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WP-28195-2023

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VISHAL DHAGAT

ON THE 3rd OF SEPTEMBER, 2024WRIT PETITION No. 28195 of 2023*GRAM PANCHAYAT HARGARH**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Shri Sushil Kumar Mishra - Advocate for petitioner.

Shri Pradeep Singh - Govt. Advocate for respondent/State.

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ORDER

Petitioner has filed this petition under Article 226 of the Constitution of India making a prayer to quash impugned letter dated 13.04.2023 contained in Annexure-P/4 and letter dated 21.04.2023 contained in Annexure-P/5.

2. Letter dated 13.04.2023 is written by Sub Divisional Officer (Revenue), Sihora, District Jabalpur to Chief Executive Officer, Janpad Panchayat Sihora regarding recovery of illegal Toll Tax in Hargarh area. Request was made to conduct an enquiry regarding illegal extortion of Toll Tax. By letter dated 21.04.2023, Chief Executive Officer, Janpad Panchayat Sihora has written a letter to Secretary, Gram Panchayat Hargarh, Janpad Panchayat Sihora, wherein it was informed and directed to Secretary, Gram Panchayat Hargarh that there is no provision for imposition of commercial tax under Section 77-A(2) of M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993. Request was made to submit its enquiry report regarding



illegal recovery of Tax in Gram Panchayat Hargarh.

3. Counsel appearing for petitioner submitted that tax has been imposed as per provision of Item No.8 of Schedule-II under Section 77-A (2) of M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993. Resolution has been passed by Gram Sabha and no illegal toll or tax is collected by Panchayat. It is submitted that respondent No.3 is not competent authority to take action against resolution of Gram Sabha. Action can be taken by appellate authority under Madhya Pradesh Gram Sabha Appeal Rules, 2001. In view of same, impugned letters dated 21.04.2023 and 13.04.2023 be set aside.

4. Government Advocate appearing for State opposed the petition and raised preliminary objection regarding maintainability of petition. It is submitted that no resolution in accordance with law has been passed authorizing Sarpanch to file petition before this Court. Resolution does not reflect the name of Punch and does not bear their signatures. No final order has been passed. Petition is premature and same deserves to be dismissed. It is submitted that respondent No.3 is having jurisdiction under Section 85 to suspend the execution of any order, licence issued and permission granted by Panchayat.

5. Heard the counsel for the parties.

6. Schedule-II, Entry 8 enacted under Section 77 sub-section (2) is quoted as under:-

"8. A fees payable by the owners of the vehicles other than motor vehicle, where such vehicles other than the motor vehicles enter the Gram Panchayat area."

7. As per said entry, taxes can only be imposed upon vehicle other



than motor vehicles. Definition of motor vehicle is given in Section 2 (28) of the Motor Vehicles Act, 1988 which is quoted as under :-

"(28) "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding [twenty-five cubic centimeters];"

8. From going through aforesaid provision, definition of motor vehicle as provided under the Motor Vehicles Act, 1988 includes all vehicles which are mechanically propelled or adapted for use on roads. In Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993, power to impose optional tax is vested in Gram Panchayat on vehicles other than motor vehicles which enter the Gram Panchayat area. Vehicles have not been defined in Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993. If the definition of motor vehicle is borrowed from Motor Vehicles Act, 1988, then it includes both motor vehicle or vehicle. Entry 8 lays down that fees can be collected on vehicles other than motor vehicles. Entry 8 is ambiguous and it does not clearly lay down that fees can be collected on what type of vehicles. Now a days all vehicles are motor vehicles. They are propelled by motors and motor vehicles are exempted from tax under Entry 8, therefore, Gram Panchayat could not have levied fees on Dumpers and Trucks which fall within definition of Motor Vehicles Act which enter the village.

9. Issue before this Court is also covered by judgment which is passed in case of *S.N. Suderson and Company Vs. Gram Panchayat Poniya* passed



in W.P. No.4056/1994 decided on 16.12.1997, Single Bench of this Court held that entry tax on motor vehicle cannot be imposed by the Gram Panchayat.

10. Counsel for petitioner has relied upon Schedule-II of Section 77(2) Entry No.8. Said entry gives power to levy fees on vehicles other than motor vehicle if it enters Gram Panchayat. All vehicles which are driven by motors will fall within definition of motor vehicles and Gram Panchayat does not have any power to impose tax on motor vehicle.

11. No adverse order is passed against petitioner only communication is made for enquiry on imposition of Tax by Gram Panchayat.

12. Resultantly, petition is **dismissed**.

(VISHAL DHAGAT)
JUDGE

sp/-