



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.723 of 2021

P.Selvi

... Petitioner

-Vs-

1.The District Collector cum
The Regional Transport Authority, Madurai.

2.The Regional Transport Officer,
Madurai (South), Madurai.

3.The Inspector of Police,
Keelavalavu Police Station,
Madurai.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the respondents 1 and 2 to consider the petitioner's application dated 16.10.2020 in the light of the orders of this Court in W.P.(MD)No.12245 of 2020 for the replacement of existing vehicle bearing Registration No.TN 59 AF 3496 with vehicle bearing Reg.No.TN 30AS9259 in respect of the stage carrier of the petitioner on the route Madurai to Natham.

For Petitioner : Mr.S.Govindaraman
For Respondents : Mr.Bhagawathi
Government Advocate

ORDER

Heard the learned counsel on either side.

2.The petitioner is holding a stage carriage permit for the petition mentioned vehicle. The vehicle is involved in Crime No.155 of 2012 registered on the file of the third respondent. The vehicle was impounded and it was returned by virtue of the orders passed by the Judicial Magistrate, Melur. One other condition imposed on the petitioner was that the vehicle will not be alienated or altered. At this stage, the petitioner wants to replace the vehicle. The petitioner gave an application in this regard on 16.10.2020. Since no orders were passed, the present writ petition has been filed.

3.The petitioner's request is opposed by the respondents. They have also filed a detailed counter affidavit. The core argument of the learned Government Advocate is that when the vehicle is involved in a criminal case, it is not open to the petitioner to seek replacement of the same.



4.I carefully considered the rival contentions and went through the materials on record. No doubt, the petition mentioned vehicle is involved in a criminal case and the petitioner has only been granted interim custody on certain terms and conditions.

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5.The stand of the respondents is that if the petitioner is allowed to replace the vehicle, the character of the vehicle will change from being a public service vehicle to an idle vehicle. I am not impressed by the aforesaid objection. The learned counsel for the petitioner drew my attention to the relevant provisions set out in Tamil Nadu Motor Vehicles Rules. They are as follows:-

"201. Permit – replacement of vehicle application.

(1) If the holder of a permit desires at any time to replace a vehicle covered by the permit with another vehicle he shall forward the permit and apply in writing to the Transport Authority by which the permit was issued stating the reasons why the replacement is desired and shall—

(i) if the new vehicle is in his possession forward the certificate of registration thereof; or (ii) if the new vehicle is not in his possession, state any material particulars in respect of which the new vehicle will differ from the old.

(2) The fee payable in respect of an application for replacement of a vehicle by another vehicle, other than involving variation of permit and in respect of vehicles involving variation of permit shall be such fee as prescribed in rule 279

202. Rejection of application.— Upon receipt of an application under rule 201 the Transport Authority may in its discretion reject the application—

(i) if it has previous to the date of the receipt, of the application, given reasonable notice of its intention to reduce the number of transport vehicles of that class generally or in respect of the route or area to which the permit applies; or

(ii) if the new vehicle proposed differs in material respects from the old; or

(iii) if the holder of the permit has contravened the provision thereof or has been deprived of possession of the old vehicle under the provisions of any agreement of hire purchase.

203. Procedure on granting replacement.— If the Transport Authority grants an application for the replacement of a vehicle under rule 201 it shall call upon the holder of the permit to produce the permit relating to the old vehicle and the certificate of registration of the vehicle



if not previously delivered to it and shall correct the permit accordingly under its seal and signature and return them to the holder."

6.The learned counsel for the petitioner submitted that the petitioner has complied with all the requirements set out in Rule 201. There can be no dispute whatsoever that the petitioner is in possession of a new vehicle and he is also having the certificate of registration. In such a case, the application could have been rejected only on one of the three grounds set out in Rule 202. I sustain the contention of the petitioner's counsel that the reason for rejection will not fall under any of the three circumstances set out in Rule 202. The petitioner's counsel would point out that the discretion of the authority is circumscribed by Rule 202. The respondents cannot not invent a fourth ground for rejection of the application for replacement of the vehicle.

7.In the case on hand, it is true that the petitioner's vehicle was seized by the police and that it was returned pursuant to the orders of the jurisdictional Magistrate. The petitioner's counsel states that even after replacing the vehicle, he will continue to pay idle tax for vehicle and that he will comply with the conditions stipulated by the jurisdictional Magistrate.

8.The second respondent in his counter has claimed that if the vehicle is replaced, the character of the vehicle will get changed. When the jurisdictional Magistrate imposed a condition that the character of the vehicle should not be changed, he only meant that the vehicle as a physical object should be maintained as such. The learned Magistrate could not have meant anything else.

9.That apart the vehicle in question has become fairly old. If it is replaced by new vehicle, it will only benefit the passengers. The respondents are declining to take note of this relevant and vital aspect.

10. In this view of the matter, the Writ Petition is allowed. The respondents 1 and 2 are directed to permit the petitioner to replace the petition mentioned vehicle by the new vehicle bearing Registration No. **(*)TN 30 AS 9259**. No costs.

Sd/-

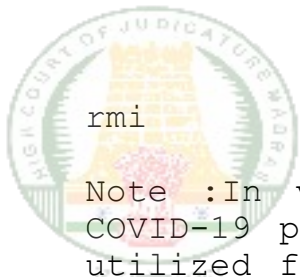
Assistant Registrar(CS-II)

**(*) Corrected as per order of
this Court dated 31.03.2021**

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/ /2021

Sub Assistant Registrar(CS)



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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.

To

(*) to be substituted the order already despatched on 30.03.2021

- 1.The District Collector cum
The Regional Transport Authority,
Madurai.
- 2.The Regional Transport Officer,
Madurai (South),
Madurai.
- 3.The Inspector of Police,
Keelavalavu Police Station,
Madurai.

+1 CC to M/s.SPL GP (SR-8698[F] dated 04/03/2021)

+1 CC to M/s.S.GOVINDARAMAN, Advocate (SR-8624[F] dated 04/03/2021)

W.P.(MD)No.723 of 2021
03.03.2021

ES (CO)
TR(31.03.2021) 4P 6C