

(2001) 04 AP CK 0007

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3492 of 2001 and Batch

Meerja Hameedullah Baig

APPELLANT

Vs

Regional Transport Authority, South Zone, Hyderabad and
another

RESPONDENT

Date of Decision : 10-04-2001

Acts Referred:

Andhra Pradesh Motor Vehicles Rules, 1989 — Rule 207, 448, 448
Central Motor Vehicles Rules, 1989 — Rule 139, 164
Constitution of India, 1950 — Article 19(1), 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 165
Maharashtra Motor Vehicles Rules, 1989 — Rule 72(1), 74(6)
Motor Vehicles Act, 1939 — Section 129
Motor Vehicles Act, 1988 — Section 107, 111, 132, 138, 176

Citation : (2001) 4 ALD 163 : (2001) 4 ALT 215

Hon'ble Judges : S.B. Sinha, C.J.;V.V.S. Rao, J

Bench : Division Bench

Advocate : M/s. V. Raghunath, V. Narasimha Reddy, B. Siva Rama Krishnaiah, E. Maruthi Raja, K. Venkatesh, M.N. Srinivasan, B. Chandrasekhar, Ch. Siddaiah, J. Ugra Narasimham, A. Vishnuvardhan Reddy, V.V.L.N. Sarma, S. Venkateshwar Reddy, Arifulla, John Rajendra Prasad, Y.V. Subba Rao, Ch. Ravinder, A. Sudarshan Reddy, B. Sudhakar Reddy, K.N. Jwala, V. Srinivasa Rao, D. Kodanda Rami Reddy, S.P. Chakravarthy, R.N. Hemendranath Reddy, Government Pleader for Transport, Mrs. V. Bharathi and Mrs. M. Vinobha Devi, for the Appellant;

Judgement

S.B. Sinha, CJ

1. In these writ petitions, the vires of Rule 448-B of Andhra Pradesh Motor Vehicles Rules, 1989 (hereinafter referred to as "the State Rules") framed in exercise of the powers conferred under Sections 28, 38, 95, 96, 107, 111, 138 and 176 of the Motor Vehicles Act, 1988 (Central Act 59 of 1988) (hereinafter referred to as "the said Act") is called in question. An incidental question as regards the correctness or otherwise of a decision of this Court in M. Venkateswara Rao and Others Vs. Secretary, R.T.A. and Others, , also arises for

consideration.

2. While admitting the writ petitions, it was observed that the findings of the learned single Judge in Venkateswara Rao's case (*supra*) to the effect that a writ of mandamus would not lie directing the release of the vehicles nor the seizure itself can be declared as illegal as well as the finding that the aggrieved persons have to necessarily file application for release of the vehicle seized and detained by the competent authority, if they so desire, may be considered afresh in the light of the decision of the Apex Court in *State of Maharashtra and Others Vs. Nanded-Parbhani Z.L.B.M.V. Operator Sangh*, .

3. The Motor Vehicles Act, 1988 was enacted to consolidate and amend the law relating to motor vehicles. Chapter XIII of the said Act deals with offences, penalties and procedure. Section 207 empowers any Police Officer or other persons authorised by the State Government to seize and detain a vehicle in the manner prescribed therein if he has reason to believe that a motor vehicle has been or is being used in contravention of the provisions of Section 3 or Section 4 or Section 39 or without the permit required by sub-section (1) of Section 66 or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, seize and detain the vehicle and for this purpose take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle. Proviso to sub-section (1) of Section 207 of the Act reads thus:

"Provided that where any such officer or person has reason to believe that a motor vehicle has been or is being used in contravention of Section 3 or Section 4 or without the permit required by subsection (1) of Section 66 he may, instead of seizing the vehicle, seize the certificate or registration of the vehicle and shall issue an acknowledgment in respect thereof."

Sub-section (2) of Section 207 reads thus:

"Where a motor vehicle has been seized and detained under sub-section (1), the owner or person in-charge of the motor vehicle may apply to the transport authority or any office authorised in this behalf by the State Government together with the relevant document for the release of the vehicle and such authority or officer may, after verification of such documents, by order release the vehicle subject to such conditions as the authority or officer may deem fit to impose."

4. The word "prescribed" has been defined in Section 2(32) to mean prescribed by rules made under the Act.

The word "owner" has been defined in Section 2(30) in the following terms:

"Owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession

of the vehicle under that agreement."

5. Pursuant to or in furtherance of the power conferred upon the Central Government under the provisions of the Act, the Central Government has made rules known as Central Motor Vehicles Rules, 1989. Rules 139 and 164 which are relevant for the purpose of these cases read as follows;

"139. Production of licence and certificate of registration :--The driver or a conductor of a motor vehicle shall produce certificate of registration, insurance, fitness and permit, the driving licence and any other relevant documents on demand by any Police Officer in uniform or any other officer authorised by the State Government in this behalf, and if any or all of the documents are not in his possession, he shall produce in person an extract or extracts of the documents duly attested by any Police Officer or by any other officer or send it to the officer who demanded the documents by registered post within 15 days from the date of the demand."

"164. Offences for the purpose of Section 208 :--The offences for the purpose of sub-section (1) of Section 208 shall be:

- (a) Driving during the period of disqualification (Section 23).
- (b) Failure to stop the vehicle when it is involved in an accident (Section 132).
- (c) Obtaining or applying for driving licence without giving particulars of endorsement (Section 182).
- (d) Driving dangerously (Section 184).
- (e) Driving while under the influence of drinks or drugs (Section 185).
- (f) Abetment of an offence u/s 184 or Section 185 or Section 188.
- (g) Taking part in unauthorised race or trial or speed of any kind (Section 189).
- (h) Altering a driving licence or using an altered licence;
- (i) Any other offence punishable with imprisonment in the commission of which a motor vehicle was used."

6. Rules 448-A and 448-B of the State Rules read as under:

"448-A: Procedure of seizing and detaining a motor vehicle :--When a motor vehicle is seized and detained by any officer referred to in Rule 448, he shall take the following steps :--

- (i) arrangements shall be made for temporary safe custody of the motor vehicle in the nearest Police Station or at any appropriate place;
- (ii) the fact of seizure and detention shall be informed without delay to the Secretary, Regional Transport Authority of the Region and the Secretary, Regional Transport Authority of the Region to which the motor vehicle belongs;

(iii) the officer who seized and detained the motor vehicle may release the vehicle of the offence for which it is seized and detained are compounded u/s 200 under intimation to the Secretaries of Regional Transport Authorities mentioned in Clause (ii).

(iii) where prosecution of the driver or owner or both is necessary, charge sheets against them shall be filed before the concerned Magistrate within three days from the date of seizure and the motor vehicle shall be released by the officer who detained it after the prosecution is completed under intimation to Secretaries of Regional Transport Authorities mentioned in clause (ii).

(v) Mahazor of the vehicles is to be carried out notifying its condition, specifying the number and condition of each tyre fitted and parts which are easily removable, replaceable and tamperable (Viz., Batteries, Fuel, Pump, Dynamo, (Differential Engine) and extra lights etc.,) and loose parts, stephney tyres and tools and a copy of it is to be delivered to the person from whom it is seized, duly signed."

"448-B: Release of seized and detained vehicles :--(1) An application for release of a vehicle seized and detained under sub-section (1) of Section 207 shall be in the form of a memorandum in duplicate with relevant documents duly enclosing a fee of rupees twenty five.

(2) The Secretary, Regional Transport Authority, of the Region shall entertain application for release of vehicles seized and detained by his subordinate officers :

Provided that application shall be made to the Deputy Transport Commissioner in the case of check made by the Secretary, Regional Transport Authority in the cadre of Regional Transport Officer and the Transport Commissioner, if the Secretary, Regional Transport Authority is of the cadre of Deputy Transport Commissioner or Joint Transport Commissioner."

7. The learned Counsel appearing on behalf of the petitioners would submit that having regard to the scheme of the Act, Rule 448-B of the State Rules is unconstitutional as thereby uncontrolled and unfettered powers have been conferred upon only the authorities specified therein to release the vehicle or not to release the vehicle or to impose such conditions which may be wholly unjust and unfair.

The learned Counsel would contend that a seizure can be effected under the following circumstances :--(a) Where no further enquiry is required and (b) where an enquiry is required to be conducted and adjudication thereupon is necessary, as for example, difference in payment of tax. The learned Counsel would contend that in a case where no further enquiry is required to be conducted, on production of the required documents, the vehicle should be released forthwith. In the second case, the legislative intent stated in the proviso appended to sub-section (1) of Section 207 should be strictly adhered to. He submits that having

regard to the provisions of Rule 139 of the Central Motor Vehicle Rules, the State Rules must be held to be ultra vires and, in any event, as Rule 448-A and sub-rule (2) of Rule 448-B of the State Rules cannot stand together, the latter should be declared as ultra vires. In any event, learned Counsel contends that Rule 448-B must be held to be ultra vires the provisions of Section 207 of the Act. The learned Counsel in support of the said contention, relies upon the decisions of this Court in Saleem Tours and Travels Vs. Joint Transport Commissioner and Secretary, RTA, Hyd. and another, , and the decision of the Apex Court in State of Maharashtra v. Nanded-Parbhani ZIBMV Operators Sangh. It was submitted that the observations made by a learned single Judge of this Court in M. Venkateswara Rao v. Secretary, RTA are contrary to the decision of the Apex Court in Nanded-Parbhani case.

8. Mr. Sri Rangarao, learned Counsel appearing on behalf of the respondents, on the other hand, would submit that the matter stands concluded by a Division Bench decision of this Court in G. Nagaraju Vs. Government of Andhra Pradesh and others, .

9. A seizure which is illegally effected amounts to deprivation of property. In Wazir Chand Vs. The State of Himachal Pradesh, , the Apex Court held that seizure made by a person who had no authority therefore or when the conditions prescribed therein are not satisfied, in such an event, the doctrine of ultra vires shall come into play and the seizure must be held to be wholly illegal. It is also a trite law that in the event a seizure is illegal, the property so seized should be released immediately.

In The Commissioner of Commercial Taxes and Others etc. Vs. R.S. Jhaver and Others etc., , the Apex Court held:

"We have already indicated that the High Court held that the warrant issued by the Magistrate for search of the residential accommodation was bad because it showed that the Magistrate had not applied his mind to the question of issuing it, inasmuch as there were portions which should have been struck out from the printed form and gaps which should have been filled in. But, this was not done. That conclusion of the High Court has not been challenged before us. The Court has further held that proper and reasonable opportunity was not given to the persons concerned to show that the goods seized were not properly accounted for in their account-books, though this finding is not material now for we have held that sub-section (4) falls in its entirety, it follows therefore that anything recovered from the search of the residential accommodation the basis of this defective warrant must be returned. It also follows that anything confiscated must also be returned, as we have held that sub-section (4) must fall. As to the accounts etc., said to have been seized, it appears to us that the safeguards provided u/s 165 of the Code of Criminal Procedure do not appear to have been followed when the search was made for the simple reason that everybody thought that that provision was not applicable to a search under subsection (2). Therefore, as safeguards provided in Section 165 of the Code of Criminal

Procedure were not followed, anything recovered on a defective search of this kind must be returned."

10. In *K.L. Subbayya Vs. State of Karnataka*, , the Apex Court held:

"We feel! that both Sections 53 and 54 contain valuable safeguards for the liberty of the citizen in order to protect them from ill-founded or frivolous prosecution or harassment. The point was taken before the High Court which appears to have brushed aside this legal lacunae without making any real attempt to analyse the effect of the provisions of Sections 53 and 54. The Court observed that these two sections were wholly irrelevant. With due respect, we are unable to approve of such a cryptic approach to a legal question which is of far-reaching consequences. It was, however, suggested that the word "place" would not include the car, but the definition of the word "place" under the Act clearly includes vehicle which would include a car. Thus the ground on which the argument of the petitioner has been rejected by the High Court cannot be sustained by us. We are satisfied that there has been a direct non-compliance of the provisions of Section 54 which renders the search completely without jurisdiction. In this view of the matter, the appeal is allowed, the conviction and sentence passed on the appellant is set aside and he is acquitted of the charges against him"

11. However, a question arises, as to whether in all cases, where a jurisdictional question is raised, a writ petition should be entertained? In our opinion, it need not be, as even a jurisdictional fact may be allowed to be adjudicated upon by the Tribunal at the first instance.

12. In *The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others*, , the Apex Court held:

"Normally, the questions of fact, though they may be jurisdictional facts the decisions of which depends upon the appreciation of evidence, should be left to be tried by the Special Tribunals constituted for that purpose. If and after the Special Tribunals try the preliminary issue in respect of such jurisdictional facts, it would be open to the aggrieved party to take that matter before the High Court by a writ petition and ask for an appropriate writ. Speaking generally, it would not be proper or appropriate that the initial jurisdiction of the Special Tribunal to deal with these jurisdictional facts should be circumvented and the decision of such a preliminary issue brought before a High Court in its writ jurisdiction. We wish to point out that in making these observations, we do not propose to lay down any fixed or inflexible rule; whether or not even the preliminary facts should be tried by a High Court in a writ petition, must naturally depend upon the circumstances of each case and upon the nature of the preliminary issue raised between the parties."

In *State of Uttar Pradesh Vs. Brahm Datt Sharma and Another*, , it was held:

"The High Court was not justified in quashing the show-cause notice. When a

show-cause notice is issued to a Government Servant under a statutory provision calling upon him to show-cause, ordinarily the Government Servant must place his case before the authority concerned by showing cause and the Courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. The purpose of issuing show-cause notice is to afford opportunity of hearing to the Government Servant and once cause is shown it is open to the Government to consider the matter in the light of the facts and submissions placed by the Government Servant and only thereafter a final decision - in the matter could be taken. Interference by the Court before that would be premature. The High Court in our opinion ought not to have interfered with the show-cause notice."

13. However, it is not correct to say that under no circumstances, a writ of mandamus will issue nor a writ petition would not be maintainable. The Court may irrespective of the power of the administrative authority may entertain a writ application if it is prima facie found that an illegality affecting the Constitutional right of a person has been committed. The High Court may also exercise its jurisdiction of judicial review if there does not exist any factual dispute. Indeed, adjudication of disputed question of fact may also be taken recourse to by the High Court, but it is not desirable to do so.

14. We may also usefully note that in *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others*, , the Apex Court has clearly held:

"Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition, But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in atleast three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

It would not, therefore, be correct to hold that in all situations, a party approaching the writ Court must be asked to avail the remedy before the appropriate Tribunal. However, when a question comes as to whether a statutory authority has to consider the merit of the matter, the High Court will, normally, refuse to embark upon such a question. In *State of West Bengal and Others Vs. Nuruddin Mallik and Others*, , the Apex court observed:

"It is not in this case that after the management sent its letter dated 6-8-1992 non-teaching staff, both the District Inspector of Schools and the Secretary of the Board sought for certain information through their letters dated 21-9-1992. Instead of sending any reply, the management filed the writ petition in the High Court, leading to passing of the impugned orders. Thus, till this date the

appellate authorities have not yet exercised their discretion. Submission for the respondents was that this Court itself should examine and decide the question in issue based on the material on record to set at rest the long-standing issue. We have no hesitation to decline such a suggestion. The Courts, can either direct the statutory authorities, where it is not exercising its discretion, by mandamus to exercise its discretion, or when exercised, to see whether it has been validly exercised. It would be inappropriate for the Court to substitute itself for the statutory authorities to decide the matter."

15. Further, there cannot be any doubt that whenever a constitutionality of a provision is questioned, the statutory authority cannot decide the same and as of necessity the writ Court will have to entertain the writ petition.

In the aforementioned backdrop, the contentions of the learned Counsel for the petitioners have to be considered.

16. Section 129-A of the Motor Vehicles Act, 1939 was repealed and replaced by Section 207 of the Motor Vehicles Act, 1988. The constitutionality of the said provision came up for consideration before the Apex Court in *The Transport Commissioner, Andhra Pradesh, Hyderabad and Another Vs. S. Sardar ali, Bus Owner, Hyderabad and Others, , Chinnappa Reddy, J.*, speaking for the Division Bench, in no uncertain terms held:

"Indeed, whenever an offence under a law other than the Penal Code is committed and that law does not itself regulate the procedure to be followed, there is no option but to look to the provisions of the Criminal Procedure Code for further action and to weave into a single texture the provisions of the Code and the special law. The High Court has totally ignored the provisions of the Criminal Procedure Code and the judgment stands vitiated on that account. It has, therefore to be set aside. We have explained the context of Section 129-A in the scheme emerging from the interlacing of the provisions of the Motor Vehicles Act and the Criminal Procedure Code. We do not have the slightest hesitation in rejecting the contention that there is any infringement of the fundamental right guaranteed by Article 19(1)(g) of the Constitution and in upholding the vires of Section 129-A of the Motor Vehicles Act.

The said decision is a complete answer to the submission of the learned Counsel for the petitioners that the seizure must be declared as ultra vires having regard to the fact that thereby the right of the petitioners to carry on their business and their livelihood, deprivation therefrom would attract Article 21 of the Constitution of India.

17. It is now a well settled principle of law that only because in certain cases some persons may face hardship, the same itself cannot be a ground to declare a provision unconstitutional.

It is one thing to say that a statute is ultra vires the Constitution in which event it must be found as to how it violates any of the provisions contained in Part-III

or other provisions of the Constitution of India, but, it is another thing to say that although a statutory provision is intra vires, the action taken thereunder is ultra vires. In the case where the action taken under a statutory provision is questioned on that ground, then judicial review is permissible.

Possible abuse of the power, it is trite, is no ground to declare a statute unconstitutional.

18. The right to seize and detain a vehicle has been conferred upon the authorities specified under the Act. Such a power had not been conferred upon each and every officer. Not only such seizure can be effected only when the authorities empowered therefore form a reasonable belief that one or the other requirements specified in the said provisions is fulfilled. In the event where such power does not exist, seizure would be invalid.

Further more, a presumption of constitutionality is attached to every statute or statutory rules. In a case of this nature, an attempt has to be made to give effect to all the statutory provisions. They, in a given situation, may have to be read up or read down so as to uphold the constitutionality unless it is found that the same is clearly violative of the Constitution.

19. For the reasons aforementioned, we are of the opinion that neither Section 207 nor sub-rule (2) of Rule 448-A of the State Rules are invalid.

20. Let us now consider as to whether Rule 448-B is ultra vires sub-rule (2) of Rule 448-A and Section 207 of the Act.

21. Before embarking upon the said question, the decision of the Apex Court in Nanded-Parbhani case may be noticed. The Apex Court clearly held:

"The aforesaid power of seizure has been conferred upon the appropriate authority, which power is in fact a sovereign power of the State and has been delegated to the Police Officer in discharge of their duties of law enforcement and in the enforcement of an orderly society. The power, therefore, is required to be exercised with care and caution and the power has to be exercised only when the pre-condition for exercise of power is fully satisfied. It is a cardinal principle of rule of construction of statute that when the language of a statute is fairly and reasonably clear, then inconvenience or hardships are no considerations for refusing to give effect to that meaning. It is not the contention of the learned Counsel appearing for the State nor can it be said that on giving a plain meaning to the words used in Section 207(1) of the Act, there will be any absurdity or would make the statute offending any provisions of the Constitution. Tindal, C.J. in *Susse Peerage* case (1844) 11 Cl and F85, P.143, applying the rule has stated - "if the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the lawgiver". In AIR 1945 48 (Privy Council) , p.53 Viscount Simonds held: "This Board has insisted that in construing

unambiguous words, we are not concerned with the policy involved or with the results, injurious or otherwise, which may follow from giving effect to the language used". In *Kanai Lal Sur Vs. Paramnidhi Sadhukhan*, , Gajendragadkar, J., (as he then was), held: "If the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

It was further observed:

"The intention of the Legislature is required to be gathered from the language used and, therefore, a construction, which requires for its support with additional substitution of words or which results in rejection of words as meaningless has to be avoided. Bearing in mind, the aforesaid principles of construction of statute and on examining the provisions of Section 207 of the Act, which has been quoted earlier, we have no doubting our mind that the Police Officer would be authorized to detain a vehicle, if he has reason to believe that the vehicle has been or is being used in contravention of the Section 3 or Section 4 or Section 39 or without the permit required under subsection (1) of Section 66 or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used. In the case on hand, we are not concerned with the contravention of Section 3 or Section 4 or Section 39 or sub-section (1) of Section 66 and we are only concerned with the question of contravention of the condition of permit. Reading the provisions as it is, the conclusion is irresistible that the condition of permit relating to the route on which or the area in which or the purpose for which the vehicle could be used if contravened, would only authorise the Police Officer to detain the vehicle and not each and every condition of permit on being violated or contravened, the Police Officer would be entitled to detain the vehicle. According to the learned Counsel appearing for the State of Maharashtra, the expression "purpose for which the vehicle may be used" could be construed to mean that when the vehicle is found to be carrying passengers more than the number prescribed in the permit, the purpose of user is otherwise. We are unable to accede to this contention as in our opinion, the purpose would only refer to a contingency when a vehicle having a permit of stage carriage is used as a contract carriage or vice versa or where a vehicle having a permit for stage carriage or contract carriage is used as a goods vehicle and vice versa. But carrying passengers more than the number specified in the permit will not be a violation of the purpose for which the permit is granted. If the Legislature really wanted to confer power of detention on the Police Officer for violation of any condition of the permit, then there would not have been the necessity of adding the expression "relating to the route on which or the area in which or the purpose for which the vehicle may be used". The user of the aforesaid expression cannot be ignored or can it be said to be a tautology. We have also seen the Form of permit (from PCOT) meant in respect of a tourist vehicle, which is issued under Rule 72(1)(ix) and Rule 74(6) of the Maharashtra Motor Vehicles Rules, 1989. On seeing the different columns, we are

unable to accede to the contention of the learned Counsel appearing for the State of Maharashtra, that carrying passengers beyond the number mentioned in Column 5, indicating the seating capacity, would be a violation of the conditions of permit relating to either the route or the area or the purpose for which the permit is granted. In this view of the matter, we see no infirmity with the conclusion arrived at by the High Court in the impugned judgment and the detention of the vehicles has rightly been held to be unauthorised and consequently, the compensation awarded cannot be said to be without jurisdiction."

The decision of the learned single Judge of this Court in *M. Venkateswara Rao*, (supra) must be read in that context.

22. We have, however, no doubt in our mind that sub-section (2) of Section 207 provides for release of the vehicle, irrespective of the Rule 448-B and the authorities seizing the vehicle would thus be entitled to pass an appropriate order in terms thereof.

23. Rule 448-A clearly prescribes seizing and detaining of vehicles which was necessary in terms of sub-section (1) of Section 207 of the Act. Sub-rule (ii) of Rule 448-A is in no unmistakable terms confers power upon the officer who had seized and detained the vehicle to release the same. The said power is in consonance with the provisions of sub-section (2) of Section 207 of the said Act. Such provision, in our view, cannot be said to be ultra vires. Rule 448-B which has been inserted in the State Rules by virtue of G.O. Ms. No.123, Transport dated 4-6-1999, cannot also be held to be ultra vires having regard to the fact that the same appears to be in consonance with sub-section (2) of Section 207 of the said Act.

As in terms thereof, the State Government is empowered to authorise an officer in this behalf to release the vehicle seized or detained under sub-section (1) of Section 207, when an application is filed by the person or owner in charge of the vehicle so seized and detained, together with the relevant documents, as is mandatory under sub-section (2) of Section 207 of the Act, and, thus, the submission made by the learned Counsel for the petitioner to the effect that Rule 448-B contravenes the express provisions of Section 207, that in all such cases, an application must be accompanied with the documents cannot be accepted.

The provisions of Rule 448-B, therefore, must be held to be an additional remedy and not an exclusionary one.

24. Having regard to the decision of the Supreme Court in *Nanded-Parbhani* case as also the scheme of the Act, seizure and detention of the vehicles may be made in exceptional cases where it is found absolutely necessary to take recourse thereto although power in relation thereto in the specified authority can neither be denied nor disputed.

25. In *Saleem Tours and Traves* case (supra), a Divisions Bench of this Court held

that though seizure of vehicles u/s 207 of the Act for breach of conditions of permit is permissible, such seized vehicles, however, should not be detained for unduly long time till completion of enquiry and determination of tax payable and laid down certain guidelines for the release of the seized vehicles.

26. We must also bear in mind that in the said Act there doesn't exist a provision for confiscation. Detention of the vehicle is meant under the Act to be for a temporary period only.

Learned Counsel for the petitioners has drawn our attention to various loopholes in the producer adopted by the authorities in seizing vehicles and suggested that this Court may frame certain guidelines in relation thereto. We would not like to go into the aforementioned question, as no contention in that regard has been raised before us. We may, however, notice that a Division Bench of this Court in G. Nagaraju's case referring to an earlier Division Bench decision of this Court in P. Ravindranath Reddy and Others Vs. Government of Andhra Pradesh and Others, , observed:

"Section 207(1) empowers the authorised officer to seize and detain the vehicle in the prescribed manner if he has reason to believe that there were certain contraventions as envisaged in the section. When rule making power is vested with the State Government to prescribe the procedure for seizure and detention, as a corollary, thereto, it can be said that the rule making power can also extend to the procedure for release of the vehicle. Release is integrally and inextricably connected with seizure and detention, more especially with detention. The power to seize and detain necessarily takes within its fold the ancillary or complementary power to release the vehicle under detention. The provisions dealing with seizure, detention and release have such a close nexus that they should be regarded as constituting a single Code. Hence, the power to make a rule prescribing the steps and formalities to be gone through for the release of the vehicle can be said to be comprehended within the expression "prescribed manner" immediately following the expression "seize and detain". Thus even in the absence of a provisions like Section 207(2) the same provision could have been introduced by means of a rule by Central or State Government in regard to the release of the vehicle seized and detained. The substantive power to make a rule thus being spelt out from Section 207(1) itself, the same rule can also provide for levy of fee by virtue of the provision contained in Section 211."

It was further observed:

"We fail to see how the impugned rule goes beyond the scope of the Act in nominating the Secretary, Regional Transport Authority to receive and dispose of the applications for the release of the vehicles seized. Section 207(2) empowers the authorised officer to entertain such applications. Section 207(2) speaks of the "transport authority" or "any officer" authorised in this behalf by the State Government. The State Government has specified the Secretary, RTA as the competent authority, by framing impugned Rule. It is not necessary that the

authorised officer should be specified by means of a notification only. It does not make material difference whether the power is conferred by means of a notification or by all rule so long as the competent authority i.e., the Government makes the rule or the notification. No particular formality is prescribed for nominating the authorised officer u/s 207(2). As regards the propriety in conferring the power on the Secretary, RTA who is the highest officer of the Transport Department in the district, the wisdom of the rule making authority cannot be questioned on any germane ground. There is nothing wrong in conferring that power to an authority higher in rank than the checking officers who are usually Motor Vehicle Inspectors or the Assistant Motor Vehicle Inspectors. The approach of such higher officer could be expected to be more objective and unbiased."

The correctness of the said decision has not been questioned before us.

27. Before parting with this case, we would like to observe that the authorities exercising the power of detention and seizure of the vehicles are under statutory obligation to see, having regard to the provisions of Rule 139 of the Central Rules, that only minimal inconvenience is caused to owners of the vehicles and, they, in appropriate cases, instead of resorting to seizing and detaining the vehicles, should, take recourse to the proviso to sub-section (1) of Section 207 of the Act. The scheme of the Act is not to seize and detain the vehicles in petty matters as the offences can be compounded even upon payment of Rs.2,000/-.

The authorities should also bear in mind the observations made by this Court hereinbefore and in the event any application is filed for release of the vehicle, the same should be disposed of as expeditiously as possible and preferably within a period of three days from the date of filing such applications. In the event such applications are to be rejected, sufficient and cogent reasons therefore must be stated.

28. Subject to the findings supra, the decision of the learned single Judge in *M. Venkateswara Rao v. Secretary, RTA* is approved.

29. The writ petitions are disposed of with the aforementioned directions. There shall be no order as to costs.