



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.[MD]No.20762 of 2021

K.Murugesan

... Petitioner

Vs.

1.The District Collector Cum
The Regional Transport Authority,
Sivagangai.

2.The Regional Transport Officer,
O/o. The Regional Transport Officer,
Sivagangai.

3.S.Kaja Mohaideen
[R3 given up vide order dated 22.11.2021]

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the first respondent vide his proceedings in Memo R.No.22508/A3/2021, dated 09.11.2021 and quash the same as illegal and consequently direct the first respondent to re-consider the petitioner's Joint Application dated 03.08.2021 as per Section 82 of the Central Motor Vehicle Act, 1988 without insisting an order from the learned Judicial Magistrate, Melur.

For Petitioner : Mr.A.C.Asaithambi

For Respondents 1 & 2 : Mr.M.Lingadurai

Special Government Pleader

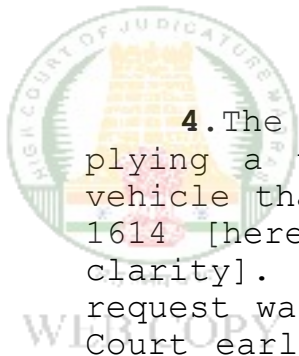
Respondent No.3 : Given up

O R D E R

Mr.A.C.Asaithambi, learned Counsel for lone writ petitioner and Mr.M.Lingadurai, learned Special Government Pleader who accepts notice on behalf of respondent 1 & 2 (official respondents) are before this Court.

2.The third respondent (private respondent) has been given up as he is a formal party and no prayer has been sought as against the third respondent.

3.Considering the narrow scope on which the captioned main writ petition turns, with the consent of the learned Counsel on both sides, main writ petition was taken up.



4.The petitioner holds a valid stage carriage permit and is plying a vehicle in Madurai-Kalaiyarkovil route via Melur. The vehicle that was hitherto plying bears the Registration No.TN 59 AF 1614 [hereinafter 'old vehicle' for the sake of convenience and clarity]. The petitioner wanted to replace this old vehicle, the request was not acceded to and that brought the petitioner to this Court earlier vide W.P.[MD]No.12245 of 2020, which was disposed of by a Hon'ble Single Judge of this Court [after hearing both sides] in and by order dated 30.09.2020.

5.In the earlier writ petition, it was pointed out by the respondents that the request of the petitioner for replacement was opposed on the ground that the petitioner's old vehicle was involved in Crime No.155 of 2012, registered on the file of Keezhavalavu Police Station. The old vehicle was seized, the jurisdictional Magistrate was moved and interim custody of old vehicle was given on certain terms and conditions. Ultimately, Hon'ble Single Judge, disposed of the writ petition by directing the respondents therein to permit the petitioner to replace the old vehicle with a new vehicle which bears a Registration No.TN 51 K 0715 [hereinafter 'new vehicle' for the sake of convenience and clarity].

6.For the sake of ease of reference, this Court deems it appropriate to reproduce the entire order of the Hon'ble Single Judge dated 30.09.2020 and the same reads as follows:

'Heard the learned counsel on either side.

2.The petitioner is holding a valid stage carriage permit and it is plying on the route Madurai to Kalaiyarkoil via., Melur. The registration number of the vehicle is TN-59-AF-1614. The petitioner now wants to replace the said vehicle. He submitted an application in this regard. The same was rejected by the impugned order. Hence, this writ petition has been filed.

3.The petitioner's request is opposed by the respondents. They have also filed a detailed counter affidavit. I carefully considered the rival contentions and went through the materials on record. The primary objection of the respondents is that the petitioner's original vehicle namely., bearing Registration No.TN-59-AF-1614 was involved in Crime No.155 of 2012 registered on the file of Keelavalavu Police Station. The vehicle was also seized. The petitioner moved the jurisdictional magistrate and obtained interim custody of the vehicle subject to certain terms and conditions.

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 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.'

Most relevant paragraphs in the aforementioned order are paragraph Nos.6 and 8 ie., concluding paragraph.

7. Aforementioned paragraph No.6 assumes significance in the light of the impugned order. There will be a little more elaboration on this infra. Post aforementioned order of Hon'ble Single Judge, writ petitioner and the third respondent submitted a joint application to the first respondent, with a prayer for transfer of permit qua new vehicle. This joint application was heard out.

8. This application was heard out and written submissions were also submitted ie., written submissions dated 31.08.2021 submitted in the hearing on 31.08.2021.

9. Thereafter, the impugned order came to be made on 09.11.2021 and a scanned reproduction of the same is as follows:

Office of the Secretary/Regional Transport Authority-cum- Regional Transport Officer, Sivagangai.

Memo R. No. 22508/A3/2021

Date 9.11.2021

Sub	Motor Vehicle - Stage Carriage - Route Bus TN51K0715 - Transfer of Permit application filed - Opinion of Government Pleader obtained - Certain action requested - reg.,
Ref	1. Joint application, dated 03.08.2021 filed by Thiru. K. Murugesan, S/o Karuthaiah Thevar, 10B/12, Vellimalai Nadar Compound, Melur, Madurai District and Thiru. S. Kaja Mohaideen, S/o. Late. Shiek Abdul Kadar, Prop. Madurai Ramnad Transports, 8B, New Natham Road, Madurai District, 2. Opinion of Government Pleader, Madurai Bench of Madras High Court, Madurai dated 28.09.2021, 3. Orders of Regional Transport Authority-Cum-District Collector, Sivagangai dated 27.10.2021.

In the above proposed Joint-application, the existing vehicle TN51K0715 had earlier replaced the vehicle, TN59AF1614, based on the directions of Madurai Bench of Hon'ble High Court, Madras delivered in W.P (M.D) No. 12245 of 2020, dated 30.09.2020. The previous vehicle, TN59AF 1614 was involved in Crime No.155/2012 of Keezhavalavu Police Station and this vehicle impounded in connection with it was latter released by Hon'ble Judicial Magistrate Court, Melur in Cr.M.P.No.5946/20, on the condition that the petitioner shall not alter, Change, mortgage, sell or in any other manner transfer or encumber the property till the disposal of the case,

2. In such condition, followed by the replacement of the above vehicle by TN51K0715, under the said High Court Order, the above joint application has been now filed before the RTA., Sivagangai District. The application was taken up for consideration by R.T.A., in the hearing, dated 31.08.2021, wherein it has been ordered to obtain G.P., opinion in this



-2-

R. No. 22508/A3/2021

instant case. As per the RTA's Order, G.P., opinion was obtained in which G.P., has opined that, 'the writ petitioner ought to have been obtained order from the learned Judicial Magistrate, Melur since the matter has been seized by the said court and the department ought to have been bound by the same, therefore the writ petitioner has to file a petition before the Learned Judicial Magistrate, Melur and inform the entire facts about the replacement of vehicle and thereafter the department may consider as per the rule 201 to 203 of the Motor Vehicle Act'.

3. As per the reference 3-rd cited, the Regional Transport Authority-cum-District Collector have since Ordered to inform this, to concerned petitioner in writing to get Orders from JM Court, Melur. In these circumstances, the Petitioners are hereby informed to approach the Judicial Magistrate Court, Melur, file petition before the Hon'ble Court, informing the entire facts about replacement of vehicle and get Orders for the Transfer of Permit application now filed in respect of Stage Carriage - Bus, TN51K0715, so that further processing of this application may be taken up.

Secretary,
Regional Transport Authority-Cum -
Regional Transport Officer,
Sivagangai.

To (by R.P.A.D)

The Applicants Concerned.

10. Notwithstanding very many averments in the writ affidavit and notwithstanding several grounds that have been raised in the writ affidavit, learned Counsel made one focused submission in his campaign against impugned order and that focussed submission is, the impugned order runs contrary to the earlier order of Hon'ble Single Judge which has been extracted and reproduced supra, more particularly, paragraph No.6 thereat.

11. Learned State Counsel submitted that the apprehension of the respondents is, the petitioner should not take a permit for the old vehicle which has now been returned to the petitioner by the jurisdictional Judicial Magistrate on certain terms and conditions specifically with terms to the effect that the petitioner shall not alter, change, mortgage, sell or transfer or encumber the old vehicle. Learned State Counsel also drew the attention of this Court to the relevant provision of the Tamil Nadu Motor Vehicle Rules, 1989 to say that the respondents do have powers in this regard.

12. Learned State Counsel also pointed out that the proceedings impugned are not final orders (in the transfer of permit joint application) but is only a directive to carry the matter further.



13. It may not be necessary to go into those aspects for two reasons. One reason is, the writ petitioner makes a categorical statement that the old vehicle will now remain idle and the writ petitioner is not seeking permit for the old vehicle. Paragraph No.6 of the order made by the Hon'ble Single Judge has recorded the stated position of the petitioner that the petitioner will continue to pay idle tax for the old vehicle and he will comply with the conditions made by the jurisdictional Magistrate.

14. In this view of the matter, the second point in this case is emerge from the peculiar facts and circumstances of this case and more particularly owing to the undisputed position that the earlier order of the Hon'ble Single Judge has attained finality as an intra Court appeal vide W.A.[MD]No.395 of 2021 came to be filed, wherein the Hon'ble Division Bench disposed of the writ appeal without interfering with the order of the learned Single Judge. The respondents will have to necessarily go by the earlier order made by the Hon'ble Single Judge where there is a specific directive to permit the petitioner to replace the old vehicle with the new vehicle ie., transfer of permit.

15. For the sake of convenience and ease of reference, this Court deems it appropriate to extract the order of the Hon'ble Division Bench which reads as follows:

'This appeal has been preferred by the appellants against the order of the learned Single Judge, setting aside the impugned order and directing appellant Nos.1 and 2 to permit the respondent to replace the old vehicle, bearing Registration No.TN-59-AF-1614 with the new one, bearing Registration No.TN-51-K-0715, in respect of the stage carriage permit of the respondent.

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



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.'

16. In the light of the discussions thus far, the impugned order deserves to be interfered with as it has directed the writ petitioner to approach the judicial Magistrate concerned, ie., jurisdictional Judicial Magistrate viz., Judicial Magistrate, Melur, by filing a petition before the Court informing / appraising the Court of entire facts about replacement of vehicle and get orders for transfer of permit joint application now filed in respect of the new vehicle ie., the stage carriage.

17. The stated position of the writ petitioner that the old vehicle will be kept idle, that idle tax will also be paid and the other submission of the learned Counsel for the petitioner that no permit will be sought for the old vehicle which is the subject matter of proceedings before aforementioned jurisdictional Judicial Magistrate, viewed in the light of the order made by the Hon'ble Single Judge, the impugned order is interfered with.

18. The impugned order is set aside however with a directive to the first respondent to consider the joint application of the writ petitioner and the third respondent being application dated 03.08.2021, pass orders afresh in the light of the earlier order made by this Hon'ble Court and the aforementioned stated position of the writ petitioner after following requisite procedure as expeditiously as the business of the first respondent would permit and in any event within four [4] weeks from today ie., on or before 20.12.2021. This legal drill shall be done without insisting on the writ petitioner approaching the jurisdictional Judicial Magistrate which is the directive qua the impugned communication. To be noted, it is well open to the first respondent to give opportunity to the third respondent (private respondent) who is the transferee qua joint application if deemed appropriate and if deemed necessary. This also takes care of the interest of the third respondent who has been since deleted.



19. Captioned main writ petition is disposed of with the above directive. There shall be no order as to costs.

Sd/-

Assistant Registrar (CRL)

WEB COPY

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MR

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,
Sivagangai.
2. The Regional Transport Officer,
O/o. The Regional Transport Officer,
Sivagangai.

+1 CC to M/s.A.C. ASAITHAMBI, Advocate (SR-35618[F] dated 24/11/2021)

+1 CC to M/s.SPL GP (SR-35449[F] dated 23/11/2021)

W.P. [MD]No.20762 of 2021

22.11.2021

SS (CO)

SB(09.12.2021) 9P 5C