IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.34120, 1955, 3289, 5018, 5028, 11241, 11242, 11417, 11438, 11703, 12206, 12211, 12222, 12224, 12227, 12230, 12232, 12235, 12241 of 2022 and W.P.(MD).No.20270 of 2023
and
W.M.P.Nos.33592, 5128, 5142, 11653, 11661, 11669, 11673, 11675, 11677, 11683, 11686, 11695, 30502, 30503, 30504, 30505, 30511, 30512 and 30514 of 2022 and W.M.P.(MD).No.16726 of 2023

W.P.No.34120 of 2022:-

All Omni Bus Owners Association,
Rep. by its President Dr.A.Anbazhagan ... Petitioner

Vs

1. The State of Tamil Nadu,
   Rep. by its Secretary,
   Home Transport Department,
   Fort St.George, Chennai-600 009.

2. The State Transport Authority,
   Elilagam, Chennai-600 005. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the second respondent to accept the stoppage reports of the buses of the members of the petitioner Association, call for the physical verification report of the vehicles from the concerned motor vehicles inspectors for the periods 01.10.2021 to till date and accept tax from 01.01.2023 onwards.

In W.P.Nos.34120, 1955, 3289, 5028, 11241, 11242, 11417, 11438, 11703 of 2022

For Petitioners : Mr.Vijay Narayanan
for Mr.S.Sarath Kumar
For Respondents : Mr.Haja Nazirudeen
Additional Advocate General
assisted by
Mr.N.Naveen Kumar
Government Advocate
assisted by
Mr.P.Hari Babu
Government Advocate

In W.P.Nos. 5018, 12206, 12211, 12222, 12224, 12227, 12230, 12232, 12235, 12241 of 2022

For Petitioners : Mr.A.R.Balaji
For Respondents : Mr.Haja Nazirudeen
Additional Advocate General
assisted by
Mr.N.Naveen Kumar
Government Advocate
assisted by
Mr.P.Hari Babu
Government Advocate

In W.P.(MD).No.20270 of 2023

For Petitioner : Mr.Asaithambi A C
For Respondents : Mr.Haja Nazirudeen
Additional Advocate General
assisted by
Mr.N.Naveen Kumar
Government Advocate
assisted by
Mr.P.Hari Babu
Government Advocate

COMMON ORDER

Some of the writ petitions have been filed challenging the order passed by the Transport Commissioner and Joint Commissioner, thereby rejected the request made by the petitioners to permit them to submit application for stoppage reports of buses.

2. Some of the writ petitions have been filed for direction directing the State Transport authority to accept the stoppage report of their respective buses.

3. Heard both sides and perused the materials available on record.

4. The petitioners are Omni Bus Owners Association consisting owners of omni buses as its members and various omni bus owners. The issue involved in these writ petitions are common and as such, this Court is inclined to pass common order.

5. The petitioners owned their respective omni buses under valid permit and they are operating their respective buses. While being so, during Covid-19 pandemic, the Government of India and the Government of Tamil Nadu stopped all the transports from plying on the roads from 01.04.2020 and further directed the stoppage of vehicles including those belonging to various owners. Though there was a direction to stop the vehicles from plying on the road, the petitioners had paid the fees for reporting stoppage of vehicles as contemplated under Section 172(6) of the Tamil Nadu Motor Vehicle Rules, 1989. It was continued till 2022. The petitioners had submitted their stoppage report till 30.09.2021 and the same were duly accepted with collection of requisite fees. Thereafter, the State Transport Authority sent a communication dated 22.09.2021, thereby permitted the vehicles to ply with 50% capacity of passengers.

Thereafter, again by a letter dated 23.10.2021, permitted the transport operators to ply the buses with 100% capacity of passengers.

6. Though the Government permitted to operate the buses with those capacities, due to the impact of Covid -19, no passenger had opted to travel in the omni buses. That apart, the sitting capacity of the buses is 36 and with the capacity of 50% occupancy, it would not be operated, since Rs.3000/- per seat has to be paid as tax per quarter and Rs.4000/- per berth. Therefore, the petitioners submitted their stoppage reports of their respective vehicles for five quarter i.e., from 01.10.2021 to 31.12.2022. However, the stoppage reports were returned to the respective applicants, on the ground that the Government already had permitted to ply the vehicles with 50% capacity and thereafter with 100% capacity. Further, the stoppage of vehicles will cause inconvenience to the general public and as such, the application for stoppage of vehicles were returned by the respondents.

7. Thereafter, the petitioners were not permitted to operate their

buses even after lifting of lockdown and ban of operating transports, on the ground of non-payment of taxes for the period which was allowed by the Government to operate the buses. Therefore, some of the owners of the omni buses approached this Court and this Court, directed the respondents to receive the tax for the period from 01.05.2022. The said tax has to be paid through the respondents' web portal called 'Vahan' website. However, after logging into the web portal, the petitioners were not sent with One Time Password (OTP) to proceed further i.e, payment of taxes. Therefore, this Court, by an order dated 22.12.2022 specifically directed the State Transport Authority to instruct all the Regional Transport Officers to accept the tax payable from 01.01.2023 by the omni bus owners. Further directed the State Transport Authority shall ensure that the OTP shall be released properly enabling the bus owners to pay their respective taxes. Only thereafter, the petitioners were permitted to pay their tax and operated their buses on 01.01.2023. Now, the petitioners are operating their buses on payment of their respective taxes.

8. The respondents filed counter and the submissions made by the

learned Additional Advocate General appearing for the respondents revealed that the permit of the vehicle is completely different from tax. As per Rule 172(6) of the Tamil Nadu Motor Vehicles Rules, the fee should be paid for every 20 days stoppage. As per Section 3 of the Tamil Nadu Motor Vehicles Taxation Act, 1974, every motor vehicle deemed to be used or kept for use in the State of Tamil Nadu have to pay the tax under the schedules of the said Act. Though the Government of Tamil Nadu permitted to operate the transport with 50% capacity of passengers from 22.09.2021 and with 100% capacity of passengers from 23.10.2021, the petitioners did not operate their transport. Therefore, they had submitted stoppage applications to escape from the payment of tax accrued from the period 01.10.2021 to 31.12.2022. If the stoppage application is accepted, even after the orders passed by the Government of Tamil Nadu, thereby permitted to ply the vehicles, it would cause great loss to the exchequer besides causing difficulty for the general public.

9. It is relevant to extract the provision under Rule 172(6) of the Tamil Nadu Motor Vehicles Rules as follows:-

" (6) It shall be a condition of the permit of every transport vehicle that the vehicle will be so maintained as to be available for the service for which the permit was granted for the entire period of currency of the permit and that the permit is liable to be suspended or cancelled, after due notice to permit holder if the vehicle has not been used for the purpose for which the permit was granted for a continuous period of more than ten days during the period for which the permit authorise the use of the vehicle on the road, unless the holder of the permit had obtained in writing the prior permission of the Transport Authority to suspend the service of the vehicle for a specific period exceeding ten days:

Provided that no holder of a permit shall ordinarily be granted permission to suspend the service of the vehicle for a continuous period exceeding twenty days at a time:

Provided further that the period may be extended by such further period or periods, as the Transport Authority thinks fit:

Provided also that the holder of a permit shall pay the fee prescribed in the Table under rule 279.

It shall be a condition of every permit of a transport vehicle that the vehicle shall be allowed or caused to be driven only by a duly qualified person holding a valid driving licence.

It shall be a condition of every permit of a transport vehicle that the vehicle shall not be allowed or caused to be allowed to carry any stolen property with the knowledge that the same was stolen.

It shall be a condition of the permit, that where a temporary permit under section 87 or a special permit under sub section (8) of section 88 is issued to a vehicle covered by the permit, the breach of any of the conditions of the temporary permit or as the case may *be, the special permit shall be deemed to be the breach of the conditions of the permit itself and the said permit shall be liable for suspension or cancellation."*

10. It is also relevant to extract the provision under Rule 254 of the Tamil Nadu Motor Vehicles Rules as follows:-

*254. **Withdrawal of transport vehicle from service — report.**— If the holder of a Stage Carriage or a contract carriage or goods carriage permit for whatever reasons withdraws the vehicle from the service authorised by permit and does not restore the vehicle to the service within a period of ten days, he shall forthwith report the fact, the reason therefor and the expected period of withdrawal to the Regional Transport Authority concerned and shall also submit a report to that authority immediately on restoration of the vehicle to the service.*

11. Whereas, due to Covid – 19, there was pandemic circumstances all over the country. Therefore, there was lock down and ban of transport issued by the Government of India as well as all the States. Therefore, the entire country suffered a lot and we had seen so many mortalities. In fact, every human was afraid of seeing another human being. Due to the said impact, the entire day to-day life of every one including all business activities and machineries of all department including transport were affected all over the country. Though the

Government lifted the ban of transport and the lock down, no one was interested to travel in the public transport, due to pandemic circumstances. There were three waves of Covid – 19. There was incertainity of human life. Therefore, though the Rule 172(6) and 254 of Tamil Nadu Motor Vehicles Rules says about the stoppage or suspension of permit for certain period with prior permission and withdrawal of vehicle from service, it were not possible during Covid -19. In fact, the Government itself banned the transport and also issued lock down.

12. Further, as per the above Rules, the petitioners have to keep their vehicles immediately ready for use after stoppage period. There is no provision either for returning the application or rejecting the application submitted by the permit holders for stoppage of their vehicles. If at all the petitioners do not comply with the requirements of the Rules, the respondents can very well initiate action for suspension order or cancellation of permit. Even after the interim order passed by this Court, the respondents did not permit the petitioners to pay their taxes in order to operate their vehicles and insisted them to pay taxes for the earlier

period where the petitioners submitted applications for stoppage period of their vehicles.

13. Therefore, there was loss not only to the petitioners and also to the exchequer. Because of Covid -19, the petitioners' vehicles were kept unused and as such, they sustained huge loss to restart the vehicles. They have to obtain fitness certificate and renewal of their insurance and other payments before operating their vehicles.

14. Admittedly, they have not plied their vehicles from the period 01.10.2021 to 31.12.2022. Therefore, there is no question of escaping from the payment of tax by the petitioners. Further, the provisions under Section 3 of the Tamil Nadu Motor Vehicles Taxation Act casts duty to pay tax only in respect of the vehicles used or kept for use in the State of Tamil Nadu. But, during the period for which the tax was demanded, the petitioners' vehicles were not in use or kept for use, which fact was also notified by the Motor Vehicle Inspector by its report. Accordingly, the petitioners' vehicles were not plied on the public road from 01.10.2021 to

06.01.2023. Therefore, the petitioners are not liable to pay tax when their vehicles were not used or put on road.

15. Further Rule 172(6) read with Rule 254 of the Tamil Nadu Motor Vehicle Rules, 1989 is not at all attracted in the case on hand. Once the vehicles were stopped and not operated on any public road, the tax cannot be levied. Rule 172(6) is only a condition of the permit and any violation of the permit condition would lead to cancellation or suspension of permit under Section 86 of the Motor Vehicles Act, 1988. It cannot be invoked to collect tax under a different statute viz., Tamil Nadu Motor Vehicle Taxation Act.

16. Pending writ petitions, in view of the interim orders passed by this Court, the respondents permitted the petitioners to operate their vehicles on payment of tax from 01.01.2023. Insofar as the orders passed by the respondents, thereby returning the stoppage report are hereby quashed. Insofar as the period in which the petitioners submitted their applications for stoppage of their permits, the respondents are directed to

accept and allow stoppage of petitioners' buses from 01.10.2021 to 31.12.2022 and permit the petitioners to operate their vehicles in the permitted routes without insisting for payment of tax during the period of non-operation of their buses.

17. Accordingly, W.P.Nos.5018, 12206, 12211, 12222, 12224, 12227, 12230, 12232, 12235, 12241 of 2022 and W.P.(MD).No.20270 of 2023 are allowed. W.P.Nos.34120, 1955, 3289, 5028, 11241, 11242, 11417, 11438, 11703 of 2022 are disposed of. Consequently, connected Miscellaneous petitions are closed. No costs.

03.09.2024

Internet: Yes
Index : Yes/No
Neutral Citation : Yes/No
Speaking/Non Speaking order
mn

G.K.ILANTHIRAIYAN. J,

mn

To

1. The Secretary,
   The State of Tamil Nadu,
   Home Transport Department,
   Fort St.George, Chennai-600 009.

2. The State Transport Authority,
   Elilagam, Chennai-600 005.

W.P.Nos.34120 of 2022 and etc., batch

03.09.2024