

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.37496 OF 2017

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed seeking verbatim the following relief:

“... to issue an appropriate Writ more particularly one in the nature of Writ of Mandamus declaring the action of the 2nd and 3rd respondents herein in passing the impugned Order vide Proceedings Progs.R.No.70723/A3/2017 dated 06-11-2017 in suspending the State Permit of the petitioner vehicle (Bus) vide Permit No. AP016/12228/PC/2017 for a period of 30 days U/S 86 of M.V.Act without taking into consideration the explanation offered by the petitioner by simply saying that the same is not satisfactory as illegal, arbitrary and opposed to the established principles of law and consequently set aside the same and pass such other order or orders as this Hon'ble court deems fit and proper in the circumstances of the case in the interest of justice.”

2. I have heard the submissions of the learned counsel for petitioner and the learned Government Pleader for Transport appearing for the respondents. I have perused the material record.

3. The facts, which are relevant and necessary for consideration, in brief, are as follows:

“The Assistant Secretary, R.T.A., Vijayawada, having come to notice that the petitioner is plying the subject vehicle without a second driver and allowing one driver to work more than eight hours and having come to an opinion that there is violation of the provisions of Sections 84 (e) and 91 of the Motor Vehicles Act, 1988 (for brevity, ‘the Act’) read with Rule 241 of the A.P. Motor Vehicle Rules, 1989, issued a show-cause notice, dated

03.11.2017, to the petitioner calling for an explanation and to show cause as to why Permit No.AP016/12228/PC/2017, valid upto 01.08.2022, held by the subject vehicle bearing registration No.AP-07-TB-9647 shall not be suspended. Having received the said show-cause notice, the petitioner gave an explanation, *inter alia* stating that no driver is being allowed to drive the subject vehicle for more than eight hours from Vijayawada; that the driver, who is driving the subject vehicle from Vijayawada, is getting down at Visakhapatnam and at that place of shifting, the second driver is boarding the bus to drive the subject vehicle upto the destination; and therefore, no driver is being allowed to work for more than eight hours. However, by the order impugned, the explanation of the petitioner was rejected by a one sentence observation that the explanation of the owner is not satisfactory and the permit held by the subject vehicle was suspended for a period of 30 days from 06.11.2017 to 05.12.2017, as envisaged under Section 86 of the Act. Aggrieved thereof, the petitioner is before this Court.”

4. Learned counsel for the petitioner would submit that when an explanation is offered as stated above, no verification, as to whether two drivers are employed by means of shift system, was done; that the order impugned was passed without giving an opportunity of hearing and without application of mind; and therefore, the order impugned is liable to be set aside.

5. Learned Government Pleader first submitted that an efficacious alternative remedy of appeal is available under Section 89 of the Act and therefore, the Writ Petition is not maintainable.

He next brought to the notice of this Court the orders of a Division Bench of this Court in W.P.(PIL).No.59 of 2017 and the observations of the Division Bench of this Court in the interim order passed in the said PIL. He specifically drew the attention of this Court to certain observations made by this Court in the said interim order. He would submit that the Division Bench of this Court expressed concern over the Department not taking action against violators of the permits. He also would submit that the object of registration of the vehicle is to ensure that the drivers neither over-work nor are under-paid; that unless two drivers are employed on the vehicle, they cannot drive the vehicle with alertness and dedication that is expected of them; that therefore, in the case on hand, the explanation offered is not a valid explanation; that in view of the orders of the Division Bench of this Court in the aforestated PIL from time to time, the action which is impugned in this Writ Petition against the petitioner is taken in accordance with the procedure established by law and therefore, the Writ Petition is liable to be dismissed.

6. I have given earnest consideration to the facts and submissions. The only violation complained of in the present case is non-employment of a second driver on the subject vehicle of the petitioner and allowing one driver to work more than eight hours in violation of the provision of Section 91 of the Act. However, the explanation of the petitioner is that there is a shift system and one driver is being allowed to work for less than eight hours or eight hours only and that no driver is being allowed to work for more than eight hours in view of the shift system being followed by the petitioner.

7. A reading of the impugned order reflects that the explanation was rejected without verification of the correctness of the explanation offered by the petitioner by simply stating that the explanation is not satisfactory. In that view of the matter, this Court is of the considered view that this Writ Petition can be disposed of with appropriate directions.

8. In the result, the Writ Petition is disposed of setting aside the impugned order, dated 06.11.2017, and directing the 2nd respondent to consider the explanation of the petitioner in strict accordance with the procedure established by law, however, after affording an opportunity of hearing to the petitioner, and pass a reasoned order within a period of two weeks from the date of receipt of a copy of this order and communicate the decision taken thereon to the petitioner within a week thereafter. At the hearing, the petitioner shall produce necessary material documents, including the vehicular documents, as may be required by the authority concerned, and to substantiate the explanation offered. It is made clear that till the said exercise is completed, no coercive action should be taken against the permit of the subject vehicle of the petitioner and the petitioner, while plying the subject vehicle, shall employ two drivers from the starting point till destination.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.

M.SEETHARAMA MURTI, J

November 10, 2017
Note: Issue C.C. by 13.11.2017.
B/o.MD