214 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-26857-2021 (O&M)
Decided on: February 23, 2022

The Jagdamba Cooperative Transport Society Ltd.and others

.....Petitioners

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Amit Jhanji, Senior Advocate with
Ms. Nikita Garg, Advocate
for the petitioner.

Ms. Shruti Jain Goyal, DAG., Haryana
for the respondents.

<u>Pankaj Jain, J</u>

1. By way of present writ petition, the petitioners have questioned the action of the respondent-State in insisting upon payment of Motor Vehicle Tax as a condition precedent for issuance of fitness certificate for the motor vehicle. The petitioners herein are the Co-operative Transport Societies holding Stage Carriage permits under the approved Stage Carriage Scheme 2016 for plying vehicles of various routes. It has been averred that the petitioner-Societies are plying their vehicles on the aforesaid routes and never defaulted for payment of motor vehicle tax. However, owing to lockdown due to covid-19 the Stage Carrier Services were suspended for many months continuously and the tax could not be paid. Even when opened they were allowed to operate only partially with 25% sitting capacity and then with 50% and thereafter 75% sitting capacity. The fitness certificates of the vehicle belonging to the petitioner-Societies

stood expired in due course of time. The petitioners claim that now the fitness certificates are issued through online portal. When they applied online for the fitness certificate they were unable to do so as the alert was shown on the webside which reads as follows:-

> *"Tax is not paid by this Registration No.HR68B9724. Please, clear the tax first or fill the tax exemption details if applicable."*

2. The contention of the petitioners is that the fitness certificate of the motor vehicle is governed by the provisions of Motor Vehicles Act, 1988 (hereinafter referred to as 'The 1988 Act') whereas the payment of tax is goverened by Haryana Motor Vehicles Taxation Act, 2016 (hereinafter referred to as the '2016 Act'). The 1988 Act nowhere provides for, that the issuance of fitness certificate shall be subject to payment of tax, thus, non entertainment of the application filed by the petitioner for grant of fitness certificate on account of non-payment of tax cannot be sustained.

The respondent-State filed written statement wherein it has been pleaded that:

> *"As already submitted above, the issuance/grant of fitness etc.are made through an online process of the official website mpartivahan.gov.in of the Ministry of Road Transport & Highways, Government of India, as the record of all the vehicles registered throughout India is made online. Any pending dues in respect of a vehicle i.e tax, challan amount etc.are entered in the online record maintained by the department and a set-mechanism has been made by the NIC in the online process unless and until the pending dues in respect of a vehicle is cleared, no service in respect of a vehicle can be processed. Moreover, the authorities have been acting with due diligence and utmost care to balance the interests of*

different sects of society by providing different types of benefits/schemes to the affected people. It is wrongly contended by the petitioner that criteria for filing o the application for fitness certificate has not been prescribed under the statutory provisions of law. A careful scrutiny of Section 56 of Motor Vehicles Act, 1988, as relied upon and reproduced by the petitioner, itself makes it amply clear that the fitness certificate cannot be issued unless the vehicle complies for the time being with all the requirements of the Act which invariably presupposes, contemplates and expressly provided for levy of different taxes as involved in the present subject matter of the case."

3. We have heard learned counsel for the parties and have gone through the pleadings on record.

4. Section 56 of the 1988 Act that governs issuance of fitness certificate of transport vehicles reads as under:-

Section 56 of MV Act 1988 :- 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), a 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 prescribe, the provisions of this section may be extended to non-transport vehicles.]"

5. It is clear from the bare reading of the provisions that the issuance of fitness certificate of a transport vehicle has no relation with the payment of tax. As per the mandate of Section 56 the prescribed authority is under the statutory obligation to decide upon fitness certificate of the vehicle and in case the authorized testing station refuses the fitness certificate to a vehicle it is bound to supply the owner of the vehicle reason in writing for such refusal.

6. On the other hand, so far as the payment of tax is concerned the same is goverened by Haryana Motor Vehicles Taxation Act, 2016 which provides for consequences for non-payment of tax. Such consequences as enumerated in Section 10 of the 2016 Act provides for, that in the situation of non-payment of tax due, the owner of the motor vehicle shall be liable to pay penalty as may be specified by the State by way of notification issued under Section 3 of the 2016 Act. It does not include denial of issuance of fitness certificate.

7. The stand of the respondent-State that as per the mechanism

created by the NIC until and unless the pending dues in respect of a vehicle are cleared, no service in respect of the vehicle can be processed, cannot be sustained, sans statutory backing. Without there being any provision which allows the authorities to withhold the fitness certificate, the authorities cannot be allowed to act in the teeth of Section 56 of the 1988 Act.

8. Consequently, the present writ petition is allowed to the aforesaid extent. Respondents are directed to entertain the application filed by the petitioners for grant of fitness certificate and decide the same within the time as prescribed under law.

(AJAY TEWARI)
JUDGE

(PANKAJ JAIN)
JUDGE

February 23, 2022
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Whether speaking/reasoned	**Yes**
Whether reportable	**No**