

HIGH COURT OF M.P. BENCH AT INDORE**W.P. No.6624/2018**

(Mahesh Palod V/s. Assistant Commissioner (License) & Ors.)

Indore dt :-28.02.2019

Mr Ayush Jain learned counsel for petitioner .

Mr Aniket A Naik learned counsel for respondents.

Heard.

2. The petitioner has filed the present petition being aggrieved by order dated 26.4.2017, passed by the Asst. Commissioner (License) Municipal Corporation, Indore, (Respondent no.1) whereby the application submitted by him in order to obtain Money Lenders licence under section 11-B of the Madhya Pradesh Money-Lenders Act, 1934, has been rejected.

3. Facts of the case in short are as under :-

The petitioner is permanent resident of Indore and the Municipal Corporation Indore is body incorporated under the provisions of Municipal Corporation Act, 1956, represented through Commissioner. According to the petitioner, in the year 2007-08 and 2008-09 he had a license to do the money lending business Thereafter, he submitted an application on 24.01.2014, before the respondents for obtaining the registration certificate of money lending license . Thereafter, he again submitted an application on 01.08.2015 in prescribed format along with the requisite fee. Thereafter, he visited the office of respondents and also served a legal notice. Despite of the

aforesaid, when his application was not considered he filed a Writ Petition No.6259/2016 before this high court . By order dt.9.9.2016, the writ petition was disposed of with a direction to the respondents to consider the application in accordance with law. In compliance of the order of the High Court, the petitioner again submitted a representation and finally by impugned order dated 26.4.2017, the respondent No.1 has rejected the application due to registration of three criminal cases against him. Hence, the present petition before this court.

4. The petitioner has assailed the impugned order on the ground that under Section 11(B) of the M.P. Money Lenders Act, 1934, every person who carries or intends to carry the business of money lending is required to get himself registered by submitting an application to the registering authority of that area. There is no requirement of character certificate and there is no discretion left to the registering authority to reject the application. Therefore, the learned registering authority on an exterior consideration has wrongly rejected the application. The petitioner is having fundamental right to do the business and the impugned action of the respondents is in violation of Article 14, 21 and 41 of the Constitution of India.

5. The respondents have filed a return by submitting that initially the Tehsildar was a competent authority to issue money lending license. Thereafter, by way of Madhya Pradesh Money-Lenders (Amendment) Act, 2000, word

'Tehsildar' has been replaced by 'Registering Authority' and as per the definition of registering authority the Municipal Corporation has been made registering authority for urban areas. A brief note was prepared by the committee and forwarded to the Secretary Mayor-in-council vide letter dated 9.10.2017. Thereafter, the Mayor-in-council has passed the Resolution No.81 on 10.10.2017, approving the mandate and the brief prepared by the committee for grant of license under Madhya Pradesh Money-Lenders Act, 1934. Thereafter, vide order dated 2.4.2018 the Municipal Corporation has delegated power to issue the license to the respondent No.1.

6. It is further submitted that the Municipal Corporation by way of Resolution has proposed that no license be issued to any money lenders who has a negative character (criminal antecedents) verified by the police. The petitioner applied for issuance of grant of money lending license and thereafter, the respondents have requisitioned information for his character verification from the Station In-charge Police Station, Sanyogitaganj. The police Sanyogitaganj vide letter dated 4.4.2017, has informed that there are 3 criminal cases are pending against the petitioner in the matter of extortion, voluntary causing hurt trespass and criminal intimidation for recovery of loan amount. Since the petitioner is not having the character certificate issued by the police therefore, the respondents have rightly denied the license to him. It is

further submitted that if the impugned order is set aside that would amount to setting aside the Resolution dated 14.11.2017, passed by the Mayor-in-council, which is not permissible under Article 226 of the Constitution of India. The petitioner is also having remedy under Section 403 of the Municipal Corporation Act to file an appeal before the appellate committee. Hence, the petition is liable to be dismissed.

7. Mr Ayush Jain Learned counsel appearing for the petitioner argued that petitioner is having fundamental right to do the business of money lending. As on today, he has not been convicted in any of the offence punishable under the IPC or M.P.Money-Lending Act hence, he cannot be labelled of a person having negative character. Even otherwise, the registering authority is only required to maintain a register of the persons who are engaged in the money lending business. The Municipal Corporation is not having any authority to pass a resolution contrary to the provisions of the Money Lending Act. The statute nowhere give discretion to the registering authority to reject the application. The statute should be read as it is and even the court cannot reframe the legislation by putting certain conditions for issuance of the license. Even if the resolution is passed by the MIC same is no-nest, suffers from colourable exercise of power. In support of his contention, he has placed reliance over the judgment passed by the Apex Court in the case of Kerala

Samsthana Chethu Thozhilali Union V/s. State of Kerala & Ors., (2006) 4 SCC 327 in which the Apex Court has held that when any criteria is fixed by the statute or by a policy and attempt should be made by the authority making the delegated legislation in conformity therewith, subordinate legislation cannot travel beyond the preview of the act. He has further placed reliance over the judgment passed by the Apex court in the case of **St. Johns Teachers Training Institute V/s. Regional Director, national Council for Teacher Education & Anr., (2003) 3 SCC 321** in which it has been held that the power to make subordinate legislation is derived from enabling act and it is a fundamental that delegate on whom such power is conferred as to act within the limits of the authority conferred by the act.

8. Shri Aniket Naik, learned counsel appearing for the respondents emphasised that the petitioner is facing criminal cases in which charges under the provisions of IPC are against him as he was found indulging into the criminal activities for recovery of the loan amount. The Municipal Corporation has passed a resolution prescribing certain conditions for grant of the license within its domain. Under Section 366 of the Municipal Corporation Act, permission of Commissioner is necessary for doing of any trade and business under the license issued by him in a prescribed format. The Municipal Corporation is competent to pass a resolution to regulate the provision of

Municipal Corporation Act and the Rules framed therein. The application of the petitioner has been rejected on the basis of resolution passed by the Mayor-in-Council and if the impugned order is set aside that would amounts to quashing the resolution of the MIC, which is not permissible under Article 226 of the Constitution of India. The Municipal Corporation in the interest of general public has taken a decision to get verified the criminal antecedents of the person applying for money lending license. In order to save innocent public from the clutches and atrocities of money lenders for recovery of the loan, such a decision cannot be said to be an arbitrary decision. In support of his contention, he has placed reliance on the decision of the Apex Court passed in a case of **Maharashtra State Board Transport Corporation V/s. Mangrulpir Jt. Motor Service (P.) Ltd., & Ors., 1971 (2) SCC 222** in which it has been held that in considering the public interest if the Regional Transport Authority would find that the answers furnished by the applicant are not full and complete, it will be constricting the exercise of power of the Regional Transport Authority by denying it authority to ask for additional information for full and detailed consideration of the applications in the interest of the public, no hard and fast rule can be laid down as to how the RTA would act and what limitation of their power will be. He has further placed reliance over the judgment passed by the Apex Court in the case of **Indian Hotel and**

Restaurant Association & Anr. V/s. State of Maharashtra & Anr. reported as (2016) 15 SCC 330 in which the Apex Court has held that the condition relates to the verification of criminal antecedents of the candidates is absolutely necessary in order to engage them to the post of security guard. He has also placed reliance over the judgment passed in the case of **M.J. Shivani & Ors. V/s. State of Karnataka & Ors.** Reported as 1995 (6) SCC 289 wherein it has been held that the licensing authority is conferred with the discretion to impose such condition by notification or order having statutory force or conditions emanating there from as a part thereof as are deemed appropriate to the trade or business as the operation of video games poses a danger to the public peace and order and safety but the public will fall a prey to gaming where they always stand to loose in playing the case of chance. Therefore, the restriction is imposed cannot be said to be arbitrary and unreasonable. It could be gathered from the provisions of the Act and Rules and the total consideration of the relevant provisions in a notification or order or condition of the license.

9. Shri Naik, learned counsel for the respondents has also urged that the Rules framed under United State of Gwalior, Indore and Malwa (Madhya Bharat) Moneylenders Act, Samvat, 2007, are still continued to apply under the M.P. Moneylenders Act, 1934, in which there is a provision of cancellation of the license.

Therefore, once the authority has been given power to issue the license, the same authority is having power to cancel and also deny the license. Hence, the petition is liable to be dismissed.

10. I have given anxious consideration to the rival submissions of the learned counsels for the respective parties, peruse the record, provision of relevant acts and rules and judgments, mention above .

11. The Madhya Bharat Money-Lenders Act, 1934 is an Act incorporated to regulate and control the transaction of money lending business in Madhya Pradesh . Earlier the Madhya Bharat Money lenders Act, Samvat, 2007 was in force along with the Rules framed thereunder. Under Section 11-A every registering authority shall maintain a register of money-lenders in such a form as may be prescribed. Section 11-B provides for registration of money-lenders and issuance of registration certificate. For the ready and better interpretation Section 11A and 11B are reproduced below :-

“[11-A]. Register of money-lenders.- (1)
Every [Registering Authority] shall maintain a register of money lenders in such form as may be prescribed.]

(2) Such register shall be deemed to be a public document within the meaning of the Indian Evidence Act, 1872 (I of 1872), [xxx].

11-B. Registration of money-lenders and registration certificate.-(1) Every person who carries on or intends to carry on the business of money lending shall get himself

registered by an application made to the Registering Authority of that area in which he carries on or intends to carry on such business and, on such registration, the Registering Authority shall grant a registration certificate to him in such form as may be prescribed :

Provided that no person being a firm or partner of a firm of moneylenders shall be so registered except upon production before the Registering Authority of a certified copy of an entry showing such person as the firm or partners, as the case may be, made in the register of firms under Section 59 of the Indian Partnership Act, 1932 (No. 9 of 1932) :

Provided further that no registration certificate shall be granted to carry on the business of money lending in the Scheduled Areas referred to in clause (1) of Article 244 of the Constitution.

(2) The application made under sub-section (1) shall be in writing and shall specify the area in which the applicant carries on or intends to carry' on the business of money lending and such other particulars as may be prescribed.]

12. Under Section 11B of the Act of 1934, it is incumbent upon every person who carries or intends to carry the business of money lending to get himself registered by an application made to the registering authority of that area in which he carries or intends to carry on such business and on such registration, the registering authority shall grant a registration certificate to him. As per definition of 11A and 11B there is mandatory requirement of maintenance of register of money-lenders and it is

incumbent upon every person to get himself registered by an application made to the registering authority. On such registration, the registering authority shall grant a certificate of registration to him. It is important to mention here that no rules have been framed under the Money Lending Act, 1934, prescribing the procedure for grant of license. No conditions for grant of licence have been prescribed under Section 11B. The certificate issued by the Tehsildar prior to the commencement of Madhya Pradesh Money-Lenders (Amendment) Act, 2000 has been saved and shall in continue to be in force for the period it was granted. Section 11F prescribed the power to carry on the business without registration of certificate, but it does not prohibit or invalidate or isolate the transaction of money-lending. There is a provision of penalty for contravention of the provision of Section 2A and Section 3(1)(c) of the Act of 1934. No suit for recovery of loan advance by the money lender shall proceed in civil court until he holds the valid registration certificate if he is carrying on a business of money lending. Therefore, the registration and certificate is required to do the business of money lending and to file a civil suit for recovery of the loan amount.

13. Section 11C mandates that person who makes application under Section 11B shall pay the prescribed registration fee. As per sub-section 2 a registration made at the request of applicant be granted for a one year or two

years. Therefore, as per co-joint reading of Section 11B and sub-section 2 of 11(c), the registration certificate issued at the request of applicant can be granted for a period of one year or two years. There is a mandatory condition for grant of registration certificate, but that is after registration by registering authority. As per sub-section 1 of Section 11B, after the receipt of the application from any person, the registering authority of that area on such registration shall grant a registration to him. Therefore, there is no mandatory condition for registration, but after registration, it is mandatory to issue registration certificate. Otherwise, the law makers would have directly provided that upon receipt of an application, the registering authority shall issue a registration certificate. Therefore, under Section 11B, it is always a discretion of registering authority to issue a certificate or not, therefore, the contention of the learned counsel for the petitioner is hereby rejected that upon receipt of the application, it is mandatory for the registering authority to issue a certificate, without imposing any condition.

14. Initially, the Tehsildar was a registering authority. Thereafter, the said word Tehsildar has been replaced by the word registering authority and the registering authority has been notified as per the size of local area. The Municipal Corporation has been made the registering authority for the urban areas. As per Section 7 of the Municipal Corporation Act, 1956, there shall be a

constituted Municipal Corporation for a larger urban area in accordance with the provision of the Act. The Commissioner is one of the Municipal authorities under Section 6(d) of the Municipal Corporation Act, charged with carrying out with the provision of this Act.

15. Section 54 of the Municipal Corporation provides the provision of appointment of Commissioner by the State Government for the period of 5 years. Section 55 of the Municipal Corporation gives power to the Commissioner being a pre executive officer.

16. Chapter 8 of the Municipal Corporation Act, deals with the general provision for carrying on the Municipal administration and under Section 366, whenever it is prescribed by under this Act that permission of Commissioner is necessary for doing any act, such permission shall be in writing. Every license and written permission granted under this Act shall be signed by the Commissioner. Sub-section 5 of Section 366 provides that any license or written permission granted under this Act or any under Rules or any bye-laws made thereunder at any time could be suspended or revoked by Commissioner if any of its condition or restriction is infringed or breached. The power to suspend and revoke has also been granted under sub-section 6 of Section 366.

17. Since the money-lending is a business within the area of any Municipal Corporation therefore each Municipal Corporation is having right to control the manner of the

business, therefore, the Corporation is also having power to prescribe the conditions to do the said money-lending business. Municipal Corporation Indore has imposed one of the condition for declaration of a character verification by the applicant before starting the business of money lending which cannot be said to be arbitrary and contrary to the provisions of Money Lending Act and Municipal Corporation Act.

18. When the Municipal Corporation has been made the registering authority, under the M.P. Money Lenders Act, 1934, for issuing the certificate then the Municipal Corporation is bound to act under the provisions of Municipal Corporation Act, 1956, Rules and Bye-laws. Under Section 69(4) of the Municipal Corporation Act, any power, duties, function conferred upon the Corporation by this Act may be exercised by any Municipal Officer empowering him in writing in this behalf under Section 69(3) subject to the approval of sanction of the Corporation or Mayor-in-council, entire execution power for the purpose of carrying out the provision of Act vest in the Commissioner. Therefore after becoming registering authority by virtue of power conferred under section 69 (3) and (4), the mayor-in-council by resolution dated 10.10.2017 and 14.11.2017 has appointed respondent No.1 as registered authority. By way of resolution it has also been resolved that the Money Lenders is required to deposit the fee for registration under the Money Lenders Act and separate fee to

obtain a trade license under the Municipal Corporation Act. Therefore, even if under the M.P. Money Lenders Act, 1934 there is no condition for obtaining a money lending license, but in order to do the business or trade under the Municipal Corporation Act, 1956 the Municipal Corporation is certainly competent to impose the conditions in the public interest.

In the case **M.J. Sivani v. State of Karnataka**, reported in (1995) 6 SCC 289, it has been held that :

19. The licensing authority, therefore, is conferred with discretion to impose such restrictions by notification or order having statutory force or conditions emanating therefrom as part thereof as are deemed appropriate to the trade or business or avocation by a licence or permit, as the case may be. Unregulated video game operations not only pose a danger to public peace and order and safety; but the public will fall a prey to gaming where they always stand to lose in playing the games of chance. Unless one resorts to gaming regularly, one can hardly be reckoned to possess skill to play the video game. Therefore, when it is a game of pure chance or manipulated by tampering with the machines to make it a game of chance, even acquired skills hardly assist a player to get extra tokens. Therefore, even when it is a game of mixed skill and chance, it would be a gaming prohibited under the statute except by regulation. The restriction imposed, therefore, cannot be said to be arbitrary, unbridled or uncanalised. The guidance for exercising the discretion need not ex facie be found in the notification

or orders. It could be gathered from the provisions of the Act or Rules and a total consideration of the relevant provisions in the notification or order or conditions of the licence. The discretion conferred on the licensing authority, the Commissioner or the District Magistrate, cannot be said to be arbitrary, uncanalised or without any guidelines. The regulations, therefore, are imposed in the public interest and the right under Article 19(1)(g) is not violated.

20. It is true that the owner or person in charge of the video game earn livelihood assured under Article 21 of the Constitution but no one has the right to play with the credulity of the general public or the career of the young and impressionable age school or college-going children by operating unregulated video games. If its exhibition is found obnoxious or injurious to public welfare, it would be permissible to impose total prohibition under Article 19(6) of the Constitution. Right to life under Article 21 does protect livelihood, but its deprivation cannot be extended too far or projected or stretched to the avocation, business or trade injurious to public interest or has insidious effect on public morale or public order. Therefore, regulation of video games or prohibition of some video games of pure chance or mixed chance and skill are not violative of Article 21 nor is the procedure unreasonable, unfair or unjust.

19. The Corporation has rightly decided to obtain the following documents in order to grant the registration certificate to do the business of money lending :-

कार्यालय नगर पालिक निगम इन्दौर

(लायसेंस विभाग)

संक्षेपिका

विषय : साहूकारी रजिस्ट्रेशन प्रमाण पत्र जारी करने के संबंध में।

म.प्र. शासन द्वारा साहूकारी अधिनियम 1934 यथा संशोधित अधिनियम 2000 के तहत नगरी निकायों को साहूकारी रजिस्ट्रेशन प्रमाण पत्र जारी करने के अधिकार दिये गये हैं। पूर्व में नगर पालिका निगम इंदौर द्वारा साहूकारी कार्य के लायसेंस नगर पालिका अधिनियम 1956 की धारा 366 के अंतर्गत व्यवसायिक श्रेणी में वर्ष 2013-2014 तक जारी किये गये हैं। साहूकारी अधिनियम के तहत ही साहूकारी रजिस्ट्रेशन प्रमाण पत्र जारी किये जाने की जानकारी प्राप्त होने पर ऐसे व्यवसायियों को नगर पालिका अधिनियम 1956 की धारा 366 के अंतर्गत ट्रेड लायसेंस वर्ष 2014-15 में जारी किये गये एवं न ही नवीनीकरण (रिन्युवल) किये गये। म.प्र. साहूकार अधिनियम 1934 यथा संशोधित अधिनियम 2000 में वर्णित प्रावधान अनुसार नगरीय क्षेत्र के लिये नगर निगम/नगर पालिका को रजिस्ट्रीकर्ता प्राधिकारी नियुक्त किया गया है। साहूकारी अधिनियम की धारा 11 में रजिस्टर का संधारण, रजिस्ट्रीकरण फीस अवधि आदि का प्रावधान है। साहूकारी रजिस्ट्रीकरण प्रमाण पत्र अन्य नगरीय निकाय जैसे ग्वालियर एवं जबलपुर नगर निगम, द्वारा जारी किये जा रहे हैं। संबंधित निकाय से प्राप्त जानकारी संलग्न है। अतः उक्तानुसार नगर निगम इंदौर के द्वारा भी म.प्र. साहूकार अधिनियम 1934 यथा संशोधित अधिनियम 2000 के प्रावधान के तहत साहूकारी रजिस्ट्रेशन प्रमाण पत्र लायसेंस विभाग नगर निगम इंदौर द्वारा नियमानुसार जारी किया जाना प्रस्तावित है:-

1. म.प्र. साहूकारी अधिनियम 1934 यथा संशोधित अधिनियम 2000 के प्रावधान के अंतर्गत साहूकारी रजिस्ट्रेशन प्रमाण पत्र नगर निगम इंदौर द्वारा नगरीय क्षेत्र के लिये जारी किया जावेगा।
2. साहूकारी रजिस्ट्रेशन प्रमाण पत्र हेतु रजिस्ट्रीकरण फीस के साथ में ट्रेड लायसेंस शुल्क रुपये 3000/- प्रतिवर्ष के मान से लिया जाना प्रस्तावित है।
3. साहूकारी रजिस्ट्रेशन प्रमाण पत्र की अवधि एक वर्ष समाप्ति एवं प्रत्येक वित्तीय वर्ष की समाप्ति के पूर्व रिन्युवल कराया जाना आवश्यक होगा।
4. साहूकारी रजिस्ट्रेशन प्रमाण पत्र में आवेदक द्वारा संलग्न प्रारूप में पूर्ण भरा हुआ आवेदन लायसेंस विभाग में प्रस्तुत किया जायेगा। आवेदन के साथ निम्न त्रिस्तरीय अधिकारियों की गठित समिति के अभिमत अनुसार अभिलेख प्राप्त किया जाना उचित होगा :-
1. निर्धारित आवेदन पत्र
2.
3. चरित्र प्रमाण पत्र (पुलिस विभाग से)
4. आय प्रमाण पत्र (राजस्व विभाग कलेक्टर कार्यालय से)
5. वर्तमान वर्ष की मकान/फर्म की टेक्स रसीद की फोटो प्रति
6. मकान मालिक की सहमति पत्र (किरायेदार होने की स्थिति में)
7. नजरी नक्शा (लोकेशन मेप)
8. पंजीयन प्रमाण पत्र की फोटो प्रति (यदि पूर्व में सक्षम प्राधिकारी/तहसीलदार द्वारा जारी किया गया हो)
9. नगर निगम द्वारा जारी व्यवसायिक लायसेंस की रसीद या प्रमाण पत्र की छायाप्रति।

उपरोक्त अभिमत के अतिरिक्त विभागीय मत अनुसार नगर निगम के लायसेंस विभाग द्वारा साहूकारी रजिस्ट्रेशन प्रमाण पत्र जारी किया जायेगा। नियमों के अंतर्गत सहायक आयुक्त/प्रभारी अधिकारी (लायसेंस विभाग)/ एवं समय-समय पर आयुक्त द्वारा नियुक्त अधिकारी साहूकारी रजिस्ट्रेशन प्रमाण पत्र जारी करने हेतु रजिस्ट्रीकर्ता प्राधिकारी होंगे।

साहूकारी अधिनियम के अंतर्गत साहूकारी रजिस्ट्रेशन की फीस 50 रुपये प्रति वर्ष निर्धारित है जो कि काफी कम है। ऐसी स्थिति में इसमें रशेनरी तथा कर्मचारीयों का पृथक से सेल बनाया जाकर रिकार्ड/रजिस्ट्रेशनरी आदि के रखरखाव हेतु भी आवश्यक व्यवस्थाये करना होगी। इस हेतु साहूकारी अधिनियम के तहत पंजीयन शुल्क 50 रुपये प्रतिवर्ष के साथ निगम के ट्रेड लायसेंस का शुल्क भी पूर्व अनुसार 3000/- रुपये आवश्यक रूप से लिया जाकर व्यवसायियों को दोनों लायसेंस नियमानुसार एक साथ ही जारी किया जाना प्रस्तावित है। जिसमें निगम के राजस्व में

वृद्धि के साथ लायसेंस की संख्या में भी वृद्धि हो सकेगी एवं दोनों का रेकार्ड रखने में भी सरलता एवं एकरूपता होगी।

अतः इस संबंध में प्रकरण में निगम परिषद की स्वीकृती हेतु प्रकरण आपकी और प्रेषित है। प्रकरण में मेयर इन कॉसिल के माध्यम से परिषद की स्वीकृति प्राप्त कर भिजवाने का कष्ट करें।

(आरती खेडेकर)
सहायक आयुक्त लायसेंस
नगर पालिक निगम इन्दौर

(देवेन्द्र सिंह)
अपर आयुक्त राजस्व
नगर पालिक निगम इन्दौर

20. The petitioner has not challenged the such resolution in this writ petition. Not only the Municipal Corporation, Indore, but the Municipal Corporation, Gwalior and Jabalpur have also passed the similar type of resolution for grant of money laundering licence.

In case of **Maharashtra State Road Transport Corpn. v. Mangrulpur Jt. Motor Service (P) Ltd.**, reported in (1971) 2 SCC 222, the apex court has held as under:

19. In deciding the question of power of the Regional Transport Authority to call for further information it has to be borne in mind that the Regional Transport Authority shall, in considering an application for permit, have regard among other matters to the interests of the public generally, the advantages to the public of the services to be provided, the adequacy of other passenger transport services, the operation by the applicant of other transport services including those in respect of which applications from him for permits are pending, the benefit to any particular locality or localities likely to be afforded by the service. Therefore in considering public interest if the Regional Transport Authority would find that the answers furnished by any applicant are not full and complete, it will be constricting the exercise of power of the Regional Transport Authority by denying it authority to ask for additional information for full and detailed consideration of the applications in the interest of the public. No hard and fast rule can be laid down as to how the Regional Transport Authority will act or what the limitations of their powers will be. It is a statutory body. It is

to exercise statutory powers in the public interest. Such public interest would have to be considered with regard to particular matters enumerated in Section 47 of the Act and the particulars of an application are to be judged with reference to Sections 46 and 47 in particular of the Act. Reference may also be made to Rule 68(6) of the Bombay Motor Vehicles Rules which enables the State or the Regional Transport Authority, as the case may be, to require an applicant to appear before it and to withhold the consideration of the application for the permit until the applicant has so appeared in person if so required or by any recognised agent if so permitted, and until the applicant has furnished such information as may be required by the Transport Authority "in connection with the application". The words "in connection with the applicant" are important. These words indicate that the Regional Transport Authority will have power to ask for further information.

20. In the present case, on July 29, 1970, the Regional Transport Authority found that the applications which had been submitted in the year 1965-66, would hardly represent the real merits of the operators in the year 1970. The Regional Transport Authority therefore directed the applicants to file additional information relating to matters covered by columns 10 to 16 and 19 of the prescribed form. The further direction was that the information would be filed before August 21, 1970, and would be published and objections would be called for within 15 days from the date of publication. Counsel for the respondents submitted that the information supplied by the applicants pursuant to the direction of the Regional Transport Authority would be voluminous and the publication would take a long time. Under Section 57 of the Act the application is to be published in order to enable parties to submit representation in connection therewith. Publication therefore is a statutory obligation. In view of the fact that information was asked for with regard to specific columns of the application it cannot be

denied that the information was in connection with application. It will therefore be within the competence of the Regional Transport Authority under Section 57 of the Act to publish the application of the substance thereof in order to enable the persons affected thereby to send the representations to the Regional Transport Authority.

21. The Regional Transport Authority is entrusted by the statute to consider the applications for the grant of permit. Applications are on a printed form. It will be in the interest of the applicants to furnish all information. If, however, for any reason, the Regional Transport Authority will require further information, it will depend upon the facts and circumstances of each case as to whether the power is exercised bona fide, and whether the discretion that is conferred on the Regional Transport Authority is exercised properly and judiciously. In the absence of the Regional Transport Authority acting under any corrupt motive or mala fide for any oblique purpose the discretion which is conferred on the Regional Transport Authority should not be undermined and restricted.

21. So far the eligibly condition to get the license is concerned; learned counsel for the petitioner has submitted that as on today only an FIR has been registered against him, therefore, under the criminal jurisprudence, he is an innocent person unless the charges are proved against him. As per the condition imposed by the MIC for issuance the license aspirant is required to declare about his character. The character of person is not dependent upon the conviction or acquittal. The good or bad character can be certified, without even registering the criminal cases or conviction therein. It is a satisfaction of

an authority who is issuing the character certificate. The Municipal Authority has only got verified the character of the petitioner from the Municipal Corporation. If the petitioner is assailing the impugned order on merit then, he is having remedy of appeal under Section 403 of the Municipal Corporation Act, before the appellate committee. As per sub-section (2) of Section 403 any order of Commissioner regarding granting or refusal of the license and permission is appealable to appellate committee. Therefore, the petitioner is having alternative and efficacious remedy of appeal against the refusal of the grant of permission of license. Hence, the petition is, accordingly, **dismissed with limited liberty to file appeal.**

(VIVEK RUSIA)
JUDGE

SS/-