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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (T) No. 155 of 2017**

Abdul Shafiq, S/o Shri Abdul Hakeem, aged about 53 years, by occupation Bus Operator, Resident of Near Sahara Battery, Moudhapara, Raipur, Chhattisgarh.

---- Petitioner

Versus

1. The State of Chhattisgarh, through the Principal Secretary, Government of Chhattisgarh, Transport Department, Secretariat, Mahanadi Bhawan, New Raipur, Chhattisgarh.
2. The Transport Commissioner, Transport Department, Indrawati Bhawan, New Raipur, District Raipur, Chhattisgarh.
3. The Regional Transport Authority, Raipur District Raipur, Chhattisgarh.
4. The Regional Transport Officer/Taxation Authority/Registration Authority, Raipur, Chhattisgarh.

---- Respondents

For Petitioner : Shri Brajesh Kumar Dubey, Advocate.
 For Respondent/State : Shri Prafull N Bharat, Additional Advocate General.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sharad Kumar Gupta, Judge.

Order on Board**Per Thottathil B. Radhakrishnan, Chief Justice****14/07/2017**

1. This writ petition is filed challenging the validity of Sub-section (2) of Section 3 of the Chhattisgarh Motor Vehicle Taxation Act, 1991; for short 'Taxation Act'. Petitioner pleads that the impugned provision contradicts the contents of Sub-section (1) of Section 56 of the Motor Vehicles Act, 1988; for short 'MV Act', which invalidates the registration of a transport vehicle unless it carries a certificate of fitness. The plea is that, because the cancellation of a fitness certificate of a transport vehicle results in deemed invalidation of the registration of that vehicle, the impugned provision which enables levy of tax on a transport vehicle, merely on the ground that certificate of registration is current, notwithstanding the expiry of its certificate of fitness, is unconstitutional in the light of Article 254, apart from

infringing the fundamental rights guaranteed under Articles 14 and 19(1)(g) of the Constitution of India.

2. Heard the learned counsel for the Petitioner and the learned Additional Advocate General.
3. Section 39 of the MV Act makes registration of motor vehicles obligatory. It provides that no person shall drive any motor vehicle and no owner of a motor-vehicle shall cause or permit the vehicle to be driven in a public place or any other place unless the vehicle is registered in accordance with the Chapter IV of the MV Act and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner. The proviso to that Section is not relevant for the purpose of this case. Any mechanically propelled vehicle adapted for use upon roads detailed in the definition clause of Section 2(28) of the MV Act is a 'motor vehicle' or 'vehicle' for the purpose of that Act. Therefore, Section 39 of the MV Act applies to all motor-vehicles or vehicles as defined in Section 2(28) of the MV Act. Various definitions in Section 2 of that Act show that vehicles get classified into different categories as defined therein. Section 56(1) of the MV Act applies to “transport vehicle” which is defined in Section 2(47) of the MV Act, to mean a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle; which categories are also defined. Hence, the applicability of Section 56 of the MV Act is confined to transport vehicles. The proviso in Sub-section (1) of Section 56 of the MV Act denudes a transport vehicle of the efficacy and the validity of its registration under Section 39, unless it carries a “certificate of fitness”. The “certificate of registration” as defined in Section 2(4) of the MV Act evidences due registration of a motor-vehicle in accordance with the provisions of Chapter IV of the MV Act. The requirement that a transport vehicle shall possess a “certificate of fitness” in terms of Section 56(1) of that Act is one which is in addition to the requirement of certificate of registration. The effect of Sub-section (1) of Section 56 of the MV Act is that the validity of the registration of a transport vehicle for the

purpose of satisfying the mandate of Section 39 of the MV Act is not to be deemed, unless that particular transport vehicle carries a certificate of fitness in accordance with the provisions of Section 56 of the MV Act. Therefore, a transport vehicle may be one which is covered by a certificate of registration; yet, one which cannot be deemed to be one which is validly registered for the purpose of Section 39 unless it carries a certificate of fitness as enjoined in Section 56 of the MV Act. Reading such inhibition as contained in Section 56 of the MV Act alongwith the prohibition contained in Section 39, it can be seen that the legislative prescription through those statutory provisions is that no person shall drive any transport vehicle and no owner of any transport vehicle shall cause or permit that vehicle to be driven as delineated in Section 39 of the MV Act unless that transport vehicle carries a certificate of fitness in terms of the dictate of Section 56 of the MV Act read with the prescriptions made by the Central Government as enjoined in that section, apart from the certificate of registration.

4. Clause (c) of Section 2 of the Taxation Act defines 'tax' to mean a tax leviable under that Act. Section 3 of that Act provides for levy of tax on motor vehicles. It reads as follows :

“3. Levy of tax on Motor Vehicles. - (1) A tax shall be levied on every motor vehicle used or kept for use in the State at the rate specified in the First Schedule :

[Provided that the lifetime tax on every motor vehicle shall be levied at the rates specified in the second Schedule] :

Provided further that in respect of a motor vehicle passing through the State from a manufacturer to a dealer under a temporary certificate of registration for a period not exceeding one month, the rate of tax shall be one third of the tax payable for a quarter.

(2) A Transport Vehicle of which the certificate of registration is current, shall, for the purposes of this Act, be presumed to have been in use or kept for use, notwithstanding the expiry of the certificate of fitness in case of such transport vehicle.”

5. Sub-section (1) of Section 3 provides that a tax shall be levied on every motor vehicle used or kept for use in the State at the rate specified in the first Schedule

to that Act. The impugned Sub-section (2) of Section 3 provides that a transport vehicle of which the certificate of registration is current, shall, for the purpose of the Taxation Act, be presumed to have been in use or kept for use, notwithstanding the expiry of the certificate of fitness in case of such transport vehicle. The presumption so provided as per Sub-section (2) of Section 3 of the Taxation Act is that if a vehicle is covered by certificate of registration in terms of the Motor Vehicles Act and the Rules thereunder, it shall be deemed to be a vehicle which is used or kept to be used for the purpose of levy of tax under Sub-Section (1) of Section 3 of the Taxation Act.

6. As regards motor vehicle taxation, in terms of Entry 57 in List II (State List) in the Seventh Schedule in the Constitution, the State has the exclusive power to make laws with respect to taxes on vehicles, whether mechanically propelled or not, suitable for use on roads; subject to the provisions of Entry 35 of List III (Concurrent List), which includes the subject: principles on which taxes on mechanically propelled vehicle are to be levied. Therefore, the power of the State of Chhattisgarh to levy tax through the provisions of the Taxation Act is beyond dispute. The levy of tax as per Section 3 of the Taxation Act is on every motor vehicle used or kept for use in the State of Chhattisgarh. It is not made dependent on the registration of the vehicle. Also, such levy is not conditional on registration of the motor vehicle concerned. The provisions in Section 39 of the MV Act read with Section 56(1) of that Act does not abridge the authority to levy tax under Section 3 of the Taxation Act. The impugned provision in Section 3(2) of the Taxation Act is a statutory devise to protect and insulate the exchequer against deprivation of tax in terms of Section 3(1) of the Taxation Act on the premise that a transport vehicle, though stands with a certificate of registration, is to be treated as one which cannot be driven or permitted to be driven in any public or other place on the ground that it does not carry a certificate of fitness in terms of Section 56 of that Act. If we were to accept the plea that inspite of possessing a certificate of registration, a vehicle which has run beyond the expiry of certificate of fitness

should be exempted from levy of tax, that would impinge the provision for levy of tax, as is contained in Section 3(1) of the Taxation Act which imposes the levy tax on 'motor vehicle used or kept for use in the State'. There being no conflict between the provisions of the MV Act and the Taxation Act, the plea of the Petitioner that the impugned provision in the Taxation Act does not stand in the light of the Article 254 of the Constitution is repelled. In the light of the fact that the vehicles get classified into different categories or types, going by the interpretation clause, namely, Section 2 of the MV Act, no hostile discrimination can be read into the impugned provision in the Taxation Act. The impugned Sub-section (2) of Section 3 of the Taxation Act applies only to those vehicles which fall within the term 'transport vehicle' as defined in the MV Act. For this reason, the plea of arbitrariness and hostile discrimination and the challenge attempted to be levied with reference to Articles 14 and 19(1)(g) of the Constitution are only to be negated. We do so.

7. It is not in dispute that the Petitioner's vehicle is one which continues to hold a certificate of registration. Under such circumstances, we do not find that any case for examining the constitutional validity of the provisions is made out by the Petitioner. This writ petition therefore fails.
8. In the result, this writ petition is dismissed.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(Sharad Kumar Gupta)
JUDGE