



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2022

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.NO.22775 OF 2008

AND

M.P.NOS.2 AND 3 OF 2008

Federation of Financiers Association
Rep.by its General Secretary
Shri K.Srinivasan
No.45/165, West Car Street
Chidambaram 608 001.

... Petitioner

-Vs-

1. The Special Transport Commissioner
and the Transport Commissioner
Ehilagam, Chepauk
Chennai 600 005.
2. Joint Transport Commissioner-cum-
Regional Transport Authority
No.4, Anderson Salai
Ayanavaram, Chennai 600 023.
3. State of Tamil Nadu
Rep.by its Secretary to Government
Department of Road Transport
Fort St.George
Chennai 600 009.
4. Union of India
Rep. by its Secretary
Ministry of Road Transport & Highways
Transport Bhavan, I.Parliament Street
New Delhi.

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the letter R.No.67853/H2/07 dated 20.03.2008 bearing



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Circular No.20/08 issued by the 1st respondent quashing the same as arbitrary, illegal, ultra vires and violative of Article 14 and Article 19(1)(g) of the Constitution of India.

For Petitioner : Mr.Mukunth
For Respondents : Mr.K.Thippusulthan
Government Advocate
for R1 to R3
Mr.Arumugam
for R4

ORDER

Circular No.20/2008 issued by the 1st respondent has been put to challenge in this writ petition.

2.Heard Mr.Mukunth, learned counsel for the petitioner, Mr.K.Thippusulthan, learned Government Advocate for R1 to R3 and Mr. Arumugam , learned counsel for R4.

3.It is brought to the notice of this Court that this Court had already considered the same issue in W.P.Nos.14469 etc., of 2008 and it was held as follows:

11. The short issue involved in the present case is whether, the bankers and financiers while they make entry in the hypothecation agreement, in the registration certificate, it is necessary to obtain trade certificate or not.

12. For better appreciation, [Section 51](#) of the Motor Vehicles Act, Rules 34 and 41 (h) of the Motor Vehicles Rules are extracted hereunder:

"[Section 51](#) of the Motor Vehicles Act:

51.Special provisions regarding motor vehicle subject to hire purchase agreement, etc. - (1) Where an application for registration of a motor vehicle which is held under a hire purchase, lease or hypothecation agreement (hereafter in this section referred to as the said agreement) is made, the registering authority shall make an entry in the certificate of registration regarding the existence of the said agreement.

Rules 34 and 41 (h) of the Motor Vehicles Rules:



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34. Trade certificate.- (1) An application for the grant or renewal of a trade certificate shall be made in Form 16 and shall be accompanied by the appropriate fee as specified in rule 81.

41. Purposes for which motor vehicle with trade certificate may be used.- The holder of a trade certificate shall not use any vehicle in a public place under that certificate for any purpose other than the following:-

.....

(h) for removing the vehicle after it has been taken possession of by or on behalf of the financier due to any default on the part of the other party under the provisions of an agreement of hire purchase, lease or hypothecation."

13. A perusal of [Section 51](#) of the Motor Vehicles Act makes it clear that where an application for registration of a motor vehicle which is held under a hire purchase, lease or hypothecation agreement is made, the registration authority shall make an entry in the certificate of registration regarding the existence of the said agreement. However, the said provision did not impose condition to the bankers and financiers to obtain trade certificate.

14. A perusal of Rule 34 of the Motor Vehicles Rules shows that an application for the grant or renewal of a trade certificate shall be made in Form 16 and shall be accompanied by appropriate fee as specified in Rule 81.

15. On a perusal of Rule 41 (h) of the Motor Vehicles Rules makes it clear that the holder of a trade certificate shall not use any vehicle in a public place under that certificate for any purpose other than for removing the vehicle after it has been taken possession of by the financier due to any default on the part of the other party under the provisions of an agreement of hire purchase, lease or hypothecation.

16. The above said provisions makes it clear that if the bankers and financiers kept the vehicle idle, they need not obtain trade certificate. However, if they want to use the vehicle, they must obtain trade



stand allowed with the above terms. No costs. Consequently, connected miscellaneous petition is closed.

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4. This writ petition is also disposed of in terms of the above order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

KP

To

1. The Special Transport Commissioner
and the Transport Commissioner
Ehilagam, Chepauk, Chennai 600 005.
2. The Joint Transport Commissioner-cum-
Regional Transport Authority
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Ayanavaram, Chennai 600 023.
3. The Secretary to Government
State of Tamil Nadu
Department of Road Transport
Fort St.George, Chennai 600 009.
4. The Secretary
Union of India
Ministry of Road Transport & Highways
Transport Bhavan, I.Parliament Street
New Delhi.

+1cc to the Government Pleader, High Court, Madras, S.R.No.34171

W.P.No.22775 of 2008

BR(CO)
RLP(21/06/2022)