(2002) 02 MAD CK 0049

In the Madras High Court

Case No : Writ Petition No. 5011 of 1998and W.P.M.P. No.7781 of 1998

Interfreight Services Private Limited APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 14-02-2002

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2002) 02 MAD CK 0049

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : C. Jose Ukkur, for the Appellant; M. Mahalingam, G.A., for the Respondent

Final Decision : Dismissed

Judgement

V. Kanagaraj, J.—The petitioner firm has filed this writ petition praying to issue a Writ of Declaration declaring that the Circular No.67 of

1996 communicated in L.No.E1/52352/96 issued by the second respondent to the third respondent, directing the third respondent to seek permit

for Tata Sumo motor car bearing Registration No.TN-04 D-2363 belonging to the petitioner, is ultra vires of Articles 14, 19(1)(d) and 300A of

the Constitution of India and Section 66 r/w. Sec. 2(33) of the Motor Vehicles Act and as such cannot be made applicable to the petitioner.

2. In the affidavit filed in support of the writ petition, the petitioner would submit that they have purchased the said vehicle for the use of the

Managing Director of the company for his visits to branch offices situated at various places in the country; that the petitioner is not using the same

as a transport vehicle nor to carry any other person in connection with its business; that the permit is required to be obtained for a private service vehicle only when the vehicle is used for carrying persons in connection with the trade or business carried on by the owner of the vehicle; that

Section 2(33) of the Motor Vehicles Act, 1988 contemplates to treat vehicles plying from point to point i.e. from the residential colony of the staff

to the office or factory of the owner of the vehicle, picking up and dropping back staff on a regular basis as private service vehicle and since the

petitioner is not using the vehicle in such a manner, the direction of the second respondent that the petitioner should seek permit under the

provisions of the Act is illegal and violative of Article 14 of the Constitution of India; that the respondents have no manner of right to carve out an

imaginary classification of a group like Firms and Companies and impose onerous duties on them; that the application for private service vehicle is

to be made in accordance with Section 76 of the Act, which inter alia provides furnishing of certain particulars for the issue of such permit and

therefore the order in the circular would have no application to the petitioner; that the direction of the respondents to Companies which own Tata

Sumo vehicles to seek permit under the provisions of the M. V. Act is also a violation of Article 19(1)(d) of the Constitution of India. On such

grounds, the petitioner would seek the relief extracted supra.

3. During arguments, the learned counsel appearing on behalf of the petitioner would submit that it is a general direction issued by the Transport

Commissioner which would reveal only the inability of the officials to check the vehicle and is violative of the relevant Articles of the Constitution of

India as pleaded in the writ petition and would pray to allow the writ petition as prayed for.

4. A plain reading of the impugned instructions imparted by the Transport Commissioner to all the Deputy Transport Commissioners, Joint

Transport Commissioners and all the Section Heads in the Transport Department would reveal that since instances have been brought forth to the

effect that some Companies or Firms owning Tata Sumo vehicles are registered as `non-transport vehicles'' and tax is levied on unladen weight

basis, which is not correct, the Transport Commissioner has directed all his subordinates that whenever such vehicles are registered in the name of

such Companies, the intention being obvious that they are to be used for the purpose of promotion of their trade or business otherwise than on for hire or reward and as such the usage of these vehicles attracts the provisions of Section 2(33) of the Motor Vehicles Act, 1988 and therefore it

requires permit u/s 66(1) of the Motor Vehicles Act, 1988 for using as service vehicle, such vehicles should be registered only as `private service

vehicles'' and necessary permits should also be issued on obtaining application to the effect simultaneously.

5. The crux of the matter in the issue of the circular is to curb misuse of the privilege given by law, getting them registered as `non-transport

vehicles'' in the name of such companies and making use of the same for the purpose of carrying persons for promoting their trade or business

otherwise than for hire or reward. Therefore, according to the Commissioner of Transport, the usage of these vehicles attract the provisions of the

Section 2(33) and requires permit u/s 66(1) of the Motor Vehicles Act, 1988.

6. In the case in hand, there is no denying of the fact on the part of the petitioner that the Tata Sumo vehicle, which is the subject matter here, is

registered in the name of the petitioner firm, but their contention is that it is only made use of to carry the Managing Director of the company and

that the permit is required to be obtained for a private service vehicle only when the vehicle is used for the purpose in connection with the `trade or

business'' carried on by the owner of the vehicle and that it should ply from point to point, but the petitioner is not using the same for such purposes

but only to carry their Managing Director to various places in and outside the State. But, there is no denying of the fact on the part of the petitioner

that the vehicle is made use of for `commercial enterprise'' and the purpose for which the vehicle is strictly made use of, cannot be monitored by

authorities all the time. Therefore, against widespread misuse of the privilege granted by law for such types of vehicles owned by the companies or

firms registering the vehicles as `non-transport vehicles'' and levying the tax on the unladen weight basis, the Commissioner of Transport

department had issued the impugned Circular requiring his subordinates to register such vehicles only as private service vehicles and it is neither

unreasonable nor discriminatory since the Circular has been issued for the transport authorities working all over the State to adopt the procedure

mentioned therein in respect of Tata Sumo vehicles owned by companies or firms in a uniform manner. Thus, the Circular impugned herein is only aimed at putting possible checks against misuse of the privilege granted by law becoming applicable for all the vehicles of the category of Tata

Sumo owned by the Companies or firms and hence this internal circular issued by the Commissioner of Transport to his subordinate officers is in

no manner repugnant to or offending any of the Articles of the Constitution as brought forth in the petition and therefore it has to be held herein that

the said Circular has been issued by the Commissioner of Transport only within the permissible limits of law and the same has to be approved

especially in view of the fact that with the general honest thought and common good of all and in the public interest, the Circular has been issued

and not in any motivated or discriminatory or biased manner by the Transport Commissioner. Therefore, it has to be decided that there is no pith

or substance in the petitioner coming forward to file the above writ petition challenging the Circular issued by the Transport Commissioner and the

writ petition becomes liable only to be dismissed.

In result, the above Writ Petition is without merit and the same is dismissed as such.

However, in the circumstances of the case, there shall be no order as to costs.

Consequently, W.P.M.P.No.7781 of 1998 is also dismissed.

