

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.12.2017

Coram

The Hon'ble Mr. Justice T.S. Sivagnanam
&
The Hon'ble Mr. Justice K. Ravichandrababu

W.P.No.26911 of 2017
and
W.M.P.Nos.28684 & 28685 of 2017

Puduvai Pradesh Auto
Ottunargal Matrum Urimaiyalargal Sangam,
rep. by its General Secretary,
G. Sinouvassane.Petitioner

Vs.

1. The Ministry of Road Transport and Highways,
rep. by its Secretary,
Government of India,
New Delhi.
2. The Government of Puducherry,
rep. by its Secretary (Tr) -cum-
The Chairman (STA),
Transport Department,
Chief Secretariat, Puducherry.
3. The Transport Commissioner,
-cum- Additional Secretary (Tr) to Government,
Transport Department,
100 Feet Road, Mudhaliarpeth, Pondicherry.Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Declaration, to declare the impugned notification of the first 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.

For Petitioner : Mr. Stalin Abhimanyu
For Respondent-1 : Mr.A. Kumaraguru
For Respondents 2 &3 : Mr. Gandhiraj
Government Pleader (Puducherry)

O R D E R
(Order of the Court was delivered by T.S.Sivagnanam, J.,)

Heard Mr. Stalin Abhimanyu, the learned counsel appearing for the petitioner, Mr.A. Kumaraguru, the learned counsel for the first respondent and Mr. Gandhiraj, the learned Government Pleader (Puducherry) appearing for the respondents 2 & 3.

2. The petitioner seeks for issuance of a Writ of Declaration, to declare the impugned notification of the first respondent with reference to the amendment to Rule 32 and Rule 81 of the Central Motor Vehicles Rules with reference to the increase of Fees vide Gazette Notification in G.S.R.1183 (E) dated 29.12.2016, as invalid.

3. An identical prayer was considered by the Division Bench of this Court, in the case of Chennai City Auto Ootunargal Sangam Vs. the Secretary, Ministry of Road Transport and Highways Union of India, in W.P.Nos.1598, 1067 etc., of 2017 (batch), wherein, the same notification was challenged and a Writ of Declaration was prayed for. The Division Bench, by common order, dated 03.04.2017, struck down the Rules 32 and 81 of the Central Motor Vehicles Rules, as being void. The operative portion of the order reads as follows:-

"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."

4. In the above decision, the Central enactment has been held to be void. This decision would bind the respondents 2 and 3 as well. However, since the respondents 2 and 3 appear to have taken a stand that the earlier order was passed at the instance of an Association in Tamil Nadu, the same will not bind them. This interpretation is incorrect, because, what has been struck down is the Central enactment and judgment would have a binding effect on the respondent.

5. In the counter affidavit filed by the third respondent, it has been stated that, as against the order of the Division Bench, dated 03.04.2017 (referred to supra), Special Leave Petition is pending before the Hon'ble Supreme Court. However, the third respondent would fairly admit there is no interim order, staying the operation of the order of the Division Bench, dated 03.04.2017.

6. The learned Government Pleader for the Government of Puducherry/respondents 2 and 3 would submit that the respondents 2 and 3 would abide by any order, that may be passed by this Court.

7. In the light of the above and following the decision of the Division Bench, in the case of Chennai City Auto Ootunargal Sangam (referred to supra), this Writ Petition is ordered as prayed for. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

msm/sd

To

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

2. The Secretary (Tr) -cum-
The Chairman (STA),
Transport Department,
Chief Secretariat, Puducherry.

3. The Transport Commissioner,
-cum- Additional Secretary (Tr) to Government,
Transport Department,
100 Feet Road, Mudhaliarpeta, Pondicherry.

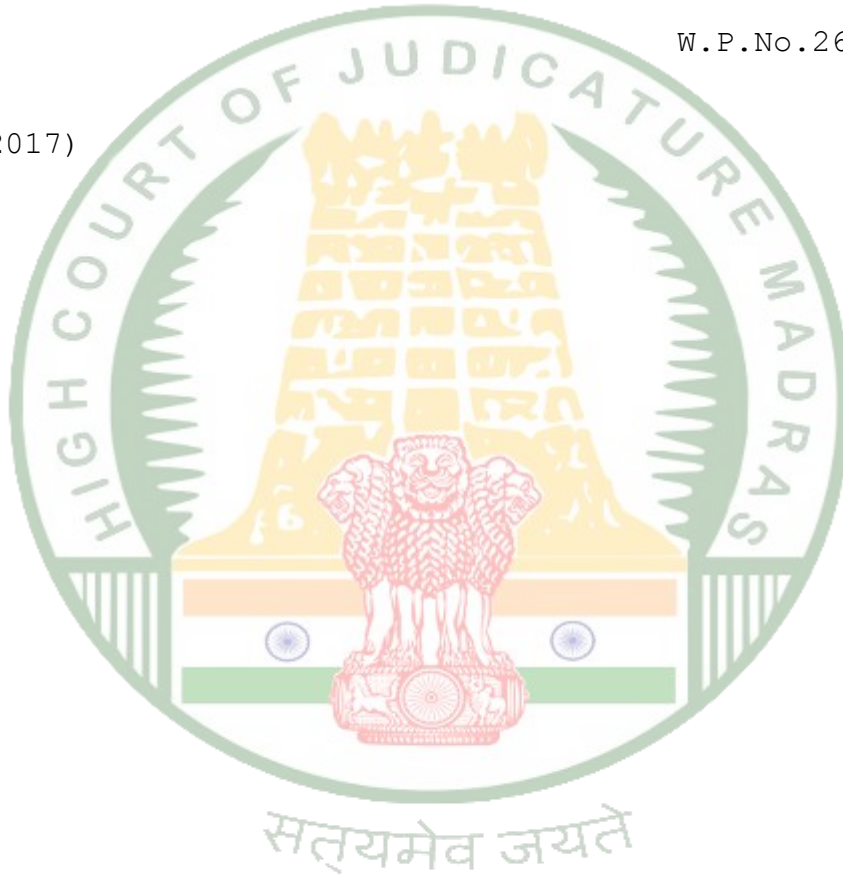
+1 CC to Mr.A.Kumaraguru, Advocate sr 87542.

+2 Ccs to Mr. Stalin Abhimanyu, Advocate sr 87326.

+1 Cc to Govt. Pleader sr 87734.

W.P.No.26911 of 2017

VGII(CO)
SP(27/12/2017)



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