HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 952 of 2014

Hifazuddin Solanki Aged 42 Years S/o Shri K.D.Solanki R/o House No. 86, Purana Ganj Line, Tah Rajnandgaon, PS City Kotwali, Distt Rajnandgaon (CG)

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Transport DKS Bhawan, PS Mandir Hasoud, Raipur (CG)

2. Regional Transport Authority Raipur Region, PS Moudha Para, Raipur (CG)

3. State Transport Appellate Tribunal, Ghari Chowk, Mahanadi Khand, PS Civil Lines, Dist Raipur (CG)

--- Respondents

For petitioner- Shri Syed Ishhadil Ali, Advocate.
For State- Smt. Smita Ghai, PL.

Hon'ble Shri Justice Goutam Bhaduri

Order

17/07/2019

Heard.

1. The instant petition is against the order date 12/12/2013 passed by the State Transport Appellate Tribunal, Raipur in Appeal No.104/13.

2. Facts of the case are that the petitioner filed an application for regular stage carriage permit on 14/06/2012. The said application for stage carriage permit was rejected by the order dated 3/10/2012 by the Regional Transport Authority, Raipur. Thereafter, an appeal was preferred under Section 89 of the Motor Vehicles Act before the State Transport Appellate Tribunal, Raipur wherein the order dated 12/12/2013 was passed. Said order is under challenge.

3. Learned counsel for the petitioner would submit that both the Regional Transport Authority as also Appellate Tribunal failed to take into

account the fact that on the date of the application the ground on which the application was rejected will not be applicable since the petitioner was not in possession of the vehicle. It is stated as alleged dues of tax cannot be said to be on vehicle and it would only be applicable if the vehicle is in possession of the petitioner as per section 2 (30) of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act of 1988). Therefore since the vehicle were already seized, rejection of the permit cannot be done on that ground and as such the application was required to be allowed.

4. Per contra, learned State counsel opposes the argument and would submit that the order is well merited which do not call for any interference.

5. Perused the documents. The initial rejection of the stage carriage permit was by an order dated 3/10/2012. Perusal of the said order would show that during the hearing of such application objection were raised that the petitioner owned four vehicles bearing numbers CG 08 ZA 0105, CG 08 ZA 0129, CG 08 ZA 0134 and CG 08 B 5010 and amount of Rs.712000/-, Rs.832000/-, Rs.848640/- and Rs.408000/- were outstanding dues as a tax on the vehicle of the petitioner. The application for permit for route Rajnandgaon to Dhamtari via Somni, Arjunda, Balod and Gurur and return trip was in respect of another vehicle bearing number CG 05 J 1255. The petitioner though contended that the dues were not outstanding but as required under Rule 72(3)(d) of the Motor Vehicles Rules, 1994, no dues certificate issued by the regional transport authority was required to be produced along with the application for permit. Even during the appellate stage no dues certificate to demonstrate the fact that dues have been cleared were not produced.

6. With respect to the submission that the petitioner was not in possession of the vehicle and therefore even if alleged no dues were there he cannot be treated as owner of other vehicle. Such submission

was examined qua the definition clause of Act of 1988 and is completely misconceived in view of section 2 (30) of the Act of 1988 which defines the owner and reads as under:-

> "owner means a person in whose name a motor vehicle stands registered and, where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement."

7. The owner includes a person in whose name the motor vehicle stands registered and the person if he is under the higher purchase agreement is in possession of the vehicle and even if the vehicle is in the name of the financier, he would be treated as an owner. The petitioner has not disputed that in respect of the other vehicle, vehicle was not registered in his name, therefore certainly he would fall within the definition of 'owner'. The submission of the petitioner would be a noble idea to accept that on the one hand dues to the tune of lakhs are not paid to the State along with the fact that outstanding dues of the financier are not paid and used for his benefit, whereas the application when is filed for a new vehicle those factors to be side lined. If such submission is accepted, then it would be disastrous and would only benefit to the people who canvass for undue enrichment.

8. Under the circumstances, the petition is completely misconceived as no illegality is found in the order dated 12/12/2013. Accordingly, the petition is dismissed.

Sd/-

(Goutam Bhaduri)

JUDGE

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