



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2021

CORAM

THE HON'BLE MR. JUSTICE M.SUNDAR

W.P(MD)No.22116 of 2021

and W.M.P. (MD)No.18708 of 2021

WEB COPY

J.Vaibav Bajaj
Rep. By its Managing Partner,
K.N.Balusamy,
5-294, Kovai Main Road,
Near Roundana, L.N.S. Post,
Karur - 639 002.

... Petitioner

Vs.

The Regional Transport Officer,
Regional Transport Office,
No.126, Old Dindigul Road,
Near Collectorate,
Karur - 639 007.

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, calling for the records relating to the impugned order passed by the respondent vide his proceedings in Se.Mu.AA.No.35138/A2/2021 dated 30.11.2021, quash the same as illegal.

For Petitioner	:	Mr.AN.Ramanathan
For Respondent	:	Mr.M.Lingadurai, Special Govt. Pleader.

O R D E R

Mr.AN.Ramanathan, learned counsel on record for writ petitioner and Mr.M.Lingadurai, learned Special Government Pleader, who accepts notice on behalf of lone respondent are before me, with the consent of learned counsel on both sides, main writ petition is taken up owing to the narrow compass on which the captioned matter turns.

2. Before I set out short facts, it is deemed appropriate to say that the 'Central Motor Vehicle Rules, 1989' shall be referred to as 'said Rules'. To be noted, said Rules is a piece of subordinate legislation, the same having been made by the Central Government in exercise of rule making powers conferred on it by various provisions of 'Motor Vehicles Act, 1988 (Act No.59 of 1988)' {hereinafter 'said Act' for the sake of convenience and clarity}.

3. Learned counsel for writ petitioner submits that an order made by the lone respondent in 'November of 2021 (signed on 30.11.2021) bearing reference nr.K.M.vz::35138EA2E2021' (hereinafter 'impugned order' for the sake of convenience and clarity) has been



assailed. The impugned order has been made under Rule 44 of said Rules and vide the impugned order, the trade certificate of the writ petitioner has been suspended for ten (10) days from 06.12.2021 to 15.12.2021. This is for non-compliance / violation of Rule 42 of said Rules. To be noted, Rule 42 of said Rules mandates that no holder of a trade certificate shall deliver a motor vehicle to a purchaser without registration, whether temporary or permanent. In the case on hand, the allegation against the writ petitioner is that he being a trade certificate holder, carrying on business in the name and style 'Vaibav Bajaj' (retail dealer in two wheelers manufactured by a particular company) has sold a two wheeler on 31.10.2019; that two wheeler met with an accident on 16.12.2019 and one person who was an unfortunate victim of this road accident succumbed to injuries and died on 21.01.2020.

4. Notwithstanding very many averments and several grounds raised in the writ affidavit, learned counsel for writ petitioner raised one point in his campaign against the impugned order and that one point is Section 44 of said Rules makes it statutorily imperative for the respondent to give to the writ petitioner an opportunity of being heard before making the impugned order, which is an order of suspension for alleged violation of Rule 42 of said Rules, as already alluded to supra.

5. Rule 44 of said Rules reads as follows:

'44. Suspension or cancellation of trade certificate.—*If the registering authority has reason to believe that the holder of any trade certificate has not complied with the provisions of rules 39 to 43, it may, after giving the holder an opportunity of being heard, suspend or cancel the trade certificate held by him.'*

6. There is no disputation or disagreement that prior to the impugned order, a show cause notice was issued to the writ petitioner and the writ petitioner has also given his explanation. The only issue is regarding personal hearing.

7. Learned State Counsel advertent to the impugned order points out that a personal hearing has been held and date of personal hearing has been recorded as 03.03.2021 in the impugned order. Learned State Counsel also goes on to point out that the objections and stand of the writ petitioner have been dealt with and reasons have been recorded in the impugned order. It is not necessary to extract and reproduce the relevant portions as there is no disputation on this aspect of the matter. Suffice to say that the reasons have been recorded though the reasons are subject to challenge by the writ petitioner. The long and short of the matter is infraction of Rule 42 of said Rules which has already been alluded to supra.



8. From the competing contentions, the only point that falls for consideration is whether a personal hearing was held. In this regard, learned counsel for writ petitioner submits that the entire initiation of proceedings was only in April of 2021 vide a communication from the respondents bearing reference குறிப்பாணை எண்:35138/அ1/2020 and therefore, the personal hearing could not have been held on 03.03.2021.

9. The stated position of the writ petitioner has been considered, therefore, it is quite possible that the date of personal hearing has been wrongly recorded in the impugned order but I do not want to hazard a guess, I do not want to embark upon resolving this controversy and that is owing to the reason that the writ petitioner does have an alternate remedy and there is nothing to demonstrate that this alternate remedy is not efficacious. Alternate remedy of the writ petitioner is under Rule 45 of said Rules, which reads as follows:

'45. Appeal.—Any person aggrieved by an order of the registering authority under rule 35 or rule 44 may, within thirty days of the receipt of any such order, appeal to the head of the Motor Vehicles Department established under section 213.'

10. Though alternate remedy is not a bar for exercise of writ jurisdiction, exercise of writ jurisdiction on the teeth of alternate remedy is only in cases of certain specific exceptions which have now come to be known in litigation parlance as 'Whirlpool exceptions' being exceptions laid down by the Hon'ble Supreme Court vide **Whirlpool principle [Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others]** reported in (1998) 8 SCC 1]. In the case on hand, there is nothing to demonstrate that the factual matrix fits into any of the exceptions culled out in Whirlpool principle. Absent Whirlpool exceptions, I find the case on hand does not call for any interference in this writ petition owing to the alternate remedy. This is more so as the impugned order is a speaking order which deals with all the objections that have been raised by the writ petitioner. It is well open to the writ petitioner to assail the impugned order under Rule 44 of said Rules and if writ petitioner chooses this legal route, subject to limitation, the appellate authority can deal with the matter on its own merits and in accordance with law uninfluenced by / untrammelled by the observations made in this order which are for the limited purpose of disposal of the case on hand.

10. Before I conclude, there is one other point which has also weighed in favour of refraining from interfering qua impugned order in writ jurisdiction is suspension of trade certificate is for a period of 10 days from 06.12.2021 to 15.12.2021 and the expiry of the 10th day is in the anvil i.e., tomorrow.



11. The sequitur is captioned writ petition is disposed of preserving the rights of the writ petitioner to the limited extent indicated supra. Consequently, captioned WMP is disposed of as closed. There shall be no order as to costs.

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Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsm

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

The Regional Transport Officer,
Regional Transport Office,
No.126, Old Dindigul Road,
Near Collectorate,
Karur - 639 007.

+1 CC to M/s.SPL GP (SR-38879[F] dated 15/12/2021)

W.P(MD)No.22116 of 2021
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14.12.2021

SAR(CO)

GC(28.12.2021) 4P 3C