

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Ms. JUSTICE J. UMA DEVI

Writ Appeal No.1290 of 2017

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order of the learned Single Judge in W.P. No. 24740 of 2017 dated 2.8.2017. The respondents in the Writ Petition are in appeal before us aggrieved by the order of the learned Single Judge in permitting the respondent-writ petitioner to approach the Station House Officer, Patamata Police Station on 7.8.2017 at 11.00 A.M, and to produce before him the original 'B' Register extract, vehicle specification, vehicle sketch and vehicle permit for verification; and, on such production, the 3rd appellant should receive the same and comply with the order in CrI. M.P. No. 1775 of 2017 dated 24.4.2017.

The III Additional Chief Metropolitan Magistrate, Vijayawada, by his order in CrI.M.P. No. 1775 of 2017 in Crime No. 177 of 2017 dated 24.4.2017, granted interim custody of the subject bus to the respondent-writ petitioner on their executing a personal bond for Rs.30.00 lakhs, and on their furnishing surety for a like sum. They were directed not to dispose of the bus until further orders of the Court; to produce it before the Court, or the police station concerned, whenever required; and to keep the same intact. The owner of the bus was required to be present before the Station House Officer, Patamata Police Station, and produce the original 'B' Register extract, vehicle specification, vehicle sketch and vehicle permit for verification before taking delivery of the bus. The Station House Officer, Patamata Police Station was directed to return the bus to the respondent-writ petitioner for interim custody on proper identification under due acknowledgment, to take photographs while returning the property to the respondent-writ petitioner, and to file the same in Court.

The subject bus met with an accident resulting in the death of a cyclist who fell below it. Crime No. 177 of 2017 was registered with the Patamata Police Station, Vijayawada, the vehicle was seized and the driver arrested. The respondent-writ petitioner filed a petition seeking interim custody of the vehicle which resulted in the order in CrI.M.P. No.1775 of 2017 being passed. Aggrieved by the order passed in CrI.M.P. No. 1775 of 2017, the State preferred Criminal Revision Petition No.33 of 2017 before the Metropolitan Sessions Judge, Vijayawada on 1.5.2017 which is still pending consideration as on date. While matters stood thus, the respondent-writ petitioner invoked the jurisdiction of this Court by filing W.P.No.24740 of 2017, which resulted in the order under appeal being passed.

Learned Government Pleader for Home, appearing for the appellants, would submit that the subject vehicle was registered in Arunachal Pradesh on 15.10.2016; the vehicle was delivered to the respondent-writ petitioner on 22.10.2016; even prior thereto, the registration of the vehicle was cancelled by the Government of Arunachal Pradesh, and intimation thereof was furnished to the Joint Transport Commissioner on 13.6.2017; the vehicle, registered in Arunachal Pradesh, has an All India Permit; in terms of Rule 85(3) of the Central Rules, the bus is required to commence and end its journey in Arunachal Pradesh; the subject vehicle was not carrying any passengers when the accident occurred; as its use resulted in the death of a cyclist, the subject vehicle was detained; and the Writ Petition was disposed of without the appellants being afforded an opportunity to file their counter affidavit.

Sri B. Sivaramakrishnaiah, learned counsel for the respondent-writ petitioner, would submit that registration of the subject vehicle was cancelled only on 9.6.2017, more than three months after the date of the accident on 17.3.2017; the order passed by the transport authorities in the State of Arunachal Pradesh, cancelling registration of the subject

vehicle, was suspended by the Itanagar Bench of the Gauhati High Court in W.P. (C) No. 283(AP)/2017 dated 13.6.2017; consequently the vehicle was entitled to ply, based on its All India Permit, anywhere in the country; the order of the III Additional Chief Metropolitan Magistrate, Vijayawada is still in force, and necessitated compliance; the Writ Petition was not disposed of at the stage of admission, and the Learned Government Pleader, appearing on behalf of the appellants was given a week's time to obtain instructions; when the Writ Petition came up for admission on 26.7.2017, it was adjourned to 2.8.2017 to enable the Learned Government Pleader to obtain instructions; on the basis of such instructions, the learned Single Judge disposed of the Writ Petition; and, as the order of the III Additional Chief Metropolitan Magistrate, Vijayawada in CrI.M.P. No.1775 of 2017 is still in force, the learned Single Judge was justified in passing the order under appeal, more so as no petition was filed before the Metropolitan Sessions Judge, Vijayawada seeking stay of the order passed by the III Additional Chief Metropolitan Magistrate, Vijayawada.

While it does appear that the order of the III Additional Chief Metropolitan Magistrate, Vijayawada has not been stayed, the fact also remains that the Writ Petition was disposed of without the appellants herein filing their counter affidavit. None of the facts stated before us, both by the learned Government Pleader for Home and Sri B. Sivaramakrishnaiah, learned counsel for the respondent-writ petitioner, were brought to the notice of the learned Single Judge, nor is it reflected in the order under appeal.

A writ of mandamus is not a writ of course or a writ of right but is, as a rule, discretionary. (**C.R. Reddy Law College Employees' Association, Eluru, W.G. District v. Bar Council of India, New Delhi**¹). As the extra-ordinary jurisdiction of the High Court, under Article 226 of the Constitution of India, is discretionary, it is not to be exercised merely

¹ 2004(5) ALD 180 (DB)

because it is lawful to do so. The very amplitude of the jurisdiction demands that it will, ordinarily, be exercised subject to certain self-imposed limitations, (**Thansingh Nathmal v. Supdt. of Taxes**²), and not as a matter of course. The discretionary jurisdiction, under Article 226 of the Constitution of India, must be exercised with great caution and only in furtherance of public interest, and not merely on the making out of a legal point. Larger public interest must be kept in mind in order to decide whether intervention of the Court is called for or not (**Master Marine Services Pvt. Ltd v. Metcalfe and Hodgkinson Pvt Ltd**³; **Air India Ltd v. Cochin International Air Port Ltd**⁴; **Rashpal Malhotra v. Mrs. Saya Rajput**⁵; **Council of Scientific and Industrial Research v. K.G.S. Bhatt**⁶). Even if a legal flaw might be electronically detected, this Court would not interfere save manifest injustice or unless a substantial question of public importance is involved. (**Rashpal Malhotra**⁵; **K.G.S. Bhatt**⁶). While the order of the III Additional Chief Metropolitan Magistrate, Vijayawada may necessitate compliance unless the said order is stayed or varied, it is not as if this Court is required to interfere in every case, even if it is satisfied that larger public interest would require it to refrain from interference.

Even otherwise, considering the seriousness of the allegations, the appellants are entitled to put forth their case by filing a counter affidavit in the Writ Petition. We are satisfied that the appellants have been denied the opportunity of contesting the matter on merits after filing their counter affidavit in the Writ Petition.

Learned Government Pleader for Home submits that, in case the Writ Petition is restored to file, they would file their counter affidavit within two weeks from today. The order under appeal is set aside, and the Writ Petition is restored to file. The appellants herein shall file their

² AIR 1964 SC 1419

³ (2005) 6 SCC 138

⁴ (2000) 2 SCC 617

⁵ AIR 1987 SC 2235

⁶ AIR 1989 SC 1972

counter-affidavit, in the Writ Petition, within two weeks from today. It is open to the respondent-writ petitioner to request the learned Single Judge to take up the Writ Petition for admission, any day after two weeks from today.

The Writ Appeal is disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(J. UMA DEVI, J)

7th September, 2017

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