

## Smt. Sipra Majumdar Vs State of West Bengal and Others

**Court:** Calcutta High Court

**Date of Decision:** Dec. 11, 1995

**Acts Referred:** Motor Vehicles Act, 1988 " Section 51(3), 51(5)

**Citation:** (1996) 2 CALLT 58 : 100 CWN 248

**Hon'ble Judges:** Arun Kumar Dutta, J

**Bench:** Single Bench

**Advocate:** Milan Bhattacharyya and Amarendra Ghosh, for the Appellant; N.I. Khan, for Respondent Nos. 1 to 3, Ashit Kr. Bhattacharyya and Manik Chandra Das, for the Respondent

### Judgement

Arun Kumar Dutta, J.

The Petitioners, Respondents Nos. 1 to 3 and 4 and Respondents Nos. 7 and 8 are represented by their respective

learned Advocates, who have been heard quite at length.

2. By this writ application under Article 226 of the Constitution of India, the writ petitioner Smt. Sipra Majumdar (hereinafter as the petitioner) has

prayed the Court for issue of "a Writ in the nature of Mandamus commanding the Respondents, their agents, servants and subordinates to cancel

and/or revoke and/or rescind the order passed by the Respondent Nos. 2 and 3 in granting the Registration Certificate in the name of the

Respondent No. 8 and further to stay operation of the Certificate issued in the name of the Respondent No. 8", along with the other reliefs prayed

for therein for the reasons stated and on the grounds made out therein.

3. Upon hearing the submissions of the learned Advocates for the contending parties and perusal of the materials on record it appears that the

petitioner had purchased the vehicle in question, bearing Registration No. WB-0379, on the basis of a Hire Purchase Agreement entered into with

the Respondents Nos. 4 and 5. Her name was entered in the Certificate of Registration to be the registered owner thereof, subject to the Hire

purchase Agreement. It is contended by her that she had been paying monthly instalments in time, and 13 out of 38 monthly instalments thereunder

had already been paid by her. Even so, the Respondents Nos. 4 and 5 have retaken possession of the vehicle in question, and are stated to have

sold the same to the Respondent No. 8. She (Petitioner) subsequently came to learn that the Respondents Nos. 2 and 3 had given a Registration

Certificate in the name of the Respondent No. 8 in respect of the said Vehicle without giving her any opportunity of being heard in the matter.

4. Certain disputed questions of facts regarding the transactions in question were sought to be raised by the learned Advocates of the contending

parties. But exercising the Writ Jurisdiction, as I do, I do not feel inclined to enter in to the said disputed questions of facts. The undisputed fact,

however, remains that the vehicle in question was purchased by the petitioner under a Hire purchase Agreement with the Respondents Nos. 4 & 5,

and an entry was accordingly made in the Certificate of Registration showing her to be the owner thereof, making a further entry thereon that the

same is subject to the Hire purchase Agreement with the Financer, as appearing from Annexure "B" to the Writ Application. The vehicle in

question is stated to have been subsequently transferred by the Respondents Nos. 4 and 5 to the Respondent No. 8, and her name was

subsequently entered in the Certificate of Registration to be the owner thereof by the Registering Authority concerned by Order dated 23.6.95. An

objection was put in by the Petitioner before the Registering Authority by a letter dated 6.4.1995 for not transferring the vehicle or issuing no

objection certificate without hearing her. It appears from the official records produced by the learned Advocate for the Respondents Nos. 2 and 3,

as directed, that the objection put in by her was subsequently withdrawn by her by letter dated 16.6.95, which is sought to be disputed by her.

5. Even though the objection raised by the petitioner by her letter dated 6.4.95 appears to have been subsequently withdrawn by her by letter

dated 16.6.95, disputed by her, it was obligatory on the part of the Registering Authority concerned to be satisfied, on proof, that the agreement

between the parties concerned stood terminated in terms of subsection (3) of Section 51 of the Motor Vehicles Act, 1988 which reads as follows :

Any entry made under sub-section (1) or sub-section (2), may be cancelled by the (last registering authority) on proof of the termination of the

said agreement by the parties concerned on an application being made in such form as the Central Government may prescribe (and an intimation in

this behalf shall be sent to the original registering authority if last registering authority is not the original registering authority)"".

6. Unhappily for the Respondents Nos. 2 and 3, there is nothing in the Official records produced to show that they had satisfied themselves, on

proof being presented before them, that the Hire Purchase Agreement between the parties concerned had been terminated. That being so, it was

incompetent for them to cancel the registration already made in favour of the Petitioner in respect of the vehicle in question. That apart, in terms of

subsection (5) of Section 51 of the said Act, it was obligatory on the part of the Registering Authority to give the petitioner, the registered owner of

the vehicle in question, an opportunity of being heard before the cancelling the registration of her name in respect thereof. Sub-section (5) of

Section 51 of the Act provides that such an opportunity should be granted when the registered owner refused to deliver the Certificate of

Registration or has absconded. When such opportunity is to be granted to a registered owner who has refused to deliver the certificate of

Registration or absconded, there could be little justification why the registered owner who has not refused to deliver the Certificate of Registration

or has not absconded should not be given an opportunity of being heard before cancelling the registration of a vehicle in his/her favour. The

principle of natural justice required that the Petitioner should have been given an opportunity of being heard before cancelling her registration in

respect of the Vehicle in question on the application of the principle of audi alteram partem, as enunciated by the Supreme Court in the decisions in

Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , and H.L. Trehan and Others Vs. Union of India (UOI) and Others, .

7. Since the Registering Authority concerned appears to have pointedly failed to comply with the requisite provisions of subsections (3) and (5) of

Section 51 of the aforesaid Act, and since there has been violation of the principles of natural justice for not giving the Petitioner any opportunity of

being heard before cancelling her name from the Certificate of Registration in respect of the Vehicle in question, the order dated 23.6.95 passed by

the Registering Authority concerned cancelling the entry of her name in the Certificate of Registration and entering the name of the Respondent No.

8 therein cannot be said to be according to law, and is accordingly liable to be set aside.

8. In the premises above, the Writ application is disposed of by directing the Respondents Nos. 2 and 3 not to give any effect to the order dated

23.6.95 granting the Registration Certificate in the name of the Respondent No. 8 in respect of the vehicle in question till the question as to whether

the entry made in the relevant Certificate of Registration in the name of the petitioner (in respect thereof) could be cancelled or not, in the facts and

circumstances of the matter, is decided by them in the light of the observations hereinabove made, upon due compliance with all the requisite

provisions of law, after giving all the contending parties, including the Writ petitioner and the Respondents Nos. 4, 5 and 8, all reasonable

opportunity of being heard in the matter. The matter should be disposed of by the respondent-Authorities in terms of this order, as early as

possible, preferably within a period of four weeks from the date of communication of the order. Interim order, if any, stands vacated. There will be

no order as to costs.