



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P (MD)No.7060 of 2017

and

W.M.P. (MD)Nos.5588 and 5589 of 2017

R.Bakthasiromony

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Home Secretary,
Home (Tr.VII) Department,
Fort St.George, Chennai.
- 2.The Regional Transport Authority,
(Collectorate), Nagercoil,
Kanyakumari District.
- 3.The Regional Transport Officer,
Marthandam,
Kanyakumari District.
- 4.The Inspector of Police,
Eraniel Police Station, Eraniel,
Kanyakumari District.
- 5.The Inspector of Police (Traffic),
Colachel Police Station,
Colachel, Kanyakumari District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the impugned Government Order in G.O. Ms.No.849, Home (Tr.VII) Department, dated 13.12.2011 and quash the same as illegal.

For Petitioner : Mr.A.C.Asaithambi

For Respondents : Mr.M.Rajarajan,
Additional Government Pleader



ORDER

Heard the learned counsel on either side.

2.W.P.(MD)No.2662 of 2015 was allowed by this Court vide order dated 23.11.2018, which reads as follows:-

Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents. The petitioner is a mini bus operator in Kanyakumari. He complains that the Police officials without any authority of law are harassing him. Even his vehicle was seized by the Police on more than one occasion. This impelled him to challenge G.O Ms.No.849, Home (Tr.VII) Department dated 13.12.2011 which authorises the officers of traffic police not below the rank of Sub Inspector of Police (Traffic) to levy spot fines. The offences for which the traffic police could levy fines have been set out in the table annexed to the G.O. As many as 34 offences have been set out in the above said annexure.

2.The grievance of the petitioner is only in respect of serial No.30 annexed to the said G.O incorporating Section 192-A(1) of the Motor Vehicles Act, 1988. The petitioner does not question the said Government Order in other aspects. His challenge is confined to Serial No.30 contained in the annexure to the impugned G.O Ms.No.849 dated 13.12.2011.

3.The submission of the learned counsel appearing for the petitioner is that Section 200 of the Motor Vehicles Act, 1988 enables composition of the offences mentioned in the 200(1). Section 200(1) of the Act reads as follows :

"Any offence whether committed before or after the commencement of this Act punishable under section 177, section 178, section 179, section 180, section 181, section 182, subsection (1) or subsection (2) of section 183, section 184, section 186, 8[section 189, sub-section (2) of section 190,] section 191, section 192, section 194, section 196, or section 198, may either before or after the institution of the prosecution, be compounded by such officers or authorities and for such amount as the State Government may, by notification in the Official Gazette, specify in this behalf."



4. Invoking the said power under Section 200(1) of the Motor Vehicles Act, 1988, the impugned Government Order has been issued. But, interestingly, Section 200(1) of the Act does not include the offences under Section 192 A of the Motor Vehicles Act, 1988. Therefore, it is obvious that the Government could not have authorized the traffic police not below the rank of the Sub Inspector of Police to levy spot fine even in respect of the offence under Section 192 A of the Act. Such an authorisation is clearly without the authority of law. Unless Section 200(1) is amended to include Section 192 A of the Act such an authorisation could not have been given.

5. The counter affidavit filed on behalf of the Government does not deal with this contention at all. A feeble submission was made that the writ petition deserves to be dismissed since the challenge has been mounted after a gap of three years. The said Government Order was issued in December 2011 whereas the writ petition was filed only in February, 2015. When the validity of the Government Order or statute is questioned, laches can never be a reply or defence. The authority of the government to issue the G.O in question in respect of the offence under Section 192 A has been raised. There is no answer. Therefore, the order impugned in this writ petition is set aside insofar as Serial No.30 in the annexure including Section 192-A(1) is concerned. In all other respects, the impugned G.O is sustained.

6. This writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

3. Following the aforesaid order, the present writ petition is allowed on the same lines. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(T & P)

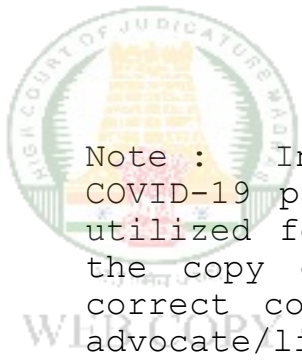
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Sub Assistant Registrar(CS)

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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 Home Secretary, The State of Tamil Nadu,
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+1 CC to M/s.SPL GP (SR-5653[F] dated 17/02/2021)

W.P (MD) No. 7060 of 2017
16.02.2021

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TR(25.03.2021) 4P 7C