

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2020

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.240 of 2020
and WMP.Nos.277 & 278 of 2020

Tvl. Ponnaiyah Ramajayam Institute
of Medical Sciences
Rep. by its Chancellor P.Murugesan
Manamai Nallur East Coast Road
Mahabalipuram Kancheepuram District-603 102 ... Petitioner

Vs.

- 1 The Regional Transport Officer
Chengalpattu.
- 2 The Sub Inspector of Police
E-2 Tirukazhukundram Police Station
Chengalpattu Kancheepuram District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying Writ of Certiorari to call for the records of the 1st respondent in Memo No.35704/A2/2019 dated 3.10.2019 demanding tax with penalty a sum of Rs.19,79,610/- and to quash the same.

For Petitioner : Mrs.Radha Gopalan

For Respondents : Mr.R.P.Pratap Singh,
Government Advocate

O R D E R

Heard Mrs.Radha Gopalan, learned counsel for the petitioner and Mr.R.P.Pratap Singh, learned Government Advocate for the respondents.

2. The petitioner states that it is a trust set up in 2004 for managing Educational Institutions. It has obtained permits from the appropriate authorities in Puducherry for plying of buses for carrying staff and students. The present impugned proceedings relate to a bus bearing registration No.PY-01/BL/2192. A permit was obtained from the authorities at Puducherry and the bus was utilized to cater the needs of staff and students at the college at Puducherry. Since the petitioner proposed to set up and start a medical college and

intended to use the bus as an ambulance, the bus was moved to Manamainallur and after obtaining no objection certificate from the Regional Transport Authority on 20.05.2013, the permit obtained was surrendered with effect from 19.02.2013. However, according to the petitioner, since necessary permits for starting the medical college could not be obtained, the bus was kept idle and was not registered in Tamil Nadu.

3. On 19.02.2018, when the vehicle was returning from the workshop after repair, it was seized and impounded and kept in the custody of the second respondent/Sub-Inspector of Police on the ground that necessary statutory records, valid insurance and pollution control certificate, permit and challans for tax payment had not been produced.

4. A representation was made to the Regional Transport Officer, Chengalpet on 11.09.2018, stating as follows:

பெறுநர்
உயர்திரு ஆர்.டி.ஓ. அவர்கள்
செங்கல்பட்டு

அய்யா

பி.ஒய் 01 யு.எஸ் 2192 என்ற எண்ணுள்ள எங்கள் கல்வி நிறுவனத்திற்கு சொந்தமான வாகனத்தை எங்கள் அலுவலகத்தில் மறுபதிவு செய்ய வேண்டி வாகனத்தை மெக்கானிக் கொண்டு வேலை செய்து விட்டு திரும்பும் வழியில் மோ.வா.ஆ.நிலை 11 அவர்களால் தணிக் கை செய்யப்பட்டு சில குறைபாடுகளின் காரணமாக வாகனம் திருக்கழுக்குன்றம் காவல் நிலையத்தில் சிறை வைக்கப்பட்டுள்ளது. அதற்காக தாங்கள் விதிக்கும் இணைக் கட்டணம் மற்றும் வரி செலுத்தி விடுகிறேன். வாகனத்தை விடுவிக்க ஆவணம் செய்ய கேட்டுக் கொள்கிறேன்.

5. The impugned order has come to be passed on 03.10.2019, wherein the Officer proceeds on the basis that the vehicle in question is an Omni bus, and levying tax on that basis in terms of Section 3 and 4 of the Tamil Nadu Motor Vehicles Taxation Act, 1974 (in short TNMVT Act) read with the schedules therein.

6. Without going into the merits of the levy per se, what stares me in the face is the apparent violation of principles of natural justice. It is no doubt incumbent upon the Authority to assess the vehicle and levy appropriate tax, but such levy has to be preceded by proper opportunity extended to the petitioner/owner of the vehicle including on the aspect of classification of the vehicle itself and the use/purpose to which it was deployed. The schedules to the TNMVT Act levy

varying rates of tax in respect of different classes of vehicles and a decision as to what class the vehicle falls under cannot be taken unilaterally by the authority, but only after taking into consideration the submissions of the petitioner in this regard.

7. The above exercise has not been carried out. The provisions of Sections 3 and 4, no doubt, do not specifically extend an opportunity of hearing prior to levy of tax. However, in the light of the position that the rate of tax would depend on the specification of the vehicle as well as the use to which such vehicle was put, such opportunity of hearing would have to be read into the provision in order to ensure that all relevant facts are ascertained and a proper determination of the vehicle type and use, as well as all other relevant parameters is made, prior to levy of tax.

8. In this regard useful reference may be made to the judgment of the Hon'ble Supreme Court in C.B.Gautam V. Union of India (199 ITR 530) though rendered in the context of revenue laws. When dealing with a challenge to the provisions of erstwhile Chapter XX-C of the Income Tax Act, 1961, the Hon'ble Supreme Court considered the importance of the right to be heard in adjudication proceedings concluding that normally a decision that would impact the civil rights of a party should be taken only after that party were heard. Section 269 UD was thus read so as to include therein an opportunity of personal hearing prior to passing of an order of acquisition. The relevant portion of the judgment reads as follows:

26. The next question to which we propose to address ourselves is whether the provisions of Chapter XX-C are bad in law as there is no provision for giving the concerned parties an opportunity of being heard before an order is passed under the provisions of Section 269UD of the said Chapter for the purchase by the Central Government of an immovable property agreed to be sold in an agreement of sale. In this regard a plain reading of the provisions of the said Chapter clearly shows that they do not contain any provision for giving the concerned parties an opportunity to be heard before an order for compulsory purchase of the property by the Central Government is made. In connection with the requirement of opportunity of being heard before an order for compulsory purchase is made we find that somewhat similar questions have been considered by this Court on a number of occasions. In the case of Union of India v. Col. J.N. Sinha and Anr. : (1970) IILLJ284SC the facts were that the first respondent who was in the class-I service of the Survey of India and rose to the position of Deputy Director of Survey was compulsorily retired by an order under

Rule 56(j) of the Fundamental Rules, no reasons were given in the order. Respondent No. 1 challenged the order on the ground that it violated principles of natural justice and no opportunity had been given to the first respondent to show cause against his compulsory retirement. A Division Bench of this Court in its judgment in that case observed as follows:-

Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. As observed by this Court in *Kraipak and Ors. v. Union of India* : [1970]1SCR457 'the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law out supplement it.' It is true that if a statutory provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if, on the other hand, a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the Legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power.

27. In the case of *Olga Tellis and Ors. v. Bombay Municipal Corporation and Ors. etc.* : [1985] 2 SCR 51 at 89, a Constitution Bench comprising five learned Judges of this Court had occasion to deal with the provisions of Section 314 of the Bombay Municipal Corporation Act, 1888. Chandrachud, C.J., (as he then was) delivering the judgment of the Court held that "the said Section confers on the Commissioner the discretion to cause an encroachment to be removed with or without notice. That discretion has to be exercised in a reasonable manner so as to comply with the constitutional mandate that the procedure accompanying the performance of a public act must be fair and reasonable. The Court must lean in favour of this interpretation because this helps sustain the validity of the law." Chandrachud, C.J., went on to observe as follows:-

It must further be presumed that, while vesting in the Commissioner the power to act without notice, the Legislature intended that the power should be exercised sparingly and in cases of urgency which brook no delay. In all other cases, no departure from the audi alteram partem rule ('Hear the other side') could be presumed to have been intended. Section 314 is so designed as to exclude the principles of natural justice by way of exception and not as a general rule. There are situations which demand the exclusion of the rules of natural justice by reason of diverse factors like time, place the apprehended danger and so on. The ordinary rule which regulates all procedure is that persons who are likely to be affected by the proposed action must be afforded an opportunity of being heard as to why that action should not be taken. The hearing may be given individually or collectively, depending upon the facts of each situation. A departure from this fundamental rule of natural justice may be presumed to have been intended by the Legislature only in circumstances which warrant it. Such circumstances must be shown to exist, when so required, the burden being upon those who affirm their existence.

28. It must, however, be borne in mind that courts have generally read into the provisions of the relevant sections a requirement of giving a reasonable opportunity of being heard before an order is made which would have adverse civil consequences for the parties affected. This would be particularly so in a case where the validity of the section would be open to a serious challenge for want of such an opportunity.

29. It is true that the time frame within which the order for compulsory purchase has to be made is a fairly tight one but in our view the urgency is not such as would preclude a reasonable opportunity of being heard or to show cause being given to the parties likely to be adversely affected by an order of purchase under Section 269UD(1). The enquiry pursuant to the explanation given by the intending purchaser or the intending seller might be a somewhat limited one or a summary one but we decline to accept the submission that the time limit provided is so short as to preclude an enquiry or show cause altogether.

30. In the light of what we have observed above, we are clearly of the view that the requirement of a reasonable opportunity being given to the concerned parties, particularly, the intending purchaser and the intending seller must be read into the provisions

of Chapter XX-C. In our opinion, before an order for compulsory purchase is made under Section 269UD, the intending purchaser and the intending seller must be given a reasonable opportunity of showing cause against an order for compulsory purchase being made by the appropriate authority concerned. As we have already pointed out the provisions of Chapter XX-C can be resorted to only where there is a significant under-valuation of property to the extent of 15% or more in the agreement of sale, as evidenced by the apparent consideration being the lower than the fair market value by 15% or more. We have further pointed out that although a presumption of an attempt to evade tax may be raised by the appropriate authority concerned in case of the aforesaid circumstances being established, but such a presumption is rebuttable and this would necessarily imply that the concerned parties must have an opportunity to show cause as to why such a presumption should not be drawn. Moreover, in a given transaction of an agreement to sell there might be several bona fide considerations which might induce a seller to sell his immovable property at less than what might be considered to be the fair market value. For example; he might be in immediate need of money and unable to wait till a buyer is found who is willing to pay the fair market value for the property. There might be some dispute as to the title of the immovable property as a result of which it might have to be sold at a price lower than the fair market value or a subsisting lease in favour of the intending purchaser. There might similarly be other genuine reasons which might have led the seller to agree to sell the property to a particular purchaser at less than the market value even in cases where the purchaser might not be his relative. Unless an intending purchaser or intending seller is given an opportunity to show cause against the proposed order for compulsory purchase, he would not be in a position to rebut the presumption of tax evasion and to give an interpretation to the provisions which would lead to such a result would be utterly unwarranted. The very fact that an imputation of tax evasion arises where an order for compulsory purchase is made and such an imputation casts a slur on the parties to the agreement to sell lead to the conclusion that before such an imputation can be made against the parties concerned, they must be given an opportunity to show cause that the under-valuation in the agreement for sale was not with a view to evade tax. Although Chapter XX-C does not contain any express provision for the affected parties being given an opportunity to be heard before an order for purchase is made under Section 269UD, not to read the

requirement of such an opportunity would be to give too literal and strict an interpretation to the provisions of Chapter XX-C and in the words of Judge Learned Hand of the United States of America "to make a fortress out of the dictionary." Again, there is no express provision in Chapter XX-C barring the giving of a show cause notice or reasonable opportunity to show cause nor is there anything in the language of Chapter XX-C which could lead to such an implication. The observance of principles of natural justice is the pragmatic requirement of fair play in action. In our view, therefore, the requirement of an opportunity to show cause being given before an order for purchase by the Central Government is made by an appropriate authority under Section 269UD must be read into the provisions of Chapter XX-C. There is nothing in the language of Section 269UD or any other provision in the said Chapter which would negate such an opportunity being given. Moreover, if such a requirement were not read into the provisions of the said Chapter, they would be seriously open to challenge on the ground of violations of the provisions of Article 14 on the ground of non-compliance with principles of natural justice. The provision that when an order for purchase is made under Section 269UD-reasons must be recorded in writing is no substitute for a provision requiring a reasonable opportunity of being heard before such an order is made.

9. In the light of the discussion as aforesaid, the impugned order is liable to be set aside as being non-speaking and passed in violation of the principles of natural justice. Let the petitioner be heard and an order in accordance with law be passed by the first respondent after taking into consideration the contentions of the petitioner. This exercise will be carried out within a period of eight (8) weeks from date of uploading of this order.

10. This Writ Petition is allowed in the aforesaid terms. No costs. Connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

To

- 1 The Regional Transport Officer
Chengalpattu.
- 2 The Sub Inspector of Police
E-2 Tirukazhukundram Police Station
Chengalpattu Kancheepuram District.

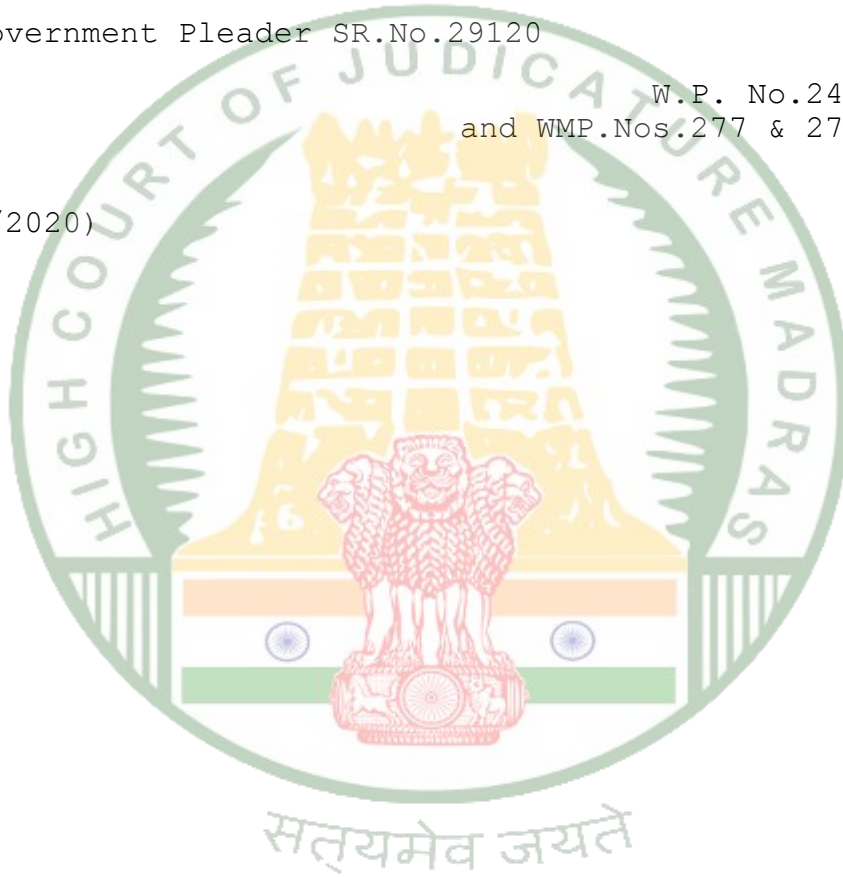
+1cc to Mrs.Radha Gopalan, Advocate SR.No.28925

+1cc to Government Pleader SR.No.29120

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and WMP.Nos.277 & 278 of 2020

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