

(2019) 02 OHC CK 0036

In the Orissa High Court

Case No : Writ Petition (Civil) No. 15681 Of 2018

Susanta Kumar Tripathy & Others

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 08-02-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 21, 226, 227
Motor Vehicles Act, 1988 — Section 64(o), 211
Industrial Disputes Act, 1947 — Section 10A(1), 17A
Code Of Civil Procedure, 1908 — Section 20(c)
Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 — Section 2(p)
Prevention Of Cruelty To Animal (Regulation Of Live Stocks, Markets) Rules, 2017 — Rule3(3)(1)(b)
Central Vehicle Rules, 1989 — Rule 81
Orissa Motor Vehicles Rules 1993 — Rule 22(4), 22(6), 22(7)

Citation : (2019) 02 OHC CK 0036

Hon'ble Judges : K. S. Jhaveri, CJ;K. R. Mohapatra, J

Bench : Division Bench

Advocate : Subash Ch. Pani, Khirod Ch.Majhi, Ramesh Ku. Sahu, B.M.Sarangi, K.C. Dash, Abhaya Ku. Behera, Goutam Ch. Rout, B.N. Behera, Sitansu Mohan Singh, Chandan Mishra, Dillip Ku. Swain, Prakash Ch. Parida, Basanta Ku. Das, Malaya Ranjan Behera, S.K. Mohanty, Sangram Mishra Siba Narayan Biswa, Sanjib Ray, Binaya Ku. Mohanty, Sanjay Ku. Parida, Aurovinda Mohanty, Nirranjan Maharana, A. Mohanta, Susanta Baral, S.K. Bhanjadeo, Shashmita Nayak, Neelakantha Panda, S.C. Samantaray, Bhikari Ch. Pradhan, Dillip Kumar Mohapatra, Partha Sarathi Das, Debasish Mishra, B.S. Rayaguru, Jashobanta Dash, Susanta Kumar Baral, Susanta Kumar Pradha, Durllabha Ranjan Mishra, Ashok Kumar Sahoo, Pulakesh Mohanty, Debi Prasad Dhalasamanta, L. Bhuyan, S.K. Mohammad, Abhijit Das, P.K. Jena, Nirranjan Behera, B.B. Behera, Prasanta Kumar Panda, Nirranjan Nayak, Satyajit Samal, Prabhakar Behera, M.K. Pradhan, B. Dash, B.P.Pradhan, M.S. Sahoo, P.K. Muduli, B.K. Sharma

Final Decision : Disposed Of

Judgement

K.S. Jhaveri, Cj

1. Heard learned counsel for the petitioners, learned Central Government Counsel for the opposite party-Union of India, learned Standing Counsel for the Transport Department as well as learned Additional Government Advocate for the State-opposite parties.

2. A batch of similar writ petitions are disposed of by this Court vide common judgment passed in W.P.(C) No. 14114 of 2018 (Dinabandhu Sahoo vs.

Union of India and others) and batch of writ petitions on 01.02.2019. The said judgment is reproduced hereunder :

By way of all these writ petitions, the petitioners, who are owners of the respective vehicles, have challenged the Notification No.1183 (E) dated 29/12/2016 issued

by the Ministry of Road Transport and Highways, New Delhi, Government of India amending Rule 81 of the Central Vehicle Rules, 1989 (for short the Rules)

levying additional fees of fifty rupees for renewal of fitness certificate for each day of delay after expiry of fitness certificate which was incorporated at Column No.3

at Sl.No.11 of the table.

2. Learned counsels for the petitioners submit that the levy of additional fee of fifty rupees for each day of delay after expiry of certificate of fitness for renewal has

been introduced by way of amendment of the Motor Vehicle Rules, particularly the entry at Sl.No.11, Column No.3 of the Table of Rule 81 issued by the Government

of India. It is vehemently argued that the aforesaid notification is illegal, arbitrary, unreasonable, excessive and unconstitutional and the same violates Article 14 of

the Constitution of India, therefore, the same is liable to be struck down to the extent of imposition of additional fee as stated above and the same may be declared to

be void in the interest of justice. Learned counsel for the parties also argue that in view of Hon'ble Madras High Court decision, the charging of additional fees is

also required to be declared void and struck down.

2.1. It is also submitted that the Government may, if it considers necessary so in public interest, by general or special order, exempt any class of persons from

payment of any such fees either in part or in full. The power of Section 211 of the Motor Vehicles Act is restricted on levy of fees alone and does not extend to

levy

of additional fee as proposed in the impugned notification.

2.2. In support of the contentions, learned counsel for the petitioners have relied upon the following decisions of the Hon'ble Supreme Court as well as different High

Courts:

(i) Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Ors., reported in AIR 2004 SC 2321 : (2004) 6 SCC 254.

(ii) All India Jamiatul Quresh Action Committee vs. Union of India, reported in 2018 (5) SCJ 545.

(iii) T. Rajakumari and Ors. Vs. The Government of Tamil Nadu and Ors., reported in AIR 2016 Mad 177.

(iv) Mr. Shiv Kumar vs. Union of India, represented by Secretary Ministry of Law and Justice and Ors., reported in AIR 2014 Kant 73.

(v) Textile Technical Tradesmen Association and Ors. Vs. Union of India and Ors., reported in (2011) ILLJ 297 Mad.

(vi) Chennai City Auto Ootunargal Sangam and Ors., vs. The Secretary, Ministry of Road Transport and Highways decided on 03.04.2017 by Hon'ble Madras

High Court in W.P.No.1598 of 2017.

(vii) Order dated 04.09.2017 and 21.02.2018 passed by the Hon'ble Supreme Court in Diary No.22817 of 2017 and Civil Appeal No.(s) 11216 of 2017.

(viii) Ayodhya Yadav, S/o. Siyaram Yadav vs. Union of India and another decided on 30.11.2018 by the Hon'ble Chhatisgarh High Court in W.P.(C) No.841 of 2018.

2.3. Learned counsel for the petitioners contended that in view of the decisions as stated above, levy of additional fees cannot be held to be justified and valid. The

Hon'ble Supreme Court in Kusum Ingots and Alloys Ltd. (supra), more particularly, in paragraphs 21, 22, 28 and 29 has held as under:

21. A parliamentary legislation when receives the assent of the President of India and published in an Official Gazette, unless specifically excluded, will apply to the entire territory of India. If passing of a legislation gives rise to a cause of action, a writ petition questioning the constitutionality thereof can be filed in any High Court of the country. It is not so done because a cause of action will arise only when the provisions of the Act or some of them which were implemented

shall

give rise to civil or evil consequences to the petitioner. A writ court, it is well settled would not determine a constitutional question in vacuum.

22. The court must have the requisite territorial jurisdiction. An order passed on writ petition questioning the constitutionality of a Parliamentary Act whether interim or final keeping in view the provisions contained in Clause (2) of Article 226 of the Constitution of India, will have effect throughout the territory of India subject of course to the applicability of the Act.

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28. Lt. Col. Khajoor Singh Vs. The Union of India and Another [(1961) 2 SCR 828] whereupon the learned counsel appearing on behalf of the appellant placed strong reliance was rendered at a point of time when clause (2) of Article 226 had not been inserted. In that case the Court held that the jurisdiction of the High Court under Article 226 of the Constitution of India, properly construed, depends not on the residence or location of the person affected by the order but of the person or authority passing the order and the place where the order has effect. In the latter sense, namely, the office of the authority who is to implement the order

would attract the territorial jurisdiction of the Court was considered having regard to Section 20(c) of the Code of Civil Procedure as Article 226 of the Constitution thence stood stating :

...The concept of cause of action cannot in our opinion be introduced in Art. 226, for by doing so we shall be doing away with the express provision contained therein which requires that the person or authority to whom the writ is to be issued should be resident in or located within the territories over which the High Court has jurisdiction. It is true that this may result in some inconvenience to person residing far away from New Delhi who are aggrieved by some order of the Government of India as such, and that may be a reason for making a suitable constitutional amendment in Art. 226. But the argument of inconvenience, in our opinion, cannot affect the plain language of Art. 226, nor can the concept of the place of cause of action be introduced into it for that would do away with the two limitations on the powers of the High Court contained in it.

29. In view of clause 2 of Article 226 of the Constitution of India now if a part of cause of action arises outside the jurisdiction of the High Court, it would have jurisdiction to issue a writ. The decision in Khajoor Singh (supra) has, thus, no

application.

2.4. Learned counsel for the parties have also taken us to an order of the Hon'ble Supreme Court in All India Jamiatul Quresh Action Committee (supra), wherein the

Hon'ble Supreme Court in paras-1 and 2 has observed as under:

1. The challenge through the bunch of writ petitions, which are the subject matter of consideration, is to the validity of the Prevention of Cruelty to Animal

(Regulation of Live Stocks, Markets) Rules, 2017, and the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017. Both

the above Rules, we are informed, were challenged before the Madurai Bench of the Madras High Court, which has stayed the operation of the said Rules.

Mr.P.S.Narasimha, learned Additional Solicitor General, informs this Court, that the Union of India is not seeking modification of the aforestated interim order.

We accordingly record the statement of the learned Additional Solicitor General. We understand the position to be that the interim order shall apply across the

whole country. It is also the contention of the Union of India, that a large number of representations depicting the allegedly unworkable and unacceptable

provisions of the Rules have been received, and a number of writ petitions have been filed in different High Courts, besides those which have been filed before this

Court. It is pointed out, that the issues of challenge raised in the representations and writ petitions are the subject matter of a fresh consideration by the

Government of India. It is pointed out, that the Ministry of Environment and Forests, is presently seized of the matter, and after an appropriate determination,

changes if any, as may be considered appropriate will be introduced after which the amended Rules, shall be re-notified. We record the above statement made to

this Court on behalf of the Government of India.

2. We are of the view and accordingly direct that as and when the amended Rules are notified, sufficient time be granted to all stake holders before they are

implemented, so that they have a sufficient opportunity, if aggrieved, to assail them in consonance with law. In the above view of the matter, as of now, we find no

justification to retain these writ petitions on our board. The same are accordingly disposed of. As a sequel to the above, pending interlocutory applications also

stand disposed of.

2.5. They have also taken us to a Division Bench order of the High Court of Madras decided on 03.08.2016 in T. Rajakumari (supra), wherein the Madras High Court in

paragraphs-2, 3 and 4 has observed as under:

2. The accepted undisputed position is that the Hon'ble Supreme Court has not stayed the operation of the Delhi High Court order dated 17.02.2016 striking down Section 2(p) of Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, Act (hereinafter called "PNDT Act"). Consequently, Rule 3(3) (1)

(b) of the PNDT Act have also been struck down as ultra vires the Act. We reproduce the operative portion of the order as under:

"98. We accordingly dispose of these petitions with the following declarations / directions:

(i) that Section 2(p) of the PNDT Act defining a Sonologist or Imaging Specialist, is bad to the extent it includes persons possessing a postgraduate qualification

in ultrasonography or imaging techniques - because there is no such qualification recognised by MCI and the PNDT Act does not empower the statutory bodies

constituted thereunder or the Central Government to devise and coin new qualification;

Â (ii) We hold that all places including vehicles where ultrasound machine or imaging machine or scanner or other equipment capable of determining sex of the

foetus or has the potential of detection of sex during pregnancy or selection of sex before conception, require registration under the Act;

(iii) However, if the person seeking registration (a) makes a declaration in the form to be prescribed by the Central W.P.(C) Nos.6968/2011, 2721/2014 &

3184/2014 Page 81 of 83 Supervisory Board to the effect that the said machine or equipment is not intended for conducting pre-natal diagnostic procedures; (b)

gives an undertaking to not use or allow the use of the same for pre-natal diagnostic procedures; and, (c) has a ""silent observer"" or any other equipment installed

on the ultrasound machines, as may be prescribed by the Central Supervisory Board, capable of storing images of each sonography tests done therewith, such

person would be exempt from complying with the provisions of the Act and the Rules with respect to Genetic Clinics, Genetic Laboratory or Genetic Counselling

Centre;

(iv) If however for any technical reasons, the Central Supervisory Board is of the view that such ""silent observer"" cannot be installed or would not serve the purpose, then the Central Supervisory Board would prescribe other conditions which such registrant would require to fulfil, to remain exempt as aforesaid;

(v) however such registrants would otherwise remain bound by the prohibitory and penal provisions of the Act and would further W.P.(C) Nos.6968/2011,

2721/2014 & 3184/2014 Page 82 of 83 remain liable to give inspection of the ""silent observer"" or other such equipment and their places, from the time to time

and in such manner as may be prescribed by the Central Supervisory Board; and,

(vi) Rule 3(3)(1)(b) of the PNDT Rules (as it stands after the amendment with effect from 9th January, 2014) is ultra vires the PNDT Act to the extent it requires a

person desirous of setting up a Genetic Clinic / Ultrasound Clinic / Imaging Centre to undergo six months training imparted in the manner prescribed in the Six

Months Training Rules. No costs."

3. In view of the aforesaid position, it is accepted that the law would be finally laid down by the Hon'ble Supreme Court and thus there is no point in keeping this petition pending and whatever the declaration of law by the Hon'ble Supreme Court would be equally applied. The only question is as to what would happen till the Hon'ble Supreme Court examines the issue. In this behalf, if the Hon'ble Supreme Court had stayed or would stay the operation of the Judgment, then only

could those provisions struck down again come in force.

4. It is trite to say that once a High Court has struck down the provisions of the Central Act, it cannot be said that it would be selectively applied in other States.

Thus, there is no question of applicability of provisions struck down by the High Court as of now until and unless the Hon'ble Supreme Court upsets the Judgment or stays the operation of the Judgment.

2.6. Learned counsel for the petitioners have also relied upon a decision of the Division Bench of Karnataka High Court in Mr. Shiv Kumar (supra), wherein the Hon'ble Court has, in para-6, held as under:

6. Having heard learned counsel and on perusal of the judgment of the Kerala High Court in Soumya Ann Thomas, as well as the judgment of the Apex Court in

Kusum Ingots and Alloys Ltd., what follows is that Section 10A(1) of the Act has been held to be unconstitutional being violative of Articles 14 and 21 of the Constitution. However, to save it from the vice of unconstitutionality, the expression of 'two years' has been read down to 'one year' in sub-section (1) of Section

10A of the Act. The Kerala High Court's pronouncement on the constitutionality of a provision of a Central Act would be applicable throughout India. This is made clear by Hon'ble Supreme Court in Kusum Ingots and Alloys Ltd., wherein it has been stated that an order passed on a Writ Petition questioning the constitutionality of a Parliamentary Act whether interim or final keeping in view the provisions contained in Clause (2) of Article 226 of the Constitution, would have effect throughout the territory of India subject of course to the applicability of the Act. In that view of the matter, this Writ Petition would not call for any specific orders with regard to holding constitutionality or otherwise of sub-section(1) of Section 10A of the Act. Keeping in mind the pronouncement of the Division Bench of the Kerala High Court and reading the same in the context of Kusum Ingots and Alloys Ltd, the position of law with regard to sub-section (1) of Section 10A of the Act is now been made clear, particularly, insofar as State of Karnataka is concerned. With the aforesaid observations, the Writ Petition is disposed of.

2.7. Learned counsel for the petitioners have also relied upon another decision of the Madras High Court in the case of Textile Technical Tradesmen Association (supra), wherein the learned Single Judge has reiterated the decisions of the Hon'ble Supreme Court in Kusum Ingots and Alloys Ltd (supra). Keeping in mind the

said decision of the Hon'ble Supreme Court, the Madras High Court, in paragraphs-23, 24 and 25, has held as under:

23. As held by the Hon'ble Supreme Court, in view of clause (2) of Article 226 of the Constitution of India, if once it is adjudged by a High Court that a particular Parliamentary Act or a provision of the said Act is unconstitutional, in effect, it is as if the said Act/provision had never been in force. As a matter of fact, in

D.D.Basu's Commentary on the Constitution of India edited by Hon'ble Mr.Justice Y.V.CHANDRACHUD, it has been summed up succinctly as follows;-

Where a Statute is adjudged to be unconstitutional, it is as if it had never been. Rights cannot be built up under it; contracts which depend upon it for their consideration are void; it constitutes a protection to no one who has acted under

it and no one can be punished for having refused obedience to it before the decision was made. 'And what is true of an Act void in toto is true also as to any part of an Act which is found to be unconstitutional and which consequently has to be regarded as having never at any time been possessed of any legal force.

24. Of course, it is true that the question under consideration in these Writ Petitions was not directly raised and argued before the Hon'ble Supreme Court and

answered in Kusum Ingots' case. It is obiter dicta of the Hon'ble Supreme Court. But, such obiter dicta is also expected to be followed by the High Courts. In this regard, I may refer to a Judgment of the Hon'ble Supreme Court Sarwan Singh Lamba v. Union of India reported in AIR 1995 SC 1729, wherein it has been held by a Constitution Bench that ""normally even an ""Obiter Dictum

is expected to be obeyed and followed"". Recently, in Oriental Insurance Co Ltd., vs. Meena Variyal reported in 2007 (5) SCC 428, the Hon'ble Supreme Court, in Paragraph No.26, has held as follows;-

An Obiter Dictum of this Court may be binding only on the High Courts in the absence of a direct pronouncement on that question elsewhere by this Court. But, as far as this Court is concerned, though not binding, it does have clear persuasive authority.

25. In the light of the above legal position, applying the principles stated in Kusum Ingots case, cited supra, I am of the view that the impugned provision viz.,

Section 17-A of the Industrial Disputes Act, 1947, is no more in force in the Union Territory of Puducherry also in pursuance of the Judgment of the High Court of

Andhra Pradesh in Telugunadu Workcharged Employess v. Government of India, cited supra. There can be no doubt that the Judgment of the High Court of Andhra Pradesh, in which it has been adjudged that Section 17-A of the Act is unconstitutional, will have effect throughout the Territory of India.â??

3. Learned Central Government Counsel appearing for the opposite party No.1- Union of India has filed counter affidavit denying the claim of the petitioners. Relevant

portions of the said counter affidavit are reproduced hereunder:

â??1. That the present petition filed on behalf of the petitioner is not maintainable on the ground that the petitioner has challenged the Notification No.GSR 1183

dated 29.12.2016, which is a policy decision made by the Ministry. Through the said notification, the Rule 81 of Central Motor Vehicles Rules, 1989 was amended and

the fees charged by the authorities for services being provided by the respective Regional Transport Offices have been revised. Hence, this petition is liable to be dismissed on this ground alone.

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4. That on the basis of the recommendation of the above said committee the Ministry has notified draft rules vide Notification No.GSR 744 (E) dated 28.07.2016 in the

Official Gazette of India and invited objection/suggestion from the public/stakeholders. The copy of the said notification is annexed herewith as Annexure-2.

5. That thereafter on 29.12.2016 the draft rules were finalized vide notification GSR 1183 (E) dated 29.12.2016 after considering suggestions and objection received. By

this Notification the fees charged by the Authorities for service as provided by the respective Regional Transport Offices were revised. The copy of the said notification is annexed herewith as Annexure-3.

6. That it is further submitted that on 02.02.2017 the Ministry has issued letter of clarification vide letter No.RT-11017/12/2013-MVL dated 02.02.2017 with respect to

notification GSR 1183 (E) dated 29.12.2017 to the Principal Secretaries (Transport)/the Transport Commissioner of all the States/UT Administrations that It is

clarified that the revised rates for Delay fees can be changed at the new rates from the date of publication of the notification i.e. 29th December, 2016 and not retrospectively. The copy of the letter dated 02.02.2017 is annexed herewith as Annexure-4.

7. That it is further submitted that on 21.03.2017 the Ministry again has issued notification vide No.GSR 271 (E) dated 21.03.2017 by which the State Government were

empowered to lower the fees as they may decide. The copy of the said notification dated 21.03.2017 is annexed herewith as Annexure-5.

8. That the averments made in paragraph-11 is true that the Honâble Madras High Court vide order dated

3. 04.2017 passed in the writ petition No.1598 of 2017 filed by Chennai City Auto Ootunargal Sangam vs. Union of India and others, the order is as follows:

17. In view of foregoing discussions, we find that the levy of additional fee under various heads as per the impugned notification is without authority and such

levy of additional fee is therefore, liable to be struck down.

18. In the result, the Writ Petitions are partly allowed and the impugned notification i.e. GSR 1183 (E) dated 29. 12.2016 of the first respondent amending Rule

32 and 81 of the Central Motor Vehicle Rule, 1989 to the extent of the imposition of additional fee is declare void and consequently the same if to that extent

struck down. No costs.

The Ministry of Road Transport and Highways (Union of India, Opposite party No.1) has challenged the above order dated 03.04.2017 passed in the writ petition

No.1598 of 2017 before the Supreme Court of India by filing the Special Leave Petition No.023648 of 2017, which is pending for hearing.

In view of the above the present petition filed by the petitioner be kept in abeyance and without taking any decision till the SLP disposed of by the Honâble

Supreme Court.

4. Mr. Sharma, learned Standing Counsel for the State Transport Authority filed counter affidavit in a similar writ petition bearing W.P.(C) No.6636 of 2018, the

averments of which are adopted in these writ petitions. He also supported the contentions raised by learned Central Government Counsel for the Union of India in

their counter affidavit, the averments of which have also been adopted in these writ petitions. The relevant portions of the counter affidavit filed in W.P.(C) No.6636

of 2018 are reproduced hereunder:

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3. That in reply to the averments made in paragraph-1 of the writ petition, it is submitted that as provided under Rule 22(6) of Orissa Motor Vehicles Rules 1993, application for renewal of Certificate of Fitness shall be made in Form-II not less than 30 days before the date of expiry of Certificate of Fitness and the owner or the

person in control of the vehicle shall cause the vehicle to be produced for inspection on such date and at such time and place as appointed under sub-rule 4 of the

said Rules. Since the petitioner has failed to apply for renewal of Certificate of Fitness in consonance with the sub-rule 6 of Rule 22 of Orissa Motor Vehicle Rules, the

petitioner is liable to pay the additional fees of Rs.50.00 for each day of delay after expiry of Certificate of Fitness. As per Rule 81 of the Central Motor Vehicles Rules,

1989, the additional fee levied by the Opp.Party under Rule 81 of the Central Motor Vehicles Rules, 1989 is nothing, but a fee which is payable by the petitioner and

the opposite party No.1 is competent to levy such fee under the statute. The petitioner cannot escape from the liability payment of additional fees with some plea or

the other. Instances have been brought to the notices of this authority that Transport Vehicles are being plied on road without valid Fitness Certificate, which poses

threat to the road safety. Besides, when the Certificate of Fitness is not renewed, registration certificate of the vehicles shall become invalid. If a transport vehicle

without having valid fitness, causes any accident, the victim will not get any compensation from the Insurance Company. Therefore, the plying of vehicle without

Valid Fitness Certificate should be discouraged at any cost.

4. That in reply to the averments made in paragraph-4 of the writ petition are concerned, it is humbly submitted that as provided under Section 64(o) of the Motor

Vehicles Act, 1988, the Central Government is competent to make Rules to prescribe fee to be charged for issue or renewal or alteration of Certificate of Registration

and also for Certificate of Fitness.

5. That, it is submitted that fees for issue and renewal of Certificate of fitness was last revised by the Government of India on 28.03.2001. After more than 15 years, the

fee was revised and additional fees has been sought to be levied by way of an amendment to the said Rule on 29. 12.2016. It is submitted that in the year 2001, there

were 18 number of Regional Transport Offices in the State, whereas, as of now there are 35 Regional Transport Offices, which are functioning in the State providing

services to the general public. The State Government has deployed manpower and infrastructure facilities have been provided across the State in the office of

Regional Transport Offices, for which huge amount has been spent in every year at increased rate. The State Government is providing different citizen centric

services across the State to public at large including the petitioner. The amount of additional fees sought to be levied to Rule 81 of the Central Motor Vehicles Rules,

1989 for delay in making application for renewal of Fitness Certificate is aimed to compensate expenditure incurred by the State Government on quid pro quo basis

and the Government of India has legislative competence to levy such additional fee, which is nothing but a fee. The additional fee so levied is a part of deterrent

measure, so that the vehicle owner should be more careful in making application for renewal of Fitness Certificate. In this process only genuine vehicles for Fitness

Certificate ply on the road. The Motor Vehicle Act has been enacted to take into account and to provide for road and transport Technology, pattern of passenger and

freight movements, development of road network in the country and improved techniques in motor vehicle management.

6. That before amending Rule 81 of the Central Motor Vehicles Rules, 1989, draft notification was published in the Gazette of India vide Notification No.GSR 744(E)

dtd. 28.07.2016 inviting objections and suggestions from all persons likely to be affected. Since no objections and suggestions were received from the public

including the petitioner in respect of the said draft rules, the same has been made final. Therefore, the petitioner cannot challenge the levy of additional fees

contained in the said Notification dtd. 29.12.2016 at this belated stage and he is stopped to challenge the same as he has not filed any objection to the draft

notification published by opposite party No.1.

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9. That, so far as averments made in paragraph-9 of the writ petition are concerned, it is submitted that levy of additional fee of Rs.50/- per day from the date of expiry

of Fitness Certificate is extremely nominal and is not applicable to Transport Vehicle owners, who are renewing Fitness Certificate within the prescribed time.

The

applicant is paying fee for testing of his vehicle and which is being tested, as per mandate of the statute and after inspection of vehicle, Fitness Certificate is issued on realization of separate fee for issue of Fitness Certificate.

10. That in reply to the averments made in Paragraph-10 of the writ petition, it is submitted that under Rule 22(7) of the Orissa Motor Vehicles Rules, 1993, in cases

where the owner of a vehicle fails to apply for renewal of Certificate of Fitness before 30 days of its expiry as provided under sub-rule 6, he shall have to pay penalty

of Rs.500/-, which is related to filing for application for renewal of certificate of fitness only. The legislative intention for levy of additional fee of Rs.50/- per day in

Sl.No.11 of the table under Rule 81 of the Central Motor Vehicles Rules, 1989 payable by vehicle owners, who had not applied for renewal of Certificate of Fitness

before its expiry.

11. That in reply to the averments made in paragraphs-

11 to 13 are concerned, it is submitted that since the petitioner has not filed application for renewal of Fitness Certificate 30 days before its expiry, he is liable to pay

additional fee of Rs.50 per day, as prescribed under Rule 81 of the Central Motor Vehicles Rules, after the date of expiry of the Fitness Certificate.â??

5. Learned Additional Government Advocate for the opposite party-State Government has also supported the submissions of learned Central Government Counsel

for the Union of India as well as the submission of learned Standing Counsel for the Transport Department.

6. Learned counsel for the petitioners have mainly contended that the decision of Madras High Court dated 03.04.2017 rendered in the case of Chennai City Auto

Ootunargal Sangam (supra) against which Civil Appeal No.11216 of 2017 has been preferred by the Department of the Central Government before the Hon'ble

Supreme Court, in which delay has been condoned but the Hon'ble Supreme Court has not stayed the order of the Madras High Court. As such, unless the provision

in question is struck down, there will be different application of the same

provision in the State of Tamil Nadu and the State of Odisha, which is not permissible in

view of Clause (2) to Article 226 of the Constitution of India and case law decided in Kusum Ingots and Alloys Ltd (supra).

7. In that view of the matter, the impugned notification is required to be quashed so far as levy of additional fee is concerned. The opposite parties are required to be

restrained from operating the Notification No.1183 (E) dated 29/12/2016 issued by the Government of India, more particularly, entry at Sl.No.11, Column No.3 of the

table to Rule 81 of the Rules, otherwise the poor litigants have to approach the High Court and pursue the litigation unnecessarily and public exchequer will also

suffer. On that basis, not only the petitioners have to pay cost of the petition but also the State Government as well as the Central Government has to pay the

expenses and bear the cost of frivolous litigation.

8. In that view of the matter and in view of the decisions referred to hereinabove, the Notification No.1183 (E) dated 29/12/2016, more particularly, entry at Sl.No.11,

Column No.3 of the table to Rule 81, which is under challenge in all theses writ petitions, is either required to be quashed and set aside or the opposite parties are

required to be restrained from implementing the same till a decision is rendered by the Hon'ble Supreme Court in the pending civil appeal.

9. The same view has been taken by the Chhatisgarh High Court in the case of Ayodhya Yadav (supra), wherein the Division Bench of Chhatisgarh High Court, in paragraphs-3, 4, 5 and 6 has observed as under:

3. In the present cases, we are not concerned about the other fees which have been notified. The issue is limited to Sr. No.11 which deals with grant or refusal of fitness certificate for which the fees fixed is Rs. 200/-, however, the note adds that additional fees of Rs.50/- for each day of delay after expiry shall be levied, which is

subject matter of challenge.

4. Reliance has been placed by counsel representing the various petitioners on a decision rendered by the Division Bench of High Court of Madras in case of

Chennai City Auto Ootunagral Sangam represented by its Secretary Tamilnadu Driving School owners deferation represented by its General Secretary, Madra

Metro Auto Drivers Association (Affiliated with AITUC) represented by its General Secretary, Vada Chennai Maavatta Auto Ottunargal Padugappu Nalasangam, represented by its General Secretary, Tamilnadu Lorry Owners Federation represented by its President vs. Secretary, Ministry of Road Transport and Highways,

Secretary, Home (Transport), Transport Commissioner, reported in 2017 (3) Mad LJ 769.

5. Vide the above decision dated 03.04.2017, the said notification has been quashed in part and the matter is now awaiting adjudication by the Hon'ble Apex Court in

Civil Appeal No.011216 of 2017.

6. In view of the above situation and position, since the final word in relation to the validity of the central notification is yet to come from the Apex court, this writ application stands disposed off with an observation that the additional fees in terms of Sr. No.11 in relation to the fitness certificate to be levied after its expiry shall

remain in abeyance, however, the obligation and the liabilities to pay the same will depend upon the final opinion which may be rendered by the Apex Court in Civil

Appeal No.011216 of 2017.

10. We have heard learned counsel for the parties and perused the materials available on record.

11. In view of the fact stated above, the impugned Notification No.1183 (E) dated 29/12/2016, more particularly, entry at Sl.No.11, Column No.3 of the table to Rule 81,

which has been issued by the Central Government, is travelling beyond the scope of Act and the same is without authority of law. Therefore, the contentions of the petitioners are required to be accepted and the same is accepted in view of the fact that the notification has already been quashed and set aside by the Madras High

Court. In view of operation of law the same is applicable to the State of Odisha also.

Further, in view the observations made by the Madras High Court in its order/judgment delivered in Textile Technical Tradesmen Association (supra) and Chennai

City Auto Ootunargal Sangam (supra), the notification is required to be quashed and set aside, therefore, the same is quashed and set aside.

12. The parties are directed to abide by the decision of the Hon'ble Supreme Court. Since the Central Government has already challenged the impugned judgment of

Madras High Court, they are not required to challenge this order. However, if the petitioners want to intervene in the application pending before the Hon'ble Supreme

Court, it is open to the petitioners to intervene and prefer appropriate application to plead the case before the Supreme Court.

13. Taking into consideration the huge filing of writ petitions by the litigants only on this issue and more than 1000 matters are pending and, in every week, hundreds

of new matters are coming on the Board, the Division Bench has to engross in these matters. In view of the observations made by Madras High Court in Chennai City

Auto Ootunargal Sangam (supra) and since, the Hon'ble Supreme Court has not stayed the judgment, we are of the opinion that the impugned notification,

particularly, entry at Sl.No.11, Column No.3 (Note) of the table to Rule 81 shall not be implemented at present within the State of Orissa. Keeping in mind the litigation

policy and to avoid unnecessary litigation cost, these matters are required to be decided in the interest of justice to avoid any further litigation in the matter.

14. It is clarified that if ultimately the Government succeeds in the Supreme Court, it will be open for them to recover the amount of additional fees from the petitioners.

15. The writ petitions stand disposed of to the extent indicated above. All connected Misc. Cases/I.As are also disposed of accordingly.

No order as to costs.â??

3. Since the issue involved in the present writ petitions are similar to that of W.P. (C) No. 14114 of 2018 (Dinabandhu Sahoo vs. Union of India and

others) and batch of writ petitions, all these present writ petitions are disposed of at the stage of admission in terms of the common judgment dated

01.02.2019 passed by this Court in W.P.(C) No. 14114 of 2018 and batch of writ petitions.

In view of disposal of the writ petitions, all connected Misc. Cases/I.A. are disposed of accordingly.

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