

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7014 OF 2017

Kalicharan Rameshchandra Sonvaniya .. Petitioner

VS.

The Taxing Officer and Additional
Transport Commissioner, Mumbai and others .. Respondents

Mr. V.J. Dixit, Sr. Advocate i/b Mr. S.V. Dixit, Advocate for the petitioner
Mr. S.G. Karlekar, A.G.P. for the respondent/State

**CORAM : S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.**

DATE : 14-06-2017

ORAL ORDER :

1. The petitioner is aggrieved and dis-satisfied with the demand of tax.
2. Mr. Dixit, learned Senior Counsel appearing for the petitioner does not dispute that the Maharashtra Motor Vehicles (Taxation of Passenger) Act, 1958 (for short “**the Act**”) and the Maharashtra Motor Vehicles (Taxation of Passenger) Rules, 1958 (for short “**the Rules**”), contemplate an appeal against the notice of demand and impugned in the Writ Petition. However, he would submit that in this case, the demand is raised by the Divisional Transport Commissioner

and he is equal to the Transport Commissioner in every sense. Therefore, no useful purpose would be served by filing an appeal under Rule 12(2) of the Rules for it will be an appeal from Caesar to Caesar.

3. This Court was moved during Vacation by means of this Petition and the learned Vacation Judge on hearing the petitioner in the Vacation, passed the following order :-

“1. Heard learned Counsel for the petitioner. The petitioner is challenging the legality and correctness of the demand notice dated 08th May, 2017 issued under Section 9 of the Bombay Motor Vehicles (Taxation of Passenger) Act, 1958 read with Rule 9 thereof.

2. As seen from Section 11 and Rule 12 of the said Act and Rules respectively, there is an alternate remedy by way of appeal against such levy of taxes and demand notice. The petitioner may exhaust those remedies.

3. The learned Counsel for the petitioner submits that the petitioner would prefer appeal under the said provisions, however he prays that the petitioner may be protected for a reasonable period so as to enable him to approach the appellate authority.

4. Issue notice to the respondents. Learned A.G.P. waives service of notice on behalf of all the respondents.

5. It is likely that if the petitioner is not protected right now, coercive steps would be taken against him for

recovery of the amount demanded. The petitioner needs to be given some protection in the interest of justice so as to enable him to approach the appellate authority. The respondents shall not take coercive action against the petitioner in pursuance of demand notice till 10th June, 2017 so as to enable the petitioner to approach the appellate authority and seek interim relief. Authenticated copy of this order be given to the petitioner on request.

6. Stand over to 14th June, 2017.”

4. Mr. Dixit, learned senior counsel, on instructions states that that order was operating for a limited period, so as to enable the petitioner to avail of remedy of appeal. The petitioner has filed an appeal and applied for stay in that appeal and some oral directions have been issued not to enforce the demand notice but no written order has been passed.

5. In the peculiar facts and circumstances of this case and when the appeal is already filed, we do not express any opinion on the larger question and whether the remedy of appeal is really an efficacious one. If that remedy is illusory, as complained, then even that issue is kept open for the time being and since the demand is raised by the Divisional Commissioner, we direct the Transport Commissioner of Maharashtra to hear the petitioner's appeal, as expeditiously as possible and within a

period of three (3) months from the date of receipt of copy of this order.

6. It is the Transport Commissioner alone, who shall hear this appeal and uninfluenced by the notings or the observations of the Divisional Commissioner. The appeal shall be decided in accordance with law by a reasoned order, to be passed and communicated to the petitioner. The petitioner should be heard either through its representative or by any officer and allowed to produce all the relevant records and documents. They shall be considered by the appellate authority and all contentions be dealt with in the reasoned order. It is our anxiety that the right of Appeal guaranteed by the Rules should not only be efficacious but meaningful, that is why these elaborate directions.

7. Writ Petition is disposed of with an additional direction that till the appeal is decided, the demand shall not be implemented or enforced. We clarify that we have not expressed any opinion on the rival contentions as far as merits are concerned.

[MANGESH S. PATIL]
JUDGE

[S.C. DHARMADHIKARI]
JUDGE

arp/