

(1992) 04 MP CK 0011

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 407 of 1992

Mahendra Arora and Another

APPELLANT

Vs

The Transport Commissioner, M.P. and Others

RESPONDENT

Date of Decision : 08-04-1992

Acts Referred:

Constitution of India, 1950 — Article 226, 265

Criminal Procedure Code, 1973 (CrPC) — Section 10(4), 100(5)

Madhya Pradesh Motoryan Karadhan Adhiniyam, 1991 — Rule 16, 16(2), 17, 16, 16(1)

Motor Vehicles Act, 1988 — Section 80, 87

Citation : AIR 1993 MP 29 : (1992) 1 MPJR 344

Hon'ble Judges : T.N. Singh, J;R.C. Lahoti, J

Bench : Division Bench

Judgement

T.N. Singh, J.

With this petition, six other matters are heard analogously involving the common question of law of some importance. By this common Order, all seven Matters, of which brief particulars are itemised below, are disposed of.

M. P. No. Petitioner/ owner Vehicle No. Seizure Date

407/92 M. Arora MP 07 1943 27-2-1992

(Jointly) R. K. Arora MPG 7171 -do-

431/92 M. S. Jadon MKW 7744 -do-

446/92 M. Arora CIG 7605 28-2-1992

449/92 R. P. Sharma MP 06 7527 -do-

461/92 R. N. Sikarwar MKH 7730 7-3-1992

462/92 Ashok Parashar CPG 57 27-2-1992

563/92 S. S. Tomar MP-06-A-1411 9-3-1992

(Jointly) A. K. Shrivastava MP-06-A-1601 -do-

Subhash Pathak MP-06-6838 -do-

The common feature of all these cases is that the vehicles were seized by the Flying squad of the Transport Department operating on different dates in Gwalior region in different areas. Except in one (the instant petition), in all other matters, State of M.P., through Secretary, Transport Department, is impleaded as the first respondent. During the course of hearing of these petitions, the Transport Commissioner, Shri Shivraj Singh, along with Regional Transport Officer, personally attended hearing and assisted Shri Kelkar, learned Additional Advocate General, appearing for the State and other respondent in these matters.

Although in all matters, returns have come and on facts, contentions of the petitioners, in all cases, variously raised, are disputed, we do not propose to dilate thereon. Indeed, in all these matters, a preliminary objection is forcefully pressed not only by Shri Kelkar but also by Shri Nigudkar, learned counsel appearing for M.P. Road Transport Corporation (intervener) that there being available to the petitioners the statutory remedy of appeal the petitions are not maintainable. With that, we would deal appropriately in due course, but at this stage, we would simply state that in all the petitions, the common question of law agitated is that the seizure made of the vehicles of the petitioners was without jurisdiction and not illegal only. It is contended that for plying the vehicles without permit, those were seized, but no tax could be levied or collected in such a case in terms of the provisions of M.P. Motor Van Karadhan Adhiniyam, 1991, for short, the "Act" /"Adhiniyam". It is not disputed that all petitioners are bus-owners and in all cases, the common allegation against the petitioners is that passengers were found carried in the vehicles seized during surprise check on the highway by the Flying Squad when it was found that for the concerned route, none had a valid permit on the date of seizure. In that regard, in respect of the cases of the different petitioners, details are furnished in the separate returns about non-fulfilment in different manner by the different petitioners of the legal requirement of the holding of a proper and/ or valid permit. Indeed, it is the common ground of the respondents in all these cases that for nonpayment of tax due payable under the required permit contemplated under the Motor Vehicles Act, 1988, for short, the "M.V. Act", the vehicles were validly and legally seized in terms of Section 16(3) of the Act.

To the other provisions of the Act, we would refer soon, but presently, it is necessary " to state that Section 20(b) of the Act provides for an appeal by any person aggrieved by the seizure of motor vehicle made u/s 16, but it also provides that no appeal shall be entertained unless the amount of tax and penalty levied in respect of which the appeal is preferred has been paid. Complaints are made in specific terms in some petitions about the tax demanded and release of vehicles being made conditional on payment of amounts specified. In M.P. No. 563 of 1992, at para 1, it is stated that from each of the petitioners Rs. 30,000/- was demanded as the tax amount and indeed, that demand is

challenged by them as illegal and without jurisdiction. In M.P. No. 407 of 1992, at para 2, on the other hand, the prayer made is for quashing the illegal demand and recovery of motor vehicle tax at the rate of Rs. 600/ - per seat for the entire month for plying the vehicle without permit for a Single day and also for quashing illegal detention of the vehicles. Indeed, learned leading counsel for the petitioners in all the cases, Shri J.P. Gupta, raised legal contentions pertaining to that common prayer and counsel on both sides made submissions on the interpretation of the relevant provisions of the Act and also of the Rules framed thereunder, namely, M.P. Motoryan Karadhan Niyam, 1991, for short, the "Rules"/ "Niyam".

To decide the preliminary objection, we need not tarry further. Strong reliance Shri Nigudkar placed on the oft-cited decision in Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, although the moot question decided therein was a different one. That was a case of interpretation of an exclusionary clause and the question decided was that the suit was maintainable for declaration that provisions of law relating to assessment of Sales Tax were ultra vires and suit was not barred by Section 17, M.B. Sales Tax Act, 1950 for refund of the tax illegally collected. However, more appropriately he referred also to M.G. Abrol Vs. Shantilal Chhotalal and Co., in which case, the majority opined that the Sea Customs act having provided for an appeal unless there were exceptional circumstances, the Supreme Court and High Court would not exercise writ jurisdiction. However, at para 15, it was also observed that although by way of an appeal under the said Act, the order of confiscation and imposition of large penalty could be challenged, that was not an effective remedy because the appeal could not be filed without first paying the penalty. Shri Kelkar relied on Veerappa Pillai Vs. Raman and Raman Ltd. and Others, to submit that the specific remedy under special law debarred the petitioners' entry in to this Court to invoke its writ jurisdiction, True, in that case, their Lordships disapproved High Court's direction to grant the petitioners the permit applied for and took the view that the Court had exceeded its powers and jurisdiction in making the direction and not "merely quashing the proceedings".

Reliance, Shri Gupta placed on the holding in Ram and Shyam Company Vs. State of Haryana and Others, that the rule of exhaustion of alternative remedy is a rule of convenience and discretion rather than a rule of law and a person is not debarred from approaching the High Court against an illegal or invalid order which adversely affected him. There are, however, other principles also which rebuff effectively the preliminary objection. Levy and collection of tax by the respondents from the petitioners and the coercive measures of seizure used for that purpose are challenged in these matters. Article 265 of the Constitution prohibits levy and collection of tax without authority of law. The grievance in these cases obviously has a Constitutional impress, preeminently suited for decision by a Constitutional Court. Writ jurisdiction is meant to be exercised in such cases. It may indeed be regarded as a complaint of a some petitioners' fundamental right to livelihood being infringed. Obviously, an owner-driver is to

depend for his livelihood on the earnings of the bus he is operating. This Court, recently, in Sushil Sharma's case AIR 1992 MP 79, has held that when grievance is made of violation of his fundamental right, the Court is bound to hear the petitioner on merit and the petition cannot be dismissed in limine. Reference has been made appropriately also to Bharat Kala Bhandar Ltd. Vs. Municipal Committee, Dhamangaon, where the Court heard the appellant on the question not raised by him in appeal before the High Court and other Courts below; they held that the question being of considerable importance and being likely to be raised in other matters, the law had to be settled. An impost by the Municipality was challenged. The Act provided specified remedies and also barred other remedies.

Respondents have indeed contended that at the Main Seat of this Court, the vires of the Act is challenged and we stay hands, but we do not propose to deal in these matters with the question of vires. We are required to merely determine due exercise of the jurisdiction as contemplated under The Act in these matters. In Lilavati Bai Vs. The State of Bombay, in a case under Bombay Land Acquisition Act, the Court held that High Court's "special jurisdiction" under Article 226 of the Constitution empowers it to determine how far the provisions of the statute have or have not been complied with that position indeed is to be examined in the matters but the relevant provisions are to be carefully interpreted. The preliminary objection of the respondents and the intervener in these matters is accordingly overruled.

To the moot controversy now. For that, we give first a shgtr re'sume" of the new Act, which has taken the place of M.P. Motor Vehicles Taxation Act, 1947, hitherto holding the field. In the Statement of Objects and Reasons of Act No. 25 of 1991 (the Adhiniyam, as originally enacted; amended later by Act No. 26 of 1991, but both simultaneously enforced), published in M.P. Rajpatra dated 27-11-1991, pps. 1595/96, it is, inter alia, stated that the tendency to evade payment of tax on motor vehicles being noticed, suitable provisions in that regard have been incorporated in the Bill "for the payment of tax in advance and subsequently appropriate refunds for the periods of non-use". Rightly, therefore, Shri Kelkar submitted that we construe the relevant provisions to effectuate legislature's will and devine the legislative intendment of the different provisions using the internal aid of the Objects and Reasons of the Bill.

The words and expressions used but not defined in the Act would have meanings assigned to them in M. V. Act as per Section 2(e) of the Act. Relevant portions of those provisions of the Act which have a direct bearing on the controversy, we extract:

"3. Levy of tax on Motor Vehicles.-

(1) A tax shall be levied on every motor vehicle used or kept for use in the State at the rate specified in the First Schedule :

(the two provisos are omitted, not relevant).

(2) A Transport vehicle of which the certificate of registration is current shall, for the purposes of this Act, be presumed to have been in use or kept for use, notwithstanding the expiry of the certificate of fitness in case of such transport vehicle."

*** ** "5. Payment of tax.-- (1) The tax levied under this Act shall be paid 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 for that quarter, half year or year, within fifteen days from the commencement of the quarter, half year or year, as the case may be. Tax for a half yearly token shall not exceed twice and tax for an annual token shall not exceed four times the tax for a quarterly token :

Provided that the tax shall be paid in respect of a motor vehicle used or kept for use for any period expiring on the last day of a quarter and not exceeding two months, at two thirds of the quarterly tax or one-third of such tax according to the period exceeds or does not exceed one month :

(Second proviso omitted, not relevant.)

Provided also that the tax levied in respect of a stage carriage plying on a route other than a city route or a contract carriage other than a motor cab shall be paid in advance monthly, quarterly, half yearly or annually within ten days from the beginning of the month, quarter, half year or year, as the case may be."

Section 8(1) contemplates filing of a declaration in the prescribed form, to be delivered within the prescribed time to the Taxation Authority concerned by every owner who is liable to pay tax under the Act. Section II provides for general exemption from levy of tax in certain cases.

Under Section 12(1)(a) is contemplated "grant of token" to a person in the prescribed form when tax is paid by him or when no tax is payable. For failure to pay tax due, penalty is contemplated and also interest, u/s 13, but refund of tax u/s 14 is also contemplated for non-user of the vehicle. Any tax, penalty or interest due under the Act may be, as per Section 15, recovered as an arrears of land revenue, but notice in the prescribed form is to be served on the owner for his default. Power of entry, seizure and detention of motor vehicles in case of non-payment of tax is contemplated u/s 16, of which relevant portion is extracted :--

"16. Power of entry, seizure and detention of Motor Vehicles in case of non-payment of tax.-- (1) The Taxation Authority or any other officer, authorised by the State Government in this behalf, may at all reasonable time enter into and inspect any motor vehicle or premises where he has reason to believe that a motor vehicle is kept for the purpose of verifying whether the provisions of this Act or any Rules made thereunder are being complied with:

.....

(3) The Taxation Authority or any officer authorised by the State Government in

this behalf may if it/ he has reason to believe that a motor vehicle has been or is being used without payment of tax, penalty or interest due, seize and detain such motor vehicle and for this purpose take or cause to be taken any step as may be considered proper for the temporary safe custody of such motor vehicle and for the realisation of tax due."

To the intricate and rather clumsy scheme of the First Schedule, specifying the rate of tax of which levy in terms of Section 3(1) is contemplated, we may now refer. The first column relates to "Class of Motor Vehicle"; and the second to "Rate of Quarterly tax for motor vehicles". Of the first column, Item No. IV is in respect of "Public Service Vehicles" and the tax is payable for "motor vehicles plying for hire or reward and used for transport of passengers". The levy of tax in the second column is variously specified, "per seat" and that is the main feature of the scheme of the said item. In respect of different vehicles of different types operating under different conditions and circumstances, the levy is linked also to period and length of the route operated. Sub-item (d) deals with "vehicles permitted to carry more than six passengers and plying as stage carriages on routes other than city routes" and it has four sub-heads with which we are not concerned. Sub-Item (e) prescribes levy in respect of, separately, ordinary, express and A.C./De Lux buses, "permitted to carry more than six passengers and kept as reserved stage carriage or spare bus". Sub-Item (f) deals with "contract carriage" and vehicle are classified under six sub-heads. In other cases, in respect of all sub-items the levy is contemplated in respect of "Vehicle permitted" to ply under different types of permits granted either u/s 87(1)(a) or Section 88(8) or Section 88(9), M.V. Act. the permit contemplated under sub-heads (4) and (5) is described categorically as a "special permit" and under sub-head (6) as a "temporary permit", of sub-item (f). In that context and setting the scheme underlying all sub-heads and the sub-items is to be appreciated to examine precisely the purport of sub-item (g), that is extracted in extenso :

"(g) Motor Vehicle Rs. 600.00 Plying without per seat per month" permit

We turn now to the Rules. Forms A, B, and C are prescribed under Rule 5 for the declaration contemplated u/s 8(1) of the Act. Rule 7 deals with the manner of payment of tax. If the tax is payable for a month that shall be paid to the Taxation Authority "not later than 10 days after commencement of the month" and if that is payable for a period for less than a month as the case may be, "on or before the date on which the tax becomes due". The second proviso of Clause (c) of Rule 7(1) contemplates further that when tax is "payable by public service vehicle plying on a temporary permit or a on a special permit (that) shall be paid at the time of issue of "the said permit". Under sub-rule (3)(b), proviso, power is vested in the "Taxation Authority" to allow the owner of a vehicle "other than a transport vehicle" to deposit the amount in cash in its office but in other cases by Bank Draft or deposit in treasury. Rule 9(3) contemplates grant by the Taxation Authority to the owner of a "public service vehicle" a certificate in form "J" for payment of tax under sub-items (d), (e) and (f) of item IV of the First Schedule

and in Form T grant of "token" is also contemplated. Rule 15 provides for notice to be served in form "E" on the owner of the motor vehicle "who fails to pay tax due, penalty or interest payable under the Rule"; Sub-rule (3) contemplates showing of cause within seven days and in case of non-payment recovery of the amount from the owner, as an arrear of land revenue. Rule 17 provides that the officer seizing a vehicle u/s 16(3) and the Taxation Authority shall release the vehicle detained on payment of tax penalty and interest due and that Form "U" shall be used for seizing the Vehicle and that copies thereof is to be served on the person from which possession and control the vehicle has been seized. Although Rule 16(2) provides search to be made following Cr.P.C., no form of seizure memo is provided.

In the M. V. Act Sub-section 2(47) defines the term "transport vehicle" to mean a "public service vehicle, a goods carriage and educational institution bus or a private service vehicle"; Sub-section (35) defines the term "public service vehicle" to mean any motor vehicle "used or adopted to be used for the carriage of passengers for hire or reward and includes taxi-cab, a motor-cab, contract carriage and stage carriage". Chapter V of the Act, captioned "Control of Transport Vehicles" prohibits vide Section 66 the owner of a motor vehicle from using or permitting the use of the vehicle "as a transport vehicle in any public place whether or not such vehicle is actually carrying any passenger or goods save in accordance with the conditions of a permit granted" under the Act. Procedure is laid down in Section 80 of the said Act for applying and for grant of permit but special provision is made in Section 87(1) for grant of "temporary permit" for a period not exceeding four months and in Section 88 for "special permits" and for "tourist vehicles" as per Sub-sections (8) and (9) respectively. Power to seize and detain a vehicle is also contemplated u/s 207 M. V. Act to be exercised by any police officer or other authorised person who has "reason to believe" that the vehicle is being used in contravention of the provisions of Section 3, 4 or 39 or is without permit required by Section 66(1) or is contravening any condition of the permit.

Although we have noted the provision of the relevant Rules it remained to be pointed out that u/s 24 rules made by the State Government are "for the purpose of carrying in to effect the provisions of the Act" and are to be treated, therefore, as part and parcel of the Act. For a valid detention when search is made and vehicle is seized procedure prescribed under Rule 17 is to be followed, but equally important is the procedure contemplated for search under Rule 16(2) making applicable to the search the provisions of Cr.P.C. because that detention occurs after search and it is a consequential event. Those provisions, for reasons to be elaborated hereinafter, are mandatory and we would examine if power u/s 16 of the Act was validly exercised in terms thereof.

Despite the voluminous pleadings we would not go astray and would confine the focus of enquiry to the jurisdictional point to determine the legality of the seizure of the vehicles of the petitioners. We would note, therefore, only the admitted

facts pertaining the seizure made in each case as documentarily evidenced accepting the case of the respondents in that regard. We have to examine in each case as to what was done when the search or seizure was made in each case, except that of petitioner No. 1 of the instant petition, who has got his vehicle released after payment of the tax due. On record has come with the return of the respondents in each case the seizure memo and also the notice served on the driver in Form "U" communicating to him the demand to be satisfied for release of the vehicle. All seizure memos are of the same type in one respect, the person or persons witnessing the search is or are invariably one or more officers of the Enforcing Wing of the department; no independent witness has testified the search made in any of the cases. There is a total non-compliance with the provisions of subsections (4) and (5) of Section 100 Cr.P.C. What documents were seized during search pertaining to the vehicle and who were persons travelling or how many were travelling in the bus at the time of the seizure or how many had paid fare, are not also indicated in any search memo. Similarly, the notice in Form "U" served on the driver is faulty in each case. Almost invariably in all cases number of passengers travelling, in respect to which tax it to be paid, is not mentioned and in many cases even the amount due payable as tax is either not specified or is wrongly specified. In one case, M. P. No. 446 of 1992, neither could the vehicle be seized properly from the driver who is said to have bolted when caught nor he could be served with the notice in Form "U" for that reason, These defects in the seizure memos and demand notices in Form "U" taint the seizures, that would be questioned which we would examine in due course while dealing with counsel's legal contentions to these, we turn now (sic).

It is contended by Shri Gupta if the tax has been paid for the vehicle for keeping it as a "reserved stage carriage" or "spare bus" in terms of sub-item (e) of Item No. IV of the First Schedule of the Act, there can be no valid seizure of the vehicle. That would also be the case if a temporary permit is applied for and tax in that regard was paid though permit was not issued. It is also stressed that if the public service vehicle was being taken for repair the vehicle could not be seized. Another contention of Shri Gupta is that the provision of sub-item (g) of Item No. IV of the First Schedule cannot be construed in the manner applied by the respondents in raising the tax demand of Rs. 30,000/- reckoned at Rs. 600/- per seat per month of the authorised capacity of 50 passengers of the bus in each case. That is taxing provision and not penal provision, he submitted. It cannot be assumed, according to learned counsel, that for the entire month ending on the date of checking the vehicle seized actually carried 50 passengers and, therefore, tax was due payable in that regard. On behalf of the respondents Shri Kelkar contended that department's interpretation of sub-item (g) was flawless and accorded with the legislative intent. Tax evasion was a growing menace and that could be checked if sub-item (g) was meaningfully construed and applied. He submitted further that there was no scope for construing liberally a tax statute and that strict construction implied stringent construction. He also

cited case law which will be discussed in due course.

16-A. Latham, C. J. of the High Court of Australia in "Matthews v. Chicory Marketing Board" 160 CLR 263 (M) explained what a "tax" is and his definition a Bench of seven Judges of the Apex Court has approved in the case of The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., that holding is relevant for the present occasion. Tax implies, "compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered." Our Constitution defines such terms as "taxation", "tax on income" and also "tax on the sale or purchase of goods" inclusively vide Article 366 but not the term "tax". It bars however vide Article 265 levy or collection of tax except by authority of law. In a recent decision which Shri Kelkar has cited, Keshavji Ravji, : AIR 1991 SC 1806: (1991 AIR SCW 1845) the Apex Court has underlined the underlying constitutional philosophy of taxation and has observed that taxation has ceased to be regarded as an "impertinent intrusion into the sacred rights of private property", and that "it is now increasingly regarded as a potent fiscal tool of the State policy" employed for equal distribution of burdens of the community to sustain social services and purposes. A legislation with a fiscal mission has no place for "artificial and unduly latitudinarian rules of construction". However, in Justice G. P. Singh's Principles of Statutory Interpretation, 5th Edition, p. 455, is noted Lord Helburey's dictum in Tenant v. Smith (1892) AC 150 that "the subject is not to be taxed without clear words for that purpose" and that is said to be valid for all times and climes. What is not admissible in interpreting a taxing statute is "equitable construction" and in the words of Lord Cairns, "if the person sought to be taxed comes within the letter of law he must be taxed however great hardship may appear to the judicial mind to be" (referred in IRC v. Duke of Westminster 1936 AC 1).

Levy of tax on motor vehicles in terms of Section 3(1) is "at the rates specified in the First Schedule" and that is on "every motor vehicle used and kept for use in the State", the presumption contemplated under Sub-section (2). In respect of a "transport vehicle" is a part of the charging section. The provisions of the First Schedule are also integral part of the charging section and are to be so read. But, as held in Ujagar Prints (: AIR 1989 SC 516) and Aphali Pharmaceuticals, ibid 2227, Schedules, in many cases, contain a substantive enactment and even go beyond the scope of a section to which it is connected. In the Act the First Schedule refers to Section 3(1) but its particular provision sub-item (g) of Item No. IV is to be meaningfully construed to subserve its purpose. It is to be accepted indeed that the rate specified in that sub-item of the tax payable has a penal tinge. The sub-item deals with an extraordinary situation of penalising the owner of a motor vehicle in respect to which "permit" is required but that is not obtained by him and tax is evaded. On that account, it does not lose its essential character as a taxing measure; the rate as also the incident of the levy are specified and their character does not vary a bit from other sub-items. It differs only in respect of the event of payment, which is not voluntary and not made in

advance.

As per section 5(1) any tax levied in terms of the First Schedule is payable in advance by the owner of the motor vehicle and in that regard duty is cast on him to file a "declaration" u/s 8(1) while tendering the tax due payable. Tax is payable in advance for the entire period for which the vehicle is "proposed to be used or kept for use" because u/s 66 M. V. Act without payment a transport vehicle cannot be used in a public place. However under different sub-items and sub-heads of Item No. IV tax is levied "per seat" meant to be occupied by passengers in the vehicle, to be carried for hire or reward, on the route permitted. His trade is taxed; the incidence of tax falls on the passenger transported by him. In that regard the new and the repealed Act speak in the same voice. In Schedule II of the repealed Act, against Item No. 2 ("stage carriage") the entry in the corresponding column is "Rs. 100/- per passenger per day". Except indeed of sub-item (g) in all other cases contemplated under Item No. IV relating to "public service vehicle" it is assumed that the vehicle possesses the "permit" whether issued in terms of section 80, or 87 or 88 M. V. Act. By plying a vehicle on a public place and using it for transport of passengers for hire or reward the owner makes himself liable to pay tax under the relevant sub-item and/or sub-head of Item No. IV. What is clear and obvious is that there must be a valid permit and also valid payment of tax in respect to that permit which will entitle an owner of the "public service vehicle" to use the vehicle for transport of passengers and ply it on a public place for hire or reward but when permit is not obtained tax would still be payable, even if the "declaration" is not filed u/s 8(1).

With deliberate care the word "motor vehicle" is used to denote its neutral character in sub-item (g) to distinguish it from sub-items (d) and (f) which deal respectively with cases of vehicles used as a "stage carriage" and a "contract carriage" holding permits as such. Sub-item (g) deals with the case of any motor vehicle used for transport of passengers for hire or reward but without possessing permit for the activity engaged in. We are clear in our minds that the several entries under the several sub-items and sub-heads are mutually exclusive. Thus, even if a motor vehicle, whether an ordinary bus, or express bus or an A.C./De Lux bus, which is kept as "reserve stage carriage or spare bus" has no live liability to taxation other than one contemplated under sub-item (e), it will be safe if it is "kept for use" (inside garrage) and is not taken out on the road in the public place for plying for hire or reward and used for transport of passengers. We do not accept Shri Gupta's contention that if liability of tax under sub-item (e) Item No. IV is discharged in terms of section 3(1) of the Act there cannot ensue liability also in terms of the same provision applying sub-item (g). In clear and categorical terms incidence of taxation u/s 3(1) arises in respect of the same motor vehicle in terms of its user and non-user (kept for use); ownership per se of the bus of any type mentioned in sub-item (e) creates liability to payment of tax for that bus even if that is not plied or used on the road.

However, the question still would be, if the vehicle is found plying on a public place within the meaning of sub-item (g) on a particular date what precisely would be the corpus or extent of the tax-liability in respect of the particular incident. Clearly and categorically tax is levied and made payable in respect of such a motor vehicle under sub-item (g), and "Rs. 600/- per seat per month" in terms of Section 3(2). A presumption would arise that the vehicle would be or had been in use for a month preceding or including the incident. Evidently, Section 3(2) is enacted to care for such a situation and for sub-item (g) to be meaningfully construed. Because the owner had not discharged his duty of filing the "declaration" contemplated u/s 8 the presumption would be buttressed. Payment within 10 days "from the beginning of the month" as contemplated is under the third proviso of Section 5 (1) and that is to be read with the first proviso. It is clear that the minimum period for which the tax is payable for the vehicle used or kept for use is a month's and that is payable in advance. However, there is a saving grace which benefits the defaulter contemplated under sub-item (g) in that the levy and the collection of the tax thereunder would give him due discharge till the end of the month. For plying the vehicle on any date subsequent to the date of detection and collection from him the tax till the end of the month, he need not pay further tax but he must obtain a valid permit of any type, permanent, temporary or special, in terms of section 80 or 87 or 88, as the case may be.

The other question that arises is, whether the rate of Rs. 600/- per seat would be applicable to the authorised number of seats to blow up the liability though it is found that when the vehicle plying without permit was checked all seats had not been occupied. The scheme of item No. IV is to levy tax in all cases "per seat" (or per passenger) as already discussed above. Indeed, when a stage carriage or a contract carriage is plying under a valid permit tax is levied and collected in respect of full carrying capacity as per declaration filed u/s 8. It would be difficult to countenance a presumption that in the absence of a permit and a declaration on all the preceding dates during the month more passengers than were found carried on the date of checking had been actually carried. It would accord peacefully and harmoniously with the legislative intent underlying the special provision of sub-item (g) of Item No. IV and of the charging provision. Section 3, to hold that the levy would be "per seat" found occupied when liability arises on detection of tax evasion and tax would be payable for the seats actually found occupied. For this construction we find support intrinsically from the evidence of legislative intent provided by Explanations (7) and (8). Taxation and prosecution for the offence are to be treated separately is the legislative mandate. It is the nexus between the number of passengers carried and the fare paid by them (irrespective of the amount paid) which makes up the taxing net contemplated under Item No. IV of the First Schedule of the Act. u/s 66 a permit is not required for "any transport vehicle while proceeding empty to a place for the purpose of repair". Thus, evidently, when that condition is satisfied the owner would be out of the taxing net of sub-item (g) and mere non-

mention of Clause (p) along with Clause (m) of section 66(3) M. V. Act in Explanation (7) would not hit him.

No charm or merit we have seen in Shri Gupta's contention that when the owner applies for any permit and even makes payment therefore he will be out of taxing net of sub-item (g) and his vehicle cannot be seized u/s 16(3) of the Act. Although in the new M. V. Act a liberalised policy in the matter of grant of a permit is manifested, still the law enacted is to be interpreted on its own terms. Legislature has not made any provision like "deemed grant" of a permit if no action is taken for any specified time on the application made. That is not to be read in any provision of the M. V. Act, whether Section 66 or 80 or 87 or 88. However, we have taken the view that for avoiding a seizure u/s 16(3) of the Act twin conditions of obtaining a permit and advance payment of tax contemplated under the Act are to be satisfied. Payment procedure is indicated with meticulous care in the Act and the Rules. Any unauthorised payment not made in accordance with the procedure prescribed would not vest the applicant with any right under the Act. As per Rule 7 (1)(c) payment may be made "on or before the date on which the tax becomes due" and the second proviso of the Rule clearly contemplates in case of vehicle plying on "temporary permit or special permit (it) shall be paid at the time of issue" of the permit. For making cash payment, as per proviso of Rule 7(3)(b) order is to be obtained from the Taxation Authority and indeed Section 12 as also Rule 9 clearly contemplates liability in regard to tax being discharged on issuance of a "token"; that position is manifested also in Rule 7(4)(b) and the second part of Form B (declaration). The legal requirement is, first there shall be a permit duly obtained and then particular of that duly filled in the declaration while tendering payment.

In the other contention of Shri Gupta that the power of seizure contemplated u/s 16(3) is not exercisable in regard to liability arising in terms of sub-item (g) of Item No. IV of the First Schedule is also equally meritless. True, the power is exercisable when the authorised officer "has reason to believe that a motor vehicle has been or is being used without payment of tax, penalty or interest due" and the vehicle may be seized and detained for "the realisation of tax due". But, what is obvious is that tax is payable when a "motor vehicle (is) plying for hire or reward and used for transport of passengers" which requirement of Item No. IV is common to all sub-items and sub-heads and that caps and crowns the provision made in sub-item (g). As stated above, the scheme of things contemplated is that before the vehicle is plied by the owner for transport of passengers on hire he is also to pay tax in advance and for that he is to obtain a permit and file a declaration along with the tax due payable under the relevant sub-item of Item No. IV. There is well known legal adage judicially recognised, what cannot be done directly is also not indirectly permitted. We reiterate once again that sub-item (g) is a special provision and a substantive enactment and it is meant to subserve the special purpose of checking tax evasion. It is also obvious that "for the realisation of tax due" seizure and detention can be made u/s 16(3) as that is its object and purpose and tax levied and payable in terms of

sub-item (g) is also "tax due".

What merits examination, however, is the contention that seizure per se is expropriatory which imparts to section 16(3) a penal hue. Obviously, seizure takes place after search of the vehicle takes place under subsection (1), both provisions being complimentary are to be read together. The characteristic common feature of both is the positive requirement that the authorised officer shall have "reason to believe" about any act or activity of the owner contravening the provisions of the Act to acquire competence to "enter into and inspect any motor vehicle" otherwise the arbitrary or mala fide exercise of power may act to the serious prejudice not only of the owner but also of the travelling public. At any time and at any public place and public service vehicle may be held up for indefinite period if the power is abused or misused. No wonder, in Rule 16(2) the search procedure contemplated makes applicable provisions of Criminal Procedure Code to searches made u/s 16. Arrest of movement of a vehicle during search and seizure u/s 16 results virtually in the arrest transitorily of the passengers and impairment of their constitutionally guaranteed freedom of movement. An innocent passenger is not likely to be aware of illegal or unauthorised movement of the vehicle when he boards it and indeed no duty is statutorily cast on him to enquire from the owner or driver if the vehicle was armed with a valid permit for legal movement. It is this Court's constitutional duty to interdict any possible violation of a citizen's fundamental right guaranteed whether under Clause (d) or (g) of Article 19(1) of the Constitution and to construe the enacted law accordingly to constitutionalise it.

The expression "reason to believe" has special significance and is so construed judicially. In Craies on Statute Law 7th Ed., p. 167, it is stated : "There is a well-known principle of construction that where the legislature uses in an Act a legal terms which has received judicial interpretation it must be assumed that the term is used in the sense in which it has been judicially interpreted." Construing the expression, "reason to believe" in Section 34 Income Tax Act 1922 the Apex Court has held that the belief of the Income Tax Officer cannot be a mere pretence and the reasons for the belief must have a rational connection to the formation of the belief and it has also been held that the belief must be that of an honest and reasonable person based upon reasonable ground and that the Income Tax Officer cannot act on mere suspicion, he may act only on direct or circumstantial evidence. See *S. Narayanappa and Others Vs. Commissioner of Income Tax, Bangalore*, ; *State of Uttar Pradesh Vs. Manchar and Company, Bareilly*, In another case, under U. P. Sales Tax Act the same view is expressed that for the escaped assessment to be taxed the belief of the assessing authority must have a rational basis. See, *The Commissioner of Sales Tax, U.P. Vs. Bhagwan Industries (P) Ltd., Lucknow*, . The words obviously imply the duty to act reasonably and application of objective tests. That is also supported by the provision of appeal in Section 20 vesting in the Appellate Authority the power and jurisdiction to appraise facts to test the legality of the seizure. Chapter 6 of Maxwell on Interpretation of Statutes deals with the topic "Construction to

prevent evasion or abuse" and at p. 146 (12th edn.) is quoted Lord Macnaghten : "It is well settled that a public body invested with statutory powers.... must take care not to exceed or abuse its powers. It must keep within the limits of the authority committed to it. It must act in good faith. And it must act reasonably." (See *Mayor of Westminster v. In W. Rly Co.* (1905) AC 426).

We would stress, therefore, the necessity identifying the bounds of authority of the officer making the seizure u/s 16(3) of the Act and those are indeed to be found within the parameters of Rules 16 and 17. Not only those provisions are to be regarded therefore as mandatory but the inherent requirements (of which due compliance is to be insisted upon to fulfil the object of a valid levy in terms of sub-item (g) of Item IV) are to be precisely outlined. It would be necessary to insist, therefore, the presence, at the time of search and seizure, of independent witnesses as contemplated u/s 100 Cr P.C. The officer making the seizure would also be required to make appropriate documentation to establish rationality of his belief and reasonableness of his act. It would be necessary for him to record in the seizure memo (in the rules no form is prescribed) the number of passengers actually found travelling and paying or contracting to pay the fare for the journey made, along with their names and addresses. Evidently, if the seizure is challenged in appeal that would provide the factual basis of exercise of power u/s 16 which can then be tested by the appellate authority which it is bound to do.

Reference we would make now to the case-law cited at the Bar. Shri Gupta relied on *Achyut Shivram Gokhale Vs. Regional Transport Officer and Others*, It was held in that case that while granting special permit, R.T.A. can ask the applicant to furnish the names of the passengers to be carried. Shri Kelkar relied on *State of Karnataka Vs. K. Gopalakrishna Shenoy and Another*, in which case it was held that liability to pay tax u/s 3(1) of Karnataka Motor Vehicle Taxation Act was not dependent upon the vehicle being covered under the certificate of fitness or not. On few other decisions also Shri Kelkar relied. One is a Full Bench decision, *V. Govindarajulu and Vs. The Regional Transport Officer, Anantapur and Others*, dealing with a case under A. P. Motor Vehicle Taxation Act. It is held that in case of a transport vehicle the levy is on the user of the vehicle. In *I. Navakoti Vs. The Regional Transport Officer, Nellore*, the vehicle having a valid permit was found plying outside the specified route; on that account it was held liable to pay tax under the relevant provision of the A. P. Motor Vehicle Taxation Act. Another case under the same Act is of *Sunkara Venkateswara Rao Vs. The Joint Regional Transport Officer, Krishna, Vijayawada and Another*, (1971 Tax LR 556) wherein it was held that even a casual use of tourist carriage as a stage carriage was liable to additional tax from the month when the vehicle is found to be used. These decisions obviously support the view we have taken.

It is time we sum up the conclusions., On interpreting the sub-item (g) of Item No. IV of the First Schedule we hold that when any motor vehicle which is a "Public Service Vehicle" is found plying for hire or reward and is used actually for transport of passengers, but without a valid permit issued in accordance with law

authorising it be engaged in that trade, the owner of the vehicle shall be liable to pay tax in terms of sub-item (g) reckoned at the rate of Rs. 600/- each seat found occupied by a passenger actually travelling in the vehicle when any search is made of the vehicle in terms of Section 16(1) of the Act. We are also of the view that when payment is made of the tax levied in terms of sub-item (g) that shall be deemed paid for the period expiring on the last day of the month. Indeed, in virtue thereof the owner may be entitled either to seek refund if the vehicle is not proposed to be plied by him subsequently during that month and intimation in that regard is filed by him in Form "K" or to apply for a permit of any type, contemplated u/s 80, 87 or 88 and when granted to file a declaration in Form B seeking therein adjustment of the payment made.

We also hold that for a valid seizure for non-payment of tax payable in terms of Section 3 and Item No. IV, sub-item (g) of First "Schedule of the Act, the following conditions are to be satisfied :

(a) Before seizure, the search of the vehicle is to be made in accordance with Rule 16 of the Rules/Niyamread with Section 100(4), Cr P.C. At least two independent and respectable inhabitants of the locality shall be called upon to witness the search. They shall sign the seizure memo prepared in the manner herein specified.

(b) In the list of things seized prepared in accordance with Section 100(5), Cr. P.C. not only the particulars of the vehicle and any document pertaining thereto seized during search shall be given, the particulars of passengers found travelling their total number, names and addresses shall also be given.

(c) In preparing Form "U" in terms of Rule 17, the number of seat found occupied by passengers transported in the vehicle shall be mentioned and tax due payable for release of the vehicle shall be reckoned at the rate of Rs. 600/- per such seats (and not for the total authorised capacity) for the period ending with the last day of the month.

The result of our above conclusions on law and admitted facts discussed above is that the seizure of the vehicle of each of the petitioners is not tenable but no direction is to be made in respect of the vehicle "No. MP-07-1943 owned by petitioner No. 1 of M. P. No. 407/92 or even in respect of the other vehicles already released under interim orders passed by this Court in these matters. We direct however that the three vehicles of the three petitioners of M. P. No. 563/92, bearing registrations Nos. MP 06-A-1411, MP-06-A-1501 and MP-06-6838, shall be released. It is however clearly understood that illegal seizure of the vehicle, on which ground these petitions are allowed, would not wipe out the tax-liability of the petitioners. Indeed, it shall be open to the respondents to take action against them for their prosecution or even u/s 13 of the Act for imposing on them penalty and u/s 15 for recovery from them as arrears of land revenue the tax, penalty and interest due payable by them. However, if and when that is done the liability of the petitioners for tax payable in

terms of sub-item (g) shall be reckoned in the manner hereinabove specified.

This order shall govern disposal of all the petitions listed in para 1 above but in the facts and circumstances of these cases we are making no order as to costs in any of them.