

25th January, 2022
(D/L No.31)
(SKB)

W.P.A. 13 of 2022
(Via Video Conference)

Sujit Sarkar
Versus
Union of India and others

Mr. Dilip Kumar Samanta,
Mr. Biswapriya Samanta
... for the petitioner.

Mr. Amal Kumar Sen,
Mr. Lal Mohan Basu
... for the State.

Affidavit of service filed in Court today be kept on record.

The petitioner has challenged an order passed by the Additional Regional Transport Officer dated 21st December, 2021 rejecting the petitioner's application for a Trade Certificate in favour of M/s. Ankur Motors of which the petitioner is the proprietor. Although the impugned order or the documents on record do not show the connection between the petitioner and Ankur Motors, an averment in the writ petition states that the petitioner is the proprietor of Ankur Motors.

By the impugned order, the Additional Regional Transport Officer states that the petitioner has failed to produce any document authorizing as bona fide dealer by the Original Equipment Manufacturer and further that the petitioner has also failed to prove himself as a

bona fide dealer of the Original Equipment Manufacturer.

The State is represented.

Upon hearing learned counsel, this court is of the view that the impugned order cannot be sustained on various grounds. First, the order mentions in Rule 35(2) of the Central Motor Vehicles Rules, 1989 (hereinafter referred to as the 'said Rule') in the matter of grant of Trade Certificate whereas the rejection is passed in Rule 35(1) of the said Rule. Second, the importance given to the petitioner proving himself to be an authorised bona fide dealer as required under Rule 35(1) is to be seen in the context of the Associate Dealer Agreement dated 23rd June, 2021 between Hero Motocorp Limited and Ankur Motors. By the said agreement, Ankur Motors has clearly been designated as the Associate Dealer of Hero Motocorp. Third, the agreement has to be given a purposive construction and it would be evident that once the agreement is before the concerned authority, the application for grant of permit cannot be rejected on the "bona fide dealer" ground under Rule 35(1) of the said Rule. This is more so since the Agreement defines an Associate Dealer as being engaged by Hero Motocorp from time to time and does not draw a distinction between an Associate and an Authorised bona fide Dealer.

The decision of the Kerala High Court in *Biju K. K. Vs. The Transport Commissioner and another* was on the

point whether a sub-dealer can be equated to a dealer for the purpose of obtaining a trade certificate under the relevant Act and Rules and may not be strictly relevant for the present case since the question would turn on the particular dealership agreement.

However, since it is evident from the impugned order that the concerned authority failed to apply its mind on the nature of the agreement existing between the petitioner as the proprietor of Ankur Motors and Hero Motocorp Limited, the impugned decision cannot be sustained.

W.P.A.13 of 2022 is accordingly allowed. The impugned order dated 21st December, 2021 is set aside. The concerned authority is directed to reconsider the application of the petitioner within three weeks from the date of communication of this order.

Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Moushumi Bhattacharya, J.)