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W.P.No.7351 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	19.08.2024
PRONOUNCED ON	22.08.2024

CORAM:

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

W.P.No.7351 of 2017

and

W.M.P.Nos.8013 to 8015 of 2017

M/s.Bala Bhavan Educational Trust,
Rep. by its Trustee,
No.15, Lake 1st Main Road, Nungambakkam,
Chennai – 600 034.

.... Petitioner

Vs

1. Regional Transport Officer,
Chennai (Central),
Chennai – 600 023.

2. Transport Commissioner,
Transport Department,
Ezhilagam, Chepauk,
Chennai – 600 005.

.... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorari calling for the records comprised in the impugned demand notice, bearing Memo No.A1/78932/2016 and dated 30.11.2016 issued by the first respondent and quashing the same as being wholly illegal and unconstitutional.



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For Petitioner : Mr.Sathish Parasran
Senior Counsel
for Mr.Rahul Balaji

For Respondents : Mr.J.Ravindran
Additional Advocate General
Assisted by Mr.V.Manoharan
Additional Government Pleader

ORDER

This Writ Petition has been filed challenging the order passed by the first respondent dated 30.11.2016, thereby ordered to pay at Rs.500/- per seat of the bus per quarter, in total for a sum of Rs.9,51,300/-.

2. The petitioner Trust was established in the year 1976 and its object is to run educational institutions. The educational institutions were previously run by the Nungambakkam Ladies Recreation Club in the name of Padma Seshadri Bala Bhavan Matriculation School and Bala Bhavan Primary School (hereinafter referred to as "PSBB School"), which is a private unaided school, affiliated to the Central Board of Secondary Education. The operation of the PSBB Group of Schools remains the sole activity of the petitioner Trust. The petitioner applied permit for its buses. The buses were used for its students and staffs. The permits were issued by the competent authorities under the Motor Vehicles Act, 1988 (hereinafter referred to as "MV Act"), after payment of necessary taxes.

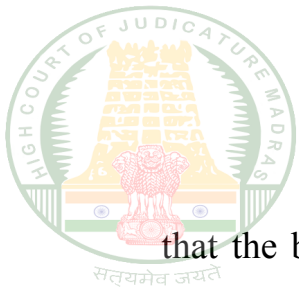


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3. The definition of Educational Institution Bus as per Section

2(11) of the MV Act is that “an omnibus, which is owned by a college, school or other educational institution and used solely for the purpose of transporting students or staff of the educational institution in connection with any of its activities”. In order to provide concessional rates of tax as contemplated under Section 3 read with Item 8(a) of the first schedule of Tamil Nadu Motor Vehicles Taxation Act, 1974 (hereinafter referred to as “Taxation Act”). The petitioner submitted an application for necessary permits and was issued permit on 22.07.2005 for the vehicle bearing No.TN-01-Z-7767 and permit dated 19.10.2006 for the vehicle bearing No.TN-01-AC-0747 by the first respondent. The permits were issued after satisfying the definition of educational institution bus and concluded that the petitioner is entitled for concessional rates of tax and on receipt of the same, the petitioner was issued permit. In fact, the permit was renewed periodically and finally they renewed from 06.10.2011 to 05.10.2016. While being so, the first respondent demanded to pay taxes on the buses owned by the petitioner.

4. Mr.Sathish Parasran, learned Senior Counsel appearing for the petitioner would submit that the impugned demand was issued on the ground



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that the buses were not registered in the name of Principal, Correspondent or

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Manager of the particular school so as to grant concessional rate of tax. The first respondent failed to see that where the functioning and operations of the trust or society are solely in relation to the educational institution, a vehicle does not cease to be an 'educational institution bus' under Section 2(11) of the M.V.Act. The buses of the petitioner were used solely for the purpose of ferrying the school staff and students for the activities such as sports/tournaments, educational trips, annual day program, sports day, students cultural events, inter-school competitions, workshops, seminars and for the purpose of picking up and dropping the students and staffs from their respective residence to school. The first respondent already registered the buses of the petitioner as educational institution bus and granted permit. All of a sudden, it cannot be said that the buses are not registered in the name of the Principal, Correspondent or Manager of the School and as such, it is not coming under educational institution bus. Though the buses were registered in the name of the petitioner, the purpose of the petitioner is to hold and utilize all the properties for the benefits of the PSBB School. The impugned demand was issued without issuance of any notice or conducting any enquiry. Therefore, it is a clear violation of principles of natural justice.

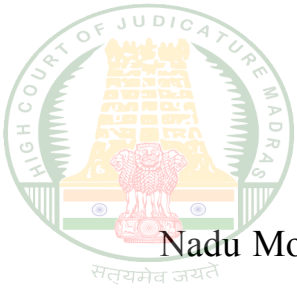


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5. In support of his contention he relied upon the Judgment of this

WEB COPY Court reported in **2016 SCC Online Mad 24486** in the case of ***G.R.Govindarajulu & Sons Charities, Peelamedu, Coimbatore Vs. Regional Transport Officer*** and the Judgment of the Hon'ble Supreme Court of India reported in **(2004) 4 SCC 281** in the case of ***Escorts Farms Ltd., previously known as M/s.Escorts Farms (Ramgarh) Ltd., Vs. Commissioner, Kumaon Division, Nainital, U.P. and others.***

6. The first respondent filed a counter and the learned Additional Advocate General appearing for the respondents 1 & 2 submitted that the vehicles are registered in the name of the petitioner Trust. Though the petitioner Trust is also running the schools, it also involved in other activities and as such the buses are used in connection with other activities. Therefore, the buses should be registered with the category of private service vehicle as defined in Section 2(33) of M.V.Act. On perusal of the object of the petitioner also revealed that the petitioner Trust was formed not only to promote the educational activities and also carry on other activities, which are commercial in nature. Therefore, the petitioner is not entitled for any concessional rate of tax. The buses registered in the name of the petitioner are liable to pay tax under item 8(a) of first schedule of Taxation Act. Rule 3(2)(iv) of the Tamil



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2012, says about the school bus permit, in which, it was categorically stated that the school bus shall be registered in the name of the school and not in the name of the Trust or Society conducting the school.

7. In support of his contention, he relied upon the Judgments of this Court reported in *(2008) 3 LW 97* in the case of *Tvl. Suganthi Educational Trust Vs. The Regional Transport Officer* and *AIR 2008 Mad 173* in the case of *Lakshmi Vidhya Sangam, rep. by its Secretary & Treasurer Vs. The Regional Transport Officer, Madurai (South), Madurai*.

8. Heard Mr.Sathish Parasran, learned Senior Counsel appearing for the petitioner and Mr.J.Ravindran, learned Additional Advocate General appearing for the respondents 1 & 2 and perused the materials available on record.

9. Admittedly, the buses belong to the petitioner and registered in the name of the petitioner. The petitioner is a Trust and its objects are as follows :



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a) To establish institutions for studies for imparting primary, secondary and collegiate education and research for the advancement of knowledge, skill, training and education of every kind including science, humanities, technology, engineering, arts, crafts, commerce, medicine and professional studies and to construct and acquire buildings, structure, equipment, implements, whatsoever necessary for the purpose.

b) To run hostels, students home or other facilities and amenities for the students.

c) To set up library, laboratory, workshop, gymnasium, reading rooms and all amenities and services for students.

d) To award scholarships, prizes, fellowships, grants and loans and other payments for the purposes of study and research in any and every field of knowledge.

e) To carry on the educational institutions hitherto carried on by Nungambakkam Ladies Recreation Club viz., Padma Seshadri Bala Bhavan Matriculation School and Bala Bhavan Primary School under the Trust and take over any other institutions and run the same as part and parcel of the Trust.

f) To fulfil all conditions that may be imposed for earning any grant or assistance for the purposes of the Trust from any Government, Municipal, Local or other Authority or other institutions.

g) To provide funds and facilities for Higher Studies training or research.



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h) To amalgamate or merge with any other Trust having same or similar objects.

i) To do all such acts, deeds and things in addition to and in furtherance of the above purposes and in the advancement or any other charitable object of public utility not involving any activity for profit.

j) Each of the above purpose of the Trust shall be deemed to be made separate and independent object of the Trust.

10. Thus, it is clear that in order to carry out the educational institution, a Trust was formed for imparting primary, secondary and collegiate education and research for the advancement of knowledge, skill, training and education of every kind including science, humanities, technology, engineering, arts, crafts, commerce, medicine and professional studies. The buses were registered as educational institution bus. The address mentioned in the registration certificate as Padma Seshadri Bala Bhavan Senior School, 15-Lake 1st Main Road, Nungambakkam, Chennai under the caption of educational institution vehicle. The permits were periodically renewed. It was valid from 06.10.2016 to 05.10.2021. Therefore, the petitioner Trust was given concessional rate in respect of road tax.



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11. As per Section 2 (11) of the M.V.Act, the educational institution

buses means an omnibus, which is owned by a college, school or other educational institution and used solely for the purpose of transporting students or staff of the educational institution in connection with any of its activities. Therefore, the object of the said definition is to use the vehicle solely for the purpose of transporting educational institutions' students and staff in connection with their activities. In order to give concessional rate of tax as contemplated under Section 3 read with item 8(a) of the first schedule of the Taxation Act. It is relevant to extract the provision under Section 8(a) of the first schedule of the Taxation Act is as follows :

- | | |
|--------------------------------------------------------------------------------------------------------------------------------------|--------|
| 8(a) (i) To transport students and staff of school for every person (other than the driver) which the vehicle is permitted to carry. | 50.00 |
| (ii) To transport students and staff of colleges for every person (other than the driver) which the vehicle is permitted to carry. | 100.00 |

12. The Judgments cited by the learned Additional Advocate General reported in *AIR 2008 Mad 173* in the case of *Lakshmi Vidhya Sangam, rep. by its Secretary & Treasurer Vs. The Regional Transport Officer, Madurai (South), Madurai*, in which, this Court held as follows :-



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“20. A Trust/Society can establish an educational institution, engage in charitable activity, promote culture or religious activity or any other activity illegally permissible. A Trust/Society can earmark a property either movable or immovable for a specific purpose. All the properties and assets owned by the Trust cannot always be the properties of the educational institution. Possession and Management of the trust properties and administering properties owned or held on behalf of the educational institution are entirely different. The corpus of the Trust cannot be said to be corpus of the educational institution. The right of transfer is incidental to ownership. Income derived by the trust in letting out the properties either movable or immovable for generating income, cannot be the income of the educational institution started or established by the trust. The educational laws of the country mandate that the educational institution, college or school, as the case may be, which received recognition from the competent authority to maintain and submit a statement of movables and immovables owned by that college or school or educational institution, to such authorities from whom recognition is obtained. A trust can start schools, colleges or educational institution or charitable institution or engage in any other separate entity by itself and one cannot claim right of ownership or title in respect of movables or immovables held by other.



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It is the college, school or educational institution, which impart education and awards the degree or diploma or certificate through the Universities or examining bodies are recognised by the competent authorities and trust is not the educational institution. Merely because the trust has started an educational institution, in the instant case, schools, viz., (a) T.V.S.Lakshmi Matriculation Higher Secondary (b) T.V.S.Higher Secondary School (c) Lakshmi School and (d) T.V.S.Primary School, it cannot be called as an educational institution. Trust is only an educational agency and not the institution. Only colleges, schools and educational institutions are provided with the concession in the rate of tax, taking into consideration the ownership of the vehicle coupled with the usage of the vehicle.”

13. A 'private service vehicle' is defined under Section 2(33) of the M.V.Act, which means a motor vehicle constructed or adapted to carry more than six persons, excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for hire or reward but does not include a motor vehicle used for public purposes.



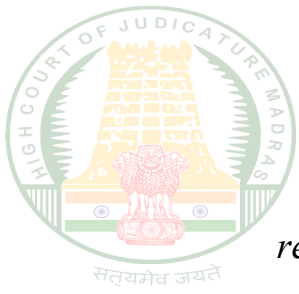
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14. In the above Judgment, the Trust also engaged with other activities, including commercial in nature. Simultaneously, it also runs school.

Therefore, the above Judgment is not applicable to the case on hand, since the petitioner Trust, as stated supra, runs only schools as per the objects of the Trust Deed.

15. The learned Senior Counsel relied upon the Judgment reported in **2016 SCC Online Mad 24486** in the case of **G.R.Govindarajulu & Sons Charities, Peelamedu, Coimbatore Vs. The Regional Transport Officer (South), Coimbatore**, in which, this Court held as follows :

“4. From the above objects, which are few of the objects of the Trust as mentioned in their Memorandum, it is evidently clear that the petitioner Trust is an Educational Trust. Under the provisions of the Tamil Nadu Private Colleges (Regulation) Act and the Tamil Nadu Recognized Private Schools (Regulation) Act, an educational agency has been recognized as a body which establishes and administers an institution. Therefore, the respondent cannot ignore the fact that the petitioner is an educational agency. One more issue which is very relevant is that the transport permit in respect of all the three buses for which higher rate of tax has been demanded from retrospective effect, stands in the name of the



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respective Educational Institution. However, this vital fact has been lost sight of by the respondent while issuing the impugned demand. That apart, the impugned demand has been issued in the year 2005 with retrospective effect from the year 1998 to 2002 and there is nothing placed on record by the respondent to show as to under what authority of law, they have issued such a demand with a retrospective effect. Hence, for all the above reasons, it is evidently clear that the impugned order is an outcome of total non-application of mind.”

16. The above Judgment is squarely applicable to the case on hand.

The first respondent failed to see the objects of the petitioner Trust, it is an educational Trust. That apart, the first respondent made demand with retrospective effect. The permits of the petitioner buses were already renewed under the caption of Educational Institution Bus. Further, the petitioner was not served with any show cause notice and was not given an opportunity to explain whether the buses are used only for educational institution or other purposes. In order to apply for permit under Section 8(a) of M.V.Act, the Form PEV to be submitted for permit in respect of educational institution bus. In the said form, the petitioner categorically mentioned the name of the educational institution and also addressed as Padma Seshadri Bala Bhavan Senior Secondary School, No.15, Lake 1st Main Road, Nungambakkam,



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Chennai – 600 034. It was duly accepted and granted permit to the buses owned by the petitioner Trust.

17. In view of the above, the order impugned in this writ petition cannot be sustained and is liable to be quashed. Accordingly it is hereby quashed insofar as the items 2 and 4 as mentioned in the schedule.

18. In the result, this writ petition stands allowed. Consequently, connected miscellaneous petitions are closed. No costs.

22.08.2024

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

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To
1. The Regional Transport Officer,
Chennai (Central),
Chennai – 600 023.

2. The Transport Commissioner,
Transport Department,
Ezhilagam, Chepauk,
Chennai – 600 005.



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G.K.ILANTHIRAIYAN. J.

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Pre-delivery order in
W.P.No.7351 of 2017
and
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22.08.2024