

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

WP(C).No. 14179 of 2015 (V)

PETITIONER(S):

**M/S.CONFRATE CARGO SERVICES PVT. LTD.,
CCH ASSOCIATION BUILDING, INDIRA GANDHI ROAD,
WILLINGDON ISLAND, KOCHI-3,
REPRESENTED BY ITS MANAGING DIRECTOR,
BALAGOPALA B. PAI.**

BY ADV. SRI.M.JITHESH MENON

RESPONDENT(S):

- 1. REGIONAL TRANSPORT AUTHORITY, ERNAKULAM,
REPRESENTED BY ITS SECRETARY, CIVIL LINES, KAKKANAD,
KOCHI-682 030.**
- 2. THE SECRETARY,
REGIONAL TRANSPORT AUTHORITY, ERNAKULAM, CIVIL LINES,
KAKKANAD, KOCHI-682 030.**

BY GOVERNMENT PLEADER SMT.K.A.SANJEETHA

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
16-07-2015 ALONG WITH WP(C) 14188/2015 THE COURT ON 22-07-2015
DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 14179 of 2015 (V)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1- TRUE COPY OF THE NATIONAL PERMIT ISSUED IN RESPECT OF KL-7/AB
2809 DATED 20-10-2008.**

**EXHIBIT P2- TRUE COPY OF THE AUTHORIZATION ISSUED IN RESPECT OF
KL-7/AB 2809 DATED 23-10-2008.**

EXHIBIT P3- TRUE COPY OF THE JUDGMENT IN WPC NO. 33629/09 DATED 15-3-2010.

EXHIBIT P4- TRUE COPY OF THE NOTICE DATED 24-7-2010.

**EXHIBIT P5- TRUE COPY OF THE ORDER OF THE 1ST THE RESPONDENT
DATED 18-8-2010.**

**EXHIBIT P6- TRUE COPY OF THE ORDER IN M.P.NO. 652/10 IN MVAA NO. 320/2010
DATED 19-10-2010.**

EXHIBIT P7- TRUE COPY OF THE JUDGMENT IN MVAA NO. 320/2010 DATED 28-4-2014.

**EXHIBIT P8- TRUE COPY OF THE NOTICE ISSUED BY THE 2ND RESPONDENT
DATED 4-3-2015.**

**EXHIBIT P9- TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONER
DATED 10-3-2015.**

**EXHIBIT P10- TRUE COPY OF THE LETTER DATED 17-3-2015 ISSUED BY THE
2ND RESPONDENT.**

**EXHIBIT P11- TRUE COPY OF THE AMENDMENT BROUGHT TO RULE 186 OF THE
KERALA MOTOR VEHICLES RULES.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) Nos.14179 & 14188 of 2015

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Dated this the 22nd day of July, 2015

JUDGMENT

Under challenge in these writ petitions are Ext.P10 letter issued by the second respondent and Ext.P11 amendment to Rule 186 of the Kerala Motor Vehicles Rules.

2. The petitioner in W.P(C) No.14179 of 2015 is the registered owner of a goods vehicle bearing Reg. No.KL-7/AB 2809 and the petitioner in W.P(C) No14188 of 2015 is the registered owner of the goods vehicle bearing Reg. No.KL-07/U 8744. The petitioners allege that the vehicles were covered by national permits and they have got the authorisation to operate in other States. When the authorisation issued in respect of the vehicles expired, the petitioners applied for fresh authorisation, for a period of one year. While the applications were pending, the petitioners were served with a notice stating that the authorisation applications would be considered only if the check

reports pending against the vehicles were cleared.

3. The petitioners had challenged the said notice before this Court by filing W.P(C) No.33629 of 2009 and the writ petition was disposed of by Ext.P3 judgment directing the applications for authorisation to be considered without insisting for compounding fee and to complete the proceedings either under Sections 86 or 94 of the Motor Vehicles Act, within six months. The petitioners allege that in compliance of Ext.P3 judgment, the first respondent issued a notice to them intimating that an item was boarded for consideration before the first respondent for consideration of further action to be initiated on the check reports. However, the first respondent without taking a decision as to the action to be resorted to, straight away cancelled the permit of the petitioners without following the provisions envisaged under Section 86 of the Act read with Rule 186 of the Motor Vehicles Rules. No opportunity was also given to the petitioners to compound the offenses; it is alleged.

4. The aforesaid cancellation was challenged by the petitioners by filing separate appeals before the State Transport Appellate Tribunal. The petitioner in W.P(C) No.14179 of 2015 filed MVAA No.320 of 2010 and the petitioner in W.P(C) No.14188 of 2015 filed MVAA No.324 of 2010. The petitioners further allege that even though those appeals were filed in 2010, the records were not produced by the respondents for four years and the appeals were finally allowed by the Tribunal. MVAA No.320 of 2010 was disposed of on 28.4.2014 and MVAA No.324 of 2010 was disposed of 5.9.2014. The learned Tribunal set aside the order of cancellation and gave the petitioners an opportunity to compound the offenses.

5. Thereafter the petitioners produced the judgment of the STAT before the first respondent and requested for compounding the offenses. The first respondent issued notice to the petitioners (Ext.P10 in both the writ petitions) requiring them to compound the offenses. The petitioner in W.P(C) No.14179 of 2015 was required

to compound the offence for a total amount of ₹50,000/- as compounding fee and the petitioner in W.P(C) No.14188 of 2015 was required to compound the offence for a total amount of ₹24,000/- as compounding fee. The petitioners allege that the compounding fee at the time of impugned action was only ₹2,000/-. However, in Ext.P10 notice, Ext.P11 amendment which was brought into force was referred to. By Ext.P11 amendment, the compounding fee prescribed under Rule 186 has been enhanced to the maximum amount leviable as per the present section. It is with this background, the petitioners have come up before this Court.

6. The respondents have filed a counter affidavit justifying the stand taken by them.

7. I have heard the learned counsel for the petitioners and the learned Senior Government in the matter.

8. The learned Senior Government Pleader would submit that what was directed by the STAT was to provide opportunity to the

petitioners to compound the offenses disclosed in the check reports. It was submitted that thereafter notices were issued to the petitioners requesting them to compound the offenses as per Rule 186(2)(b) the Kerala Motor Vehicles Rules, 1989 before 26.3.2015. However, the petitioners failed to appear for personal hearing and were not willing to remit the compounding fee. The learned Senior Government Pleader gave thrust to the point that the impugned orders were passed pursuant to Ext.P4 amendment which came into effect on 4.7.2013 and the petitioners are liable to pay the compounding fee as per the new amendment. The learned Senior Government Pleader would further point out that the impugned orders were passed subsequent to the amendment.

9. In answer to the said submission, the learned counsel for the petitioners would submit that Ext.P4 amendment has got only prospective operation and it was brought into force before the amendment. Evidently and admittedly too, the petitioners have

committed the offenses which is capable of compounding. The learned Tribunal also directed the respondents to compound the offenses on the basis of the check reports.

10. It is crucial to note that the offenses alleged to have been committed by the petitioners were prior to 2010 and the impugned action was also passed in 2010. It is true that subsequently, Ext.P11 amendment has come into force. However, it is relevant to note that Ext.P4 has no retrospective operation. As the offenses said to have been committed by the petitioner were before Ext.P11 amendment came into force, the rate that has to be made applicable is the rate which was in force when the offenses were committed. It is also crucial to note that though the appeals were filed in 2010, the records were not produced by the respondents before the Tribunal for four years. There is some contribution on the part of the respondents also in delaying the compounding, which now fell after the commencement of Ext.P11.

11. On a consideration of the entire materials now placed on record, this Court is of the view that the petitioners are entitled to the relief prayed for.

In the result, the writ petitions are disposed of making it clear that Ext.P11 has only prospective operation. The first respondent shall permit the petitioners to compound the offenses at the rate which was in existence with the offenses were committed by the petitioners.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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