

(1)

CWP No.9336 of 2020 &
CWP No.9392 of 2020

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(PROCEEDINGS THROUGH V.C.)

Date of Decision: September 9th, 2020

CWP No.9336 of 2020

Virender

...Petitioner

Versus

State of Haryana & others

...Respondents

(2)

CWP No.9392 of 2020

Kuldeep

...Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present Mr. Amit Jhaji, Advocate for the petitioners.

Ms. Kirti Singh, DAG, Haryana.

AUGUSTINE GEORGE MASIH, J. (ORAL)

By this order, I propose to dispose of two Civil Writ Petitions i.e. CWP No.9336 of 2020, titled as 'Virender Versus State of Haryana & others' and CWP No.9392 of 2020, titled as 'Kuldeep Versus State of Haryana & others', as in these cases, facts as well as issues involved are identical.

2. An order was passed by the Hon'ble Supreme Court in Civil Appeal Nos.556, 557 and 558 of 2020, according to which the applicant(s)/

appellant(s) before the Hon'ble Supreme Court and/or any other eligible person could make application(s) to the concerned authority, if already not made, for registration and for grant of permit within one week from the date of the order. If such an application had been moved earlier or is now moved to the Competent Authority, the same were to be considered as per law expeditiously and in any case before 20.03.2020. According to the said order, the applications could not be submitted on or before 28.01.2020.

3. In pursuance to the said order dated 21.01.2020 of the Hon'ble Supreme Court, petitioners in these two writ petitions had submitted their applications through email on 27.01.2020 along with the copies of the bank drafts of Rs.25,000/-, which fact of receipt of those emails has not been disputed by the respondents. Petitioners, after the sending the said emails on 27.01.2020, send their applications in the physical form along with original bank drafts through courier on the same day, which were, as per the admitted facts, received in the office of the Additional Deputy Commissioner-cum-Secretary-cum-Member, Regional Transport Authority, Sonapat – respondent No.3, on 29.01.2020. The applications of the petitioners have been rejected on the ground that they have been received after 28.01.2020 in the physical form. The reason assigned for rejection of the said applications apart from they having been received on 29.01.2020 is that the applications received through emails which had been received by the Additional Deputy Commissioner-cum-Secretary-cum-Member, Regional Transport Authority, Sonapat – respondent No.3 on 27.01.2020, could not be verified with regard to the authenticity thereof within the stipulated time i.e. on or before 28.01.2020. It is, on these grounds, that the

CWP No.9336 of 2020 &
CWP No.9392 of 2020

applications of the petitioners having been rejected leading the petitioners to approach this Court by way of these two Civil Writ Petitions i.e. CWP No.9336 of 2020 and CWP No.9392 of 2020.

4. Learned counsel for the petitioners, with reference to the order dated 21.01.2020 passed by the Hon'ble Supreme Court, submitted that as per the said order, the appellant(s)/applicant(s) or any other eligible person could make an application on or before 28.01.2020. The date of receipt of the application has not been specified by the Hon'ble Supreme Court. What has been said is that the application should be made by the applicant within the time which has been fixed i.e. one week from the date of the order. He asserts that the application, as per the said order, would be one which is complete in all respects and made within the stipulated time. Any complete application which is made within the stipulated time, was bound to be considered by the respondents on merits and the said application could not be rejected only on the ground that the same has not been received on or before 28.01.2020. He, on this ground, asserts that the order dated 06.05.2020 (Annexure P-19), in pursuance whereof the order dated 08.06.2020 (Annexure P-20) has been passed by the respondents, cannot be sustained.

5. Learned counsel for the State, on the other hand, asserts that the submission of the learned counsel for the petitioners is unacceptable as the period which has been given by the Hon'ble Supreme Court i.e. one week from 21.01.2020 would require the application to be submitted and received by the Additional Deputy Commissioner-cum-Secretary-cum-Member, Regional Transport Authority, Sonapat – respondent No.3 on or before

28.01.2020 complete in all respects. Any application which is in the physical form, which could be duly verified and has been received upto 28.01.2020 has been considered and decision taken thereon on merits. With regard to the applications, which have been received although through email prior to and on 28.01.2020 but in the physical form subsequent to this date i.e. 28.01.2020, as in the case of the petitioners, which were received on 29.01.2020, could not be considered and had to be rejected on the sole ground of not having been received in compliance and in accordance with the order of the Hon'ble Supreme Court. She, therefore, contends that the applications of the petitioners being not within the time stipulated, the respondents have rightly rejected the same in accordance/compliance with the order of the Hon'ble Supreme Court. Prayer has, thus, been made for dismissal of the writ petitions.

6. I have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the order dated 21.01.2020 passed by the Hon'ble Supreme Court, the pleadings as also the impugned orders.

7. The order dated 21.01.2020 passed by the Hon'ble Supreme Court in Civil Appeal Nos.556, 557 and 558 of 2020 reads as follows:-

“Applications for impleadment/intervention are allowed.

Leave granted.

The matters were heard on 13.10.2017 when this Court passed the following order:

“Having heard learned counsel for the parties, the order or status quo is modified to the following

extent:

a) the respondent – State is at liberty to call for objections and offer hearing to the objectors in respect of the Draft Scheme of 2017 but shall not finalise the same.

b) The transporters who are continuing on the basis of 2016 Scheme shall be allowed to operate and if any permit has expired, the same shall be renewed in accordance with law.

If any transporter is eligible to obtain the permit in pursuance to the directions given by the High Court, his case shall be considered and shall not be refused on the ground that a new policy/scheme is coming.”

In response to the above order, the State Government has examined the matter at the highest level and it is stated across the Bar by the counsel for the State that the State Government has decided to withdraw the Draft Scheme of 2017 and all the dispensations afforded under that scheme. In other words, the Draft Scheme of 2017, which was the subject matter of challenge in the present proceedings stands completely nullified. We accept this statement.

The State Government has sought permission to take lawful, permissible action under Section 102 of the Motor Vehicles Act, 1988 to cancel or modify the State Carriage Scheme 2016 by following the prescribed procedure under the law in order to remove all the defects therein.

We find no reason to refuse this permission. The State Government may proceed in the matter in accordance with law after giving due opportunity to all concerned.

In view of the statement made on behalf of the State Government, referred to above, which we have accepted, nothing remains for consideration in these appeals. However, we make it clear that all future actions be proceeded in accordance with law.

The appellant(s)/applicant(s) or any other eligible person will be free to make application(s) to the concerned authority, if already not made, for registration and for grant of permit within one week from today, and if so made, the competent authority may consider the same as per law expeditiously and in any case before 20th March, 2020.

If the appellant(s)/applicant(s) are aggrieved by any decision taken by the competent authority, it will be open to them to pursue such other remedies as may be permissible in law including under Section 100 (2) of the Motor Vehicles Act, 1988.

In view of the above, nothing survives for consideration in these appeals. Accordingly, the appeals and pending applications, if any, are disposed of.”

8. A perusal of the order dated 21.01.2020 would indicate that not only the applicants/appellants before the Hon'ble Supreme Court but any other eligible person could make an application to the concerned authority, if already not made, within a period of one week from the date of the order of the Hon'ble Supreme Court. Meaning thereby, the application could be made by such interested persons, who were eligible on or before 28.01.2020. All applications made on or before 28.01.2020 were required to be accepted by the respondents and thereafter, proceeded with in accordance with the subsequent directions issued by the Hon'ble Supreme

Court in the order dated 21.01.2020 to be completed on or before 20.03.2020.

9. The question which now requires to be considered is “whether a complete application in all respects, submitted through email on or before 28.01.2020 along with the copy of bank draft (fee), which email is received well in time by the Competent Authority, could be treated as a valid application in accordance with the order of the Hon'ble Supreme Court despite the fact that the physical copy of the application is received after 28.01.2020?”

10. The answer to this question obviously would be 'YES' for the reason that the order of the Hon'ble Supreme Court does not indicate or specify the date of receipt of the application. The words used in the order passed by the Hon'ble Supreme Court are 'make application(s)'. Meaning thereby that the application(s) had to be sent on or before 28.01.2020. The order of the Hon'ble Supreme Court does not state that the said application (s) should be received on or before 28.01.2020. This means the date for sending the application has been fixed by the Hon'ble Supreme Court, whereas the date of receipt thereof would not render the said application beyond the period specified by the Hon'ble Supreme Court. Any complete application made/sent within the stipulated period had to be accepted irrespective of the date of receipt thereof. The period consumed by the Delivery Agency in the process of delivering the application would not render the application beyond the period fixed by the Hon'ble Supreme Court.

11 The petitioners have made the applications on 27.01.2020

CWP No.9336 of 2020 &
CWP No.9392 of 2020

which is prior to 28.01.2020, the date fixed by the Hon'ble Supreme Court and that too, complete in all respects including the required fee with copies of bank drafts dated 27.01.2020, the said applications could not have been rejected by the Additional Deputy Commissioner-cum-Secretary-cum-Member, Regional Transport Authority, Sonapat – respondent No.3 vide impugned order dated 08.06.2020 (Annexure P-20), which has been passed in pursuance to the clarification/communication dated 06.05.2020 (Annexure P-19) as has been issued by the Transport Commissioner, Haryana – respondent No.2.

12. In view of the above, these writ petitions are allowed. Impugned orders dated 06.05.2020 (Annexure P-19) dated 08.06.2020 (Annexure P-20) are hereby set aside qua the petitioners only. The applications of the petitioners be considered by the Additional Deputy Commissioner-cum-Secretary-cum-Member, Regional Transport Authority, Sonapat – respondent No.3 in accordance with the law as per the directions given by the Hon'ble Supreme Court at the earliest and in any case, within a period of four weeks from today.

September 9th, 2020
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No