

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5 OF 2021

Bhartiya Parivahan Pvt.Ltd.

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

Mrs. A.P. Madhuri, for the Petitioner.

Mr. C.D. Mali, AGP for the Respondent-State.

Mrs. P.J. Gavhane, AGP for the Respondent-State.

Mr. A.P. Vanarase, AGP for the Respondent-State.

CORAM : K.K. TATED &
R.I. CHAGLA, JJ.
DATE : 24 February 2021

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

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

2. The Petitioner in the above Petition has
sought directions against Respondent No. 2 for release of their
trailer bearing registration No. MH-43-U-8218.

3. The Petitioner is owner of its trailer (for short

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“subject vehicle”). The subject vehicle being more than 8 years old is not fitted with CNG, was plying on the roads in Mumbai City when it was detained.

4. The trailer was purchased in December 2010 by the Petitioner and the same was registered at R.T.O., Panvel in Maharashtra bearing registration No. MH-43-U-8218. It has been stated in the Petition that due to inadvertence and oversight, the trailer which had completed 9 years and 10 months on 7th November 2020 entered into City of Mumbai for the first time as the regular vehicle plying there had developed technical fault. There is a Challan dated 7th November 2020 annexed at Exh.A to the Petition which shows that the trailer was detained as it had entered into Mumbai City, inspite of the trailer having completed 9 years 10 months from the date of its registration on 15th September, 2010. The R.T.O. insisted upon the Court orders for releasing the trailer. Hence, this Petition has been filed.

5. Mrs. A.P. Madhuri, the learned Counsel for the Petitioner has referred to an order of the Division Bench of this Court in the matter of ***Sampada P. Hedukar Vs. The State of***

Maharashtra & Ors.¹ and companion matters dated 30th July 2020 (Coram: A.A. Sayed and N.R. Borkar, JJ). This was a similar case where the vehicles were admittedly plying in the City of Mumbai in breach of directions issued under order dated 3rd March 2004 in the matter of ***Bombay Environment Action Group Vs. Municipal Corporation of Greater Bombay & Ors.***² 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.

6. Learned Counsel for the Petitioner has further pointed out that in the said order dated 30th July 2020, this Court in paragraph 2 had recorded that reliance had been placed by the Petitioner therein upon several orders passed by

1 ***Writ Petition No. 12544 of 2019***

2 ***Notice of Motion No. 57 of 2008 in Writ Petition No. 1762 of 1999***

this Court in similar matters, wherein subject to undertakings given by the owners not to ply the vehicles in the City of Mumbai and subject to deposit of certain fine amounts, vehicles were ordered to be released. Accordingly, in Paragraph 3 of the said order, this Court held thus:-

“3] Learned Counsel for the Petitioners states that the Petitioners in all these Petitions are willing to give an Undertaking as provided in various orders of this Court. Hence, we dispose of all these Petitions by passing the following order:

a] The vehicles, being subject matter of all these petitions, shall be released to the Petitioners subject to the following conditions :-

(i) the Petitioners filing an Undertaking before this Court to the effect that the vehicles shall not be plied in the city of Mumbai and shall be taken out of the limits of city of Mumbai; and

(ii) the Petitioners in each Petition depositing a sum of Rs. 7,500/- with the concerned Regional Transport Office in respect of each vehicle. Ordinarily, we would have directed the Petitioners to deposit an amount of Rs. 10,000/-, however, in view of the ongoing Lock-down due to the Covid-19 outbreak, at the request of learned Counsel for the Petitioner and in the interest of justice, we have reduced the amount to

Rs. 7,500/-;

(b) Only upon deposit of the sum of Rs. 7,500/- (Rupees Seven Thousand Five Hundred only) with the concerned R.T.O. and on the Petitioners filing true copies of the Undertakings in this Court, the vehicles shall be released to the Petitioners on production of authenticated copy of this order;

(iii) All the Petitions are disposed of in the above terms.”

7. Having considered the submissions of the learned Counsel for the parties and the order of this Court dated 30th July 2020 passed in a similar case, it would be appropriate to grant similar relief as granted by this Court in the said order.

8. 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. Hence the following order:-

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

- (i) The Petitioner filing an Undertaking before this Court 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; and
- (ii) The Petitioner in each Petition depositing a sum of Rs. 20,000/- (Rupees Twenty Thousand only) with the concerned Regional Transport Office in respect of each vehicle;
- (iii) Only upon deposit of the sum of Rs. 20,000/- (Rupees Twenty thousand only) with the concerned R.T.O. and on the Petitioner filing true copies of the Undertakings in this Court, the subject vehicle shall be released to

the Petitioner on production of authenticated copy of
this order;

(iv) Rule made absolute in the above terms. The Writ
Petitions are disposed of with no order as to costs.

[R.I. CHAGLA J.]

[K.K. TATED, J.]