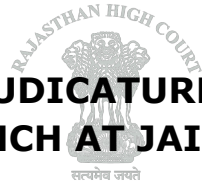




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



D.B. Special Appeal Writ No. 253/2024

M/s Ak Jilshan Cont, Through Its Proprietor Shri Akram Khan S/o Shri Rajjak, Registered Office At Village Neemli, Tijara, Alwar, Owner Of Truck Bearing Rj-40Ga-4031.

----Appellant

Versus

1. State Of Rajasthan, Through The Secretary, Transport Department, Government Of Rajasthan, Secretariat, Jaipur.
2. The Joint Secretary, Mines And Geology Department, Secretariat, Jaipur, Rajasthan.
3. Regional Transport Officer, Bharatpur.
4. District Transport Officer, Bharatpur.
5. District Transport Officer, Bhiwadi, District Alwar.

----Respondents

For Appellant(s) : Mr. Raj Kumar Goyal
For Respondent(s) : Mr. SS Naruka, AAG assisted by
Mr. Vikram Sharma &
Mr. Divanshu Gupta

**HON'BLE THE CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE ASHUTOSH KUMAR**

Order

REPORTABLE

25/07/2024

1. Heard.
2. This appeal is directed against the order dated 14.02.2024 passed by learned Single Judge, whereby the writ petition of the petitioner has been dismissed, though granting him liberty of availing statutory remedy of appeal.
3. Short and pointed submission of learned counsel for the appellant is that though there exists an alternative remedy, in



extraordinary circumstances mainly on the ground of violation of principles of natural justice, the petitioner sought to invoke jurisdiction of this Court under Article 226 of the Constitution of India. He would submit that as against emphatic statement made in the petition that there was no opportunity of hearing afforded before suspension of licence, the respondents came out with a vague and evasive reply without placing on record any material to prove actual service of notice.

4. *Per contra*, learned counsel appearing for the respondents would submit that the order which was impugned in the writ petition clearly states that notice was issued to the writ petitioner and only thereafter, order was passed by the competent authority, therefore, there is no violation of principles of natural justice or statutory provisions.

5. Section 53 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') provides for suspension of registration. The relevant provision reads as under:-

"53.Suspension of registration.-(1) If any registering authority or other prescribed authority has reason to believe that any motor vehicle within its jurisdiction-

(a) is in such a condition that its use in a public place would constitute a danger to the public, or that it fails to comply with the requirements of this Act or of the rules made thereunder, or

(b) has been, or is being, used for hire or reward without a valid permit for being used as such,

the authority may, after giving the owner an opportunity of making any representation he may wish to make (by sending to the owner a notice by registered post acknowledgement due at his address entered in the certificate of registration), for reasons to be recorded in writing, suspend the certificate of registration of the vehicle--

(i) in any case falling under clause (a), until the defects are rectified to its satisfaction; and

(ii) in any case falling under clause (b), for a period not exceeding four months.



(2) An authority other than a registering authority shall, when making a suspension order under sub-section (1), intimate in writing the fact of such suspension and the reasons therefore to the registering authority within whose jurisdiction the vehicle is at the time of the suspension.

(3) Where the registration of a motor vehicle has been suspended under sub-section (1), for a continuous period of not less than one month, the registering authority, within whose jurisdiction the vehicle was when the registration was suspended, shall, if it is not the original registering authority, inform that authority of the suspension.

(4) The owner of a motor vehicle shall, on the demand of a registering authority or other prescribed authority which has suspended the certificate of registration of the vehicle under this section, surrender the certificate of registration.

(5) A certificate of registration surrendered under sub-section (4) shall be returned to the owner when the order suspending registration has been rescinded and not before.”

6. The provision of law is crystal clear that if the registering authority or any other prescribed authority has any motor vehicle within its jurisdiction is in such a condition, as described in Clause A & B of sub-Section(1), the authority is required to give the owner an opportunity of making a representation, he may wish to make (by sending to the owner a notice by registered post, acknowledgement due at his address entered in the certificate of registration) and, thereafter, for reasons to be recorded in writing, pass the order of suspension of certificate of registration.

7. The power to suspend registration is statutory in nature and is, therefore, required to be exercised in the manner provided under the law and no other manner. Where the statutory provision incorporates the principles of natural justice, the same is required to be strictly complied with and there is no escape. Present is not a case where the notice was served and the appellant despite an opportunity of hearing afforded to him, did not submit any representation.



8. We have gone through the pleadings made by the parties. The appellant in the writ petition has made a categorical statement on affidavit that he was not afforded any opportunity of hearing. As against this, the respondents have only made evasive reply that a notice was issued. Where there is an allegation that opportunity of hearing was not afforded, it is not suffice to state that notice was issued. The authority is required to satisfy the Court by placing on record the proof of service of notice in the manner prescribed under the law, governing exercise of power. The order passed by the authority which was impugned in the writ petition, though contains a statement that notice was issued, it does not refer to any material with regard to service of notice.

9. On the last date of hearing, we had required learned counsel for the respondents to place before the Court, relevant record containing proof of service of notice on the appellant. However, learned counsel for the State is unable to place before the Court any such material to satisfy that the notice, which is alleged to have been issued, was served on the appellant through mode prescribed under the law. The provision contained in Section 53 of the Act of 1988 states that opportunity of hearing was required to be given by sending to the owner a notice by registered post, acknowledgement due at the address entered in the certificate of registration. All these necessary facts are required to be proved to satisfy the Court that the statutory mandate has been complied with.

10. It is not a case where the appellant has raised a grievance regarding non-compliance of principles of natural justice only on the ground that the action of the respondents results in civil



consequences. Present is a case where the principles of natural justice have been incorporated in the statutory scheme itself, therefore, it is not merely a case of violation of principles of natural justice, but also an action in excess of authority conferred under the law.

11. Viewed from any angle, the action of respondents is void *ab initio* and the impugned order passed by the registering authority is liable to be set aside only on that ground. We find that this aspect of the matter was not appreciated by the learned Single Judge. True it is that the appellant has alternative remedy, however, the law is well settled in plethora of decisions that there are exceptions to this rule where the Writ Court may be inclined to exercise its discretionary jurisdiction despite existence of alternative remedy. One of the exceptional grounds is violation of principles of natural justice. Present is a case of total absence of opportunity of hearing.

12. Therefore, in these circumstances learned Single Judge was not justified in relegating the appellant to exhaust available alternative remedy but the case ought to have been decided on its own merits, though confined to the issue of violation of principles of natural justice, instead of remanding the case. Having gone through the material on record, we are satisfied that the present is a case of complete violation of principles of natural justice which renders the order void *ab initio*. Therefore, instead of remanding the case back to the learned Single Judge, we are inclined to decide the case here itself.



13. Accordingly, decision taken by respondents to suspend registration is declared illegal and the suspension of registration stands revoked forthwith. Respondents, however, have liberty to initiate proceedings afresh in accordance with law.

14. Resultantly, appeal is allowed and the order passed by learned Single Judge is set aside. The writ petition stands allowed in the manner as directed above. Pending application, if any, stands disposed of.

(ASHUTOSH KUMAR),J

(MANINDRA MOHAN SHRIVASTAVA),CJ

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