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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1469 OF 2017

Poona Mobile PUC Center,
Through its Proprietor
Ather Khan s/o Sardar Khan,
Age: 43 years, Occu: Business,
R/o. Flat No.3, Neelkant Apartment,
Golegaonkar Colony RTO Road,
Aurangabad

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Transport Department,
Mantralaya, Mumbai-32
2. The Transport Commissioner,
Administrative to Building
3rd and 4th Floor Govt. Colony,
Wandre (East), Mumbai – 51
3. The Regional Transport Officer,
RTO Office, Railway Station Road,
Aurangabad – 431005
4. The Deputy Regional Transport Officer,
RTO Office, Railway Station Road,
Aurangabad - 431005

..RESPONDENTS

Mr V. R. Jain (Kamboj), Advocate for petitioner;
Mr C. S. Kulkarni, A.G.P. for respondents

**CORAM : PRASANNA B. VARALE
AND
MANISH PITALE, JJ.**

DATE : 5th October, 2018

ORAL ORDER:

Heard Mr Jain, learned Counsel appearing on behalf of the petitioner.

2. The petitioner Poona Mobile PUC Center is run through its proprietor. The petitioner is aggrieved by the order passed by the Deputy Regional Transport Officer, Aurangabad, dated 26th July, 2017. Perusal of the documents placed on record show that a show cause notice was issued to the petitioner on 1st July, 2016. The concerned authority found that there are certain non-compliances of the conditions of licence and also breach of conditions of the licence. As such, the show cause notice was issued. Perusal of the order shows that the petitioner submitted an application to the authority on 2nd July, 2016 seeking some time to submit his reply. In spite of such request being made by the petitioner, thereafter the petitioner failed to supply any submission or say to the authority. As such, the authority was left with no choice but to pass the impugned order.

3. Perusal of the impugned order shows that there are various reasons assigned by the authorities based on the material available with it and resultantly, the authority, namely, Deputy Regional Transport Officer, by exercising the powers under the Motor Vehicles Act, 1989 cancelled the licence of the petitioner with immediate effect and it was directed to the petitioner to deposit the licence granted to it in the office. It is further stated in the order that if the petitioner is aggrieved by the order, it can avail

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the remedy of an appeal before the Transport Commissioner, Maharashtra State, Mumbai.

4. Learned Counsel appearing on behalf of the petitioner submitted that the petitioner had approached the appellate authority and the appellate authority only on the ground that there is no provision under the Act of an appeal against the order of rejection of cancellation of PUC licence.

5. Notices were ordered to be issued to the respondents authorities by order dated 16th February, 2017. Learned Asstt. Govt. Pleader invited our attention to the detailed affidavit-in-reply filed on behalf of the respondents-authorities. It is submitted that the order passed by the authorities, impugned in the petition, is based on sound reasons and sufficient material. It is stated in the affidavit-in-reply that the petitioner had availed the remedy of challenging the show cause notice by approaching the Civil Court and the suit was pending at the time of filing of the petition and as per the latest instructions of the learned Asstt. Govt. Pleader, the suit is also dismissed during the pendency of the petition.

6. Learned Counsel for the petitioner, at the time of hearing of the petition placed before us a copy of the order passed by the appellate authority on 29th May, 2017. Though the learned Counsel submitted before us that the appellate authority only on the ground that there is no provision

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in the Act, declined the hearing of the appeal. Perusal of the said document clearly shows that even though the authority states that there is no provision of an appeal, the petitioner was granted an opportunity of hearing to submit his say before the authority on a fixed date i.e. on 22nd September, 2016, at 11.30 a.m. in the office of the Deputy Commissioner (Enforcement-1). Learned Counsel submitted that as the authorities have subsequently decided the appeal treating it as an application and remitted the matter back to the regional authority for a decision afresh on merits, the petitioner be permitted to undertake the same exercise.

7. Learned Asstt. Govt. Pleader, on instructions from the officer, who is present in this Court, submits that the authorities do not have objections to consider the appeal/application filed by the petitioner and to decide the same on its merits, in view of the orders passed by the authority on 29th May, 2017 in the matter of Shahanawaz Khan Sardar Khan in Appeal/Application No.60 of 2016-17.

8. As the respondents-authorities expressed their willingness to decide the appeal/application filed by the petitioner on merits, we are not observing anything on the merits of the matter and we are of the opinion that the petition now can safely be disposed of by permitting the petitioner to approach the authority, namely, Deputy Commissioner of Transport and the appellate authority, Maharashtra State, Mumbai. Learned Asstt. Govt.

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Pleader, on instructions, submitted that the authorities can hear the petitioner on 26th November, 2018 and the order would be passed by the authorities after hearing the petitioner as expeditiously as possible.

9. Learned Counsel appearing on behalf of the petitioner, on instructions, submitted that the petitioner is ready to remain present before the authority on 26th November, 2018 for hearing along with the documents and the authority be directed to permit the petitioner to place on record the documents, if any, in support of his application.

10. In view thereof, the respondents-authorities are directed to hear the petitioner on 26th November, 2018 and also permit the petitioner to place on record certain documents, if the petitioner desires to rely thereon, at the time of hearing. The authorities shall pass the orders, needless to state on merits, upon hearing the petitioner as expeditiously as possible and preferably within eight weeks from hearing the petitioner.

Writ Petition stands disposed of in above terms.

(MANISH PITALE, J.)

(PRASANNA B. VARALE, J.)

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