

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.378 of 2022

In

Civil Writ Jurisdiction Case No.10256 of 2020

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Mani Bhushan Kumar, Son of Lallan Shukla, Resident of Village - Prbhat Nagar, Bhawanipur, P.S. - Sadar, District - Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Secretary Department of Transport, Bihar, Patna.
2. The State Transport Commissioner, Department of Transport, Government of Bihar, Patna.
3. The Divisional Commissioner Cum Chairman, Regional Transport Authority, Vaishali.
4. The Joint Commissioner Cum Secretary, Regional Transport Authority, Vaishali.
5. The District Magistrate, Vaishali.
6. The District Transport Officer, Vaishali.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ratanakar Jha, Advocate
For the Opposite Party/s : Mr. Ajay Kumar Rastogi (AAG-10)
Mr. Rohitabh Das, AC to AAG-10

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

- 3 19-05-2022 This miscellaneous application has been filed seeking modification of an order of this Court dated 01.12.2021 (wrongly typed in paragraph 1 of the writ petition as 01.12.2001), passed in CWJC No. 10256 of 2020, whereby the said writ application filed on behalf of the petitioner was disposed of with an observation that the petitioner shall be at



liberty to approach the Appellate Authority by preferring an appeal under Section 89(1)(b) of the Motor Vehicles Act, 1988 (for short 'the Act'). The said order was passed in view of a preliminary objection raised on behalf of the State of Bihar over maintainability of the writ petition on the ground that the petitioner had alternative remedy of appeal which he had not availed.

2. Before we refer to the facts necessitating the petitioner to file the present modification application, we need to point out at the outset that there is an apparent typographical error in the said order while referring the statutory provision i.e. "Section 89(1)(b)" of the Act, which, in any case, could have been "Section 89(1)(g)" of the Act.

3. In the light of the said observation in the order dated 01.12.2021 the petitioner preferred an appeal before the Commissioner-cum-Chairman, Regional Transport Authority against the order dated 05.03.2020, passed by the District Transport Officer, Vaishali, whereby the registration numbers of the petitioner's two vehicles had been cancelled. The power with the Registering Authority to cancel registration of a motor vehicle lies under Section 55 of Chapter IV of the Act. Section 57 of the Act provides that any person aggrieved by an order of



Registering Authority under various provisions of the Act, including Section 55, may prefer an appeal before the prescribed authority. Chapter IV of the Bihar Motor Vehicles Rules, 1992, framed in exercise of rule making power under the Act, deals with registration of motor vehicles, Rule 41 whereof prescribes the Appellate Authority, which reads as under :-

“41. Appellate Authority. - (1) The authority to hear appeals against any appealable order other than an order under Chapter-III of the Central Motor Vehicles Rules, 1989, passed by a Registering Authority under Chapter-IV of the Act shall be the District Magistrate.

(2) The authority to hear appeals against any order under Section 53 by any other authority prescribed under Rule 43 shall be the State Transport Commissioner.

(3) The authority to hear appeals against any appealable order passed by an Inspector of Motor Vehicles or an authorised testing station under Section 56 in respect of a certificate of fitness shall be the Registering Authority having jurisdiction in the area in which the order was passed.”

4. The petitioner’s appeal preferred against the order of this Court dated 01.12.2021 has not been entertained by the Commissioner-cum-Chairman, Regional Transport Authority.

5. After having examined the statutory provisions under the Act and the Rules, we are of the view that appeal would lie against an order of cancellation of registration passed under Section 55 of the Act before the District Magistrate of the concerned district under Rule 41(1) of the Rules.



6. Accordingly, order dated 01.12.2021 is modified with the observation that the petitioner shall be at liberty to prefer appeal against the impugned order of cancellation of registration before the District Magistrate, Vaishali under Rule 41(1) of the Rules. It is indicated that if such appeal is preferred within four weeks from today, the Appellate Authority shall decide the petitioner's appeal on merits, keeping in mind the fact that the petitioner had been pursuing his remedy before this Court by filing the writ application in 2016 and subsequently by filing the present modification application, and shall not dismiss the petitioner's appeal on the ground of delay.

7. This application is accordingly allowed with the aforesaid observation and direction.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

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