



W.P. No. 26733 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2024

CORAM

THE HON'BLE MRS. JUSTICE N. MALA

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&

W.M.P. No. 25787 of 2022

Salem Mavatta Salai Pokkuvarathu
Motor Thozhilalar Sangam
(Reg.No. 1177/s/m)
rep. by its General Secretary,
No.29E-1, VPC Street,
Cinema Nagar, Salem – 636 009.

..Petitioner

Vs.

1. The State of Tamil Nadu,
rep. by Secretary to Government,
Labour Department,
Fort St. George, Chennai – 600009.
2. The Secretary to Government,
Government of Tamil Nadu,
Transport Department,
Fort St. George, Chennai – 600009.



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3. The Commissioner of Labour,
DMS compound,
Teynampet,
Chennai – 600 006.

4. The Director General of Police,
Opp. Light House,
Kamarajar Salai,
Chennai – 600 004.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Mandamus directing respondents 1 and 3 to delete the “Transport Badge Number” column in the online application format so as to enable the members of the petitioner union holding LMV driving licence to become members of the Tamil Nadu Unorganized Drivers Welfare Board.

For Petitioner :: Mr.S. Ayyathurai

For Respondents :: Mrs. Rajarajeswari,
Govt. Advocate for R1 & R3
Mr.Yogesh Kannadasan,
Special Govt. Pleader for R2
Mr.L.S.M. Hasan Fizal,
Addl. Govt. Pleader for R4

O R D E R

The writ petition is filed for issue of a Writ of Mandamus directing respondents 1 and 3 to delete the “Transport Badge Number”



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column in the online application format so as to enable the members of the petitioner union holding LMV driving licence to become members of the Tamil Nadu Unorganized Drivers Welfare Board.

2. The petitioner Union will be referred to as the petitioner and the respondents as respondents.

3. The gist of facts, which led to the filing of this writ petition, are as under:

(i) The members of the petitioner are Drivers driving light motor vehicles like Cars, Autos, Tempos, Load Autos, Mini Passenger Vans, Load Vans, etc., Cleaners and Mechanics. While some of the members of the petitioner are self-employed, most of them are employed under private employers with valid driving licences. The petitioner has a membership of about 1208 drivers, cleaners and mechanics.

(ii) The petitioner's case is that for providing benefits such as marriage assistance, assistance for children's education, etc, to workers in



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unorganized sectors and self-employed people, several welfare boards have been created by the 1st respondent and one such Board is the Tamil Nadu Unorganized Drivers' Welfare Board. Any driver, either privately employed or self-employed, desirous of becoming a member of the Board could make an application through online mode and not physically for Membership.

(iii) While so, when the Members of the petitioner, who were drivers possessing light motor vehicle (LMV) licence, tried to submit online applications for membership, the same was not accepted because they were required to furnish “Transport Badge Number” in the column provided for the same. According to the petitioner, Transport Badge Number was required only for drivers who drive heavy motor vehicles weighing 7500 kg and above.

(iv) According to the petitioner, its members are harassed by the Traffic Police for not wearing the Badge though it is known to them that light motor vehicle drivers are given only licences and not badges and no endorsement is made on the licences. The petitioner would also state that



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the insistence on obtaining Badge for driving light motor vehicle was against the dictum of the Hon'ble Supreme Court, in the judgment rendered in ***Mukund Dewangan V. Oriental Insurance Company Limited*** reported in ***AIR 2017 SC 3668***. In spite of the same, the online application form for getting enrolled as a member of the Welfare Board still contains the column “Transport Badge Number” and because of it, the petitioner's members possessing light motor vehicle (LMV) licences were not able to submit their applications for Membership. The non-acceptance of the application forms of the members of the petitioner was brought to the notice of the respondents orally and the respondents had also assured that the problem would be rectified. As no steps were taken despite the said assurance, the petitioner submitted a written representation on 16.09.2021 to the 2nd respondent. Even thereafter, as no action was taken, the present writ petition was filed with the prayer as aforesaid.

4. A detailed counter was filed on behalf of respondents 1 to 3 stating that the Tamil Nadu Unorganized Drivers and Automobile Workshop Workers Welfare Board was formed under Tamil Nadu Manual



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Workers (Regulation of Employment and Conditions of Work) Act, 1982

(Tamil Nadu Act 33 of 1982) (hereinafter referred to as “the Act” in short)

in order to provide social security to the registered workers of the said board. The manual workers engaged in driving Autorickshaw, Taxi, Van, Tempo, Lorries and Buses other than those owned by Government Departments are registered in the said Board and now, the manual workers employed in Automobile workshops are also registered in the said Board. The counter affidavit states that the column with regard to badge endorsement in the driving licence was inserted in the online application form for registration to verify whether the applicant, who applies for membership of the Board through online, has valid driving licence to drive the transport vehicle carrying passengers or goods by road as stated in sub-clause (b) of Section 8-B of the Act. Further, Rule 10 of the Tamil Nadu Motor Vehicles Rules, 1989, mandates the endorsement of badge and that it was only in conformity with the aforesaid Rules, the column for badge endorsement was added in the online application form. Referring to the judgment of the Hon'ble Supreme Court in *Mukund Dewangan's case* (AIR 2017 SC 3668), it was stated in the counter affidavit that in compliance to



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the orders of the Hon'ble Apex Court, the Joint Secretary (T) of Ministry of Road Transport and Highways, Government of India, issued necessary clarification to the Principal Secretaries (Transport) and DGPs of all States that the requirement under the Motor Vehicles Act, 1988 (Central Act 59 of 1988) to obtain transport licence was under consideration. The Ministry had also requested to issue appropriate instructions to the Licensing Authorities and the Enforcement Authorities for compliance of the directions of the Hon'ble Supreme Court. However, according to respondents 1 to 3, as per Tamil Nadu Motor Vehicles Rules, 1989, it was mandatory to obtain badge endorsement for public transport vehicles which includes Autorickshaws, Taxis and all other light motor vehicles and therefore, there was no statutory violation in insisting on the same. Further, according to respondents 1 to 3, in order to identify eligible workers, to avoid any fraudulent registration in the Board and to ensure the funds be utilised for the well-being of eligible registered workers, the badge endorsement was mandated. In short, the stand of respondents 1 to 3, as stated in the counter affidavit was that, insistence on providing the “Transport Badge Number” was in strict compliance with the provisions of



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Tamil Nadu Motor Vehicles Rules, 1989, in particular, Rules 7, 8, 9 and 10 of the said Rules and also the clarification issued by the Ministry of Road Transport and Highways, Government of India that the issue of obtaining transport licence was under the consideration of the Government of India.

5. Learned counsel for the petitioner submitted that in exercise of the powers conferred by Section 4 read with Section 3 of the Act, the Government of Tamil Nadu framed a Scheme called "Tamil Nadu Unorganised Drivers Social Security and Welfare Scheme, 2006" and under the said Scheme "Tamil Nadu Unorganized Drivers Welfare Board" was created. According to the learned counsel for the petitioner, the Act is a special enactment and therefore, the provisions of General Enactment cannot override a Special Enactment. He would also submit that the Hon'ble Apex Court, in the judgment rendered in *Mukund Dewangan's case* (AIR 2017 SC 3668) has clarified that badge endorsement for Light Motor Vehicle licence was not mandatory and therefore, the insistence on furnishing "Transport Badge Number" by the respondents was against the judgment of the Hon'ble Supreme Court. Referring to Section 9 of the



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aforsaid Scheme read with Form I, the learned counsel for the petitioner submitted that when the Scheme as well as the Form do not contemplate obtaining the badge number, the column for "Transport Badge Number" ought not to have been inserted in the online application. The learned counsel would, therefore, submit that the mandamus prayed for be issued to respondents 1 to 3.

6. Per contra, learned Government counsels for respondents 1 to 3 submitted that the furnishing of "Transport Badge Number", which the respondents 1 to 3 were insisting upon was in accordance with the provisions of Tamil Nadu Motor Vehicles Rules, 1989. They would further submit that the judgment of the Hon'ble Supreme Court in *Mukund Dewangan's case* (AIR 2017 SC 3668) has now been referred to a Constitution Bench in a batch of appeals in Civil Appeal No. 841 of 2018 etc and the matters are likely to be taken up during the second week of April, 2024. Therefore, the learned Government counsels submitted that until the Constitution Bench decides the issue one way or the other, the judgment rendered in *Mukund Dewangan's case* (AIR 2017 SC 3668) cannot be applied.



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7. I have heard the learned counsels on either side and also perused the materials placed on record.

8. The Government of Tamil Nadu has created several Welfare Boards for workers in unorganized sectors with a view to provide them various benefits like marriage assistance, children's education assistance etc. One such Welfare Board is the Tamil Nadu Unorganized Drivers and Automobile Workshop Workers Welfare Board created by the Government of Tamil Nadu, pursuant to the Scheme framed, namely, the Tamil Nadu Unorganized Drivers Social Security Scheme, 2006, exercising its powers under Section 4 read with Section 3 of the Act, with the avowed object of providing social security and the benefits specified supra. The Scheme was made applicable to all manual workers engaged in driving Auto Rickshaws, Taxi, Van, Tempo, Lorries and Buses other than those owned by the Government Departments. The Scheme mandates registration for Membership of manual workers for the purpose of receiving the benefits provided thereunder. It covers both employed as well as self-employed persons.

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9. At the outset, it would be relevant here to refer to the definitions of certain terms and the provisions of the said Scheme for better understanding.

10. Section 2(g) of the said Scheme defines a “manual worker” as “any person who has completed 18 years of age but has not completed 60 years of age and who is engaged to do any manual work in the employment of Driving Auto Rickshaws, Taxi, Van, Tempo, Lorries and Buses other than those owned by the Government Departments specified in item 24 in the Schedule to the Act.

11. Section 2(i) defines a “self employed person” as *“any person who has directly engaged himself in Driving Auto Rickshaws, Taxi, Van, Tempo, Lorries, and Buses other than those owned by the Government Departments for his livelihood.”*



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12. Section 9(1) of the Scheme deals with “ *Registration of Manual Workers* ” and the said provision reads as follows:

“9. *Registration of Manual Workers:* (1) *Any manual worker who has completed the age of 18 years but not completed 60 years, may register his name with the Board¹ [through the Labour Officer (Social Security Scheme) of the respective district] to become a member of the Scheme. “*

[1. Inserted by G.O.Ms.No. 122 Labour and Employment II) Dept., Dt. 24th October, 2008].

13. Section 13 of the said Scheme deals with “Contributions” and the said provision is reproduced hereunder:

“13. *Contributions:* (1) *The contribution payable under this scheme shall comprise contribution payable to the Board by an employer (hereinafter referred to as the “employer's contribution”), and the grant made to the Board by the Government, from time to time as contribution to the Fund which shall form part of the Fund.*



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(2) *All remittances payable to the fund shall be rounded off to the nearest rupees.*

(3) *Every employer shall pay to the Board a sum equivalent to 3% of the wages payable by him to the manual workers, employed by him, before the 15th day of every month by means of a demand draft drawn in favour of the “Secretary, ¹[Tamil Nadu Unorganised Drivers Welfare Board] Payable at chennai accompanied by a statement in Form V.*

(4) *Every officer employed to collect Contribution under sub-section (2) of the Section 8-B of the Act shall collect the same by cash or by means of a Demand draft drawn in favour of the “Secretary, ²[Tamil Nadu Unorganised Drivers Welfare Board], payable at Chennai and remit the same to the Board within thirty days from the date of such collection accompanied by a statement in Form VI.”*

[1,2 Substituted vide Notification G.O.(Ms) No. 49, Labour and Employment (II) Dept. Dated. 12th June, 2014.]

It is seen from a reading of the aforesaid provisions that the Scheme covers manual workers aged between 18 to 60 years, who are either employed or self-employed. To avail the benefits under the Scheme,



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registration is mandated. Fund is created with contributions from the Government and the employer. The various benefits to the members of the Scheme are Personal Accident Benefit (Section 17), Pension Scheme (Section 18), Assistance on Natural Deaths (Section 20), Education Assistance (Section 21), Marriage Assistance (Section 22) and Delivery or Miscarriage of Pregnancy Assistance (section 23). In short, the Scheme is Social Security and Welfare Scheme for manual workers (Drivers) in the Unorganized Sector.

14. The issue involved in the present writ petition is whether the respondents are justified in insisting on obtaining “Transport Badge Endorsement” by Drivers possessing light motor vehicle licence in order to register themselves as members of the Tamil Nadu Unorganized Drivers Welfare Board. The Hon’ble Apex Court, in *Mukund Dewangan’s case* (AIR 2017 SC 3668) held as follows:

.....“there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of



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such class without any endorsement to that effect.

Directions were also issued to all concerned stating that no endorsement on the licence to drive light motor vehicle was necessary. “

(emphasis supplied)

In view of the law laid down by the Hon’ble Supreme Court, the insistence on furnishing “Transport Badge Number” by the respondents, on the basis of the Rules framed by the State Government, is not sustainable. The Hon’ble Supreme Court, in its judgment in the said case, had, on consideration of the precedents, Central Act including Amendment Act and the Rules concluded that endorsement was not necessary to drive a transport vehicle, if the driver possessed licence to drive light motor vehicle and the transport vehicle belonged to such class. Hence, the respondents insistence on “Transport Badge Number” in the Membership Registration form cannot be countenanced as it is against the dictum of the Apex Court. The contention of the respondents that the matter has been now referred to a Constitution Bench and therefore, the issue is at large cannot also be accepted for the reason that even in the reference to the Constitution Bench,



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the Hon'ble Apex Court has clarified that it has not expressed any opinion on the merits of the referral or on the correctness of the decision in *Mukund Dewangan' case* (AIR 2017 SC 3668) and that it would await further arguments once the considered view of the Union Government is placed before the Court. Therefore, in my view, as of now, the law declared by the Hon'ble Apex Court in *Mukund Dewangan's case* would apply. Therefore, the respondents cannot insist on separate endorsement in the licence for the purpose of furnishing "Transport Badge Number" in the Form for registration to get enrolled as a member of the Tamil Nadu Unorganized Drivers Welfare Board.

15. Even the contention of the respondents that the Joint Secretary(T), Ministry of Road Transport and Highways, Government of India, issued necessary clarification to the Principal Secretaries (Transport) and DGPs of all State that the requirement under the Motor Vehicles Act, 1988 (Central Act 59 of 1988) to obtain transport licence was under consideration, in my view, cannot be accepted because the respondents have



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lost sight of the fact that in the very same communication dated 12.01.2024, the Ministry requested all concerned to issue appropriate instructions to Licensing Authorities and the Enforcement Authorities to comply with the directions of the Hon'ble Supreme Court. When the Ministry has issued directions to comply with the order of the Hon'ble Supreme Court, the reliance placed by the respondents on Tamil Nadu Motor Vehicles Rules, 1989, for the purpose of insisting on badge endorsement is unsustainable. It is further pertinent to note that even in the Form annexed to the Scheme, there is no requirement of production of “Transport Badge Number”. When the Scheme as also the Form II issued under Section 9(2) of the Scheme do not mandate endorsement of transport badge in light motor vehicle (LMV), it is not known as to how the column “Transport Badge Number” was inserted in the online application. Therefore, I am in total agreement with the submission of the learned counsel for the petitioner that it is not necessary to obtain endorsement of transport badge and insisting to furnish the same in the online application is unsustainable.



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16. For all the above reasons, I am of the view that the direction prayed for deserves to be issued. Accordingly, the respondents are directed to receive the online applications of the members of the petitioner Union without insisting on the “Transport Badge Number”. It is, however, made clear that if the Hon'ble Supreme Court, in the reference made to the Constitution Bench, decides that badge endorsement is necessary even for light motor vehicle licenses, then the respondents are at liberty to insist on the same.

17. The writ petition is disposed of accordingly. No costs. Connected W.M.P. is closed.

30.01.2024

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Index: Yes/No

Internet: Yes/No

Speaking Order/Non-Speaking Order



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1. The Secretary to Government,
Labour Department,
Fort St. George, Chennai – 600009.
2. The Secretary to Government,
Government of Tamil Nadu,
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N. MALA,J.

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