



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.07.2018

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THE HONOURABLE MR. JUSTICE M. GOVINDARAJW.P. (MD) No. 21404 of 2016andW.M.P. (MD) Nos. 15288, 15289 and 15660 of 2016

S. Swaminathan,
S/o. Ponnusamy,
No. 214-A, Sivasamy Road,
Ram Nagar, Opp. To Hotel City Tower,
Coimbatore - 641 009.

... Petitioner

/Vs./

1. The Principal Secretary to Government,
Transport Department,
Fort St. George, Chennai - 600 009.
2. The Transport Commissioner,
Chepauk, Chennai - 600 005.
3. The Secretary / Regional Transport Authority,
Pudukkottai Post, Pudukkottai District.

4. S. Muthu

... Respondents

PRAYER : Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records in pursuant to the impugned order passed by the third respondent in his proceedings in Proc.No.49427/A2/2016 dated Nil.10.2016 signed on 26.10.2016 and quash the same and consequently direct the third respondent to hand over the original R.C. And Stage Carriage Permit in respect of vehicle bearing Registration No.TN 55 R 0743 to the petitioner within a stipulated time may be fixed by this Court.

For Petitioner

: Mr.M.Saravanakumar

For R-1 to R-3

: Mrs.J.Padmavathi Devi

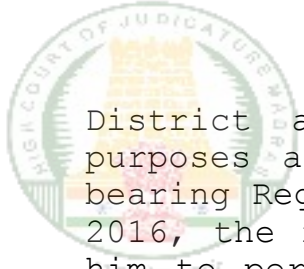
Special Government Pleader

For R-4

: Mr.T.Padmanabhan

O R D E R

The petitioner is a financier in the Automobile field in the name and style of SPS Finance Investments Automobiles. The fourth respondent is one of the bus operators in Pudukkottai



District and borrowed money for settling old debts and other purposes and he executed a hypothecated agreement of the vehicle bearing Registration No.TN 55 R 0743. During first week of September 2016, the fourth respondent approached the petitioner and requested him to permit to replace the bus (Stage Carriage Vehicle) bearing Registration No.TN 55 R 0743 with the vehicle bearing Registration No.TN 55 AY 6909. The petitioner verified this fact from the third respondent. However, instead of replacing the old vehicle with the vehicle bearing Registration No.TN 55 AY 6909, the fourth respondent arranged another vehicle with the help of another financier. Immediately, the petitioner submitted his objection to the third respondent on 26.09.2016. The third respondent in his Letter in Na.Ka.No.44643/A2/2016 dated Nil.10.2016, directed the petitioner to clarify that under which provisions of law, the objection was submitted to him. Even though the letter dated 26.09.2016, was despatched only on 21.10.2016 and delivered to the petitioner on 24.10.2016, the third respondent, in his proceedings, Proc.No.49427/A2/2016 dated Nil.10.2016 permitted replacement of the Stage Carriage bearing Registration No.TN 55 R 0743 with the vehicle bearing Registration No.TN 49 AY 5465 with effect from 26.10.2016. According to the petitioner, the order passed by the third respondent is illegal in view of Section 51 (11) of the Motor Vehicles Act, 1988, [hereinafter referred to as "the Act"] and also Rule 202 (iii) of the Tamil Nadu Motor Vehicles Rules, 1989, [hereinafter referred to as "the Rules"]. Therefore, he seeks for quashing the impugned order passed by the third respondent and to hand over the original RC book and the Stage Carriage permit in respect of the vehicle bearing Registration No.TN 55 R 0743 to the petitioner.

2. Per contra, the learned counsel appearing for the fourth respondent vehemently contend that as per Section 51 (11) of the Act, the requirement is that the financier shall be intimated of the transactions. It does not specify that "No Objection Certificate" should be produced or the financier should be heard, when an objection is made. According to him, the financier has no role in replacing of vehicle and therefore, the writ petition is liable to be dismissed. He has deposited a sum of Rs.20,00,000/- as per the interim directions given by this Court. Further, there is an appeal remedy under Section 89 (1) (g) of the Act r/w Rule 157 (1) (e) of the Rules to the petitioner. Without exhausting an appeal remedy, the writ petitioner cannot maintain this writ petition and therefore, the respondent seeks dismissal of the writ petition.

3. The third respondent also filed counter affidavit controverting the averments made by the petitioner. As per Section 51 (11) of the Act, an intimation was given to the petitioner and there is no impediment to replace the vehicle. The petitioner has no role in the process and therefore, the writ petition is liable to be dismissed.



4. I have heard the rival submissions.

5. The writ petition is filed challenging the order passed by the third respondent in replacing the stage carriage vehicle bearing Registration No.TN 55 R 0743 with another vehicle bearing Registration No.TN 49 AY 5465. As per Section 83 of the Act, the holder of a permit may, with permission of the authority replace any vehicle covered by a permit by another vehicle of the same nature. As per Rule 201 of the Rules, if the holder of a permit desires at any time to replace a vehicle covered by the permit with another vehicle shall forward permit and apply in writing to the Transport Authority, stating reasons for replacing. Rule 202 (iii) of the Rules specifies if the holder of a permit has contravened the provision thereof or has been deprived of possession of the old vehicle under the provisions of any agreement of hire-purchase, in its discretion, the Transport Authority can reject the application. So, this provision goes to show what is required for the purpose of replacing the vehicle that the permit holder shall apply for replacing of vehicle stating reasons for changing the vehicle.

6. A reading of Section 51 of the Act shows certain special provisions regarding motor vehicle subject to hire-purchase agreement. Insofar as the renewal of the permit or transfer of ownership is concerned, it cannot be substituted without consent of financier. Sub-Section 11 of Section 51 of the Act reads as under:

"(11) A registering authority registering the new vehicle, or issuing the duplicate certificate of registration or a no objection certificate or a temporary certificate of registration, or issuing or renewing, a fitness certificate or substituting entries relating to another motor vehicle in the permit, shall intimate the financier of such transaction."

7. From a reading of the above provision, it can be seen that it does not specify "No Objection Certificate" should be produced. Now, it has to be seen as to whether Section 51 (11) of the Act is complied with or not. It is admitted in the affidavit filed by the petitioner that the fourth respondent has approached the petitioner for the purpose of replacing his vehicle and had taken the original RC Book and the respondent permitted the petitioner to do the same.

8. It is the contention of the petitioner that he was under the bonafide impression that old vehicle bearing Registration No.TN 55 R 0743 is going to be replaced with another vehicle hypothecated to him bearing Registration No.TN 55 AY 6909. Therefore, it is clear that the factum of replacing the old vehicle with a new vehicle is well within the knowledge of the petitioner. The petitioner has also issued letter dated 24.09.2016 to the third respondent, which reads



"Sub: Objection for replacement of permit: reg:-

Permit no : PSPNO 27/SC/PDK/2011

Vehicle no : TN 55 R 0743

Renewal upto : 05/03/2021

Owner name : S.Muthu

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With reference to the above sub we wish to inform you that we have objection replacement of permit. Kindly do the needful."

9. In reply, the third respondent has sent a letter dated 26.09.2016, stating that "under what provision of law, such objection is made by the petitioner". Thereafter, on 26.10.2016, the replacing of the vehicle was permitted by the third respondent in favour of the fourth respondent. This sequence of events of exchange of letters shows that the intimation was served to the petitioner. The petitioner cannot now deny that he was not intimated the act of replacing. The very purpose of the statutory provision is to see that the borrowers shall not indulge in changing the vehicles without intimation to the financier. Since the petitioner is very much aware of the transaction and that he had filed his objection before passing order, the statutory requirements under Section 51 (11) of the Act are complied with.

10. The contention of the learned counsel appearing for the petitioner that without hearing the petitioner and without considering his objection, the order passed in violation of principles of natural justice or contrary to the provisions of the Motor Vehicles Act cannot be accepted. Insofar as replacing of vehicle is concerned, Section 83 of the Act specifies that the holder of a permit, may, with permission of the authority replace any vehicle covered by the permit by another vehicle of the same nature. The only condition is that if the vehicle of the same nature can only be replaced, then the authority, who granted permit, can, at his discretion, permit to replace the vehicle. Rules 201 and 202 of the Rules also confer discretion on the transport authority to reject the application on certain circumstances. The petitioner would insist that Rule 202 Sub Clause (iii) will apply to this case, which is under:

"(iii) if the holder of the permit has contravened the provision thereof or has been deprived of possession of the vehicle under the provisions of any agreement of hire purchase"

11. In the instant case, if the fourth respondent was deprived of possession of the old vehicle under the provisions in any agreement of hire-purchase, the authority, at his discretion, can reject the request. Originally, the petitioner has consented for replacing the old vehicle with another vehicle bearing Registration No.TN 55 AY 6909 hypothecated to him. But, he has objected the vehicle financed by some other financier to be replaced in the place of the old vehicle. In that event, the question of deprivation of



possession will not arise in the present case. Therefore, the authority has exercised his discretion and permitted replacement of vehicle. The contention that the petitioner's objections shall be taken into consideration and that he should be heard as stated supra is not mandated in the Act.

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12. In the Judgment of the Kerala High Court, in the case of M.Gopakumar vs. State of Kerala and others reported in AIR 1996 KERALA 291, the learned Single Judge has observed as follows:

"6. The last submission is that the said provision is violative of the fundamental right of freedom of trade and business. The learned counsel did not elaborate his argument and substantiate the point. In my view Rule 174 is a salutary provision to safeguard the interests of the real owners of the vehicle. The registered owner, who I permitted to run the vehicle with the permit granted to him which actually belongs to the financiers, cannot be permitted to get over the payments due to the financier by substituting another vehicle. Such an enabling provision would only defeat the purpose of financial arrangements. While financial condition is a relevant factor in the grant of renewal of permits, I do not find any reason why the same consideration is put by replacing the vehicle. The restriction imposed for replacement of the vehicle in my view is reasonable and in no way affects the freedom of trade or business of the petitioner.

For all these reasons I do not find any sustainable grounds in the O.P. to grant the reliefs prayed for and hence it is dismissed.

Petition dismissed."

whereas, a Division Bench of this Court, in the judgment reported in W.A.No.38 of 1982, dated 07.11.1984, while dealing with the similar situation, has observed as under:

"Lastly, a fair reading of rule 191 (iii) will support our above approach. It is useful to extract rule 191:-

"191. Upon receipt of an application under rule 190 the Transport Authority may in its discretion reject the application -

(i) if it has previous to the date of receipt of the application given reasonable notice of its intention to reduce the number of transport vehicles of that class generally or in respect of the route or area to which the permit applies, or

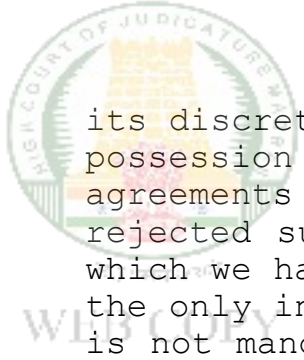


(ii) if the new vehicle proposed differs in material respects from the old; or

(iii) if the holder of the permit has contravened the provisions thereof or has been deprived of possession of the old vehicle under the provisions of any agreement of hire purchase."

Rule 191 envisages a stage after the application is received and entertained. In other words, the requirements of rule 190 must have been complied with by then. According to rule 191 (iii), upon receipt of an application under rule 190, the Transport Authority may in its discretion reject the application, if the holder of the permit has contravened the provisions thereof or has been deprived of possession of the old vehicle under the provisions of any agreement of hire purchase. There is no mandate that if any application not accompanied by a no objection certificate should not be entertained and should be rejected straightaway. On the other hand, the discretion is vested with the Transport Authority under rule 191 to reject or to entertain an application where the bus operator has been deprived of possession of the old vehicle under the provisions of any hire-purchase agreement. It is easy to visualise that where the vehicle has been seized by the financier, ordinarily, he would not issue a no objection certificate to the bus operator to enable him to maintain an application under rule 190. In short, generally, on seizure of the vehicle by the financier, the bus operator would not be in a position to obtain a no objection certificate from the financier. If the proviso to Rule 190(1) were to be construed mandatory, then, there will be no occasion for the Transport Authority to exercise its discretion in a case where the bus operator has been deprived of possession of the old vehicle under the provisions of any of the agreements of hire purchase, because the application ought to be rejected summarily and if so the relevant part of rule 191(iii) to which we had occasion to refer, would become redundant. We therefore find that according to the canon of construction, the only interpretation possible is that the proviso to rule 190 (1) is not mandatory."

13. The Hon'ble Division Bench of this Court has categorically held that if the provision is held to be mandatory and there will be no occasion for the Transport Authority to exercise



its discretion in a case where the bus operator has been deprived of possession of the old vehicle under the provisions of any of the agreements of hire purchase, because the application ought to be rejected summarily and if so the relevant part of rule 191(iii) to which we had occasion to refer, would become redundant and hold that the only interpretation possible is that the proviso to rule 190 (1) is not mandatory. The said judgment is followed by another judgment passed in W.P.18852 of 2005 dated 29.11.2006. Therefore, it is clear that the provision relied on by the petitioner i.e., the rules 201, 202 is only discretionary and not mandatory. Therefore, the order passed by the third respondent cannot be said to be illegal.

14. The learned counsel appearing for the fourth respondent would contend that there is an alternative remedy available under Section 89 and 90 of the Act. Section 89 (f) of the Act provides for an appeal for refusal to grant permission under Section 83 and Section 89 (g) of the Act provides any person aggrieved by any other order, which may be prescribed may within the prescribed time to file an appeal to the State Transport Appellate Tribunal. Against the order of the Tribunal, a revision is provided under Section 90 of the Act.

15. In the instant case, a Division Bench of this Court in a case of Tamil Nadu State Transport Corporation vs. C.Durai and another reported in 2005 (1) TN MAC 1 (DB) held that no writ petition should ordinarily be entertained when there is an alternative remedy, except in very rare cases if there is compelling reasons. But, in the instant case, there is no compelling reason to entertain this writ petition. Therefore, the non-exhaustion of the alternative remedy also renders this writ petition unsustainable.

16. In view of the above discussions, I do not find any reasons to interfere with the order passed by the third respondent. Accordingly, the writ petition is dismissed. No costs. It is open to the petitioner to file any appeal if he chooses to. Consequently, connected miscellaneous petitions are dismissed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

1.The Principal Secretary to Government,
Transport Department,
Fort St.George, Chennai - 600 009.



2.The Transport Commissioner,
Chepauk, Chennai - 600 005.

3.The Secretary / Regional Transport Authority,
Pudukkottai Post, Pudukkottai District.

+1CC TO MR.T.PADMANABHAN, ADVOCATE IN SR.NO.75246.
+1CC TO MR.M.SARAVANAKUMAR, ADVOCATE IN S.R.NO.75043.
+1CC TO SPECIAL GOVERNMENT PLEADER IN S.R.NO.75019.

SM/TK

DS RP SAR-4:14.09.2018: 8P/7C

W.P. (MD) No.21404 of 2016
25.07.2018