

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.09.2019	Pronounced on : 18.10.2019
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CORAM:

THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 7096 of 2019
and
W.M.P. Nos. 7812, 7816 and 7817 of 2019

N. Indhumathi ... Petitioner

-vs-

1. Union of India,
Rep. by Secretary to Government,
Ministry of Law,
New Delhi.
2. M/s. Sriram Transport Finance Company Limited,
Mookambika Complex, 3rd Floor,
No. 4, Lady Dhesika Road,
Mylapore,
Chennai - 600 004. ... Respondents

PRAYER:- Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the First Respondent to bring into force the Hire Purchase Act 1972 in the interest of justice.

For Petitioner : Mr. S.N. Amarnath

For Respondents: Mr. Venktaswamy Babu,
Central Government Standing Counsel
(for R1)

Mr. K.S. Ramakrishnan (for R2)

O R D E R

The Writ Petition has been filed for a direction to the First Respondent, viz., the Secretary to the Government of India, Ministry of Law, New Delhi, to bring into force the Hire Purchase Act, 1972, in the interests of justice.

2. Another Writ Petition seeking the same relief had came up for consideration before this Court, which had been disposed by order dated 08.10.2003 in W.P. No. 14909 of 1998 (Aiswarya Frieght Carrier -vs- Union of India), holding as follows:-

"8. More than 30 years have elapsed since the Hire Purchase Act was enacted. The Central Government was vested with the power to issue notification to bring into effect such Act. Even though 3 decades have passed, no notification has been issued by the Central Government. As observed in the Constitution Bench's decision, it is for the Parliament to see that the laws passed by it are enforced. That is the matter left for the legislature and a Writ of Mandamus cannot be issued directing the executive to issue notification for bringing the Act into force. However, having regard to the facts and circumstances of the case and keeping in view of the decision AIR 1988 SC 1768 Aeltmesh Rein v. Union of India, I feel it is a fit and proper case where the Writ of Mandamus should be issued to the Central Government to consider as to whether a notification should be issued to bring into effect the Hire Purchase Act. This may be considered by the Central Government within a period of six months from the date of receipt of copy of this order. The petition is accordingly disposed of. No costs."

3. It is represented by the Learned Central Government Standing Counsel appearing for the First Respondent that after that order was passed by this Court, the Hire Purchase Act, 1972 (Act XXVI of 1972), has been repealed by the Hire Purchase (Repeal) Act, 2005 (Act XXXI of 2005), which has been published in the official gazette on 23.06.2005. It would be useful here to refer to the statement of objects and reasons of the Hire-Purchase (Repeal) Act, 2005, which reads as follows:-

"The Hire Purchase Act, 1972 was enacted to regulate the rights and duties of parties to hire-purchase agreements. The Act, inter alia, provides for a ceiling on hire-purchase charges. Originally, it was intended to bring the Act into force w.e.f. 1-6-1973 but on several representations received from the public against bringing the Act into force, it was decided not to bring the Act into force. The provisions of the Act were examined in the light of the suggestions received from various interest groups and consequently the Hire Purchase (Amendment) Bill, 1989 was introduced in Rajya Sabha. The said Bill was referred to the Department-related Parliamentary Standing Committee on Home Affairs for examination and

report. The Committee recommended for an in-depth examination of the Hire-purchase Act, 1972 by the Law Commission of India and for introduction of a fresh comprehensive legislation.

2. The Commission examined the matter vide its 168th Report and recommended comprehensive amendments to the Act including statutory hire-purchase charges @ 18% per annum or a lower rate as specified by the Central Government. On examination of this Report, it was felt that the mathematical formula as provided in the Act and the formula as recommended by the Commission for calculating hire-purchase charges were too mathematical for a common man to understand, and that the hire purchase charges and rate of interest may better be left to the market conditions in the changed economic scenario, because loans are available from banks and financial institutions on borrower-friendly terms. In view of this, the Hire Purchase Act, 1972 has lost its relevance. Hence, it has been decided to repeal the Hire Purchase Act, 1972.

3. The Bill seeks to achieve the above object."

4. Having regard to the fact that the Hire Purchase Act, 1972, has been repealed from the statute book, the question of bringing the same into force does not survive for consideration.

5. In the upshot, the Writ Petition is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (Insp.Cell)

//True Copy//

सत्यमेव जयते

vjt

Sub Assistant Registrar

To

The Secretary to the Government of India,
Ministry of Law, New Delhi.

+1 cc to M/s.Venkatasamy Babu, Advocate, S.R.No.87536

W.P. No. 7096 of 2019

RP(CO)
SSM(21/10/2019)