IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 23127 OF 2022

Munir Beg .... ***Petitioner***

Mr. Braja Mohan Sarangi, Advocate

-versus-

R.T.O., Cuttack and others .... ***Opp. Parties***

Mr. Pravakar Behera, Standing Counsel (For Transport Department)

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

Order No. **14.09.2022**

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

2. The Petitioner in this writ petition prays for a direction to the Regional Transport Officer, Cuttack-Opposite Party No.1 to accept the M.V. tax amount of Rs.69,000/- for the vehicle bearing Registration No.OD-05-AJ-6713 (Truck) and to allow transfer of the ownership and issue permit as well as fitness certificate without insisting upon payment of penalty imposed for non-payment of M.V. tax in time.

3. It is submitted by Mr. Sarangi, learned counsel that the Petitioner is an auction purchaser of the aforesaid vehicle conducted by the Financer, namely, Branch Manager, Cholamandalm Inv. Fin. Co. Ltd., Cuttack-Opposite Party No.2. The vehicle was seized by the Opposite Party No.2 for non-payment of the loan dues by the registered owner, namely, Dinesh Kumar Sahoo-Opposite Party No.3. It is also submitted that since the Petitioner is in possession of the aforesaid vehicle, he is liable to pay the M.V. tax including the arrear amount, but not the penalty for non-payment of M.V. tax in time. In support of his case, he relies upon the decision of this

Court in the case of ***Sk. Imran Ahmad –v- R.T.O., Bhubaneswar*** in W.P.(C) No.15548 of 2014, which was disposed of on 10th April, 2015 with the following observation:

> *"In Bachan Singh v. The Road Transport Officer, Rourkela, and others, 2009 (II) OLR 183, a Division Bench of this Court succinctly dealt with the law on the subject. It was held that a transferee of the vehicle or the person who is in possession or control of the vehicle shall be liable to pay the arrears of tax payable by the previous owner or the person who had possession or control of such vehicle and remained unpaid at the time of transfer of the vehicle.*
>
> *Thus, the irresistible conclusion is that the petitioner is only liable to pay tax.*
>
> *In view of the same, the writ application is disposed of with a direction to the opposite party no.1 to accept the tax and thereafter transfer the vehicle in the name of petitioner."*

4. In view of the above, he prays for a direction to the R.T.O., Cuttack-Opposite Party No.1 to accept the M.V. tax including the arrear amount in respect of the vehicle bearing Registration No.OD-05-AJ-6713 (Truck) and to take steps for issuance of fitness certificate and permit as well as transfer of ownership.

5. Mr. Behera, learned Standing Counsel for the Transport Department submits that since the Petitioner is in possession of the vehicle, he is liable to pay the tax including the arrear amount in respect of the aforesaid vehicle. But the ownership of the vehicle cannot be transferred without complying with the provision of Section 51(5) of the Motor Vehicles Act, 1988 (for short 'the Act'). In many cases, the Financer-Opposite Party No.2 without following the procedure laid down in Section 51(5) of the Act is conducting auction and is parting with possession of the vehicle, which is contrary to law. He also

draws attention of this Court to Section 50 of the Act, relevant portion of which reads as under:

> ***"50. Transfer of ownership.-***
> ***xxx xxx xxx***
>
> *(2) Where-*
>
> *(a) the person in whose name a motor vehicle stands registered dies, or*
>
> *(b) a motor vehicle has been purchased or acquired at a public auction conducted by, or on behalf of, Government,*
>
> *the person succeeding to the possession of the vehicle or, as the case may be, who has purchased or acquired the motor vehicle, shall make an application for the purpose of transferring the ownership of the vehicle in his name, to the registering authority in whose jurisdiction he has the residence or place of business where the vehicle is normally kept, as the case may be, in such manner, accompanied with such fee, and within such period as may be prescribed by the Central Government."*

Since the case of the Petitioner does not come under the provisions of Section 50(2) of the Act, the ownership of the vehicle cannot be transferred in his name. He, therefore, submits that the prayer for transfer of ownership of the vehicle in favour of the Petitioner is not permissible under law since the transfer of ownership can only be made by complying with the provisions of Section 51(5) of the Act.

6. Taking into consideration the rival contentions of the parties, this Court finds that the Petitioner being in possession of the vehicle is liable to pay the M.V. tax including the arrear amount. It is further submitted by Mr. Behera, learned Standing Counsel for the Transport Department that if the certificate proceeding has been initiated against the owner of

the vehicle then the entire certificate amount has to be deposited.

7. In course of hearing, Mr. Sarangi, learned counsel for the Petitioner submits that he will take steps by filing appropriate proceeding for waving of the penalty amount.

8. In view of the above, this Court disposes of the writ petition with a direction that on payment of M.V. tax including the arrear amount as on date within a period of fifteen days hence along with certified copy of this order, the R.T.O., Cuttack-Opposite Party No.1 shall consider issuance of fitness certificate and permit in respect of the vehicle bearing Registration No.OD-05-AJ-6713 (Truck). Transfer of ownership of the vehicle can only be considered, if the provision of Section 51(5) of the Act is complied with, provided that no other case in respect of the said vehicle is pending before any forum or Court or any certificate case has been initiated against the registered owner.

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

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

(K.R. Mohapatra)
Judge

bks