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**(2014) 06 BOM CK 0175**

**In the Bombay High Court**

**Case No : Criminal Writ Petition No. 97 of 2014**

Ismailalkh Ibrahimkha Pathan

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

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**Date of Decision :** 11-06-2014

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 86

**Citation :** (2014) ALLMR(Cri) 3640

**Hon'ble Judges :** C.V. Bhadang, J;B.P. Dharmadhikari, J

**Bench :** Division Bench

**Advocate :** S.Z. Sonbhadre, Advocate for the Appellant; A.S. Fulzele, A.P.P, Advocate for the Respondent

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## **Judgement**

C.V. Bhadang, J.—Rule. Rule made returnable forthwith. Heard finally with consent of the Parties. Heard Shri S.Z. Sonbhadre, learned Counsel for the petitioner and Shri A.S. Fulzele, learned A.P.P. for respondent. Petitioner by this petition, challenges order dated 17.01.2014 passed by the Deputy Regional Transport Officer, Nagpur City whereby the permit of petitioner in respect of Vehicle No. MH 32-Q-3284 has been suspended for a period of one month from 18.01.2014 to 17.02.2014. It appears that the impugned order is passed under Section 86 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act" for short).

2. It is contended by the learned Counsel for petitioner that there was a show cause notice issued to petitioner on 15.01.2014, by which the petitioner was called upon to show cause within a period of seven days, as to why action should not be taken under Section 86 of the Act. This was purportedly on the allegations that there was breach of conditions of permit in as much as the vehicle was overloaded. It is submitted that the impugned order came to be passed within two days thereafter i.e. 17.01.2014, in which it is observed that the petitioner has failed to remain present and to file reply to the show cause notice. It is contended that there was no sufficient opportunity of hearing given, in as much

as although the show cause notice required the reply to be given within 7 days, the impugned order was passed within two days of issuance of notice. It is therefore, urged that the impugned order is passed in breach of principles of natural justice and it may be quashed and set aside.

3. Learned A.P.P. appearing on behalf of the respondent State supports the impugned order. It is submitted that the show cause notice was received by the petitioner and the impugned order is passed thereafter. The learned A.P.P. has also submitted that the appellant has an efficacious alternate remedy in the matter by way of an appeal before the State Transport Appellate Tribunal.

4. We have heard the learned counsel for the parties and perused the record. It does appear that the impugned show cause notice which is issued on 15.01.2014, required the petitioner to file reply to the same within a period of seven days and the impugned order is passed two days thereafter i.e. on 17.01.2014. The impugned order records that the petitioner was absent and has failed to file reply. It would be further pertinent to note that in paragraph No. 24 of the reply filed by the respondent, it is contended that the petitioner had approached the respondent on 17.01.2014, and petitioner failed to produce his explanation. This is clearly contrary to the contents and observations made in the impugned order that the petitioner had failed to remain present and submit reply. We find that there is no sufficient opportunity granted to the petitioner and consequently there is a clear breach of principles of natural justice in passing the impugned order.

5. It is also submitted by the learned A.P.P. that the petitioner has an alternative remedy by way of appeal before the State Transport Appellate Tribunal. We do not find that the availability of any such alternate remedy can come in the way of the petitioner for more reasons than one. In the first place, it is by way of rule of self-restraint, that this court in appropriate case would refuse to exercise the extra ordinary jurisdiction in the wake of availability of alternative remedy. There is no absolute bar in this regard. Secondly, in a case which would demonstrate clear breach of principles of natural justice, the availability of alternative remedy would not deter this Court in exercise of the extra ordinary jurisdiction. Consequently the following order is passed.

(i) Writ Petition is allowed. The impugned order is quashed and set aside.

(ii) Respondent would be at liberty to issue fresh show cause notice and take appropriate action in accordance with law. If such notice is issued, the respondent would complete the exercise within a period of 8 weeks from the issuance of notice.

(iii) Rule is made absolute in the aforesaid terms. However, in the facts and circumstances of the case there will be no order as to costs.