GAHC010187642020

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5601/2020

M/S PODDAR CAR WORLD PVT LTD
A DULY REGD. COMPANY UNDER THE COMPANIES ACT, 1956, HAVING A SHOWROOM AT KHANAPARA, FARMGATE, G.S. ROAD, GUWAHATI-781022, REP. BY ITS GENERAL MANAGER S.M. MINHAZUL HAQUE.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, TRANSPORT DEPTT., DISPUR, GUWAHATI-06.

2:THE COMMISSIONER OF TRANSPORT

ASSAM
PARIBAHAN BHAWAN
KHANAPARA
GUWAHATI-22.

3:THE DISTRICT TRANSPORT OFFICER

KAMRUP (R AND L) METRO
HAVING ITS OFFICE AT NH-37
BETKUCHI
GUWAHATI-781034.

4:THE MOTOR VEHICLE INSPECTOR

KAMRUP (M)
OFFICE OF THE DISTRICT TRANSPORT OFFICER
KAMRUP (M)
NH-37
BETKUCHI

GUWAHATI-781034

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : SC, TRANSPORT

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 18-12-2020

Heard Mr. K. N. Choudhury, learned senior counsel assisted by Mr. J. Patwary, learned counsel appearing for the writ petitioner. Also heard Ms. M. D. Bora, learned standing counsel appearing for the Transport Department.

In this writ petition two orders, both dated 14.12.2020, issued by the respondent nos. 3 & 4 have been assailed, inter-alia, on the ground that both the orders have been issued in violation of the principles of natural justice as well as the statutory provision of law.
By the impugned orders, the Trade Certificate granted to the petitioner for operating the dealership of Maruti Cars was suspended with immediate effect.

Mr. Choudhury submits that no prior notice was served upon the petitioner nor was it heard before the impugned orders were passed.

By referring to Rule 44 of the Central Motor Vehicles Rules, 1989, Mr. Choudhury submits that there is a statutory requirement of serving prior notice before any order of suspension of Trade Certificate can be passed by the authorities. However, in the present case, the requirement of the Rules have been given a goby.

In so far as the allegations made against the petitioner, Mr. Choudhury submits that those are all incorrect on facts and therefore, his client would have been in a position to met those allegations and explain the matter had it been granted an opportunity of hearing.

Under such circumstances, the learned senior counsel has prayed for setting aside the impugned orders by urging that his client has already suffered tremendous loss and agony due to the operations of impugned order, which have brought its business to a compete stand still.

Ms. Bora, learned departmental counsel has produced the original records to submit that there complaints to the effect that the petitioner has been delivering used cars to its customers as brand new cars by giving it a fresh quoting of paints, thereby cheating the buyers. Having detected such fraud, the respondent no.3 had no option but to intervene in the matter promptly. Hence, the impugned orders had to be issued without serving notice.

The learned department counsel has, however, not denied nor disputed the fact that no notice was served upon the petitioner nor was the petitioner heard in the matter before the impugned orders were issued.

Rule 44 of Central Motor Vehicles Rules, 1989 reads as follows:

> "*44. Suspension or cancellation of trade certificate – If the registering authority has reason to believe that the holder of any trade certificate has not complied with the provisions of rules 39 to 43, it may, after giving the holder an opportunity of being heard, suspend or cancel the trade certificate held by him.*"

The allegation against the petitioner in this case is also to the effect that the petitioner has acted in contravention of Rule 42 of the Rules of 1989 by delivering vehicles to the customers without valid registration.

There is no dispute about the fact that the petitioner can operate the dealership only if there is a valid Trade Certificate held by it. But as noticed above, by the impugned orders dated 14.12.2020, the Trade Certificate of the petitioner has suspended indefinitely, that too, without giving it any opportunity of being heard.

The allegations brought against the petitioner may or may not be correct. However, in view of Rule 44 of the Rules, it cannot be said that the petitioner was not entitled to any opportunity of being heard so as to explain its stand before the authorities. I do not also find anything on record to indicate the existence of any such compelling circumstance which could make serving prior notice upon the petitioner impracticable. I am, therefore, of the unhesitant opinion that the impugned orders dated 14.12.2020 have been issued in clear violation of the

principles of natural justice as well as Rule 44 of the Rules of 1989. Therefore, the impugned orders are not sustainable in the eye of law.

The same are accordingly set aside.

However, since the impugned orders have been interfered with on a technical ground, hence, the authorities are granted liberty to serve notice upon the petitioner asking it to show cause, giving at least seven days time to submit reply, and thereafter, proceed in the matter afresh.

A decision be taken on the question of suspension of the Trade Certificate of the petitioner only after giving it an opportunity of hearing.

This exercise be carried out and completed, as expeditiously as possible, preferably within a period of two weeks from today.

Since, respondent no. 3 i.e. the DTO has already expressed his mind by drawing a conclusion that the petitioner had violated the law without even hearing his version and taking note of the apprehension expressed by Mr. Choudhury that the respondent no.3 has demonstrated a pre-determined mind set, I am of the view that ends of justice would be best served, if, instead of respondent no. 3, the respondent no. 2 i.e. the Commissioner of Transport, Assam is directed to pass an order in the matter after hearing the petitioner.

Mr. Choudhury has also submitted that his client would not have any objection, if the respondent no. 2, exercises original jurisdiction in the matter, in which event the petitioner would be ready and willing to for go its right of appeal before the said authority.
Ordered accordingly.

It is, however, made clear that until such time, a final order is passed in the matter by the respondent no. 2 as per order of this Court, the petitioner shall prepare proper inventory of each and every order booked and car delivered and shall also furnish list of the same with necessary particulars to the respondent no.2, with an undertaking that there has been no contravention of any provision of law in making such delivery.

Writ petition stands disposed of accordingly.

JUDGE

Comparing Assistant