
(2009) 10 AHC CK 0090
In the Allahabad High Court

Ram Darash Singh Yadav

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-10-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 72(2), 86

Citation : (2010) 1 AWC 900 : (2011) 1 RCR(Civil) 400 : (2011) 1 RCR(Civil) 400

Hon'ble Judges : Shashi Kant Gupta, J;R.K. Agarwal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Shashi Kant Gupta, J.—As the point involved in these three writ petitions are one and same, they are taken up together for disposal by this common judgment and order. The Writ Petition No. 1177 of 2006 is being treated as leading case and reference of facts of the above writ petition are sufficient to decide all the three cases.

2. This writ petition has been filed, inter alia, for the following reliefs:

(i) to issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 19.5.2006.

(ii) to issue a writ, order or direction in the nature of certiorari quashing the impugned recovery citation dated 22.12.2005.

(iii) to issue a writ, order or direction in the nature of certiorari quashing the ex parte order dated 20.5.2005.

(iv) to issue a writ, order or direction in the nature of certiorari quashing the circular dated 19.7.2000 and direction dated 12.9.2003.

(v) to issue a writ, order or direction in the nature of mandamus directing the respondent No. 3 to not charge any amount of penalty on the basis of direction dated 12.9.2003 (Annexure-3).

3. In Writ Petitions Nos. 1760 of 2006 and 1812 of 2006 a prayer for replacing the vehicle covered by permit by Higher Model Vehicle is also there.

4. Background facts as enumerated in the present Writ Petition No. 1177 of 2006 are as follows:

5. The petitioner was the owner of stage carriage No. U.P. 61/3637. The said vehicle was covered by regular stage carriage permit 1720/VNS/1998, which was valid from 20.7.1998 to 19.7.2003. The petitioner was depositing the road tax and additional tax in accordance with the provisions of Uttar Pradesh Motor Vehicles Taxation Act, 1997 (in short "the Taxation Act") and Uttar Pradesh Motor Vehicles Taxation Rules, 1998 (in short "the Taxation Rules").

6. Since the model of the vehicle was of the year 1991, engine and chasis required major repairing. The financial position of the petitioner was very bad. He was not in a position to get the engine and chasis repaired, therefore, on 30.7.2001 the petitioner surrendered the certificate of registration and permit (in short "the documents") of the vehicle in the office of respondent No. 3, Assistant Regional Transport Officer (Administration), Ghazipur which was accepted by the concerned authority by order dated 31.7.2001 and during the said period, the vehicle remained parked in the Garage of "Chhotey Body Mistri". After repairing of the chasis and engine of the vehicle No. UP 61/3637 on 4.8.2005, the petitioner moved an application in the office of respondent No. 2, Assistant Regional Transport Officer, Ghazipur and requested to release the documents of the vehicle in question.

7. The respondent No, 3 called for the report from the enforcement office by order dated 4.8.2005 and on the same day the report about "check" and "challani" was submitted and nothing adverse was found against the petitioner. On 5.8.2005, petitioner was directed to deposit a sum of Rs. 1,314 and Rs. 6,643 as the road tax and additional tax respectively for getting the documents of the vehicle released. On the same day, i.e., 5.8.2005, the petitioner deposited the said total sum of Rs. 7,957, and the documents of the vehicle were released. Since the regular stage carriage permit No. 1720/98 for plying of the vehicle on the prescribed route stood already expired on 19.7.2003, the petitioner moved an application for renewal of the permit No. 1720/98 and in the meantime, the petitioner obtained a temporary permit for the period from 9.9.2005 to 3.10.2005 for the prescribed route.

8. On 31.12.2005, respondent No. 5 issued a recovery certificate to recover a sum of Rs. 1,05,000 towards penalty/compounding fee against the petitioner for the period from 1.12.2001 to 31.7.2005. The petitioner made inquiry from the office of respondent Nos. 3 and 4 with regard to the impugned recovery certificate and he was apprised that in pursuance of direction dated 12.9.2003 issued by the Deputy Transport Commissioner, Varanasi Zone, Varanasi, the respondent No. 2 has passed an ex parte order on 20.5.2005 whereby he imposed a sum of Rs. 2,500 per month for the period from 1.12.2001 to

31.7.2005 as penalty/compounding fee on the ground that the certificate of registration of vehicle of the petitioner remained surrendered for more than four months.

9. The impugned order was passed on the basis of the circular dated 19.7.2000 issued by the Transport Commissioner, Uttar Pradesh. The said circular dated 19.7.2000 provided for the levy of compounding fee u/s 86 of the Motor Vehicles Act, 1988 (in short "the M.V. Act") read with Clause (xxiv) to Sub-section (2) of Section 72 of the M.V. Act and sought to attach the condition to the permit in the following terms ;

holder of the public services vehicle permit shall not keep his vehicle out of use for more than four months in a year.

10. The petitioner, being aggrieved, filed a Writ Petition No. 292 of 2006 before this Court and this Court directed the petitioner to file objections before the concerned authority which had issued the order dated 20.5.2005 requiring the petitioner to deposit a sum of Rs. 1,05,000 towards compounding fee. Thereupon, the petitioner filed its objections before the Assistant Regional Transport Officer (Administration), Ghazipur, which was rejected by order dated 19.5.2006. Hence, the present writ petition.

11. Heard Sri Bajrang Bahadur Singh and Sri Akhilesh Kumar Singh, counsel for the petitioners and learned standing counsel for the respondents and perused the record.

12. The question involved in all these writ petitions is whether the compounding fee/penalty can be imposed u/s 86 read with Section 72(2)(xxiv) under the M.V. Act against the holder of public services vehicle permit for keeping his vehicle out of use for more than four months from the date of surrender of the certificate of registration of the vehicle u/s 12 Sub-clause (2) of the Taxation Act read with Sub-rules (3) and (4) of Rule 22 of the Taxation Rules, 1998.

13. The contention of the petitioner is that under Sub-rule (4) of Rule 22 of Taxation Rules, the tax payable in respect of motor vehicle which is again brought into use shall be calculated from the first day of the month in which the certificate of registration is returned to the owner, therefore, the impugned orders by which the authorities are demanding payment of compounding fee/penalty u/s 86 of the M.V. Act for the period during which the permit and other papers remained surrendered is not permissible.

14. To adjudicate upon the present controversy, it would be useful to refer to Sections 86 and 72 (2) (xxiv) as well as Sub-section (2) of Section 12 of the Taxation Act and Sub-rules (3) and (4) of Rule 22 of the Taxation Rules, which are reproduced hereinbelow:

Motor Vehicles Act, 1988:

86. Cancellation and suspension of permits.--(1) The transport authority which

granted a permit may cancel the permit or may suspend it for such period as it thinks fit--

(a) on the breach of any condition specified in Section 84 or of any condition contained in the permit, or

(b) if the holder of the permit uses or causes or allows a vehicle to be used in any manner not authorised by the permit, or

(c) if the holder of the permit ceases to own the vehicle covered by the permit, or

(d) if the holder of the permit has obtained the permit by fraud or misrepresentation, or

(e) if the holder of the goods carriage permit, fails without reasonable cause, to use the vehicle for the purposes for which the permit was granted, or

(f) if the holder of the permit acquires the citizenship of any foreign country:

Provided that no permit shall be suspended or cancelled unless an opportunity has been given to the holder of the permit to furnish his explanation.

72. Grant of stage carriage permits.--(1) Subject to the provisions of Section 71, a Regional Transport Authority may, on an application made to it u/s 70, grant a stage carriage permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit:

Provided that no such permit shall be granted in respect of any route or area not specified in the application.

(2) The Regional Transport Authority, if it decides to grant a stage carriage permit, may grant the permit for a stage carriage of a specified description and may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely--

(i)....

(xxiv) any other conditions which may be prescribed.

Motor Vehicles Taxation Act, 1997:

12. Non-use of vehicle and refund of tax.--(1) When any person who has paid the tax in respect of a transport vehicle, proves to the satisfaction of the Taxation Officer in the prescribed manner that the motor vehicle in respect whereof such tax has been paid, has not been used for a continuous period of one month or more since the tax was last paid, he shall be entitled to a refund of an amount equal to one-third of the rate of quarterly tax payable in respect of such vehicle for each (thirty days) of such period for which such tax has been paid:

Provided that no such refund shall be admissible unless such person has surrendered the certificate of registration, the token, if any, issued in respect of the vehicle and the permit, if any, to the Taxation Officer, before the period for

which such refund is claimed.

(2) Where the operator or, as the case may be, the owner of a motor vehicle, does not intend to use his vehicle for a period of one month or more he shall, before the date the tax or additional tax, as the case may be, is due, surrender the certificate of registration, the token, if any, issued in respect of the motor vehicle and the permit, if any, to the Taxation Officer of the region where the tax or additional tax was last paid and on such surrender, no tax or additional tax under this Act shall be payable in respect of such vehicle for each complete calendar month of the period during which the vehicle remains withdrawn from use and the aforesaid documents remain surrendered with the Taxation Officer:

Provided that in case such vehicle is found plying during the period when its documents as mentioned in this sub-section remain surrendered with the Taxation Officer, such owner or operator, as the case may be, shall be liable to the tax as if the said documents were not surrendered and shall also be liable to the penalty payable under Sub-section (3) of Section 9.

Motor Vehicles Taxation Rules, 1998:

22. Procedure in the case of non-use of a vehicle.--[(1) When the owner of a motor vehicle has occasion to withdraw his motor vehicle from use for a period of one month or more, the certificate of registration and the token, if any, issued in respect of the vehicle must be surrendered to the Taxation Officer, together with a declaration in Part I of Form "F", otherwise the motor vehicle shall be deemed to have been in use. The Taxation Officer shall complete Part III of Form "F" and return it to the claimant, and shall at the same time enter in the certificate of registration the date of its surrender;

Provided that in the case of a transport vehicle, the permit and additional tax payment certificate relating to it shall also be surrendered to the Taxation Officer alongwith other documents mentioned in this sub-rule. These documents shall be returned to the owner in the manner laid down in Sub-rule (3) when he desires to bring the vehicle into use again.]

(2) The intimation of non-use shall be accompanied by a cash receipt of (Rupees one hundred) to be deposited in the office of the Taxation Officer and shall be presented by the owner or his duly authorized agent to the Taxation Officer."

[(3) When the owner of the motor vehicle who has so surrendered his certificate of registration and token, desires to bring his motor vehicle into use again, he shall complete and sign an application in Part II of Form "F" and shall present it to the Taxation Officer. If the owner has lost Part III of Form "F" returned to him under Sub-rule (1), he shall, on giving a declaration to that effect and on payment of rupees five, be supplied by the Taxation Officer a fresh blank Form "F" and the owner shall fill in Part II thereof If the period for which the tax has been paid is unexpired on the date of such application, the certificate of registration and token alongwith the additional tax payment certificate will be

returned to the claimant after entering the date of return in the certificate of registrations. In other case, an application in Part II of Form "F" must be accompanied by an application in Form "D" for the renewal of token and on payment of the tax due, if any, the Taxation Officer will return certificate of registration and will issue token in the manner specified under Rule 13.

(4) The tax or additional tax, payable in respect of a motor vehicle which is again brought into use shall be calculated from the first day of the month in which the certificate of registration is returned to the owner.]

15. The genesis of the controversy involved in the matter arises from the circular dated 19.7.2000 issued by the Commissioner Transport, Uttar Pradesh. Therefore, it is necessary and useful to reproduce the said circular for better appreciation of facts in issue:

dk;kZy; ifjogu vk;qDr mRrj izns"k A

la[;k& ,l0Vh0,0 @ 2000 y[ku? % fnukad % tqykbZ 19] 2000

lsok esa]

leLr IEHkkxh; ifjogu vf/kdkjh] mRrj izns"k A

ekg vizSy] 2000 dh cSBd esa ijfeV"qknk okguksa ds yEcs vof/k rd ljs.Mj djus dh dqizFkk dks lekIr djus ds IEcU/k esa foLrkj ls ppkZ gqbZ Fkh A bl rjg dh f"dkd;rsa izk;% vkrh gSa fd okgu Lokeh okguksa ds izi= lefiZr dj IEcfU/kr okgu dk pksjh Nqis lapkyu djrs gS A ftlls tgka ,d vksj jktLo dh {kfr igqaprh gSa] ogha nwljh vksj ijfeV ftl mn~ns"; ls iznku fd;k x;k gS mldh Hkh iwfrZ ugh gksrh gS A izoZru "kk[kk dk mDr dqizFkk dks jksdus esa ,d egRoiw.kZ jksy gS vkSj ekfld cSBdksa esa bl IEcU/k esa le; le; ij leqfpr funsZ"k Hkh fn;s x;s gS A ijUr q fLFkfr esa visf{kr lq/kkj u gksus ds dkj.k bl IEcU/k esa fof/kd izko/kkuksa dk IE;d~ ijh{k.k fd;k x;k vkSj ;g vko;"drk izrhr gqbZ fd bl dqizFkk dks jksdus ds fy, okgu Lokeh ds fo:) /kkjk 86 ds vUrZxr~ dk;Zokgh vey es yk;h tk;s A

eksVj ;ku vf/kfu;e dh /kkjk 86?1? ds vUrZxr DykWt ^,* ls ^,Q* ds vUrZxr ijfeVksa ds fujLrhdj.k vFkok fuyEcu dh dk;Zokgh fd;s tkus dk izko/kku gS A mDr /kkjk dh mi/kkj 1? ds DykWt ^bZ* eas ;g izko/kkfur gS fd ;fn eky okgd dk ijfeV/kkj d fcuk fdlh ;qfDr;qDr dkj.k ds okgu dk lapkyu ugh djrk gS rks mlds fo:) /kkjk 86 dh dk;Zokgh vkd`"V gksrh gS A pwafd ;k=h okguksa ds yEcs le; rd viz;ksx dh fLFkfr dks /kkjk 86 dh ijhf/k esa ugh j[kk x;k gS] vr% bl deh dks ijfeV "krksZ esa ,d ubZ "krZ tksM+dj iwjk fd;k tk ldrk gS A mYys[kuh; gS fd /kkjk 72?? ds DykWt 24 esa ;g izko/kkfur gS fd dksbZ vU; "krZ tks fofufnZ"V dh tk;sa ijfeV dh "krksZ eas dj fy;k tk;s fd /kkjd vius ijfeV dk viz;ksx pkj ekg ls vf/kd ugh dj ldsxk A vr% vius izkf/kdj.k dh vkxkeh cSBd esa ;k=h okguksa ds ijfeVksa esa fuEu "krZ tksM+s tkus dk izLrko ikfjr djkdj visf{kr dk;Zokgh lqfuf"pr djsa A

that the holder of the public service vehicle permit shall not keep his vehicle out of use for more than four months in a year

?izse ukjk;.k? ifjogu vk;qDr] mRrj izns"k A

16. The aforesaid circular dated 19.7.2000 has been issued by the Commissioner Transport on the premises that complaints were received that the motor vehicle owners after surrendering their certificate of registration of their vehicles were operating them and thus, evading huge amount of taxes. Therefore, it was felt necessary to invoke Section 86 of the M.V. Act to prevent this practice. It has also been observed in the said circular that the consequence ensuing from the non-use of the vehicle for a very long period is not covered under the ambit of Section 86 of the M.V. Act, therefore, the condition as noticed hereinafter was sought to be attached to the permit allegedly on the basis of the provisions as contained in Section 72(2)(xxiv) of the M.V. Act. Thus, on the basis of the said circular, public service vehicle permit holder cannot keep his vehicle out of use for more than four months in a year.

17. In pursuance to the aforementioned circular, the authorities concerned started imposing Rs. 2,500 as compounding fee/penalty per month for the period subsequent to four months from the date of the surrender of registration certificate of the vehicle.

18. Now the question before this Court is whether such circular can be issued by the Commissioner Transport for imposing the compounding fee on the basis of the Section 86 read with Section 72(2)(xxiv) of the M.V. Act.

19. Learned Counsel for the petitioner has submitted that the Commissioner Transport is not empowered to invoke Section 86 and Section 72 of the M.V. Act for imposing the compounding fee for the period during which the registration certificate of the vehicle remained surrendered even if the period of surrender was for more than four months. It has further been submitted that Sub-clause (xxiv) of Sub-section (2) of Section 72 of the M.V. Act has been illegally invoked by Transport Commissioner. The said clause reads as follows:

Any other condition which may be prescribed.

20. The word "prescribed" has been defined u/s 2(32) of the M.V. Act as follows:

"Prescribed" means prescribed by rules made under this Act.

21. Therefore, from a bare perusal of the aforementioned definition "prescribed" as provided u/s 2(32) of the M.V. Act, it is apparent that "any other condition" under Clause (xxiv) to Sub-section (2) of Section 72 can be prescribed by Rules made under the M.V. Act.

22. We have perused the Central Motor Vehicles Rules, 1989, we fail to find any rule prescribing any condition for restraining the holder of the public services vehicle permit from keeping his vehicle out of use for more than four months in a year. This apart, there is no enabling section or charging section under the Taxation Act, 1997 whereby the conditions for imposing compounding fee/penalty can be imposed for non-use of vehicles exceeding more than four months in a year. Article 265 of the Constitution of India clearly provides that "No tax shall be levied or collected except by authority of law".

23. Thus, the conditions for imposing the compounding fee/ penalty cannot be prescribed under Clause (xxiv) Sub-section (2) of Section 72 of the M.V. Act.

24. Learned standing counsel for the respondents has heavily relied upon Sub-section (1)(e) of Section 86 of the M.V. Act and impressed upon this Court that if the holder of the goods carriage permit, fails without reasonable cause, to use the vehicle for the purposes for which the permit was granted, then authorities can recover compounding fee in terms of Sub-section (5) of Section 86 of the M.V. Act.

25. We have given considerable thought to this submission. In our view the said submission is totally misconceived and unsustainable for the following reasons:

(i) Firstly, Sub-clause (e) of Sub-section (1) of Section 86 of the M.V. Act is only applicable to the goods carriage permit holder and not to the public service vehicle permit holder. The conditions as prescribed under the impugned circular dated 19.7.2000 is with respect to public service permit holder and not to the goods carriage permit holder as provided u/s (e). For ready reference, we once again reproduce the condition sought to be attached to the permits on the basis of the circular dated 19th July, 2000 which reads as under:

That the holder of the public service vehicle permit shall not keep his vehicle out of use for more than four months in a year.

26. For ready reference Section 86(1)(e) of the M.V. Act is reproduced below:

(e) If the holder of the goods carriage permit, fails without reasonable cause, to use the vehicle for the purposes for which the permit was granted, or

(ii) Secondly, Section 12(2) of the Taxation Act of 1997 read with Taxation Rules, 1998 does not provide any outer limit for the period of surrender. Sub-rules (3) and (4) of Rule 22 of the Taxation Rules, 1998 provides that the tax payable in respect to the motor vehicle which is again brought into use shall be calculated from the day on which certificate of the registration is returned to owner which was surrendered earlier. Therefore, the demand of compounding fee/penalty subsequent to four months from the date of surrender of the registration certificate of the vehicle is not permissible. Specific provisions have been provided u/s 12 of the Taxation Act and Rule 22 of the Taxation Rules, 1998, which clearly and specifically deal with the matter of surrender of registration certificate of the vehicle and necessary safeguards have been provided under the Said Taxation Act and Taxation Rules.

27. In this connection reference to Proviso to Sub-section (2) of Section 12 is necessary which clearly provides as follows:

(2) Where the operator or, as the case may be, the owner of a motor vehicle, does not intend to use his vehicle for a period of one month or more he shall, before the date the tax or additional tax, as the case may be, is due, surrender the certificate of registration, the token, if any, issued in respect of the motor

vehicle and the permit, if any, to the Taxation Officer of the region where the tax or additional tax was last paid and on such surrender, no tax or additional tax under this Act shall be payable in respect of such vehicle for each complete calendar month of the period during which the vehicle remains withdrawn from use and the aforesaid documents remain surrendered with the Taxation Officer:

Provided that in case such vehicle is found plying during the period when its documents as mentioned in this sub-section remain surrendered with the Taxation Officer, such owner or operator, as the case may be, shall be liable to the tax as if the said documents were not surrendered and shall also be liable to the penalty payable under Sub-section (3) of Section 9.

28. The bare perusal of the aforementioned proviso clearly provides that if the vehicle is found plying during the period when its documents remained surrendered with the taxation officer, such owner or operator as the case may be can be held liable to the penalty payable u/s 9 of the Taxation Act. It has further been provided u/s 19 of the Taxation Act as follows:

19. Punishment of offences.--Whoever contravenes any of the provisions of this Act or the rules made thereunder shall be punishable with fine which may extend to five hundred rupees and for the second or subsequent similar offence, be punishable with fine which may extend to one thousand rupees:

Provided that no Court shall, except for reasons to be recorded in writing, impose a fine of less than five hundred rupees for any such second or subsequent offence.

29. Therefore, from the aforementioned provisions it can be safely inferred that necessary inbuilt machinery and penal provisions have been provided under the Taxation Act, 1997 and Taxation Rules, 1998 to prevent the evasion of tax in the matters relating to the surrender of the registration certificate of the vehicles and also deal with the consequences flowing therefrom if the said provisions are contravened.

30. Now let us revert back to Section 86 of the M.V. Act, 1988. We have already held in the earlier part of this judgment, that provisions of Section 86(1)(e) of the M.V. Act cannot be pressed into service since it relates to goods carriage whereas the conditions sought to be attached to the permit by the impugned circular is in regard to the public service vehicles. Moreover Sub-clause (e) of Sub-section (1) to Section 86 does not deal with the cases relating to surrender of vehicle. Specific provisions are provided under the Taxation Act, 1997 and Taxation Rules, 1998, therefore Clause (e) of Sub-section (1) to Section 86 does not cover the cases of surrender of registration certificate of the vehicle, whereas it is covered u/s 12 of the Taxation Act read with Rule 22 of the Taxation Rules.

31. Now we will deal with the question of the applicability, effect and implication of Sub-section (5) of Section 86 of the M.V. Act which provides for imposition of compounding fee.

32. At this juncture, it will be useful to refer to Sub-clause (5) of Section 86 of the M.V. Act which reads as under:

(5) Where a permit is liable to be cancelled or suspended under Clause (a) or Clause (b) or Clause (e) of Sub-section (1) and the transport authority is of opinion that having regard to the circumstances of the case, it would not be necessary or expedient so to cancel or suspend the permit if the holder of the permit agrees to pay a certain sum of money, then, notwithstanding anything contained in sub-section (1), the transport authority may, instead of cancelling or suspending the permit, as the case may be, recover from the holder of the permit the sum of money agreed upon.

33. Section 86 of the M.V. Act seeks to empower the transport authority which granted the permit to cancel the permit or suspend it for specified period for the breach of the conditions of the permit or for specific offences specified in the clause. It also confers power on the transport authority to permit compounding of offences under this Clause by recovering the money agreed upon from the permit holder in lieu of the suspension or cancellation of the permit.

34. In the present case, we have already held in the earlier part of this judgment that Sub-clause (e) of Sub-section (1) of Section 86 of the M.V. Act cannot be invoked for recovering compounding fee if the permit holder of the public services vehicle surrenders the registration certificate of its vehicle for more than four months in a year. Sub-section (5) of Section 86 can only be invoked when permit is liable to be cancelled or suspended under Clause (a) or Clause (b) or Clause (e) of Sub-section (1) of Section 86.

35. In the present case, since the Clause (e) of Sub-section (1) of Section 86 is not applicable. Therefore, the provisions of Sub-section (5) of Section 86 cannot also be invoked.

36. There is one more aspect of the matter which cannot be ignored. The bare perusal of the sub-section (5) of Section 86 of the M.V. Act clearly provides that the compounding fee cannot be imposed suo motu or unilaterally by the authorities concerned and before imposing compounding fee it is necessary that the permit holder should agree to pay certain sum of money in lieu of cancellation or suspension of the permit and then only the compounding fee can be levied, therefore it is necessary that before imposing any compounding fee, an opportunity is required to be given to the permit holder to offer his explanation. In the present case this opportunity has also not been given to the petitioners before imposing any compounding fee. The record of the case clearly shows that principle of natural justice has been violated and no opportunity has been given to the petitioners before imposing the compounding fee. It is settled principle of law that principle of natural justice should be complied with by the authority giving decision if it visits civil consequences.

37. From the aforesaid discussions, it follows that no such condition in pursuance to Sub-clause (xxiv) of Sub-section (2) of Section 72 of the M.V. Act can be

imposed nor any compounding fee can be charged u/s 86(1)(e) and Sub-section (5) of Section 86 of the M.V. Act from the holder of the public service vehicle permit for keeping its vehicle out of use for more than four months in a year.

38. In Writ Petition Nos. 1812 of 2006 and 1760 of 2006 it has been stated that the petitioners are not being permitted to replace their vehicles, covered by the permit, by any other vehicle of the same nature. It is suffice to say that it is open to the petitioners to approach the concerned authority who will pass necessary orders in the matter in accordance with law, and keeping in view the provisions of Section 86 of the M.V. Act, 1988.

39. In view of the aforesaid discussions, the circular dated 19.7.2000 filed as Annexure-4 to the writ petition issued by the Commissioner Transport and further recovery proceedings pursuant to the impugned circular dated 1.9.7.2000 cannot be sustained in law and are hereby quashed. Consequently, the impugned order dated 19.5.2006, passed by the respondent No. 2 on the basis of the impugned circular is also quashed. The respondents are directed to pass afresh orders on the applications of the petitioners for renewal of their permits in accordance with law ignoring the aforementioned circular dated 19.7.2000.

40. In the result, the writ petition is accordingly allowed subject to the above observations.