IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.13510 of 2022(O&M)

Reserved on 18.07.2022
Date of Decision-17.08.2022

Libra Bus Service (P) Ltd. ... Petitioner

Versus

State of Punjab and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Amit Jhanji, Sr. Advocate with
Mr. Sangram Saron, Advocate and
Ms. Nikita Garg, Advocate
for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

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<u>RAJ MOHAN SINGH, J.</u>

[1]. Petitioner has preferred this writ petition for the issuance of an appropriate writ, order or direction especially in the nature of mandamus, directing the respondents to issue certificates of fitness of the vehicles as per Section 56 of the Motor Vehicles Act, 1988, Rules 38 to 41 of the Punjab Motor Vehicles Rules, 1989, pursuant to the application dated 11.01.2022 and list submitted by the petitioner to respondent No.3. Respondent No.3 be also directed to convey the said certificates of fitness to respondent No.4 and the name of the petitioner be included in the timetable for the various routes.

[2]. The grievance of the petitioner is that despite submission of application dated 11.01.2022 for the issuance

of certificates of fitness for 73 buses, the issue has been kept pending by respondent No.3, except two certificates issued in the month of May 2022 for no valid reasons. As a consequence of the aforesaid inaction, the petitioner has suffered losses and has been ousted from the timetable of the buses issued on 26.05.2022. Petitioner has 73 buses, which were plying through the State of Punjab. Motor vehicles tax could not be paid due to the financial difficulty during COVID-19 and also on account of the fact that the respondent-State had levied tax on vehicles, permits of which had expired and had not been renewed. Respondent No.3 while exercising powers under Section 11-B (2) of the Motor Vehicles Taxation Act, 1924, fixed the payment of installments of dues in four installments vide order dated 17.12.2021. The installment of Rs.1,46,36,750/- per month was fixed with last date of depositing the installment on 20th day of every month. As per condition No.4 of the aforesaid letter, it has been recited that "if the Government exempts any tax due to Corona, then appropriate proceeding will be initiated accordingly." The fixation of installment was not corresponding to the tax levied for permits which had expired. The said issue was not considered and adjusted. The difference in the amount due has to be checked properly. Respondent No.3 vide order dated 21.12.2021 erroneously fixed installment of

Rs.1,45,93,100/- per month with last date of deposit as 27th day of the month. Condition No.4 of the letter reads as under:-

> *"4) If the Government relaxes any tax due to Corona then as per that necessary proceedings will be conducted."*

[3]. In compliance of the aforesaid letter, the petitioner had deposited first installment on 27.12.2021. Subsequently, the petitioner had written a letter to respondent No.3 on 03.01.2022 for adjusting the tax of the permits, which had expired.

[4]. In the light of payment of first installment, another letter was issued by the petitioner on 11.01.2022 for issuing certificate of fitness. On 11.01.2022, the petitioner was not in default of any motor vehicles tax. Respondents No.3 and 4 did not chose to issue necessary fitness certificate in order to enable the petitioner to earn livelihood. The matter was again taken up with the authorities on 25.01.2022. The aforesaid letter was in respect of miscalculation of installment. The renewal of permits were sought to be revoked vide order dated 03.03.2022 on account of non-payment of second installment. This issue was the subject matter of challenge in CWP No.5632 of 2022. The said writ petition was got dismissed as withdrawn on 06.04.2022 in order to enable the writ petitioner to assail the order by way of another writ petition by incorporating subsequent events. Thereafter, CWP

No.8074 of 2022 was filed, assailing the illegality and the said writ petition is still pending.

[5]. The bus operators have faced huge financial constraints. Respondent-Authority by considering the situation and in exercise of powers conferred under Section 13(2) of the Punjab Motor Vehicles Taxation Act, 1924, granted exemption from payment of penalty or interest for late payment of tax and arrears were ordered to be deposited during the period from 06.05.2022 to 05.08.2022. The aforesaid exemption was subsisting for the period and in lieu of the same, the petitioner was to make good the arrears of tax, but the buses of the petitioner were ousted from the time table on 26.05.2022, thereby disregarding the amnesty scheme, which was made applicable to the petitioner.

[6]. The stand of the respondent-Authorities is that the issuance of certificate of fitness is dependent upon the payment of tax. Despite the aforesaid stand, 2 out of 73 buses at serial Nos.40 and 64 of the fleet detail from 01.01.2020 to 31.03.2022 have been granted fitness certificates in May, 2022. Petitioner has also submitted detailed representations dated 02.06.2022 and 08.06.2022 in this context.

[7]. By way of filing the present writ petition, petitioner has raised the plea whether the petitioner can be granted fitness certificate on its application dated 11.01.2022 when the

petitioner was not in default on payment of motor vehicles tax after payment of first installment and the date of second installment was not due. Petitioner has also questioned the action of the respondent-State in insisting payment of motor vehicles tax as condition precedent for the issuance of fitness certificates for the buses. Whether fitness certificate can be refused its renewal when the Government itself had extended the time period for making payment of taxes from 06.05.2022 to 05.08.2022 without any interest and penalty by exercising the power under Section 13(3) of the Punjab Motor Vehicles Taxation Act, 1924.

[8]. Learned Senior Counsel for the petitioner submitted that the fitness certificate of the motor vehicle is governed by the provisions of Motor Vehicles Act, 1988, whereas payment of tax is governed by Punjab Motor Vehicles Taxation Act, 1924. The Motor Vehicles Act, 1988 nowhere provides for the issuance of fitness certificate subject to payment of tax. Section 56 of the Motor Vehicles Act, 1988 governs the issuance of fitness certificate of transport vehicles, which reads as under:-

> ***"56. Certificate of fitness of transport vehicles.*** *(1) Subject to the provisions of sections 59 and 60, a transport vehicle shall not be deemed to be validly registered for the purposes of section 39, unless it carries a certificate of fitness in such form containing*

such particulars and information as may be prescribed by the Central Government, issued by the prescribed authority, or by an authorized testing station mentioned in sub-section (2), to the effect that the vehicle complies for the time being with all the requirements of this Act and the rules made thereunder:

Provided that where the prescribed authority or the "authorized testing station" refuses to issue such certificate, it shall supply the owner of the vehicle with its reasons in writing for such refusal:

[Provided further that no certificate of fitness shall be granted to a vehicle, after such date as may be notified by the Central Government, unless such vehicle has been tested at an automated testing station.]

[(2) The "authorised testing station" referred to in sub-section(1) means any facility, including automated testing facilities, authorised by the State Government, where fitness testing may be conducted in accordance with the rules made by the Central Government for recognition, regulation and control of such stations.]

(3) Subject to the provisions of sub-section (4), certificate of fitness shall remain effective for such period as may be prescribed by the Central Government having regard to the objects of this Act.

(4) The prescribed authority may for reasons to be recorded in writing cancel a certificate of fitness at any time, if satisfied that the vehicle to which it relates no longer complies with all the requirements of this Act and the rules made thereunder; and on such cancellation the certificate of registration of the vehicle and any permit granted in respect of the vehicle under Chapter V shall

be deemed to be suspended until a new certificate of fitness has been obtained:

**[Provided that no such cancellation shall be made by the prescribed authority unless,-*

(a) such prescribed authority holds such technical qualification as may be prescribed by the Central Government and where the prescribed authority does not hold the technical qualification, such cancellation is made on the basis of the report of an officer having such qualification; and

(b) the reasons recorded in writing cancelling a certificate of fitness are confirmed by an authorised testing station chosen by the owner of the vehicle whose certificate of fitness is sought to be cancelled:

Provided further that if the cancellation is confirmed by the authorised testing station, the cost of undertaking the test shall be borne by the owner of the vehicle being tested and in the alternative by the prescribed authority.]

[(5) A certificate of fitness issued under this Act shall, while it remains effective be valid throughout India.

[(6) All transport vehicles with a valid certificate of fitness issued under this section shall carry, on their bodies, in a clear and visible manner such distinguishing mark as may be prescribed by the Central Government.]

[(7) Subject to such conditions as the Central Government may prescribed, the provisions of this section may be extended to non-transport vehicles.]"

[9]. Perusal of the aforesaid provision would show that the issuance of fitness certificate of a transport vehicle has no relation with the payment of tax. In view of Section 56 of the Motor Vehicles Act, 1988, the prescribed authority is under statutory obligation to decide the issue of fitness certificate of the vehicle and in case, authorized testing station refuses to issue fitness certificate to a vehicle, then the same is bound to supply the owner of the vehicle with reasons in writing for such refusal. The payment of tax is governs under different statue, which also provides for consequences for non-payment of taxes. Section 56 of the Motor Vehicles Act, 1988 provides for a fitness certificate in terms of Rules 38 to 41 of the Punjab Motor Vehicles Rules, 1989. The said rules have been made under the power granted to the State under Section 65(2)(d) of the Motor Vehicles Act, 1988. For ready reference, Section 65(2)(d) of the Motor Vehicles Act, 1988 is reproduced hereasunder:-

> *“(d) the issue or renewal of certificates of registration and fitness and duplicates of such certificates to replace the certificates lost, destroyed or mutilated;”*

[10]. Under Section 65 of the Motor Vehicles Act, 1988, the State Government has been authorized to make rules for the purpose of carrying into effect the provisions of this Chapter other than the matters specified in Section 64 of the Motor Vehicles Act, 1988. Section 64 of the Motor Vehicles

Act, 1988 is in respect of power of Central Government to make rules.

[11]. Perusal of Section 65(2)(d) of the Motor Vehicles Act, 1988 would show that neither the rules provide for any motor vehicles tax clearance, nor the Form CFX provides for any such motor vehicles tax clearance. Rules 38 to 41 of the Punjab Motor Vehicles Rules, 1989 are reproduced hereasunder:-

> ***"38. Board of Inspection for issue or renewal of certificate of fitness.*** *[Sections 56 and 65(2)(a)] (1) The functions to grant or renew a certificate of fitness of a transport vehicle other than tourist vehicles and all other functions which are to be discharged by a prescribed authority under section 56 shall be performed by a Board of Inspection within their jurisdiction which may be laid down by the State Transport Commissioner.*
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> *(2) A Board of Inspection shall consist of,*
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> *(a) the District Transport Officer concerned; or any other Officer appointed by the State Transport Commissioner; and*
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> *(b) a Motor Vehicles Inspector or any other officer appointed by the State Transport Commissioner:*
>
> *Provided that in the case of a tourist vehicle, the Secretary, State Transport Authority shall be the member of the Board of Inspection in place of the District Transport Officer.*
>
> *(3) In the event of a difference of opinion between the members of a Board of Inspection regarding the fitness*

of a vehicle, the decision of the Board of Inspection shall be deemed to be that the vehicle is not fit and an order shall be made in the name of the Board of Inspection refusing to grant or renew the certificate of fitness or cancelling the certificate of fitness.

39. Application for certificate of fitness. *[Sections 65(2)(b)] (1) For the grant or renewal of a certificate of fitness, a transport vehicle shall be presented to the Board of Inspection or to an authorised testing station in whose functional area the vehicle is kept or whose functional area includes the major portion of the route or area to which the permit of the vehicle extends:*

Provided that the Board of Inspection or an authorised testing station shall keep in view, in addition to other matters, the design of the vehicle to be of the type approved by the State Transport Authority for grant of a certificate of fitness.

(2) If owing to the mechanical break-down or other cause a transport vehicle is, at the time when the certificate expires, outside the functional area of the Board of Inspection or an authorised testing station by which the certificate is to be renewed, any other Board of Inspection or an authorised testing station may, without prejudice to any penalty to which the owner may have become liable, if the vehicle is in the opinion of the Board of Inspection or authorised testing station fit for use by endorsement in Form "C.F. Sub" and subject to such conditions as the Board of Inspection or an authorised testing station may, specify may authorise its continued use for such a time as may reasonably be necessary for the vehicle to return to the area of the Board of Inspection or an authorised testing station by

which the certificate should be renewed. The vehicle may thereupon be driven to such area in accordance with such endorsement, but shall not be used after return to that area until the certificate has been renewed.

[39A. Penalty for Vehicle remained without fitness.]- *The owner of transport vehicle shall, if he fails to present his vehicle before the Board of Inspection of an authorised testing station, on or before the date of expiry of certificate of fitness or within such period so specified by Board of Inspection for its renewal, be liable to pay the following composition fee/penalties in additions to fee specified for renewal of certificate of fitness under rule 81 of the Central rules:*

Period of Delay	*Amount of Penalty*
(a) For each day upto 15 days	*Rupees ten per day subject to maximum of Rupees Fifty.*
(b) More than 15 days upto 3 months	*Rupees ten per day subject to maximum of Rupees Five Hundred*
(c) More than 3 months upto 6 months	*Rupees ten per day subject to maximum of Rupees One Thousand*
(d) More than 6 months upto one year	*Rupees ten per day subject to maximum of Rupees Two Thousand*
(e) More than one year	*Rupees Two thousand per year and Rupees ten for every additional day*

Provided that the Government may by general or special order and subject to such condition as may be specified, exempt, any person or class of persons from payment of all or portion of penalty payable.]

40. Procedure of Board of Inspection or an authorised testing station. *[Section 65(2)(b)] (1) A Board of Inspection or an authorised testing station before which a vehicle is produced for the issue or renewal of a certificate of fitness may,*

(a) issue a certificate of fitness or renew the same in respect of the vehicle;

(b) defer decision regarding the issue or renewal of a certificate of fitness pending the rectification of certain defects; or

(c) refuse to issue a certificate or renew the certificate.

Where the course specified in clause (b) is followed, a Board of Inspection or an authorised testing station shall supply the owner of the vehicle or his agent with a list of the defects requiring correction in Form CFX, and pending the carrying out of the repair shall suspend and impound any certificate of fitness previously in force in respect of the vehicle. In completing Form C.F.X., the Board of Inspection or an authorised testing station shall note the conditions under which it shall be permissible for the vehicle to be used pending the grant or renewal of the certificate. These conditions shall in no case permit the use of the vehicle for the conveyance of passengers for hire or reward or for the carriage of goods other then goods carried in connection with the repairing of the vehicle.

(2) If a Board of Inspection or an authorised testing station defers its decision under clause (b) of sub-rule (1) in case of a renewal of a certificate of fitness and supplies the owner of the vehicle or his agent with a list of defects in Form C.F.X., and if thereafter the vehicle is not produced for further examination within a period of two months or within such period as may have been specified by the Board of Inspection or an authorised testing station in Form C.F.X., the certificate of fitness shall be deemed to be cancelled with effect from the date on which its duration expires.

(3) In issuing or renewing a certificate of fitness, a Board of Inspection or an authorised testing station shall endorse thereon the period for which the certificate of fitness shall remain effective in accordance with the provisions contained in rule 62 of the Central Rules.

***41. Report to be made when a certificate of fitness is cancelled or renewal is refused**. [Section 65(2)(b)] - A Board of Inspection or an authorised testing station shall intimate to the Regional Transport Authority by whom the permit of the vehicle was issued at the first instance and also to the registering authority of the District where the vehicle stands registered, the fact of cancellation of a certificate of fitness or refusal to renew the certificate of fitness, as the case may be and in both the cases referred to above, a Board of Inspection or an authorised testing station shall impound the certificate of fitness and forward it to the Registering Authority concerned."*

[12]. Rule 40 of the aforesaid Rules provides for deferring the issue or renewal of a certificate of fitness

pending rectification of certain defects. List of defects has been duly provided in Form CFX, in which arrears of motor vehicles tax is not a defect.

[13]. Sections 64 and 65 of the Motor Vehicles Act, 1988 bifurcate the subjects on which the rules can be framed by the Central Government or by the State Government. Rule 73 of the Central Motor Vehicles Rules, 1989 was framed for tax clearance certificate to be submitted to the testing station. The said rule was framed while exercising the powers under Section 64 of the Motor Vehicles Act, 1988. Section 65 of the Motor Vehicles Act, 1988 gives power to State Government to make rules for the purpose of carrying into effect the provisions of this Chapter other than the matters specified in Section 64 of the Motor Vehicles Act, 1988.

[14]. Learned Senior Counsel for the petitioner by referring to Rule 73 of the Central Motor Vehicles Rules, 1989 submitted that the said rule cannot be made applicable in the State of Punjab as the same has not been adopted in view of powers granted under Section 65(2)(d) of the Motor Vehicles Act, 1988. Even a perusal of Section 73 of the Central Motor vehicles Rules, 1989 would show that no authorized testing station shall accept an application for the grant or renewal of a certificate of fitness unless the same is accompanied by a tax clearance certificate in such form as may be specified by the

State Government from the Regional Transport Officer. The rules framed by the State Government i.e. Punjab Motor Vehicles Rules, 1989 do not answer such a contingency of providing for any motor vehicles tax clearance in the absence of any such form for tax clearance certificate. In State Rules, the intention is clear not to have such requirement of tax clearance for the issuance of fitness certificate to a motor vehicle.

[15]. Learned Senior Counsel by referring to State motor vehicles rules of Madhya Pradesh in case titled ***Rajesh Kumar Miglani Vs. State of M.P, ILR (2017) MP 2671***, motor vehicles rules of Uttar Pradesh in case ***CWP No.922 of 2022*** titled ***Deepak Kumar Tewari Vs. State of UP and others*** and Kerala motor vehicles rules in case titled ***State of Kerala Vs. C.P. Varghese, 2017 SCC Online Kerala 10291*** submitted that the requirement of tax clearance certificate is introduced only after incorporating the same within the respective States rules while acknowledging the power for framing such rules in compliance of Section 65(2)(d) of the Motor Vehicles Act, 1989. In State of Punjab, no such rule has been framed, requiring the tax clearance certificate as a condition precedent for the issuance of fitness certificate of motor vehicle.

[16]. Learned Senior Counsel further submitted that amnesty scheme granted for relaxation to all the bus

operators to pay the principal amount within the prescribed time frame till 05.08.2022 without any interest and penalty has not been honoured by the respondent-Authorities while ousting the buses of the petitioner from the timetable issued on 26.05.2022. The necessary time period in view of amnesty scheme was available to the petitioner till 05.08.2022 and therefore, the fitness certificate was not required. Two of the buses of the petitioner in fleet detail have been issued fitness certificates, thereby showing that the respondent-Authorities are adopting pick and choose policy as many other bus operators, who are also in default in payment of the tax are being allowed to ply their buses by granting fitness certificates without insisting upon payment of taxes.

[17]. On the other hand, learned State counsel submitted that Article 246 read with entry 35 enumerated in list III and entry 57 enumerated in list II of the 7th Schedule of the Constitution of India lay down that the Parliament as well as the State Legislature has competence to make laws with respect to the "mechanically propelled vehicles" i.e. motor vehicles. By referring to Rule 73 of the Central Motor Vehicles Rules, 1989, learned State counsel submitted that if the State has not framed its rules, then the Central Rules would prevail and the said Rule 73 of the Central Motor Vehicles Rules, 1989 provides for tax clearance certificate in such form as

may be prescribed by the State Government from the Regional Transport Officer. Even for applicability of Rule 73 of the Central Motor Vehicles Rules, 1989, there has to be a tax clearance certificate in the form as may be specified by the State Government. There is no such specified form prescribed by the State Government for the purpose of tax clearance certificate. State Rules in terms of Rules 38 to 41 of the Punjab Motor Vehicles Rules, 1989 and even CFX Form do not show any such existence of prescribed form. Rule 73 of the Central Motor Vehicles Rules, 1989 does not cover the ambit of rules framed by the State Government for the purpose of carrying into effect the provisions of this Chapter other than the matters specified in Section 64 of the Motor Vehicles Act, 1988. Learned State counsel while incorporating Rule 73 of the Central Motor Vehicles Rules, 1989 also placed reliance upon ***CWP No.26857 of 2021*** titled ***The Jagdamba Cooperative Transport Society Ltd. and others Vs. State of Haryana*** decided on 23.02.2022***, State of Kerarla Vs. C.P. Verghese case (supra), Deepak Kumar Tewari's case (supra)*** and ***R.K. Miglani's case (supra)*** and ultimately contended that Rule 73 of the Central Motor Vehicles Rules, 1989 would answer the present situation and the payment of tax is the condition precedent for grant of fitness certificate of the motor vehicle.

[18]. Having heard learned counsel for the parties, I find that Rule 73 of the Central Motor Vehicles Rules, 1989 was framed in exercise of powers under Section 64 of the Motor Vehicles Act, 1988. Bare reading of Rule 73 of the Central Motor Vehicles Rules, 1989 would show that for acceptance of an application for the grant of renewal of a certificate of fitness, tax clearance certificate in such form as may be prescribed by the State Government from the Regional Transport Officer is required. If no such form is prescribed by the State rules then the aforesaid Rule 73 of the Central Motor Vehicles Rules, 1989 will not answer the question. Moreover the Rule 73 of the Central Motor Vehicles Rules, 1989 being the outcome of Section 64 of the Motor Vehicles Act, 1988 is not covered under the ambit of Section 65 of the Motor Vehicles Act, 1988 and the State rules have been framed in the matters, which are not specified under Section 64 of the Motor Vehicles Act, 1988. Since the State rules do not provide for any such form for any motor vehicle clearance, nor the Form CFX provides for the same, therefore, the requirement of the statute/rule as culled out by the Division Bench of this Court in ***The Jagdamba Cooperative Transport Society Ltd. and others case (supra)*** would apply. Rule 40 of the Motor Vehicles Act, 1988 provides for deferring the issue or renewal of a certificate of fitness pending the rectification of certain defects. The list of defects has been provided in Form

CFX and the arrears of Motor Vehicles tax is not an enlisted defect in the said list.

[19]. In view of aforesaid discussions with reference to rules and statute, I am of the considered opinion that the issuance of fitness certificate of a transport vehicle has no relation with the payment of tax. The non-payment of tax is a violation of tax law, for which remedial steps can be taken by the competent authority. In view of mandate of Section 56 of the Motor Vehicles Act, 1988, the prescribed authority is under statutory obligation to decide the fitness certificate of the vehicle and in case, the authorized testing station refused the fitness certificate to a vehicle, then it is bound to supply the owner of the vehicle reasons in writing for such a refusal.

[20]. In the present writ petition, the petitioner has prayed for direction to issue certificates of fitness in view of Section 56 of the Motor Vehicles Act, 1988 and to further convey the same to respondent No.4 for necessary action. Petitioner has also prayed for including the petitioner in the timetable in the various routes.

[21]. In the light of aforesaid discussions, this Court deems it appropriate to direct the respondent-Authorities to issue certificates of fitness to the buses of the petitioner as per Section 56 of the Motor Vehicles Act, 1988 and Rules 38 to 41 of the Punjab Motor Vehicles Rules, 1989 and allow the

petitioner to operate their buses. Respondent-Authorities shall also fix equitable installments for arrears of vehicles tax so as to enable the petitioner to deposit the motor vehicles tax in accordance with law. Respondent-Authorities shall also consider the feasibility of extending the amnesty scheme dated 04.05.2022 on equitable consideration in accordance with law.

[22]. The present writ petition is accordingly disposed of.

(RAJ MOHAN SINGH)
JUDGE

17.08.2022
Prince

Whether reasoned/speaking Yes/No

Whether reportable Yes/No