IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.14469, 14612 & 21721 of 2008

The South India Hire Purchase Association
Rep.by its Chairman Sri Meghraj Lunawath,
Nahar Hall, Desabandhu Plaza, 47, Whites Road,
Royapettah, Chennai-600 014
....Petitioner in W.P.No.14469 of 2008

Madras Hire Purchase Association,
Old No.128, New No.220, 4th Floor,
N.S.C.Bose Road, Sowcarpet,
Chennai-600 079 Rep.by its
Secretary, Anurag Dugar. ...P1 in W.P.No.14612 of 2008

M/s.Prashant Investments
No.17, Kandappa Street, Sowcarpet,
Chennai-600 079 Rep.by its
Partner, Dinesh Kothari. ...P2 in W.P.No.14612 of 2008

Corporation Bank,
Zonal Office,
Nos.38 & 39, Whites Road,
Royapettah, Chennai-600 014.
Rep.by its Manager,S.Jaganath
...Petitioner in W.P.No.21721 of 2008

vs.

1. The Special Transport Commissioner,
   and the Transport Commissioner
   Ezhilagam, Chepauk
   Chennai-600 005.

2. Joint Transport Commissioner-cum-
   Regional Transport Authority
   No.4, Anderson Salai
   Ayanavaram,
   Chennai-600 023.

3. State of Tamil Nadu
   Rep.by its Secretary to Government,
   Department of Road Transport,
   Fort St.George,
   Chennai-600 009.

4. Union of India,
   Rep.by its Secretary,
   Ministry of Road Transport & Highways

Transport Bhavan, I, Parliament Street
New Delhi. ... Respondents in all W.Ps

PRAYER in W.P.Nos.14469 & 14612 of 2008: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the letter R.No.67853/H2/07 dated 20.03.2008 bearing Circular No.20/08, issued by the 1st respondent and quashing the same as arbitrary, illegal, ultra vires and violative of Article 14 and Article 19(1)(g) of the Constitution of India.

PRAYER in W.P.No.21721 of 2008: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, declaring that the circular No.20/08.Ltr R.No.67853/H2/07 dated 20.03.2008 issued by the 1st respondent is not applicable to the petitioner bank.

For Petitioner in W.P.No.14469 of 2008	:	M/s.Krishna, SC for M/s.Sarvabhavan Associates
For Petitioner in W.P.No.14612 of 2008	:	Mr.ARL.Sundresan, SC for Mr.T.K.Baskar
For Petitioner in W.P.No.21721 of 2008	:	Mr.R.R.Pradeep for Mr.S.Sethuraman
For R1 to R3 in all W.Ps	:	Mr.J.Ramesh, AGP
For R4 in W.P.No.14469 of 2008	:	Mr.G.Karthikeyan
For R4 in W.P.No.14612 of 2008	:	Mr.A.Kumaraguru
For R4 in W.P.No.21721 of 2008	:	M/s.D.Rameshkumar ACGSC

C O M M O N O R D E R

The prayer in W.P.No.14469 of 2008 & 14612 of 2008 is for the issuance of a Writ of Certiorari, to call for the letter R.No.67853/H2/07 dated 20.03.2008 bearing Circular No.20/08, issued by the 1st respondent and quash the same as arbitrary, illegal, ultra vires and violative of Article 14 and Article 19(1)(g) of the Constitution of India.

2. The prayer in W.P.No.21721 of 2008 for the issuance of a Writ of Declaration, declaring that the circular No.20/08.Ltr R.No.67853/H2/07 dated 20.03.2008 issued by the

1st respondent is not applicable to the petitioner bank.

3. The case of the petitioner in W.P.No.14469 of 2008 is that the petitioner's Association is a company duly registered under the provisions of the Companies Act, 1956 and bearing registration No.5525 of 1967. The petitioner Association was formed with the object of welfare of the persons, firms, associations and other corporate bodies dealing in Hire purchase, leasing and Hypothecation Business. The petitioner association consists of more than 350 financiers who are involved in the business of hire purchase, lease and loan cum hypothecation business of various categories of vehicles including motor cars, two wheelers, three wheelers and heavy commercial vehicles.

4. The case of the petitioners in W.P.No.14612 of 2008 is that the first petitioner Association is a society duly registered under the provisions of the Tamil Nadu Societies Registration Act, 1975 and bearing registration No.12 of 1992. The first petitioner association was formed with avowed object of welfare of the persons, firms, associations and other corporate bodies dealing in Hire Purchase, leasing and Hypothecation Business. The first petitioner association consists of more than 600 financiers who are involved in the business of hire purchase, lease and loan cum hypothecation business of various categories of vehicles including motor cars, two wheelers, three wheelers and heavy commercial vehicles. The second petitioner is a partnership firm involved in the business of financing hire purchase, lease and loan cum hypothecation of various categories of vehicles.

5. The case of the petitioner in W.P.No.21721 of 2008 is that the petitioner bank is a public sector bank constituted under the Banking Regulations Act and is carrying on the business of Banking all over India, having its registered office at Mangalore and Zonal Office and Branches all over India, including the State of Tamil Nadu.

6. The members of the petitioners Association have been actively involved in extending credit facility to various sections of people, including people in rural areas, thus enabling them to purchase vehicles on credit basis. This has benefited numerous people, including many people like lorry operators. While so, the 1st respondent herein issued Letter R.No.67853/H2/07 dated 20.03.2008 bearing Circular No.20/08 ("Impugned Circular") making it compulsory upon all financiers, to obtain the Trade Certificate while applying for endorsement/cancellation of Hire Purchase/Lease/Hypothecation agreement of motor vehicle with the Regional Transport Authority. Though the impugned circular was issued on 20.03.2008, it was not strictly enforced by the Regional Transport Authorities for a few weeks. From 01.06.2008 onwards, the Regional Transport Authorities have been

insisting that the petitioners obtain Trade Certificate as a condition precedent to entertaining applications for making/canceling the hire purchase and hypothecation endorsements in the certificate of registration. Aggrieved by the same, the present writ petitions are filed.

7. The learned Senior Counsel appearing for the petitioners would submit that the financiers do not need to obtain trade certificate for making/canceling the hire purchase and hypothecation endorsements in the certificate of registration and would further submit that in the event of a default in repayment of loan and the financier repossessing such vehicle, the financier can apply for cancellation of registration certificate in the name of the defaulter and can always obtain a fresh registration in its name and there is no need for obtaining trade certificate. The learned Senior Counsel referred a decision in W.P.(C).No.7544 of 2017 in TATA MOTORS FINANCE LTD Vs.STATE TRANSPORT AUTHORITY, ODISHA and others. The relevant paragraph No.12 is extracted hereunder:

> 12.It is apt to refer the legal maxim “Expressio Unius est exclusion alterius” i.e., if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and any other manner are barred. Similar question had come up for consideration before this Court in Subash Chandra Nayak (supra) and this Court in paragraph-8 observed as follows:
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> > “.................the statute prescribed a thing to be done in a particular manner, the same has to adhere to in the same manner or not at all. The origin of the Rule is traceable to the decision in Taylor v.Tailor, (1875) LR I CH D 426, which was subsequently followed by Lord Roche in Nazir Ahmad v.King Emperor, MANU/PR/0020/1936:AIR 1936 PC 253(2). But the said principle has been well recognized and holds the field till today in Babu Vergheese v.Bar Council of Kerala MANU/SC/0168/1999 :(1999) 3 SCC 422, and Zuari Cement Limited v. Regional Director, Employees' State insurance Corporation, Hyderabad and others, MANU/SC/0706/2015:(2015) 7 SCC 690 and the said principle has been referred to by this Court in Manguli Behera v. State of Odisha and others (W.P (C).No.21999 of 2014 disposed of on 10.03.2016)”.
>
> In view of the above settled position of law, there is no doubt that if an action is required to be undertaken in a particular manner, then that has to be done in that manner or not at all. Therefore, applying the same to the present context, if the statute specifically provides the manner in which the hypothecation endorsement is to be entered into the

certificate of registration and the termination thereof, when an application is made, as has been provided under the Statute in Rules 60 and 61 of the Rules, 1989 in the prescribed forms, ie., Forms-34 and 35 along with the fees, then the registering authority cannot have any option than to follow the law as prescribed under the Act, 1988 read with Rules, 1989. As such, the registering authority cannot and could not have refused to make endorsement or terminate the hypothecation in the certificate of registration, because the financier has not renewed the trade certificate for doing its business in the State. The grant of trade certificate to a financier is only confined to Rule 41(h) of the Rules, 1989. Therefore, the financier cannot use trade certificate for any purpose other than specified under the Rule 41(h) of the Rules, 1989. Thus, the action of the registering authority in refusing to make endorsement of hypothecation and cancellation thereof in the certificate of registration, in the name of renewal of trade certificate, amounts to, not only arbitrary and unreasonable exercise of power, but also contrary to the provisions of law.

8. The learned Senior Counsel appearing for the petitioners would further submit that the petitioners are bankers and financiers. They advance loan amount for purchasing the vehicle. The learned Senior Counsel would further submit that as per Section 51 of the Motor Vehicles Act, the bankers and financiers are entitled to make entry in the certificate of registration regarding the existence of hypothecation agreement and the present impugned order forced the bankers and financiers to obtain trade certificate even for making entry in the hypothecation agreement which is legally un-sustainable. The purpose of making entry in the hypothecation agreement is to lien over the vehicles.

9. The learned Senior Counsel further submitted that trade certificate is necessary if they sell the vehicles to any third parties. In the present case, the bankers and financiers are not dealing with the selling of motor vehicles for any third parties or any trade activities, they simply advance loan to the vehicles who intend to purchase from the trader. However, the trade certificate is necessary if the bankers and financiers ply the vehicles after taking possession. For mere making entry in the hypothecation agreement it is not necessary to obtain trade certificate.

10. The learned counsel appearing for the respondents would submit that the financial bankers shall not use any vehicle in a public place unless they obtained a trade under certificate for any purpose and also refute the allegations raised by the learned counsel for the petitioner and justified the impugned order.

11. The short issue involved in the present case is whether, the bankers and financiers while they make entry in the hypothecation agreement, in the registration certificate, it is necessary to obtain trade certificate or not.

12. For better appreciation, Section 51 of the Motor Vehicles Act, Rules 34 and 41 (h) of the Motor Vehicles Rules are extracted hereunder:

> "Section 51 of the Motor Vehicles Act:
>
> 51.Special provisions regarding motor vehicle subject to hire purchase agreement, etc. - (1) Where an application for registration of a motor vehicle which is held under a hire purchase, lease or hypothecation agreement (hereafter in this section referred to as the said agreement) is made, the registering authority shall make an entry in the certificate of registration regarding the existence of the said agreement.
>
> Rules 34 and 41 (h) of the Motor Vehicles Rules:
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> 34.Trade certificate.- (1) An application for the grant or renewal of a trade certificate shall be made in Form 16 and shall be accompanied by the appropriate fee as specified in rule 81.
>
> 41.Purposes for which motor vehicle with trade certificate may be used.- The holder of a trade certificate shall not use any vehicle in a public place under that certificate for any purpose other than the following:-
>
> ....
>
> (h) for removing the vehicle after it has been taken possession of by or on behalf of the financier due to any default on the part of the other party under the provisions of an agreement of hire purchase, lease or hypothecation."

13. A perusal of Section 51 of the Motor Vehicles Act makes it clear that where an application for registration of a motor vehicle which is held under a hire purchase, lease or hypothecation agreement is made, the registration authority shall make an entry in the certificate of registration regarding the existence of the said agreement. However, the said provision did not impose condition to the bankers and financiers to obtain trade certificate.

14. A perusal of Rule 34 of the Motor Vehicles Rules shows that an application for the grant of renewal of a trade certificate shall be made in Form 16 and shall be accompanied by appropriate fee as specified in Rule 81.

15. On a perusal of Rule 41 (h) of the Motor Vehicles Rules makes it clear that the holder of a trade certificate shall not use any vehicle in a public place under that certificate for any purpose other than for removing the vehicle after it has been taken possession of by the financier due to any default on the part of the other party under the provisions of an agreement of hire purchase, lease or hypothecation.

16. The above said provisions makes it clear that if the bankers and financiers kept the vehicle idle, they need not obtain trade certificate. However, if they want to use the vehicle, they must obtain trade certificate. It is also not in dispute that whenever the vehicle used ply in the public place, they must be registered the vehicle in the registering authority after registration they are entitled to ply vehicle in the public place such exemption granted to the trader who use the vehicle for trade purpose.

17. However, the bankers and financiers advance loan to a person to purchase the vehicle. They are entitled to make entry in the registration certificate for which they need not obtain trade certificate. However, if the bankers took possession of the vehicle for any default and if they sell the vehicle to third parties to ply the vehicles in the public place, necessarily they must obtain trade certificate.

18. This Court perused the impugned order dated 20.03.2008. The first respondent in paragraph no.2 of the impugned order has clearly stated that generally trade certificates are only issued to the dealers of new motor vehicles leaving financiers, body builders and repairers of motor vehicles and several other categories of 'dealers' as defined under Section 2 (8) of the Motor Vehicles Act, 1988 and it imposed a condition that whenever financial institutions/ banks/ financial corporations approach for registering hire purchase, they should obtain and procure trade certificate for every category of vehicles. Hence for mere making entry in the hypothecation agreement, it is not necessary for obtaining trade certificate, however, if the bankers and financiers want to ply the vehicle in the public place, after taking possession it is necessary to obtain the trade certificate.

19. The decision referred to by the learned Senior Counsel also makes it clear that the grant of trade certificate to a financier is only confined to Rule 41 (h) of the Motor Vehicles Rules. Therefore, the financier cannot use

trade certificate for any purpose other than specified under Rule 41 (h) of the Motor Vehicles Rules. The decision squarely apply to the present case on hand.

20. In view of all the above discussions, this Court is inclined to interfere with the impugned order. Accordingly, Clause 7.1), 7.2) and 7.3) of the impugned order dated 20.03.2008 alone are set aside. This Court is not inclined to interfere with the other portions of the impugned order. The writ petitions stand allowed with the above terms. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

ssb
To
1. The Special Transport Commissioner,
   and the Transport Commissioner
   Ezhilagam, Chepauk
   Chennai-600 005.

2. The Joint Transport Commissioner-cum-
   Regional Transport Authority
   No.4, Anderson Salai
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3.The Secretary to Government,
  State of Tamil Nadu
  Department of Road Transport,
  Fort St.George,
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4. The Secretary,Union of India,
   Ministry of Road Transport & Highways
   Transport Bhavan, I, Parliament Street
   New Delhi.

+1 CC to Mr.D. Ramesh Kumar, Advocate sr 75422.
+1 CC to Govt. Pleader sr 76162.
+1 CC to Mr.T.K.Baskar, Advocate sr 76276.
+1 CC to M/s. Saravanabhuman Associates sr 74796.
+1 CC to Mr.A.Kumaraguru, Advocate sr 74327
+1 CC to Mr.S.Sethuraman, Advocate sr 74893.

W.P.Nos.14469, 14612 & 21721 of 2008

VBA(CO)
SP(12/11/2019)