IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 20962 OF 2022

Urmila Pradhan ..... ***Petitioner***

Mr. Braja Mohan Sarangi, Advocate

-versus-

Union of India and others .... ***Opp. Parties***

Mr. Prasanna Kumar Parhi,
Assistant Solicitor General
along with Mr. Satyabrata Panda, CGC
(For Opposite Party No.1)

Mr. Pravakar Behera,
Standing Counsel for Transport Department
(For Opposite Party Nos.2 to 4)

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
26.08.2022

Order No.

1. 1. This matter is taken up through hybrid mode.

2. Mr. Sarangi, learned counsel for the Petitioner undertakes to serve a copy of the writ petition on Mr. Parhi, learned Assistant Solicitor General appearing for Opposite Party No.1 in course of the day.

3. The Petitioner in this writ petition seeks to assail the inaction of the Regional Transport Officer, Bhubaneswar-Opposite Party No.4 in accepting the NOC issued for change of residence by the R.T.O., Kalahandi district in respect of vehicle bearing Registration No.OR-08-BE-0634 (Suzuki BIT) insisting upon payment of additional fee for delay in submission of the application for cancellation of said NOC pursuant to the amendment of Rule 81 of the Central Motor Vehicle Rules,1989 (for short "the Rules').

4. It is submitted by Mr. Sarangi, learned counsel that the Petitioner is the registered owner of Vehicle **No.**OR-08-BE-0634 (Suzuki BIT) registered under the R.T.O., Kalahandi. The Petitioner applied for change of residence and the NOC (Clearance Certificate) vide Annexure-3 was issued by the R.T.O., Kalahandi on 17th September, 2019 to be produced before RTO, Bhubaneswar. As per law, the Petitioner has to submit the said NOC within a period of thirty days before the R.T.O., Bhubaneswar for change of residence from the date of its issue. However, the Petitioner could not submit the same within the stipulated period. When the Petitioner approached the R.T.O., Bhubaneswar and produced the NOC requesting him to accept the same and change the address, the same was not accepted insisting upon payment of additional fee in view of amendment of Rule 81 of the Rules. It is submitted by learned counsel for the Petitioner that the amendment in Rules 32 and 81 of the Rules imposing additional fee has already been set aside by this Court in ***W.P.(C) No.18124 of 2019 (Anirudha Kumar Dash-vrs.-Union of India and others)*** and a batch of writ petitions disposed of on 13th December, 2019, relevant portion of which reads as under:

> *"13. After considering the entire fact situation of the instant cases and submissions made by the learned counsel for the parties, and after considering Paragraph-8 of the judgment of the Madras High Court referred to above, we are of the opinion that there cannot be different implications of the same notification in two different States. Therefore, to maintain the uniformity, by following the judgment of the Madras High Court, we also consider it appropriate to struck down the amendment Rule 32 and Rule 81 of the Rules amended vide impugned Notification No.G.S.R.1183(E) dated 29.12.2016*

> *issued by the Ministry of Road Transport & Highways, New Delhi, Government of India, to the extent of imposition of additional fee only.*
>
> *13.1 However, it is made clear that it will be subject to final result of the appeal filed by the Union of India before the Supreme Court. It is further clarified that if ultimately the Government succeeds in the Supreme Court, it will be open for the Government to recover the amount of additional fees from the Petitioners from the date of implementation of the notification."*

5. In view of the above, learned counsel for the Petitioner submits that the demand of additional fee to accept the NOC issued for change of residence issued under Annexure-3 is not legal. Hence, this writ petition has been filed for a direction to the R.T.O., Bhubaneswar to accept the NOC issued under Annexure-3 without insisting upon payment of additional fee under Rule 81 of the Rules.

6. Mr. Behera, learned Standing Counsel for the Transport Department submits that there is no material on record to show that the Petitioner had, in fact, approached the R.T.O., Bhubaneswar for acceptance of NOC issued for change of residence. He, however, does not dispute the position of law as stated by learned counsel for the Petitioner and submits that the matter is at present pending for consideration before Hon'ble Supreme Court. He further submits that if an application is filed by the Petitioner along with the NOC issued under Annexure-3 complying with other formalities for its acceptance, the same shall be considered by the R.T.O., Bhubaneswar in accordance with law. The Petitioner should also file an undertaking to the effect that if Union of India succeeds in the appeal pending before Hon'ble Supreme Court, the Petitioner will be liable to

pay the additional fee as stated in Paragraph-13.1 of the aforesaid judgment.

7. Taking into consideration the submission made by learned counsel for the Petitioner and the ratio in ***W.P.(C) No.18124 of 2019 (Anirudha Kumar Dash)*** (supra), this Court is of the considered opinion that the R.T.O., Bhubaneswar should accept the NOC issued for change of residence stated to have been filed by the Petitioner without insisting upon payment of additional fee in terms of Rule 81 of the Rules.

8. It is, accordingly, directed that in the event the Petitioner makes an application complete in all respect to accept the NOC for change of residence issued by the R.T.O., Bhubaneswar under Annexure-3 within a period of two weeks hence along with such NOC, the R.T.O., Bhubaneswar-Opposite Party No.4 shall do well to accept the same and do the needful in accordance with law without insisting upon payment of additional fee for delay in making such application. In view of the observation made by this Court in paragraph-13.1 of the order in ***W.P.(C) No.18124 of 2019 (Anirudha Kumar Dash) (supra),*** no undertaking is required to be given by the Petitioner, as submitted by Mr. Behera, learned counsel for Transport Department.

9. With the aforesaid observation and direction, this writ petition is disposed of.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

bks