HIGH COURT OF MADHYA PRADESH : JABALPUR

W.P. No. 14557/2017

Rajesh Kumar Miglani **…..Petitioners**
& Another

Versus

State of Madhya Pradesh
& others **…..Respondents**

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Coram:

DB: Hon'ble Shri Justice Hemant Gupta, Chief Justice

Hon'ble Shri Justice Vijay Kumar Shukla, J.

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Shri R.N. Tripathi, Advocate for the petitioners.

Shri Samdarshi Tiwari, Additional Advocate General for the respondents/State.

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Whether Approved for Reporting: **Yes**

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Law Laid Down:

The Motor Vehicles Act, 1988 being the Central Legislation does not contemplate grant of fitness certificate and it is left to be framed by the State Government, therefore, the issue of fitness certificate and payment of tax falls within the legislative competence of the State in terms of Section 65(2)(d) of the Act of 1988 and under Section 3 of the M.P. Motoryan Karadhan Adhiniyam, 1991. Thus, Sub-Rule (2) of Rule 48 of the M.P. Motor Vehicles Rules, 1994 contemplating requirement of no dues certificate for grant of fitness certificate, cannot be said to be beyond the legislative competence of the State Government.

There is a presumption that the official acts are performed regularly in terms of Sub-section (e) of Section 114 of the Evidence Act and so is the presumption of correctness of information available on the website. Hence, the web portal of the Department should have entire data of tax paid of each of the vehicle. Further, the aggrieved person should be given an option of submitting online request to reconcile such payment. The State Government to make such amendment in the software.

Significant Paragraph Nos. **12, 13, 14, 16 and 17**

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Reserved on: 20/09/2017
Delivered on: 03/10/2017

O R D E R

{ 03/10/2017 }

Per: Hemant Gupta, Chief Justice:

The challenge in the present writ petition is to the legality of Sub-Rule (2) of Rule 48 of Madhya Pradesh Motor Vehicles Rules, 1994 (hereinafter referred to as "*the Rules of 1994*" in short) to the extent it requires that fitness application for vehicle shall be accompanied with a tax clearance certificate in Form M.P.M.V.R.-23 (TCC). The impugned Sub-Rule (2) of Rule 48 of the Rules of 1994 reads as under:-

> "(2) An application for issue or renewal of certificate of fitness shall be made in Form M.P.M.V.R.-22 (C.F.A.), to the Registering Authority or the operator of the authorised testing station in whose jurisdiction the vehicle is normally kept or whose functional area includes the major portion of the route or area to which the permit relating to the vehicle extends and shall be accompanied with a tax clearance certificate in Form M.P.M.V.R.-23 (T.C.C.)."

2. The petitioners are engaged in the business of bus operations and have 74 buses on their fleet. The buses are required to have fitness certificate in terms of Motor Vehicles Act, 1988 (in short "*the Act of 1988*") and the Rules made thereunder whereas the passenger tax is payable on such vehicles under Motoryan Karadhan

Adhiniyam, 1991 (hereinafter referred to as "*the 1991 Act*") and M.P. Motoryan Karadhan Rules, 1991 (in short as "*the Rules of 1991*"). The grievance is that levy and collection of tax cannot be correlated with issuance of fitness certificate as both operate in separate legislative schemes. The fitness certificate is covered by the Central law i.e. Act of 1988 whereas the tax is governed by the 1991 Act and the Rules made thereunder i.e. the Rules of 1991. Therefore, condition of clearance of tax cannot be a condition precedent for grant of fitness certificate.

3. The petitioners have pointed out that grant and renewal of fitness certificate is sought to be declined in wholly illegal and arbitrary manner as the no dues certificate of tax is not issued to the transporters without assigning any reason. It is pleaded that even if the tax clearance certificate is not issued by the department and even when the certificate is issued, the Transport Authority refuses to entertain the application on the pretext that the computer system is showing the tax due on the vehicle. It is pointed out that there is a complete machinery for levy of tax and penalty for failure to pay tax and they also have power of entry, seizure and detention of motor vehicle in case of non-payment of tax but without issuing any notice of payment of tax, the tax assessment is not done and arbitrarily the motor vehicle owner is asked to pay the tax and when he fails to meet the demand, the fitness

certificate is not issued.

4. The argument of the petitioners is that the condition of issuance of no dues certificate of tax, as a condition precedent for issuance of fitness certificate, gives rise to conflict between the Central and the State law and that in terms of Article 254 of the Constitution of India in case of a conflict, the Central Act will prevail.

5. To examine the arguments raised, certain statutory provisions needs to be reproduced.

6. The M.P. Motor Vehicles Rules, 1994 have been framed in terms of the provisions of the Motor Vehicles Act, 1988. The relevant provision of the Act of 1988 which is relevant to frame the Rules regarding fitness certificate, reads as under:-

> "**65. Power of the State Government to make rules**.-(1) A State Government may make rules for the purpose of carrying into effect the provisions of this Chapter other than the matters specified in section 64.
> (2) Without prejudice to the generality of the foregoing power, such rules may provide for –
> *** *** ***
> (d) the issue or renewal of certificates of registration and fitness and duplicates of such certificates to replace the certificates lost, destroyed or mutilated;
> (e) the production of certificates of registration before the registering authority for the revision of entries therein of particulars relating to the gross vehicle weight;"

7. The relevant Rule for issue of fitness certificate in terms of the Rules framed in exercise of Section 65 of the Act of 1988 is the Rule 48 of 1994 Rules, which is again reproduced as under:-

> "**48. Issue or Renewal of Certificate of Fitness**.-(1) A certificate of fitness shall be issued or renewed by the Registering Authority or subject to its general control and direction by such officer of the Transport department not below the rank of Transport Sub-Inspector as may be authorised by it in this behalf or by an operator of the authorised testing station specified by the Government under sub-section (2) of section 56 of the Act.
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> (2) An application for issue or renewal of certificate of fitness shall be made in Form M.P.M.V.R.-22 (C.F.A.), to the Registering Authority or the operator of the authorised testing station in whose jurisdiction the vehicle is normally kept or whose functional area includes the major portion of the route or area to which the permit relating to the vehicle extends and shall be accompanied with a tax clearance certificate in Form M.P.M.V.R.-23 (T.C.C.).
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> *** *** ***"

8. Section 3 of 1991 Act imposes tax on every motor vehicle used or kept for use in the State at the rate specified in the First Schedule. Such tax, in terms of Section 5, is payable in advance by the owner of the motor vehicle, at his choice, quarterly, half-yearly or annually on a token to be obtained by him. Section 8 casts a duty upon an owner to file a declaration with the Taxation Authority together with the proof of the payment of the tax. Section 8 of 1991 Act reads as

under:-

> "8. **Filing of declaration and determination of tax payable**. -
> (1) Every owner, who is liable to pay the tax under this Act shall file a declaration with the Taxation Authority together with the proof of the payment of the tax which he appears to be liable to pay in respect of such vehicle in such form and within such time as may be prescribed.
> (2) When any motor vehicle in respect of which tax has been paid is altered in such a manner as to cause the vehicle to become a motor vehicle in respect of which higher rate of tax is payable, the owner of such vehicle shall file an additional declaration with the Taxation Authority together with the certificate of registration and the proof of the payment of difference of tax which he appears to be liable to pay in respect of such vehicle, in such form and within such time as may be prescribed.
> (3) On receipt of the declaration under sub-section (1) or the additional declaration under sub-section (2) as the case may be, the Taxation Authority shall, after making such enquiry as it deems fit and after giving to the owner an opportunity of being heard, determine, by an order in writing, the tax payable by the owner and intimate the same to him in such form and within such time as may be prescribed.
> (4) Where the owner fails to file a declaration required under sub-section (1) or (2) the Taxation Authority may, on the basis of information available with it and after giving to the owner an opportunity of being heard, by an order in writing, determine the amount of tax payable by such owner *suo-motu* and intimate the same to him in such form and within such time as may be prescribed.
> (5) On determination of the tax payable under sub-section (3) or (4) as the case may be, by the Taxation Authority, the difference of the amount of tax payable and the amount of tax

> paid shall as the case may be, be paid by or refunded to the owner in a manner applicable to the payment or refund of tax under this Act and rules.
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> (6) Where the owner files a false declaration the taxation authority shall, after giving the owner an opportunity of being heard, by an order in writing, impose a penalty not exceeding twice the amount of tax determined under sub-section (3).
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> *Explanation.* - "Alteration in a motor vehicle" includes an acquisition, surrender or non-use of or any change in a permit by which the vehicle is covered."

9. Section 13 of the 1991 Act deals with penalty for failure to pay tax whereas Section 15 deals with the procedure for recovery of the tax, penalty or both. Section 16 of the said Act empowers the Taxation Authority to enter into and inspect any motor vehicle or premises where he has reason to believe that the motor vehicle is kept for the purposes of verifying whether the provisions of the Act or any rules made thereunder are being complied with. Section 20 provides a remedy of appeal against an order made for levy of tax and penalty imposed under Section 13 or aggrieved by the seizure of the motor vehicle under Section 16 of the said Act of 1991.

10. The M.P. Motoryan Karadhan Rules, 1991 provide for declaration to be filed under Section 8 of the 1991 Act in terms of Rule 5 thereof. Rule 6-A deals with the procedure for determination of the tax payable and Rule 8A deals with filing of declaration, determination and payment of tax by a fleet owner. Rule 15 provides for the recovery

of tax, etc. whereas Rule 17 deals with the procedure for seizure and detention of motor vehicle in case of non-payment of tax. The relevant Rules of the 1991 Rules are reproduced as under:-

> "**6A. Determination of tax payable.** - (1) On receipt of declaration under sub-section (1) or (2) of Section 8 of the Act the Taxation Authority shall without delay proceed to determine the amount of tax payable and shall pass the order required under sub-section (3) of the said section as early as possible.
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> (2) Where no declaration is filed by the owner by the last date fixed for payment of tax, the Taxation Authority shall without delay proceed *suo motu* to determine the amount of lax payable under sub-section (4) of Section 8 and shall pass order required under that sub-section as early as possible.
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> (3) While passing the order referred to in sub-section (3) or (4) of Section 8 of the Act, the Taxation Authority shall, simultaneously, issue the intimation of such order in Form-E-2 to be served on the owner in the manner laid down in sub-rule (2) of Rule 15.]
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> [*Explanation.* - The order passed under sub-rule (1) or (2) shall be valid until the rate of tax or the vehicle is altered and the determination of tax afresh shall be necessary only after any alteration in the rate of tax or the vehicle.]
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> **8A. Filing of declaration, determination and payment of tax by a fleet owner.** - (1) Notwithstanding anything contained in Rule 5, 6, 6A, 7 or 8 a declaration required to be filed under sub-section (1) of Section 8 of the Act by a fleet owner in respect of stage carriages and reserve stage carriages owned by him shall be in Form H-l and shall be delivered to the Taxation Authority through a duly authorised representative within ten days from the commencement of the month.

(2) The additional declaration required under sub-section (2) of Section 8 of the Act by a fleet owner in respect of his stage carriages and reserve stage carriages altered during a month shall be in Form H-2 and shall be delivered to the Taxation Authority through a duly authorised representative within ten days from the close of the month.

(3) The declaration under sub-rule (1) or the additional declaration under sub-rule (2), as the case may be, shall be accompanied by a crossed bank draft or paid up treasury challan marked "Original" evidencing the payment of tax which the fleet owner appears to be liable to pay by such declaration or additional declaration.

(4) On receipt of the declaration under sub-rule (1) and the additional declaration under sub-rule (2) for the month, the Taxation Authority, after satisfying itself as to the correctness of the declaration and the additional declaration and after making such enquiries as it deems fit, pass an order in writing determining the amount of tax payable for the month by the fleet owner in respect of his stage carriages and reserve stage carriages and issue the intimation of such order in Form H-3 to be served on the fleet owner in the manner laid down in sub-rule (2) of Rule 15.

(5) If the fleet owner fails to file the declaration under sub-rule (1) or the additional declaration under sub-rule (2), the Taxation Authority shall without delay, proceed *suo motu* to determine the amount of monthly tax payable by the fleet owner on the basis of information available with it and shall proceed to recover the tax so determined in accordance with the Act and these rules.

(6) When the amount of monthly tax payable by the fleet owner in respect of his stage carriages and reserve stage carriages is determined under sub-rule (4) or (5), as the case may be, the difference of tax shall be paid by or refunded to the fleet owner

in the manner laid-down in these rules.

(7) The Taxation Authority may for the purposes of this rule require the fleet owner to produce before it any vehicle or any account, register, records or other documents or to furnish any information or may examine the vehicle or the accounts, registers, records or other documents and the fleet owner shall comply with any such requirement.

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15. Recovery of tax, etc. - (1) If any owner fails to pay tax due, penalty or interest payable under the Act and these rules, the Taxation Authority to whom such amount is payable, shall serve on the owner a notice in [Form 'E-2'–*subs.by No.1 dt. 11.10.1992*] for the sum payable.

(2) Provisions of the Madhya Pradesh Land Revenue Code, 1959 (No.20 of 1959) and the rules made thereunder shall apply *mutatis mutandis* in respect of service of notice issued under sub-rule (1).

(3) If within seven days of the service of notice, the sum contained in the notice is not paid and no reasonable cause for its non-payment has been shown, the Taxation Authority may proceed to recover the amount as an arrear of land revenue.

(4) Notwithstanding anything contained in the aforesaid sub-rules, the Taxation Authority may take action under sub-section (3) of Section 16 of the Act for the realisation of sum payable.

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17. Procedure for seizure and detention of motor vehicle in case of non-payment of tax. - (1) The memorandum of seizure and the order of seizure and detention of motor vehicle under sub-section (3) of Section 16 of the Act shall be made in Form U-l and U-2 respectively, and copies thereof shall be served on the persons from whose possession or control such motor vehicle has been seized and detained.

> (2) The motor vehicle seized and detained shall be kept in safe custody at the nearest Police Station or at any other place at the discretion of the officer seizing the motor vehicle or the Taxation Authority.
>
> (3) The vehicle detained shall be released by the officer or the Taxation Authority seizing it on payment of tax, penalty and interest due.
>
> (4) The detained vehicle shall not be released by the officer or Taxation Authority seizing it if proceedings of confiscation under sub-section (6) of Section 16 of the Act has been initiated by the Taxation Authority.
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> (5) The Taxation Authority shall send the intimation for initiation of proceedings for confiscation of Vehicle under clause (a) of sub-section (7) of Section 16 of the Act in Form 'X' to the Magistrate having jurisdiction to try the offence."

11. The argument of the learned counsel for the petitioners is required to be examined in the context of the aforesaid provisions. The argument is that non-issuance of no dues certificate or non-updation of the tax status on the web portal infringes the right of the petitioners to carry on business under Article 19(1)(g) of the Constitution of India, therefore, the procedure adopted by the respondents in the light of the statutory provisions is illegal and unsustainable.

12. Section 65(2)(d) of the Act of 1988 (Central Act) empowers the State Government to frame the Rules regarding grant of fitness certificate. In exercise of such power, the State Government has notified the Rules of 1994, which deal with the procedure of issuance of fitness certificate. The payment of tax is made conditional for

issuance of the fitness certificate for the reason that a defaulter of payment of tax should not be issued fitness certificate in respect of every vehicle so as to ensure due compliance of the statutory provisions. We find that the issue of fitness certificate and payment of tax falls within the legislative competence of the State in terms of Section 65(2)(d) of the Act of 1988 and under Section 3 of the 1991 Act. Therefore, Sub-Rule (2) of Rule 48 of the Rules of 1994 contemplating that no dues certificate shall be required for grant of fitness certificate, cannot be said to be beyond the legislative competence of the State Government. The Central Legislation does not contemplate the grant of fitness certificate or the condition thereof. They have been left to be framed by the State Government; therefore, condition imposed of payment of tax before grant of fitness certificate is in larger public interest to ensure that tax dues are paid by the transporters.

13. The question as to when there can be said to be a conflict between the Central and the State legislation was examined by the Supreme Court in a judgment reported as **(2016) 6 SCC 602 (Goa Foundation and another vs. State of Goa and another**, wherein the Land Acquisition Act, 1894 was amended by the Legislative Assembly of Goa in the year 2009 when the Clause 6, 7, 8 and 9 were inserted in Section 41 of the Act. Examining the challenge to the said provisions,

the Court held as under:-

> "**29**. We do not see how repugnancy between the two legislative exercises on the principles laid down in *M. Karunanidhi* (1979) 3 SCC 431 and *Kanaka Gruha Nirmana Sahakara Sangha* (2003) (1) SCC 228 can be said to exist in the present case. Section 41 of the Principal Act and the terms of the agreement executed thereunder (even if the latter is understood to be 'Law' enacted by the competent legislature for the purpose of Article 254) are silent with regard to modification/variation or deletion/subtraction of the terms of the agreement. The State Amendment Act by bringing in clauses (6) to (9) of Section 41 invalidates a clause of the agreement [Clause 4(viii)] by effecting a deletion thereof with retrospective effect i.e. 15.10.1964 (the date of coming into operation of the Principal Act to the State of Goa). The State Amendment, by no means, sets the law in a collision course with the Central/Principal enactment. Rather, it may seem to be making certain additional provisions to provide for something that is not barred under the Principal Act. Moreover, if the provisions of the State Amendment are to be tested on the anvil of the finding of this Court that the acquisition in the present case is under Section 40(1)(aa) of the Land Acquisition Act, the deletion of the relevant clause of the agreement as made by the said amendment may appear to be really in furtherance of the purpose of the acquisition under the Central Act. We, therefore, do not find any repugnancy between the Principal Act and the State Amendment, as urged on behalf of the petitioners in this case."

14. In a later judgment reported as **(2017) 3 SCC 545** (**Ahmedabad Municipal Corporation vs. GTL Infrastructure Limited and Others**), the Supreme Court was examining the

provisions of Gujarat Provincial Municipal Corporation Act, 1949 (59 of 1949) wherein the levy of property tax on mobile towers was challenged. The High Court held that levy of property tax on mobile towers under Gujarat Provincial Municipal Corporation Act is *ultra vires* the Constitution except the cabin that houses the BTS system. The argument was that as per Entry 49 List-II Schedule VII, the State can impose taxes on lands and building and not on mobile towers. The Supreme Court held as under:-

> "**18**. Though Article 246 has often been understood to be laying down the principle of Parliamentary supremacy, it must be qualified that such supremacy, if any, is extremely limited and very subtle. This has to be said when the federal structure of the Indian Union has been recognised as a basic feature of the Constitution. Both, the Central and the State legislatures, are competent to enact laws in any matters in their respective Lists i.e. List I and List II. Conflict or encroachments must be ironed out by the Courts and only on a failure to do so the provisions of Article 246 will apply. Insofar as the common List i.e. List III is concerned, any repugnancy in law making by the Union and State Legislatures is dealt with by Article 254 which gives primacy to the Parliamentary law over the State law subject to the provisions of clause (2) of Article 254 of the Constitution which again is subject to a proviso which may indicate some amount of Parliamentary supremacy.
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> **31**.The measure of the levy, though may not be determinative of the nature of the tax, cannot also be altogether ignored in the light of the views expressed by this Court in *Goodricke Group Ltd vs State of W.B*.-1995 Suppl (1) SCC 707. Under both the Acts read with the relevant Rules, tax on Mobile Towers is

> levied on the yield from the land and building calculated in terms of the rateable value of the land and building. Also the incidence of the tax is not on the use of the plant and machinery in the Mobile Tower; rather it is on the use of the land or building, as may be, for purpose of the mobile tower. That the tax is imposed on the "person engaged in providing telecommunication services through such mobile towers" (Section 145-A of the Gujarat Act) merely indicates that it is the occupier and not the owner of the land and building who is liable to pay the tax. Such a liability to pay the tax by the occupier instead of the owner is an accepted facet of the tax payable on land and building under Schedule VII List II Entry 49."

15. In view of the foregoing analysis of the provisions of the Act and the Rules made thereunder and the law laid down by the Supreme Court, the condition that an application for issue or renewal of certificate of fitness shall be accompanied with a tax clearance certificate in Form M.P.M.V.R. - 23 (TCC) is not inconsistent with any provision of the Central Legislation (Act of 1988). Therefore, the offending clause i.e. Sub-Rule (2) of Rule 48 of the Rules of 1994 cannot be said to be illegal or beyond the legislative competence of the State.

16. The argument that the tax is demanded if the demand finds mention on the web portal. It is contended that web portal is not updated and that without finalizing the orders under the 1991 Act or the Rules framed thereunder, the demand is raised. We find that argument is based upon apprehensions. There is a presumption that the

official acts are performed regularly in terms of Sub-section (e) of Section 114 of the Evidence Act. Therefore, there will be presumption of correctness of the information available on the website. But if any demand is reflected on the website though it may not actually exist, an owner has a right to file declaration, determination and payment of tax payable in terms of Rule 8A of the Rules of 1991. An order of imposing penalty is required to be passed under Section 13 of the Act. Therefore, an aggrieved transporter cannot be permitted to come to the writ Court that data on the website is not updated and is reflecting non-payment of tax.

17. However, in the interest of justice, it is directed that the web portal should have the entire data of the tax paid of each of the vehicle and an aggrieved person should be given an opportunity to reconcile such payment by submitting online request. Such transparent process will redress the grievance of the aggrieved person(s) such as the petitioners to a large extent. We hope and trust that the State Government shall make necessary amendments in the software, if not already provided for, within three months.

18. Writ petition stands **disposed of**.

(**HEMANT GUPTA**)
Chief Justice

(**VIJAY KUMAR SHUKLA**)
Judge

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