IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 9511 OF 2017
IN WP/7014/2017

KALICHARAN RAMESHCHANDRA SONVANIYA.
VERSUS
TRANSPORT COMMISSIONER AND ANOTHER.

...
Advocate for Applicants : Shri V.D.Dixit, Senior Advocate h/f Shri Dixit Sushant V..
AGP for Respondents/ State : Shri S.G.Karlekar.
...

CORAM: S.C. DHARMADHIKARI
AND
MANGESH S. PATIL, JJ.

DATE :- 25th July, 2017

P.C.:

1 This Civil Application is moved by the original Petitioner seeking clarification from this Court whether, this Court in it's order passed on 14.06.2017 in the above Writ Petition directed that the appeal should be heard by the Appellate Authority within the meaning of Rule 12(2) of the Bombay Motor Vehicles (Taxation of Passengers) Rules, 1958 or that the appeal should be heard by the Transport Commissioner.

2 It is submitted by Shri Dixit, learned Senior Advocate appearing for the Applicant/ original Petitioner, that the Petitioner should not be now relegated to filing another petition to challenge the communication at page 14 of the Civil Application paper book. On the

date the order was passed by this Court, promptly it was clarified that the appeal of the Petitioner/ Applicant cannot be heard by the Transport Commissioner. Sub rule (2) of Rule 12 of the Bombay Motor Vehicles (Taxation of Passengers) Rules, 1958 employs the word "Commissioner" within the limits of whose jurisdiction the area of jurisdiction of the Tax Officer issuing the notice lies. The word "Commissioner", therefore, having not been defined under the Acts, namely, the Motor Vehicles Act, 1988, the Central Motor Vehicle Rules, 1989 or the Maharashtra Motor Vehicles Rules, 1989 or the Bombay Motor Vehicles (Taxation of Passengers) Act, 1958 or the Bombay Motor Vehicles (Taxation of Passengers) Rules, 1958 or the Bombay Motor Vehicles Tax Act, 1958 or the Bombay Motor Vehicles Tax Rules, 1959, that must be construed with reference to the meaning assigned to it in the General Clauses Act, 1897 or the Maharashtra General Clauses Act (Bombay Act No.I of 1904), is thus the basis for this version.

3 Shri Karlekar, learned AGP, would submit that it is true that the order at page 14 of the Civil Application paper book was passed straightway and without noticing the contours of this Court's directions. This Court, therefore, should pass an appropriate order on the Civil Application.

4 The communication at page 14 of the paper book relates to the very appeal which we had directed, should be heard and decided in

accordance with law. Our order dated 14.06.2017 is clear. The Court was moved by the original Petitioner/ Applicant before us challenging the demand raised by the Additional Transport Commissioner, Maharashtra State, Mumbai. When it was brought to the notice of the Petitioner that an appeal lies under Rule 12(2) of the Bombay Motor Vehicles (Taxation of Passengers) Rules, 1958, the complaint was made that it would mean that an appeal lies from Caesar to Caesar. It in these circumstances that this Court issued the clarification and that is after the learned Senior Counsel appearing for the Petitioner agreed to avail of the remedy of appeal. Paragraphs 4 to 6 of the order of this Court dated 14.06.2017 reads as under:-

> "*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.
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> *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.*
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> *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.*"

5 The definitions in the General Clauses Act, 1897 or the Maharashtra General Clauses Act are contained in Section 3 of both Acts. That Section itself opens with the following words:-

The General Clauses Act, 1897:

> "*3. In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context, ...*"

The Maharashtra General Clauses Act:

> "*3. In this Act, and in all Bombay Acts (or Maharashtra Acts) made after the commencement of this Act, unless there is anything repugnant in the subject or context, ...*"

6 A bare reading of these words would reveal as to how the General Definitions have to be applied unless there is anything repugnant in the subject or context.

7 Before us, the subject is of the demand of tax under the Bombay Motor Vehicles (Taxation of Passengers) Rules, 1958. The Act is

the Bombay Motor Vehicles Tax Act, 1958. Section 2 thereof contains the definitions. The term "tax" is defined in Section 2(6) to mean a tax including any additional or one time tax imposed by or under this Act. "Taxation Authority" or "Authority" means such officer or authority as the State Government may, by notification in the official Gazette, appoint to be the Taxation Authority for the whole State or for any area or areas for the purposes of this Act, and the State Government may appoint more than one officer or authority as Taxation Authority for the whole State or for any area (See Section 2(7)). Then, there is schedule appended which schedule says that the officers at Sr.Nos.1, 2, 3 and 4 are the Transport Commissioner, Joint Transport Commissioner, Deputy Transport Commissioner and Assistant Transport Commissioner, respectively and their area is the whole State.

8 In the instant case, the demand was raised by the Additional Transport Commissioner. The appeal, therefore, according to the Petitioner, would lie to the Appellate Authority. Section 3 of the Bombay Motor Vehicles Tax Act, 1958 deals with levy of tax. The tax is levied in terms of the First Schedule and on the category of vehicles set out therein. Section 4 provides for payment of tax. Section 4-A sets out a provision for payment of tax from the month of registration of vehicle etc.. Section 5 provides for issuance of certificate of taxation. Section 6 states that tax to be paid along with declaration. Then, in the event of any additional tax

payment, same is envisaged by Section 7. Section 8 deals with any liability to pay arrears of tax and interest due, if any, of persons succeeding to the ownership, possession or control of motor vehicles. Section 8-A provides for interest to be paid, if tax is not paid within time limit. Refund of tax is dealt with by Section 9. There are further sections dealing with special provisions for fleet owners, tax on transport vehicles brought in the State on temporary permits, destination and utilisation of the proceeds of tax. Arrears of tax and interest recoverable as arrears of land revenue are dealt with in Section 12. There are further provisions including exemptions.

9 We do not see how when it comes to a matter of recovery of tax under the Bombay Motor Vehicles Tax Act, 1958, the power to levy, assess and recover the tax is conferred in the officers of the Motor Vehicle Department, the Transport Commissioner is denuded of any power of appeal. The power of appeal to challenge the demand of tax is to be exercised by the Commissioner of the Revenue Division is the understanding prevailing amongst the officers under the Bombay Motor Vehicles Tax Act, 1958. We have not been shown any provisions in the Bombay Motor Vehicles Tax Act, 1958 which would take away the authority, jurisdiction and power of the Transport Commissioner when he is at the topmost position. There is no restriction or fetter on his power for his area is whole State. Similar is the provision with regard to the Joint Transport Commissioner. In such circumstances, there must be something

in the Bombay Motor Vehicles Tax Act, 1958 which takes away the power, authority and jurisdiction of the Transport Commissioner to hear the appeal. The Bombay Motor Vehicles Tax Act, 1958 empowers the making of the Rules. That is how the Rules styled as "the Bombay Motor Vehicles (Taxation of Passengers) Rules, 1958" have been framed. Prior thereto, there are the Bombay Motor Vehicles Tax Rules, 1959.

10 It is in these circumstances that when the word "Taxation Authority" has been employed and used throughout, the demand is of the tax and payable under the Bombay Motor Vehicles Tax Act, 1958, may be a category of tax thereunder and leviable on the passengers. Nonetheless, the power to tax, levy, assess and recover it, is traceable to these provisions. If the Bombay Motor Vehicles (Taxation of Passengers) Act, 1958 is also enacted and with same stipulations, then, all the more, we do not understand as to how the words and expressions used, but not defined in this Act and the above enactments can be construed de-hors the scheme of the Motor Vehicles Act, 1988. They will have the meaning assigned to them in the Motor Vehicles Act, 1988 is the clarification. However, the definition in the Bombay Motor Vehicles (Taxation of Passengers) Act, 1958 of the term or word "Tax Officer" reads as under:-

> *"2(9) "Tax Officer" means such officer as the State Government may, by notification in the Official Gazette, appoint to be the Tax Officer for the whole State or for any area or areas for the purposes of this Act, and the State Government may appoint more than one officer as Tax*

Officers for the whole State or for any area;"

11 There is notification issued in exercise of the powers conferred by Section 2(9) of the Bombay Motor Vehicles (Taxation of Passengers) Act, 1958 and which supercedes all previous notifications. It is the Government of Maharashtra which appoints each of the officers specified in the column 2 of the Schedule as Tax Officers for the areas specified in the next column.

12 It is submitted by Mr.Karlekar that the Transport Commissioner is notified as Taxing Authority in the sense he is the Tax Officer. Therefore, advisedly in the Rules, a provision is made of an appeal, but not to him. He would submit that if the demand is raised and in terms of Section 9 of the Bombay Motor Vehicles (Taxation of Passengers) Act, 1958, then, the appeal lies to the prescribed Authority under Section 11 of the Bombay Motor Vehicles (Taxation of Passengers) Act, 1958. The "prescribed authority" would mean prescribed by the Rules made under this Act. In the Rules which have been framed, the term has not been defined. In the the Bombay Motor Vehicles (Taxation of Passengers) Rules, 1958, therefore, an appeal is provided against the notice of demand in the case of a fleet owner and which will lie to the State Government and such appeal shall be heard by the Secretary or Deputy Secretary to the Government of Bombay in the Home Department

on behalf of the State of Maharashtra. Rule 12(2) of the Bombay Motor Vehicles (Taxation of Passengers) Rules, 1958, however, provides for an appeal against the notice of demand in case of any other operator and that would lie to the Commissioner within the limits of whose jurisdiction the area of jurisdiction of the Tax Officer issuing the notice lies.

13 We are dealing with the situation of sub-rule (2) of Rule 12 where an appeal lies to the Commissioner. Now, the term "Commissioner" according to the learned AGP and the State, must derive it's meaning not from any definition or any provision under the Bombay Motor Vehicles (Taxation of Passengers) Act, 1958 or Rules, but the General Clauses Act.

14 While it is true that there is a provision of appeal and in the case of a fleet owner such an appeal lies to the Government. But, in the case of any other operator, it should lie to the Commissioner within the limits of whose jurisdiction the area of jurisdiction of the Tax Officer issuing the notice lies. If that is how the provision is understood, then, a situation arises where, as in the present case, the demand is raised by the Additional Transport Commissioner. The term "Commissioner" as is understood by the law which we have referred above is the Commissioner known as the Transport Commissioner whose area is the whole State. The area of the Joint Transport Commissioner, Deputy Transport Commissioner and Assistant Transport Commissioner is also the whole State. The area of Additional Transport Commissioner and in this case who is raising the

demand for tax, has neither been defined nor the term is appearing in the Schedule to the notification issued under Section 2(9) of the the Bombay Motor Vehicles (Taxation of Passengers) Act, 1958. It would be incongruous if, as in the present case, the Commissioner of Transport or the Additional Commissioner of Transport or the Joint Transport Commissioner raises the demand. The Additional Transport Commissioner is raising the instant demand on the footing that the vehicle has come within his area of jurisdiction. The Transport Commissioner, however, is the Transport Commissioner for the whole State and his area is the whole State.

15 In such circumstances, the demand in the present case and which is traceable to Dhule District is raised by the Tax Officer or Taxing Officer who also happens to be the Additional Transport Commissioner. However, this demand is traceable to Rule 9 of the Bombay Motor Vehicles (Taxation of Passengers) Rules, 1958 and in the Form VI. Having carefully perused the Bombay Motor Vehicles (Taxation of Passengers) Act, 1958 and the Rules and the Form-VI appended thereto, we are of the opinion that the designation apart, the demand was raised as a Tax Officer. In the circumstances, if an appeal has to be heard against such demand and decided in accordance with law, it would mean that the Transport Commissioner, an authority created by the Bombay Motor Vehicles Tax Act, 1958 and the highest in the hierarchy, would have no appellate

power. It would be only the Commissioner of Revenue Division. Therefore, though a Commissioner level officer, as in this case, acting as a Taxing Officer has raised the demand, but the Commissioner of Revenue Division would sit as an appellate authority. Meaning thereby, the Transport Commissioner would have no jurisdiction or power to decide the appeal against the demand raised by the Tax Officer. The Transport Commissioner would then have to abide by the adjudication in appeal by the Revenue Commissioner. That would definitely create a situation in which if the tax falls in arrears, that has to be recovered as arrears of the land revenue by the officer under the Maharashtra Land Revenue Code, 1966. In the Revenue Division, the Revenue Commissioner is the topmost officer amongst of the officers and functionaries under the Maharashtra Land Revenue Code, 1966. If he has to decide legality and validity of the tax, then, the full process would create a situation of conflict. Other officers and functionaries under the Maharashtra Land Revenue Code, 1966, therefore, can recover the tax only as decided by the Commissioner of the Revenue Division in appeal. That would then necessarily mean that the Commissioner of Revenue Division though envisaged as an authority and head in matters of recovery of arrears of tax, goes behind and scrutinizes the notice of demand for it's legality and validity. We do not think that such situation was ever envisaged.

16 It is in these circumstances that when there is a notice of

demand served and an appeal lies to the prescribed authority, the prescribed authority would mean none other than the functionary and at the topmost level under the scheme of the Motor Vehicles Act, 1988, the Bombay Motor Vehicles Tax Act, 1958, the Bombay Motor Vehicles (Taxation of Passengers) Act, 1958 and the Rules made thereunder. It could be the State Government. We had the Transport Commissioner only in mind and no other Commissioner.

17 We do not think that the power of revision conferred in the State Government by Section 11-A of the Bombay Motor Vehicles (Taxation of Passengers) Act, 1958 would have any bearing on the issue. That power of revision, if available, can always be invoked even against the order of the appellate authority in this case, namely, the Transport Commissioner.

18 Therefore, we do not feel that there is any ambiguity or confusion in our order dated 14.06.2017 passed in Writ Petition No.7014/2017. We had always in mind the Transport Commissioner. It is the Transport Commissioner who shall decide the appeal in terms of Rule 12 (2) of the Bombay Motor Vehicles (Taxation of Passengers) Rules, 1958. That appeal shall be heard and decided on it's merits. The communication at page 14 of this Civil Application does not survive in the light of the above. It is set aside.

19 Now that the Transport Commissioner will hear the appeal, it

should be disposed of as expeditiously as possible and within a period of FOUR WEEKS from the date of receipt of a copy of this order. In the event, a fresh appeal is instituted by the Petitioner/ Applicant, then, our direction to dispose of the appeal within four weeks shall be reckoned from the date of filing of such appeal. Either way, the notice of demand shall not be enforced and executed until the appeal is heard and disposed of. Needless to clarify that in the event the fresh Appeal is not instituted or the Appeal is not pressed within the above period by the Petitioner, the demand can be enforced and executed in accordance with law.

20 The Civil Application is, accordingly, disposed of.

kps **(MANGESH S. PATIL, J.)** **(S.C. DHARMADHIKARI, J.)**