IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2575 OF 2016

Jatin S/o Ashok Arora,
Aged- 26 years, Occu: Transport
Business, R/o Shabad Pratap Ashram
Gwalior(M.P) Through his GPA
Vijaykumar S/o Kunjilal Bhaat,
Age: 48 years, Occu: Private Service,
R/o C-9/B Dwarikapur colony,
Near Khodapati Mandir, Gwalior (M.P.) ...PETITIONER

versus

The State of Maharashtra
Through its Secretary to
Home Department(Transport)
Mantralaya, Mumbai and others ...RESPONDENTS

.....
Mr. Pramod F. Pathni, Advocate for petitioner
Mr. B.A. Shinde, AGP for respondents No. 1 to 3
.....

CORAM : S. V. GANGAPURWALA AND
K.K. SONAWANE, JJ.

DATED : 29th APRIL, 2016.

Order :-

1. In present petition, the petitioner is challenging the authority of the respondents to levy and demand passenger tax at the rate of 70% load factor of sitting capacity of passenger transport vehicle. So also seeking declaration about clause (A) of Reciprocal Transport Agreement.

2. The learned counsel for the petitioner and the learned Assistant Government Pleader submit that, in similar set of facts, the division bench of this Court (Coram: R.M. Borde and A.I.S. Cheema, JJ.) has

delivered the judgment on 11th March, 2016, in Writ Petition No. 4098 of 2014 and other connected petitions.

3. Relevant paragraphs No. 11 and 12 of the judgment dated 11th March, 2016, in Writ Petition No. 4098 of 2014 and connected petitions read as under :

> *11. For the reasons recorded above, writ petitions deserve to be allowed and the same are accordingly allowed. Respondents have no authority in law to levy and demand passenger tax at the rate of 70% of the load factor of seating capacity of passenger transport vehicle since it is contrary to provisions of the Act of 1958, as well as impermissible for the reasons set out above. Respondents State authorities shall not demand passenger tax on computation of 70% of load factor of the seating capacity of the passenger transport vehicle and shall levy and collect tax strictly in accordance with the provisions of Bombay Motor Vehicles (Taxation of Passengers) Act, 1958.*
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> *12. Respective counsel for the petitioners, on instructions, state tReleganthat in terms of the directions issued by this Court during the pendency of these petitions, petitioners continued to deposit 50% of the amount as claimed from them and, the amount so paid shall be appropriated by the State towards past liability in respect of demand of tax. Petitioners do not have any specific objection for appropriation of the amount which they have deposited during the pendency of the petitions towards tax and, in future, levy and recovery of tax shall be in accordance with the Act of 1958. State Government shall be entitled to the amount deposited / to be deposited in view of interim orders which were passed during pendency of these petitions and to take further appropriate decisions in*

respect of recovery of past liability/difference of the petitioners as per rules relied on by the petitioners themselves and referred above. Rule is accordingly made absolute. In the facts and circumstances of the case, there shall be no order as to costs.

4. Considering the above, we follow the same course. For the reasons recorded in judgment dated 11th March, 2016, in Writ Petition No. 4098 of 2014 with other connected writ petitions, we pass the same order, as under.

5. Respondents have no authority in law to levy and demand passenger tax at the rate of 70% of the load factor of seating capacity of passenger transport vehicle since it is contrary to provisions of the Act of 1958, as well as impermissible for the reasons set out above. Respondents State authorities shall not demand passenger tax on computation of 70% of load factor of the seating capacity of the passenger transport vehicle and shall levy and collect tax strictly in accordance with the provisions of Bombay Motor Vehicles (Taxation of Passengers) Act, 1958.

6. Counsel for the petitioner, on instructions, states that in terms of the directions issued by this Court during the pendency of the petition, petitioner continued to deposit 50% of the amount as claimed from him and, the amount so paid shall be appropriated by the State towards past liability in respect of demand of tax. Petitioner does not have any specific objection for appropriation of the amount which he has deposited during the pendency of the petition towards tax and, in

future, levy and recovery of tax shall be in accordance with the Act of 1958. State Government shall be entitled to the amount deposited / to be deposited in view of interim orders which were passed during pendency of this petition and to take further appropriate decisions in respect of recovery of past liability/difference of the petitioner as per rules relied on by the petitioner himself and referred above.

7. Rule is accordingly made absolute. In the facts and circumstances of the case, there shall be no order as to costs. The writ petition accordingly stands disposed of. No costs.

Sd/- **Sd/-**

[K. K. SONAWANE, J.] **[S. V. GANGAPURWALA, J.]**

MTK