



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.10.2021

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)No.19150 of 2021

P.Palanichamy

... Petitioner

Vs.

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

2.The Regional Transport Officer,
Theni.

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

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned order of the 2nd respondent vide Na.Ka.No.24019/A3/2021 dated Nil.10.2021 signed on 13.10.2021, and to quash the same and further to direct the respondents 1 and 2 to grant replacement of the existing stage carriage vehicle bearing Registration No.TN 59 AQ 6843 with vehicle bearing Registration No.TN 66 S 4533 with regard to the stage carriage permit of the petitioner on the route Madurai to Cumbum.

For Petitioner : Mr.J.Anandkumar
For Respondents : Mr.D.Ghandiraj
Government Advocate

ORDER

The prayer sought for herein is the Writ of Certiorarified Mandamus, calling for the records of the impugned order of the 2nd respondent vide Na.Ka.No.24019/A3/2021 dated Nil.10.2021 signed on 13.10.2021, and to quash the same and further to direct the respondents 1 and 2 to grant replacement of the existing stage carriage vehicle bearing Registration No.TN 59 AQ 6843 with vehicle bearing Registration No.TN 66 S 4533 with regard to the stage carriage permit of the petitioner on the route Madurai to Cumbum.



2.It is the case of the petitioner that the petitioner is having a valid stage carriage permit for running the bus in the route between Madurai and Cumbum in respect of vehicle with Registration No.TN 59 AQ 6843. The said permit was given by the first respondent, which has been renewed by the first respondent for a period of five years from 01.03.2020 to 28.02.2025.

3.In the year 2012, a case has been registered in Crime No.155 of 2012 by the third respondent, where the vehicle in question allegedly involved in a criminal case. Therefore, the police impounded the vehicle and the certificate of registration for the said bus with Registration No.TN 59 AQ 6843 has been produced before the concerned Magistrate Court, at Melur.

4.In view of the said case, since the vehicle in question has been impounded by the respondent police, the petitioner even though is having a valid permit to run the vehicle in the said route upto 28.02.2025, he could not ply the vehicle. Therefore, in order to replace the vehicle in question for the same permit, the petitioner has made a request to the respondents ie., the respondents 1 and 2 and the said request has been turned out through the impugned order passed by the second respondent dated 15.10.2021, wherein the second respondent has stated the following reasons:

“இவ்விண்ணப்பத்தினை 1988 மோட்டார் வாகனப் பிரிவு 83ன் கீழ் பரிசீலனை செய்திட கீழ்க் கண்ட விபரங்களுடன் மீள இவ்வலுவலகத்திற்கு விண்ணப்பம் செய்யுமாறு வாகன உரிமையாளர் கேட்டுக் கொள்ளப்படுகிறார்.

1.TN 59 AQ 6843 வாகன அசல் பதிவுச் சான்று கீழ்வளவு காவல் நிலைய குற்ற வழக்கு எண்.155/2012 ன்படி மேலூர் நீதிமன்ற நடுவர் நீதிமன்றத்தின் பொறுப்பில் ஒப்படைக்கப்பட்டுள்ளது. மேற்கண்டபடி இவ்வாகனத்தின் மீது வழக்கு நிலுவையில் உள்ளதால் அனுமதி சீட்டு நடப்பிலுள்ள இவ்வாகனத்தை வேறொரு பேருந்து கொண்ட வாகன மாற்றம் அனுமதிக்கலாம் என்பதற்கான நீதிமன்ற உத்தரவை மேலூர் மாண்புமையுடைய நீதிமன்ற நடுவர் நீதிமன்றத்தில் பெற்று விண்ணப்பத்துடன் இணைக்கப்படவில்லை.

2.TN 59 AQ 6843 வாகனத்தின் அசல் பதிவுச் சான்று மற்றும் அனுமதி சீட்டு வாகனம் மாற்றம் கோரிய விண்ணப்பத்துடன் இணைக்கப்படவில்லை.”

Challenging the said order, the present Writ Petition has been filed.



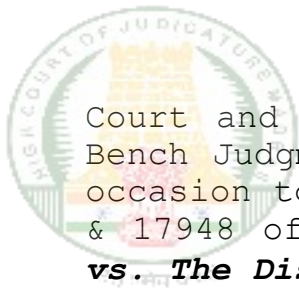
5.Mr.J.Anandkumar, learned counsel appearing for the petitioner has submitted that the bus with Registration No.TN 59 AQ 6843, which was used by the petitioner with the permit since has been impounded, the said vehicle could not be pressed into service. Therefore, in order to replace the vehicle with the different vehicle number, when the petitioner approached the respondents, especially the second respondent, under Section 83 of the Motor Vehicles Act, 1988, instead of permitting the petitioner to replace the vehicle, the present order has been passed directing the petitioner to get an order from the concerned Magistrate Court, where criminal case is pending and also to produce the original Registration Certificate pertaining to the vehicle in question, even though the same has been produced and kept in the records of the criminal case concerned at the Court referred above. Therefore, the learned counsel seeks indulgence of this Court to set aside the said order and remit the matter back to the respondents for re-consideration, as the said reasoning given by the second respondent in the impugned order is not inconsonance with Section 83 of the Motor Vehicles Act, 1988.

6.In this context, the learned counsel appearing for the petitioner has relied upon various orders passed by this Court in W.P.(MD)No.12245 of 2020 dated 30.09.2020 and W.A.(MD)No.395 of 2021 dated 15.03.2021, following which, a number of orders have been passed by this Court at various point of time on the similar issue.

7.Per contra, Mr.D.Ghandiraj, learned Government Advocate appearing for the respondents, on instructions, would submit that, the vehicle in question of the petitioner involved in a crime. Therefore, it was impounded and the criminal case is still pending. Therefore, during pendency of the criminal case, if the vehicle in question is permitted to be replaced by any other vehicle, by taking advantage of the situation, the vehicle in question, which has already been impounded, is also to be pressed into service. Therefore, in order to avoid the same, such kind of orders were sought to be obtained from the concerned Magistrate Court. Accordingly, the application of the petitioner was considered and the orders to be passed by the Magistrate Court can be obtained and the original registration certificate from the Magistrate can also be obtained and produced for the purpose of considering the application to grant permission to replace the vehicle in question. Therefore, the said order does not warrant any interference, he contended.

8.I have considered the said rival submissions made by both the parties and have perused the materials placed before this Court.

9.As has been rightly pointed out by the learned counsel appearing for the petitioner, the issue raised in this writ petition is no more *res-integra*. A number of orders have been passed by this



Court and the Writ Court Order has been confirmed by the Division Bench Judgment referred to above. Following these orders, I had an occasion to consider the similar issue recently in W.P.(MD)Nos.17947 & 17948 of 2021 dated 01.10.2021, in the matter of **Masana Thevar vs. The District Collector, Madurai and 2 others.**

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10. After having considered all these aspects, I have passed the following order:

"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 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



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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 not invent a fourth ground for



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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



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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."

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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 aforesaid 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., TN59 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.

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21.With these directions the writ petition is disposed of. No costs."

11.The facts of the said case is similar to the facts of the present case also. Therefore, the law already decided would squarely apply to the present case also, where the petitioner is entitled to get a direction.

12.In that view of the matter, this Court feels that this Writ Petition can be disposed of with the following orders:

that the impugned order is quashed and the matter is 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 petitioner shall not under any circumstance utilize the vehicles in question ie., TN59 AQ 6843 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.

13.Accordingly, this Writ Petition is ordered. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CRL)

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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.

To

- 1.The District Collector-cum-
The Regional Transport Authority,
Theni.
- 2.The Regional Transport Officer,
Theni.
- 3.The Inspector of Police,
Keelavalavu Police station,
Madurai.

+1 CC to M/s.J.ANANDKUMAR, Advocate (SR-32660[F] dated 26/10/2021)

+1 CC to M/s.SPL.GP (SR-32834[F] dated 27/10/2021)

Order made in
W.P. (MD)No.19150 of 2021
Dated: **26.10.2021**

RS-TR/JCP/SAR-II(28.10.2021) 10P 6C