



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.10.2021

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)Nos.17947 & 17948 of 2021

Masana Thevar ...Petitioner in W.P.(MD)No.17947 of 2021

M.Saraswathi Ammal ...Petitioner in W.P.(MD)No.17948 of 2021

-Vs-

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

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

3. The Inspector of Police,
Keelavalavu Police Station,
Madurai. ...Respondents in both WPs

Common Prayer: Writ Petitions filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned orders of the 2nd respondent vide Na.Ka.No.44153/A2/2021 and Na.Ka.No.40522/A2/2021 dated Nil.09.2021 and 15.09.2021 signed on 17.09.2021 and 27.09.2021 and to quash the same and further to direct the respondents 1 and 2 to grant replacement of the existing stage carriage vehicles bearing Registration Nos.TN59 AL 4713 and TN 59 AQ 3927 with the vehicles bearing Registration Nos.TN 59 AT 2035 and TN 55 AC 5742 with regard to the stage carriage permits of the petitioners on the route Madurai to Ponnamatavathy and Melur to Kottampatti, respectively.

For Petitioners : Mr.J.Anandkumar (in both WPs)

For Respondents : Mr.D.Ghandiraj (in both WPs)
Government Advocate



COMMON ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus, calling for the records of the impugned orders of the 2nd respondent vide Na.Ka.No.44153/A2/2021 and Na.Ka.No.40522/A2/2021 dated Nil.09.2021 and 15.09.2021 signed on 17.09.2021 and 27.09.2021 and to quash the same and further to direct the respondents 1 and 2 to grant replacement of the existing stage carriage vehicles bearing Registration Nos.TN59 AL 4713 and TN 59 AQ 3927 with the vehicles bearing Registration Nos.TN 59 AT 2035 and TN 55 AC 5742 with regard to the stage carriage permits of the petitioners on the route Madurai to Ponnamatavathy and Melur to Kottampatti, respectively.

2.It is the case of the petitioners that, both the petitioners are having Stage Carriage Permits for the route between Madurai to Ponnamatavathy and Melur to Kottampatti for the vehicles bearing Registration Nos.TN 59 AL 4713 and TN 59 AQ 3927 respectively.

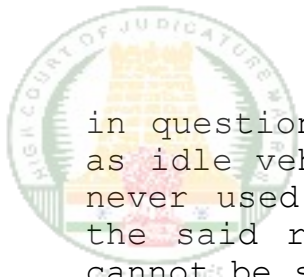
3.While so, the said vehicles since were involved in some criminal case, there have been cases pending before the concerned Magistrate. The resultant position would be that, the vehicles have been seized and produced before the Magistrate Court, where, the documents pertain to the vehicles concerned have also been produced. Therefore, the vehicles cannot be used anymore for the present under the permits given to the petitioners.

4.Hence, in order to replace the vehicles with the same permits, the petitioners since are having other vehicles with registration Nos.TN 59 AT 2035 and TN 55 AC 5742, they had made applications under Section 83 of the Motor Vehicles Act, 1988 read with Rule 201 of the Tamil Nadu Motor Vehicles Rules, 1989.

5.However, having considered the said applications submitted by the petitioners, the respondents, ie., the second respondent has rejected the same, by orders dated 17.09.2021 and 15.09.2021. Aggrieved over the same, the present writ petitions have been filed.

6.Heard Mr.J.Anandkumar, learned counsel appearing for the petitioners, who would submit that, insofar as the two reasons stated in the rejection orders are concerned, the first reason cannot be imposed against the petitioners and even in respect of the second reason, if the original RC books ie., Registration Certificates are produced before the Magistrate and if the petitioners are not able to get back the same, only a certified copy would be possible to be obtained and produced before the respondents.

7.Insofar as the apprehension made by the respondents is concerned, the petitioners' counsel would submit that, the vehicles



in question ie., TN59 AL 4713 and TN 59 AQ 3927 would be kept only as idle vehicles, for which, tax also would be paid and it would be never used for plying in the route under the permits. Therefore, the said reasons stated by the respondents in the impugned orders cannot be sustained, he contended.

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8.Per Contra, Mr.D.Ghandiraj, learned Government Advocate appearing for the respondents would submit that, though under Section 83 of the Motor Vehicles Act, 1988, it is possible for the petitioners to get replacement of the vehicles in the given permits, but in normal circumstances, as per the Rules 201 and 202 of the Tamil Nadu Motor Vehicles Rules, 1989, if the vehicles are produced by the permit holders for the purpose of replacing the existing vehicles, they are otherwise in order, that kind of permission for replacing the vehicles would be given.

9.However, in cases, where the vehicle involved in any criminal case and with the result, the issue is pending before the concerned Criminal Court, where some orders are passed or otherwise, only depending upon the orders to be passed by the criminal Court alone, the fate of the earlier vehicle or existing vehicle can be decided, as there can be chance for the permit holders to reintroduce the same vehicles, after getting it released from the criminal Court, by way of an interim custody. In that case, that will be the violation of the permit conditions. Therefore, the first reason has been stated in the impugned orders.

10.In respect of the second reason stated in the impugned orders is concerned, the learned Government Advocate would submit that, unless the original Registration Certificate is produced, which is required under the relevant Rules, the requests of the petitioners cannot be considered. Therefore, the second reason has been given.

11.Citing these two reasons stated in the impugned orders, the learned Government Advocate would submit that, there is every justification on the part of the second respondent to make all these two reasons in the impugned orders, hence, the impugned orders cannot be said to be unsustainable and therefore, he seeks dismissal of the writ petitions.

12.I have considered the said rival submissions made by the learned counsel appearing for both parties and have perused the materials placed before this Court.

13.In a similar circumstance, infact the permit holder had approached before this Court in W.P.(MD)No.12245 of 2020, where the learned Single Judge of this Court, by order dated 30.09.2020 has passed the following order:-

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 riot 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.



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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 not 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."

14. Infact, the said order though was appealed by way of an intra-Court Appeal in W.A.(MD)No.395 of 2021 by the Transport Authorities, the order of the writ Court was confirmed by the order of Division Bench dated 15.03.2021 with the following terms:-

"2. The learned Special Government Pleader appearing for the appellants submitted that if any such permission is given, it will be contrary to the order of the learned Judicial Magistrate, Melur, not to alter, mortgage, sell or in any other manner transfer or encumber the vehicle till the disposal of the criminal case, and in any case, if the permit is likely to be transferred to the new vehicle, the respondent cannot be permitted to use the old vehicle.

3. We do not find any merit in this appeal, particularly, in view of the submission made by the learned counsel appearing for the respondent that the very same permit will not be used for the old vehicle and the said vehicle will be kept in idle and the respondent will also not alienate the same.

4. In view of the said submission, the order of the learned Single Judge does not require any interference. In fact, the order will enure the benefit of not only the respondent, but also the general public. In any case, if the permit is likely to be transferred to the new vehicle, the old vehicle cannot be used as stated by the learned Special Government Pleader.

5. This Writ Appeal is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed."



The petitioners have been similarly placed and infact he is better placed.

15.Insofar as the existing vehicles, which involved in the criminal cases are concerned, it is the definite stand of the petitioners that the vehicles could not be reintroduced, unless and until clean sheet is obtained from the criminal Court. Moreover, the existing vehicles should be kept as idle vehicles and idle tax would be paid without any default.

16.Insofar as the replacement of the vehicles is concerned, ie., TN 59 AT 2035 and TN 55 AC 5742, whatever the documents required ie., registration certificate and other documents for the purpose of replacing the vehicles under the existing permits had also been produced and therefore, based on which, the issue can be reconsidered and accordingly, an order can be passed under Section 83 of the Motor Vehicles Act, 1988.

17.The reason being that, Section 83 of the Motor Vehicles Act, 1988 reads thus:

"83. Replacement of vehicles. - The holder of a permit may, with the permission of the authority by which the permit was granted, replace any vehicle covered by the permit by any other vehicle of the same nature."

18.No other reasons can be stated for replacing the vehicles as has been contemplated under Section 83 of the Motor Vehicles Act, 1988. However insofar as the Rules 201 and 202 of the Tamil Nadu Motor Vehicles Rules, 1989 are concerned, what are all the 3 reasons in which, such rejection has to be made, have been clearly stated and infact, it was dealt with by the Writ Court in the aforesaid judgment, which has been confirmed by the Division Bench of this Court also.

19.Therefore, beyond the said reasons, no new reasons can be invented or added by the Transport Authorities to be complied or requiring to be complied with by the permit holders, as has been stated in the impugned orders. Therefore, this Court has no hesitation to hold that the impugned orders cannot be sustained and are liable to be interfered with.

20.In the result, following orders are passed in the writ petitions:

that the impugned orders are quashed and the matters are remitted back to the second respondent for re-consideration. While reconsidering the same, the aforestated view of this Court and the view already confirmed by the Division Bench order referred to above, shall be borne in mind and in this regard, undertakings can be obtained from the petitioners that the petitioners shall not under any circumstance utilize the vehicles in question ie., TN 59 AL 4713 and TN 59 AQ 3927 by using the



permits, unless and until it is completely cleared from the criminal cases by the concerned criminal Court. After getting such undertakings from the petitioners and after verifying the other documents pertaining to the replacement of vehicles, as per Section 83 of the Motor Vehicles Act, 1988 and Rules 201 and 202 of the Motor Vehicles Rules, 1989, revised orders can be passed by the respondents with regard to the plea of the petitioners for replacement of the vehicles concerned. The needful as indicated shall be undertaken by the second respondent within a period of two (2) weeks from the date of receipt of a copy of this order.

21.With these directions the writ petitions are disposed of.
No costs.

Sd/-

Assistant Registrar (W)

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/ /2021

Sub Assistant Registrar(CS)

SM

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,Madurai.

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

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

+2 CC to M/s.J.ANAND KUMAR, Advocate (SR-30898[F] & SR-30897[F]
dated 01/10/2021)

+1 CC to M/s.SPL.GP (SR-31003[F] dated 04/10/2021)

W.P. (MD)Nos.17947 & 17948 of 2021

Dated:

01.10.2021

MGJ(06.10.2021) 8P 7C

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