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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No. 1913 of 2014

Purnendra Singh, aged about 30 years, son of Shri Raghvendra Singh, by occupation Bus Operator, resident of 12/194, behind Irrigation Colony, Shahdol, district Shahdol (M.P.)

---- Petitioner

Versus

1. The State of Chhattisgarh, through the Principal Secretary, Government of Chhattisgarh, Transport Department, Mantralaya, Raipur (C.G.)
2. The Regional Transport Officer, Ambikapur (C.G.)
3. The Incharge Flying Squad, Transport Office, Ambikapur (C.G.)

---- Respondents

For Petitioner	:	Shri Subhodh Pandey, Advocate
For Respondents/State	:	Shri Prafull Bharat, Additional Advocate General.

HON'BLE SHRI NAVIN SINHA, CHIEF JUSTICE &
HON'BLE SHRI P. SAM KOSHY, J.

Order On Board

Per NAVIN SINHA, C.J.

28/04/2015

1. We have heard Learned Counsel for the Petitioner and the Additional Advocate General on behalf of the State.

2. The Petitioner is the owner of a vehicle bearing No. M.P.-18-P/1077, granted a Contract Carriage permit by the Regional Transport Officer, Shahdol, Madhya Pradesh valid till 26.6.2014. The vehicle was stopped for checking on 26.6.2014 in Khongapani, District

Korea and seized under Sections 66/192-A, 39/192, 3/181 and 29/177 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Central Act') and Section 16(3) of the Chhattisgarh Motor Vehicles Taxation Act, 1991 (hereinafter referred to as 'the State Act'). According to the seizure memo, the vehicle was found to be running as a Stage Carriage permit and consequently possessing more than the sanctioned sitting capacity. Treating the vehicle as being run without a permit, fine of Rs.57,000/- @ Rs.1,000/- per extra seat was levied under Section 16(3) of the State Act read with Schedule-I, Entry IV(g) of Explanation (d) and fine of Rs.39,000/- for extra sitting and sleeper seats was also levied.

3. The Petitioner filed an application under Sections 451 and 457 Cr.P.C. before the Chief Judicial Magistrate for release of the vehicle which was rejected on 2.7.2014 affirmed in revision by the Additional District and Session Judge, Manendragarh on the ground that once confiscation proceedings have started under Section 20-C of the State Act there was no jurisdiction to release the vehicle.

4. Learned Counsel for the Petitioner submits that Schedule-I, Entry IV(g) of Explanation (d) is an adaptation from the Madhya Pradesh Motoryan Karadhan Adhiniyam, 1992 (hereinafter referred to as 'the Act of 1991'). The constitutional validity of the same was considered in 2007 AIR SCW 556 (Hardeo Motor Transport v. State of Madhya Pradesh). It was held to be unconstitutional in view of Section 192-A of the Central Act. It was *inter alia* held that if there was a valid permit of one kind and the allegation was with regard to its use for which a different permit was required, it would not tantamount to the vehicle plying without permit. The penalty to be imposed under the State Act could not be higher than that under the Central Act. No confiscation proceeding has been initiated till date against the Petitioner. The fine leviable on account of the vehicle being run allegedly as a Stage Carriage permit during the subsistence of a licence for a Contract Carriage permit has been duly paid in accordance with Section 192-A of the Central Act on 24.3.2015.

5. Learned Additional Advocate General does not dispute the submissions of fact made on behalf of the Petitioner and further acknowledges that the fine as leviable under Section 192-A of the Central Act has been deposited by the Petitioner on 24.3.2015 and also that no confiscation proceedings has been initiated till date, and no cognizance has even been taken in the prosecution by the Respondents before the Competent Court.

6. We have considered the submissions on behalf of the parties. Schedule-I, Entry IV(g) of Explanation (d) of the Act is an adaptation from the Act of 1991, already held to be unconstitutional.

7. In Hardeo Motor Transport (supra) it was observed as follows:-

> '19... 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.
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> 36. The 1991 Act also does not make any provision for compliance of the principles of natural justice or for determination of a question as to whether the conditions of permit have been violated by an independent authority.

> 37. Appellants have paid tax. They have paid tax as specified for in permits granted in their favour as a contract carriage. The rate of tax payable for a contract carriage is higher than the rate of tax imposed on a stage carriage. For non-payment of tax or for payment of tax for a wrong purpose, a penalty can be imposed but it is difficult to conceive that a different rate of tax which is not contemplated under Section 3 of the 1991 Act can be imposed by way of penalty."

8. The Respondents are directed to release the vehicle of the Petitioner pursuant to his having deposited the penalty as prescribed under Section 192-A of the Central Act.

9. In the result, the writ application is allowed.

(Navin Sinha)	(P. Sam Koshy)
CHIEF JUSTICE	**JUDGE**

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