



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.07.2020

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) .Nos.6729, 6730, 6731, 6732, 6733 and 6734 of 2019

Thamos Madasamy	... Petitioner in WP(MD)No.6729/ 2019
Govindarajan Subbaraiyalu	... Petitioner in WP(MD)No.6730/ 2019
Rajesh Sivanandi Devar	... Petitioner in WP(MD)No.6731/ 2019
S.Karuppasamy	... Petitioner in WP(MD)No.6732/ 2019
S.Chellamani	... Petitioner in WP(MD)No.6733/ 2019
R.Sundar Rasu Devar	... Petitioner in WP(MD)No.6734/ 2019

- Vs. -

1. The Regional Transport Officer,
Madurai North, Melur Road, Madurai District.
2. The Regional Transport Officer,
Madurai South, Madurai. ... Respondent in WP(MD)No.6729/ 2019

The Regional Transport Officer,
Madurai South, Velmurugan Nagar,
Near PRC Bus Depot, Madurai - 625 003.
... Respondent in WP(MD)Nos.6730 & 6731 / 2019

1. The Regional Transport Officer,
Madurai North, Melur Road, Madurai District.
2. The Regional Transport Officer,
Madurai South, Madurai. ... Respondent in WP(MD)No.6732/ 2019

1. The Regional Transport Officer,
Madurai North, Melur Road, Madurai District.
2. The Regional Transport Officer,
Madurai South, Madurai. ... Respondent in WP(MD)No.6733/ 2019



1. The Regional Transport Officer,
Madurai North, Melur Rd, Madurai District.
2. The Regional Transport Officer,
Madurai South, Madurai. ... Respondent in WP(MD)No.6734/ 2019

Prayer in WP(MD). 6729/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for records relating to the impugned proceedings in Endt Ndis. 13205/A3/2019 dated 04.03.2019 and quash the same and consequently to direct the respondents to issue new and fresh three wheeler auto rickshaw permit in favour of the petitioner

Prayer in WP(MD). 6730/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Mandamus to direct the respondent to issue new and fresh three wheeler Auto rickshaw permit in favour of the petitioner.

Prayer in WP(MD). 6731/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, direct the respondent to issue new and fresh three wheeler Auto rickshaw permit in favour of the petitioner.

Prayer in WP(MD). 6732/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for records relating to the impugned proceedings in Endt Ndis. 13207/A3/2019 dated 04.03.2019 and quash the same and consequently to direct the respondents to issue new and fresh three wheeler auto rickshaw permit in favour of the petitioner

Prayer in WP(MD). 6733/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for records relating to the impugned proceedings in Endt Ndis. 13557/A3/2019 dated 04.03.2019 and quash the same and consequently to direct the respondents to issue new and fresh three wheeler auto rickshaw permit in favour of the petitioner.

Prayer in WP(MD). 6734/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for records relating to the proceedings in Endt Ndis.13206/A3/2019 dated 04.03.2019 and



quash the same and consequently to direct the respondents to issue new and fresh three wheeler Auto rickshaw permit in favour of the petitioner.

In all the writ petitions:

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For Petitioners : Mr.S.Parthasarathy
For Respondents : Mr.M.Rajarajan
Government Advocate

COMMON ORDER

Heard the learned counsel on either side.

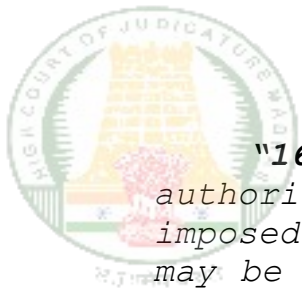
2.The petitioners in these writ petitions are having valid driving licences to drive three wheeler auto rickshaw. Copies of their driving licences have been enclosed in the typed set of papers. The petitioners herein want to eke out their livelihood by driving auto rickshaw. To do so, the petitioners will have to be issued with contract carriage permits. Four of the writ petitioners had applied for issuance of the said permit and they were rejected. The rejection orders have been challenged in these writ petitions. Two of the writ petitioners were not even issued with the necessary applications. Therefore, they have filed petitions in the nature of writ of mandamus.

3.The prayer made by the petitioners herein is stoutly opposed by the respondents. The respondents have also filed a detailed common counter affidavit. The stand of the respondents is that in Madurai city, there are already number of auto rickshaws plying and that it would not be in public interest to permit their number to increase further. Therefore, the Regional Transport Authority who is none other than the District Collector of Madurai District had taken a policy decision not to permit the issuance of contract carriage permits for auto rickshaws. On account of the aforesaid stand taken by the Regional Transport Authority, the impugned orders came to be passed.

4.In the counter affidavit, there is a reference to D.O letter bearing letter No.42417/C2/2013, dated 14.08.2015 sent by the District Collector to the Transport Commissioner. According to the learned Government Advocate, the stand of the respondents is clearly sustainable in view of Rule 165 of Tamil Nadu Motor Vehicle Rules 1988.

5.I carefully considered the rival contentions. Let me take up Rule 165 of Tamil Nadu Motor Vehicle Rules, 1989 for consideration. The said Rule reads as under:

<https://hcservices.ecourts.gov.in/hcservices/>



"165.Limit upon number of permits.-When a transport authority has in exercise of its powers under the Act, imposed a limit upon the number of permits of any class which may be granted for a specified route or a specified area and has already granted such number of permits of that class, the Transport Authority or the Secretary of the Transport Authority, if authorised in this behalf by the Transport Authority, may decline to receive further application for such permits in respect of any such route or areas."

6.I am afraid that the respondents have misconstrued the scope of the said Rule. The operation of the Rule will kick in only if a curb or limitation is imposed by the transport authority. The expression occurring in this Rule "in exercise of its power under the Act" is significant. In other words, the transport authority must exercise its power and justify the imposition of ceiling with reference to the provisions referable to the parent Act. There can be no dispute that Rule 165 refers to Section 74(3) (a) of the Motor Vehicles Act, 1988 which reads as under :

"74.Grant of contract carriage permit.-

(1).....

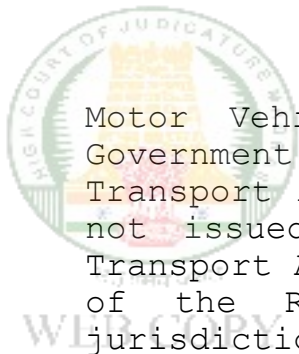
(2).....

(3) (a) The State Government shall, if so directed by the Central Government, having regard to the number of vehicles, road conditions and other relevant matters, by notification in the Official Gazette, direct a State Transport Authority and a Regional Transport Authority to limit the number of contract carriages generally or of any specified type as may be fixed and specified in the notification, operating on city routes in towns with a population of not less than five lakhs.

.....

7.Even a bare reading of the aforesaid provision would lead one to come to the conclusion that the question of State Government directing the State Transport Authority and the Regional Transport Authority to limit the number of contract carriages generally or at any specified type would arise in the event of it being directed by the Central Government in this regard.

8.The petitioners' counsel strongly contends that no such direction has ever been issued by the Central Government. This matter was taken up on more than one occasion to enable the Government Advocate to produce the notification, if any, issued by the Central Government. The respondents are not able to produce any such direction or notification issued by the Central Government. When no such direction as contemplated in Section 74(3) (a) of the



Motor Vehicles Act, 1988 is available, the question of State Government directing the State Transport Authority or Regional Transport Authority will not arise. The State Government has also not issued any such notification. It appears that the Regional Transport Authority on his own had taken a policy decision. The act of the Regional Transport Authority is illegal and without jurisdiction. The Regional Transport Authority can impose curbs on number of permits, as per Rule 165 of aforesaid Rule, only if the said power has been conferred on him by the State Government. The State Government in turn can do so if it has been so directed by the Central Government. Thus, the direction issued by the Central Government will be the sheet anchor.

9. In this case, as rightly pointed out by the learned counsel for the petitioner, the condition precedent for invoking Rule 165 is absent. The State Government also does not appear to have given any direction. The respondents appear to have forgotten that the right to eke out livelihood by driving a commercial vehicle is a fundamental right guaranteed under Article 19(1)(g) of the Constitution of India.

10. Therefore, I have no hesitation to hold that the act of the respondents is violative of the statutory scheme set out in the Motor Vehicles Act and the Rules framed thereunder. It also adversely affects the fundamental rights of the petitioners herein. The orders impugned in these writ petitions stand quashed. The respondents are directed to issue the petition mentioned permits without delay subject to the petitioners complying with the relevant formalities. In the result, these writ petitions are allowed. No costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



1.The Regional Transport Officer
Madurai North
Melur Road
Madurai District

2.The Regional Transport Officer
Madurai South
Madurai.

ORDER MADE IN
W.P. (MD) .Nos. 6729, 6730, 6731, 6732, 6733 and 6734 of 2019
23.07.2020

msa
SDS (13.08.2020) 6P-3C