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WP Nos.35113 and 35114 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14-11-2022

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP Nos.35113 and 35114 of 2019

And

WMP Nos.35905 and 35906 of 2019

1.Mr.Gajendran (Died)	..	P-1 in WP 35113/2019
2.G.Parvathi	..	P-2 in WP 35113/2019
3.G.Jeeva Sastha	..	P-3 in WP 35113/2019
4.G.Rubbasnekaa	..	P-4 in WP 35113/2019

[P-2 to P-4 substituted as Lrs
of the deceased first petitioner vide order
of Court dated 14.11.2022 made
in WMP No.27813 of 2022 in
WP 35113 of 2019]

Mr.K.Amirthalingam	..	Petitioner in WP 35114/2019
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VS.

1.The Managing Director,
Tamil Nadu Tea Plantation Corporation Limited,
Registered Office,
TAN TEA Complex,
Orange Grove Road,



WP Nos.35113 and 35114 of 2019

Coonoor – 643 001.

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2. The Divisional Manager,

Tamil Nadu Tea Plantation Corporation Limited,

Pandiar Tea Division,

Gudalur – 643 211,

The Nilgiris District. ..

Respondents in both WPs

WP No.35113 of 2019 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to order passed by the first respondent in its Ref.No.G /7533/2016 dated 22.08.2019 and quash the same as illegal and arbitrary and consequently forbearing the second respondent from deducting amounts of Rs.68,769/- from the monthly salary of the deceased first petitioner in No.Say.Mu.AA/No.Pa./1818/2018 dated 20.11.2019.

WP No.35114 of 2019 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to order passed by the first respondent in its Ref.No.G /7533/2016 dated 22.08.2019 and quash the same as illegal and arbitrary and consequently forbearing the second respondent from deducting amounts of Rs.72,074/- from the monthly salary of the petitioner in No.Say.Mu.AA/No.Pa./1818/2018 dated 19.10.2019.



WP Nos.35113 and 35114 of 2019

For Petitioner in both WPs : Mr.S.Murugan

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For Respondents in both WPs : Mr.Haroon AL.Rasheed for
M/s.T.S.Gopalan and Co.

C O M M O N O R D E R

The order of recovery issued by the respondent in respect of excess usage of fuel in respondent-Corporation vehicle by the deceased first petitioner in respect of WP No.35113 of 2019 and the petitioner in respect of WP No.35114 of 2019, are under challenge in these writ petitions.

2. Both the deceased first petitioner in WP No.35113 of 2019 and the petitioner in WP No.35114 of 2019 were worked as Drivers and their services were utilised for the purpose of transporting Tea Plantation products to one place to other places. The respondent-Corporation fixed fuel norms for plying the vehicle based on the Government Orders issued periodically. In respect of any deficit, notices are issued to the Drivers and if any excess usage of fuel is noticed, then recovery orders are imposed.

3. During the relevant point of time, 6 kilometers per litre was



WP Nos.35113 and 35114 of 2019

the norm fixed by the Government and that was adopted by the respondent-Corporation. Since some of the Drivers, had not met out the norms, the show cause notices were issued to these Drivers, who had not submitted any explanation defending their case.

4. In view of the fact that no explanation was received by the Management, the respondent-Corporation issued the recovery order and the said orders are under challenge in these writ petitions.

5. The learned counsel for the petitioner in both the writ petitions mainly contended that the respondents have no authority to fix the fuel norms. Further the Government norms fixed as 4 kilometer per litre was not followed by the respondent-Corporation and therefore, on that ground the recovery order is to be set aside.

6. The learned counsel for the respondent-Corporation reiterated that the show cause notices issued to the deceased first petitioner in WP No.35113 of 2019 and the petitioner in WP No.35114 of 2019 were not



WP Nos.35113 and 35114 of 2019

responded and therefore, based on the Government Orders, the impugned order of recovery was issued. Thus the writ petitions are to be rejected.

7. Regarding fuel norms, the merits are to be considered by the respondent-Corporation with reference to the Government Orders applicable and in force. The issue regarding fixation of norms cannot be decided by the High Court in the writ proceedings under Article 226 of the Constitution of India.

8. It involves various factors to be considered by the respondent-Corporation. The model of the vehicle utilised for transporting, the fuel consumption as per the Government Order prescription of such vehicles and the mileage, which is to be considered in hilly areas like Ooty are also to be taken into consideration by the Corporation, while fixing the fuel norms, which all are to be applied for the deceased first petitioner in WP No.35113 of 2019 and the petitioner in WP No.35114 of 2019, who all are driving the vehicles in the Hilly Areas in Nilgiris District.



WP Nos.35113 and 35114 of 2019

9. In this regard, the learned counsel for the respondent-

Corporation brought to the notice of this Court that in respect of the very same vehicle, the deceased first petitioner in WP No.35113 of 2019 and the petitioner in WP No.35114 of 2019-Drivers are able to achieve the norms of fuel for 6 kilometers per litre as prescribed by the Government. However, these all are the factual disputes, which all are to be adjudicated by the Corporation by affording opportunities to the deceased first petitioner in WP No.35113 of 2019 and the petitioner in WP No.35114 of 2019.

10. Perusal of the order impugned reveals that the deceased first petitioner in WP No.35113 of 2019 and the petitioner in WP No.35114 of 2019-Drivers had achieved 5.60 kilometers per litre in few cases and the norms fixed was 6 kilometers per litre. If the discrepancies are very meagre, then the respondent-Corporation has to consider the traffic congestions in the Hilly Areas and other mitigating circumstances. They cannot have a blind arithmetical norms in respect of usage of fuel in Hilly Areas. It requires a practical and pragmatic approach. More-so, depending on the condition of the vehicles. Therefore, this Court is of an opinion that the recovery cannot be



WP Nos.35113 and 35114 of 2019

merely based on the norms of fixation and the hard factors prevailing in Hilly Areas are also to be taken into consideration.

11. Since the deceased first petitioner in WP No.35113 of 2019 and the petitioner in WP No.35114 of 2019 had not availed the opportunities provided to them to respond to the show cause notice, this Court is of an opinion that the matter is to be remanded back for reconsideration for the purpose of adjudicating all these issues and take a practical decision in respect of usage of vehicle in various Hilly Areas in Nilgiris Districts.

12. In this view of the matter, the order of recovery impugned issued by the second respondent in proceedings Nos.Say.Mu.AA/ No.Pa./ 1818/2018 dated 20.11.2019 in respect of WP No.35113 of 2019 and Say.Mu.AA/No.Pa./1818/2018 dated 19.10.2019 in respect of WP No.35114 of 2019, are quashed. The matter is remanded back to the respondent-Corporation for the purpose of issuing a fresh show cause notice to the legal heirs of the deceased first petitioner, namely, Petitioner Nos.2 to 4 in WP No.35113 of 2019 and the petitioner in WP No.35114 of 2019, within a



WP Nos.35113 and 35114 of 2019

period of four weeks from the date of receipt of a copy of this order. On receipt of the show cause notice, the petitioners are at liberty to submit all the relevant documents and their explanations to the respondents, within a period of two weeks from the date of receipt of the copy of the show cause notice to be issued by the respondents. Thereafter, the respondents are directed to consider the issues on merits and in accordance with law as expeditiously as possible.

13. With the abovesaid directions, both the writ petitions stand allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

14-11-2022

Index : Yes/No.

Internet : Yes/No.

Speaking Order/Non-Speaking Order.

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WP Nos.35113 and 35114 of 2019

To
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S.M.SUBRAMANIAM, J.

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