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W.P. No. 41 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2024

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 41 of 2024

S.Eswaramoorthy

... Petitioner

-VS-

The District Transport Officer,
District Transport Office,
Tiruppur South,
Veerapandi,
Palladam Road,
Tiruppur.

... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the Respondent to consider his representation dated 20.09.2023 and return the Petitioner's vehicle in his custody namely 'Ashok Leyland lorry' bearing chassis number RVE2758-2, Model 'ALCO 1611' within a stipulated time.

For Petitioner : Mr. Sam Jayaraj Houston

For Respondent : Mr. V.Ravi,
Special Government Pleader



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for short), the owner of the vehicle is liable for levy of fine of Rs. 5,000/-

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as per Section 182-A of the Act read with Section 200 of the Act.

- (ii) The Registration Certificate of the above said vehicle is liable for suspension as per Section 53(1)(a) of the Act for a period until the defects noticed in the vehicle is rectified.
- (iii) Since the holder of permit of the goods vehicle being the Petitioner had irregularities handed over the vehicle which covered by valid permit upto 31.07.2023 to a third person without proper permission of the transfer authority as required under Section 82(1) of the Act and plied his vehicle without any valid permit as on date (permit already expired on 31.07.2023 without renewal) the permit of the vehicle is liable for suspension under Section 86(1)(c) of the Act and the holder of permit may liable to compound such offence by a maximum sum of Rs. 5,000/- as per the table attached to under Rule of Tamil Nadu Motor Vehicle Rules, 1989 (hereinafter referred to as 'the Rules' for short).

He further submits that the Petitioner is liable for payment of such a sum as detailed below:-

- (i) Rs. 5,000/- for making irregular alteration of the engine as per Section 182(A)(4) of the Act.



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(ii) For having plied his vehicle without permit from 01.08.2023 and

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irregular handing of vehicle to a third person under a contract by violating Section 82(1) of the Act, the permit is liable to be suspended and to pay a sum of Rs. 5,000/- as being of suspension of permit under Rule 206 of the Rules.

(iii) The Registration Certificate of the vehicle bearing TN-59-E-3456 is liable for suspension as per Section 53(1) of the Act until the defects are rectified.

4. It is evident from the aforesaid submissions made that the Petitioner has unauthorizedly transferred the engine of the vehicle without the permission of the registering authority and necessary penal action has been contemplated in that regard, apart from investigation for other violations and further action to be taken against him. Such exercise would have to be expeditiously completed.

5. In this context, reference must be made to the dictum laid down by the Hon'ble Supreme Court of India in the decision in ***Director of Settlements, A.P. -vs- M.R. Apparao*** [(2002) 4 SCC 638], which reads as follows:-

"17. One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to



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*the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. “Mandamus” means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition (**Kalyan Singh -vs-***



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State of U.P. (AIR 1962 SC 1183). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law...."

In the light of this legal position, when it has not been shown that the Respondent has any legal duty to return the vehicle of the Petitioner as the Petitioner has committed various violations, the question of directing the Respondent to dispose the representation made by the Petitioner for such relief does not arise.

In the result, the Writ Petition is dismissed with the aforesaid observations. No costs.

14.02.2024

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 22.05.2024.

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To

The District Transport Officer,
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Tiruppur South,
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P.D. AUDIKESAVALU, J.

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