

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) 2245/2022
CM 5624/2022

Reserved on: 17.10.2022
Pronounced on: 21.09.2022

Green Valley Sumo Taxi Stand UnionPetitioner(s)

Through: Mr. Ateeb Kanth, Advocate
V/s

U.T of J&K and OthersRespondent(s)

Through:

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

1. In this petition the petitioner has inter-alia prayed for the following reliefs:

- (i) *To issue writ of mandamus direct respondents to grant fitness certificates to the petitioners following the mandate of Govt. orders dated 31.10.2018 and 15.01.2020.*
- (ii) *To issue writ of mandamus direct the respondent no. 1 and 2 or its subordinate officers to implement the order issued by Govt. of India, Ministry of Roads, Transport and Highways dated 31.10.2018 with regard to fitment of Vehicle Location Tracking Devices implementation of Development, Customization and Deployment of State wise vehicle tracking platform for safety and enforcement as per the AIS-140 specifications in States/UTs dated 15.01.2020, whereby Public Service Vehicles (All four wheeled or Higher*

Passenger Carrying Vehicles) W.E.F 1st April, 2018 be given exemption.

2. The case set up by the petitioner, who claims to be a Union of Sumo and Taxis, is that the Sumo and Taxis owned by the members of the petitioner association are registered before 31st December, 2018, and, therefore, they are exempted from the fitment of Vehicle Location Tracking Devices for short (VLTD) and Panic Buttons till appropriate infrastructure like Command and Control centers to monitor and track the vehicles is established in the Union Territory of Jammu and Kashmir. Strong reliance is placed by the petitioner on the communication of the Government of India, Ministry of Roads, Transport and Highways dated 31st October, 2018. It is submitted that the communication dated 31st October, 2018, refers to notification No. S.O 1663(E) dated 18th April, 2018, whereby the Government of India, in exercise of powers conferred by Clause (a) of Sub-Section 3 of Section 110 of the Motor Vehicles Act 1988 (the Act), has exempted all Public Service Vehicles from the provisions of Rule 125-H of the Central Motor vehicles Rules 1989, providing for equipping the Public Service Vehicles with Vehicle Location Tracking Device (VLTD) and one or more Emergency Panic Buttons up to 1st of April, 2019. It is submitted that despite their being a communication dated 15th January, 2020, issued by Ministry of Roads, Transport and Highways, to all the Principal Secretaries/Transport Commissioners of States/Union Territories for formulating scheme for implementation of “Development, Customization, Deployment and Management” of State wise vehicle tracking platform for safety and enforcement etc., the Government of Union Territory of Jammu and Kashmir has not so far framed any such scheme. Absent such scheme, the

petitioner cannot be compelled to equip their vehicles registered prior to 31st December, 2018, with the VLTD and Emergency Panic Buttons. The petitioner claims that their vehicles are due for issuance of fitness certificates, but because of the inability of the petitioner to equip their vehicles with VLTD and Emergency Panic Buttons, the respondents have declined to issue the certificate of fitness in their favour. Learned counsel for the petitioner argues that the in-action of the respondents to grant certificate of fitness in favour of the petitioner has deprived them of their right to livelihood guaranteed by Constitution of India in terms of Article 21 thereof.

3. Having heard learned counsel for the petitioner and perused the material on record, I am of the view that this petition deserves to be dismissed for more than one reason.

4. The petitioner has not come to this Court with clean hands. Prior to filing of this writ petition, the petitioner had approached this Court through the medium of WP(C) No. 1834/2022, essentially claiming the same reliefs as are prayed for in this petition. For facility of reference, the reliefs prayed for in WP(C) No. 1834/2022, are reproduced here under:

i. To issue writ of certiorari quashing the order No. ARTO/PUL/2022/512 dated 17.08.2022 issued by Assistant Regional Transport Officer, Pulwama.

ii. To issue of mandamus directing the respondent no. 1 and 2 or its subordinate officers to implement the order issued by Govt. of India, Ministry of Roads, Transport and Highways dated 31.10.2018 with regard to fitment of Vehicle Location Tracking Devices and also implement

the scheme for implementation of Development, Customization and Deployment of State wise vehicle tracking platform for safety and enforcement as per the AIS 140 specifications in States/UTs dated 15.01.2022, whereby Public Service Vehicles (All four wheeled or Higher Passenger Carrying Vehicles) W.E.F 1st April, 2018 be given exemption.

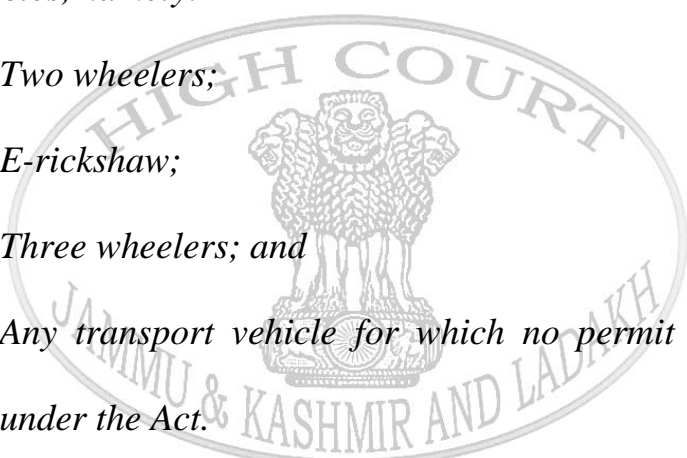
5. From reading of the two petitions and the prayers made therein, it clearly transpires that the members of petitioner association, who claim to have registered their vehicles prior to 31st December, 2018, are not willing to get their vehicles fitted with the VLTD and Emergency Panic Buttons, as is mandated by Rule 125-H of the Central Motor Vehicles Rules, 1989. The claim of the petitioner in both the petitions is that the Government of India in terms of S.O 1663(E) dated 18th April, 2018, has exempted all Public Service Vehicles from provisions of Rule 125-H, pertaining to fitment of Location Tracking Devices (VLTD) and one or more Emergency Buttons up to 1st April, 2019. And in terms of communication dated 31st October, 2018, read with communication dated 15th January, 2020, issued by Government of India, Ministry of Roads, Transport and Highways, the States and Union Territories have been called upon to frame a proper scheme for implementation of the provisions and to raise necessary infrastructure in respect of providing the Command and Control centers to monitor and track the vehicles. In the earlier writ petition, i.e. WP(C) 1834/2022, this Court was not persuaded to pass interim directions and instead a notice was issued to the respondents to file their objections within four weeks. Feeling

dissatisfied with the order passed by this Court, dated 30th August, 2022, declining grant of interim relief, the petitioner filed an application for withdrawal of the said writ petition with liberty to file fresh only if the cause survived. The writ petition was sought to be withdrawn on the ground that the respondents had assured to redress the genuine grievances of the petitioner.

6. Be that as it may be, this Court accepted the application and vide its order dated 30th September, 2022, dismissed the petition as withdrawn with liberty to file fresh one only if the cause survived. There is nothing brought on record by the petitioner in the instant petition to demonstrate as to what happened after the withdrawal of the writ petition. As a matter of fact, the first petition was withdrawn on 30th September, 2022, and the instant petition was filed on 7th October, 2022, without waiting for consideration of the grievances of the petitioner by the respondents. As a matter of fact, there was no assurance given by the respondents to consider the grievance of the petitioner. Earlier writ petition was withdrawn with liberty to file fresh one on the same cause of action, probably with a view to take another chance to get the interim relief. Such practice resorted to by the litigants is strongly deprecated. Learned counsel for the petitioner, who has appeared in both the matters, needs to be careful in future, lest it may create an adverse impression about the fairness of the counsel. Leaving it here, I also do not even find any case on merits. Rule 125-H was added in the Central Motor Vehicles Rules, 1989, by way of Central Motor Vehicles (20th Amendment) Rules 2016. Rule 125-H which deals with the requirement for fitment of VLTD and Emergency Buttons, is reproduced as under:

(1) *“All public service vehicles, as defined under clause (35) of Section 2 of the Act, shall be equipped with or fitted with vehicle location tracking device and one or more emergency buttons.*

Provided that this rule shall not apply to the following category of vehicles, namely:-

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- (i) *Two wheelers;*
 - (ii) *E-rickshaw;*
 - (iii) *Three wheelers; and*
 - (iv) *Any transport vehicle for which no permit is required under the Act.*

(2) *The specifications, testing and certification of the vehicle location tracking device and emergency button referred to in sub-rule(1) shall be in accordance with AIS-140:2016, as amended from time to time, till such time the corresponding BIS specifications are notified under the Bureau of Indian Standards Act, 1986 (63 of 1986).*

(3) *The vehicle location tracking device and emergency button referred to in sub-rule (1) shall be fitted by the manufacturer of their dealer or the respective operator, as the case may be, in accordance with AIS-140:2016, as amended from time to time, till such time the corresponding BIS specifications are notified under the Bureau of Indian Standards Act, 1986.”*

7. From reading of the Rule 125-H, it is clear that all Public Service Vehicles except Two Wheelers, Three Wheelers, E-Rickshaw and a Transport vehicle for which no permit is required under the Central

Motor Vehicles Act, 1988, are required to be equipped with or fitted with VLTD and one or more Emergency Buttons. It is true that with a view to give sufficient time to the owners of Public Service Vehicles to comply with the provisions of the Rule 125-H and equip their vehicles with VLTD and one or more Emergency Buttons, the time line for its compliance was extended up to 1st April, 2019. This obviously was in respect of the vehicles which were registered prior to 1st of April, 2019, and were not fitted with the aforesaid devices. True it is that in terms of S.O 5454(E) dated 25th October, 2018, the Government of India in exercise of powers conferred by Clause (a) of Sub-Section 3 of Section 110 of Motor Vehicles Act, 1988, and in suppression of S.O 1663(E) dated 18th April, 2018, exempted all the Public Service Vehicles registered up to 31st day of December, 2018, up to 1st day of January, 2019, for complying with Rule 125-H and equip their vehicles with the requisite devices. It is true, by virtue of aforesaid S.O the States or Union Territory Governments, were given power to notify the date for compliance of requirement after the expiry of time period of exemptions specified in the S.O, in respect of Public Service Vehicles registered up to 31st December, 2018. However, no notification of the Government of Jammu and Kashmir, has been brought to my notice, whereby the exemption to comply with Rule 125-H has been granted by the Union Territory of Jammu and Kashmir. Rather one would find a copy of Minutes of Meeting chaired by Transport Commissioner dated 1st April, 2022, whereby in respect of “installation of Vehicle Location Tracking Devices”, a decision has been taken to direct all the RTO’s and ARTO’s to ensure the strict compliance of S.O No. 5453(E) dated 25th October, 2018. It was also made clear that process of fitment VLTD and one or

more Emergency Buttons, would be completed within a period of four months and the Public Service Vehicle owners are free to choose or install VLTD and one or more Emergency Buttons of their choice from any of the manufacturers as long as it is type approved as per the Central Motor Vehicles Rules, 1989. This decision was taken on 1st April, 2022, and four month period granted has expired on 1st August, 2022. In the absence of any further exemption granted by the Union Territory of Jammu and Kashmir, the petitioner cannot ply the Public Service Vehicles unless they are fitted with the requisite devices and are in compliance with Rule 125-H of the Central Motor Vehicles Rules, 1989.

8. This Court cannot issue a writ of mandamus to the respondents for acting contrary to the statutory Rules. It is true that the Government of Union Territory of Jammu and Kashmir is empowered to grant exemption having regard to the relevant facts and circumstances and provide reasonable time to the petitioner to have their Public Service Vehicles fitted with the requisite devices to comply with the Rule 125-H of the Central Motor Vehicles Rules, 1989. This is however, left to be determined by the Competent Authority having regard to the attending facts and circumstances. That apart, the petitioner has lost its right to invoke the extraordinary jurisdiction of this Court by being unfair and attempting to play with the process of law.

9. For the foregoing reasons, I find no merit in this petition and the same is, accordingly, dismissed. The dismissal of the writ petition, however, shall not disable the petitioner from making a representation in this regard to the competent authority for seeking reasonable extension of time, so that they are in a position to comply with Rule 125-H of the Central Motor Vehicles Rules, 1989. Needless, to say that in case any

such representation is made, the Competent Authority shall accord it due consideration having regard to the difficulties pointed out by the petitioner association.

(SANJEEV KUMAR)
JUDGE

SRINAGAR
21 .10.2022
"Mir Arif"

Whether the order is speaking : Yes/No
Whether the order is reportable: Yes/No

