

IN THE HIGH COURT OF JUDICATURE FOR MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE PURUSHAINDRA KUMAR KAURAV

ON THE 9th OF MARCH, 2022

WRIT PETITION No.4801 of 2022

Between:-

**KRISHNA NARAYAN PRAJAPATI, S/O
SHRI KALKA PRASAD PRAJAPATI, AGED
ABOUT 45 YEARS, OCCUPATION: BUS
OPERATOR, R/O H.7, VAIBHAV HOMES
PH II, BY PASS ROAD BHOPAL (MADHYA
PRADESH)**

....PETITIONER

(BY HARISH CHAND KOHLI, ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH
THROUGH SPECIAL SECRETARY
DEPARTMENT OF TRANSPORT VALLABH
BHAWAN, BHOPAL (MADHYA PRADESH)**
- 2. THE REGIONAL TRANSPORT
OFFICER/CUM TAX OFFICER REGIONAL
TRANSPORT OFFICE BHOPAL (MADHYA
PRADESH)**

....RESPONDENTS

(BY GIRISH KEKRE, PANEL LAWYER)

*This petition coming on for admission this day, the Court passed
the following:*

ORDER

The instant petition is filed seeking directions to the respondent/State to exercise its power under Section 21 of the Madhya Pradesh Motoryan Karadhan Adhinyam, 1991 (for short, hereinafter

referred to as the “Adhiniyam, 1991”) and to exempt the tax on the petitioner’s vehicle for the period from March, 2020 till the vehicle is permitted to ply on road.

2. Facts of the case are that the petitioner is a transporter and operates passenger transport vehicles on the basis of various permits granted by the concerned transport authorities. The petitioner holds permit for various routes. According to the petitioner, on account of the Covid -19 situation, the lock-down was imposed which has immensely restricted and adversely effected the business of the petitioner. Various exemptions have been granted by the State Government to other stake holders. The petitioner could not operate his vehicle on the route in question and the said vehicle was stopped since March, 2020. Intimation of stoppage of bus was also given to the respondent authorities on 01.04.2020, which was required under Form “0” of sub Rule (1) of Rule 13 of the Madhya Pradesh Motoryan Karadhan Rules, 1991. The in-charge of the bus terminal also certifies that the vehicle owned by the petitioner was not operated on the route in question between 01.04.2020 to 25.01.2022.

3. Learned counsel appearing for the petitioner submits that the concerned department is showing the tax liability against the petitioner, however, on account of the vehicle being non-operational during the period in question, the petitioner should not be compelled to deposit the tax. According to him, the State Government is empowered under Section 21 of the Adhiniyam, 1991 to exempt the vehicle from tax. The State Government should exercise power under Section 21 of the Adhiniyam, 1991. Neither, the exemption is being granted in accordance with Section 21, nor the same is being rejected and therefore, the petitioner is in the instant petition.

4. Learned Government Advocate appearing for the State submits that no doubt Section 21 empowers the State Government to exempt a whole or in part any motor vehicle or class of motor vehicle from the payment of tax, penalty and interest from such date, as may be notified in the notification. However, the word “may” used in Section 21 clearly shows that the same is the discretionary power and it is for the State Government whether to exercise such power or not, and therefore, the High Court under Article 226 of the Constitution should not issue the mandamus to take a decision even either way.

5. Learned counsel for the petitioner in response to the submissions made by the State submits that he is not insisting for taking a positive decision, but what he is praying is that even if the State does not want to exercise power conferred under Section 21 of the Adhiniyam, 1991, in that case also, it is incumbent upon the State Government to atleast pass some order in this regard.

6. This Court is not persuaded with the submission put forth by learned counsel appearing for the petitioner. The language of Section 21 of the Adhiniyam, 1991 is clear and unless the State Government exercises power under Section 21 of Adhiniyam, 1991 and issues a specific notification, it is always deemed that such a power has not been exercised by the State. It is not for the State Government to give any specific response to any prayer for individual exemption etc. Under such circumstances, no mandamus can be issued. In view of the aforesaid, the petition stands dismissed.

7. At this stage, learned counsel for the petitioner submits that the petitioner may be granted liberty to approach the respondents. This Court has not restricted the petitioner to approach the respondents. It

would be up to the petitioner to take appropriate steps as permissible in law.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

Jasleen