

(1994) 11 SHI CK 0007
In the High Court Of Himachal Pradesh
Case No : Writ Petition No. 695 of 1994

Dharam Chand

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 25-11-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20
Companies Act, 1956 — Section 446
Constitution of India, 1950 — Article 162, 224
Himachal Pradesh Municipal Corporation Act, 1979 — Section 2(43), 223, 228, 255
Life Insurance Corporation Act, 1956 — Section 15, 41
Motor Vehicles Act, 1939 — Section 74
Motor Vehicles Act, 1988 — Section 115, 116
National Highways Act, 1956 — Section 4
Railways Act, 1890 — Section 80

Citation : (1995) 1 ILR HP 35

Hon'ble Judges : Gulab C. Gupta, C.J.; Kamlesh Sharma, J

Bench : Division Bench

Advocate : Dilip Sharma, for the Appellant; Inder Singh, for the Respondent

Final Decision : Allowed

Judgement

Gulab C. Gupta, C.J.—The Petitioner is the President of the High Court of Himachal Pradesh Bar Association and challenges through this writ petition filed in public interest, the legal and constitutional validity of the policy (Annexure P-3) and notification dated 11th April, 1991 (Annexure P-D) of the Respondent State Government, purported to have been made u/s 115 of the Motor Vehicles Act, 1988 (Shortly called as 1988 Act) prohibiting/restricting movements of motor-vehicles on several roads within the Municipal limits of Shimla town.

2. It appears that one Shri Navkiran Singh, Advocate of Chandigarh was to appear in this Court on 12th August 1994. He was traveling by his car from Chandigarh to the High Court at Shimla. The policeman on duty at the start of the road leading to the High Court did not, however, permit him to take his car to the parking of the High Court in spite of his showing the identity-card. The said

Shri Singh, therefore, claimed to have suffered harassment and humiliation and made a complaint to the Acting Chief Justice of this Court with a copy of the said letter to the Petitioner. The Petitioner, as the President of the High Court Bar Association, considered the aforesaid and felt that the said difficulty is being faced even by the local Advocates. The situation of the High Court at Shimla, according to the Petitioner, is such that one has to pass through a small length of restricted road before reaching the gate of the High Court. Since the aforesaid policy-notification does not exempt Advocates from the said prohibition/restriction, the Advocates are finding it difficult to travel to the High Court and discharge their legal and constitutional obligations. Since this is affecting not only the provision of law but also the working of the independent judiciary, it is prayed that the notification issued be modified to the extent that Advocates/litigants are not prevented from reaching the High Court and to obtain permits for use of the restricted or sealed roads.

3. During the hearing of this writ petition on 20th September 1994, it was brought to the notice of this Court that even Hon''ble Judges and the staff of the High Court are not able to use their vehicles to reach the High Court. The Court, therefore, gave notice of the writ petition to the learned Advocate General and requested him to look into the matter to see if the grievances of the Petitioner could be satisfied. This Court thankfully notices that because of the intervention of the learned Advocate General, the Respondent State Government issued a notification on 15th October, 1994 removing restrictions on movement of vehicles from Cart-Road upto High Court. The said notification did not, however, satisfy the Petitioner and other members of the Bar. It did not even satisfy the requirements of the Hon''ble Judges and the staff of the High Court. It was then revealed that even the Chief Justice of the High Court is not able to freely travel from his residence to the High Court for discharging the official duties and is required to obtain permit from the Additional Secretary to the Government after paying Rs. 15/- as token-fee per quarter. This was considered unusual and the learned Advocate General was again requested to do something about it. We again thankfully notice that because of the efforts of the learned Advocate General, Respondent Government exempted from payment of token-fee for permits for official vehicles not only of the judiciary but also of the State Government. In spite of this notification, permit will be required, though the same, would be available without any token fee. Learned Counsel for the Petitioner however, pointed out that in spite of this notification dated 7th November, 1994, the Hon''ble Judges and the staff of the High Court will have to seek permission from the Respondent State Government for plying their vehicles and obtain permits for the purpose. It was submitted that it is appropriate to require the permits for plying the official vehicles of the Chief Justice and the Hon''ble Judges and that too for approaching the High Court. We are happy to record that even the learned Advocate General expressed his concern about it. It was thereafter that the Additional Secretary (Home) to the Government of Himachal Pradesh wrote to the Registrar of this High Court on 8-11-1994 that

Hon"ble the Chief Justice and the Judges of the High Court of Himachal Pradesh are hereby allowed to ply their vehicles upto lift and Lakkar Bazar as per the practice prevalent before 1993." The language of this letter was considered offensive by the Petitioner and other Advocates who submitted that the Additional Secretary (Home) has infact by writing this letter asserted his authority over the Chief Justice and the Judges of this Court who could not have used their vehicles but for this letter. The letter, however, permitted plying the vehicles upto lift and Lakkar Bazar without indicating the route through which these places could be reached by the Chief Justice and the Judges of this Court. It was stated at the Bar that this letter will have to be read in the context of notification Annexure P-2 as amended by the, notification dated 15th October, 1994 and hence the Chief Justice and the Judges of this Court will not be able to reach lift and Lakkar Bazar through prohibited/restricted roads without the permission of the Additional Secretary (Home). Since the impression gathered by this Court was that the Respondent Government was not willing to come forward in the matter, it was considered proper to hear arguments on merits of the matter and therefore, arguments were heard.

4. The submission of the learned Counsel for the Petitioner is that the impugned notification is ultra-vires the authority of the Respondent State Government in as much as it prohibits/restricts plying of motor vehicles on public streets within the Municipal Limits of Shimla Municipal Corporation. The particular submission is that the matter being covered by Sections 223 and 228 of the Himachal Pradesh Municipal Corporation Act, 1979 (hereinafter referred to as the Corporation Act), the Respondent State Government has no authority or jurisdiction to issue the impugned notification. It is further submitted that the impugned notification violates Section 115 of the 1988 Act under which it has been issued in as much as it totally prohibits use of vehicles on certain roads without any reason or justification and restrict use of such vehicles on certain roads for reasons irrelevant to the aforesaid provisions of the law. It is further submitted that Section 115 of 1988 Act does not entitle the Respondent State Government to issue permits and charge Rs. 15/- per quarter for the same. It is, therefore, submitted that the impugned notification is wholly illegal and unconstitutional. Learned Advocate General first submitted that there is no foundation in the writ petition for the aforesaid submissions and hence objected to the aforesaid submissions being considered by this Court. When pointed out that it was a public interest litigation and questions submitted for consideration of this Court were basically questions of law and hence this Court would not like to ignore consideration thereof, the learned Advocate General made submissions in detail. It was submitted that the power u/s 115 of 1988 Act are powers available to the Respondent State Government and are not in any manner controlled by the Corporation Act and hence the impugned notification is fully competent. It is also submitted that prohibition/restriction on the use of the motor vehicles, is in the interest of public safety and convenience as appearing from the notification itself and hence there is no violation of. Section 115 of the said Act. As regards

payment of token tax, it is submitted that the same is the cost of token issued for the purpose of identifying the vehicle and is not a tax. It is, therefore, submitted that there is no illegality in the impugned notification. It was in the alternative submitted that if this Court holds that Section 115 of 1988 Act would not provide sufficient legal basis to the impugned notification, the notification will be constitutionally valid as issued under the executive powers under Article 162 of the Constitution.

5. In the context of submissions of the parties, as aforesaid, the first question requiring consideration of this Court is whether the impugned notification is without authority or Jurisdiction and is, therefore, illegal ? The submission of the Petitioner appears to be that prohibition/restriction being in relation to public roads within the limits of Municipal Corporation. Shimla, the matter is covered by Sections 223 and 228 of the Corporation Act under which it is the Commissioner or the Corporation which is authorised to impose prohibition/restriction on use of roads for motor vehicles and hence powers u/s 115 of the 1988 Act cannot be utilised for the purpose Section 115 of the said Act under which the impugned notification has been issued, reads as under:

115.-Power to restrict the use of Vehicles.-The State Government or any authority authorised in this behalf by the State Government, if satisfied that it is necessary in the interest of public safety or convenience, or because of the nature of any road or bridge, may by notification in the official Gazette, prohibit or restrict subject to such exceptions and conditions as may be specified in the notification, the driving of motor vehicles or of any specified class or description of motor vehicles or the use of trailers either generally in a specified area or on a specified road and when any such prohibition or restriction is imposed, shall cause appropriate traffic signs to be placed or erected u/s 116 at suitable places:

Provided that where any prohibition or restriction under this section is to remain in force for not more than one month, notification thereof in the official Gazette shall not be necessary but such local publicity as the circumstances may permit, shall be given of such prohibition or restriction.

A bare reading of this would indicate that the power conferred by this provision is on the State Government or any authority authorised in this behalf by the State Government. The power is exercisable either in the interest of public safety or public convenience or because of the nature of any road or bridge. Since this provision forms part of Chapter-VIII of the 1988 Act, which deals with the "Control of traffic," it is reasonable to hold that the power is exercisable in relation to driving of motor vehicles generally or of any specified class or description of motor vehicles and can be imposed either generally in specified area or on a specified road. This provision corresponds to Section 74 of Motor Vehicles Act, 1939 (hereinafter referred to as 1939 Act) and must be treated to be in force at least from 1939. The Supreme Court while considering a similar provision in Travancore Cochin Motor Vehicles Act, in Municipal Council Palai Vs. T.J. Joseph and Others, held that the same was a general provision applying to

all persons and locality covering a wider area than a Municipal Act. Clearly, therefore, Section 74 is available to the State Government all over the State generally. The question requiring consideration however, is whether this power is also available to the State within the municipal area and in relation to public roads over which the Municipal Corporation has the authority and jurisdiction.

6. Sections 223 and 228 of the Corporation Act, on which reliance has been placed read as under:

223. Vesting of public streets in Corporation-(1) All streets within the city which are or at any time become public streets and the pavements, stones and other materials thereof shall vest in the Corporation.

(2) All public streets vesting in the Corporation shall be under the control of the Commissioner and shall be maintained, controlled and regulated by him in accordance with the bye laws made in this behalf.

228. Power to prohibit use of public streets for certain kinds of traffic.-(1) The Commissioner may-

(a) prohibit vehicular traffic in any public street or any portion thereof so as to prevent danger, obstruction or inconvenience to the public or to ensure quietness in any locality:

(b) prohibit in respect of all public streets or any particular public street, the transit of any vehicle of such form, construction, weight or size or laden with such heavy or unwieldy objects as may be likely, to cause injury to the roadways or any construction thereon, except under such conditions as to time, mode of traction or locomotion, use of appliances for the protection of road-ways, number of lights and assistants and other general precautions and upon the payment of such charges as may be specified by the Commissioner generally or specially in each case ;

(c) prohibit access to premises from any particular public street carrying high speed vehicular traffic :

Provided that the Commissioner shall not take action without the sanction of the Corporation in cases under Clause (a) and (c).

(2) Notices of such prohibition as are imposed under Sub-section (1) shall be posted in conspicuous places at or near, both ends of public streets or portions thereof to which they relate, unless such prohibition applied generally to all public streets.

These provisions, according to the decision of the Supreme Court in Municipal Council, Palai are special provisions applicable, only within the area of the Municipal Corporation. Clearly, therefore, it is a subsequent Special Act and hence the question requiring consideration is whether such an act would have precedence over the earlier general provision. The law in this, behalf is clearly stated by the maxim-"Generalia specialibus non derogant" meaning that a prior

general provision may be affected by a subsequent particular provision if the subject matter of the particular provision prior to its enforcement was being governed by the said general provision. The rule has received approval of the Supreme Court in *Damji v. L.I.C.* (1966 SC 135), wherein Section 446 of the Companies Act, 1956, came to be considered in the context of Sections 15 and 41 of the Life Insurance Corporation Act, 1956. It was held that Section 446 of the Companies Act is a general provision and Sections 15 and 41 of the L.I.C. Act are special provisions and, therefore, on matters falling within, latter, the Company Court has no jurisdiction even during the winding up. In cases covered by the aforesaid rule, the operation of the particular Act may have the effect of partially repealing the General Act as held in *Municipal Board, Bareilly Vs. Bharat Oil Company and Others*, or curtailing its operation as held in *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, or adding Condition to its operation for the particular case. In *Municipal Board Bareillys* case the State Government had framed Rules levying octroi in general by all municipalities. Thereafter rules were framed by the State for levy of octroi by Bareilly municipality. It was, therefore, held that there was deemed repeal of the earlier rules in respect of Bareilly municipality. Similarly, in *Ratan Lal Adukia and Another Vs. Union of India*, the question was whether special provision u/s 80 of the Railways Act, 1890 or general provisions of Section 20 of the Code of Civil Procedure, 1908 would prevail and it was held that since Section 80 of the Railways Act was substituted in 1961 and was a special provision, it impliedly repealed in respect of suits covered by it the general provisions of Section 20 CPC. However, in *Harishankar Baglets* case (supra) the Court while applying this rule clarified that the subsequent operation of special law repealing earlier general law does not mean that those laws remain abrogated indicating that the repealed statute was never on the statute-book. The effect of application of the aforesaid rule is not to repeal or abrogate any law. Its objective is simply to by pass them wherever they are inconsistent with the subsequent provision. The Supreme Court thus limited the scope of operation of the statute without there being any repeal of any of its provisions. This case also decides that if the provisions of the later special statute are supplemented to the provision of the prior general Act, no conflict arises, and there is no super session of the General Act. The application of this principle would indicate that the operation of the earlier general statute is curtailed in so far as it comes in conflict with the subsequent special statute. In view of this law, we have to determine whether, there is a conflict between the provisions in Motor Vehicles Act and Sections 223 and 228 of the Corporation Act, so as to effect operation of the prior general law contained in Motor Vehicles Act.

7. Section 223 of the Corporation Act, as quoted earlier, would indicate that all streets within the city including the pavements, stones and other material thereof vest in the Corporation and are under the control of the Commissioner who is responsible for maintaining, controlling and regulating them in accordance with bye-laws made in this behalf. The word "public streets" is defined in

Section 2(43) of the Corporation Act and means any street which vests in the Corporation as a public street or the soil below the surface of which vests in the Corporation or which under the provisions of this becomes, or is declared to be, a public street Chapter XIII of this Act which contains provisions of Sections 223 to 255 contains almost all provisions regarding such streets. Section 228 authorises the Commissioner to prohibit vehicular traffic in any public street or a portion thereof to prevent danger, obstruction or inconvenience to the public or to ensure quietness in any locality, or to prohibit access to premises from any particular public street carrying high speed vehicular traffic. This provision is clearly wider in its scope than Section 115 of the 1988 Act. The said provision permits prohibition/regularisation in the interest of public safety or convenience or because of the nature of the, road or bridge, whereas Section 228 of the Corporation Act authorises such action in order to prevent danger, obstruction or inconvenience to the public or to ensure quietness in any locality. For this reason it may appear that there is really no conflict between the two provisions but the provisions u/s 228 of the Corporation Act is wider in its scope in its application and would for that reason be more beneficial to public interest which underlies the provision. The intention of the legislature in enacting such a provision in the presence of earlier provision must be held to provide for specific situations appearing in bigger towns covered by the Act. Under the circumstances, the application of rule aforesaid would lead to the conclusion that under (sic) Section 115 of the 1988 Act is not intended to operate within the area where Municipal Corporation Act is operating. Since the Corporation Act has received the assent of the President, the same would otherwise be operative in view of the principles contained under Article 224 of the Constitution of India. Under the circumstances, it is the considered view of this Court that Section 115 of the 1988 Act is not applicable within limits of Municipal Corporation, Shimla and it is Section 228 of the Corporation Act which would be applicable within the said limits. In this view of the matter, the impugned notification must be held to be without authority and jurisdiction.

8. As noticed earlier, Section 115 of 1988 Act is the successor to Section 74 of 1939 Act. It may, therefore, be argued that by enacting 1988 Act the Parliament had provided a later general law as against the prior special law and hence the aforesaid principle i.e. a prior general Act is affected by a subsequent particular Act, may not apply to the present case. Even if 1988 Act is taken to be the subsequent general law, the same would not repeal or affect earlier special law, i.e. the Municipal Corporation Act. The proposition seems to be well settled and is stated in *Municipal Council Patai's case* (Supra). In the said case the Court quoting Sutherland on Statutory Construction (Vol. I, 3rd Edn. P.486) has held that: "where the later general statute does not propose an irreconcilable conflict, the prior special statute will be construed as remaining in effect as a qualification of or exception to the general law". Elaborating the said concept further, the Court held as under:

Of course, there is no rule of law to prevent repeal of a special by a later general

statute and, therefore, where the provisions of the special statute are wholly repugnant to the general statutes it would be possible to infer that the special statute was repealed by the general enactment. A general statute applies to all persons and locality within its jurisdiction and scope as distinguished from a special, one which in its operation, is confirmed to a particular locality and, therefore, where it is doubtful whether the special statute was intended to be repealed by the general statute the court should try to give effect to both the enactments as far as possible.

The same principles were stated in *U.P. State Electricity Board v. Hari Shanka Jain* (1978) 4 SCC 16 as "In passing a special Act, Parliament devotes its entire consideration to a particular subject. When a general Act is subsequently passed, it is logical to presume that Parliament has not repealed or modified the former special Act unless it appears that the special Act again received consideration from Parliament." The reasoned statement of this law is contained in *Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others*, and is as under:

One such principle of statutory interpretation which is applied is contained in the latin maxim *leges posteriores priores contrarias abrogant* (later law abrogate earlier contrary laws). This principle is subject to the exception embodied in the maxim: *generalalia specialibus non derogant* (a general provision does not derogate from a special one). This, means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in the earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one (Bennion, *Statutory interpretation* pp. 433-34).

If the two provisions are considered in the context of aforesaid law to ascertain whether there was any inconsistency or conflict between them, it would appear that there is no conflict between the two. The Municipal Act which is a prior special law permits prohibition/restriction on many more considerations than covered u/s 115 of 1988 Act. The Motor Vehicles Act Could not have considered "public roads" treated as vesting in the Municipal Corporation and hence could not have provided for special problem faced within the city. Then the difference between the two provisions is only of the authority exercising the power. Municipal Commissioner appointed under the Corporation Act is this local authority exercising mere or less similar powers in relation to the territories comprised within the Corporation as exercised by the State Government in relation to the entire State, though subject to general control and superintendence of the State. In such a situation, the question of conflict would not arise and hence even if Section 115 of 1988 Act is treated to be a subsequent general law, the same would not affect the operation of special law u/s 228 of the Corporation Act.

9. It may, therefore, be examined if the impugned notification is ultra-vires the provisions of Section 115 of the 1988 Act. The particular submission in this behalf is that the impugned notification instead of restricting use of motor

vehicles generally as well as certain roads for all vehicles which may even not fall within the definition of motor-vehicles prohibits use thereof by all vehicles. Sealing is, therefore, said to be beyond the authority conferred on the said u/s 115 of the 1988 Act. As regards the restricted roads, it is submitted that restriction is not imposed for public safety or convenience or else there would not have been any provision for granting permits for use of the said roads. In other words, the submission is that in case public safety and convenience were the reason for restricting movement of motor vehicles on roads, the said purpose would be defeated by grant of permits for the same. Then it is submitted that restriction and prohibition do not apply to certain specified dignitaries, their wives and institutions, and defeat the very purpose of prohibition/restriction. The submission, in other words, is that in case use of sealed or restricted roads by certain dignitaries, their wives and institutions is not against the public safety and inconvenience then their use by the general public cannot also be so. It is, therefore, submitted that the impugned notification is ultra-vires the provision of Section 115 of the 1988 Act. As noticed earlier, Section 115 of 1988 Act is pari-materia with Section 74 of the 1939 Act. The said provision has received consideration by a Division Bench of Nagpur High Court in *New Motor Transport Company, Drug v. Regional Transport Authority Raipur and Ors.* (AIR 1952 Nag 111). In the said case an order of the District Magistrate passed u/s 74 of the 1939 Act, closing all un-metalled roads for plying passenger service vehicles except on a permit issued by him in this behalf was under consideration. The Court interpreting Section 74 held that the District Magistrate if he is satisfied that it is necessary in the public safety and public convenience or because of the nature of any road or bridge, may by notification in the official Gazette prohibit or restrict subject to such exceptions and conditions as may be specified in the notification, the driving of motor vehicles or of any specified class of motor vehicles or the use of trailer or generally in a specified area or on a specified road. The Court also held as under:

Under Section 74 the District Magistrate cannot constitute himself as a licensing authority to permit the use of the road by any particular vehicle according to his discretion. All that the section authorises the District Magistrate in so far as it is relevant here, is to prohibit or restrict in the interests of public safety or convenience the driving of motor vehicles or of any specified class of motor vehicles on a specified road. The prohibition or restricting may no doubt be subject to exceptions, and conditions. The exceptions and conditions cannot, however, be arbitrary. As the power to restrict or prohibit is conferred in the interest of public safety or convenience or because of the nature of any road or bridge the expectations and conditions subject to which the power of prohibition or restriction may be exercised must themselves proceed on no other considerations except those necessitating the prohibition or restricting under the section.

The sweeping prohibition in the notifications, however, that no motor vehicles shall ply on the road without the previous written permission of the authority

results in the prohibition altogether of, the use of stage carriages on the road except as may be permitted by the District Magistrate. That means that stage carriages also can be driven on the roads covered by item 4 provided there is previous written permission from the District Magistrate. From the notification, it is not clear on what grounds the permission is given. The District Magistrate has to prescribe the exceptions and conditions in general way and leave the control of transport vehicles by permits to the transport authorities functioning under the Act. We are, therefore, of the opinion that the notification dated 15-5-1945 is beyond the scope of the power conferred by Section 74 of the Act and is therefore, invalid.

10. Since Section 115 of the 1988 Act is a verbatim reproduction of earlier Section 74, there is no reason why the aforesaid interpretation should not apply to it. The application of the aforesaid would necessarily lead to the conclusion that "sealing" of roads in the manner and imposing "restriction" removable on grant of permit is ultra-vires Section 115 of 1988 Act. The decision in *Jaswant Singh v. State of Rajasthan* (AIR 1977 Raj 42) and *Rajbandha Maidan Vyavasayee Samiti, Raipur and Others Vs. Collector, Raipur and Others*, were also cited to support the legal validity of the impugned notification. Rajasthan's case (supra), concerned an order passed under Rule 230 banning plying tempos on a portion of road for fast moving traffic in Jaipur city and the ban was found to be in wider public interest and convenience and hence the Court held that there was no scope for interference with the said order. The ban, in this case was not total and was not removable by permit and hence this case would not support the present action. The Madhya Pradesh's case (supra) concerned a notification closing a part of the National Highway to heavy vehicular traffic during daytime. It was contended that the State Government could not exercise powers u/s 74 of the 1939 Act and impose such a restriction. The court was of the opinion that so much of the National Highway as falls within the municipal area belongs to municipal corporation and not to the Central Government, and hence the District Magistrate had the authority, and jurisdiction to impose the ban. Since the ban was found to be in public interest, the same was up-held. If the court had held that the banned portion of the National Highway vested in the Central Government u/s 4 of the National Highway Act, 1956, the court may not have up-held the said order. This judgment would, therefore, indirectly support the conclusion of that court that insofar as streets vesting in the municipal corporation are concerned, the proper authority to impose ban would be the Municipal Commissioner.

11. Then it should also be kept in view that the object and purpose of Section 115 of the 1988 Act is to prohibit or restrict use of motor vehicles and not seal or restrict roads. The impugned notification does not deal with motor vehicles but concerns itself with the use of certain road within the municipal limits of Shimla town, and is therefore beyond the ambit and scope of Section 115 of 1988 Act." The said notification must therefore be held to be illegal.

12. Even though the aforesaid conclusions are sufficient to dispose of the petition,, it may be examined whether the Respondent State has the authority to collect Rs. 15/-, per quarter, as token fee or tax. As far as tax is concerned, the same cannot be imposed or collected except under a law passed by the legislature. As far as fee is concerned, it is considered to be a payment levied by the State in respect of services performed by it for the benefit of the individual. It is usually co-related, to the services rendered and aim at raising the expenses of service rather than making any profit out of it. (See State of Rajasthan and Others Vs. Shri Sajjanlal Panjawat and Others, Then there is art entry relating to fee at the end of each of the three lists in 7th Schedule of the Constitution. It would, therefore, follow that the legislature has the power to levy a fee which is co-existence with the power to legislate with respect to substantive matters and that the legislature may while making a law relating to a subject matter within its competence levy a fee with reference to services rendered by the State under such law. In the instant case, if payment of Rs. 15/- is treated to be a fee, it must be for some, service rendered by the State and should be authorised by Section 115 of 1988 Act or some other provisions under the Motor Vehicles Act itself. No statutory provision has been brought to our notice to justify the said levy and collection. Learned Advocate General, however, submitted that the Respondents have decided to issue "token" to serve as identifying mark of the vehicle permitted to be used on the road in question and the amount collected is the price of such token. This, again, is beyond Section 115 of 1988 Act. The said provision requires the Respondent to identify prohibition or restriction by causing appropriate traffic signs to be placed or erected u/s 116 of 1988 Act at suitable places. Clearly, therefore, the collection of said amount is not only without any authority of law but is indeed in violation of Section 115 of 1988 Act and cannot for that reason be sustained.

13. The learned Advocate General drew our attention to the policy framed by the Respondent State Government on 8th May, 1991 (Annexure P-3) and submitted that prohibition/restriction imposed on use of motor-vehicles are necessary in order to protect the interest of pedestrians and to provide pollution free atmosphere and neat and clean environment in Shimla. The object beyond the policy though laudable would not by itself be enough to legalise otherwise illegal notification. The policy was not made in the context of Section 115 of 1988 Act and that is the reason why it over-shoots the mark. Then it is not always necessary that the policy framed by a department of the Government should necessarily be the policy followed by all. The particular department of the Government does not exercise any authority or jurisdiction de hors the authority delegated to it under law made by the legislature, Obviously, the present laws do not justify implementation of the aforesaid policy. The Respondent should first seek legislative sanction to the policy and thereafter put it in operation in accordance with the legislative intent. Then this Court also does not appreciate the tendency to frame a policy ignoring all laws validly passed by the legislature covering the subject matter of the policy. Policy-makers may be wise and yet

they cannot be permitted to compete with legislative wisdom. Indeed, the democratic discipline requires that they accept legislative wisdom and not seek its substitution by their own personal wisdom. In this connection, it must be noticed that the implementation of the policy has obstructed even the Chief Justice and Judges of this Court in traveling to the High Court for discharge of their constitutional duties and obligations. It is surprising that the notification permits wives of dignitaries to use all roads but does not extend this privilege to constitutional functionaries like the Chief Justice and Judges of the High Court. Apparently, the policy considerations between the two are lop-sided and indicate ignorance of the authorities of the constitutional provisions and functioning of the High Court as an integral part of the independent judiciary. The fact that these Respondents were not even willing to accommodate the functionaries of the High Court by making suitable amendment in the notification would establish that the policy decisions are wholly unconstitutional and unjustified. Even a laudable object has to be achieved in accordance with the provisions of the Constitution and laws. In this view of the matter, no benefit can be given to the Respondent-State of this so called policy and the objects behind it.

14. As a result of the aforesaid discussions, the petition succeeds and is allowed. The impugned notification dated 11th April, 1991 (Annexure P-2) purporting to prohibit or restrict driving of motor-vehicles on public roads within the limits of Municipal Corporation, Shimla, issued u/s 115 of 1988 Act is, hereby quashed.

15. No Costs.

16. Appeal Accepted