

WRIT PETITION NO. 755 OF 2021

Ramesh Raman Nair ... Petitioner

Versus

The State of Maharashtra & Ors. ... Respondents

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Mr. Rajas Ashish Naik for the Petitioners.

Mr. K.S. Thorat, A.G.P for the Respondent-State.

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**CORAM : K.K. TATED &
R.I. CHAGLA, JJ.**

DATE : 4th MARCH, 2021.

ORDER : (Per R.I. Chagla, J.)

1 Rule. Rule made returnable forthwith. Heard by consent of
the parties.

2 By this Petition, under Article 226 of the Constitution of India, the Petitioner is seeking directions against Respondent No.2 to forthwith release the Petitioner's commercial vehicle being Goods carrier Delivery Van, make/model Eicher Motors 10.59 bearing Registration

No.MH 46 E 2769 (“the subject vehicle”) which has been detained by R.T.O. Mumbai alongwith original documents and for allowing the Petitioner to take it out of Mumbai on such terms and conditions as this Court may deemed fit and proper.

3 The Petitioner is the owner of the subject vehicle. The Petitioner is plying the subject vehicle since the day of registration in the areas of Vashi, Panvel, Pune and other areas outside Mumbai. The subject vehicle bearing registration No.MH 46 E 2769 was registered on 25.05.2012. The subject vehicle had completed eight years of age and had not been converted to CNG/LPG on 02.02.2021 when the driver of the subject vehicle whilst transporting the goods to Panvel had in avoiding traffic, by mistake entered the Mumbai City. The Officer of the Respondents Mr. Nitin Jadhav of the flying squad No.2 had detained the subject vehicle of the Petitioner and Notice had been issued under Section 207 of the Motor Vehicles Act on 02.02.2021 and thereafter, Inspection Report was issued on 03.02.2021. The Seizure memo dated 04.02.2021 was prepared by the R.T.O. Officer who stopped the Petitioner’s vehicle at Borlareta junction in the jurisdiction of Trombay Transport Department and the Petitioner’s driver was asked to produce all relevant documents.

4 The Petitioner has stated that he was not aware of any prohibitory order issued by this Court, prohibiting the plying of transport vehicles which are more than eight years old on the roads in the local limits of Mumbai City. It has been stated that in the seizure memo dated 04.02.2021 that the subject vehicle which is detained may be de-registered in view of Section 207 of the Motor Vehicles Act and in view of the order of this Court passed in Writ Petition No.1762 of 1999. The Petitioner has stated that Respondent No.2 has refused to release the subject vehicle of the Petitioner and has informed the Petitioner to get necessary orders from the appropriate Court for release of the Petitioner's vehicle. Hence, the Petitioner has filed the present Petition.

5 Mr. Rajas Ashish Naik, the learned Counsel for the Petitioner has submitted that this Court has in similar matters passed orders wherein subject to undertaking given by the owners of the vehicle not to ply the subject vehicle in the City of Mumbai and subject to deposit of certain fine amount, the vehicle was ordered to be released. He has relied on two such orders passed by the Division Bench of this Court in Writ Petition No.11847 of 2012 - *Salwinder Singh vs. The State of Maharashtra through Home Department (Transport) and others*, dated 13.06.2013 and in Writ Petition No.661 of 2019 - *Anil Vasant Walunj vs. The State of*

Maharashtra and others, dated 31.01.2019. He has submitted that upon such undertaking given and fine paid, the subject vehicle was directed to be released by the R.T.O. and was allowed to be taken out of Mumbai City with the undertaking that vehicle will not ply within the limits of Greater Mumbai.

6 The learned Counsel for the Petitioner has further drawn reference to the decision of the Division Bench of this Court dated 03.03.2004 in *Bombay Environmental Action Group vs. Municipal Corporation of Greater Bombay and others*, Notice of Motion No.57 of 2004 in Writ Petition No.1762 of 1999. In the said decision, the Division Bench of this Court (Coram: C.K. Thakker and Dr. D.Y. Chandrachud, JJ as they then were) had issued directions for phasing out of eight years old transport vehicles, unless the same were converted to run either on CNG or LPG extended upto December 31, 2004. Directions were issued in the said order that vehicles found plying within Mumbai City in breach of these directions, the same shall be immediately impounded by the R.T.O. or by the Traffic Police.

7 We have considered the submissions of the learned Counsel for the parties. In the decision of the Division Bench of this Court dated 3rd March 2004 in ***Bombay Environment Action Group*** (supra) directions

were issued for 8 years old transport vehicles to be phased out, unless converted on CNG/LPG which has been extended upto December 31, 2004. It is an admitted position that the subject vehicle was more than 8 years old and had not been converted into CNG/LPG and hence, by plying in Mumbai City when detained was in breach of the directions of this Court in order dated 3rd March 2004.

8 In the decision of this Court in *Salvinder Singh* (supra) this Court noted that several orders have been passed by this Court allowing vehicles which were seized to be released on the payment of fine and subject to the condition that the vehicle will be released only for the purpose of taking them outside municipal limits. This Court was of the view that the fine which has been imposed in the prior decisions of this Court, requires to be enhanced so as to impose a deterrent on violators and prospective violators. The directions of this Court were passed in the public interest with a view to mitigate environmental pollution. In the subsequent decision in the *Anil Vasant Walunj* (supra) this Court had directed the Petitioner to deposit the sum of Rs.10,000/- with the concerned R.T.O. for release of the vehicle in favour of the Petitioner and an appropriate undertaking was also to be submitted in tune of the order passed by this Court in Writ Petition No.1762 of 1999. This deposit was

enhanced in subsequent orders passed by this Court, one such order being in *Bhartiya Parivahan Pvt. Ltd. vs. State of Maharashtra and others* dated 24.02.2021 where the Petitioner was directed to deposit sum of Rs.20,000/- with the concerned R.T.O. in respect of the subject vehicle and file an undertaking before this Court to the effect that the subject vehicle shall not ply in the City of Mumbai and shall be taken out of the limits of the City of Mumbai.

9 We consider it appropriate to pass a similar order as passed by this Court in the above referred matters. Hence the following order is passed :

(a) The subject vehicle shall be released to the Petitioner subject to the following conditions:-

- (i) The Petitioner filing an Undertaking before this Court and copy to R.T.O., to the effect that the subject vehicle shall not be plied in the city of Mumbai and shall be taken out of the limits of city of Mumbai.
- (ii) The Petitioner depositing a sum of Rs.20,000/- (Rupees Twenty Thousand only) with the concerned Regional Transport Office in respect of the subject vehicle by way of fine.

(iii) Only upon deposit of the sum of Rs.20,000/- (Rupees Twenty thousand only) by way of fine and filing true copies of the Undertakings with the concerned R.T.O., the subject vehicle shall be released to the Petitioner.

(b) Rule made absolute in the above terms. The Writ Petition is disposed of.

(c) No order as to costs.

(d) Parties to act on authenticated copy of this order.

Waishali
S.
Waghmare

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signed by
Waishali S.
Waghmare
Date:
2021.03.11
23:00:18
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(R.I. CHAGLA, J.)

(K.K. TATED, J.)