BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 09.03.2022
CORAM

THE HONOURABLE MR. JUSTICE C.SARAVANAN

Writ Petition (MD) Nos.3307 & 3318 of 2022, 17772 & 17814 2021
and
W.M.P.(MD) Nos.2907 and 2915 of 2022 in
W.P.(MD)Nos.3307 & 3318 of 2022
and
W.M.P.(MD)Nos.15111 and 15114 of 2021 in
W.P.(MD)Nos.17772 and 17814 of 2021

W.P.(MD)No.3307 of 2022:-

Dharvees Mydeen, S/o.Abdul Khader .. Petitioner

Versus

1.The Transport Commissioner,
Chepauk, Chennai - 600 005.

2.The Principal Secretary to Government,
Transport Department,
Fort St. George,
Chennai - 600 009.

3.The Regional Transport Officer,
Madurai Central,
Madurai. .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the respondents 1 and 3 to renew the primary permit in Permit No.0509/TN64/CC/2011 and the Extension Validity Permit (E.V. Permit) and also to grant certificate of fitness to the petitioner's Contract Carriage Omni Bus bearing Registration No.TN-64-L-2830, without insisting the motor vehicle tax for the period from 01.04.2021 to 30.06.2021.

For Petitioner : Mr.K.K.Senthil

For Respondents : Mr.V.Nirmalkumar
Government Advocate

W.P.(MD)No.3318 of 2022:-

A.Mohamed Ali Jinnah .. Petitioner

Versus

1.The Transport Commissioner,
Chepauk, Chennai - 600 005.

2.The Principal Secretary to Government,
Transport Department,
Fort St. George,
Chennai - 600 009.

3.The Regional Transport Officer,
Madurai Central,
Madurai. .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the third respondent to accept the fees towards issuance of certificate of fitness to the petitioner's Contract Carriage permit vehicle bearing No.TN-64-L-2715 and issue the certificate of fitness.

For Petitioner : Mr.K.K.Senthil

For Respondents : Mr.J.K.Jayaseelan
Government Advocate

W.P.(MD)No.17772 of 2021:-

Dharvees Mydeen, S/o.Abdul Khader .. Petitioner

Versus

1.The Transport Commissioner,
Chepauk, Chennai - 600 005.

2.The Principal Secretary to Government,
Transport Department, Fort St. George,
Chennai - 600 009.

3.The Regional Transport Officer,
Madurai South, Madurai.
[R3 deleted from the cause title vide
dated 07.03.2022 in W.M.P.(MD)
No.15295/2021 in W.P.(MD)No.17772/2021]

4.The Regional Transport Officer,
Madurai Central, Madurai.
[R4 is impleaded vide order dated 07.10.2021
in W.M.P.(MD)No.15110/2021 in W.P.(MD)
No.17772/2021] .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the respondents to consider the representation of the petitioner, dated 23.09.2021 in the light of the proceedings of the first respondent, vide its Letter R.No.19026/A1/2020, dated 24.08.2021.

For Petitioner : Mr.K.K.Senthil

For Respondents : Mr.V.Nirmalkumar
Government Advocate

W.P.(MD)No.17814 of 2021:-

A.Mohamed Ali Jinnah .. Petitioner

Versus

1.The Transport Commissioner,
Chepauk, Chennai - 600 005.

2.The Principal Secretary to Government,
Transport Department, Fort St. George,
Chennai - 600 009.

3.The Regional Transport Officer,
Madurai South, Madurai.
[R3 deleted from the cause title vide dated 07.03.2022 in W.M.P.(MD) No.15345/2021 in W.P.(MD)No. 17814/2021]

4.The Regional Transport Officer,
Madurai Central, Madurai.
[R4 is impleaded vide order dated 07.10.2021 in W.M.P.(MD)No.15143/2021 in W.P.(MD) No.17814/2021] .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the respondents to consider the representation of the petitioner, dated 23.09.2021 in the light of the proceedings of the first respondent, vide its Letter R.No.19026/A1/2020, dated 24.08.2021.

For Petitioner : Mr.K.K.Senthil

For Respondents : Mr.V.Nirmalkumar
Government Advocate

COMMON ORDER

W.P.(MD)Nos.17772 and 17814 of 2021 have been filed for a Mandamus by the respective petitioners to consider and pass appropriate orders on the representations dated 23.09.2021 of the respective petitioners in the light of the proceedings of the first respondent/Transport Commissioner in Letter R.No.19026/A1/2020, dated 24.08.2021.

2.W.P.(MD)No.3307 of 2022 has been filed to direct the respondents 1 and 3 to renew the primary permit in Permit No.0509/TN64/CC/2011 and the Extension Validity Permit (E.V. Permit) and also to grant certificate of fitness to the petitioner's Contract Carriage Omni Bus bearing Registration No.TN-64-L-2830, without insisting the motor vehicle tax for the period from 01.04.2021 to 30.06.2021.

3.W.P.(MD)No.3318 of 2022 has been filed to direct the third respondent to accept the fees towards issuance of certificate of fitness to the petitioner's Contract Carriage permit vehicle bearing No.TN-64-L-2715 and issue the certificate of fitness.

4.The case of the petitioners is that due to outbreak of Covid-19 Pandemic, the petitioners were unable to operate the Contract Carriages. It is submitted that for the earlier period upto 31.03.2021, the petitioners have been given exemption. However, for the period between 01.04.2021 and 30.06.2021, the petitioners have not been given exemption.

5.The learned counsel for the petitioners further submits that the petitioners also obtained an interim order from this Court on 30.09.2021 permitting them to deposit the tax for the ensuing period and the petitioners have been regularly paying the tax payable on the contract carriages under the provisions of the Motor Vehicles Act, 1988.

6.The learned counsel for the petitioners submits that the primary permit in Permit No.0509/TN64/CC/2011 and the Extension Validity Permit (E.V. Permit) and also the Fitness Certificate issued to the petitioner's Contract Carriage Omni Bus bearing Registration No.TN-64-L-2830 [Petitioner in W.P.(MD)No.3307/2022] and the Fitness Certificate issued to the petitioner's Contract Carriage permit vehicle bearing No.TN-64-L-2715 [Petitioner in W.P.(MD)No.3318 of 2022] have expired during the interregnum and the respondents are refusing to receive the amount in the light of the fact that the petitioners are in arrears of tax for the period between 01.04.2021 to 30.06.2021.

7.The learned counsel for the petitioners has placed reliance on a Press Release No.370, dated 02.07.2021, of the Government of

Tamil Nadu, wherein, the Government has partially withdrawn the lock down restrictions and allowed the bus operators to carry on the activities of general bus services within the District and between the Districts with 50% seating capacity with Non-A/c. It is submitted that till 02.07.2021, the plying of buses particularly in the night hours was prohibited and therefore, the petitioners had not used the respective contract carriages and therefore, the petitioners are entitled for abatement/exemption.

8.Opposing the prayer, in these two writ petitions in W.P.(MD) Nos.17772 and 17814 of 2021, the learned Government Advocate, on instructions, submits that the representations of the respective petitioners were disposed of separately on 12.10.2021 and therefore, the Writ Petitions were without any merits and were infructuous even at the time when they were filed.

9.It is submitted that the petitioners ought to have filed a stoppage form in terms of the provisions of the Motor Vehicles Act and the Motor Vehicles Rules framed thereunder and since the petitioners failed to file the same, the question of granting abatement/exemption does not arise.

10.By way of rejoinder, the learned counsel for the petitioners submits that the order dated 12.10.2021 disposing of the respective petitioners' representations was never communicated to the petitioners and that they have been disposed during the pendency of the present Writ Petitions and therefore, it cannot be said that the relief sought for in the Writ Petitions were infructuous. In any event, these orders have been communicated to the petitioners only during the course of hearing on the last occasion. The learned counsel for the petitioners, therefore, submits that the refusal on the part of the respondents to accept fees for issuing Primary Permit, E.V. Permit and Fitness Certificate respectively, for the ensuing period based on the aforesaid order cannot be sustained.

11.I have considered the arguments advanced by the learned counsel for the petitioners and the learned Government Advocate for the respondents.

12.The petitioners are in arrears of motor tax payable under the provisions of the Motor Vehicles Act, 1988 and the Motor Vehicles Rules framed thereunder for the period from 01.04.2021 to 30.06.2021. The petitioners were allowed to operate the contract carriages in the light of the undertaking given by them that they would pay such taxes for the succeeding period. The petitioners have also continued to pay the amount for the succeeding period. However, the primary permit in Permit No.0509/TN64/CC/2011 and the Extension Validity Permit (E.V. Permit) and also the Fitness Certificate issued to the Contract Carriage Omni Bus bearing Registration No.TN-64-L-2830 of the petitioner in W.P.(MD) No.3307/2022 and the Fitness Certificate issued to the Contract

Carriage permit vehicle bearing No.TN-64-L-2715 of the petitioner in W.P.(MD)No.3318 of 2022 have not been renewed and expired and the respondents have refused to renew the same, as the petitioners are in arrears of tax for the period between 01.04.2021 and 30.06.2021.

13.Considering the fact that the petitioners were allowed to operate the contract carriages, I do not find any merit in the stand of the respondents in not renewing the Primary Permit, E.V. Permit and Fitness Certificate, which expired in the month of February, 2022. Therefore, I direct the respondents to allow the petitioners to pay the renewal charges and necessary charges for renewing the Primary Permit, E.V. Permit and Fitness Certificate for their contract carriage. If necessary statutory amounts are paid by the petitioners, such Certificates shall be issued and the Primary Permit, E.V. Permit and Fitness Certificate be reviewed for the succeeding year and Fitness Certificate for the vehicle of the petitioner in W.P.(MD)No.3318 of 2022.

14.As far as the case of the petitioners for exemption of tax for the period between 01.04.2021 and 30.06.2021 is concerned, I direct the petitioners to pay the amount without prejudice to their rights to establish that they were entitled to abatement/exemption from payment of tax in the light of the order dated 02.07.2021. The petitioners are directed to file appropriate applications citing the above Press Release of the Government for exemption. The first respondent shall consider such applications and dispose of the same within a period of sixty days from the date of receipt of the applications.

15.The petitioners are directed to pay the amount within 10 days time from the date of receipt of a copy of this order. On payment of the aforesaid tax amount by the respective petitioners for the respective vehicles, the petitioners shall be allowed to operate their contract carriages. The amount to be paid by the petitioners is without prejudice to their rights to challenge the orders to be passed, if adverse orders are passed. Penalty, if any, will be subject to the final order to be passed by the first respondent.

16.With the above directions, these Writ Petitions are disposed of . No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

SMN2

To

1.The Transport Commissioner,
Chepauk, Chennai - 600 005.

2.The Principal Secretary to Government,
Transport Department,
Fort St. George,
Chennai - 600 009.

3.The Regional Transport Officer,
Madurai Central,
Madurai.

4.The Regional Transport Officer,
Madurai South,
Madurai.

+1 CC to M/s.SPL GP (SR-11210, 11146 & 11147[F] dated 10/03/2022)

+1 CC to M/s.K.K.SENTHIL, Advocate (SR-11102[F] dated 10/03/2022)

Common order in
Writ Petition (MD) Nos.3307 & 3318 of 2022,
17772 & 17814 2021
09.03.2022

ks(CO)
TR(23.03.2022) 7P 7C