IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2024

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THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.No.7282 of 2022
and
W.M.P.No.7315 of 2022

M/s.Gajapathy Travels
Rep.by its Proprietor C.Dinakaran ... Petitioner

vs.

1.The State Transport Authority
Cum-Transport Commissioner,
Ezhilagam, Chepauk,
Chennai 600 005.

2. The Motor Vehicles Inspector,
Moden Integrated RTO Check Post,
Pethikuppam, Elavoor,
Thiruvallur District 601 201. .. Respondents

Prayer : Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, forbearing the 1st respondent from subordinates to him including the 2nd respondent from demanding and collecting a sum of Rs.10,000/- or anyother amount in the name of Compounding Fee without specifying any offence or violation of conditions of permit at the time of payment of Motor Vehicles Tax to ply the vehicle in the State of Tamil Nadu or any other time.

For Petitioner : Mr.R.Natesan

For Respondents : Mr.P.Balathandayutham
Special Govt.Pleader.

ORDER

In this writ petition, the petitioner has prayed for Omnibus wherein relief to restrain the 1st respondent and the subordinate to the first respondent and second respondent herein from demanding and collecting a sum of Rs.10,000/- or any other amount in the name of Compounding Fee without specifying any offence or violation of the conditions of permit at the time of payment of Motor Vehicles Tax to plying the vehicle in the State of Tamil Nadu

2. The petitioner appears to be holding an All India Tourist Permit issued by the State Transport Authority, Nagaland and therefore on the strength of the same, the petitioner is plying buses in the State of Tamil Nadu .

3. It is not clear as to whether the vehicle has been plied in the State of Tamil Nadu as a “contract carriages” or as a “stage carriage.” Neither the documents that have been filed before this Court are not complete nor the affidavit filed in support of the writ petition gives any particular to this effect. Question of granting mandamus would not arise only where there is no corresponding duty on the part of the respondent. The petitioner should have filed a representation with the concerned respondent giving the particulars to the respondent for taking a decision as to whether compounding fee was that being recollected was proper or not. Directly approaching this Court without even such representation to the respondent cannot be permitted. The law on this subject has also been clarified by this Court in **C.Ravichandran vs. Union of India Rep.by its Secretary, Ministry of Road Transport and High Ways, New Delhi and 4 Others** in W.P.No.12649 of 2022 dated 18.08.2022. The Court has examined the position exhaustively.

4. Relevant portion of the said order in W.P.No.12649 of 2022 reads as under :-

37. I am however unable to subscribe to the above view as the constitutionality and vires of All India Tourist Vehicles (Authorisation or Permit) Rules, 2021 was not challenged before the court in the said case. That apart Section 89(9) of the Motor vehicle Act 1988 specifically gives powers to the Central Government to frame rules Guidelines for Recognition/Renewal or Extension as an approved tourist Transport Operator (TTO).

38. Without declaring Section 88(9) ultra vires, it is not open to dilute the Rules made there under. Further there is presumption of constitutionality of provision of the Act and rules made thereunder. There also cannot be double taxation if the vehicle was indeed used as a "tourist vehicle" i.e. as a "Contract Carriage" under the provision of the All India Tourist Vehicles (Authorisation or Permit) Rules, 2021 read with Section 88(9) &(14) and Section 89 of the Motor Vehicle Act 1988. 39. The use of the subject bus by the petitioner prima facie indicates that the petitioner had used it as a " stage carriage" though the petitioner has obtained "Permit", "Authorisation" under All India Tourist Vehicles (Authorisation or Permit) Rules, 2021. If the use of a "Stage Carriage" was disguised as a "Tourist Vehicle" albeit as a "Contract Carriage the benefit of "Authorization" and "Permit" issued under India Tourist Vehicles (Authorisation or Permit) Rules, 2021, will not insure to the petitioner.

40. The petitioner has now been issued with a demand notice dated 08.06.2022 pursuant to the order dated 18.10.2021 of this Court in W.P.No.19949 of 2021. In the above demand notices dated 8.6.2022, the petitioner has been

called upon to show cause as to why a sum of Rs.36,000/- after from Rs.10,000/- towards tax and an equal amount of Rs. 36,000/- towards penalty apart from Rs.10,000/- for plying the subject bus without a pollution certificate as per Section 190(2) the Motor Vehicles (Amendment) Act 2019 and +Rs.500/- for not producing records at the time of inspection as per Section 177 of the Motor Vehicles (Amendment) Act 2019] to consider the release of subject Bus bearing Registration No.NL01B1080 registered as a All India Tourist Omni Bus should not be demanded from the petitioner under the provisions of the Tamil Nadu Motor Vehicles Taxation Act, 1974 read with rule Tamil Nadu Motor Vehicles Taxation Rules, 1974.

41. If the subject Bus impounded was used as a “Stage Carriage”, the benefit of “Permit” and “Authorization” issued under All India Tourist Vehicles (Authorisation or Permit) Rules, 2021 will not come to the rescue of the petitioner as under Section 66 of the Motor Vehicles Act, 1988 only a stage carriage can be used as a “Contract Carriage” subject to certain conditions as may be specified and not vice versa is not specified.

5. Under these circumstances, this writ petition is closed with liberty to the petitioner to give appropriate representation to the first respondent or the second respondent as the case may be explaining the position as to why the respondents should not collect compounding fees

from the petitioner for the vehicle plied by the petitioner. If such representation is given, the competent authority shall consider the same and pass appropriate orders on merits, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

26.09.2024

Index : Yes/No
Internet : Yes/No
Speaking : Non-speaking Order
Neutral Citation : Yes/No
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To

1.The State Transport Authority
Cum-Transport Commissioner,
Ezhilagam, Chepauk,
Chennai 600 005.

2. The Motor Vehicles Inspector,
Moden Integrated RTO Check Post,
Pethikuppam, Elavoor,
Thiruvallur District 601 201.

C.SARAVANAN, J.

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