

(1976) 08 AP CK 0022

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2452 of 1974

Y. Peda Venkaiah

APPELLANT

Vs

The Regional Transport Officer, Nellore

RESPONDENT

Date of Decision : 16-08-1976

Acts Referred:

Andhra Pradesh Motor Vehicles Taxation Act, 1963 — Section 12, 3, 4, 6, 9(1)

Citation : AIR 1977 AP 227

Hon'ble Judges : B.J. Divan, C.J.;Raghuvir, J;Kuppuswami, J

Bench : Full Bench

Advocate : G. Suryanarayana, for the Appellant; Government Pleader, for Transport, for the Respondent

Judgement

Alladi Kuppuswami, J.—The petitioner is the owner of a contract carriage, APG 7623 and has been paying tax at Rs. 40/- per seat for quarter, being the tax for such a contract carriage under the Andhra Pradesh Motor Vehicles Taxation Act, 1963 (referred to in this judgment as the Act). He paid the requisite tax till the quarter ending 31st March 1974. In the first week of February, 1974, after having obtained a temporary permit, for the journey Rajupalem on Tirupati and back, he gave the vehicle on hire to a tourist party. On 12th February 1974 the vehicle was stopped and checked at Nellore while proceeding from Tirupati towards Guntur. It was found that there were several groups of persons who had boarded the bus for getting down at different places and paid different fares. In the circumstances, the authorities were of the view that the vehicle was being used as a stage carriage. A notice, dated 16-2-74 was issued by the Regional Transport Officer asking the petitioner to show cause why he should not be asked to pay tax on the footing that the vehicle was a stage carriage. The difference of the tax was Rs. 4480/- for the whole quarter ending 31-3-1974. The petitioner was asked to show cause why this amount along with penalty should not be collected from him. After considering the petitioner's explanation an order dated 10th April, 1974 was passed, in which it was held that the petitioner was liable to pay the difference of tax of Rupees 4480/-. In addition to this, a penalty of Rs.

4480/- was also levied.

2. The petitioner has filed this writ petition praying for the issue of an appropriate writ, quashing the said order. It is contended inter alia that the Motor Vehicles Taxation Act or the rules made thereunder do not empower the licensing authority to levy the difference of tax and penalty in the event of a contract carriage being used as a stage carriage. The only remedy is to take appropriate proceedings under the Motor Vehicles Act. It was further contended that in any event the respondent erred in directing the payment of the entire difference of tax for the full quarter, though the alleged offence took place only in the second month of the quarter. It was submitted that the difference would be only 2/3rd of the quarterly tax as per R. 5 of the Andhra Pradesh Motor Vehicles Tax Rules.

3. When the writ petition was heard in the first instance by Chinnappa Reddy, J. we find from the order of reference, two contentions were raised by the learned counsel. The first was whether the petitioner was entitled to claim the benefit u/s 9(1) of the Act. This G. O. was not specifically referred to in the writ petition, but seems to have been relied on at the time of arguments in support of the contention that as the petitioner was found to be playing his vehicle as a stage carriage only in the second month, even if he is liable to pay tax on that footing, he was not liable for the tax for the whole quarter, but only for 4/5th of the tax as provided in the above G. O. The second contention was that the petitioner was not liable to pay penalty. Though in the writ petition the reason why penalty was not payable is not mentioned, this submission is made on the strength of the decision of a bench of this Court in Sunkara Venkateswara Rao Vs. The Joint Regional Transport Officer, Krishna, Vijayawada and Another, in which it was held that if there is no demand of tax earlier the petitioner cannot be said to have committed default in payment of tax and therefore no penalty can be levied u/s 6 of the Act.

4. Chinappa Reddy, J. observed that on the applicability of G.O. 2401 there was a conflict between decisions of this Court in Sunkara Venkateswara Rao Vs. The Joint Regional Transport Officer, Krishna, Vijayawada and Another, and an unreported decision in W.A. No. 97 of 1971 (Andh Pra). On the second question though there was no such conflict, he was prima facie not inclined to agree with the reasoning of the Judges in Sunkara Venkateswara Rao Vs. The Joint Regional Transport Officer, Krishna, Vijayawada and Another, He therefore considered desirable that the entire case should be referred to a Full Bench so that both the questions may be resolved.

5. It is in these circumstances that this writ petition has been heard by us.

6. Though in the order of reference, the two questions that are said to have been raised are (1) whether the petitioner is entitled to the benefit of the concession in tax according to G.O. 2401 ; and (2) whether the petitioner is not liable to pay penalty, Sri Suryanarayana sought permission to raise the broader questions that no tax at all can be demanded from the petitioner in addition to what he paid in

the beginning of the quarter for a contract carriage. He drew our attention to the writ petition where this question has been raised and it is contended that the Act and the rules made thereunder do not empower the authority to levy the difference of tax and penalty in the event of a contract carriage being used as a stage carriage, and in such a case, only proceedings under the Motor Vehicles Act can be resorted to, As this question has been raised in the writ petition we have permitted the petitioner to argue this point also, even though this is not mentioned in the order of reference. The petitioner's case is that if the above contention is accepted there is no need for him to rely upon G.O. 2401 where merely gives a concession in the matter of tax and the further question of penalty also will not arise. Before considering the question whether the petitioner who has paid tax on the footing that the vehicle is a contract carriage can be asked to pay the tax again when he is found to use the vehicle as a stage carriage, it will be useful to set out the relevant provisions of the Act:

Section 3(1) : The Government may, by notification from time to time, direct that a tax shall be levied on every motor vehicle used or kept for use, in a public place in the State. Section 3(2).

The notification issued under sub-s (1) shall specify the class of motor vehicles on which, the rates for the periods at which and the date from which, the tax shall be levied.

Provided

Section 4(1)(a):

The tax levied under this Act shall be paid in advanceeither quarterly, half yearly or annually on a licence to be taken out..... within fifteen days from the commencement of the quarter, half-year or year as the case may be.....

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Section 4 (1) (b):

Where the tax for any motor vehicle has been paid for any quarter, half-year or year and the motor vehicle has not been used during the whole of that quarter, half-year or year and the motor vehicle has not been used during the whole of that quarter, half-year or year or a continuous part of thereof not being less than one month, a refund of the tax at such rates as may, from time to time, be subject to such conditions as may be specified in such notification.

Section 4(2).

Notwithstanding anything in sub-s (1) no person shall be liable to pay tax in respect of a motor vehicle for a particular period, if the tax due in respect of that

motor vehicle for that period has already been paid by some other person.

Section 4(3) (a) :

Where a tax in respect of a motor vehicle is paid by any person for a particular period or if no such tax is payable therefor, the licencing officer shall,

i) grant to such person a licence.....

ii) record in the certificate of registrationthat the tax has been paid or that no tax is payable, in respect of the motor vehicle for the said period.

Section 4(1): xx xx

Section 4(5):

No motor vehicle shall be used in any public place in the state at any time after the issue of a notification under sub-s (1) of S. 3, unless a licence permitting its use during such time has been obtained as specified in clause (a) of sub-s (1) or sub-s. (4).

Section 6:

If the tax in respect of any motor vehicle has not been paid as specified in S. 4 the registered owner or the person having the possession or control thereof shall, in addition to payment of the tax due be liable to a penalty which may extend to twice the quarterly tax in respect of that vehicle, to be levied by such officer, by order in writing and in such manner as may be prescribed. Section 7:

Any tax, penalty or fine due under this Act may be recovered in the same manner as an arrear of land revenue.

Section 8 provides for seizure and detention of a motor vehicle in case of non-payment of tax.

Section 9(1):

The Government may, by notification :

(a) grant an exemption, make a reduction in the rate or order other modification not involving an enhancement in the rate of the tax payable-

(i) by any person or class of persons, or

(ii) in respect of any motor vehicle or class of motor vehicles or motor vehicles running in any particular area.

Section 12 provides for an appeal against an order of levy of penalty under S. 6 or an order of seizure under S. 8. Section 16 enables the Government to make rules for carrying out of any of the purposes of the Act.

7. The Andhra Pradesh Motor Vehicles Taxation Rules 1963 were accordingly made and are referred to in this judgment as the rules".

8. Rule 3 provides for an entry being made regarding the amount of quarterly, half-yearly or annual tax payable in respect of the motor vehicle in the certificate of registration.

9. Section 12 provides that if the tax due has not been paid as specified in S. 4 of the Act, the registered owner shall be liable to pay the arrears of tax together with any penalty that may be imposed by the licencing officer.

10. Rule 12-A states that for the purposes of Section 3 of the Act, a motor vehicle shall be deemed to be kept for use and is liable to tax unless the registered owner or the person having possession or control or the motor vehicle intimates in writing to the Licensing Officer within 15 days of the expiry of the period for which the tax was already paid, that the motor vehicle will not be used after the said date of expiry. Rule 13 provides for the rates of penalty to be imposed if the tax has not been paid.

11. In accordance with S. 3 a notification was made specifying the tax to be levied on different classes of motor vehicles. It is seen from the notification that there are a number of classes of motor vehicles like motor-cycles, goods vehicles, which again vary according to the laden weight, motor vehicles plying for hire and used for transport of passengers, fire engines and so on. According to the notification, read with the schedule, that tax for the stage carriage is higher than that of a contract carriage. The tax in the former case being Rs. 40/- per seat and Rs. 40/- per seat for a contract carriage (sic).

12. The submission made on behalf of the petitioner is that his vehicle was registered as a contract carriage and he paid tax on that footing in accordance with the provisions of the notification specifying the tax. An entry to that effect was made in the certificate of registration. In accordance with S. 4(3) (a) (ii) a licence was granted to him to ply the motor vehicle as a contract carriage. Once the vehicle was registered as a contract carriage and tax is paid on that footing there is no provision in the Act which enables the authorities to levy tax again on the vehicle as a stage carriage if it is found to be used as a stage carriage. The petitioner may be liable for action under the provisions of the Motor Vehicles Act for contravening the conditions which enable him to use the vehicle only as a contract carriage. But there is nothing in the Motor Vehicles Taxation Act which authorises a further levy of tax as a stage carriage. There is also no machinery provided in the Act for such levy. This submission in our view proceeds upon a misconception of the true scope of the Act. S. 3 of the Act authorises the Government to levy tax on every motor vehicles used or kept for use in a public place in the State by means of a notification issued under that Section. Section 3(2) provides that the notification shall specify the class of motor vehicles on which the rates for the period at which and the date from which the tax shall be levied. In view of this provision, the Government is authorised to levy different rates of tax on different classes of vehicles and it has accordingly done so. Further S. 4 provides that tax levied shall be paid in advance either quarterly or half-yearly or annually on a licence to be taken out by the owner of the vehicle.

If therefore, at the beginning of the quarter, the vehicle belongs to a particular class referred to in that notification tax is levied on that footing and an entry is also made in the certificate of registration to that effect. But it does not follow that if the class of vehicle is changed during the quarter by reason of the use it was put to tax cannot be levied according to the class to which the vehicle then belongs. As soon as the class of vehicle is changed, the rate of tax which applies to that class according to the notification is automatically attracted. There is no need for the Act to provide specifically that if there is a change in the class of vehicle, the authorities can levy tax afresh on that vehicle as belonging to that class. There is no need for the Act to provide specifically that if there is a change in the class of vehicle, the authorities can levy tax afresh on that vehicle as belonging to that class. The power contained in S. 3 read with S. 4 is sufficient to enable the Government to levy the tax from time to time when the class of the vehicle is changed. The same question was considered elaborately in *S.V. Rao v. Joint R.T.O., Vijayawada* (1971 Tax LR 556). It was pointed out that the provisions of the Motor Vehicles Act have no application is so far as the levy of tax on motor vehicles is concerned. The levy, payment and recovery of tax are wholly governed by the Motor Vehicles Taxation Act. The mere absence of a specific provision in the Act empowering the authorities to levy tax on any vehicle as a stage carriage on which tax was paid earlier as contract carriage, does not make the levy of tax illegal. The provisions of the Act make it clear that the levy of tax is based on the nature of the user of the vehicle. As the scheme of the Act is that the minimum period for which tax payable is a quarter where it is found that a particular vehicle has been used or kept for use as stage carriage even for a day or a part of the quarter, it must be, for the purpose of the Act, held as a stage carriage liable for tax on that basis. The mere fact that tax is already paid as a contract carriage and the operator would not in any way disentitle the authorities from levying the tax on such a vehicle as a stage carriage when it was used during the quarter as a stage carriage. The learned Judges followed other decisions of this Court to the same effect which were referred to in paragraphs 17 to 19 of the judgment. We are wholly in agreement with the decision in *S.V. Rao v. Joint R.T.O., Vijayawada*, (1971 Tax LR 556 (AP)), so far as this aspect is concerned.

13. The learned counsel for the petitioner drew our attention to a decision in *A.V. Fernandez Vs. The State of Kerala*, and submitted that in considering statutes one must have regard to the strict letter of the law. If the case is not covered within the four corners of the statute no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter. The Supreme Court referred to the oft quoted observations of the House of Lords in *Inland Revenue Commrs. v. Duke of Westminster* 1936 AC 1 that the subject is not taxable by inference or by analogy but only by the plain words of a statute applicable to the facts and circumstances of the case. We do not think that this principle has any application to this case, as we are of the view that Section 3 of the Act expressly authorises

the Government to levy a tax on any vehicle used or kept for use in the state according to the class of the vehicle. If during the course of the quarter the class of the vehicle is changed, it necessarily follows that the particular rate of tax applicable to that class of vehicle is automatically attracted and it is not necessary to have a separate provision to cover such a case. In this connection reference may be made to the recent decision of the Supreme Court in *Murarilal Mahabir Prasad and Others Vs. Shri B.R. Vad and Others*, . Chandrachud, J. speaking for the majority observed that the true implication of the principle that a taxing statute must be construed strictly (viz. the subject is not to be taxed unless the changing provision clearly imposes the obligation) is often misunderstood and the principle is unjustifiably extended beyond the legitimate field of its operation. It does not apply where the Court is concerned with a provision which prescribes the machinery for the computation of tax and not with a charging provision. In the latter case the rule is that construction should be preferred which makes the machinery workable. The same view was expressed earlier by the Supreme Court in *Gursahai Saigal Vs. Commissioner of Income Tax, Punjab*, . In this case all that can be said is that there is no special machinery prescribed for levying tax at a different rate when the class of vehicle is changed, once particular tax has been levied on the vehicle at the beginning of the quarter according to the class to which it belongs on that day. In such a case, having come to the conclusion that under the charging Section namely Section 3 there is power to levy a different tax when the class of a vehicle is changed, we have to construe the provisions of the Act as providing sufficient machinery to levy such a tax. In this case when it is found that a vehicle is being used as stage carriage, notice is given to the person concerned as to why it should not be treated as a stage carriage for the purpose of taxation and after hearing the aggrieved party the licensing officer comes to that conclusion that it is used as stage carriage and accordingly levies the tax on that footing. In our view, such a procedure is perfectly justified for levying the tax which the Government is entitled to levy under the charging Section.

14. In support of the contention that when once tax is paid in the beginning of the quarter as contract carriage and such payment is endorsed in the registration certificate, it is not open to the authorities to levy further tax; the learned counsel for the appellants relied on the decision of a bench of this Court in *W. A. Nos. 303 to 308 of 1972, D/- 9-3-1973 : (1974 Tax LR 1717) (Andh Pra)*. In that case after the tax was determined at Rs. 95/- per quarter per seat on the footing that the total distance covered by the vehicle exceeded 160 K. M. but did not exceed 240 K. M. it was later on sought to be increased to Rs. 104/- with retrospective effect on the ground that the distance exceeded 240 K. M. It was contended that the previous quantum was determined under a mistake. It was held that it was not a case of mistake but there was a change in the opinion and in the absence of any specific provision of law enabling the authorities to reverse the tax which was imposed and entered in the certificate of registration, it was not competent for the licensing officer to do so with retrospective effect. This

decision has no application to the facts of the instant case. In the above decision there was no change in the class of vehicle. The distance travelled on which the tax depended was determined and tax imposed in the first instance. It was therefore, rightly held that it could not be revised on the ground that the authorities later on were of the opinion that the distance covered was higher. In the instant case, the tax was collected in the beginning as a contract carriage as the vehicle was registered as a contract carriage. Later on, by its user as a stage carriage, the class of the vehicle was changed and it attracted a higher tax. There is no question of any change of opinion or review of the prior order on that ground by the authorities. This is a case where by the conduct of the owner himself the class of the vehicle is changed and automatically the tax according to that class is attracted. Another decision that was relied on is that of Chinnappa Reddy J. in W. P. No. 1280 of 1968, D/- 14-10-1969 (Andh Pra). It was held that having determined the tax in the beginning of the quarter and made the necessary entries in the certificate, it was not open to the licensing officer to turn round and say that the tax was payable at a higher rate as there was no provision in the Act which enabled him to do so. The licensing officer addressed his mind to the question as to the rate at which the tax was payable. It was not open to him at a later stage to re-open the matter and demand that tax should be paid at a higher rate, For the same reasons stated earlier this decision also has no application to the facts of this case.

15. For all these reasons we negative the contention that the authorities were not empowered under the provisions of the Andhra Pradesh Motor Vehicles Taxation Act to levy tax on the footing that the vehicle is a stage carriage when it was found that it was being used as a stage carriage.

16. The next submission is that as the vehicle was being used as a stage carriage only during the second month of the quarter, the tax payable would be 4/5 of the tax payable for the quarter in view of G. O. 2410 dated 20-12-1964 made u/s 9(1) of the Act. The G. O. provides that in respect of motor vehicles which are intended to be used only during the last two months of a quarter or only during the last month of the quarter tax shall be paid at the reduced rates and subject to the conditions specified in the notification. Where the vehicle is to be used only during the second and third months of a quarter or part thereof the amount of tax is 4/5th of the quarterly tax. The condition referred to in Col. 3 is that the licence shall not be granted earlier than the last day of the first month of the quarter. On a plain reading of the notification we are of the view that it has no application to this case. The G. O. applies only in respect of motor vehicles which are intended to be used during the last two months or only during the last month of the quarter. This would clearly show that the G. O. has application only to a case where even at the beginning, the intention of the owner is to use it only in the last two months or during the last month of the quarter. This cannot have any application where the owner who has paid tax on the footing that it is a contract carriage for the whole quarter, later uses it as a stage carriage. The person who has paid tax for the whole quarter as a contract carriage cannot

obviously have an intention at that time to use it as a stage carriage during the last two months of the quarter or during the last month. We are in agreement with the view expressed by the Division Bench of this Court in W. A. No. 97 of 1971 (Andh Pra) where it was held that the notification clearly indicates that the vehicle must have been intended to be used only during the last two months or last month of a particular quarter. They observed that it is only when such intendment was found existing, the notification will be attracted. It cannot obviously apply to cases where there is no intendment of the use in the second or the third month of the quarter by the operator. The learned counsel for the petitioner tried to distinguish the decision in W. A. No. 97 of 1971 (Andh Pra) by stating that in that case the vehicle was not covered by a valid fitness certificate or by a valid permit, and he sought to argue that it was only for that reason it was held that it could not have been bona fide intended to be used during the second or third month; whereas in this case there was a valid permit to use it as a contract carriage. In our view there is no distinction in principle between the two cases. Even in the present case there was no valid permit to use the vehicle as a stage carriage. The mere fact that there was a permit to use it as a contract carriage is immaterial. As long as there was no permit to use it as a stage carriage, the position is the same as if there was no valid permit at all.

17. In *S. V. Rao v. Joint R. T. O. Vijayawada*, 1971 Tax LR 556 (AP) (supra) dealing with G. O. 2410 it was observed that there is no indication in the G. O. that it is not applicable to the cases of vehicles which were found to be used as a stage carriage though tax was paid on the basis of a contract carriage and it is not possible to hold that it was applicable to only bona fide owners. As we have observed earlier we are of the view that there is sufficient indication in the G. O. that it is not applicable to cases where there was no intention to use the vehicle as a stage carriage for the second and third month or the last month of the quarter even at the beginning of the quarter. The learned Judges themselves observed that no material was placed before them to show that the petitioners intended in the beginning of the quarter to use their vehicles as a stage carriage. If so, we fail to understand how having regard to the express language of the G. O. that it is applicable only to cases where the vehicles which are intended to be used during the last two months or during the last month, the learned Judges could come to the conclusion that the G. O. would still be applicable where the vehicle was used as a stage carriage for the first time in the second month without any such prior intention. We are of the view that the said decision is not correct so far as this point is concerned, and we prefer to endorse the view expressed in W. A. 97/71.

18. The third question for consideration is whether penalty can be levied in the circumstances of the case. u/s 6 of the Act penalty can be levied only if the tax due in respect of the motor vehicles has not been paid. In this case it could not be said that any tax was due before the order levying penalty was made. The vehicle was stopped in Nellore and the officer concerned gave a show cause notice as to why it should not be taxed as a stage carriage and after considering

the explanation, passed an order that it was plying as a stage carriage and hence tax had to be paid on that footing. It was in the very same order that penalty also was levied. It was only when the officer held that the carriage was used as a stage carriage and tax was payable on that footing and a demand was made to pay that tax, it can be said that a tax became due. There was no tax due before such determination and demand. In *S. V. Rao v. Joint R. T. O. Vijayawada*, 1971 Tax LR 556 (AP) (supra) dealing with this question it was observed that as there was no demand for payment of tax on the basis of the user of the vehicle as a stage carriage, until the passing of the impugned order, unless and until the petitioners commit default in payment of the tax due demanded, it must be held that the provisions of Section 6 are not attracted. We are in agreement with the decision in *S. V. Rao v. Joint R. T. O. Vijayawada* so far as this aspect is concerned. In this connection reference may be made to the decision of this Court in *M.C. Mulajkar Vs. Govt. of Andhra Pradesh and Others*, where it was held that recovery proceedings u/s 52 of the Revenue Recovery Act should be preceded by an anterior determination of the liability was reiterated in *Govindu Rama Rao v. R. D. O. Srikakulam* (1976)ILR Andh Pra 63. The learned counsel for the petitioner relied upon a decision of one of us (Kuppuswami J.) in *W. P. No. 5528 of 1974, D/- 18-3-1976 (Andh Pra)*. In that case this Court had to consider a case where a person was plying a vehicle without payment of the tax and tax as well as penalty was levied. It was urged that as there was no earlier demand for payment of tax, no penalty could be levied. It was held that Section 6 does not provide that before penalty is levied there should be a demand for tax. The tax payable is the amount fixed by the notification and will have to be paid irrespective of any demand at the beginning of the quarter and hence no further demand was necessary. The position in this case is different. At the beginning of the quarter the petitioner was using it as a contract carriage and he did pay the tax on the footing that it was a contract carriage. It was only later when it was held by the impugned order that he was using it as a stage carriage that it became liable to pay tax for the quarter on the footing that the vehicle was being used as a stage carriage. No tax had become due before that date and hence the facts in this case are distinguishable from the facts in *W. P. 5528/74*.

19. We agree with the petitioner's contention that the levy of penalty was contrary to the provisions of the Act.

20. Having regard to the view expressed by us on the first two points the order directing payment of tax for the whole quarter is justified. In the circumstances, the impugned order is upheld in so far as the demand for payment of tax is concerned and is quashed in regard to the levy of penalty.

21. The writ petition is allowed to the extent indicated above, but in the circumstances there will be no order as to costs.

22. Before parting with the case we would like to observe that though Section 12 provides for an appeal against an order of penalty or an order of seizure no appeal is provided against an order levying tax. It has already been noticed that

even if the vehicle is used for a single day, the tax for the entire quarter has to be paid. In many cases even the tax liability is very heavy; for instance in this case the tax levied is Rupees 4,480/-. In view of the heavy liability by way of tax involved we consider it desirable and in consonance with fair play that an opportunity should be given to the aggrieved party to prefer an appeal against the order of the licensing authority. Reference was made to the decision in Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another, where one of the reasons given for holding that the Travancore Cochin Land Tax Act was violative of Article. 19(1) of the Constitution was that no right of appeal was provided to the assessee who was aggrieved by the order of assessment. In that case this was one of the circumstances taken along with several other circumstances to hold that the Act infringed Article. 19(1) of the Constitution. It may not be correct to say that absence of a right of appeal by itself would render an Act liable to attack on the ground that it violated the principles of natural justice, but in our view it would be more satisfactory if a right of appeal is introduced even as against imposition of a tax at least in cases where additional tax is sought to be imposed on the ground that there has been a change in the user or in the class of vehicle. It is no doubt true an opportunity is given to show cause why further tax should not be levied but in our view it would be more just and equitable if a right of appeal is also given.

23. Petition partly allowed.