BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.02.2019

CORAM:
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD)Nos.19886 of 2015 & 5680 of 2018
and
W.M.P.(MD)No.5553 of 2018

W.P.[MD]No.19886 of 2015:

Minor S.Santhanavetrivel
Rep. by Father & Guardian,
D.S.Senthivel,
69, Muthuramalingapuram EB Main Road,
Pykara, Madurai - 625 004. ... Petitioner

Vs.

1.The Secretary,
Regional Transport Authority,
Madurai (North), Madurai - 7.

2.The Motor Vehicle Inspector,
Grade II, Enforcement Wing,
Coimbatore.

3.The Inspector of Police,
R4, Sulur Police Station,
Sulur, Coimbatore. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents herein to release the petitioner's Stage Carriage Spare Bus bearing Regn. No.TN 58 AF 2291 impounded and kept in Sulur Police Station, Coimbatore on such terms and conditions.

For Petitioner : Mr.T.Padmanabhan

For Respondents : Mr.N.Shanmugaselvam
Additional Government Pleader

W.P.[MD]No.5680 of 2018:

Minor S.Santhanavetrivel
Rep. by Father & Guardian,
D.S.Senthivel,
69, Muthuramalingapuram EB Main Road,
Pykara, Madurai - 625 004. ... Petitioner

Vs.

1.The Joint Transport Commissioner
Cum Appellate Authority,
Madurai - 7.

2.The Regional Transport Officer,
Madurai (North),
Madurai - 7. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the first respondent in R.No.3669/A2/2015 dated 17.01.2018 confirming the order of the second respondent in Demand Notice in R.No.70906/A2/2015 dated 27.10.2015 directing the petitioner to remit a sum of Rs.1,52,625/- towards the payment of additional tax payable in respect of petitioner's spare bus bearing Registration No.TN 58 AF 2291, quash the same.

For Petitioner : Mr.T.Padmanabhan

For Respondents : Mr.N.Shanmugaselvam
Additional Government Pleader

COMMON ORDER

W.P.[MD]No.19886 of 2015 has been filed for Mandamus directing the respondents herein to release the petitioner's Stage Carriage Spare Bus bearing Regn. No.TN 58 AF 2291 impounded and kept in Sulur Police Station, Coimbatore and W.P.[MD]No.5680 of 2018 has been filed challenging the order dated 17.01.2018, passed by the first respondent confirming the order of the second respondent in demand notice in R.No.70906/A2/2015 dated 27.10.2015, directing the petitioner to permit a sum of Rs.1,52,625/- towards payment of additional tax payable in respect of petitioner's spare bus bearing Registration No.No.TN 58 AF 2291.

2.It is the case of the petitioner that he obtained a temporary permit for the spare bus from the second respondent. According to him, after obtaining the temporary permit for the spare bus, paid 3/4th tax as prescribed under the Tamil Nadu Motor Vehicles Taxation Act, for violation of the spare bus permit. As directed by the second respondent, the petitioner had paid the fine and compounding fee also. It is the case of the petitioner that violation of the temporary permit conditions by the spare bus will not change the character of the said vehicle. But, under the impugned demand dated 27.10.2015, the second respondent has made a demand for payment of additional tax for the spare bus considering the spare bus to be a contract carriage bus. Since, according to the petitioner they are not liable to pay any additional tax, they have challenged the said demand dated 27.10.2015 made by the second respondent for payment of additional tax for the spare bus.

3.The counter affidavit has also been filed by the first respondent wherein, they have stated that under Section 11 of the Tamil Nadu Motor Vehicles Taxation Act, 1974, if a vehicle alters a route and there is conversion of the permit from stage carriage to contract carriage, additional tax is payable by the permit holder. According to the first respondent, the petitioner had proposed an used spare bus on contract as an omni bus without obtaining any permission under Section 88(8) of the Motor Vehicles Act, 1988. Further, according to the first respondent, additional tax has to be paid mandatorily as per the amended Act, 13 of 2012, which came into force with effect from 01.04.2012, before the commencement of the journey.

4.Heard Mr.T.Padmanabhan learned Counsel for the petitioner and Mr.N.Shanmugaselvam, learned Additional Government Pleader for the respondents.

5.According to the learned Counsel for the petitioner, violation of permit conditions will not alter the character of the nature of the permit. In the instant case, temporary permit was obtained for the spare bus only as a stage carriage permit. Further, according to the learned Counsel for the petitioner, for the violation of the permit committed by the spare bus, the petitioner had already paid the fine and compounding fees was also paid. Further, he would contend that as per Section 3 of the Tamil Nadu Motor Vehicles Taxation Act, the tax payable for the spare bus has already been paid by the petitioner and therefore, additional tax cannot be levied by the second respondent for violation of permit conditions. He drew the attention of this Court to the following orders passed by the learned Single Judge of this Court.

(a) Praveen Travels *Vs.* ***The Regional Transport Officer, Salem*** *reported in* ***2008 (1) TN MAC 538.***

(b) P.N.Ramesh *Vs.* ***The Regional Transport Officer, Salem in W.P.[MD]No.26796 of 2004 dated 18.09.2017.***

(c) K.Yogeshwaran *Vs.* ***The Secretary, Regional Transport Authority, Thiruvallur in W.P.[MD]Nos.44385 & 44386 of 2006 dated 06.07.2018.***

6.According to him, in all the aforesaid judgments, it has been consistently held that no additional tax can be levied for violation of permit conditions.

7.Per contra, the learned Additional Government Pleader would submit that under Section 11 of the Tamil Nadu Motor Vehicles Taxation Act, the second respondent can levy additional tax when any motor vehicle in respect of which tax has been paid has altered the route without permission in such manner as to cause the vehicle to become a vehicle in respect of which higher rate of tax is payable. Therefore, according to the learned Additional Government Pleader, the demand made by the second respondent for payment of additional tax for the spare bus is valid and legal.

Discussion:

8.In the case on hand, the petitioner has obtained permit for the spare bus only as a stage carriage. Stage carriage permits are granted under Section 72 of the Motor Vehicles Act and contract carriage permits are granted under Section 74 of the Act. The requirements for the grant of stage carriage permit as well as for the grant of contract carriage permit are different. The temporary permit was also obtained by the petitioner for the spare bus under Section 88(8) of the Motor Vehicles Act, 1988. It is not disputed by the respondent that for the violation of permit conditions by the spare bus, fine was paid by the petitioner as demanded by the respondent and compounding fees was also paid.

9.This Court by its earlier decisions cited by the learned Counsel for the petitioner referred to supra, has consistently held that violation of permit conditions will not alter the character of the vehicle. In the case on hand, the spare bus is having a stage carriage permit and just because the petitioner had violated the permit conditions by plying the vehicle between Madurai to Coimbatore as an omni bus, it will not alter the character of the vehicle. Therefore, the impugned demand made by the second respondent against the petitioner to pay additional tax is not in accordance with law and it has to be quashed. Both the authorities below have failed to consider the settled legal position before coming to the conclusion that the petitioner is liable to pay additional tax, for the spare bus.

10.For the aforesaid reasons, this Court is of the considered view that the impugned order dated 17.01.2018, passed by the first respondent confirming the order of the second respondent in demand notice in R.No.70906/A2/2015 dated 27.10.2015 is hereby quashed and the writ petitions are allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

11.As a condition for grant of stay, this Court had earlier directed the petitioner to pay a sum of Rs.60,000/- in W.P.[MD] No.19886 of 2015, the first respondent is directed to refund the said sum of Rs.60,000/- to the petitioner within a period of eight [8] weeks from the date of receipt of a copy of this order. It is also made clear that the respondents are given liberty to initiate action against the petitioner if not already initiated under Section 86 of the Motor Vehicles Act, 1988.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Secretary,
Regional Transport Authority,
Madurai (North), Madurai - 7.

2.The Motor Vehicle Inspector,
Grade II, Enforcement Wing,
Coimbatore.

3.The Inspector of Police,
R4, Sulur Police Station,
Sulur, Coimbatore.

4.The Joint Transport Commissioner
Cum Appellate Authority,
Madurai - 7.

5.The Regional Transport Officer,
Madurai (North),
Madurai - 7.

+2 CC to M/s.T.PADMANABHAN, Advocate in SR Nos.50052,5003

W.P.(MD)Nos.19886 of 2015
& 5680 of 2018
26.02.2019

MR
PK/23.04.2019 : 5P/8C