

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(APPELLATE SIDE)**

Present:
The Hon'ble Justice Rai Chattopadhyay

WPA 3490 of 2024

**Md. Khurshid
Vs.
The State of West Bengal & Ors.**

For the Petitioner	: Mr. Monoj Kr. Mondal, : Ms. Kakali Datta.
For the respondent no. 5	: Mr. Ritoban Sarkar, : Mr. Ranjit Singh, : Ms. Tutul Das, : Mr. Amar Singh, : Mr. Ratul Deb Banerjee.
For the State	: Mr. Pantu Deb Roy, : Mr. Subrata Guha Biswas.

Heard on : 24/07/2024
Judgment on: 24/07/2024

Rai Chattopadhyay, J.

1. Affidavit of service filed by the petitioner be taken on record.
2. In this case the writ petitioner has put forth challenge as regards the impugned order passed by the R.T.A., Tamluk, Purba Medinipur dated 17th November, 2023.
3. The writ petitioner as well as the State and the Bank respondents are represented.

4. It is necessary to look into the factual background of the case, which in a nut-shell is as follows:-
5. The writ petitioner is the auction purchaser of the vehicle being WB 25J0359. The vehicle is covered under the hire purchase agreement, executed between the respondent bank and the erstwhile registered owner thereof. The erstwhile registered owner of the said vehicle has defaulted the loan amount, with the respondent bank i.e. the respondent no. 5. Accordingly, the arbitration proceeding underwent, in terms of the agreement. By dint of an order of the learned arbitrator the bank took steps for the sale of the vehicle. The present petitioner happens to be the purchaser of the vehicle, in an auction. The bank is indemnified as well as paid the entire consideration money, in such a transaction. The bank transfers the title of the vehicle to the present petitioner and reserves no right to the same any further. After purchase as above, the writ petitioner approaches the concerned respondent i.e. the respondent no. 3 for registration of his vehicle.
6. This Court had to intervene at the first instance, due to the alleged inaction of the respondent authority in considering the petitioner's prayer for registration of the vehicle, vide its order dated 29th September, 2023. It had directed the respondent, to consider writ petitioner's prayer, as above. The resultant order dated 17th November, 2023, is impugned in this case.
7. The writ petitioner as well as the bank authorities in unison have submitted that after the sale being completed between the petitioner and the bank authorities pursuant to the direction of the learned arbitrator, the respondent authorities is duty bound to register the vehicle in the

name of its present owner i.e. the writ petitioner, as per the provisions of the statute.

8. Mr. Sarkar, who is appearing for the respondent/Bank, has submitted that in such view of the fact, the direction for compliance with the provisions under section 51(5) of the Motor Vehicles Act, 1988, as made by the respondent authority in the said impugned order, would be futile and an empty formality only. It is submitted further that the sale is already complete and the respondent bank is satisfied upon receipt of consideration money as well as being indemnified by the present petitioner, as the new purchaser of the said vehicle regarding future liabilities, if any.
9. Mr. Deb Roy who represents the State is primarily of the opinion that the requirement under section 51(5) of the Motor Vehicle Act, 1988 is unavoidable, in case of a vehicle under a hire-purchase agreement. He submits further that the vehicle was originally registered for the first time in favour of its first owner, at the Regional Transport Authority at Barasat, North 24 Parganas. He submits that the law requires the registered owner to deposit his 'certificate of registration' to the concerned registering authority, in case of his vehicle having been possessed over by the bank, as a party of the hire- purchase agreement, owing to the default of the registered owner, under provisions of that agreement. Therefore, he indicates that the writ petition suffers from defect of party. He would further say that the RTA, Purba Medinipur is not a relevant party. In this case, Mr. Deb Roy would seek dismissal of the present petition.

10. The Regional Transport Authority, Tamluk, Purba Medinipur, in its order dated 17th November, 2023, has held that the “Special provision regarding motor vehicles subject to hire purchase agreement” as laid down in Section 51 of the Motor Vehicles Act, 1988, that is, under Section 51 (5) of the Act to be precise, has not been observed by the financier/Bank in this case. It has further held that the respondent bank would appear before the registering authority of the concerned vehicle, i.e. at Barasat, to duly comply with the provision of Section 51 (5) of the Motor Vehicles Act, 1988.
11. Section 51 of the Motor Vehicles Act has provided for the special provisions regarding Vehicles subject to hire purchase agreement. Section 51(5) of the Act has provided that the financier of the vehicle i.e. the respondent/bank here, has to satisfy the registering authority to have taken possession of the vehicle from the registered owner owing to his default, under the provisions of the said agreement and that the registered owner refuses to deliver the certificate of registration or has absconded.
12. The law, in such a circumstance, empowers the said registering authority, to cancel such certificate of registration and issue a fresh certificate of registration upon payment of the prescribed fees, notwithstanding the previous certificate of registration, being produced by the financier, before it. As per the statutory provision, before doing so the registering authority may give the registered owner an opportunity to make representation, by sending him a notice at his address entered in the certificate of registration.

13. Let the said provision be extracted, as herein below :

“51. Special provisions regarding motor vehicle subject to hire-purchase agreement, etc.

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(5) Where the person whose name has been specified in the certificate of registration as the person with whom the registered owner has entered into the said agreement, satisfies the registering authority that he has taken possession of the vehicle [from the registered owner] owing to the default of the registered owner under the provisions of the said agreement and that the registered owner refuses to deliver the certificate of registration or has absconded, such authority may, after giving the registered owner an opportunity to make such representation as he may wish to make (by sending to him a notice by registered post acknowledgement due at his address entered in the certificate of registration) and notwithstanding that the certificate of registration is not produced before it, cancel the certificate and issue fresh certificate of registration in the name of the person with whom the registered owner has entered into the said agreement:

Provided that a fresh certificate of registration shall not be issued in respect of a motor vehicle, unless such person pays the prescribed fee:

Provided further that a fresh certificate of registration issued in respect of a motor vehicle, other than a transport vehicle, shall be valid only for the remaining period for which the certificate cancelled under this sub-section would have been in force.”

14. The Court cannot but help noticing the language employed in the said provision of law. The very carefully selected word “may” as appears therein, renders the said provision as directory and not a mandatory provision of the law. Therefore, in an appropriate case, the requirement of the financier approaching the registering authority with the plea, of the registered owner not providing it with the certificate of registration, in case of the vehicle being taken over by the financier due to default of the registered owner, may also be dispensed with. Of course, the applicability of the provision as above would depend on the particular facts and circumstances of the individual case.

15. So far as the present case is concerned, the financier has sold the vehicle to the present petitioner in lieu of the consideration money and an indemnity bond, by virtue of an order of the Arbitrator. The possession of the vehicle was taken over by the financier from the defaulter owner thereof and the petitioner also does not deny having been granted the possession of the vehicle, after purchase, pursuant to the order of the Arbitrator in this regard. So far, the financier/respondent bank has not complained about non-receipt of the certificate of registration, upon recovery of possession of the vehicle from the erstwhile defaulter registered owner.
16. Therefore, the basic ingredient, for application of the provision of section 51(5) of the said Act, is not attracted in this case.
17. In such view of the fact, the Court finds that the petitioner or the respondent bank cannot be compelled to take steps for due adherence to the said provision of law, that is, under section 51(5) of the said Act. The financier having taken possession of the vehicle and having not complained about any non-receipt of the certificate of registration from the erstwhile registered owner and also having already sold and delivered the possession thereof to the petitioner by dint of an order of the Arbitrator, – compliance by it, of the provision under Section 51 (5) of the said Act, would actually be redundant and a futile exercise. In such view of the matter, the argument made on behalf of the respondent, that the case suffers from defect of party, does not inspire confidence in the mind of the Court. The petitioner has his residence and place of business at Purba Medinipur and purchases the vehicle there. Therefore, it cannot be said that RTA Purba Medinipur would not have any jurisdiction to entertain petitioner's prayer for registration of the vehicle.

- 18.** Mr. Deb Roy has informed that since the registration of the vehicle has been done in the office of RTA Barasat earlier, the record lies there, and RTA Purba Medinipur is not in possession of the relevant record. Since, in the discussion as above, we can find that RTA Purba Medinipur shall be entitled to take up the issue of registration of the petitioner's vehicle in absence of any requirement for compliance of provision under section 51(5) of the Motor Vehicles Act, 1988, the Court sincerely understands that there would not be any impediment, for transmission of record interse offices, within the State. The law would require production by the financier, of the earlier certificate of registration, in favour of the earlier owner but only optionally and notwithstanding the same the registering authority is empowered to issue fresh certificate of registration in favour of the petitioner, who has purchased the vehicle from the financier, pursuant to the order of the Arbitrator.
- 19.** On the premise as above, the order impugned dated 17th November, 2023, is found to be improper and bereft of any reason whatsoever. It appears to be an arbitrary exercise of power by the respondent authority as vested in it by law. Hence, the same is found liable to be set aside.
- 20.** The writ petition being WPA No 3490 of 2024 is allowed, with the following directions :

 - (i) impugned order dated 17th November, 2023,by the R.T.A., Tamluk, Purba Medinipur is set aside;
 - (ii) the respondent No. 3 is directed to take immediate steps for registration of the vehicle in favour of the petitioner, subject to his remittance of fees etc;

- (iii) for the said purpose, let the same call for the records from the office of any other Regional Transport Authority, if required;
- (iv) preferably, the earlier 'certificate of registration' in favour of the previous registered owner, shall be produced before the respondent No.3 for registration of the vehicle in favour of the petitioner. However, it is made clear that as per the statutory provision, the respondent No.3 shall proceed to cancel the earlier registration and issuance of the fresh registration certificate of the said vehicle in favour of the petitioner, upon fulfilment of other statutory requirements, by him, notwithstanding production of such 'certificate of registration' in favour of the earlier registered owner, for the reason that the possession of the vehicle has already been handed over to the petitioner.
- (v) the entire exercise as above shall be concluded by the respondent No.3, within a period of eight weeks from the date of communication of this order.

21. The writ petition being WPA 3490 of 2024 is disposed of.

22. The urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Rai Chattopadhyay, J.)

Sk.