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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 11th August, 2021

+ **W.P.(C) 2438/2021**

MUNIYA DEVI

..... Petitioner

versus

**MOTOR LICENSING OFFICER BURARI
AND ANR**

.... Respondents

Advocates who appeared in this case:

For the Petitioner : Ms. Ananya De and Mr. Anuj Chauhan, Advocates

For the Respondents: Mr. Shadan Farasat, Advocate

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. The hearing was conducted through video conferencing.
2. Petitioner seeks a direction to respondent no. 1 to renew the permit of Autorickshaw bearing Registration No. DL 1RF/ 7359 and to transfer the same in the name of the petitioner.
3. Petitioner further seeks a direction to respondent to waive off the penalty amount imposed on account of delay in applying for the renewal of the fitness certificate.
4. Learned counsel for the petitioner submits that the autorickshaw was

registered in the name of the Shri Dev Narain, husband of the petitioner. She submits that Shri Dev Narain left his home on 20.11.2008 and thereafter never came back and has not been heard of since then. A Suit for Declaration for declaring the civil death of husband of the petitioner was filed before the competent court.

5. Learned counsel submits that petitioner informed the Motor Licencing Authority on 19.04.2016 that said Suit has been filed and accordingly requested for extension of the permit which was to expire on 05.05.2016.

6. Learned counsel submits that a decree of declaration on death was passed on 06.06.2019. Thereafter the petitioner once again approached the respondents for grant of the fitness certificate and for exemption from payment of the penalty amount but the same was not granted so petitioner has been constrained to approach this court.

7. Learned counsel for the petitioner submits that the delay in applying for extension of fitness certificate occurred solely on account of the fact that the above referred Suit for declaration was pending. She submits that the autorickshaw is the sole source of income for the family and amount of penalty that has been levied would be onerous and petitioner is not in a position to pay the same.

8. Counter affidavit has been filed by the respondent indicating the penalty amount of Rs. 71,200/- (as on the date of filing of the counter affidavit).

9. Learned counsel for the Respondent submits that apart from the penalty amount, petitioner would also have to pay charges to the Road Transport Authority as well as for the insurance of the vehicle. Apart from the said amount payable to the Road Transport Authority as well for insurance, a transfer fee of Rs. 5751/- is also liable to be paid.

10. Learned counsel submits that the Commissioner has the power under Rule 60 of the Delhi Motor Vehicle Rules 1993 to waive of the penalty amount.

11. In the present case, petitioner's husband, who was the owner of the autorickshaw left his home in 2008 and thereafter was not heard from since then. He has been declared to be dead by decree of declaration.

12. The explanation given by the petitioner that she was advised to await for a declaration from the competent court and as such could not apply for the extension of the fitness certificate is a reasonable explanation. Even otherwise so long as there was a declaration of the civil death of the husband of the petitioner, even the respondents could not have transferred the registration of the vehicle in the name of the petitioner. It is only after the declaration of the civil death that the application would be entertained by the respondents.

13. Keeping in view of the peculiar facts and circumstances of the case, I am of the view that this is a fit case where power should have been exercised by the Commissioner under Rule 60 for waiver of the entire penalty amount for the delay in applying for the renewal of the fitness

certificate.

14. In view of the above, this petition is allowed with a direction that the entire penalty amount is waived. However, petitioner shall pay the charges of the Road Transport Authority as well as have the vehicle insured and also pay the transfer charges.

15. Petitioner shall accordingly appear before the concerned Commissioner of Transport on 17.08.2021 at 3.00 p.m. The Commissioner of Transport shall indicate to the petitioner the charges to be paid by the petitioner in terms hereof.

16. On petitioner's paying the charges of the Road Transport Authority, Insurance and the transfer charges and satisfying the required parameters of fitness, the Commissioner of Transport shall direct the concerned authority to issue a fitness certificate in accordance with law.

17. Petition is allowed in the above terms.

18. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through email by the Court Master.

SANJEEV SACHDEVA, J

AUGUST 11, 2021

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