



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.07.2018

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THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P. (MD) No.13927 to 13929 of 2011
and
M.P. (MD) No.1,1 and 1 of 2011

W.P. (MD) No.13927 of 2011:

P.Mari

... Petitioner

-Vs-

1. The State of Tamilnadu,
Represented by its Secretary, Home,
P & E (TR III) Department,
Secretariat, Chennai - 600 009.

2. The Regional Transport Authority,
Madurai (North),
Madurai.

3. M.Pasupathi

4. P.Prema

5. M.Vanasundari

... Respondents

(R-3 to R-5 are impleaded vide Court order dated 18.04.2018 in W.M.P. (MD) No.7935 to 7937 of 2018 in W.P. (MD) No.13927 to 13929 of 2011.)

Prayer: Writ Petitions - filed under Article 226 of Constitution of India, to issue a Writ of Declaration, declaring Rule 214(1) of the Tamil Nadu Motor Vehicles Rules, 1989 requiring production of No Objection Certificate from all the legal representatives other than the applicant as ultra vires of Section 82 (2) & (3) of the Motor Vehicles Act in so far as the petitioner is concerned.

For Petitioner

: Mr.T.Padmanabhan

For Respondents 1&2

: Mrs.J.Padmavathi Devi

Special Government Pleader

**W.P. (MD) No.13928 and 13929 of 2011:**

P.Mari

... Petitioner (in both W.P.s)

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-Vs-

1. The Regional Transport Authority,
Madurai (North),
Madurai.

2. M.Pasupathi
3. P.Prema
4. M.Vanasundari

... Respondents (in both W.P.s)

(R-2 to R-4 are impleaded vide Court order dated 18.04.2018 in W.M.P. (MD) No.7935 to 7937 of 2018 in W.P. (MD) No.13927 to 13929 of 2011.)

Common Prayer: Writ Petitions - filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the respondent herein to grant the transfer application for transfer of the permit in respect of the vehicles bearing registration No.TN59/E-9565, TN67/H-9524 plying on the route "Rajaji Government Hospital to Sangu Nagar" and "Simmakkal to Yagappa Nagar" respectively, along with the vehicles in the name of the petitioner from the name of the deceased permit holder A.S.Manithevar without insisting on the no objection certificate from the legal heirs of Late.A.S.Manithevar.

For Petitioner : Mr.T.Padmanabhan

For Respondent No.1 : Mr.J.Padmavathi Devi

Special Government Pleader (in both W.P.s)

COMMON ORDER

The petitioner is before this Court for transfer of stage carriage permit of the mini buses bearing Registration No.TN59/E-9565, TN67/H-9524 in her favour.

2. Originally, the father of the petitioner, one A.S.Manithevar was the owner of the both the mini buses. Due to his illness, it is stated that the petitioner was operating those vehicles. The petitioner's father died on 24.05.2011. The factum of death was immediately informed to the official respondents by the petitioner on 13.06.2011 and also sought for transfer of permits in her name as she had succeeded to the possession of the vehicles along with the permits as per Section 82 (2) of the Motor Vehicles Act, 1988. Since the Official Respondents insisted on production of a No Objection Certificate, the petitioner is before



this Court for a direction, directing the respondents to issue an order of transferring the permit without insisting on "No Objection Certificate".

3. Since Section 82 (2) of the Motor Vehicles Act, 1988, does not specify production of a "No Objection Certificate" from other legal heirs, the imposition of condition by Rule 214 of the Tamil Nadu Motor Vehicles Rules, 1989, is considered as Ultra Vires and hence, the petitioner has also filed a petition for a Writ of Declaration. Both the matters were admitted and pending. When the matter was taken up for hearing, this Court directed the petitioner to implead the other legal heirs, namely, the respondents 3 to 5 (private respondents) as parties to these writ petitions. Notice was served on them and proof of service was also filed before this Court. But, private respondents have not chosen to appear before this Court.

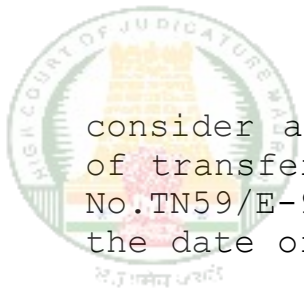
4. The learned Special Government Pleader filed a detailed counter-affidavit contending that as per Rule 214 of the Tamil Nadu Motor Vehicles Rules, in order to prevent persons, who are in possession of the permits and vehicles without any proof of legal transfer, are directed to produce No Objection Certificates from the other legal heirs, together with the application for transfer of permit. Therefore, it is contended that there is a reasonable nexus in framing the rules that No Objection Certificate from other legal heirs is mandatory for transfer the permit in favour of the persons, who claimed to have inherited rights.

5. Further, the learned Special Government Pleader would also submit that one of the legal heirs made a petition stating that the vehicles are being operated without any consent from their side.

6. The perusal of the objections filed by the other legal heirs dated 23.11.2011 would reflect that other private respondents have no objection for transferring the permit in the name of one Pasupathi, mother of the petitioner. Since there are certain factual disputes over transfer of permit, this Court under Article 226 of the Constitution of India cannot conduct a roving enquiry and give a finding.

7. According to the petitioner, since the contesting respondents have not chosen to appear before this Court, it shall be deemed that they have no objection and the permit should be transferred in favour of the petitioner. In such circumstances, it is apt that the second respondent is directed to consider the factual disputes and pass orders.

8. On the basis of the above and considering the facts and circumstances of the case, a direction is issued to the second respondent to fix a date for personal hearing of this matter and



consider all the objections and pass orders on merits in respect of transfer of permitting the mini buses bearing Registration Nos. No.TN59/E-9565, TN67/H-9524, within a period of two months from the date of receipt of a copy of this order.

9. With the above observations, this Writ Petitions are disposed of. The Order of Status quo already granted by this Court shall continue till the disposal of the case by the second respondent. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar (CS-III)

To

1. The Secretary,
Home, P & E (TR III) Department,
Secretariat, Chennai - 600 009.
2. The Regional Transport Authority,
Madurai (North), Madurai.

+ 2 CC TO Mr.T.PADMANABHAN, ADVOCATE IN SR No. 72948
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 72802

SM

TE/MMS/SAR-3 : 02/08/2018 : 4P/6C

Common Order made in
W.P. (MD) No.13927 to 13929 of 2011
12.07.2018