

W.P.(MD) No.1480 of 2023.

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.03.2023

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THE HONOURABLE Ms.JUSTICE P.T.ASHA

W.P.(MD) No.1480 of 2023

Angappan

... Petitioner

/vs./

1.The Secretary to the Government of Tamil Nadu,
Department of Transport,
Fort St.George,
Chennai 600 009.

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

3.The Assistant Transport Commissioner,
Transport Department,
Tanjore District.

4.The District Collector,
District Collector Office,
Pudukkottai 622 005.

5.The Regional Transport Officer,
Regional Transport Office,
Pudukkottai District.

... Respondents

1/12



W.P.(MD) No.1480 of 2023.

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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 5th Respondent vide his proceedings in Na.Ka.No. 32569/E2/2022 dated 05.01.2023 and quash the same as illegal and consequently direct the 5th respondent to register the petitioners New Maruti Suzuki XL 6 car and to grant exemption of Tax to the Physically disabled as per G.O.Ms.No.3352 dated 29.12.1976 within a time period stipulated by this Court.

For Petitioner : Mr.R.Karunanidhi

For Respondents : Mr.T.Amjadkhan
Government Advocate

ORDER

This is a rather unfortunate writ petition, where the writ petitioner, who is physically challenged, is forced to approach this Court to assert his entitlement to a concession that is made applicable to him by orders of the Government of Tamil Nadu. In order to appreciate the grievance of the petitioner, it is necessary to briefly allude to the facts which has culminated in filing of this writ petition.

2.The petitioner is a person, who suffers from a locomotor disability. His disability is assessed at 80% and he holds a unique disability identity card issued

2/12



W.P.(MD) No.1480 of 2023.

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by the Government of India. The learned counsel for the petitioner would submit that the petitioner is a Commerce Graduate pursuing his Chartered Accountant's course, apart from which, he has represented the country in an international Chess game. He has also obtained the title of FIDE Arbiter from the International Chess Federation and the title of Senior National Arbiter of Chess. He has also passed the trainer examination for Chess and at present he is pursuing his interest as an Arbiter of Chess by travelling abroad. The petitioner is unable to move by himself and his father has to accompany him everywhere as he has to be physically lifted and seated while travelling. In fact, his father has also advanced in age and is not able to carry the petitioner as before. Therefore, he had purchased a Maruti Suzuki XL 6 car and had adapted the said vehicle for his personal use by obtaining Retro Fitment Certificate from the Government approved Retrofitment Centre on 19.11.2022. The adoption that he has done is to the passengers seat by modifying it, is in such a way that he could easily get in and out of the seat without the assistance of another.

3.The learned counsel for the petitioner would submit that on 29.12.1976, the Government of Tamil Nadu in G.O.Ms.No.3352, Home (Transport -T)



W.P.(MD) No.1480 of 2023.

WEB COPY

Department, dated 29.12.1976 had passed the notification, in which they had decided to exempt from payment of tax all motor vehicles specially designed or adapted for the use of the physically handicapped persons, provided the adapted vehicles are used by the physically handicapped persons only. Therefore, in the light of the above Government Order, the petitioner had sought for a tax exemption before the Regional Transport Officer, Pudukkottai. Unfortunately, by an order dated 05.01.2023, the fifth respondent has demanded the production of the disability certificate and a certificate stating that the petitioner can drive the said vehicle as also the certificate from the Retro Fitment Centre, which has adapted the vehicle. Though the petitioner has forwarded his representation enclosing all the documents to show his physical disability together with the RC book and the retrofitment certificate, the impugned order has been passed.

4.A perusal of the same indicates the absolute non application of mind on the part of the fifth respondent particularly taking into account the fact that the petitioner is a physically challenged person, who seeks to be mobile for which he has adapted the vehicle without violating any rules. In fact, the demand for production of a certificate to prove that the petitioner can drive a vehicle is to say



W.P.(MD) No.1480 of 2023.

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the least absurd when the petitioner would himself state that he suffers 80% locomotor disability.

5.Mr.T.Amjadkhan, learned Government Advocate for the respondents would submit that the exemption would be available to the petitioner, only if it is a self-driven vehicle. He would seek to draw this inference by quoting the definition of an adapted vehicle as provided in Section 2(1) of the Tamil Nadu Motor Vehicles Act, 1988, as amended by the Amending Act, 2019, (*herein after referred to as Act*), wherein the adapted vehicle has been described as follows:-

“Adapted vehicle” means a motor vehicle either specially designed and constructed, or to which alterations have been made under sub-section (2) of section 52, for the use of a person suffering from any physical defect or disability, and used solely by or for such person.

6.He would further draw the attention of this Court to Section 52(1) of the Act, which reads as follows:-

“52.Alteration in motor vehicle.--

(1) No owner of a motor vehicle shall so alter the vehicle that the particulars contained in the certificate of registration are at



W.P.(MD) No.1480 of 2023.

WEB COPY

variance with those originally specified by the manufacturer:

Provided that where the owner of a motor vehicle makes modification of the engine, or any part thereof, of a vehicle for facilitating its operation by different type of fuel or source of energy including battery, compressed natural gas, solar power, liquid petroleum gas or any other fuel or source of energy, by fitment of a conversion kit, such modification shall be carried out subject to such conditions as may be prescribed:

Provided further that the Central Government may prescribe specifications, conditions for approval, retrofitment and other related matters for such conversion kits;

Provided also that the Central Government may grant exemption for alteration of vehicles in a manner other than specified above, for any specific purpose.”

7. Heard the learned counsels appearing on either side.

8. From the submissions made on the side of the respondents, which is submitted on instructions, it appears that the purport of the Government order has been totally misconstrued by the authorities. They have understood the notification to be available only to more vehicles, which are driven by the



W.P.(MD) No.1480 of 2023.

WEB COPY

physically challenged persons themselves. This is an absolute misconception. The said notification is issued in tune with the definition of an adapted vehicle as provided in Section 2(1) of the Act. The only condition prescribed is that the vehicle should be **USED** by the physically challenged persons, for whose use the vehicle has been adapted. Nowhere does it state that it should be driven by the said person.

9.It would not be out of place to mention that the Tamil Nadu Motor Vehicles Act, 1988 as it stood before the amending Act 32 of 2019 did not define an adapted vehicle, whereas with the amending Act Section 2(1) has been introduced. The said definition has to be read in conjunction with Section 52 of the Act. Therefore, a reading of Section 52 would imply that if there is an alteration of the vehicles structure, then the permission of the Registering Authority is required. This view is fortified by the explanation to Section 52, which reads as under:-

“For the purpose of this section, “alteration” means a change in the structure of a vehicle which results in a change in its basic feature.”



W.P.(MD) No.1480 of 2023.

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10.The introduction of the above section appears to be for giving effect to the objects of the “Persons with disabilities (equal opportunities, protection of rights and full participation) Act, 1995.” The amending Act aims to integrate persons with disability into the mainstream to making them more mobile. The exemption granted in the Government Order (*referred supra*) is to encourage physically challenged persons to purchase vehicles for their use. The Government Order does not state that it is the physically challenged person, who has to drive the vehicle. It would suffice the vehicle is put for his use.

11.A Division Bench of this Court in its unreported judgment in W.A.(MD) No.195 of 2021 (***Dr.G.Winston Vs. The Secretary to the Government of India, Ministry of Transport and Highways, No.1, Parliament Street, Transport Bhavan, New Delhi 110 001 and others***) has upheld the right of the appellant therein to this tax exemption. Where a rule or regulation purports to grant a right to a particular section of society, Courts must use the rule of purposive interpretation to ensure that the object of beneficial legislation reaches the intended section of the society. The Government Order read along with Section



W.P.(MD) No.1480 of 2023.

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2(1) and Section 52 of the Act clearly spells out that a physically challenged person, who owns a vehicle and has adapted the vehicle for his use is entitled to the tax exemption.

12. Further, a perusal of Section 52(1) of the Act would clearly indicate that the particulars of the alterations, which should be contained in the registration, are with reference to replacement of an engine. Such alteration is to be communicated to the Registering Authority within 14 days from the date of making the alterations. A person holding a vehicle under a hire purchase agreement can make such alteration only with the written consent of the registered owner. The registration certificate of the vehicle provides the class of vehicle, maker's name, model name, type of body, seating capacity, engine etc for identifying a vehicle and modifications to this can be made only with the approval of the Registering Authority.

13. The case on hand does not deal with any major alteration as contemplated under Section 52(1) of the Act supra. The alterations have been made only to adapt the vehicle to make it more user friendly for the petitioner,



W.P.(MD) No.1480 of 2023.

WEB COPY

who is physically challenged to make ingress and egress into and out of the vehicle easier. Neither the definition under Section 2(1) nor Section 52 specifies that it is the person, for whose purpose, the adaption is made, who should ride the vehicle. On the contrary, the definition of adapted vehicle makes it clear that the vehicle should **be used solely by or “for such person”**. Therefore, in the instant case, the adaption is made for the use of the petitioner and taking into account the Government Order, which provides for the exemption, the Writ Petition is allowed, directing the respondent/Registering Authority to apply the Government Order referred supra and grant exemption to the petitioner. However, there shall be no order as to costs.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

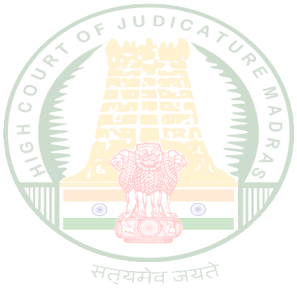
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W.P.(MD) No.1480 of 2023.

P.T.ASHA, J.

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W.P.(MD) No.1480 of 2023

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12/12