



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2018

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WEB COPY

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD) No.16190 of 2018  
and W.M.P.(MD)No.14423 of 2018

S.Raja Rathinam

... Petitioner

Vs.

1.The Regional Transport Authority,  
Collectorate Campus,  
Kanyakumari District.

2.The Regional Transport Officer,  
Marthandam, Kanyakumari District.

...Respondents

PRAYER: Writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records pertaining to the impugned orders passed by the first respondent in proceedings No.02884/A1/2016, dated 05.2018 and proceedings No.34730/A1/2017, dated 30.05.2018 and quash the same as illegal.

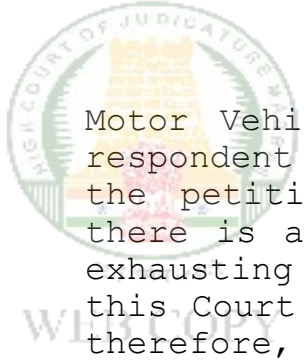
For Petitioner : Mr.A.C.Asaithambi  
For Respondents : Mr.S.Dhayalan,  
Government Advocate.

ORDER

The order passed by the first respondent dated 30.05.2018 is under challenge in this Writ Petition.

2. The first respondent issued a Show Cause Notice dated 04.06.2018 to the petitioner. From a reading of the impugned order, it appears that the petitioner has submitted his explanation. The explanation submitted by the petitioner was not accepted by the respondents and in exercising power conferred under Section 8(6) of the Motor Vehicles Act, 1988, the second respondent suspended the permission in respect of Mini Bus No.TN 74 Z 9867 owned by the petitioner. The petitioner is before this Court challenging the impugned order on the ground that opportunity of personal hearing was not given to the petitioner, which in violation of principles of natural justice.

3. Per contra, the learned Government Advocate submitted that Show Cause Notice was issued on 04.06.2018 complying with the mandatory requirements laid down in Priviso to Section 86 of the



Motor Vehicles Act, 1988. The petitioner has appeared before the respondent to avail an opportunity of personal hearing. Therefore, the petitioner is not entitled to challenge the order. Further, there is an appeal remedy under Section 89 of the Act and without exhausting the appeal remedy, the petitioner hastened to approach this Court and therefore, the writ petition is not maintainable and therefore, the same is liable to be dismissed.

4. Heard the submissions made on either side.

5. A perusal of proviso to Section 86 of the Motor Vehicles Act mandates that an opportunity shall be given to the holder of the permit to furnish his explanation. A reading of the proviso does not mandate only submission of explanation. An opportunity to furnish explanation means much more than submission of written explanation. It includes an opportunity of personal hearing offered to the petitioner also. In such circumstances, it is expected that the authority shall offer personal hearing by fixing a date for the said purpose.

6. In the instant case, no such opportunity was granted. In such circumstances, it should be construed that the order impugned is passed without following the principles of natural justice.

7. This Court in AIR 1988 Madras 127 in Ms/G.K.T. Bus Service, Palani Vs. State Transport Appellate Tribunal, Madras and another has dealt with the very same issue, wherein it has been held in paragraph No.19 as follows:

"19. Therefore, in so far as S.60 is concerned, personal hearing having not been contemplated, but more than one opportunity being extended by way of representations to be made in writing the affected persons are extended a reasonable opportunity of putting forth their submissions. This procedure statutorily evolved, is not so obnoxious as to run counter to the principles of natural justice. None of the decisions above referred to has gone to the extent of holding that, wherever an opportunity to make representations or furnish explanation is provided, it should always result in a personal hearing being extended. What had been pointed out is that depending upon facts and circumstances of each cases, and on what cimplex facts and law may get involved in a particular matter, in the absence of any statutory provision made for extending personal hearing, it would still be obligatory on the part of the concerned authority to give a personal hearing, so, that, what could not be effectively put forth in writing, could be further amplified, and clarified during the course of the personal hearing. Hence, the contention of the learned counsel for the petitioners that holding a personal



hearing must be read into S.60 as an integral part of it, and the concerned authority is duly bound to extend a personal hearing, whether asked for or not, in each matter cannot be accepted."

8. By following the judgment of this Court cited supra, I am of the considered opinion that before passing the impugned order, the permit holder shall be given an opportunity of personal hearing by fixing a specific date for personal hearing.

9. In such circumstances, I am inclined to set aside the impugned order. Accordingly, the order passed by the second respondent dated 30.05.2018 in proceedings No.34730/A1/2007 is set aside. The matter is remanded back to the second respondent for fresh consideration. The second respondent is directed to give an opportunity of personal hearing to the petitioner and pass orders on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order.

10. In the result, this writ petition is allowed. No costs. Consequently, connected W.M.P.(MD) No.14423 of 2018 is closed.

SD

ASSISTANT REGISTRAR (WRITS)

/ TRUE COPY /

SUB ASSISTANT REGISTRAR ( CS-2 )

To

1.The Regional Transport Authority, Collectorate Campus,  
Kanyakumari District.

2.The Regional Transport Officer, Marthandam, Kanyakumari  
District.

1CC TO MR. A.C. ASAI THAMBI ADVOCATE SR 76088

1CC TO THE SPECIAL GOVERNMENT PLEADER, SR 76197

W.P.(MD) No.16190 of 2018  
W.M.P.(MD) No.14423 of 2018

31.07.2018

cm

JM/SKN RSK/SAR 2/02.08.2018/3P/5C