

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(101)

CWP-20665-2016

Decided on: May 11, 2017.

Hardeep

.... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Amit Jhanji, Advocate, for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

M.M.S. BEDI, J (ORAL)

Vide Annexure P-6 dated 29.08.2016 issued by Secretary, State Transport Authority, Hisar, the petitioner had been required to ensure the deposit of payment of pending bid money amounting to Rs.8,56,440/- within a period of two days with a threat that otherwise proceedings will be conducted for cancellation/suspension of the permit of the petitioner under the provisions of Section 86 of Motor Vehicle Act, 1988.

Learned counsel for the petitioner has submitted that the exemption from road tax had been granted in the year 2012 vide order Annexure P-3 and the bid money was not payable in view of the judgment passed in CWP-17112-2002 decided on 02.12.2008 by virtue of which a Coordinate Bench of this Court had held in context to the scheme of 2001 that the operators will be permitted to operate their buses with liberty to pay the bid money in two installations within six months.

Learned counsel for the petitioner submits that for the period during which the bus of the petitioner was operated, the bid money has been

deposited as per the direction of the Court dated 02.12.2008 but for the period the bus of the petitioner did not ply and had been granted exemption for the road tax, bid money is not leviable for the said period.

I have heard learned counsel for the petitioner, who has raised the plea of limitation; violation of rules of natural justice; non-permissibility of recovery as per the provisions of law; the audit objections having been raised in 2012 and the recovery order having been passed on 2016 being in contravention to the basic principles of rules of natural justice.

It is not out of place to observe here that amount demanded by the respondents vide notice Annexure P-6, has already been deposited by the petitioner as an abundant caution without prejudice to the right of the petitioner. Order Annexure P-6 is liable to be set aside on the short ground of it having been passed without giving any opportunity of hearing to the petitioner.

It is settled principle of law that in case the rules of natural justice are not provided in any Statute, the ends of justice would not be adequately met in case the said rules are incorporated by implication. As order Annexure P-6 dated 29.08.2016 has got civil consequences causing prejudice to the petitioner, it was incumbent upon the Secretary, State Transport Authority, Hisar to intimate the petitioner the reasons for requiring the petitioner to deposit the bid money even for the period for which the bus did not ply.

I have gone through the reply filed by the respondents.

In the reply, it has been pleaded by the respondents that the petitioner had got the permit of the bus from Sadhu Ram by transfer of ownership of the vehicle against which the permit was issued. The question of deposit of bid money has already been decided by the above mentioned orders and the same had attained finality upto the level of the Supreme Court in proceedings arising out of CWP-17112-2002 but the petitioner has concealed the material facts from the Court. It is pleaded that the bid money was to be deposited in lieu of allocation of specified route for plying the bus, as such, the petitioner was bound to pay the due of the bid money as the allocation of specified routes irrespective of the fact that his bus was plying or not. It has also been pleaded that surrender of the permit does not mean cancellation of the permit in any way and allocation of the route with the permit holder unless cancellation of the permit takes place. As no such cancellation of permit had taken place, as such dues of the bid money were payable by the petitioner.

The pleas which are taken in the written statement, are subsequent invention after the impugned order having been passed which is not permissible as per the ratio of **Mohinder Singh Gill and another Vs. The Chief Election Commissioner New Delhi, 1978 AIR S.C. 851**. This Court is of the opinion that interest of justice would be adequately met in case the petitioner is given an opportunity of hearing to approach the Secretary, State Transport Authority, Hisar and to furnish an explanation and to make effort to satisfy the said authority that the amount demanded from him is not payable as per the provisions of law and on account of the factual aspects mentioned hereinabove and raised in the writ petition.

In case, the petitioner submits a written explanation within a period of one month, the same would be considered by passing a speaking order fairly by the Secretary, State Transport Authority, Hisar within a period of three months after the submission of representation.

However, no coercive steps for cancellation or suspension of permit would be taken during consideration of the claim of the petitioner especially when the amount stands already deposited.

In case, any amount is considered to be not payable by the petitioner, it will be open to the Secretary, State Transport Authority, Hisar to order the partial or total refund, as deemed appropriated, as per the objective satisfaction of the Authority. All the pleas taken up in this petition may be raised in the representation.

Disposed of with above observation.

(M.M.S. BEDI)
JUDGE

May 11, 2017
harsha

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No