

(1995) 03 KAR CK 0030

In the Karnataka High Court

Case No : Writ Petition Nos. 24498, 25804 to 25808, 28841, 31486 to 31498, 34256 to 34259 of 1994; 403 to 414, 1269 to 1271, 1612 to 1629, 1633 to 1637, 1732 to 1764, 1975 to 1986, 2064 to 2068, 2071 to 2074, 2100 to 2112, 2114 to 2116, 2140 to 2147, 2301 to 2322,

Pandit Ramachandra Harihar and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 27-03-1995

Acts Referred:

Motor Vehicles Act, 1988 — Section 192A

Citation : (1995) 3 KarLJ 333

Hon'ble Judges : Tirath S. Thakur, J

Judgement

1. The grievance of the petitioners in this batch of writ petitions relates to the power of the respondent Motor Vehicle Authorities to levy and recover composition fee from the petitioners who are tourist and contract carriage operators, as also the procedure which ought to be followed by them while seizing the vehicles under Section 207 of the Motor Vehicles Act, 1988. The petitioners contend that the authorities under the Act, have no jurisdiction to impose or recover any composition fee, for an offence punishable under Section 192-A of the Act inserted by Act 54 of 1994 with effect from 14-11-1994; for the reason that Section 200 as amended by the Act aforesaid does not permit composition of any such offence. Check reports and composition made after the 14th of November, 1994, have therefore been called in question inter alia on the ground that it is illegal and opposed to public policy to compound an offence not legally compoundable.

2. Sections 192-A and 200 of the Motor Vehicles Act, 1988 as they stand after 14-11-1994, may be reproduced at this stage:

"Section 192-A. (1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of sub-section (1) of Section 66 or in contravention of any condition of a permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, shall be

punishable for the first offence with a fine which may extend to five thousand rupees but shall not be less than two thousand rupees and for any subsequent offence with imprisonment which may extend to ten thousand rupees but shall not be less than five thousand rupees or with both:

Provided that the court may for reasons to be recorded, impose a lesser punishment.

(2) Nothing in this section shall apply to the use of a motor vehicle in an emergency for the conveyance of persons suffering from sickness or injury or for the transport of materials for repair or for the transport of food or materials to relieve distress or of medical supplies for a like purpose:

Provided that the person using the vehicle reports about the same to the Regional Transport Authority within seven days from the date of such use.

(3) The Court to which an appeal lies from any conviction in respect of an offence of the nature specified in sub-section (1), may set aside or vary any order made by the Court below, notwithstanding that no appeal lies against the conviction in connection with which such order was made".

XXX XXX XXX XXX "Section 200. (1) Any offence whether committed before or after the commencement of this Act punishable under Section 177, Section 178, Section 179, Section 180, Section 181, Section 182, sub-section (1) or sub-section (2) of Section 183, Section 184, Section 186, Section 189, sub-section (2) of Section 190, Section 191, Section 192, Section 194, Section 196 or Section 198 may either before or after the institution of the prosecution, be compounded by such officers or authorities and for such amount as the State Government may, by notification in the Official Gazette, specify in this behalf."

3. A plain reading of the above two Sections leaves no doubt whatsoever that an offence under Section 192-A of the Act is not one of the offences which can be legally compounded, in terms of Section 200 thereof. Any composition of such an offence would therefore be illegal and improper for it is trite that composition is permissible only if the law provides for it and not otherwise. Reference may in this connection be made in *Biswabahan Das v. Gopen Chandra Hazarika and Others*, AIR 1967 SC 895, where their Lordships observed thus:

"We are unable to accept the above reasoning. If a person is charged with an offence, then unless there is some provision for composition of it the law must take its course and the charge enquired into resulting either in conviction or acquittal. If composition of an offence was permissible under the law, the effect of such composition would depend on what the law provided for. If the effect of composition is to amount to an acquittal then it may be said that no stigma should attach to the character of the person, but unless that is expressly provided for, the mere rendering of compensation would not amount to the vindication of the character of the person charged with the offence".

To the same effect, is a Division Bench judgment of the Allahabad High Court in

the State of Uttar Pradesh v. Chandrapal Singh and Others, 1968 Cri. L.J. 1342.

4. Appearing for the respondents Mr. N.K. Ramesh, learned Government Pleader had no argument to offer in answer to the submissions made on behalf of the petitioners. In fairness to him, it must be stated that he did not attempt to support the recovery of the composition fee for an offence punishable under Section 192-A, after the introduction of the said Section in the Motor Vehicles Act, 1988.

4(a). He has on the contrary filed a memo together with letter dated 6-3-1995 addressed to him by the In-charge Law Officer, acknowledging the fact that after the introduction of Section 192-A the authorities have no power to compound the offences in terms of Section 200 of the Act. The memo further states that the checking authorities have been instructed by the Department to strictly adhere to provisions of Section 192-A of the Act and wherever the vehicles are found plying in contravention of the conditions of the Department, not to collect any compounding fee under Section 200 of the Act. He however, argued that the petitioners having voluntarily agreed to deposit the amount by way of composition fee, and thereby benefitted by preventing the seizure of their vehicles, are not entitled to any relief from this Court by way of refund of the amount paid for compound the offences alleged against them. He placed heavy reliance upon the judgment of this Court in M/s. S.V. Bagi v. State of Karnataka, 1992(36) Kar. L.J. 405 (FB), in support of his submission that a person who has compounded an offence cannot be deemed to be aggrieved so as to entitle him to challenge the same at a later stage.

5. That the compounding of offences punishable under Section 192-A of the Act was impermissible is not in dispute nor is it disputed that the act of making payment of the composition fee will not by itself confer jurisdiction upon the respondents to levy or recover the said fee, or make the composition legally valid even though otherwise invalid. The question however is whether the act of compounding the offences, should be subjected to scrutiny and reversed by this Court at the instance of a person or group of persons who have acquiesced in the said act, and benefitted from the same by avoiding a seizure of the vehicles involved in the commission of the offence compounded, which in the absence of compounding would have been the only course of action open to the authorities subjecting the vehicles to check. Acquiescence implies participation in proceedings without taking any objection to the power or jurisdiction of the Tribunal or authority. It is suggestive of the assent of the person acquiescing or his submission to the authority or jurisdiction of the Tribunal.

6. That the petitioner acquiesced in the jurisdiction of the respondent-Authority by depositing with them the amount of composition fee demanded cannot be disputed. As a matter of fact the very deposit of the amount of composition fee suggests and conclusively so that the petitioners had submitted to the jurisdiction of the Authority and agreed to prevent the seizure of their vehicles by depositing the amount of fee demanded. The question however is as to what is

the legal effect of any such acquiescence on the part of the petitioner and whether the decisions which were void for want of jurisdiction could be successfully avoided by the petitioners even when they had acquiesced in the jurisdiction of the Authority who pronounced the same. Prof. D. Smith in his Book "Judicial Review of Administrative Action" has brought out the distinction between the two situations namely cases where the decisions are void for want of jurisdiction and could be avoided and others where even though they are void but with which the Court will not interfere on account of the applicant's conduct thus:

"A decision made without jurisdiction is void, and it cannot be validated by the express or implied consent of a party to the proceedings. It does not always follow, however, that a party adversely affected by a void decision will be able to have it set aside. As we have seen, certiorari and prohibition are, in general, discretionary remedies, and the conduct of the applicant may have been such as to disentitle him to a remedy".

Whether the tribunal lacked jurisdiction is one question; whether the court, having regard to the applicant's conduct, ought in its discretion to set aside the proceedings is another. The confused state of the present law is due largely to a failure to recognise that these are two separate questions".

The same learned Author while dealing with the right of the person acquiescing in the jurisdiction of a Tribunal or an Authority to seek a certiorari observes thus:

"The right to certiorari or prohibition may be lost by acquiescence or implied waiver. Acquiescence means participation in proceedings without taking objection to the jurisdiction of the tribunal once the facts giving ground for raising the objection are fully known. It may take the form of failing to object to the statutory qualification of a member of the tribunal, or (exceptionally) appealing to a higher tribunal against the decision of the tribunal of first instance without raising the question of jurisdiction".

7. To the same effect is a judgment of the Bombay High Court in *Gandhinagar Motor Transport Society v. State of Bombay*, AIR 1954 Bom. 202, Chagla, C.J., delivering the judgment held as follows:

"The Court must tell the petitioner; it was open to you to raise that point before the tribunal whose order you are challenging. You have sat on the fence, you have taken a chance of the tribunal deciding in your favour, and it is not open to you now to come to us and ask for a writ". As we have already pointed out, the question is not that if the Government decision was without jurisdiction it became a competent decision merely because the petitioners did not object to the jurisdiction. But the question is whether the petitioners not having challenged the jurisdiction of the Government, this Court will give them relief by exercising its very special and discretionary jurisdiction".

8. In *Pannalal Binjraj and Others v. Union of India and Others*, AIR 1957 SC 397,

the Supreme Court was dealing with a case where the petitioners had submitted to the jurisdiction of the Income-tax Officer, to whom their cases had been transferred having so surrendered to the jurisdiction the petitioners questioned the authority of the Income-tax Officer by way of a writ petition before the Apex Court under Article 32 of the Constitution. The Court however declined to permit the petitioners to raise the plea and observed thus:

"If they (petitioners) acquiesced in the jurisdiction of the Income-tax Officers to whom their cases were transferred, they were certainly not entitled to invoke the jurisdiction of this Court under Article 32. It is well settled that such conduct of the petitioners would disentitle them to any relief at the hands of this Court".

9. To the same effect are two decisions of this Court in *C.R. Gowda v. Mysore Revenue Appellate Tribunal, Bangalore and Others*, AIR 1965 Mys. 41, and *C.Y. Parthasarathy v. Syndicate of the Mysore University, Mysore and Another*, 1994(4) Kar. L.J. 702 (DB).

10. In the former case the Constitution of the Regional Transport Authority, was challenged and so also the proceedings conducted by it as being void. The question that arose was whether such a plea could be raised belatedly by the petitioner in writ proceedings before the High Court after he had submitted to the jurisdiction of the Authority and taken a chance for a favourable judgment but lost. This Court relying upon an earlier judgment in Civil Petition No. 419 of 1961 decided on 23rd August, 1963 held that the power of the High Court in terms of Articles 226 and 227 of the Constitution was discretionary and party who had not challenged the jurisdiction of the Tribunal but submitted to it and taken a chance for a favourable decision cannot be allowed, to turn round when the decision goes against him, to challenge the jurisdiction of the very Tribunal. It is fruitful to quote the relevant passage from the judgment in Civil Petition No. 419 of 1991, reliance whereupon was placed by the Division Bench in Gowda's case, this Court observed thus:

"By refusing to exercise its discretionary power under Articles 226 and 227 of the Constitution, it is plain that the High Court is not holding that the petitioner by not challenging the jurisdiction of the Tribunal confers jurisdiction upon it if that Tribunal has, in fact, no jurisdiction, but simply tells him that he by his own conduct is precluded from invoking its discretionary powers under the writ jurisdiction, no matter whether the proceedings which he seeks to quash are without jurisdiction. If they are without jurisdiction, it is true that no conduct of the party will make them with jurisdiction. But such considerations do not affect the principle on whom the Court acts in granting or refusing to grant the writ of certiorari".

11. Relying upon the aforesaid observations of this Court the Division Bench in Gowda's case made the following observations:

"The petitioner must have been all along aware of the alleged defect in the constitution of the R.T.A. Yet, he did not raise any objection on that score, but

took a chance of his succeeding in the proceedings before it, if the petitioner had succeeded before the R.T.A., we would not have heard anything further from him about any defect in the constitution of that body. Having regard to the principles discussed above, it is clear that he is precluded by his own conduct, from now putting forward the contention that the R.T.A. had not been properly constituted. Therefore, the last ground of attack also cannot, in any way, be helpful to the petitioner".

12. Again in C.Y. Parthasarathy's case the question was whether the petitioner who had acquiesced in the jurisdiction and the authority of the enquiry Officer appointed by the University Syndicate could after the decision had gone against him turn round and question the jurisdiction of the Authority or that of the Syndicate to institute the enquiry. Speaking for the Division Bench I had summed up the position in the following words:

"It is true, that jurisdiction cannot be conferred by consent, of the parties where it does not otherwise inhere in the authority concerned; but it is equally true that the High Court can while exercising its extraordinary and discretionary powers under Article 226 of the Constitution decline to interfere with an order of a subordinate authority if it is satisfied that an objection relating to a defect of procedure or jurisdiction which could have been and ought to have been raised at the earliest opportunity was not so raised by the party complaining before it. The Rule that acquiescence of the party belatedly making a grievance about the jurisdiction of the subordinate authority disentitles him to invoke the writ jurisdiction of the High Court, does not rest on the foundation that acquiescence, confers jurisdiction but on the rationale that the High Court will be justified in refusing to exercise its jurisdiction in favour of a person who has either by reason of lack of diligence or by design remained on the fence, allowed the authority to pass an order and seeing that the same has gone against him turned round to challenge its competence, to have done so".

13. From a conspectus of the case law it is therefore apparent that even if the decision taken by the respondent-Authority was without jurisdiction yet the same was not by itself sufficient to entitle the petitioners to have the same reversed. The High Court would even in such a situation be entitled to consider whether the decision should be interfered with and relief granted to the petitioners under its extraordinary and discretionary writ jurisdiction. When seen in that background it is apparent that the petitioners have disentitled themselves to the grant of any relief in these proceedings. They had it is fairly obvious acquiesced in the jurisdiction of the respondents and tried to secure a benefit by way of prevention of seizure of their vehicles by depositing the amount of composition fee demanded from them. If the petitioners had at the appropriate stage raised the plea that the offences were not compoundable and therefore they are not liable or prepared to deposit the composition fee demanded, the authorities concerned would have certainly resorted to the seizure of the vehicles which was the only other course that was open to them. This was however not done. On the

contrary, the petitioners readily and understandably so agreed to deposit the amount of compensation fee which it is apparent was considered by them to be a much lesser evil than the seizure of the vehicles. In the process the authorities acting upon this premise lost the opportunity of seizing the vehicles in question. It is also obvious that at this distant point of time, after the vehicles have been removed, I am in no position to relegate the parties back to the position they held at the time the composition fee was levied or deposited by the petitioners. That apart the initiation of any proceedings based on the check reports against the petitioners at this stage is bound to create other complications. If the petitioners' arguments were to succeed and the composition of the offences were to be quashed it would mean that the offences committed by them would have to be tried by a competent Magistrate. This would in turn mean that the parties would have to undergo a further round of litigation only with a view to vindicate the petitioners' stand that the offences were not compoundable. Filing cases at this point of time against the petitioners for offences involving violation of the conditions of the permit does not appear to me to be a workable and appropriate alternative. In my opinion, it is better to let the bygones be bygones and settle the issue only prospectively. In the result while holding that the composition of offences falling within the mischief of Section 192-A of the Motor Vehicles Act was impermissible I hold that the petitioners are not, on account of their conduct, entitled to have the said composition or the proceedings connected therewith reversed at this stage.

14. That takes me to the next question which was argued at some length and turns on the interpretation of Section 207 of the Motor Vehicles Act, 1988. That Section 207 of the Act empowers any Police Officer or other person authorised in that behalf by the State Government, to seize a motor vehicle which he has reasons to believe is being used in contravention of any condition of the permit or the provisions of Section 3 or Section 4 or Section 39 or without the permit required by sub-section (1) of Section 66 is not in dispute. What was argued was that if it is a contravention of Section 3, 4 or Section 66(1) of the Act then the case is covered by the proviso to Section 207, in terms whereof the Police Officer or the person checking the vehicle has the discretion of seizing the certificate of registration instead of the vehicle itself. It was argued that the seizure of the vehicle results in serious inconvenience not only to the passengers who are travelling in the same but also causes hardship to the operator in that the vehicle has to be got released which process is bound to involve both time and effort. Instead if the Officer decides to seize the documents only that is a less harsh and more convenient a mode of bringing the permit holder to trial for the violation committed by him.

15. Section 207 of the Motor Vehicles Act may be reproduced at this stage. It runs thus:

"(1) Any police officer or other person authorised in this behalf by the State Government may, 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, in the prescribed manner and for this purpose take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle:

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 sub-section (1) of Section 66 he may, instead of seizing the vehicle, seize the certificate of registration of the vehicle and shall issue an acknowledgment in respect thereof.

(2) 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 officer authorised in this behalf by the State Government, together with the relevant documents 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".

16. A plain reading of the provision shows that the power to seize the Certificate of Registration of a vehicle instead of the vehicle itself is limited to cases where the contravention alleged is that of Section 3 or Section 4 or Section 66(1) of the Motor Vehicles Act. It is only in these three situations that the Officer concerned has the discretion of either seizing the Certificate of Registration of the vehicle or the vehicle itself. It is also apparent that the proviso which gives this discretion does not in so many words set-out the procedure for effecting the seizure nor does it indicate any guideline as to the situations in which the officer should insist upon seizing the vehicle instead of the Certificate of Registration. All the same this discretion has like all other discretionary powers to be exercised reasonably and fairly, for discretion howsoever wide can never be exercised fancifully or arbitrarily. As a matter of fact, the wider the discretion the more careful and circumspect has its use, to be. Transparency of the reasons which induced the authority to act in a given fashion, is the most if not the only dependable safeguard against the exercise of discretion in an arbitrary manner. The obligation to give reasons for adopting one out of the two or more options available to the authority appears to me to be implicit in the very nature of the power which a statutory authority may exercise. Such an obligation need not necessarily be stated in the statutory provisions itself; although in certain enactments the statute does specifically require the authority to record its reasons for the order it passed or the action it takes. The duty to act judicially is implicit in the nature of the power exercised by the statutory authority, and one of the concomitants of a proper discharge of such a duty is to disclose the reasons which induced the authority to act in a particular fashion when an option

to act differently though available was not availed of.

17. It therefore follows that in cases where the operator is alleged to have committed an offence which falls within the purview of any of the provisions mentioned in the proviso to Section 207 the Officer checking the vehicle should in the ordinary course opt for seizing the Registration Certificate instead of the Vehicle itself. In case however, the Officer is of the view that the seizure of the Certificate would not suffice he may proceed to seize the vehicle but while doing so, he must record reasons why he considers the seizure of the Registration Certificate to be inadequate. The recording of reasons by the

checking Officer will to a great extent prevent abuse of the power for seizure at the hands of the Officer concerned, and enable the Court before whom the matter may finally be brought up to examine as to whether the seizure was justified in the facts and circumstances of a given case. Cases in which the R.C. of a vehicle has already been on an earlier check seized by the Officers under the Act may justify the seizure of the vehicle for in such a situation the Certificate will no longer be available for seizure by the Officer concerned. Similarly cases where the Officer finds that the vehicle has been used repeatedly for the commission of the same offence of which the operator had been earlier accused or has been found guilty may also warrant the seizure of the vehicle even when the certificate may be available for seizure. In such a situation it may be possible to say that the seizure of the certificate of registration will not be enough to prevent the operator from once again indulging the commission of the offence which he is accused of or already found guilty.

18. That takes me to yet another aspect of the case of the petitioners. It was argued on their behalf that the seizure of the vehicles at odd hours mostly at night in desolate places where the vehicles are checked causes extreme hardship to the passengers large number of whom are women and children travelling in the same. It was contended that the operators had been forced to pay composition fee even though not legally payable only with a view to prevent unnecessary inconvenience and hardship to the passengers being carried by them in these vehicles. It was urged that this Court need give directions as to the procedure to be adopted for seizure of the vehicles keeping in view the need for causing the least possible inconvenience or hardship to the passengers travelling in the vehicles in question.

19. The provisions of Section 207 of the Motor Vehicles Act, 1988, simply empower the Officers checking the vehicles to seize the same in the event of their being found violating the provisions mentioned in the said Section or the conditions of the permit under which they are being plied. The said Sections or the Rules framed under the Act, do not provide any guidelines as to the procedure to be adopted for purposes of effectuating the seizures made under Section 207. Strictly speaking therefore, an Officer checking the vehicles can at any time and place where the same are checked seize the vehicle if the same are otherwise liable to seizure. Implicit in any such seizure is the fact that the vehicle

shall be taken over by the authority concerned thereby disabling the operator or the driver in charge of the vehicle from plying it any further, or taking the passengers to their destination. The question then is whether such a procedure which is fraught with possibilities of causing serious hardship to the passengers travelling in the same should be followed without giving a human face to it. In other words should the Officer concerned take charge of the vehicle immediately at the place where the same is checked and held liable to seizure or defer the actual taking over of the vehicle till the end of the journey for which the passengers have been booked. In my opinion, while it is possible for an Officer seizing the vehicle to take charge the vehicle immediately and prevent its further operation; such a take over is not necessarily to be immediate. There is nothing in Section 207 of the Act or any rule framed thereunder to make it obligatory for the Officer seizing the vehicle to take charge of the vehicle the moment it is upon check found to be liable to seizure. The power to seize must therefore be exercised rationally and keeping in view the inconvenience and hardship which the passengers following in the same are likely to face in case the take over of the vehicle is immediate. This is particularly so, because the passengers travelling in the vehicle are more often than not innocently ignorant about the possible violations of the conditions of permit or the provisions of law that the operator may be committing while carrying them from one place to the other. It is rarely if ever that a passenger boarding a bus takes care to verify whether the vehicle has a valid permit, or the driver has a driving licence or the requirements of law have been duly fulfilled by the operator. The availability of a transport facility from one place to the other is all that the passenger is concerned with and in availing of such a facility, he can hardly be deemed to be a party abetting the commission of an offence, under the Act, so as to lose the sympathy of law. His contract with the motor operator, is for a valuable consideration that has exchanged hands, if the seizure of the vehicle midway and its takeover by the authority concerned were to be approved, then it is the innocent passenger who not only loses the money paid by him but even suffers the inconvenience consequent upon the seizure of the vehicle. This could never be the intention of the law when it provided for the seizure of the vehicle under Section 207 being plied in contravention of the provisions mentioned therein. It is well settled that a hardship unfairness or injustice which could never be intended by the law, can be avoided by the Courts by a proper interpretation of the statutory provisions concerned. Reference can in this regard be made to *State of Madhya Pradesh v. M/s. Azad Bharat Finance Company and Another*, AIR 1967 SC 276, and *Tirath Singh v. Bachittar Singh and Others*, AIR 1955 SC 830, where their Lordships observed thus:

"It is argued that if the language of the enactment is interpreted in its literal and grammatical sense, there could be no escape from the conclusion that parties to the petition are also entitled to notice under the proviso. But it is a rule of interpretation well-established that, "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest

contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence".

XXX XXX XXX "(Maxwell's Interpretation of Statutes, 10th Edition, p. 299). Reading the proviso alongwith clause (b) thereto, and construing it in its setting in the section, we are of opinion that notwithstanding the wideness of the language used, the proviso contemplates notice only to persons who are not parties to the petition".

Considerations of human compassion, and prevention of injury to innocent third parties must always soften the rough edges of justice in all situations. An interpretations which subserves these object would be any day preferred by the Courts so long as the same does not have the effect, of emasculating the legal provisions being interpreted. Seen in that light I see no reasons why the power of seizure of the vehicles under Section 207 of the Motor Vehicle Act, cannot to be read to mean a power which is exercisable with the least possible inconvenience to the passengers travelling in the same; and as far as possible without frustrating, the contract that the operator has entered into with the passengers being transported by him. It follows that while the Officer checking the vehicle, may pass an order of seizure, but the actual take over of the vehicle should be deferred till the same reaches the destination, for which it is heading. This will prevent inconvenience to the passengers being carried in the vehicle while ensuring that the vehicle is taken over by the authorities concerned upon arrival at the terminal point of the journey. As to how the authorities will achieve this is a matter of procedural details with which I need not deal at length. Suffice it to say that the Officer concerned can devise ways and means to see that the actual take over of the vehicles is effectuated only when the vehicle has reached the destination.

20. It was next argued on behalf of the petitioners that the term "Tourist" not having been defined under the Act, it was not open to the Authorities to check and seize the vehicles on the ground that the passengers being carried in the same were not genuine Tourists. It was submitted that in order that the vehicle can be said to be used as a Tourist vehicle it was unnecessary that all the passengers travelling in the same should be genuine and bona fide Tourists. It was urged that as at present even if a single passenger travelling in the vehicle was found to be a "non-tourist" the Authorities were threatening to seize the vehicles and charge sheet the operator before the jurisdictional Magistrates. This according to the learned counsel was legally impermissible and vitiated the action taken by the Authorities concerned.

21. Section 88, sub-section (9) of the Act provides that any State Transport Authorities may for the purpose of "promoting tourism" grant permits in respect of Tourist Vehicles valid for the whole of India or in such contiguous State not being less than 3 in number including the State in which the permit is issued as

may be specified in such permit and in accordance with the choice indicated in the application. The term "Tourist Vehicle" has been defined by Section 2(43) thus:

" "tourist vehicle" means a contract carriage constructed or adapted and equipped and maintained in accordance with such specifications as may be prescribed in this behalf.

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22. The conditions governing a "Tourist Vehicle Permit" are prescribed by sub-section (1) of Section 88 of the Act and Rule 85 of the Central Motor Vehicles Rules, 1989. The later provides that the permit holder shall cause to be prepared in respect of each trip a list in triplicate of the Tourist Passengers to be carried in the vehicle giving full particulars as to their name, address, age and the starting point and the point of destination. One copy of this list is required to be carried in the tourist vehicle concerned and has to be produced on demand by the Officer authorised to demand production of documents and the second copy is required to be preserved by the permit holder. Sub-rule (9) of Rule 85 provides that the permit holder of a Tourist Vehicle shall not operate the Tourist Vehicle as Stage Carriage.

23. Similar provisions existed even before the promulgation of the Motor Vehicles Act, 1988. Section 67(7) of the Motor Vehicles Act, 1939, made a provision similar to Section 88, sub-section (9) and empowered the State Transport Authorities to issue Tourist vehicle permits with a view to promoting Tourism. The scope and the ambit of Section 63(7) and the nature of the permits granted under the same fell for consideration of the Supreme Court in *B.A. Jayaram and Others v. Union of India and Others*, AIR 1983 SC 1005. The Supreme Court noticed the abuse of the Tourist permits granted by the authorities and observed that the permits issued by comparatively less advanced States like Manipur and Nagaland were utilised by Transport Operators from other States like Karnataka where the vehicles attached to the same were utilised as Stage Carriages which was legally impermissible.

24. Jayaram's case was followed by *Ashutosh Swain and Others v. State Transport Authority and Others*, 1985 (2) SCC 636, in which the scope and the meaning of Section 67 and the purpose behind the issue of the Tourist Permits under the said provision was explained thus:

"Sub-section (7) of Section 63 provides that for obtaining such a permit as envisaged therein which enables the holder of such a permit to ply vehicle as a tourist vehicle in the whole of India has to make an application to the State Transport Authority constituted for the State under Section 44. The underlying object for creating this new class of permit was to promote tourism. If a tourist vehicle is hired by a tourist party for moving from State to State, the vehicle cannot be taken to another State from the place of commencement of journey unless a valid contract carriage permit of that State is obtained or the existing

permit is countersigned, this would impede tourism causing inconvenience to the tourists. To remove this barrier, Parliament introduced sub-section (7) in Section 63 envisaging a new kind of permit to be granted by the State Transport Authority of the State within the prescribed quota which would enable the holder of the permit to ply the tourist vehicle in the whole or any part of India. The impediment in the free flow of tourist traffic was sought to be suitably removed by this provision".

25. The provisions of Section 88(9) of the Motor Vehicles Act, 1988, are in pari materia with those of Section 63(7) of the Motor Vehicles Act, 1939. The purpose behind the grant of Tourist Permits even under Section 88(9) of the 1988 Act, continues to be promotion of Tourism. The statutory conditions prescribed for the permits granted under the said provision leave no manner of doubt that a permit granted under Section 88(9) cannot be utilised by the operator for operating the vehicle attached to the same as a Stage Carriage. Tourist vehicles attached to Tourist Permits issued under the aforesaid provision are required by the very Scheme of the Act and Rules to be used only for purposes of promoting tourism and for not other. It follows as a corollary that the persons carried in any such Tourist Vehicle must be genuine Tourists.

26. It is true that the term "Tourist" has not been defined under the provisions of the Act, or the Rules, but the same in my opinion makes little difference. A similar question was urged before a Division Bench of this Court in *State of Karnataka v. Mohammed Illyas*, 1994(3) Kar. L.J. 628 (DB). Repelling the argument this Court held that even though no definition of the term "Tourist" has been given by the Act, yet a Tourist is a person who moves from place to place with a view to see the country side and to enjoy its surroundings. This Court observed that a person who goes from place "A" to place "B" for meeting his relatives or for a special purpose connected with the service of social obligations even though may be travelling as a passenger cannot be said to be a "Tourist". It is fruitful in this connection to reproduce the following passage from the aforesaid judgment in *Mohammed Illyas*'s case.

"It is true that there is no definition of a "tourist" either in the Act or the Rules as submitted by the learned counsel for the writ petitioners. But if we turn to the meanings of word "tourist" as found in the Concise Oxford Dictionary one of the meanings is a person who makes a tour and the term tour is to mean journey through a Country from place to place for the purpose of excursion. Even if in a broad sense, it can be said that a tourist is a person who moves from place to place, in the context of tourist permit, which has to be granted under Section 88(9) and the Central Rules, the term "tourist" would assume a special connotation for the simple reason that the tourist permits are to be issued for promoting tourism meaning thereby for encouraging movement of passengers from place to place in the Country who would be interested to travel as a genuine tourists, who want to see Country side and to enjoy its surroundings, meaning thereby it should be an excursion trip or sight seeing trip for them. It is

easy to visualise that if a passenger goes from place "A" to "B" for meeting his relatives or for a special purpose connected with his service or social obligations though he is travelling as a passenger, he is not a tourist. Because he does not go on an excursion tour. His purpose of travelling is to arrive at a destination rather than to see that place. While for a genuine tourist, purpose of travel is not only to arrive at a destination, but to see that place or to enjoy its surroundings. His purpose must not be to visit the place for any of his personal requirements like meeting friends or relatives or for discharging any social or service obligations at the place of destination. This connotation of the word "tourist" clearly flows from the settings of Section 88(9) read with Rules requiring furnishing of advance copy of the tourist passengers to the permit-holder before the journey begins. It is difficult to appreciate the contention of the learned counsel for the writ petitioners that list of tourist passengers can include names of passengers who may not be genuine tourists who may be going from one place to another on some independent purpose of their own, like meeting friends or relatives or even on health grounds to get them treated at the place of destination. Those passengers may be styled as passengers, but they cannot be styled and said to be "tourist passengers" as required by one of the conditions of the tourist permit as laid down by Rule 85(1) of the Central Rules. It must, therefore, be held that in respect of each trip of the vehicle plying under a tourist permit, if advance list of passengers is furnished and in that list any passenger is found to be not a tourist passenger, then there would be clear breach of additional Condition No. 1 as imposed by Rule 85 of the Central Rules, exposing the operator of the tourist vehicle and the permit-holder of the to the rigour of the relevant provisions of the Motor Vehicles Act attracting penal consequences as contemplated by those provisions even in cases where the vehicle is shown to have been plied as a contract carriage".

The above passage is a complete answer to the argument advanced before me. Learned counsel for the petitioners however made a valiant attempt to persuade me to take a view different than the one taken in the aforesaid case. I find no reason to strike a discordant note not only because the view taken by a Division Bench of this Court is binding upon me sitting singly but also because I see no reason much less a compelling one to hold to the contrary.

27. The other limb of the petitioner's argument is also squarely covered by the judgment of the Division Bench in Mohammed Illyas case. The Division Bench has held that if any one of the passengers travelling in a Tourist Vehicle is found not to be a genuine tourist even though his name is entered in the list of passengers given in advance the vehicle shall be deemed to have been used otherwise than as a tourist vehicle. The argument of the learned counsel appearing for the petitioners that it is unnecessary that all the passengers travelling in the tourist vehicle should be genuine and bona fide tourist does not therefore hold good in the light of the view taken by the Division Bench in the above case. I have accordingly no hesitation in repelling the said argument also.

28. That takes me to the case of the contract carriage operators some of whom are petitioners in the present batch of petitions. It was argued on their behalf that the check reports simply alleged that the vehicles were at the time of checking found carrying individually picked up passengers. This according to the learned counsel appearing for the Contract Carriage operators did not amount to the Commission any offence to warrant the composition thereof or the recovery of any composition fee. It was submitted that the vehicles in question have been taken on contract by the travel agents who have executed with the permit holder formal contracts for the use of the same as a whole. The travel agent thereafter books different passengers and collects individual fares from them. Such a collection it was argued did not amount to using the vehicle as a stage carriage. The composition of the cases was therefore assailed on the ground that the same was without any basis or lawful jurisdiction as no offence had been committed by the operators by allowing the travel agent to book individual passengers for travel by the vehicles in question.

29. On behalf of the respondents however it is urged that the so called contracts entered into between the travel agents and the permit holders were only clever devices to somehow circumvent the provisions of the Motor Vehicles Act. It was submitted that the petitioner-operators had not placed on record any valid contract or other document to show that they had actually entered into a contract express or implied for the use of the vehicle as a whole. Reference in this connection was made to some of the forms placed on record by the petitioners purporting to be contract documents to point out that the same did not amount to valid contracts and were only a pretence with a view to hoodwinking the authorities. It was argued that the misuse of the contract carriages and tourist vehicle which was noticed by the Supreme Court in Jayaram's case had continued notwithstanding the stringent provisions of the Act and the rules framed thereunder.

30. The term contract carriage has been defined by Section 2(7) of the Motor Vehicles Act as under:

""Contract Carriage" means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum".

31. Since the allegation of the respondents is that contract carriages are being utilised as stage carriages, it is necessary to reproduce the definition of the term stage carriage also as given by Section 2(40) of the Act. The said term has been defined thus:

"Section 2(40): "Stage Carriage" means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at

separate fares paid by or for individual passengers, either for the whole journey or for stage of the journey".

32. A conjoint reading of the above provisions shows that contract carriages are distinguishable from stage carriages in that a contract carriage is required to be hired as a whole for a fixed or agreed sum under a prior contract express or implied whether by a single person or a party with the owner of the vehicle whereas a stage carriage need not be hired as a whole and individual passenger may be carried in the same for hire or reward or for separate fares paid by or for such passengers, either for the whole journey or for different stages of the journey. What lies at the heart of the distinction between a contract and a stage carriage is the fact that while the former is contracted for use as a whole the latter may be hired by individual passengers by paying individual fares and for the whole or part only of the journey which the vehicle has to perform. The question then would be whether the contract envisaged by the provisions of Section 2(7) of the Act is required to be a genuine bona fide contract for the user of the vehicle as a whole or even a pretence or a device would suffice. The answer in my opinion is much too obvious to require any effort. When the law requires the existence of a State of facts for the application of a provision or the performance of any act for any legal consequences to flow the existence of such facts or the performance of such acts are required not as a mere formality but as essential conditions precedent in the absence whereof the legal consequences cannot be said to have been intended. It follows that in order a vehicle can be said to be utilised as a Contract Carriage it is not the pretence of a contract that was envisaged by the provisions of the Act but a genuine and bona fide contract between the person hiring the vehicle as a whole and the permit holder. The genuineness and bona fide nature of such a contract would in all situations be a question of fact, to be determined by reference to the factual matrix in the context whereof the same arises. There can be no hard and fast rule nor any cut and dried formula for holding whether the contract set up by the operator is genuine or simply a device to circumvent the law. The very fact therefore that the permit holder claims to have entered into a contract with the travel agent for the use of the vehicle as a whole will not be the end of the matter, nor would it be enough to say that the permit holder has not collected individual fares from the passengers being carried by him in the vehicle even though the same has been done by the travel agent. What cannot be done by the permit holder directly can also not be done by him indirectly by introducing an intermediary like a travel agent. As a matter of fact such a liberal interpretation is fraught with serious anomalies. For instance a contract carriage operator can use a contract carriage vehicle as a stage carriage by simply bringing into existence a fake contract document where under the travel agent agrees to use the bus as a whole but in actual practice uses the same for booking and carrying individual passengers who have nothing in common with each other except that all of them have approached the same travel agent for being booked in the vehicle. If the argument of the petitioner-operators were to be accepted even such an

arrangement would suffice and would amount to lawful use of the contract carriage. This in my opinion cannot be the true legal position. The law permits the lifting of veil in all such situations to discover the true nature of the arrangement entered into by the parties. And the piercing of veil may become necessary in cases where the checking Officer having regard to the facts noticed by him comes to the conclusion that what is going on is only a device to defeat the law and not a bona fide and genuine contract with a view to use the vehicle as a Contract Carriage.

33. An almost identical question arose before a Full Bench of the Andhra Pradesh High Court in the *Govindarajulu and Others v. Regional Transport Officer, Ananthapur and Others*, AIR 1986 AP 7. In that case a Contract Carriage vehicle was found carrying 49 passengers who had all been individually picked-up and had paid individual fare of Rs. 5/- each. The passengers were found to be not belonging to a single party and each one of them was travelling on his own. The motor vehicle Inspector came to the conclusion that the vehicle was being misused as a stage carriage by collecting individual fares. Based on the report of the Inspector the Regional Transport Officer issued a show-cause notice to the owner of the contract carriage as to why the maximum tax of Rs. 11,500/- applicable to stage carriage be not collected from him. The matter finally landed up in the High Court where a Full Bench was required to consider the difference between a Contract Carriage and a Stage Carriage. The Full Bench summed up its conclusions in the following words:

"(1) The definition of "contract carriage" under Section 2(3) of the Act is plain and the language is not so elastic and wide so as to bring within its sweep a situation never intended by the Legislature.

(2) The dominant factor under the definition that determines whether a transport vehicle is used as a contract carriage or as a stage carriage is whether the vehicle is hired as a whole for a fixed or agreed sum under a prior contract, express or implied, by a single person or party with the owner of the vehicle.

(3) If once a single contract is entered into expressly or impliedly for the use of the vehicle as whole, from the mere fact that the leader of the contracting party or one of the persons in the party collected fares from the passengers, which is very often in vogue, the vehicle cannot be said to have been used as a stage carriage.

(4) If there was no single contract with the owner in respect of the vehicle and if no person or leader of the party could exercise full control over the vehicle and several passengers had separately contracted for the use of the vehicle and paid individual fares, the transport vehicle used in such manner falls within the definition of "stage carriage" and not "contract carriage".

(5) Tax is levied on the basis of the use of the transport vehicle and not on the nature of the permit held by the owner in respect of the vehicle and the power contained in Section 3 with Section 4 of the Taxation Act is sufficient to enable

the Stage Government to levy the tax from time to time when the nature of the use of the vehicle is changed and the class of the motor vehicle is thereby altered, and (6) There is no prohibition in the Act for the levy and collection of tax as authorised under Section 3(1) of the Taxation Act in cases where action is taken for the breach of any of the conditions of the permit against the holder of the permit under Section 60 of the Act. The two actions are quite different one for the user of the vehicle and the other for the breach of the conditions of the permit".

34. The Full Bench then concluded that there was no single Contract for the use of the vehicle as a whole and the collection of the individual fares from each passengers was tantamount to an unauthorised use of the Contract Carriage as a Stage Carriage. The Full Bench observed thus:

"Now turning to the facts, it is the clear and categorical finding of the Transport Authorities that there was no single contract for the use of the vehicle as a whole and individual fare was collected from each passenger. On such a finding the only right conclusion, applying the aforesaid principles, that can be reasonably reached is that the contract carriage was unauthorisedly used as a stage carriage and thereby attracted the levy of tax as a stage carriage".

35. In Mohammed Illyas case, this Court while agreeing with the view taken by the Full Bench of the Andhra Pradesh High Court held that the beneficiaries of the contract may give individual fares to the hirer namely the transport operator but there should not be any privity of contract between the individual passengers carried in the vehicle on the one hand and the owner of the bus or the permit-holder on the other. The privity of contract was required only to be between the owner of the vehicle and the hirer. If the existence of such a contract is established between these two contracting parties then whether the individual passenger pays separate fare to the tourist operator or not is a circumstance which pales into insignificance. The Court held that the Contract Carriage will cease to be so if it is found that individual passenger have paid separate fare to the owner or the permit-holder or to his agent who acts on his behalf while carrying these passengers. This it was held would imply that there were separate contracts between the passengers carried for hire or reward on the one hand and the owner of the vehicle on the other and the vehicle would cease to be a contract carriage and would be deemed to be in use as stage carriage.

36. It is therefore apparent that Courts have attached considerable significance to the existence of a contract for the use of the vehicle as a whole between the hirer and the permit holder. The existence of such prior contract is the very foundation of the user of a vehicle as a contract carriage. Once it is found or alleged that the vehicle is being used without any such prior contract or that individual passengers have individually contracted for the use of the vehicle the authority concerned would be justified in taking action under the Act. The question as to whether there was a contract for the use of the vehicle as a whole and whether that contract was genuine and bona fide contract are however

questions of facts as already indicated earlier, which would necessarily require to be adjudicated upon by the competent forum.

37. Even though the petitioners before me have contended that the contracts between the hirers and the permit holders did exist, keeping in view the very nature of the enquiry required to be conducted, it is better left to be conducted by a competent Court before whom the matters may ultimately be brought up by the authorities concerned. It is neither permissible nor otherwise advisable for this Court to embark upon an enquiry in each one of these cases to find out whether or not there existed proper and contracts whether express or implied between the permit holders on the one hand and the so called hirers namely the travel agent on the other and if so whether such contracts were valid and sufficient to render the use of the vehicles proper under the provisions of the Act. I am not therefore inclined to grant any relief to the petitioners simply on the premise that the use of the vehicle in question was being made on the basis of the alleged contracts between the travel agents and the permit holders. As and when the authorities concerned check these vehicles and decide to take action in accordance with the Act, it shall be open to the permit holders to defend such actions and prove to the satisfaction of the Court concerned that there were prior contracts of the use of the vehicles in question as envisaged by Section 2(7) of the Motor Vehicles Act and therefore there was no actionable violation committed by them.

38. That takes me to Writ Petition No. 2071 to 2074 of 1994 which are petitions filed by the owners of the Maxi-Cabs. It was argued that a Maxi-Cab even though included in the definition of the term "Contract Carriage" is none the less entitled to charge separate fares from its passengers and therefore no offence can be said to have been committed if the operator of such a Maxi-Cab charges separate fares. I am not impressed by this argument either. The Maxi-Cab is by reason of the inclusive definition given by Section 2(7) of the Act also a Contract Carriage. The reasoning applicable to the Contract Carriage therefore applies with equal force to Maxi-Cabs also. Learned counsel for the petitioners however placed heavy reliance upon the words "notwithstanding that separate fare are charged for its passengers" appearing in Section 2(7)(ii). It was argued that these words show that a Maxi-Cabs would remain a Contract Carriage even if the operator charges separate fares from its passengers. In other words charging of separate fares did not according to the petitioners amount to improper use of the vehicle or its use as a stage carriage.

39. The argument does appear attractive at its face value but a closer look does not support the same. The words relied upon by the learned counsel for the petitioners appear in para (ii), which deals with Motor-Cabs and not Maxi-Cabs. These words cannot therefore be read as qualifying the maxi-cabs also.

40. Secondly the word "its passengers" appearing in para (ii), of Section 2(7) make it clear that the same refer only to the passengers of a motor-cab and not both motor-cabs and maxi-cabs. If the intention were to apply the said words to

both motor-cabs and maxi-cabs then instead of using the word "its passenger", the legislature would have used the words "their passengers". This however is not so, which clearly means that the words "separate fares are charged for its passengers" are meant only qua motor-cabs and have no application to maxi-cabs as argued by the petitioners.

41. In the result these petitions are disposed of with the following directions.

(i) The offence punishable under Section 192-A of the Motor Vehicles Act, 1988 not being lawfully compoundable the authorities are not entitled to nor shall they compound the same or recover any composition fee from the petitioners or other operators, if they are upon checking of the vehicles owned by them found to be committing an offence punishable under the said provision. This would not however prevent the authorities from seizing the vehicles if the same is, otherwise legally permissible;

(ii) The challenge to the compositions of offences committed before and after the introduction of Section 192-A of the Act by Act No. 54 of 1994 fails and the petitions to the said extent shall stand dismissed;

(iii) The respondent-authorities and their subordinates, shall in future while affecting seizure of vehicles under Section 207 of the Motor Vehicles Act, 1988, record reasons for doing so, in cases, covered by the proviso to the said section, indicating as to why the seizure of the Certificate of Registration would not suffice;

(iv) In the event of the authorities deciding to seize a vehicle under Section 207 of the Act, the actual take over of the vehicle shall be deferred till such time the vehicle reaches the destination for which, it is heading, to avoid inconvenience to the passengers travelling in the same;

(v) The respondents shall punctually and faithfully abide by the above directions and take appropriate steps to ensure that the same are circulated for information of and compliance by all those who are charged with the duty to enforce the provisions of the Act;

(vi) Parties shall bear their own costs.