IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.358 OF 2022

S.Karthikeyan ... Petitioner

.Vs.

1. The Motor Vehicle Inspector (Grade I),
   Regional Transport Office,
   Chennai (North West),
   Chennai - 102.

2. The Regional Transport Officer,
   Chennai (North West),
   Chennai - 102. ... Respondents

PRAYER:-

Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of mandamus directing the 2nd respondent to release the petitioner's Alla India Tourist Vehicle bearing Registration No.NL-01-B-1078 which was impounded by the 1st respondent on 31.12.2021 and kept in the custody of the 1st respondent forthwith.

For Petitioner : Mr.R.Natesan

For Respondents : M/s.R.L.Karthika
Government Advocate

Mrs.V.Yamuna Devi
Special Government Pleader

O R D E R

The writ on hand has been instituted to direct the 2nd respondent to release the petitioner's All India Tourist vehicle bearing Registration No.NL-01-B-1078 which was impounded by the 1st respondent on 31.12.2021 and kept in the custody of the 1st respondent.

2. The petitioner states that he is the owner of All India Tourist vehicle bearing Registration No.NL-01-B-1078 which is covered by All India Tourist Vehicle permit issued by the Primary Authority in Nagaland and that the All India Tourist Vehicle (Authorisation and Permit) Rules, 2021.

3. When the vehicle was carrying a party of tourist in Chennai, it was checked by the 1st respondent, who, made an allegation that the vehicle was not being used for the purpose of which the permit has been granted issued a vehicle inspection record and impounded the vehicle on 31.12.2021 and kept in the custody of the 2nd respondent.

4. The petitioner states that he met the respondents in person and requested for release of the vehicle and produced the proof that the petitioner had already paid a sum of Rs.90,000/- which is the authorisation fee for the period ending 25.03.2022 and therefore, the vehicle is covered by a valid permit. The petitioner states that the vehicle costing more than Rs.50 Lakhs has been parked in an open space and therefore, the vehicle is to be released. Further, the petitioner has paid a sum of Rs.36,000/- towards tax and by citing all these reasons, the petitioner prays that a direction is to be issued for release of vehicle.

5. At the time of admission, this Court passed a conditional interim order on 11.01.2022 as follows:

> "7. Taking into account the facts and circumstances of the case and also the earlier orders passed by this court, this Court is inclined to pass the following interim order.
>
> - That there shall be a direction to the respondents to release the vehicle bearing Registration No.NL-01-B-1078 belongs to the petitioner forthwith, on condition that the petitioner shall pay a sum of Rs.36,000/- being 100% tax for one week for the 36 seater vehicle immediately.
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> - It is further made clear that the vehicle in question shall be produced by the petitioner on 19.01.2022 at the office of the respondent for verification and based on which, the respondents can file a report with a counter affidavit/

written instructions with regard to the issue raised in this writ petition.

- Post this case on 21.01.2022 immediately after admission.”

6. When the matter was taken up for hearing on 24.01.2022, M/s.R.L.Karthika, learned Government Advocate appearing on behalf of the respondents made a submission that as per the conditions stipulated in the interim order passed by this Court, the petitioner had not presented the vehicle for inspection by the Competent Authorities. Thus, this Court directed the petitioner to produce the vehicle before the Regional Transport Officer on 25.01.2022 at 10.30 a.m.

7. When the matter is taken up for hearing today i.e. 25.01.2022, the learned counsel appearing on behalf of the writ petitioner made a submission that the vehicle is already presented before the Regional Transport Officer and therefore, the request of the petitioner for release of vehicle is to be considered.

8. The learned counsel for the petitioner mainly contended that already tax has been paid and the All India Permit charges paid by the petitioner is shared with the State concerned and therefore, the petitioner is not liable to pay any further tax or otherwise. The learned counsel for the petitioner reiterated that the State of Tamil Nadu is getting a substantial share from the tax collected under the All India permit routes and therefore, no separate tax can be collected by the State.

9. Per contra, the respondents viz., M/s.D.Nithya, Motor Vehicles Inspector Grade I and Mr.D.A.Parvendan, Regional Transport Officer, Chennai (North West), who are present before this Court along with the files and assisting the learned Government Advocate, made a submission that State tax is to be imposed. In view of the fact that the subject vehicle was taking passengers within the State of Tamil Nadu and during inspection, it was traced out and accordingly the vehicle was impounded by following the rules. It is brought to the notice of the authorities that by collecting individual fares from the passengers, the vehicle was carrying the passengers which is not permitted. In view of the said violation, the vehicle was impounded and actions are initiated. Thus, the authorities must be allowed to conduct an enquiry and take a decision by following the procedures and in accordance with law.

10. The Authorities who are present before this Court further made a submission that the petitioner has not approached the authorities with a request for release of vehicle so far. Contrarily, a writ petition is filed directly. In reply, the learned counsel for the petitioner drew the attention of this Court with reference to the copy of the representation dated 03.01.2022 enclosed along with the typed set of papers filed in the writ petition. However, the petitioner could not able to establish that the representation was acknowledged by the Competent Authorities. It is informed that it was given in person. When the Competent Authorities denied the said submission, this Court has to draw a factual inference. It is the obligation on the part of the person who is submitting a representation to get acknowledgment properly or send the said representation through a registered post. Contrarily, there is a growing trend and practice amongst the litigants that even without sending representations, a copy of representation is typed and enclosed in the typed set filed along with the writ petition and a relief is sought for to consider the representation or to release the vehicle or other wise. Such practice of the litigants by enclosing the copy of the representation without proper acknowledgment can never be trusted upon by the Courts for the purpose of considering the relief. Therefore, all such representations/Appeals submitted to the Competent Authorities for seeking certain relief must be submitted in a prescribed manner and proper acknowledgment must be enclosed along with the representation for the purpose of consideration by the Courts.

11. It would be very difficult for the Courts to verify these kinds of statements. The petitioner has submitted a representation in person. The Authorities on the other hand made a submission that they have not received any representation and the petitioner is directly filed the writ petition. In such circumstances, the only way out is to draw an interference that the petitioner has to establish that he has submitted a representation.

12. As far as the submission on behalf of the writ petitioner is concerned, High Court cannot venture into an original adjudication regarding the disputes. Admittedly, there are allegations against the petitioner and regarding the usage of the subject vehicle. Such facts require an enquiry, which is to be conducted with reference to the documents and evidences available. Such an elaborate enquiry cannot be conducted by the High Court in a writ proceedings. High Court cannot based on certain submissions fix the amount of tax to be paid to the State. The tax to be paid by the person must be determined only

after proper adjudication and with reference to the documents and evidences and in consonance with the provisions of the Act and Rules. Thus, an enquiry is mandatory for the purpose of determining the tax as well as the actions to be initiated against the violators or offenders.

13. To entertain a writ of mandamus, a person who is approaching the Court must establish that he has approached the authorities. However, in the present case, the petitioner could not able to establish that he has approached the respondents for redressal of his grievances. Thus, the writ itself is not entertainable. High Court entertaining a writ petition before adjudication by the Competent Authorities is not desirable as High Court cannot conduct a roving enquiry in respect of the disputed facts and circumstances. Thus, in all circumstances, the authorities competent must be allowed to exercise their lawful powers in the manner known to law and in accordance with the provisions of the Act and Rules. The Executives are empowered to adjudicate the original issues. Thus, such original powers need not be usurped by the Courts in all circumstances. Only on exceptional circumstances, if the Courts formed an opinion that there is a gross injustice, then alone appropriate reliefs are to be granted, but not other wise. In all other circumstances, the Courts must allow the Competent Authorities to exercise their powers of adjudication on original issues and if any appeal is contemplated under the Statue, the same should also be exhausted and thereafter only the Court can exercise the power of judicial review.

14. The power of judicial review of the High Court under Article 226 of the Constitution of India is to scrutinise the processes through which a decision is taken by the Competent Authorities inconsonance with the provisions of the Act and Rules are not, but not the decision itself.

15. No doubt, during inspections the Competent Authorities found certain violations of permit and the subject vehicle was impounded. Thus the release of vehicle must be done by following the procedures as contemplated. It is not as if soon after impounding the vehicle, the aggrieved person file writ petition and High Court release the vehicle without determining the disputed issues between the parties. In the event of adopting such a procedure, there is a possibility of error or omission and further, the litigants may also take undue advantages of such procedures for the purpose of release of vehicle without any adjudication and by following the procedures as contemplated. Only endeavour is to ensure that the process of

enquiry commenced and concluded within a reasonable period of time to minimise the hardship if any caused by keeping the vehicle long period in the yard maintained by the Government authorities. Thus, release of vehicle cannot be granted in a routine manner. The seriousness involved in respect of the violations and allegations require an adjudication on the hands of the Competent Authorities with reference to the documents and evidences.

16. The apprehension raised on behalf of the petitioner is that, the subject vehicle impounded is cost about Rs.55 Lakhs and in the event of keeping the vehicle idle in an open place, it will cause damage to the vehicle. In such circumstances, the Authorities Competent are bound to consider the practical aspects of the matter and conduct enquiry and dispose of the same as expeditiously as possible.

17. The Authorities who are present before this Court further state that the Regional Transport Office of the respondent is having a parking yard at Pallavan Salai and therefore, the vehicle of the petitioner is parked in a safe place and the apprehension raised by the petitioner is incorrect and unsustainable.

18. Moreover, Mrs.V.Yamuna Devi, learned Special Government Pleader made a submission that many such vehicles are plying without paying proper State tax. This Court is of the opinion that it is the duty mandatory on the part of the authorities to conduct intensive inspections of the vehicles and trace out the violators and initiate all appropriate actions in the manner known to law. As pointed out by the learned Special Government Pleader, all such violations will result in loss of State revenue and therefore, the authorities are duty bound to perform their public duties efficiently and in accordance with law.

19. The Authorities of the Department present before this Court made a submission that one week would be sufficient for them to complete the enquiry and pass final orders. The time limit requested is very reasonable. Under these circumstances, the respondents are directed to conduct an enquiry with reference to the violations, offences raised against the petitioner based on the documents and evidences and decide the issues on merits and in accordance with law and by affording an opportunity to the writ petitioner, within a period of seven (7) working days from the date of receipt of a copy of this order. The petitioner is directed to co-operate for the conduct of

enquiry. The petitioner is at liberty to submit their explanations/objections along with the documents if any for defending their case. In the event of non co-operation on the part of the writ petitioner, the time limit of 7 working days granted by this Court cannot be insisted upon by the petitioner. The Authorities are directed to record any such non co-operation if any in the proceedings itself.

20. This being the factum established. The writ petitioner is not entitled for the relief as such sought for in the present writ petition and accordingly, the Writ Petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Sgl

To

1. The Motor Vehicle Inspector (Grade I),
   Regional Transport Office,
   Chennai (North West),
   Chennai - 102.

2. The Regional Transport Officer,
   Chennai (North West)
   Chennai - 102.

+2ccs to M/s.R.L.Karthika, Advocate, S.R.No.4348
+1cc to the Government Pleader, S.R.Nos.2753 & 4739

W.P.NO.358 OF 2022

PCH(CO)
PBS/09/02/2022