place exposing it to Sun, Rain and inclement/rough Weather without any protection would lead to deterioration of its value and irreparable damage. Instead of allowing a vehicle to lie idle and rot in front of a police station or near a check post or a public office or in the yard of a Court House, it is apposite to give custody of the vehicle to an eligible applicant as such a course helps not only in keeping the vehicle in the same good condition but also inures for the benefit of the ultimate successful party. In that view of the matter, there is no need to deny custody of the seized vehicle to the petitioner herein even during the pendency

of appeal, if any, or any contemplated action by the respondents or any pending enquiry with regard to any offences punishable under any enactment. In the case on hand, there are no compelling reasons to not to pass an order giving custody of the subject vehicle to the petitioner.

9. On the above analysis and having regard to the submissions, the writ petition is disposed of with the following directions:

The respondents concerned are directed to release the subject vehicle, i.e., Contract Carriage Bus bearing Registration no. AP 04 TW 0298, and give custody of the same to the petitioner forthwith on the petitioner paying Rs.14,000/- as undertaken and on executing a personal bond for a sum of Rs.75,000/- (Rupees Seventy five thousand only) with one surety in a like sum to the satisfaction of the authority concerned and on the petitioner further undertaking that he will not alienate or transfer the subject vehicle in any manner until a period of six months and will maintain it in the same good and road worthy condition without changing any of its features and major parts and would produce it along with its vehicular documents at a specified place or before a specified authority as and when directed by the authority concerned. On such release of the vehicle, the petitioner shall obtain pollution clearance certificate within (48) hours, if not already obtained, and shall not ply the vehicle, unless such certificate is obtained.

This order shall not preclude the petitioner from now preferring an appeal within a week from the date of receipt of a copy of this order; and if any such appeal is preferred as per procedure, the same shall be entertained by the authority concerned and disposed of in strict accordance with the procedure established by law. It is made clear that the respondent concerned is at liberty to proceed against the petitioner in accordance with the procedure established by law for initiation of any enquiry or legal action, which the law permits.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M. Seetharama Murthi, J

09.11.2017

Note:- Issue CC today
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