SUPREME COURT OF INDIA

M.P.A.I.T. Permit Owners Assn.

Vs.

State of Madhya Pradesh

C.A.No.5172 of 2001

(S.Rajendra Babu and G.P.Mathur JJ.)

28.11.2003

JUDGMENT

RAJENDRA BABU, J.:

A batch of writ petitions was filed before the High Court of Madhya Pradesh challenging the constitutional validity of Sections 16(6), (7) & (8), 20-A and 20-B of the Madhya Pradesh Motoryan Karadhan Adhiniyam, 1991 [hereinafter referred to as 'the Act'], inserted by the Madhya Pradesh Motoryan Karadhan [Sanshodhan] Adhiniyam, 1999 [hereinafter referred to as 'the Amendment Act'], published in the official Gazette on 8.12.1999 received the assent of the Governor on 30.11.1999.

The Petitioners before the High Court contended that Sections 16(6), (7) & (8), 20-A, 20-B and 20-C of the Act are repugnant to the Motor Vehicles Act, 1988 [hereinafter referred to as 'the MV Act'] enacted by Parliament in exercise of its powers under Entry 35, List III of the Seventh Schedule to the Constitution, which has been in force since 1st July 1989; that the amendments introduced by Act 27 of 1999, by which the impugned provisions are introduced in the Act, deal with the subject-

matter covered by Section 66 read with Section 192-A of the MV Act; that the impugned provisions provide for confiscation of the vehicle thereby enhancing the penalty provided by the MV Act which sets out only certain amounts of fine and thus repugnancy arises; that there are provisions in the Act for recovery of tax and, therefore, the provision for confiscation of the vehicle is uncalled for.

On behalf of the State, it is contended that the Act and the amendments made thereto are within its competence as they fall under Entries 56 and 57, List II of the Seventh Schedule to the Constitution and is within the legislative competence and the MV Act does not set out any principle of taxation subject to which the enactments made Entry 56, List II of the Seventh Schedule to the Constitution can operate. A contention had been raised on behalf of the State that the Act had obtained the assent of the President and the subsequent amendment is only supplemental in nature and, therefore, does not require any further assent of the President. However, this contention is not pursued before us.

The High Court held that the impugned provisions are not repugnant to the provisions of the MV Act and the two enactments are not enacted in the same field and, therefore, they operate in totally different fields and stated that holding of a permit is a cognate matter and there is no encroachment made on the MV Act by the Act including the Amendment Act; that plying of a motor vehicle must be only with a permit and such a permit can be obtained only on payment of requisite tax and, therefore, "having a valid permit for the purpose, is the sine qua non of incident of tax under the Karadhan Adhiniyam, 1991; that holding of a permit is pith and substance of the incident of taxation under the M.P. Motoryan Karadhan Adhiniyam; that if a person is plying without permit he is essentially avoiding the taxation which is the pith of the permit; that permit is intrinsically connected with the taxation; that applying the test of pith and substance, the Amendment Act is within the ken of Entry 57 List II, Seventh Schedule; that it is not rendered invalid even assuming it incidentally touches upon matters reserved for federal legislature; that the power of forfeiture being an incidental power to taxation there is no conflict in the provisions of Section 192-A of the MV Act and Section 16(6) of the Act; that under Section 16(6) of the Act, confiscation will be by the taxation authority whereas a criminal prosecution of a person is initiated under the MV Act and Section 192-A is an alternate to confiscation proceeding;

that there are adequate safeguards with regard to the confiscation procedure;

that the power of confiscation can co-exist with the power to prosecute the offender and the provisions in the Act do not conflict with each other and on that basis dismissed the writ petitions. Hence these appeals by special leave.

Sri K.K.Venugopal, learned Senior Advocate appearing on behalf of the appellants, contended that the Act is a law relating to levy of tax on motor vehicles relatable to Entry 57, List II of the Seventh Schedule to the Constitution.

He submitted that Parliament has enacted MV Act in exercise of powers under Entry 35, List III of the Seventh Schedule to the Constitution, which specifically covers motor vehicles and in terms of Article 254 of the Constitution prevails over any State law covering the same field; that levy of tax on motor vehicles is within the exclusive domain of the State Legislature and similarly regulatory provisions under the MV Act fall under Entry 35, List III of the Seventh Schedule to the Constitution and the Union has already enacted a law in that regard. He submitted that a careful reading of Section 16(6) of the Act would indicate that the cause or the incident which attracts confiscation is violation of the provisions of Sections 66 and 192-A of the MV Act and not for the purpose of the taxation.

Alternatively, he submitted that if for any reason it is to be held that it is also for the purpose of recovery of taxes, he contended that an examination of the scheme of the provisions of the Act and Rules framed thereunder are vague leading to such arbitrariness as to vitiate the provisions in terms of Article 14 of the Constitution. He submitted that while a provision has been made for the purpose of seizure of a motor vehicle for non-payment of tax and such vehicle, as provided under the Act and the Rules framed thereunder, has to be released the moment the tax is paid and even if in respect of such vehicle a mere report is filed in terms of Section 16(6) of the Act, the vehicle is liable to be confiscated thereby the object of the Act to recover the tax is not fulfilled but on the other hand, it results only in imposing further penalty upon the owner or the driver of the vehicle and in turn results in enhancing the penalty provided under the MV Act, which clearly would result in repugnancy in the provisions thereof. In this regard, he adverted to the decisions of this Court in Ch.Tika Ramji & Ors. etc.vs. The State of Uttar Pradesh & Ors., 1956 SCR 393, M. Karunanidhi vs. Union of India & Anr., 1979 (3) SCC 431, and T. Barai vs. Henry Ah Hoe & Anr., 1983 (1) SCC 177. He further submitted that even otherwise in respect of a motor vehicle where tax has not been paid on prosecution a fine of maximum of Rs.300/- is provided and there are provisions under the Act by which the tax can be levied and collected with penal interest. If that is so, he submitted, the motor vehicles worth several lakhs of rupees cannot be confiscated for non- payment of tax, may be running in a few thousands of rupees. He contended that such an action is wholly disproportionate exercise of power and calls for interference.

Sri K. Parasaran, learned Senior Advocate appearing for the owners of the motor vehicles, who had entered into a hire purchase agreement, submitted that in the first place confiscation is really directed against the ownership of the motor vehicles and the owner had, in no way, committed any breach of the Act or the Rules as the primary liability to pay the taxes is that of the hire purchaser and thus the provisions cannot be applied to such owners. He further submitted that even if confiscation is to be ordered for non-payment of tax by hire purchaser, what can be confiscated is only the extent of the interest of the hire purchaser and not beyond that. He further contended that the onwership of the appellants does not get affected by the reason of confiscation.

The learned Advocate General for the State of Madhya Pradesh, contended that the Act in question is aimed at curbing the user of the motor vehicles not covered by a permit or using the permit in

violation of its condition subject to the exceptions available under Section 16(6) of the Act and under the Act, tax has to be paid in advance by such user and, therefore, plying of a vehicle having a contract carriage permit as a stage carriage amounts to plying without a permit within the meaning of Explanation VII of the Schedule I to the Act and in this context, drew our attention to not only Explanation VII of the Schedule I to the Act but also to the definition of contract carriage as defined under Section 2(7) of the MV Act; that the two categories of motor vehicles, namely, contract carriages and the stage carriages have different rates of taxation; that unless such tax has been paid no permit will be available; that operation of a vehicle without a permit obviously means that tax due to the State has not been paid under the Act. He, therefore, submitted that the provisions under the Act are valid and fall within the competence of the State legislature and he fully supported the view taken by the High Court that there is absolutely no repugnancy between the MV Act and the Act inasmuch as they operate in two different fields one is a regulatory measure while the other is the taxation measure. He, therefore, submitted that we should dismiss these appeals.

For purposes of convenience, we set out the relevant provisions of the Act hereunder:

"16. Power of entry, seizure and detention of Motor Vehicle in case of non-payment of tax.

(1) xxx xxx xxx (2) xxx xxx xxx (3) xxx xxx xxx (4) xxx xxx xxx (5) xxx xxx xxx (6) Subject to the provisions of sub-section (8), where, the taxation authority upon receipt of report about the seizure of the vehicle under sub-section (3) is satisfied that the owner has committed offence under Section 66 read with Section 192-A of the Motor Vehicles Act, 1988 of plying vehicle without permit and he may by order in writing and for reasons to be recorded confiscate the vehicle seized under said sub- section. A copy of order of confiscation shall be forwarded without any undue delay to the Transport Commissioner.

(7) No order of confiscating any vehicle shall be made under sub- section (6) unless the Taxation Authority:- (a) sends an intimation in the form prescribed about initiation of proceedings for confiscation of vehicle to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made;

(b) issues a notice in writing to the person from whom the vehicle is seized and to the registered owner;

(c) affords an opportunity to the persons referred to in clause (b) of making a representation within such reasonable time as may be specified in the notice against the proposed confiscation; and (d) gives to the officer effecting the seizure and the persons to whom notice has been issued under clause (b), a hearing on due date to be fixed for such purpose.

(8) No order of confiscation under sub-section (6) of any vehicle shall be made if any person referred to in clause (b) of sub-section (7) proves to the satisfaction of the Taxation Authority that such vehicle was used under valid documents required under the Act.

20-A Appeal against order of confiscation- (1) Any person aggrieved by an order of confiscation may, within thirty days of the order or if fact of such order has not been communicated to him, within thirty days of the date of knowledge of such order, prefer an appeal in writing accompanied by such fee and payable in such form as may be prescribed, and by certified copy or order of confiscation to the Appellate Authority.

Explanation The time requisite for obtaining certified copy of order of confiscation shall be excluded while computing period of thirty days referred to in the sub-section.

(2) The appellate Authority shall send intimation in writing of lodging of appeal to the Taxation Authority.

(3) The appellate Authority may pass such order of interim nature for custody, or disposal, if necessary of the confiscated vehicle as may appear to be just in the circumstances of the case.

(4) On the date fixed for hearing of the appeal or on such date to which the hearing may be adjourned, the appellate Authority shall peruse the record and hear the parties to the appeal if present in person, or through a legal practitioner and shall thereafter proceed to pass an order of confirmation, reversal or modification of the order of confiscation.

(5) The appellate Authority may also pass such orders of consequential nature, as it may deem necessary.

(6) Copy of final order or of order consequential nature, shall be sent to the Taxation Authority for compliance.

20-B Revision before Court of Session against order of Appellate Authority- (1) If the owner of a vehicle aggrieved by final order or by order of consequential nature passed by the Appellate Authority in respect of confiscated vehicle, he may within thirty days or the order sought to be

impugned, submit a petition for revision to the Court of Session only on a point of law within the Session division where the headquarters of the Appellate Authority are situate.

Explanation :- In computing the period of thirty days under this sub- section, the time requisite for obtaining certified copy of order of Appellate Authority shall be excluded.

(2) the court of Session may confirm, reverse or modify any final order or an order of consequential nature passed by the Appellate Authority.

(3) copies of the order passed in revision shall be sent to the Appellate Authority and to the Taxation Authority for compliance or for taking such further action as may be directed by such Court.

(4) For entertaining, hearing and deciding a revision under this Section, the Court of Session shall, as for as may be, exercise the same powers and follow the same procedure as prescribed for hearing and deciding a revision under the Code of Criminal Procedure,1973 (No. 2 of 1974)." Section 192-A of the MV Act provides that if a motor vehicle is driven in contravention of Section 66(1), that is, if a vehicle is driven or caused to be driven as a transport vehicle without permit, or in contravention of any or in contravention of any condition thereof relating to the route on which or the area in which or the purpose for which the vehicle may be used, the user is punishable with fine for the first offence and imprisonment for the subsequent offence but this section does not provide for confiscation of the vehicle. Section 16(6) of the Act provides that subject to the provisions of sub-section (8), where upon receipt of report about the seizure of the vehicle under sub-section (3), the taxation authority is satisfied that the owner has committed offence under Section 66 read with Section 192-A of the MV Act of plying vehicle without permit and he may by order in writing and for reasons to be recorded confiscate the vehicle seized under the said provision. Under Section 16(3) of the Act, a vehicle seized for non-payment of tax or other dues is liable to be returned on showing that tax has been paid. Thus if tax with regard to the seized vehicle is paid that vehicle has got to be released. So far as the link that is sought to be established with taxation procedures, snaps the moment tax is paid and vehicle is released. In such an event also motor vehicle can be confiscated on a report that such vehicle had been seized. The cause or basis for confiscation of motor vehicle is driving such vehicle contrary to Section 66 of the MV Act read with Section 192-A of the MV Act and a report of seizure under Section 16(3) of the Act.

Sub-section (3) of Section 16 states that the taxation authority or any other officer authorised by the State Government in this behalf may if it or he has reason to believe that a motor vehicle has been or is being used without payment of tax, penalty or interest due, seize and detain such motor vehicle and for this purpose take or cause to be taken any step as may be considered proper for the temporary safe custody of such motor vehicle and for the realisation of tax due.

Sub-section (3) is only intended as a step for recovery of the tax, penalty or interest due and the vehicle is detained until such time as such tax or other liabilities are realised. The mere fact that such vehicle is seized for that purpose by itself will not result in confiscation of the vehicle. For confiscation of the vehicle the factor that weighs with the authority as provided under Section 16(6) of the Act is that the owner of the vehicle should have committed an offence under Section 66 read with Section 192-A of the MV Act for which provision has been made in the MV Act itself and that provision clearly sets out the nature and degree of punishment but does not include confiscation.

It is clear that confiscation would arise only in the event if an offence is committed under Section 66 read with Section 192-A of the MV Act and, therefore, such provision could not have been enacted without the assent of the President as the same directly impinges upon Article 254 of the Constitution.

Under Article 254 of the Constitution, the law made by Parliament will prevail in respect of subjects covered under List III of the Seventh Schedule to the Constitution. An exception is carved out in clause (2) of Article 254 of the Constitution whereby the law made by the State Legislature will prevail if the Presidential assent is received. But before this clause can be invoked there must be a repugnancy between the State Act and an earlier Act made by Parliament.

In effect, the scheme is that Article 254(2) gives power to the State Legislature to enact a law with the assent of the President, on any subject covered under List III of the Seventh Schedule to the Constitution, even though the Central Act may be inconsistent operating in that State relating to that subject.

The short question, therefore, for consideration arises is whether there is any conflict or repugnancy between the State Law and the Union Law.

In T. Barai vs. Henry Ah Hoe's case (supra) this Court has held:

"A State law would be repugnant to the Union law when there is direct conflict between the two laws. Such repugnancy may also arise where both laws operate in the same field and the two cannot possibly stand together, for example, where both prescribe punishment for the same offence but the punishment differs in degree or kind or in the procedure prescribed" In the case on hand the prescription of punishment is for the same offence arising under Section 66 read with Section 192-A of the MV Act and further punishment is prescribed under the State MV Taxation Act for forfeiture of the vehicle. Thus, there is clear conflict between the two enactments. Therefore, we hold that the provision of Section 16(6) of the Act and the consequential provisions thereto are repugnant to Section 66 read with Section 192-A of the MV Act and hence, invalid as the State law has not

complied with requirements under Article 254(2) of the Constitution of obtaining assent of the President to the State law.

Analogy is sought to be drawn by placing reliance on S. Satyapal Reddy & Ors. vs..Government of A.P. & Ors., 1994 (4) SCC 391, and Dr. Preeti Srivastava & Anr. vs. State of M.P. & Ors., 1999 (7) SCC 120, wherein prescription of higher qualification in the context of admission in colleges or appointment to posts was considered. Analogy is neither apt nor sound in law.

The qualification prescribed by one authority is binding on the other authority. If higher qualifications are prescribed by the other authority who has to make selections for admission in colleges or appointment to posts what it does is to enhance the quality of qualification prescribed without adversely affecting the same and adds further the intent and purpose of prescription of the qualification by the other authority and, therefore, is not in conflict with one another.

However, in the case of imposition of punishments for offences, one legislature provides a lenient punishment and other a more stringent punishment or burden will necessarily interfere with the exercise of powers of legislature.

When the offences arising upon the Union Law and the State Law respectively are substantially identical, but additional penalties are imposed for the contravention by the provision of the State Law it would be inconsistent with the law of the Union and, therefore, invalid. In the instant case, apart from what is available under Section 192-A of the MV Act, there are additional penalties arising under Section 16(6) of the Act.

This discussion is enough to dispose of this case and we do not propose to deal with other contentions raised by the learned counsel of the appellants and are left open.

These appeals are thus allowed quashing Section 16(6) and the consequential provisions of Sections 16(7), 16(8), 20-A and 20-B of the Act and the order of the High Court stands set aside.