

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 16.03.2017

PRONOUNCED ON: 03.04.2017

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

&

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.NOs.1598, 1067, 2117, 3519, 4939 of 2017

and

W.M.P.Nos.1561, 1023, 2083, 3534 and 5170 of 2017

Chennai City Auto Ootunargal Sangam,
Represented by its Secretary
J.Manohar

... Petitioner in W.P.No.1598 of 2017

Tamilnadu Driving Schools Owners Federation,
Represented by its General Secretary
Mr.James Jayaseelan,
No.12, G.S.T.Road,
Pallavaram, Chennai-43.

... Petitioner in W.P.No.1067 of 2017

Madras Metro Auto Drivers Association
(Affiliated with AITUC)

Represented by its General Secretary
J.Seshasayanam,

Old No.204, New No.48,
Prakasam Road, Jeeva Hall,
Broadway,
Chennai 600 108.

...Petitioner in W.P.No.2117 of 2017

Vada Chennai Maavatta Auto Ottunargal
Padugappu Nalasangam,

Represented by its General Secretary Mr.M.Anandan
No.29, Anandanayaki Nagar, 2nd Street,
C.B.Road, Chennai 600 021

... Petitioner in W.P.No.3519 of 2017

Tamilnadu Lorry Owners Federation
Rep. by its President Mr.R.Sugumar,
No.19, 200 Feet Road,
Sivananda Nagar,
Kolathur,
Chennai 600 099.

.. Petitioner in W.P.No.4939 of 2017

Vs

1. The Secretary,
Ministry of Road Transport and Highways,
Union Government of India,
New Delhi.
2. The Secretary,
Home (Transport)
Fort St. George,
Chennai 600 009.
3. The Transport Commissioner,
State Transport Authority,
Chepauk,
Chennai 600 005.

.. Respondents in all the Writ Petitions

Prayer in W.P.Nos.1598, 2117, 3519 and 4939 of 2017: Writ Petition filed under Article 226 of Constitution of India praying for issuance of Writ of Declaration to declare the impugned Notification of the 1st respondent with reference to the Amendment to Rule 32 and Rule 81 of the Central Motor vehicles Rules with reference to increase of Fees vide Gazette Notification in G.S.R.1183(E) dated 29.12.2016 as invalid, illegal, ultravires and unconstitutional.

Prayer in W.P.No.1067 of 2017: Writ Petition filed under Article 226 of Constitution of India praying for issuance of Writ of Declaration to declare the impugned Notification of the 1st respondent with reference to the Amendment to Rule 32 of the Central Motor vehicles Rules with reference to increase of Fees vide Gazette Notification in G.S.R.1183(E) dated 29.12.2016 as "invalid, illegal, ultravires and unconstitutional

For Petitioner :Mr.S.Govindraman (in all WPs)

For Resondents :Mr.G.Rajagopalan ASGI
Assisted by Mr.J. Madanagopala Rao for R1
Mr.A.N.Thambidurai,
Spl.Govt. Pleader for R2 and R3
(in all WPs)

ORDER

(Order of the Court was delivered by Anita Sumanth, J.)

This batch of Writ Petitions has been filed by various Associations namely Chennai City Auto Ootunargal Sangam, Tamilnadu Driving Schools Owners Federation, Madras Metro Auto Drivers Association, Vada Chennai Maavatta Auto Ottunargal Padugappu Nalasangam and Tamilnadu Lorry Owners Federation, challenging notification issued in G.S.R.1183(E) dated 29.12.2016 amending Rule 32 and Rule 81 of the Central Motor Vehicle Rules 1989 ('Rules') fixing a new fee structure under the Motor vehicles Act 1988 ('Act') and levying additional fees for certain category of services rendered by the authorities under the Act. Though the prayer addresses the notification in entirety, challenging the same on the ground of unconstitutionality and invalidity, the petitioners, have, in the course of the hearing restricted the prayer to the levy of additional fees alone.

2. The main contention of the petitioners as canvassed by Mr.S.Govindraman, Learned Counsel appearing for all writ petitioners is as follows:

The Petitioner Associations represent owners and drivers of Autos and Lorries as well as driving schools covered under the provisions of the Motor Vehicles Act 1988. The Act stipulates various conditions that are to be complied with by the members of the Associations such as the holding of valid licenses for plying of the vehicle, affixation of valid registration mark on the vehicle, norms to be followed in the conduct of driving classes etc. Section 110 of the Act authorizes the Central Government to make Rules in regard to the construction, equipment and maintenance of motor vehicles and trailers as well as various matters connected therewith. The power to levy fee is set out in terms of Section 211 of the Act in the following terms:

'211. Power to levy fee.- Any rule which the Central Government or the State Government is empowered to make under this Act may, notwithstanding the absence of any express provision to that effect, provide for the levy of such fees in respect of applications, amendment of documents, issue of certificates, licenses, permits, tests, endorsements, badges, plates, countersignatures, authorization, supply of statistics or copies of documents or orders and for any other purpose or matter involving the rendering of any service by the officers or

authorities under this Act or any rule made thereunder as may be considered necessary:

Provided that the Government may, if it considers necessary so to do, in the public interest, by general or special order, exempt any class of persons from the payment of any such fee either in part or in full.'

3. The main contention of the petitioners is to the effect that the power under section 21 of the Act is restricted to the levy of a fee alone and does not extend to the levy of additional fee as proposed in the impugned notification. The instances where additional fee is proposed to be levied are as follows (emphasized in italicized bold);

'32. Fees. - The fees which shall be charges under the provisions of this Chapter shall be as specified in the Table below:

Provided that the States may levy additional amounts to cover the cost of automation and technology utilized for conducting the testing or providing value added services.....

TABLE

Sl.No	Purpose	Amount	Rule	Section
(1)	(2)	(3)	(4)	(5)
9	Renewal of a driving licence for which application is made after the grace period.	Three Hundred rupees Note: Additional fee at the rate of one thousand rupees for delay of each year or part thereof reckoned from the date of expiry of the grace period shall be levied.		15

.....

"81. Fees. The fees which shall be charged under the provisions of this Chapter shall be as specified in the Table below:

Provided that the States may levy additional amounts to cover the cost of automation and technology utilized for conducting the testing or providing value added services.

Sl.No.	Purpose	Amount		
(1)	(2)	(3)		
4	Issue or renewal of certificate or registration and assignment of new registration mark:.....			
	(j) Any other vehicle not mentioned above	Three thousand rupees		
	Note 1: Additional fee of two hundred rupees shall be levied if the certificate of registration is a smart card type issued or renewed in Form 23A Note 2: In case of delay in applying for renewal of certificate of registration, an additional fee of three hundred rupees for delay of every month or part thereof in respect of motor cycles and five hundred rupees for delay of every month or part thereof in respect of other classes of non-transport vehicles shall be levied.			

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6	Transfer of ownership	Half of the fee mentioned against Serial No.4 Note: In case of delay in submission of "No Objection Certificate", an additional fee of rupees three hundred for delay of each month or part thereof in case of motor cycles and five hundred rupees for each month of delay or part thereof for other vehicles shall be levied.		
7.	Change of residence	Half of the fee mentioned against Serial No.4 Note: In Case of delay in submission of "No Objection Certificate" for change of residence, an additional fee of rupees three hundred for delay of each month or part thereof in case of motor cycles and five hundred rupees for each month of delay or part thereof for other vehicles shall be levied.		
11	Grant of renewal of certificate of fitness for motor vehicle	Two hundred rupees Note: Additional fee of fifty rupees for each of delay after expiry of certificate of fitness shall be levied		

4. The petitioners would contend that the levy of additional fee was in the nature of a fine or penalty over and above the prescribed fee and that the provisions of the Act and the Rules do not authorize such punitive levy. They would rely on the following judgments, specifically on the portions extracted hereunder, to buttress their arguments:

(i) India Carbon Ltd Vs. State of Assam (AIR 1997 SC 3054)

'12. There is no substantive provision in the Central Act requiring the payment of interest on Central Sales tax. There is, therefore, no substantive provision in the Central Act which obliges the assessee to pay interest on delayed payments of Central sales tax.'

(ii) Eastern Electrics Vs. State of Tamilnadu (2009(22) VST 544(Mad)) applied in State of Tamilnadu Vs. All India Tools Centre 2013 ((60) VST 106 (Mad))

'A charging section is substantive law as seen in J.K. Synthetics Ltd. v. Commercial Taxes Officer [1994] 94 STC 422 (SC). Therefore, there can be no levy of penalty without the charging section. This is in accordance with India Carbon [1997] 106 STC 460 (SC) and J.K. Synthetics Ltd. [1994] 94 STC 422 (SC). The judgments, which deal with clarificatory sections are of no help since the section 3B is not a clarificatory section, it introduces for the first time the power to levy penalty. Karthik Roller Flour Mills case (Writ Petition Nos. 6777 and 6778 of 2001 decided on August 14, 2002-Madras High Court) correctly hold that in the absence of the substantive provision, in the AST Act itself, relating to levy of interest, the provisions of the TNGST Act cannot be the source of power of such levy. Similarly, unless there is a charging section for levy of penalty, there can be no automatic reading of the power to levy penalty. The levy of penalty cannot be sustained. We are in agreement with S.P.G. Ramasamy Nadar & Sons v. Commercial Tax Officer [2004] 136 STC 606 (Mad). In our view, therefore, we see no reason to refer the matter for reconsideration.'

(iii) Ahmedabad Urban Development Authority Vs. Sharadkumar Jayantikumar Pasawalla and others (AIR1992 SC 2038)

'After giving our anxious consideration to the contentions raised by Mr. Goswami, it appears to us that in a fiscal matter it will not be proper to hold that even in the

absence of express provision, a delegated authority can impose tax or fee. In our view, such power of imposition of tax and/or fee by delegated authority must be very specific and there is no scope of implied authority for imposition of such tax or fee. It appears to us that the delegated authority must act strictly within the parameters of the authority delegated to it under Act and it will not be proper to bring the theory of implied intent or the concept of incidental and ancillary power in the matter of exercise of fiscal power. The facts and circumstances in the case of District Council of Jowai are entirely different. The exercise of powers by the Autonomous Jaintia Hills Districts are controlled by the constitutional provisions and in the special facts of the case, this Court has indicated that the realisation of just fee for the a specific purpose by the autonomous District was justified and such power was implied.'

(iv) Bimal Chandra Banerjee Vs.State of Madhya Pradesh and others (AIR 1971 SC 517)

'18. No tax can be imposed by any bye-law or rule or regulation unless the statute under which the subordinate legislation is made specially authorizes the imposition even if it is assumed that the power to tax can be delegated to the executive. The basis of the statutory power conferred by the statute cannot be transgressed by the rule-making authority. A rule making authority has no plenary power. It has to act within the limits of the power granted to it.'

5. Per contra, Mr.G.Rajagopalan, learned Addl. Solicitor General of India appearing for the respondents would rely on the judgement of the Supreme Court in Dundlod Shikshan Sansthan and another (2015 SCC Online Raj 9240), specifically paragraph 9 thereof, in support of the levy.

"8. In the present case, the fee was levied under section 200 for late filing of the returns, prior to the amendments made by the Finance Act, 2015 with effect from 1.6.2015 in Sections 200A, 246A and 272A providing for computation and appeal. We do not find that even prior to these amendments the imposition of fee was illegal. We do not in exercise of the power under Article 226 of

the Constitution of India find any valid reasons or justification to interfere with the compensatory fees imposed for late filing of the TDS returns on flat rates. The absence of any provision for condonation of delay and the appeal prior to amendments also did not make the imposition of late fees by Section 234E to be ultra vires.'

6. At the outset, there was a contest of the maintainability of the writ petitions. Mr.Rajagopal would submit that the Associations did not have the locus standi to file the same in so far as no fundamental right of the Association per se, was affected, and as such, the writ petitions were liable to be dismissed on this one ground alone.

7. He would rely on the following judgments in support of his submissions:

(i) The Tamilnadu Outdoor Advertising Association, represented by its Secretary Thiru.A.G.Nayagam Vs. Government of Tamilnadu, represented by its Secretary, Municipal Administration and Water Supply Department and nine others (2012 (8) SCC 680)

(ii) Mahinder Kumar Gupta and others Vs. Union of India, Ministry of Petroleum and Natural Gas (1995 (1) SCC 85)

8. On merits, he would draw our attention to the provisions of Section 110 and section 211 of the Motor Vehicles Act emphasizing the availability of power in the statute for the levy of fee that, according to him, extended to the levy of additional fee as well.

9. We have applied our mind to the detailed submissions advanced and perused the judgments relied upon and documents filed by the parties. First, we address the issue of maintainability. All the associations are duly registered. A list of members has been annexed to each writ petition and it cannot be denied that the relief sought directly concerns each member of the Association. The question that arises is whether the writ petitions filed by the Associations seeking relief on behalf of its members are maintainable. Reliance in this regard has been placed by the respondent on the judgment of the Supreme Court in Mahendra Kumar's case (supra) wherein the Bench was concerned with a challenge to eligibility restrictions imposed on the award of dealerships or distributorships of petroleum products. The Bench found that several persons connected to the appellants already had such dealerships and that the regulations

sought to be imposed were for the larger public good. The petition filed by the association was dismissed on the ground that the association did not have a fundamental right under Article 32 of the Constitution. A Division Bench of this court in the case of Tamilnadu Outdoor Advertising Association (supra) was concerned with a challenge to various regulations enacted by the Government seeking to check and streamline the erection of hoardings in public places or buildings belonging to Government, local bodies or corporations. The challenge, by the Association of entities engaged in the business of outdoor advertising, was mainly on the ground that the regulation affected the fundamental right to carry on business. In this context, the court observed that the petitioner was not, by itself, an advertiser and as such, there had been no violation of the fundamental rights guaranteed under Art. 19(1)(a) of the Constitution of India vis -a-vis the petitioner.

In this regard, useful reference may be made to the judgement of the Supreme Court in Vinoy Kumar v. State of Uttar Pradesh (AIR 2001 SC 1739) wherein, at para 2, the Bench states thus:

'Generally speaking, a person shall have no locus standi to file a writ petition if he is not personally affected by the impugned order or his fundamental rights have neither been directly or substantially invaded nor is there any imminent danger of such rights being invaded or his acquired interests have been violated ignoring the applicable rules. The relief under Art. 226 of the Constitution is based on the existence of a right in favour of the person invoking the jurisdiction. The exception to the general rule is only in cases where the writ applied for is a writ of habeas corpus or quo warranto or filed in public interest. It is a matter of prudence, that the Court confines the exercise of writ jurisdiction to cases where legal wrong or legal injuries caused to a particular person or his fundamental rights are violated, and not to entertain cases of individual wrong or injury at the instance of third party where there is an effective legal aid organization which can take care of such cases. Even in cases filed in public interest, the Court can exercise the writ jurisdiction at the instance of a third party only when it is shown that the legal wrong or legal injury or illegal burden is threatened and such person or determined class of persons is, by reason of poverty, helplessness or disability or

socially or economically disadvantaged position, unable to approach the Court for relief.'

10. The members of the petitioner associations are auto and lorry drivers belonging to the economically disadvantaged sections of society. The affidavits filed in support of the writ petitions, including by the Association of the Tamil Nadu driving schools, states so and this has not been denied in the counter affidavits filed by the 1st and the 3rd respondents. No counter has been filed by the 2nd respondent. In fact, there is no challenge to maintainability in the counters filed and only an oral objection is raised at the time of the hearing. Further, we believe that non-compliance of the provisions of the Act attracting the levy of fee in the first place would have already caused prejudice to the members of the petitioner associations as they could not have engaged or pursued their line of work. The levy of an additional fee in the nature of a penalty will only compound this prejudice. We cannot lose sight of the position that the service rendered by the authorities u/s 211 of the Act will remain the same irrespective of the period of delay in compliance of the statutory provisions by the petitioners and there is thus no justification for the levy of a penalty over and above the levy of the fee itself. In this light of the matter and applying the rationale of the judgment in the case of Vinay Kumar (supra) we find no infirmity in the petitioners having approached this court through their Associations and hold the Writ Petitions to be maintainable.

11. Though the initial attempt of the petitioners was to challenge the notification in full, they have, in the course of hearing, rightly restricted their challenge to the levy of additional fees alone. As it were, such an enlarged challenge could not have found favour with the court in view of the provisions of section 110 of the Act r/w section 210 thereof permitting the levy of a fee on services rendered by officers or authorities under the Act. Such levy has been in place from the commencement of the act in 1988 till the proposed revision in 2016, and accepted by the petitioners without demur.

12. We now consider the validity of the proposed additional fee. The situations where additional fee is proposed are tabulated in paragraph 4 above. The main contention of the petitioners is that the additional fee sought to be levied is without the authority of law in so far as the existing provisions of the Act and the Rules provide only for the levy of a fee and nothing beyond. We agree with this submission. A perusal of the provisions of section 22 would indicate clearly that the Act contemplates only the levy of a fee in return for services rendered by the authorities. Nowhere is there sanction for any levy over and above the fee. The settled proposition

that emerges from the judgments relied upon by the Petitioners is that there can be no substantive levy without the backing of a charging provision in this regard. Though the judgments have been rendered in the context of various revenue enactments, the principle is equally applicable to the present case. With respect to the case-law cited by the respondents, the challenge in that matter was to the constitutionality of section 234E of the Income Tax Act 1961 enacted for the levy of a fee for delay in filing a return of tax deduction, that stood repelled. That was not a case where a fee was sought to be levied in the absence of a charging provision. We are thus of the view that the cited case is of no assistance to the respondent.

13. Prior to the proposed levy, a Committee was constituted to consider the revision of fees prescribed under the Rules. A copy of the report dated September 2014 has been made available. The Committee notes that the fees prescribed for various purposes were last revised vide amendment notification No.GSR 221(E) dt.28.3.2001 effective from the same date and that there has been no revision since. On account of the significant increase in cost of infrastructure, the committee suggests increasing the fee. With respect to the levy of additional fees or a fine, the committee makes the following observations and recommendations:

'A. At present, there is no fine prescribed for non-renewal of registration in respect of non-transport vehicles. This results in there being a large number of them plying without renewal of their certificates of registration.

The Committee therefore recommends to prescribe a fine of Rs.300/- per month or part thereof for motor cycles and Rs.500/- per month or part thereof for other vehicles for late renewal of registration (i.e. after 15 years) of non-transport vehicles.

B. At present, there is no fine prescribed for delayed submission of NOC for change of address and transfer of ownership. This result in very late submission of NOC's in these cases, going even upto 2 to 3 years. This creates a peculiar situation as previous office has issued NOC and new office has not received the same, thereby keeping record in both offices blank and incomplete.

The Committee therefore recommends to prescribe a fine of Rs.300/- per month for motor cycles and Rs.500/- per month or part thereof for

other vehicles for delay in submitting NOC for change of address and transfer of ownership.

C. At present, there is no fine prescribed for non-renewal of fitness certificate before its expiry. Due to this, there is likelihood of such vehicles plying on expired certificates of fitness. To curb this tendency, it is necessary to levy a fine for non renewal of fitness certificate in time."

The Committee therefore recommends to prescribe a fine of Rs.50/- per day for non renewal of fitness certificate in time.

The present provisions of the Motor Vehicles Act do not provide for levy of fines in the above circumstances. The MoRTH may consider and make necessary amendments in the Motor Vehicles Act accordingly.'

14. Thus the suggestion of the committee for the levy of a fine is itself, and rightly, subject to the amendment of the Act to provide for such levy. The purpose behind the suggestion is on the ground that it would deter the plying of vehicles without required documentation and compliances. Such purpose would however, have to be achieved taking recourse to the available methods. The present proposal for the levy of a fine is clearly without the requisite authority. Indeed the observation of the committee extracted above with the specific suggestion for amendment makes this position clear and unambiguous.

15. The Motor Vehicles Act has been enacted to take into account and provide for road transport technology, pattern of passenger and freight movements, development of road net work in the country and improved techniques in motor vehicle management.

The power extended to Government in terms of sec.211 of the Act is for the levy of a fee as a quid pro quo for services offered by officers or authorities under the Act. The fee prescribed is thus designed to be commensurate to the service rendered by the authority. We fail to see any justification for the levy of an additional fee in the nature of the penalty when there is no change in the nature of service rendered by the authority under the Act particularly in the absence of any statutory backing for the same. The purpose, as is apparent from the recommendation of the committee is the fond hope that such levy would act as a deterrent for non-compliance of various provisions. Such non-compliance is however, a matter to be addressed using such powers as have been extended to the authorities. The Motor

Vehicles Act and the Central Motor Vehicles Rules at present, only contain a provision authorizing the levy of a fee and nothing more. In this connection, we may refer to the judgement of the Supreme Court in re. State of U.P. and others Vs. Vam Organic Chemicals Ltd and others (AIR 2003 Supreme Court 4650) wherein there was a challenge to the levy of a fee on denaturalisation of alcohol. The Bench, quashing the levy, states as follows:

"44. The question is (to borrow the language in Synthetics) whether in the garb of regulations a legislation, which is in pith and substance, as we look upon the instant legislation, a fee or levy which has no connection with the cost or expenses administering the regulation, can be imposed purely as a regulatory measure, Judged by the pith and substance of the impugned legislation, we are definitely of the opinion that these levies cannot be treated as part of regulatory measures."

16. Reference is also been made by the writ petitioners to a draft notification proposed to be issued by State Government to the effect that the fee structure set out in the impugned notification is intended to be reduced shortly. This is only a draft and we see no reason to comment thereupon.

17. In view of the foregoing discussion, we find that the levy of additional fee under various heads as per the impugned notification is without authority and such levy of additional fee is, therefore, liable to be struck down.

18. In the result, the writ petitions are partly allowed and the impugned notification of the first respondent amending Rule 32 and Rule 81 the Central Motor Vehicles Rules to the extent of the imposition of additional fee is declared void and consequently the same is to that extent struck down. No costs. Consequently, all the Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The Secretary,
Ministry of Road Transport and Highways,
Union Government of India,
New Delhi.

2. The Secretary,
Home (Transport)
Fort St. George,
Chennai 600 009.

3. The Transport Commissioner,
State Transport Authority,
Chepauk,
Chennai 600 005.

+1 CC to Mr. V. Venkatesan, Advocate sr 19573

+1 CC to Mr. J. Madanagopal Rao, Advocate sr 19699

+2 Ccs to Mr. S. Govindaraman, Advocate sr 19773

+1 CC to Mr. S. Govindaraman, Advocate sr 19823

+5 Ccs to Govt. Pleader sr 19803 ,19804,19805,19806

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