



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.03.2021

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD) No. 6067 of 2021

K. Amaresan

... Petitioner

Vs.

1. The District Collector-cum-
The Regional Transport Authority,
Dindigul.

2. The Regional Transport Officer,
Dindigul.

3. The Inspector of Police,
Keelavalavu police station,
Madurai.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned order of the second respondent vide Na.Ka.No.34628/A3/2020 dated Nil 11.2020 and to quash the same and further to direct respondents 1 and 2 to grant replacement to the petitioner stage carriage vehicle bearing registration No.TN 59-AD-3083 with vehicle bearing Registration No.TN 49-BY-3585 on the route Madurai to Dindigul.

For Petitioner : Mr.S.Govindaraman
For Respondents : Mr.B.Bhagavathi,
Government Advocate.

* * *

ORDER

Heard the learned counsel on either side.

2. The writ petitioner is holding a valid stage carriage permit. The petitioner has been using the petition mentioned vehicle for plying on the permitted route. The vehicle was involving in a criminal case. It was even seized, interim custody was taken subject to certain terms and conditions. While so, the petitioner wants to replace the vehicle. The said request was rejected by the second respondent. Questioning the same, this writ petition has been filed.

3. The respondents have filed a counter affidavit opposing the request made in the writ petition and the learned Government Advocate reiterated all the contents set out therein.

4. I have carefully considered the rival contentions and went
<https://hcservices.ecourts.gov.in/hcservices/>



through the materials on record.

5. As rightly pointed out by the learned counsel appearing for the petitioner, the case on hand is no longer *res integra*. Vide Order dated 30.09.2020 in W.P.(MD)No.12245 of 2020 I allowed the writ petition. The said writ petition is containing similar prayer. Paragraph Nos.4 to 8 of the said order read as follows:-

"4. 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 to 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.

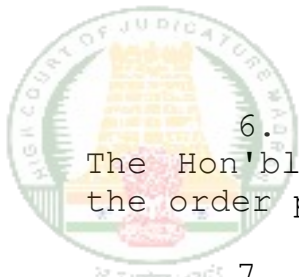
203. Procedure on granting replacement.— If the Transport Authority grants an application for the replacement of a vehicle under rule 201 it shall call upon the holder of the permit to produce the permit relating to the old vehicle and the certificate of registration of the vehicle if not previously delivered to it and shall correct the permit accordingly under its seal and signature and return them to the holder."

5.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 invent a fourth ground for rejection of the application for replacement of the vehicle.

6.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.

7.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.

8.That apart the vehicle in question has become fairly old. If it is replaced by new vehicle, it will only benefit the passengers. The first respondent has not taken note of this relevant and vital aspect. Looked at from any angle, the order impugned in the writ petition is not sustainable. It is quashed. 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-51-K-0715. No costs. Consequently, connected miscellaneous petitions are closed."



6. This order was put to challenge in W.A.(MD)No.395 of 2021. The Hon'ble Division Bench vide order dated 15.03.2021, sustained the order passed by this Court.

7. Therefore, I am of the view that this writ petition can also be allowed on the same terms. The petitioner's counsel gives an undertaking that the petitioner's vehicle that was released in terms of the order passed by the jurisdictional Magistrate will be kept correctly and will not be alienated and he will continue to pay idle tax for the vehicle.

8. Recording the said submission, the order impugned in this writ petition is quashed. Respondents 1 and 2 are directed to permit the petitioner to replace the vehicle by the new vehicle. This writ petition stands allowed. No costs.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PMU

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:

1. The District Collector-cum-
The Regional Transport Authority,
Dindigul.
 2. The Regional Transport Officer,
Dindigul.
 3. The Inspector of Police,
Keelavalavu police station,
Madurai.
- +1 CC to M/s.S.GOVINDRAMAN, Advocate (SR-13961[F] dated 26/03/2021)
+1 CC to M/s.SPL GP (SR-14067[F] dated 29/03/2021)

W.P. (MD)No.6067 of 2021
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KK(01.04.2021) 4P 6C