IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2018

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.12483 of 2018

C.Mahendran .. Petitioner

-vs-

1.The State Transport Authority
Ezhilagam
Chepauk, Chennai - 5

2. The Regional Transport Officer
Regional Transport Office
Chennai (South), Chennai- 41 .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the 1st and 2nd respondents to release the vehicle of the petitioner, bearing Regn.No.AP07 TF 7009, stationed at the office of the 2nd respondent.

For Petitioner :: Mr.M.Palani

For Respondent :: Mr.V.Jayaprakash Narayanan
Special Government Pleader

ORDER

This writ petition is filed seeking a writ of mandamus directing respondents 1 and 2 to release the vehicle of the petitioner stationed at the office of Regional Transport Office, South Chennai.

2.Heard the parties on both sides.

3.Learned counsel appearing for the petitioner submitted that the petitioner is having a contract carriage permit issued by the Andhra pradesh Transport Authority under Section 74 of the Motor Vehicles Act. Based on the said permit, he has been operating the vehicle on the route Visakapattinam to Velankanni passing through three States, namely Andhra Pradesh, Tamil Nadu and Union Territory of Pondicherry. It is also stated that the petitioner is also having contract carriage permit to ply between Tamil Nadu and Union Territory of Pondicherry and one such permit pertains to Chennai to Nagapattinam. It is further stated that when he is operating on the route Chennai to Velankanni via Pondicherry and Karraikkal, vehicle developed certain mechanical defect and hence, it was stopped from operation. It is also stated that tax was paid before the RTO, Villupuram and the validity of the permit is also valid up to 20.03.2018 and the road tax has to be paid from 21.03.2018 and therefore, when the vehicle was operated, one Motor Vehicle Inspector, Chennai (South), checked the petitioner's vehicle on 21.03.2018 and issued a report alleging certain irregularities, namely

1) The vehicle belongs to Andhra Pradesh and plying without paying tax due to Tamil Nadu;

2) Form 41 not produced; and

3) Original/Attested records not produced.

4. In view thereof, the RTO Chennai (South) detained the vehicle stating that after obtaining reply from Regional Transport Office, the vehicle will be released. But till date, they have not released the vehicle. Hence a representation was given by the petitioner on 12.04.2018 for release of the vehicle. But, RTO Chennai (South) on 23.04.2018 informed the petitioner that Engine number and Chassis number did not tally with that of the Registration number AP07 TF 7009 instead it is found that the chassis and engine number noted above coincides with the vehicle number AR01J 7009. Therefore, taking a stand that the identical engine and chassis cannot exist for two different vehicle RTO, Chennai (South), refused to release the vehicle.

5. The learned counsel appearing for the petitioner submitted that when the vehicle was detained for aforementioned three reasons, on receipt of representation dated 12.04.2018, Regional Transport Officer cannot refuse to release the vehicle citing a different reason. Again it is submitted that the objection raised by the second respondent that the same vehicle, which was registered in Andhra Pradesh, has been once again registered in Arunachala Pradesh is quite impossible, because when the vehicle in question was registered on 01.10.2016 by the Transport Department, Andhra Pradesh and the Certificate of Registration was signed on 04.10.2016, it is not known as to how the very same vehicle can be registered in Arunachala Pradesh on the same day i.e., on 04.10.2016. Referring to Section 47 of the Motor Vehicles Act, it is submitted that if the vehicle of the petitioner registered in the State of Andhra Pradesh to be re-registered in Arunachala Pradesh, first of all 'No Objection Certificate' must be obtained from the Andhra Pradesh Transport Authority. Since the Registration Certificate enclosed at Page 1 shows that the Registration of the vehicle has taken place on 01.10.2016 and signed by the competent Authority only on 04.10.2016, it is quite impossible for registering the same vehicle for any purpose in Arunachala Pradesh on the same date

i.e., 04.10.2016 when the vehicle will take minimum 3 days to reach Arunachala Pradesh. Besides, this is not the ground on which the vehicle of the petitioner has been impounded.

6. It is further submitted that after impounding the vehicle, the respondents are parking the vehicle in the open space in the office of the second respondent and thereby exposing the same to sun and natural calamities, as a result of which the utility of the vehicle is deteriorating every day and if the vehicle is not released now, the petitioner would not be in a position to operate the vehicle in view of irreparable damage going to be caused to the vehicle and hence, the learned counsel requested this Court to give a direction to the respondents to release the vehicle on certain conditions.

7. A detailed counter affidavit has been filed by the second respondent. Learned Special Government Pleader appearing for the respondents submitted that when the Motor Vehicle Inspector Grade I checked the vehicle on 21.03.2018, it was found that vehicle has been plied without valid permit and without paying the tax due to the Tamil Nadu State. A copy of the receipt produced by the petitioner shows that the petitioner has paid the tax due till 20.03.2018. With regard to the second objection that the Form 41 has not been produced is totally untenable, as this has to be retained only by the Office. In respect of the third objection that original/attested copies were not produced, this Court is of the view that since those documents are produced before this Court, the petitioner shall be directed to approach the second respondent with those documents. The personal assistant to RTO, who is present in Court, on instructions, submitted that Form 41 is not required and if the petitioner produces the other documents and a receipt evidencing payment of tax due, the vehicle may be directed to be released on certain conditions.

8. Recording the said submission, this Court is inclined to dispose of the Writ Petition with the following directions:-

"(i) The petitioner shall deposit a sum of Rs.25,000/- (Rupees twenty five thousand only) in cash with the first respondent.

(ii) The petitioner shall produce documents before the second respondent to establish the ownership of the vehicle in question.

(iii) The petitioner shall file an undertaking that he will produce the vehicle in question before the respondents as and when called for and that he will not alienate the vehicle in question till the proceedings initiated are completed.

(iv) On compliance of the above conditions, the second respondent is directed to release the vehicle to the petitioner within two days.

(v) The second respondent shall proceed with the enquiry and pass appropriate orders. The petitioner is also directed to appear and cooperate with the enquiry.

(vi) This order for release of vehicle can be availed of by the petitioner if no criminal case is pending. If any criminal case is pending, it is open to the petitioner to approach the jurisdictional Magistrate to get release of the vehicle by filing appropriate application and the same can be considered in accordance with law".

9. With the above directions, this Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1.The State Transport Authority
Ezhilagam
Chepauk, Chennai - 5

2. The Regional Transport Officer
Regional Transport Office
Chennai (South), Chennai- 41

+1cc to M.Palani, Advocate sr.no.38419
+1cc to Government Pleader sr.no.39150

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