
(2012) 11 MP CK 0042
In the Madhya Pradesh High Court
Case No : Writ Petition No. 8528 of 2011

Ravindra Singh Tomar

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 27-11-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh Motoryan Karadhan Adhiniyam, 1991 — Section 16, 21, 3
Motor Vehicles Act, 1988 — Section 130, 2, 2(14), 2(32), 207

Citation : (2013) 2 ACC 21 : (2013) 1 MPHT 475 : (2013) 1 MPJR 125 : (2013) 1 MPLJ 313

Hon'ble Judges : S.K. Gangele, J;G.D. Saxena, J

Bench : Division Bench

Advocate : N.K. Gupta, for the Appellant; Raghvendra Dixit, Govt. Advocate for the State, for the Respondent

Judgement

G.D. Saxena, J.—This writ petition, under Article 226 of the Constitution of India, has been preferred by the petitioner under the caption of public interest litigation. A large number of averments have been made in it but those to which the petitioner has restricted himself are contained in Para 11 of the petition. The said prayers read thus:--

(i) The petition may kindly be allowed and the respondents authorities be directed to keep regular and proper watch on the tractors and trolley those are being used for commercial purpose having registration for agricultural purpose and such tractor trolley owners be not allowed to use the vehicle for commercial use. Respondents be further directed to seize such vehicles and take action against the owner of the vehicle.

(ii) The respondents be further directed to keep watch over the mines area and not to allow any vehicle owner to take the mineral from mines area without having registration for commercial use and permit of the area.

(iii) The respondents be further directed to restrain the overloading of the

vehicles to avoid accidents.

(iv) The respondents be further directed to recover tax from the owners of the vehicles which are being used for commercial purpose having registration for agricultural purpose.

(v) Any other writ, order or direction which this Hon''ble Court may deem fit in the facts and circumstances of the case in larger public interest of the public and for stopping illegal evasion of State revenue may also be issued.

2. The grievance of the petitioner is that when the tractor with trailer is registered for agricultural purposes, same cannot be used for commercial use. He contended that despite making several complaints to the concerning authorities, no action has been taken and the vehicles are being allowed to run in violation of the rules. Inviting attention of this Court to Section 39 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the M.V. Act, 1988") he submitted that the provisions contemplated therein do not authorise such vehicles to be driven at any public place unless they are registered in accordance with the provisions of the Act. Apart from it, by permitting use of such vehicles in the manner as happened in the present case, the owners thereof are given opportunity to avoid payment of tax as per M.P. Motoryan Karadhan Adhiniyam, 1991, hereafter referred as "the Adhiniyam, 1991", which is a great loss to the public exchequer. By enclosing document (Annexure P-1), it is further brought to the notice of this Court that during the year 2010-11, 748 tractors with trailers were registered for agricultural purposes whereas only 42 were registered for commercial purposes, out of which 3 subsequently were converted into commercial from agricultural purposes, as per the information furnished from the office of the Regional Transport Authority, Gwalior. He further submits that under Adhiniyam, 1991 there is provided exemption from payment of registration tax, if the tractor trolley is registered for agricultural use and therefore, taking advantage of the said exemption, the vehicles which are registered for the sole purpose of agriculture, now-a-days, are being utilised by the owners in transportation of the commercial goods. Therefore, to put a check on such illegal activities, the petitioner has filed this petition in public interest at large to issue appropriate directions in the matter.

3. Heard the learned Counsel for the parties and also perused the petition and the relevant provisions of law.

4. The question for determination in this case would be whether the tractor which was registered for agricultural purposes in case is not used for such purpose, then there is a breach of the condition of policy on the part of the owner of the tractor and whether under such circumstances, the respondents can be directed to impound such vehicles, which are being used in contravention of the rules under the Adhiniyam, 1991 and the M.V. Act, 1988?

5. It is relevant to mention here that the State Government vide Notification No. F. 22-100-91-VIII, dated the 23rd January, 1992 published in M.P. Rajpatra

(Asadharan dated 23-1-92 p. 74) in exercise of powers conferred by sub-section (1) of Section 21 of the Madhya Pradesh Motoryan Karadhan Adhiniyam, 1991, thereby exempts totally Tractor Trailer Combinations, belonging to bonafide agriculturists for agricultural purposes and used for transportation of persons from and to fairs, Hat-Bazars, religious gatherings, marriages and other ceremonial occasions from payment of tax leviable under sub-section (1) of Section 3 of Madhya Pradesh Motoryan Karadhan Adhiniyam, 1991 (No. 25 of 1991) subject to the following conditions, namely:--

The vehicle for which the exemption has been granted,--

- (1) should be owned and used by the bonafide agriculturists;
- (2) should be registered in the name of bonafide agriculturists;
- (3) should not be used for hire or reward.

6. The relevant provisions in Central Motor Vehicles Rules, 1989 for vehicle registered for the purpose of agriculture are as follows:--

2. Definition.-- In these rules, unless the context otherwise requires--

(a) *** **

(b) "Agricultural tractor" means any mechanically propelled 4 wheel vehicle designed to work with suitable implements for various field operations and/or trailers to transport agricultural materials. Agricultural tractor is a non-transport vehicle.

(c) "Agricultural trailer" means a trailer generally left uncovered with single/double axle construction which is coupled to an Agricultural Tractor by means of two hooks and predominantly used for transporting agricultural materials.

7. Apart from the above, non-compliance of the provisions of the Act or any rules contained in Adhiniyam in 1991 and the M.V. Act, 1988 in using the vehicle registered particularly for the purpose of agriculture, empowers the Competent Authority to make seizure and detention of such vehicles in the event of non-payment of tax. It would be pertinent to set out the provisions of Section 16 of the said Adhiniyam, 1991 together with Section 207(1) of the M.V. Act, 1988 (so much as are relevant):--

Section 16 of M.P. Motoryan Karadhan Adhiniyam, 1991 is reproduced as below:--

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

Provided that no officer shall be authorised under this sub-section with respect to

motor cycles and motor cars.

(2) Any person driving a motor vehicle in any public place shall, on being so required by the Taxation Authority or any officer authorised in this behalf by the State Government, produce--

(a) the certificate of registration;

(b) the token in evidence of the payment of tax; and

(c) the certificate of insurance relating to the use of the vehicle and shall keep such vehicle stationary for such time as may be required by such authority or officer to satisfy himself that the tax in respect of such motor vehicle has been paid:

Provided that in the case of a motor vehicle other than a transport vehicle; the certificates so required shall be produced for inspection within such period and in such manner as may be prescribed under sub-section (4) of Section 130 of the Motor Vehicles Act, 1988.

(3) The Taxation Authority or any officer authorised by the State Government in this behalf may if he has reason to believe that a motor vehicle has been or is being used without payment of tax, penalty or interest due, seize and detain such motor vehicle and for this purpose take or cause to be taken any step as may be considered proper for the temporary safe custody of such motor vehicle and for the realisation of tax due.

(4) Where a motor vehicle has been seized and detained under subsection (3), the owner or the person in-charge of such vehicle may apply to the Taxation Authority or any officer authorised in this behalf by the State Government together with the relevant documents for the release of the vehicle and if such authority or officer after verification of such documents, is satisfied that no amount of tax is due in respect of that vehicle, may by an order in writing release such vehicle.

Section 207 of the Motor Vehicles Act, 1988 says as under:--

207. power to detain vehicles used without certificate of registration permit, etc.-- (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 subsection (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.

Corresponding Law.-- Section 207 corresponds to Section 129-A of the Motor Vehicles Act, 1939.

8. It is the contention of the learned Counsel appearing on behalf of the petitioner, that a vehicle may be seized and detained by the authority in exercise of the powers conferred u/s 16 of the said Adhiniyam, 1991 as well as Section 207 (1) of the M.V. Act, 1988. Learned Counsel also drew our attention to the provisions of the definition of Section 2 of the said Act, 1988 and in particular to sub-section (32) thereof which entails that in the said Act, unless the context otherwise required, "prescribed" means prescribed by rules made under the Act. According to the learned Counsel "prescribed manner" would have reference to the manner prescribed by the rules made under the Act.

9. It may be mentioned here that Section 207 of the said Act, 1988 is equivalent to Section 129-A of the Motor Vehicles Act, 1939 (hereinafter referred to as "the old Act") which was the subject matter of challenge and was upheld by Hon"ble Apex Court in its decision in the case of The Transport Commissioner, Andhra Pradesh, Hyderabad and Another Vs. S. Sardar ali, Bus Owner, Hyderabad and Others, . The words "in the prescribed manner" were missing in the said Section 129-A of the old Act. Hence, Hon"ble the Supreme Court defined the procedure, which is to be followed for seizing and detaining a vehicle as indicated in Paragraph 4 of the said judgment. In the case of M.C. Mehta Vs. Union of India, AIR 1987 SC 734 , particularly Paragraphs 3, 11 and 12 of this judgment, it was held that Section 207 of the new Act, in fact, specifically confers power on a police officer or other authorised person to seize and detain a vehicle if he had reasons to believe that the same is being used in contravention of the specified provisions. In another decision of Hon"ble Supreme Court in the case of State of Maharashtra and Others Vs. Nanded-Parbhani Z.L.B.M.V. Operator Sangh, power of seizure and detention of vehicles u/s 207 of the said Act has been recognised.

10. Considering the aforesaid, we find that there is a clear difference between Section 129-A of the old Act and Section 207 of the New Act. The distinction being the specific introduction of the words "in the prescribed manner" in Section 207, which were absent in Section 129-A of the old Act. It cannot be presumed that Parliament has mindlessly introduced the words "in the prescribed manner"

in Section 207 of the said Act. Because these words were absent in the earlier provision of Section 129-A of the old Act, their presence in Section 207 of the said Act would clearly imply that their introduction was intentional and with a purpose. The words cannot be construed as being redundant or meaningless., Moreover, the word "prescribed" has also been defined u/s 2(32) of the said Act to mean prescribed by rules made under the Act. It is, thus, clear that prescribed manner would mean the manner prescribed by the rules made under the Act. If no rules are made under the Act there is no prescribed manner.

11. In the case of Babu Verghese and Others Vs. Bar Council of Kerala and Others, it is categorically stated that it is a basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, it must be done in that manner or not at all. Hence, in the opinion of this Court where a power is given to do a certain thing in a certain way then it must be done in that way or not at all.

12. Upon carefully going through the said decision of Hon"ble Supreme Court in M.C. Mehta "s case (supra), we find that there is no denying that the Supreme Court has clearly indicated that there is power to seize and detain the vehicle as provided u/s 207 of the said Act. There can be no dispute with this as that is the clear meaning of the section itself. However, the same provision also provides that such power be exercised "in the prescribed manner".

13. Lastly, upon a careful reading of the decision in the State of Maharashtra"s case (supra), it is clear that this decision, rather than supporting the case of the respondents, in fact, supports the case of the petitioner, at least insofar as the question of interpretation and intention of the legislature was concerned. In this context, it would be relevant to set out the following portion of the said decision:--

8. 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 precondition for exercise of power is fully satisfied. It is a cardinal principle of the rule of construction of a 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 it would make the statute offend any provisions of the Constitution. Tindal, C.J., in Sussex Peerage case, 1 (1844) 11 Cl & Fin 85,143 : 8 ER 1034 (HL), (Cl & F at 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.

The intention of the legislature is required to be gathered from the language used and, therefore, a construction, which requires for its support an additional substitution of words or which results in rejection of words as meaningless has to be avoided.

Thus, in the light of the aforesaid discussions, in the opinion of this Court, a tractor fitted with a trailer may or may not answer the definition of "goods carriage" contained in Section 2(14) of the Motor Vehicles Act. The tractor is meant to be used for agricultural purposes. The trailer attached to the tractor, thus, necessarily is required to be used for agricultural purposes, unless registered otherwise. Therefore, after taking into consideration all the materials that are available on record and in view of the submissions made by the learned Counsel for the parties, we think it proper to dispose of the writ petition with a direction that the respondent Nos. 2, 4 and 5 shall examine the matter and for checking unauthorised plying of the vehicles shall monitor over such vehicles which are being used against the purpose. The respondent Nos. 2, 4 and 5 shall further enforce the provisions of Section 16 of the Adhiniyam, 1991 as well as Section 207(1) of the M.V. Act, 1988 for verifying whether the provisions made thereunder are being complied with or not. This shall include prosecution of the persons who may be found plying the vehicles without permits and in violation of the provisions of the Act. However, it is made clear that this direction shall not preclude the concerned authorities from taking appropriate action against the defaulters for paying taxes as may be permissible under law.