

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 5060 of 2021

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M/s Kumar Distributors Pvt Ltd., Bailey Road, Near Shaguna More, Patna-801503 (Opp DAV School), through its Director, Vikash Singh Male, aged about 42 Years, Son of Umeshwar Prasad Singh and Resident of North S.K. Puri, Boring Road, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Transport, Government of Bihar, New Secretariat, Patna.
2. The Principal Secretary, Department of Transport, Government of Bihar, New Secretariat, Visheshwaraiya Bhawan, Patna.
3. The Officer on Special Duty, Department of Transport, Government of Bihar, Visheshwaraiya Bhawan, New Secretariat, Patna.
4. District Transport Officer, Patna, Regional Transport office, Biscoman Towers, Gandhi Maidan, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Akashdeep
		Mr. Shyameshwar Kumar Singh
For the Respondent/s	:	Mr. Rakesh Prabhat (AC to SC 21)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

Date : 22-02-2022

This application has been taken up for online hearing through video conference because of COVID-19 pandemic restrictions.

The petitioner has sought quashing of the communication of respondent no. 4 dated 23.11.2020 refusing to register the vehicles of the petitioner-company in the name of the petitioner-company.



Petitioner has also prayed for issuance of a writ in the nature of a writ of mandamus commanding the respondents to register the vehicles of petitioner-company in the name of the petitioner-company and for consequential issuance of the certificate of registration.

The petitioner is a company carrying on the business of sale and purchase of two-wheeler and four-wheeler vehicles, having an authorised distributionship for Honda Motors (India) Private Limited.

The modus of petitioner's business operation, as stated in the writ petition, is that vehicles are purchased from the manufacturer by paying the entire cost of vehicles. The petitioner-company, therefore, becomes the absolute owner of such motor vehicles. Apart from receiving a commission on every sale effected by the petitioner as a dealer, it also gets exclusive right to repair, service and provide maintenance of the vehicles manufactured by the company through a service centre established with the aid and technological assistance from the manufacturer. Infrastructural support is also provided by the manufacturer.

The driving of vehicles, as per Section 39 of the Motor Vehicles Act 1988 ('Act' for brevity), is prohibited unless it is registered in accordance with the Act under a valid certificate of



registration which is to be displayed on the vehicle, in the manner prescribed.

The case of the petitioner is that under order of the Apex Court dated 24.10.2018 in the case of ***M.C. Mehta vs. Union of India Writ Petition(s) (Civil) No.(s) 13029/1985***, a ban was imposed on sale and registration of motor-vehicles conforming to Bharat Stage IV (BS-IV) emission standards, with effect from 01.04.2020.

Since 24.03.2020, national lockdown was imposed due to global Covid-19 pandemic, the Apex Court in its proceedings dated 27.03.2020, allowed registration of vehicles sold up to 30.04.2020. However, for Delhi and NCR sale and registration of BS-IV vehicles was disallowed.

On 31.07.2020, the matter was again considered by the Apex Court, when the Apex Court took notice of a large number of sales having been effected during the lockdown period, ***inter se*** dealers. The Apex Court was of the opinion that the sale of vehicles ***inter se*** dealers had been effected in a large number taking undue advantage of the order dated 27.03.2020, and directed the authorities throughout India not to register vehicles conforming to BS-IV emission standards.

The meaning and purport of the orders passed by the Hon'ble Supreme Court, noted above, are not in dispute by the parties.



The petitioner had purchased four vehicles conforming to BS-IV emission standards from Honda Motors (India) Private Limited. Two out of these four vehicles were sold to customers. The remaining two vehicles are said to have been retained by the petitioner for its own use by effecting a sale in its own favour.

It is the specific case of the petitioner that it had deposited the requisite fee and taxes for registration of all these four vehicles, which were duly accepted by the respondent authorities. It is also asserted that the petitioner had uploaded the required documents on the e-Vahan portal, on or before the cut-off date fixed by the Hon'ble Supreme Court (31.03.2020). However, due to national lockdown these four vehicles could not be registered.

While the petitioner was awaiting registration of the vehicles, the Transport Department, Government of Bihar issued a communication to all District Transport Officers for ensuring compliance of order dated 13.08.2020 passed by the Hon'ble Supreme Court in the case of *M.C Mehta (supra)*.

Subsequently a communication dated 07.09.2020 was also issued by the Transport Department regarding registration of BS-IV vehicles as per order dated 13.08.2020 passed in the case of *M.C. Mehta (supra)* by the Hon'ble Supreme Court of India. This time, however, there is conscious omission of any instruction not to



register vehicles in the name of any company/firm/organisation.

The petitioner has placed heavy reliance on this communication dated 07.09.2020 (Annexure-4) to contend that the same ensure the correct implementation of the Apex Court order dated 13.08.2020 passed in *M.C Mehta (supra)*. Once the application was uploaded on e-Vahan portal and the requisite fee and taxes paid, prior to the cut-off date (31.02.2020), the authorities were required to allow registration of all four vehicles of the petitioner irrespective of the fact that two of the said vehicles were admittedly to be registered in the petitioner's name, pursuant to a sale transaction by the petitioner (dealer) to the petitioner (dealer).

It would be relevant to take note of the fact that two out of these four vehicles which the petitioner (dealer) had sold to purchasers, were admittedly registered by the authorities. The remaining two which the petitioner (dealer) had purchased in his own name, however were disallowed under the impugned communication dated 23.11.2020.

Order dated 23.11.2020 reads as follows:

उपर्युक्त विषय के संबंध में सूचित करना है कि माननीय सर्वोच्च न्यायालय, के न्यायादेश के आलोक में परिवहन विभाग द्वारा पत्रांक 5992 दिनांक 21.08.2020 के द्वारा दिये गए निदेश में स्पष्ट वर्णित है कि एक डीलर से दूसरे डीलर के नाम से अथवा डीलर (स्वयं) के नाम से विक्रय कागजात होने की स्थिति में निबंधन नहीं किया जाए। अतः उक्त दानों वाहनों का निबंधन नहीं किया जा सकता है। साथ ही यह भी



स्पष्ट करना है कि उक्त मॉडल का Launching काफी पूर्व में हो चुका है।

-यथोक्त।

The petitioner's counsel has strongly urged that refusal to register these two vehicles is unsustainable, for the reason that prior to cut-off date (31.03.2020) requisite fee and taxes for registration of these two vehicles had been uploaded on the e-Vahan portal, in terms of the order dated 13.08.2020 passed in the case of **M.C. Mehta** (*supra*), and thus, the petitioner was entitled for registration of these two vehicles accordingly.

The learned State counsel, referring to the affidavits filed on behalf of the State, on the other hand, submits that order of the Apex Court dated 13.08.2020 clearly restricts transfer *inter se* dealers. In this connection specific reliance is placed on the first paragraph of the order dated 13.08.2020 which reads as follows:

“Heard learned counsel for the parties at length.

Considered the rival arguments. The lockdown was imposed from 25.03.2020. The sales data has been furnished for the lockdown period by FADA and Non-FADA Members for the period with effect from 15.03.2020. There are unusually a large number of transactions, which had taken place during the lockdown period inter se dealers, which cannot be recognised for the purpose of actual sales and



registration. We disallow the registration on the basis of such kind of transactions inter se dealers. As they are not sales to the customers and registration of these kinds of vehicles cannot be allowed, there is a ploy to misuse of the order and such vehicles cannot be permitted to be sold in market now. They are not genuine transactions of the sale to the customers. Hence, no registration of such kind of vehicles shall be made, which were sold inter se dealers during the lockdown period.” (emphasis ours)

The petitioner, however, relies upon the later part of the order which reads as follows:

“...There are still stated to be a large number of sales which have been made and uploaded on the E-Vaahan Portal, even temporary registrations were made. Their registration during the lockdown could not be made. Hence, we allow registration of such vehicles only which could not be registered during lockdown in the month of March, 2020 and for no other reason...”

The order dated 13.08.2020 clearly mandates no registration of vehicles which were sold *inter se* dealers during the lockdown period.



The Court is in agreement with the submission advanced by the State counsel, in support of which reliance has also been placed on subsequent order dated 30.11.2021 passed in the case of **M.C. Mehta (supra)** which reads as follows:

“We have perused an Order passed by this Court on 15.06.2020, in which it was made clear that no registration any BS-IV vehicles can be made without the permission of this Court. Learned counsel appearing for the applicants submitted that relegation of the applicants to the High Courts would not serve any purpose in view of the Order dated 15.06.2020.

Sales of the vehicles which have been uploaded on e-Vahan portal before 31.03.2020 can be registered by the concerned transport authorities provided that the temporary/permanent registration was granted before the cut off date, i.e. 31.03.2020. The concerned transport authorities are directed to carefully scrutinize the records to ensure that the sales are genuine and have taken place prior to 31.03.2020. (emphasis ours)

Interlocutory Applications stand disposed of.”

By this order, the Apex Court has cast a duty upon the Registering Authority to carefully scrutinise the records to ensure



that the sales are genuine. This observation has to be read in furtherance of the earlier order dated 13.08.2020 which clearly holds that sales which are not made to customers and which are *inter se* dealers cannot be allowed and have been held to be “**Not Genuine**” transactions.

This Court is bound by the mandate and observations of the Hon’ble Apex Court in these two orders in so far as transactions *inter se* dealers, as in the instant case, which have been held to be “**Not Genuine**” and registration has been barred.

The later part of order dated 13.08.2020 which is relied upon by the petitioner’s counsel clearly applies to transaction of sales to customers, and not dealers *inter se*, subject to the conditions contained therein to the effect that the sales were uploaded on the e-Vahan portal; and even if temporary registration was made. It is the petitioner’s own case that registration of two out of four vehicles sold to customers in respect to which the sale had been uploaded on the e-Vahan Portal prior to the cut-off date has been allowed.

The grievance of the petitioner or claim that the other two vehicles which have been sold by the petitioner (dealer) to himself (dealer) is clearly a transaction *inter se* dealers which has been stopped under the orders of the Hon’ble Apex Court as noted above.

This Court does not find any infirmity in the order dated



23.11.2020 rejecting the petitioner’s claim for registration of these two vehicles.

The writ petition is devoid of merit and the same is dismissed.

(Madhuresh Prasad, J)

I agree
Chakradhari Sharan Singh, J:

(Chakradhari Sharan Singh, J)

SUMIT/-

AFR/NAFR	NAFR
CAV DATE	01.02.2022
Uploading Date	22.02.2022
Transmission Date	NA

