



W.P.(MD) No.18504 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.04.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.18504 of 2021

and

W.M.P.(MD) Nos.15269 and 15270 of 2021

R.Bhavani

... Petitioner

Vs.

- 1.The Secretary to Government,
Transport Department, St.George Fort,
Secretariat, Chennai - 9.
- 2.The Regional Transport Officer,
Office of the Regional Transport Office,
Tenkasi, Tenkasi District.
- 3.The Motor Vehicle Inspector,
Grade - I, Tenkasi, Tenkasi District.
... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the second respondent relating to the impugned Letter in Lr.No. 24164/B1/2021, dated 27.09.2021, quashing the same and consequently, directing the second respondent to return the original documents relating to the petitioner's vehicle bearing Registration No.NL-01-B-1396.



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For Petitioner : Mr.A.K.Baskarapandiyan

For Respondents : Mr.S.P.Maharajan
Special Government Pleader

ORDER

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, calling for the records of the second respondent relating to the impugned Letter dated 27.09.2021 bearing reference Lr.No. 24164/B1/2021, quashing the same and consequently, directing the second respondent to return the original documents relating to the petitioner's vehicle bearing Registration No.NL-01-B-1396.

2. By the impugned Letter, the second respondent has demanded a sum of Rs.35,200/- as motor vehicle tax due for Tamil Nadu State under the provisions of the Tamil Nadu Motor Vehicles Taxation Act, 1974.

3. Although the learned Special Government Pleader for the respondents would submit that this Writ Petition is not maintainable, he would fairly concede that the issue has been considered by the Principle Bench of this Court *vide* order dated 18.08.2022 in W.P.No.12649 of 2022. The Court has held as under:-



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“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 All 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



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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.

42. The petitioner is therefore directed to give its reply to the above notice within a period of 15 days from the date of receipt of a copy of this order.

43. The fifth respondent is directed to adjudicate and dispose after the Demand Notice dated 08.06.2022 issued to the petitioner in the light of the above observation within a period of 30 days from the date of receipt of this order.

44. This writ petition stands disposed with the above observation. No costs.”



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4. In view of the above, the matter stands remitted back to the second respondent to pass a fresh order on merits and in accordance with law in the light of decision rendered in W.P.No.12649 of 2022 on 18.08.2022. This exercise shall be carried out by the second respondent, as expeditiously as possible, preferably, within a period of 6 weeks from the date of receipt of a copy of this order. Needless to state, the petitioner shall be heard before the final order is passed.

5. Accordingly, this Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

17.04.2024

Index: Yes / No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order
JEN

Copy To:

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C.SARAVANAN, J.

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