

(1993) 03 BOM CK 0099

In the Bombay High Court

Case No : Writ Petition No. 2393 of 1988

Sundaram Finance Limited and Another

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 03-03-1993

Acts Referred:

Bombay Motor Vehicles (Taxation of Passengers) Act, 1958 — Section 10, 2(4), 3, 8, 9
Constitution of India, 1950 — Article 14
Motor Vehicles Act, 1939 — Section 29A, 31A(5), 4, 5, 6

Citation : AIR 1993 Bom 346 : (1993) 2 BomCR 627 : (1993) 95 BOMLR 797 :
(1994) 1 MhLj 124

Hon'ble Judges : D.R. Dhanuka, J

Bench : Single Bench

Advocate : Aspi Chinai and S.A. Divan, instructed by M/s. Mehta and Girdharlal and Co, for the Appellant; N.T. Saraf and G.S. Hegde, for the Respondent

Judgement

1. This petition involves consideration of interesting and important questions concerning interpretation and application of S. 31A(5) of the Motor Vehicles Act, 1939, and Ss. 2(4), 3, 9 and 10 of the Bombay Motor Vehicles (Taxation of Passenger) Act, 1958. The relevant questions are formulated as under:--

(a) Whether the concerned authority was entitled to refuse application of the petitioners-Owners for cancellation of the then existing registration certificate in respect of vehicles in question in favour of respondent No. 4 and for issue of fresh registration certificate as contemplated under S. 31A(5) of the Motor Vehicles Act, 1939 merely on . ground of arrears of passenger tax and penalty due and payable by the operator in respect of said vehicles at the material time?

(b) Whether the petitioners are liable to be considered as "Operator" of the said vehicles within meaning of the expression "Operator" as defined under S. 2(4) of Bombay Motor Vehicles (Taxation of Passenger) Act, 1958?

(c) Whether the prescribed authority was entitled to invoke Ss. 9 and 10 of Bombay Motor Vehicles (Taxation of Passenger) Act, 1958 for realisation of

arrears of passenger tax and penalty for the period during which the respondent No. 4 plied the said vehicles under the hire purchase agreements entered into between respondent No. 4 and the petitioners?

(d) Whether the notices of demand issued by the prescribed authority under Bombay Motor Vehicles (Taxation of Passenger) Act, 1958 concerning arrears of passenger tax and penalty are enforceable against the petitioners even though the petitioners were not granted an opportunity of being heard by the concerned authorities before finalisation of the demand notice in respect thereof as against respondent No. 4, the hirer of this said vehicles?

2. At all material times, the petitioners were owners of four (4) Motor Vehicles (Tourist Buses) bearing Nos. MMK 4221, MMK 4432, MMK 4367 and MMK 4664. By four different agreements of Hire Purchase dated 24th February 1984, 14th August 1984, 14th August 1984 and 14th August 1984. The petitioners permitted respondent No. 4 to use and operate the said vehicles as hirer on the terms and conditions set out in the said agreements. Under the said written agreements, the petitioner allowed the respondent No. 4 to procure registration certificate as well as permit in respect of the said vehicles in their own name subject to their observance of term and condition of the said agreements. Under the said agreements, the respondent No. 4 was obliged to pay amount of hire as stipulated therein by instalments and exercise option to purchase the said vehicles in the manner set out therein.

3. By clause 13 of each of the said agreements the respondent No. 4 acknowledged that the respondent No. 4 would hold the said vehicles as a mere bailee of the petitioners and shall not have any proprietary right, title or interest therein until they exercised in writing his option to purchase the said vehicles as provided under the said agreement and until the respondent No. 4 made payment of the entire amount due and payable under the said agreements, to the petitioners. The registration certificate in respect of each of the said four vehicles was issued by the prescribed authority under the Motor Vehicles Act, 1939 in favour of respondent No. 4 at the instance of the petitioners. Each of the Registration Certificates contained the following endorsement "the motor vehicles above described is held by the person registered as the registered owner under a Hire Purchase Agreement with Sundaram Finance Limited". The petitioners exercised control over the said vehicles by virtue of H. P. endorsement made on the registration certificate as aforesaid. In view of the above referred hire purchase agreement arrived at between the petitioners and respondent No. 4, the respondent No. 4 was also permitted to procure permit in respect of the said four vehicles in their own name. Each of the said hire purchase agreements provided that the hirer shall be liable to pay all the taxes fees, duties, licence fee and other charges payable in respect of the said vehicles during the subsistence of the said agreement. Each of the said agreement conferred right on the petitioners-owners to terminate the said hire purchase agreement and resume possession of the vehicles in case the hirer committed default in respect of

payment of any of the instalments of the hire amount specified in the said agreement. Under each of the said agreements the petitioners reserved several powers and rights including the power to take inspection of the said vehicles etc. The fourth respondent hirer was permitted to have physical custody and physical control of the said vehicles for the limited purpose of operating the said vehicles during the subsistence of the hire purchase agreement. By clause 1(c) of the said agreement it was provided that "the hirer undertake to keep the vehicles covered by a valid permit wherever necessary during the continuance of the agreement and to use the vehicle only for the purpose mentioned in the proposal and strictly in accordance with the terms and conditions laid down in the permits, if any, issued in their favour by the prescribed authority in respect of the, said vehicles. A copy of the hire purchase agreement was tendered by the learned counsel for the petitioners across the bar and the copy of the agreement now forms part of the record of proceedings concerning this writ petition.

4. The 4th respondent operated the said four buses as Public Carriers under the permits issued to the 4th respondent by Regional Transport Authority, Bombay in the circumstances aforesaid. The name of the first petitioner was not entered in the said permit but was specifically referred to in the registration certificate as part and parcel of hire purchase endorsement. The respondent No. 4 collected passenger taxes from the passengers who travelled by the said four buses during the years 1984 to 1987. The respondent No. 4 committed serious defaults in respect of their obligations to pay the amount of passenger tax collected by them from the concerned passengers into the Government treasury. The respondent No. 4 committed defaults in respect of their obligations to pay the stipulated hire charges to petitioner No. 4 regularly as provided under the above referred hire charges to petitioner No. 1 regularly as provided under the above-referred hire purchase agreements. In this situation, the petitioner No. 1 terminated the hire purchase agreements and took back possession of the said four vehicles from respondent No. 4. The petitioner No. 1 did so during the period April 1987 to September 1987.

5. The respondent No. 4 has not filed an affidavit in reply to this petition. The respondent No. 4 filed a statement in writing before this Court admitting that the following amounts were and are due and payable by respondent No. 4 to the Regional Transport Authority on account of arrears of passenger tax and penalty:--

(i) Rs. 5,19,425/- on account of arrears of passenger tax;

(ii) Rs. 3,10,163.55 on account of penalty in view of non-payment of the said amount. The respondent No. 4 has thus admitted that a sum of Rs. 8,29,588/50 is due and payable by respondent No. 4 to the Regional Transport Authority on account of arrears of passenger tax and penalty in respect of the said four vehicles. The respondent No. 4 collected the amount of passenger tax from the passengers and appropriated the same to themselves instead of passing on the same to the Government Treasury as provided by law. The notices of demands

issued by the prescribed authority have become final as against respondent No. 4. At one stage, the learned counsel for respondents Nos. 1 to 3 stated that a sum of Rs. 8,65,050.25 was due and payable on account of arrears of passenger tax and penalty. The statement of particulars submitted by the learned counsel for respondent No. 4 obviously contained an error as the said statement was in respect of period commencing from September, 1983. When the said error was pointed out to the learned counsel for respondents Nos. 1, 2 and 3 the learned counsel for the said respondents readily accepted the figures furnished by respondent No. 4. Accordingly subject to quantification dispute raised by the petitioner it is confirmed that a sum of Rs. 8,29,588.50 is recoverable by the Regional Transport Authority from respondent No. 4 as admitted by respondent No. 4 itself.

6. After resuming possession of the said four vehicles, the first petitioner made an application to the 2nd respondent as contemplated under S. 31A(5) of the Motor Vehicles Act, 1939 for cancellation of the then existing certificate of registration in respect of the said vehicles and for issue of fresh registration certificate in favour of the petitioner as the petitioner was the true owner of the said vehicles and the hire purchase agreements were already terminated by the petitioner in view of the default committed by respondent No. 4. The respondent No. 4 was a defaulter on all counts. The respondent No. 4 made a written representation to the Regional Transport Officer to the effect that the above-referred application of the petitioners should not be granted. By his letter/order dated 23rd September 1987, the Assistant Transport Commissioner of Maharashtra State, Bombay, informed the Regional Transport Officer, Bombay (Central) that N.O.C. could not be issued to the owners of the four buses as the amount of passenger tax was still outstanding. A copy of the impugned Order dated 23rd September 1987, passed by the Asstt. Transport Commissioner is Exhibit "D" to the petition. A copy of the said order was endorsed by the said authority to the petitioner. The petitioners protested. The petitioners made a representation to the Transport Commissioner by their letter Exhibit "E" to the petition. By impugned Order dated 4th December 1987, the Transport Commissioner once again rejects the request of the petitioner seeking issue of fresh registration certificate in respect of his said vehicles in favour of petitioner No. 1 as contemplated under S. 31A(5) of the Motor Vehicles Act 1939. The Transport Commissioner rejected the application of the petitioner No. 1 referred to hereinabove, on the ground of arrears of passenger tax in respect of the said vehicles.

7. In this situation the petitioner filed this writ petition in this Court on or about 1st August 1988. By this writ petition, the petitioners have impugned action of the respondents Nos. 1, 2 and 3 refusing to cancel the then existing registration certificate with hire purchase endorsement made therein in favour of respondent No. 4 and the action of the concerned authority refusing to issue the fresh registration certificate in respect of the said vehicles in favour of the petitioners in terms of S. 31A(5) of the Motor Vehicles Act, 1939. By this writ petition, the

petitioners have impugned directions and/or orders passed by the Transport Commissioner in this behalf contained in his letters dated 23rd September 1987 and 4th December 1987. By this writ petition the petitioners have also sought relief to the effect that the respondents Nos. 1, 2 and 3 were not entitled to recover amount of arrears of passenger tax and penalty in question from the petitioners or seize or sell the said four vehicles for realisation of above referred arrears. In substance the petitioners contend that the respondent No. 4 alone was and is liable to pay the amount of arrears of passenger tax and penalty concerning the period during which the respondent No. 4 factually and actually plied and operated the said vehicles. The writ petition was admitted. By an Order dated 2nd September 1988, Daud, J. directed the petitioners to furnish bank guarantee in sum of Rs. 12 lacs from a nationalised bank so as to "secure the claim made by respondents Nos. 1, 2 and 3 on account of arrears of passenger tax and penalty for the relevant period. The learned Judge directed that the said bank guarantee be kept alive till 6 months after the disposal of the petition. The learned Judge passed this Order on the representation made by respondents 1 to 3 to the effect that about a sum of Rs. 12 lacs was outstanding on account of unpaid passenger tax for the period 1984 to 1987, when the said vehicles were plied and operated upon by respondent No. 4. The figure of Rs. 12 lacs is admittedly erroneous. The learned Judge passed an Interim Order to the effect that on the petitioners furnishing the bank guarantee in sum of Rs. 12 lacs, the said vehicles shall continue to be in possession of the petitioner. The petitioner No. 1 furnished the necessary bank guarantee as directed by the Court. After the bank guarantee was furnished by the State Bank of India at the instance of petitioner No. 1 Daud, J. passed further orders in this writ petition on 3rd November 1988. By the said order the learned Judge directed the authorities to issue the necessary fresh registration certificate in favour of the petitioners as contemplated under S. 31A(5) of the Act. By the said interim Order, the learned Judge permitted the petitioners to sell the said vehicles in view of the bank guarantee having been furnished by the petitioners as aforesaid and the public dues have already been secured. In compliance with the said order, the prescribed authorities cancelled the existing certificate and the hire purchase" endorsement in respect of each of the said four vehicles. The concerned authorities issued fresh registration certificate in respect of the said four vehicles as required. The petitioner No. 1 sold the said four vehicles. The concerned authorities have already transferred the said four vehicles in favour of the purchaser as directed by the petitioners in view of orders passed by this Court in this writ petition. The Court is informed by the learned counsel for the petitioners that a sum of Rs. 14,71,477.43 was realised by the petitioners as and by way of sale price in respect of the said four vehicles. The Court is informed that a sum of Rs. 7,20,581.97, Rs. 6,82,531.56, 3,21,054.97 and 6,79,308.00 was and is due and payable as outstanding by respondent No. 4 to the 1st petitioner. It is not possible for the Court to examine the figures in respect of alleged outstandings payable by respondent No. 4 to the 1st petitioner. This Court shall restrict its inquiry to the questions directly arising in this writ petition and the questions

directly connected therewith and consequential thereto.

8. Before I discuss the rival contentions urged by the learned counsel for the parties at the bar, it is necessary to make reference to some of the relevant provisions of the statutes having bearing on this petition.

9. Section 2(19) of the Motor Vehicles Act, 1939 defined the expression "Owner". By the said definition clause, it was provided for the purpose of the said Act that in relation to a motor vehicle which was subject of a hire purchase agreement, the person in possession of the vehicle under such an agreement shall be deemed to be the owner. This definition operates only for purpose of the Motor Vehicles Act, 1939 subject to context. S. 31 of the said Act makes provision for transfer of ownership of motor vehicles by the registering authority from name of owner to name of transferee. The said section in terms provides that the transferred must produce a No Objection Certificate obtained from the prescribed authority as contemplated under S. 29A of the Act where the ownership of any motor vehicle registered under the Act is required to be transferred. S.29A(5) of the said Act provides that before issuing the requisite no objection certificate, the registering authority shall verify as to whether all the amount due and payable to Government including road tax in respect of the motor vehicle were already paid. S. 31A of the said Act makes special provisions regarding motor vehicles subject to hire purchase agreement. S.31A of the Act is in nature of a self contained code. S. 31A(5) of the said Act provides that where the owner resumes possession of the vehicle owing to the default of the registered owner under the hire purchase agreement, the registering authority may after giving the registered owner an opportunity to make representation in this behalf, cancel the existing registration certificate and issue fresh certificate of registration in favour of the persons with whom the registered owner had entered into the hire purchase agreement. S. 31A of the said Act does not require production of "no objection certificate" as contemplated under S. 29A. before issue of fresh registration certificate. The cases contemplated u/s 31A of the Act are special cases arising out of transaction subject to hire purchase agreement and not the cases of transfer of the ownership vehicle from name of one person to another person. The cases covered under S. 31A(5) of the Act do not involve transfer of ownership in respect of vehicles registered under the Act. The subject matter dealt with under S.31A(5) of the Act is altogether different.

10. On 3rd September 1958, the Bombay Motor Vehicles (Taxation of Passenger) Act, 1958 was passed. The preamble to the said Act indicates that the said Act was passed to provide for the levy of a tax on passengers carried by road in certain class of motor vehicles such as public services vehicles and private services vehicles in the State. The said Act provides for levy of a tax on passengers carried by road in certain classes of motor vehicles. S. 3 of the said Act is the charging section. S. 3 of the said Act provides that there shall be levied and paid to the State Government a tax on all passengers carried by road in stage carriages at such rate to be fixed by State Government from time to time

by Order published in the official gazette as would yield an amount not exceeding 20% of the amount of fares payable to the operator of a stage carriage. The operator of the stage carriage is authorised to collect the amount of passenger tax from the passenger alongwith the fare for sake of convenience. S. 2(4) of the said Act prior to its amendment by Maharashtra Act 37 of 1962, provided that the expression "Operator" meant any person whose name entered in the permit as the holder thereof". By Maharashtra Act 37 of 1962, S. 2(4) of the said Act was substantially amended. S. 2(4) of the said Act as amended reads as under :--

"2.(4) "Operator" means any person whose name is entered in the permit as the holder thereof and where a stage carriage is used for caused or allowed to be used without a permit, includes the person in whose name the stage carriage is registered under the Motor Vehicles Act, 1939, or the person having possession or control of such stage carriage".

Thus the said definition consists of three parts. The said three pans are separately classified for sake of convenience as under :--

(a) "operator" means any person whose name is entered in the permit as the holder thereof and;

(b)" where a stage carriage is used caused or allowed to be used without a permit, the person in whose name the stage carriage is registered under the Motor Vehicles Act, 1939; OR

(c) the person having possession or control of such stage carriage.

It is well known that the statutory definition are applicable wherever the defined expression is used in the Act subject to the context of the provision indicating contrary legislative intention. S. 4 of the said Act provides for submission of return to the tax officer by the operator. S. 5 of the said Act provides that the tax payable during any month in accordance with the returns submitted under S. 4 shall be paid into the Government Treasury by the operator. S. 8 of the said Act reads as under :--

"Where the whole or any portion of the tax payable to the State Government in respect of any stage carriage for any month or portion thereof in pursuance of Ss. 5, 6 and 7 has not been paid to it in time, the Tax Officer may, in his discretion, levy in addition to the tax so payable, a penalty not exceeding 25 per cent of the maximum tax which would have been payable to the State Government if the stage carriage had carried its full complement of passengers during such month or portion thereof."

Section 9(1) of the said Act provides for issue of notice of demand for the sums payable to the State Government by the operator. S. 9(1) of the said Act provides that the amounts specified in the said notice of demand shall be recoverable from the operator as arrears of land revenue. S. 9(2) of the said Act provides that where the sums specified in the notice of demand are not paid within 15 days from the date of service of demand on the operator the stage

carriage, in respect of which the tax is due, and its accessories, may be distrained and sold under the appropriate law relating to the recovery of arrears of land revenue, whether or not such vehicle or accessories are in the possession or control of the operator : S. 10 of the said Act imposes restriction on use of the stage carriage in case where the amount of tax or penalty has remained unpaid for more than 15 days after the notice of demand is served. S. 15 of the said Act inter alia provides that any person who fraudulently evades or allows to be evaded the payment of any tax due from him under the Act is liable to be prosecuted and punished as more particularly set out in the said section.

11. The learned counsel for the petitioners has submitted that the respondents Nos. 1, 2 and 3 were not justified in refusing to cancel the existing registration certificate and in refusing to issue fresh registration certificate in favour of the petitioners as contemplated under S.31A(5) of the Motor Vehicles Act, 1939. The learned counsel for the petitioner has submitted that S. 31A of the said Act is a self-contained provision. The learned counsel for the petitioner has submitted that the said provision is not subject to S.29A of the Act. The learned counsel submits that in case of transfer of ownership of the vehicle contemplated under S. 31A of the Act, it is specifically provided by the said section that a no objection certificate from the registering authority under S.29A must be first produced before the ownership of the vehicle can be transferred from the name of one owner to another owner. No Objection Certificate can be issued u/s 29A of the Act unless all Government dues are first paid. The learned counsel for the petitioner rightly submits that the prescribed authorities is not entitled to refuse to cancel the existing registration certificate in favour of the hirer and issue fresh registration certificate in favour of the true owner of the vehicle on resumption of possession of vehicle as a result of termination of hire purchase agreement merely on the ground of passenger tax having remained unpaid in respect of vehicles in question. The learned counsel for respondents Nos. 1, 2 and 3 practically admitted during the course of his argument that the submission made by the learned counsel for the petitioners as correct. The learned counsel for respondent No. 4 submitted that Section 31A of the said Act was subject to the production of no objection certificate in respect of arrears of taxes as contemplated under S. 29A of the said Act. The learned counsel for the petitioner cited large number of authorities in support of his above referred submission as and by way of analogy. In my judgment it is not necessary to refer to any of these authorities as the learned counsel for the petitioners appears to be plainly and obviously right in urging the above referred contention, in view of the terminology and contents of the relevant Section of the Act. In the result the impugned Orders dated 23rd September 1987 and 4th December 1987, referred to in prayer (a)(ii) of the petition are quashed and set aside. It must be stated in the passing that the respondents Nos. 1 to 3 have already complied with S. 31 A(5) of the Act in view of the interim orders passed by this Court and the said Vehicles are already sold by the petitioners by virtue of the permission granted by this Court under its interim orders dated 3rd November 1988.

12. The next important question debated at the bar is as to whether the 1st petitioner is liable to be considered as an "operator" within meaning of S. 2(d) of the Act. It is well settled that the tax levied under the said Act is levied on passengers carried by road as contemplated under Entry 56, List II of 7th Schedule appended to the Constitution.

13. The learned counsel for the petitioners submitted that the second and third part of the definition of the expression "operator" was applicable only where no permit was issued in respect of the vehicle in question and the stage carriage was used or caused or allowed to be used without a permit. The submission as formulated by learned counsel for the petitioner is too wide. It is not possible to accept this submission as formulated. The second part of definition of the expression "operator" shall be attracted only where a stage carriage is used or caused or allowed to be used without a permit. To this limited extent only the learned counsel for the petitioners appears to be right. But not in respect of the third part. In my opinion even in cases where vehicle is operated by holder of the permit, the person having control or possession of such stage carriage is liable to be treated as an operator or deemed operator within meaning of the expression "operator" as defined u/s 2(4) of the Act jointly and severally with the person in whose name the permit concerning the vehicle stands. A true owner of the vehicle may retain control over the stage carriage while entering into a hire purchase agreement with a hirer. In all such cases where the owner retains control of the stage carriage the owner of the vehicle is liable to be considered as an operator. In such cases, the owner and the hirer both are operators. The Court must construe the definition of the expression operator after attaching due weightage to the amendment of the said definition by the Amending Act. The Amending Act widened the meaning of the expression "operator". If the submission of the learned counsel for the petitioner referred to hereinabove is accepted, it would mean virtual nullification of amendment of the above referred provision. The Court cannot construe a legislative provision so as to defeat the purpose and object of the Amending Act.

14. The Kerala Motor Vehicles (Taxation of Passenger) Act, 1963 was amended in the year 1973. The said amended definition of the expression "operator: in the Kerala Act reads as under:--

"2(b) "operator" means the owner or the person having possession or control of the vehicle and vehicles, any person whose name is entered in the permit as "holder" thereof."

I am conscious of the principle that it would be a terror in construction to interpret one Act with reference to another Act. However, I am referring to the provisions of the Kerala Act as it is necessary to do so for purpose of understanding the ratio of judgment of High Court of Kerala in the case of M/s. Sundaram Finance Ltd. v. The Regional Transport Officer, Alteppey, reported in ILR (1975) Ker 490 and the judgment of the Hon"ble Supreme Court in appeal therefrom in Civil Appeals Nos. 888-890 of 1975 (reported in Ms. Sundaram

Finance Ltd. Vs. Regional Transport Officer and another,). In the above referred Kerala Motor Vehicle (Taxation of Passenger) Act, 1963, the expression "operator" was defined so as to include every owner of the motor vehicle within the scope and ambit of the said expression. Section 2(4) of the said Act in terms does not provide that every owner of the vehicle is liable to be treated as "operator" merely by reason of fact of such ownership without anything more. It is not necessary for this Court to decide the larger questions in this writ petition. It is enough for this Court to state for purpose of this writ petition that the owner of the vehicle having control of the stage carriage during subsistence of Hire Purchase agreement is also liable to be treated as an "operator" within meaning of Section 2(4) of the State Act in addition to the person whose name is entered in the permit as the operator thereof. For all purposes the owner of the vehicle who has permitted the hirer to obtain a permit in his own name is also an operator or a deemed operator within meaning of the said expression as defined under the said Act. Such deemed operator is not liable to file periodical return u/s 49 of the Act as such deemed operator does not collect the fares from the passengers or the amount of passenger tax from the passengers in the situation where the vehicle is plied by the Hirer having permit and registration certificate in his own name. I have no doubt in my mind that the petitioners had retained sufficient legal control over the vehicle by virtue of various clauses in the hire purchase agreement as well as the endorsement of the Hire Purchase endorsement on the registration certificate. In my opinion, the petitioners cannot escape liability for payment of passenger tax even if such liability is to be termed or treated as vicarious liability. The legislature has extended the definition of the expression "Operator" in public interest. To my mind the petitioner as well as Respondent No. 4 both are jointly and severally liable for the amount of passenger tax to the Government of Maharashtra. In view of the fact that the petitioners are liable to be treated as "operator" of the said vehicle within meaning of the extended definition of the word "operator" as aforesaid, the said vehicle could be attached and sold by the authorities for realisation of the amount of passenger tax etc. u/s 9(2) of the said Act.

15. Having regard to the facts of this case I have reached the conclusion that the Respondent No. 4 is directly, primarily and substantially liable for unpaid amount of passenger tax and amount of penalty to the Government of Maharashtra. The petitioners have not collected any amount by way of passenger tax from any of the passengers during the relevant period. The learned counsel for Respondents Nos. 1, 2 and 3 has submitted as a part of his argument that the amount of penalty prescribed u/s 8 of the Act is in the nature of interest and is payable by the petitioner irrespective of their honesty and irrespective of their conduct. At the first blush I was impressed by this submission. On deeper consideration, I have no hesitation on rejecting this submission. Section 8 of the said Act confers discretion on the tax officer to impose penalty. Thus the liability to pay penalty is interlinked with the conduct of particular operator when there are more than one operators in view of the extended definition of the expression "operator" under

the said Act.

16. The learned Counsel for the petitioners has relied on the following authorities during the course of his argument in support of the petition:--

(1) K.L. Johar and Co. Vs. The Deputy Commercial Tax Officer, Coimbatore III, ; (2) Sundaram Finance Ltd. Vs. State of Kerala and Another, ; (3) Nanaiah Vs. The Regional Transport Officer, Coorg Region, Mercara, ; (4) Santakumari v. R.T.O. and Registering Authority, Kozhikode AIR 1976 Ker 17 ; (5) D.P. Sharma v. Spl. Regional Transport Officer, Bangalore, (Writ Petition No. 1576 of 1969) decided by Division Bench of Mysore High Court; (6) Shri Ratan Vs. The State Transport Authority, Jaipur and Others, ; (7) Sainik Motors, Jodhpur and Others Vs. The State of Rajasthan, (8) A.S. Karthikeyan and Others Vs. State of Kerala and Another, ; (9) Akhil Bharatiya Grahak Panchayat (Bombay Branch) and Others Vs. State of Maharashtra and Others, ; (10) The State of Tamil Nadu represented by the district Collector, Thunjavur v. Sundaram Finance Ltd., Madras 1984 TNLJ 266; (11) Sundaram Finance Ltd. v. Regional Transport Officer, Alleppey ILR (1975) Ker 490 ; (12) Sundaram Finance Ltd. v. Regional Transport Officer (Civil Appeals Nos. 888-890 of 1975) decided by Hon"ble Supreme Court on 16-8-1991 : (reported in Ms. Sundaram Finance Ltd. Vs. Regional Transport Officer and another,).

I have carefully gone through all the authorities cited at the bar. In my judgment these authorities have limited relevance for purpose of this petition and need not be discussed at length for purpose of deciding this petition. The ratio of the above referred decisions is being borne in mind while deciding the petition.

17. The learned counsel for the petitioners submitted that in case of hire purchase transactions where the hirer operates the vehicle by virtue of the permit issued by the prescribed authority in favour of the hirer, the hirer alone can be said to have control and possession of the vehicle during the subsistence of hire purchase agreement within meaning of the said expression forming part of definition of the expression "operator" under the said Act. In my opinion this submission of the learned counsel for the petitioners is too wide and it is not possible to accept the said submission as formulated. The learned counsel for the petitioners is and doubted right when he submits that the hirer operating the vehicle may be in possession of the vehicle during the subsistence of the agreement. In my opinion, the learned counsel for the petitioner is not right when he submits that the hirer alone has control of the vehicle and the owner cannot be said to have control of the vehicle during subsistence of: the Hire Purchase agreement. It is reasonably possible to visualize that the owner has retained control over the vehicle by virtue of various clauses contained in the hire purchase agreement and even otherwise. If the owner has retained such control, the owner is liable to be treated as deemed operator of the said vehicle within meaning of the expression "operator" as defined under the Bombay Motor Vehicles (taxation of Passenger) Act, 1958 (Bombay Act No. LXVII of 1958). The learned counsel for the petitioner submitted that his submission is borne out by

the judgment of High Court of Kerala in the case Sundaram Finance Ltd. v. Regional Transport Officer, Alleppey, reported in ILR (1975) Ker 490 and the judgment of the Hon''ble Supreme Court in appeal there from. I have carefully gone through both the judgments. I have no hesitation in rejecting this submission, of the learned counsel for the petitioners. No such proposition of law is laid down by the Hon''ble Courts in the above-referred cases.

18. The notices of demand issued by the prescribed authority in respect of the penalty amount aggregating to Rs. 3,10,163,55 shall not be enforceable against the petitioners. The liability of Respondent No. 4 to pay the amount of Rs. 8,29,588.50 made of Rupees 5,19,425.00 towards the arrears of passengers tax and Rs. 3,10,163.55 towards the penalty is confirmed. The Respondents Nos. 2 and 3 must recover the said amounts in the first instance from Respondent No. 4 as far as practicable.

19. As regards the liability to pay passenger tax in sum of Rs. 5,28,363.90 is concerned one more question arises for consideration of the Court. The prescribed authorities are undoubted entitled to recover the amount of passenger tax legally due and payable from all the parties who are jointly and severally liable to be treated as operators or deemed operators u/s 2(4) of the said Act. In all such cases the liability of the hirer as well as the liability of the owner who had retained control over the vehicle is joint and several. The question which arises for consideration of the Court is as to whether the notice of demand addressed to the hirer are automatically enforceable as against the owner. In my opinion the prescribed authorities are required to follow principles of natural justice while quantifying the amount of tax liability Or at the state of initiating recovery proceedings to enforce the liability already quantified as against the deemed operator of the said vehicles, like the petitioner No. 1 in this case. The figure of Rs. 5,19,425/- would perhaps bind Respondent No. 4 also. But one never knows what would happen when the petitioner is granted an opportunity of being heard in the quantification proceedings as against the petitioner. Merely because the Court feels that nothing much would come out of the exercise of granting hearing to the petitioners in respect of quantification of the amount of arrears of passenger tax, the Court cannot deprive a party of opportunity of being heard once it comes to the conclusion that the party concerned is entitled to such an opportunity.

20. While passing the final orders in this petition, the fact that the petitioners are innocent and the Respondent No. 4 is very much at fault cannot be ignored. Accordingly the operative, part of this order shall be moulded in a reasonable manner and situational modifications shall be made by the Court. The Respondent No. 4 has admitted that the Respondent No. 4 has collected the amount of passenger tax from the passenger and has not passed on the same to the Government of Maharashtra. I enquired of the learned counsel from Respondent No. 4 as to whether the Respondent No. 4 was willing to pay the said amount even now. No clear answer is forthcoming. At one stage, Shri Hegde

learned counsel for Respondent No. 4 stated that the amount would be paid by Respondent No. 4 to Respondents 1 to 3 and/or the Government of Maharashtra within 4 months from today.

21. After taking an over all view of the matter I pass the following orders:--

(a) The notices of demand in respect of penalty amount of Rs. 3,10,163.55 shall not be enforced against the petitioners. No fresh penalty proceedings shall be initiated against the petitioners;

(b) The Prothonotary and Senior Master shall encash the bank guarantee already furnished by the State Bank of India at the instance of the petitioner expeditiously and pay a sum of Rs. 5,19,425/- to the State of Maharashtra to be dealt with in the manner set out hereinafter and the balance to the petitioner unless the petitioner deposits the said amount of Rs. 5,19,425/- in Court within four weeks from today. In such an event, the Bank guarantee for Rs. 12 lacs shall be returned to the petitioner duly cancelled and the said sum of Rs. 5,19,425/- shall be dealt with as directed hereinafter. The Prothonotary and Senior Master shall handover the balance of the amount of the petitioner;

(c) The Government of Maharashtra and Respondents Nos. 1, 2 and 3 shall keep the said amount of Rs. 5,19,425/- duly earmarked as a security deposit for a period of two years from today and shall not appropriate the said amount towards arrears of passenger tax. The authorised officer shall issue of show cause notice to the petitioner calling upon them to show cause as to why the liability of the petitioners be also not quantified at Rs. 5,19,425/- on account of arrears of passenger tax in respect of the said four vehicles. After granting an opportunity of post-decisional personal hearing to the petitioners and considering all the submission which may be made by the petitioners in this behalf, the authorised officer shall pass a speaking order either confirming the notice of demand and the quantified liability at Rs. 5,19,425/- or reduce or modify the quantum of liability as deem fit. Such quantification proceedings shall be expedited. In the event of the said liability being reduced the officer shall pass order for refund of the differential amount and shall refund such refund to the petitioners expeditiously.

(d) The respondents Nos. 1 to 3 shall take immediate steps for recovery of the said amount of Rs. 8,29,588.50 against Respondent No. 4 and their partners expeditiously and vigorously as arrears of land revenue. The Court is given to understand that some of the assets of Respondent No. 4 are in charge of the Court Receiver. Even if that is so, recovery proceedings can be adopted after obtaining leave of the Court which has appointed the Receiver. According to my strong prima facie opinion the Respondent No. 4 and its partners deserve to be prosecuted for the fraudulent evasion of tax. The amount of tax in question was admittedly collected by Respondent No. 4 from the passengers. The amount of tax has not been paid over by Respondent No. 4 and their partners in the Govt. treasury in spite of opportunities being given. The Respondent No. 4 is not ready

and willing to pay the said amount even now. I am not expressing any final opinion on this aspect. The Respondents Nos. 1, 2 and 3 and the Govt. of Maharashtra shall take expeditious steps to obtain legal advice from the concerned law officer of the State or their advocate and adopt criminal proceedings against Respondent No. 4 if so advised. The Court feels distressed to find that the vicarious liability against the petitioner is being enforced without their fault and no effective steps are being taken against Respondent No. 4 for recovery of the amount due. In view of their admitted default, necessary legal proceedings be taken in the matter as deemed fit expeditiously. I have no doubt that the high authorities of the Govt. of Maharashtra shall apply their mind to this aspect and shall perform their public duty in accordance with law,

(e) The above referred amount of Rupees 5,19,425/- is directed to be kept as a security deposit for a period of two years for the reason that in the first instance the Govt, and Respondents No. 1, 2 and 3 must endeavour to recover amount from real defaulting party i.e. Respondent No. 4. If the Govt. of Maharashtra or Respondents Nos. 1, 2 and 3 are liable to recover any amount from Respondent No. 4, to that extent the liability of the petitioners shall be correspondingly reduced. At the end of two years, the Govt. of Maharashtra shall be entitled to appropriate the said amount towards arrears of passenger tax remaining outstanding and not towards penalty. After such appropriation, if any amount is refundable to the petitioners, such amount would be refunded to the petitioner within 8 weeks from the date of appropriation of the amount from the above-referred amount of security deposit.

(f) The Govt. of Maharashtra shall file a compliance report with the Court within three months from today.

(g) Having regard to the facts and circumstances of the case, the respondent No. 4 is directed to pay cost of the petition to the petitioners fixed at Rs. 3,000/- and also separate set of cost to respondents 1, 2 and 3 fixed at Rs. 3000/-.

22. Issue of certified copy is expedited.

23. Order accordingly.