

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 19TH DAY OF APRIL 2012

BEFORE

THE HON'BLE MR.JUSTICE B.S.PATIL

W.P.No.9186/2012 (T-MVT)

BETWEEN:

Bharatha Matha School
Vivekananda Nagar,
Hosakote Town,
Bangalore Rural District,
Represented by its head Master,
Sri. H. N. Krishna Murthy,
Aged about 47 years.

... PETITIONER

(By Sri. M. P. Srikanth, Adv.)

AND:

1. The State of Karnataka
Transport Department,
Vidhana Soudha,
Bangalore - 560 001.
Represented by its Secretary.
2. The Joint Commissioner for Transport
(Bangalore Urban and Rural)
MSIL Building, Infantry Road,
Bangalore - 560 001.
3. The Senior Inspector of Motor Vehicles
(RTO), K. R. Puram,
Old Madras Road,
Bangalore - 560 049.
4. The Regional Transport Officer (RTO)
K. R. Puram,

Old Madras Road,
Bangalore - 560 049.

... RESPONDENTS

(By Sri. K. M. Shivayogiswamy, Adv.)

This writ petition is filed under Articles 226 & 227 of the Constitution of India, praying to quash the interim order dated 12.1.2012 passed on Appeal No.21(tax)2011-12 by the 2nd respondent at Annexure-K.

This petition coming on for Preliminary Hearing, this day, the Court made the following:

ORDER

1. Learned Additional Government Advocate is directed to take notice for the respondents.
2. In this writ petition, petitioner is challenging the Interim orders dated 12.01.2012 and 09.02.2012 passed in appeal No.21(Tax) 2011-12 by the Appellate Authority as per Annexures-K and L. Annexure-M is the consequential notice issued by the 3rd respondent for not depositing the amount in compliance with the Interim order dated 12.01.2012 passed by the Appellate Authority.
3. Petitioner is an educational institution. It has purchased a bus bearing registration No.KA 19 8559 on 31.08.2006 and the same is duly registered with the 4th respondent-Regional Transport Officer (RTO), K.R.Puram, Bangalore. According to



the petitioner, it has obtained permission from the 4th respondent on 01.09.2006 to convert the bus from a passenger vehicle to an educational institution bus.

4. On 08.09.2010, when the driver of the bus, after completion of school working hours was taking the vehicle from the garage to the institution, the bus was intercepted and inspected by the Motor Vehicle Inspector. He issued a check report mentioning several irregularities.

5. A demand notice was issued on 05.10.2010 by the RTO, K.R.Puram directing the petitioner to pay tax amount of ₹.4,89,260/-. This was called in question before this Court by filing W.P.Nos.27821-24/2011. The said writ petitions were disposed of on 18.10.2011 with a direction to treat the demand made as a show cause notice. Petitioner was permitted to file statement of objections and the RTO was directed to consider the objections and dispose of the matter. Thereafter, the order dated 8.12.2011 came to be passed by the RTO holding that the petitioner was liable to pay ₹.4,89,260/-. This has been challenged before the Appellate Authority, namely, the Joint Commissioner (Transport) Urban and Rural District at Bangalore in Appeal No.21/2012. After hearing the petitioner,



the Appellate Authority granted an interim order on 12.01.2012 on condition that the appellant deposits 50% of the tax and penalty and furnished a bank guarantee from any nationalised bank for the remaining amount before the respondent, making it clear that if the condition was not complied within thirty days from the date of receipt of the order, further action would be taken to dispose of the appeal as per law. Petitioner made an application to consider the application which had already been filed seeking exemption from depositing the amount and/or furnishing the bank guarantee. The said application came to be rejected on 09.02.2012. In this background, aggrieved by the interim orders dated 12.01.2012 and 09.02.2012 and the consequent demand made vide Annexure-M, the petitioner has approached this Court.

6. I have heard the learned counsel for the parties and perused the entire materials on record.

7. Learned Additional Government Advocate has taken me through Section 15 of the Karnataka Motor Vehicles Taxation Act, 1957 and Rule 31-A (2) of the Karnataka Motor Vehicles Taxation Rules, 1957.



8. There is a statutory obligation for the petitioner to deposit the tax assessed while filing the appeal subject of course to the rider that the Appellate Authority can exempt or waive part of the amount to be deposited by imposing such conditions as it deemed fit. In the instant case, while granting the interim order, the Appellate Authority has directed deposit of 50% of the tax and penalty and furnish bank guarantee for the rest of the amount. Subject to the same interim stay has been granted. The case of the petitioner is that though he had filed an application for waiver of the condition, the same was not considered and direction was issued to deposit 50% of the tax.

9. Learned counsel for the petitioner submits that on merits, petitioner has got a good case inasmuch as permission was indeed granted to convert the vehicle from passenger vehicle to educational institution bus. He further submits that since the petitioner is an educational institution, it is unnecessary to put the rigor of deposit of the substantial amount as it will satisfy the ends of justice if the petitioner is made to furnish bank guarantee for a reasonable entire sum. This is strongly resisted by the learned Additional Government Advocate.

40

10. Having regard to the facts and circumstances of the case and in view of the important aspect that is pointed out by the learned counsel for the petitioner that the Joint Commissioner has not taken note of the status of the petitioner and the permission granted for conversion of the vehicle to educational institution bus from passenger bus and also keeping in mind the nature of the irregularities pointed out as per the check report, I am of the view that ends of justice will be met if 25% of the amount demanded is directed to be deposited within 30 days from today and for the remaining amount, a direction is issued to give a bank guarantee within the said period. If the petitioner complies with this direction, the Appellate Authority will consider the appeal on merits. In the event of the petitioner failing to comply with this direction, the Appellate Authority will be free to dispose of the appeal in accordance with law.

Learned Additional Government Advocate is permitted to file memo of appearance within three weeks.

**Sd/-
JUDGE**