

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9819 OF 2022

Kiran s/o Ashok Gaikwad,
Age-30 years, Occu-Owner of Vehicle,
R/o Railway Gate, Naigaon Road,
Sorthakwadi, Pune, Tq. and Dist. Pune

-- PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Transport Department,
Mantralaya, Mumbai - 32
2. The Commissioner of Food and Drugs
Administration,
Bandra-Kurla Complex,
Bandra (East), Mumbai
3. The Road Transport Authority,
38, Dr.Ambedkar Road, Near Sangam Bridge,
Pune
4. The Assistant Commissioner,
Food and Drugs Administration,
Maharashtra State, Osmanabad
5. Food Safety Officer,
Food and Drugs Administration,
Maharashtra State, Osmanabad
6. The Police Inspector,
Omerga Police Station,
Tq.Omerga, Dist.Osmanabad

-- RESPONDENTS

Mr.R.R.Karpe, Advocate for the petitioner.
Mr.S.G.Sangle, AGP for respondent Nos. 1 to 6.

(CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.)

DATE : NOVEMBER 15, 2022

ORAL JUDGMENT : (Per Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner has put forth prayer clauses B, C, D and E as under :-

"B. Hold and declare that, the action of blacklisting the vehicle i.e. Eicher bearing registration No. Mh-12-RN-6106 owned by the present petitioner and suspension of transportation registration including license of the present petitioner of said vehicle at the hands of respondent No.5 and 3 respectively i.e. Food Safety Officer and Road Transport Authority are bad, illegal and contrary to the statutory provisions.

C. Issue writ of mandamus or any other writ or direction in the like nature, thereby kindly direct the respondent authorities i.e. respondent No.5 and 3 respectively i.e. Food Safety Officer and Road Transport Authority to forthwith revoke the impression of blacklisting of vehicle of the present petitioner by consequentially restoring transportation registration including license of the present petitioner of said vehicle.

D. Issue writ of mandamus or any other writ or direction in the like nature, thereby kindly direct the respondent No.1 and 2 to consider the request application of the present petitioner dated 15.12.2021 (Exhibit-F) within stipulated period by revoking the impression of blacklisting of vehicle of the present petitioner by consequentially restoring transportation registration including license of the present petitioner of said vehicle.

E. Issue appropriate writ or any other writ or direction in the like nature, the appropriate compensation may be awarded in favour of the present petitioner on the count of such illegal acts/action resulted into heavy loss to the present petitioner being owner of the vehicle from the respondent No.5 and 3 respectively i.e. Food Safety Officer and Road Transport Authority."

3. The petitioner is the owner of a heavy motor vehicle bearing Registration No.MH-12-RN-6106. The brand name of the vehicle is Eicher. On 21.01.2021, an FIR bearing Crime No.0050/2021 was registered with respondent No.6, Umerga Police Station for offences punishable u/sections 188, 272, 273 and 328 of the IPC alongwith Sections 26(2)(i), 26(2) (iv) and 27(2)(e) of the Food Safety and Drugs Act, 2006. The driver of the vehicle is not the owner It is not the case of the petitioner that the vehicle was stolen or that the driver was unauthorizedly plying the vehicle.

4. After the registering of the offence, respondent No.5 intimated the Road Transport Authority at Pune (respondent No.3), and based on the registration of an offence, the vehicle was enlisted in a list of vehicles separately maintained for vehicles against whom an offence has been registered and which is commonly termed as a “blacklist”. The grievance of the petitioner is that the blacklisting of his vehicle has been done without granting an opportunity of hearing to him. It is the further grievance of the petitioner that after the offence was registered and the vehicle was blacklisted, no further hearing has taken place and in the absence of any further proceedings, the petitioner is unable to utilize the vehicle for his business. The vehicle has been released under the orders of the learned J.M.F.C. on an application filed by the petitioner.

5. The petitioner relies upon a circular dated 12.09.2018, as well as the guidelines dated 06.04.2017, which were relied upon by respondent No.5. It is canvassed that under clause I of the Circular, Section 19(1) (c) of the Motor Vehicles Act, 1988, is referred to and the said clause can be invoked if there is a transportation of contraband articles.

According to the petitioner, the said provision contemplates an opportunity of hearing to the aggrieved party. It is, therefore, submitted that the principles of natural justice have been violated and the vehicle could not have been blacklisted without an opportunity of hearing to the petitioner.

6. The learned AGP, by placing reliance upon a judgment delivered by the Division Bench of the High Court of Kerala in Midhun Mathew Abraham Versus Joint Road Transport Officer and others, decided on 05.10.2021 [2021 SCC Online Ker 3735], submits that the issue as regards the effect of blacklisting of a vehicle has been considered by the Kerala High Court in the said judgment. He specifically draws our attention to paragraph Nos. 4 to 11, which read as under :-

"4. It is submitted by the appellant that while matters being so, appellant could understand that the status of his vehicle in the 'VAHAN' portal is shown as blacklisted based on a petition filed by the 2 nd respondent highlighting the registration of the crime and submission of G form under the Kerala Motor Vehicle Taxation Act seeking exemption of tax in respect of the vehicle. According to the appellant, subsequent to the blacklisting of the vehicle, the appellant could not use or dispose of the vehicle. Hence, the writ petition was filed by the appellant.

5. In the writ appeal a counter affidavit is filed by the Joint Road

Transport Officer, Sub Regional Office, Alappuzha - 1 st respondent, basically contending that the "Parivahan - Sewa" project is the flagship project initiated by Government of India in the light of new amendment to rule 139 of Central Motor Vehicle Rules, 1989, validating the electronic form of motor vehicle documents. It is further submitted that this e-portal consists of a huge number of modules, which intends to give most of the services online to the public. The Motor Vehicles Department, Kerala, has migrated the MORTH's Parivahan-Sewa' software, thereby introducing the newly web based software so called 'Parivahan/Vahan' developed by the NIC and controlled by the Central Ministry. The fresh licence related activities of all offices in the State were shifted to 'Sarathi' from 01.01.2019 and the registration related activities of all new vehicles of all the offices in the State were shifted to 'Vahan' w.e.f. 01.04.2019. The said website consists of numerous modules and one such module is 'Blacklist', which includes the vehicle numbers and licence numbers having Audit Objections, Complaints, Court Cases and Check Reports etc. Accordingly, the website including its modules is introduced in consonance with the initiative of Central Government for "One Nation one Licence Policy" and is very well recognised under Rule 139 of Central Motor Vehicle Rules, 1989. The 'BLACKLIST' in 'PARIVAHAN' is the new version of 'OBJECTION' in 'SMART MOVE', which was the older version of the work nature in Kerala Motor Vehicles Department.

6. It is also submitted that rule 139 of the Central Motor Vehicle Rules, 1989, is amended inserting the words "in physical or electronic form", thereby allowing the production of motor vehicle documents in

electronic form also. For the sake of convenience and brevity, amended rule 139 of the Central Motor Vehicles Rules, 1989 is reproduced:

*"139. Production of licence and certificate of registration.- (1)
The driver or conductor of a motor vehicle shall produce certificates of registration, insurance, fitness and permit, the driving licence certificate for Pollution Under Check and any other relevant documents in physical or electronic form, as available on or downloaded from the portal, on demand by any police officer in uniform or any other officer, authorised by the State Government in this behalf, and if any or all of the documents are not in his possession, he shall produce in person an extract or extracts of the documents duly attested by any police officer or by any other officer or send it to the officer who demanded the documents by registered post within fifteen days from the date of demand.*

Provided that after validation of the documents in electronic form, referred to in sub-rule (1), by any police officer in uniform or any other officer, authorised by the State Government in this behalf, if the information in documents are found to be valid and in force, then physical forms of such documents shall not be demanded for inspection, including in cases where there is an offence made out necessitating seizure of any such documents.

(2) Upon demanding or inspecting any documents referred under sub-rule (1), the date and time stamp of inspection and

identity of the police officer in uniform or any other officer authorised by the State Government, shall be recorded on the Portal."

7. Other provisions are also introduced into the Central Motor Vehicles Rules, 1989, for seizure of documents produced in electronic form by introducing rule 139A and in the matter of procedure for issuance and payment of challan. Therefore, according to the learned Senior Government Pleader, provisions are incorporated in the Central Motor Vehicles Rules, 1989, for ensuring that sufficient details are contained in the portal so as to caution the public at large in respect of the vehicle involved in any crime and other cases.

8. On the other hand, learned counsel for appellant submitted that there is no enabling provision in the Rules, 1989, empowering the Motor Vehicles Authority/Authorities to blacklist any motor vehicle. However learned Government Pleader submitted that the term "blacklisting" is used as a nomenclature so as to make the citizens alert in respect of the details of a particular vehicle incorporated in the portal.

9. We have heard learned counsel for appellant Sri.B.Pramod, learned Senior Government Pleader Sri.K.PHarish for the State Officials, Sri.R.Prasanth Kumar for the National Informatics Centre, New Delhi, and the Union of India and Sri.PA.Abhilash appearing for the party respondent, and perused the pleadings and materials on record.

10. The sole question that emerges for consideration is whether the State Motor Vehicles Authority is entitled to blacklist or rather

incorporate the details of any crime in which a vehicle is involved in the parivahan portal introduced by the Central Government for the purpose of tackling certain specified situations ? Before going to the amended rule 139 of the Central Motor Vehicles Rules, 1989, discussed above, certain of the other provisions in the amended rules may have to be taken into consideration. In rule 2 (xa), of the amended rules word 'portal' is defined to mean a web or electronic based system set up and maintained by the Central Government for -

(i) facilitating licensing, registration, issuance of certificate of fitness and permits of motor vehicles;

(ii) recording of offences including compounding, impounding, making endorsements, suspension and revocation of licenses and registrations.

(iii) Issuance of e-challan

(iv) preserving, retaining and granting access to machine readable, printable, shareable, verifiable and secure electronic records.

11. The definition of 'portal' makes it clear and specific that there is a provision for recording of offences including compounding, impounding, making endorsements, suspension and revocation of licenses and registrations, apart from other aspects specified therein. On a reading of rule 139, it would be clear that it deals with different aspects so as to enable the driver or conductor of a motor vehicle to produce the documents relating to the motor vehicle and the driving licence by downloading the same from the portal on demand by any Police Officer in uniform or any other officer authorised by the State Government in that behalf, if any or all of the documents are not in his

possession. Likewise rule 139A of the Central Motor Vehicles Rules, 1989 as amended deals with seizure of documents produced in electronic form also, which provisions have nothing to do with the entry of offences etc. in the parivahan portal, however it is clear and convincing from the definition of web portal discussed above that the portal is created for such purposes with the largest interest of cautioning the public or any person dealing with particular vehicle. As we have pointed out above the expression "Blacklisting" is a module available to denote the details of the crime registered to have sufficient significance to the laudable object of the provision. It is also worthwhile to note that the petitioner has not challenged the provision. Accordingly, we are of the considered opinion that the Motor Vehicles Authority is vested with ample powers to incorporate the details of the offences in relation to a vehicle in the parivahan portal as per the clear provision of law discussed above, and in that view of the matter it cannot be said that the appellant had made out any case of arbitrariness and illegality before the writ court and therefore the writ court was right in dismissing the writ petition."

(Emphasis supplied)

7. He, therefore, submits that the vehicles against which there has been registration of an offence, are entered in a list, which is to be maintained separately by the State Motor Vehicles Authorities. The said Authority is empowered to incorporate the registration number of

the vehicle, its details and the details of the crime in which the vehicle was involved, in the Parivahan Portal introduced by the Central Government for the purpose of tackling specified situations. In the cases involving vehicles against whom crimes have been registered, the authorities came out with the provision to have a list to be maintained separately in order to alert the citizens as regards the involvement of a vehicle in a crime and also narrate the nature of the crime. The whole purpose is to alert the public about the details of the vehicle, its owner and the nature of the crime in which the vehicle was involved.

8. We find in Midhun Mathew (supra) that the vehicle was involved in an offence. The details of the vehicle were mentioned in the Vahan Portal and considering that a blacklist is maintained by all State Motor Vehicles Authorities under the Central Motor Vehicles Rules, 1989 all over India, that the vehicle was enlisted in the blacklist mentioning its details and the details of the offence. The Kerala High Court has, therefore, interpreted the purpose and object of maintaining a list with the title as "blacklist" as being nothing more than for alerting the public at large as regards a vehicle, which is involved in a crime. Naturally, the purpose and object is to ensure that a vehicle involved in an offence

should not be used. Nevertheless, the vehicle is not seized and retained in the possession of the State Motor Vehicles Authorities, notwithstanding the fact that the owner is entitled to approach the competent Court to get the vehicle released. The learned AGP submits on instructions that since the vehicle involved is registered as a commercial vehicle, the moment the conditions of the permit are violated, the said vehicle cannot be used as a commercial vehicle.

9. Having considered the submissions of the learned Advocates for the respective sides, it is quite apparent and we agree with the view expressed by the Kerala High Court in **Midhun Mathew** (supra), that the blacklisting of a vehicle is only to maintain a list of such vehicles which have been involved in offences and which have violated the permit rules. There is no provision contemplating a personal hearing or an opportunity of hearing to the owner of the vehicle before blacklisting it, since a vehicle is blacklisted the moment the State Motor Vehicles Authorities are intimated by any authority, which has registered an offence against such a vehicle. We are, therefore, unable to accept the contention of the petitioner that before a vehicle is entered in the blacklist, pursuant to the registration of an offence, an

opportunity of hearing has to be granted.

10. In so far as the permit of the vehicle having been purportedly suspended, respondent No.5 has informed respondent No.3 that the permit of the said vehicle needs to be permanently cancelled. The communication dated 05.04.2021 issued by respondent No.5 addressed to respondent No.3 is before us. The learned AGP submits that the petitioner was issued with a notice of hearing on 25.03.2022 calling upon the owner of the vehicle to address respondent No.3 as to why the permit issued to him should not be cancelled. It is the contention of the learned AGP, on instructions, that the petitioner did not respond to this notice. The learned Advocate for the petitioner submits, on instructions, that the petitioner has not received the said notice and, therefore, there was no occasion to address the mind of the authorities either on suspension of the permit or its cancellation. He is willing even today to address respondent No.3.

11. The learned AGP submits that the permit, as yet, has not been suspended, much less cancelled. The details of the vehicle have only been mentioned in the list, which is maintained as a blacklist. Hearing

is contemplated on suspension or cancellation of the permit. The Authorities are willing to hear the petitioner on any day of his choice provided he is willing to approach the authorities since he has ignored the earlier notice dated 25.03.2022.

12. Section 86 of the Motor Vehicles Act, 1988 pertains to cancellation and suspension of permits. Section 86 reads as under :-

"86. Cancellation and suspension of permits.—

(1) The transport authority which granted a permit may cancel the permit or may suspend it for such period as it thinks fit—

(a) on the breach of any condition specified in section 84 or of any condition contained in the permit, or *tc" (a) on the breach of any condition specified in section 84 or of any condition contained in the permit, or"*

(b) if the holder of the permit uses or causes or allows a vehicle to be used in any manner not authorised by the permit, or *tc" (b) if the holder of the permit uses or causes or allows a vehicle to be used in any manner not authorised by the permit, or"*

(c) if the holder of the permit ceases to own the vehicle covered by the permit, or *tc" (c) if the holder of the permit ceases to own the vehicle covered by the permit, or"*

(d) if the holder of the permit has obtained the permit by fraud or misrepresentation, or

(e) if the holder of the goods carriage permit, fails without reasonable

cause, to use the vehicle for the purposes for which the permit was granted, or tc" (e) if the holder of the goods carriage permit, fails without reasonable cause, to use the vehicle for the purposes for which the permit was granted, or"

(f) if the holder of the permit acquires the citizenship of any foreign country: Provided that no permit shall be suspended or cancelled unless an opportunity has been given to the holder of the permit to furnish his explanation.

(2) The transport authority may exercise the powers conferred on it under sub-section (1) in relation to a permit granted by any authority or person to whom power in this behalf has been delegated under sub-section (5) of section 68 as if the said permit was a permit granted by the transport authority.

(3) Where a transport authority cancels or suspends a permit, it shall give to the holder in writing its reasons for the action taken.

(4) The powers exercisable under sub-section (1) (other than the power to cancel a permit) by the transport authority which granted the permit may be exercised by any authority or person to whom such powers have been delegated under sub-section (5) of section 68.

(5) Where a permit is liable to be cancelled or suspended under clause (a) or clause (b) or clause (e) of sub-section (1) and the transport authority is of opinion that having regard to the circumstances of the case, it would not be necessary or expedient so to cancel or suspend the permit if the holder of the permit agrees to pay a certain sum of money, then, notwithstanding anything contained in sub-section (1), the transport authority may, instead of cancelling or suspending the permit, as the case may be, recover from the holder of the permit the sum of

money agreed upon.

(6) The powers exercisable by the transport authority under sub-section (5) may, where an appeal has been preferred under section 89, be exercised also by the appellate authority.

(7) In relation to a permit referred to in sub-section (9) of section 88, the powers exercisable under sub-section (1) (other than the power to cancel a permit) by the transport authority which granted the permit, may be exercised by any transport authority and any authority or persons to whom power in this behalf has been delegated under sub-section (5) of section 68, as if the said permit was a permit granted by any such authority or persons."

13. It is thus obvious that the Transport Authority, which has granted a permit, can cancel the permit or suspend it for a particular period on account of the contingencies mentioned below Section 86(1). The proviso below Sub Clause (f) indicates that no permit can be suspended or cancelled unless an opportunity is given to the holder of the permit to furnish his explanation. Sub Section 3 indicates that if the Transport Authority cancels or suspends a permit, it has to give the holder a written order containing reasons for the action taken.

14. In view of the above, we hold that the details of a vehicle can be entered in the list U/R 139 A, without issuing a show cause notice to

the owner. Since the petitioner is willing to appear before respondent No.3 for a hearing, this petition is disposed off with the following directions :-

[a] The petitioner shall appear before respondent No.3 pursuant to the notice dated 25.03.2022, on 23.11.2022 at 12.00 noon.

[b] The petitioner is at liberty to enter a written explanation in the said hearing.

[c] Unless the hearing continues beyond the said date, respondent No.3 would pass a reasoned order on or before 02.12.2022.

[d] If an adverse order is passed under Sub Section 3 or under Sub Section 5 of Section 86, the petitioner would be at liberty to avail of the remedy of preferring an appeal u/s 89 to the competent authority.

15. Rule is discharged. No order as to costs.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)