IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4165 OF 2024

Shri Mahendra Bansilal Patil … Petitioner

Versus

The Commissioner of Transport & Ors. …Respondents

Mr.Tejesh Dande a/w Mr.Bharat Gadhavi, Ms.Mansi Dande, Mr.Vishal Navale and Ms.Trushar Shah for the petitioner
Ms.Shruti D. Vyas, Addl.G.P. a/w Ms.P.N.Diwan, A.G.P. for the State
Mr.Ashutosh Misra for the respondent no.4 / Union of India

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 12th April, 2024

ORAL JUDGMENT: (PER G.S.KULKARNI, J.)

1. Rule. Rule made returnable forthwith. Respondents waive service. Heard finally by consent of the parties.

2. This petition, under Article 226 of the Constitution of India, raises a challenge to the action of respondent no.1 – Commissioner of Transport (for short "the Commissioner") to the effect that the petitioner's motor vehicle – a motor car, recently purchased by him, is being denied registration under the 'BH series'.

3. The case of the petitioner is that no reasons in writing are furnished to the petitioner, as to why the registration is being denied, although the

petitioner has complied with the conditions as contained in the rules framed by the Central Government, namely the **Central Motor Vehicles (Twentieth Amendment) Rules, 2021** ("**said Rules**").

4. The petitioner, is a Government Servant, presently working as Civil Judge, Senior Division, in the Maharashtra State Judicial Services. The petitioner has complied with the condition as prescribed in Clause 2 (cb) of the said Rules of submitting an Official Identity Card, which is the only compliance required to be furnished.

5. To appreciate the contentions of the petitioner, it would be appropriate to note Clause 2(cb) of the said Rules which reads thus:

> "(cb) Official Identity Card, in case the applicant working in Government office applies for BH-series registration mark."

6. As urged on behalf of the petitioner, in regard to the petitioner's application compliance of Clause 2(cb) of the Rules is the only relevant compliance, which stood complied by the petitioner, as the petitioner had submitted Official Identity Card issued by the Government of Maharashtra, District & Sessions Court, Pune, depicting that the petitioner is in the services of the Government working as Civil Judge, Senior Division, at Khed Rajgurunagar, Dist.Pune. Copy of the petitioner's identity card is also annexed to the writ petition.

7. It is the petitioner's contention that registration of a vehicle under the BH-Series was introduced by the Government of India, to facilitate convenient transfer of vehicles in different States and Union Territories by a notification dated 26th August 2021 was issued under the Motor Vehicles Act.

8. As noted above it is the petitioner's case that the rules specifically provide that if the registration of vehicle under BH series is to be opted by the applicant working in the government service, he has to provide his Official Identity Card, which is the only requirement. It is contended that despite such compliance the petitioner's application for registration of his vehicle under the BH Series is not processed or is being rejected. On enquiries, the petitioner learnt that what was foisted on the petitioner to deny registration of his vehicle under the BH series was a Circular dated 21st February 2024 issued by the Commissioner. It is submitted that what has been referred by the Commissioner and his officers in denying registration was Clause 4(i) of said Circular, which *inter alia* records that a person who is in the government service, and who intends to apply for registration of his vehicle under the BH Series, would be required to comply with other requirements, which are to the effect that if the Vehicle-owner is in Government Service and who claims that the offices are in various States of India, then he is required to furnish a Certificate in respect of his stay at such places, as also his payment slips during his previous service tenure in various States, be obtained. Also a verification

of the fact, whether before submitting application, the vehicle owner was working in the very department/ company in other State, wherein he is presently working, shall be ascertained and only thereafter, the vehicle shall be held valid for registration in 'BH Series'.

9. The contention as urged on behalf of the petitioner is that such conditions being foisted on the petitioner's application under the said Circular are totally contrary to the requirements of the statutory Rules which are Central Rules. It is submitted that the Transport Commissioner does not have any authority to issue such Circular which is contrary to the statutory provisions and/or which is in the teeth of the said Rules, framed by the Central Government, which are binding on the State Government, and which are required to be implemented by the Commissioner. It is in these circumstances, the petitioner is before the Court also assailing the said Circular dated 21st February 2024. The petitioner, in these circumstances, has prayed for the following substantive reliefs:

> "a. Record in respect of passing of impugned Circular bearing No. 10 of 2024 dated 21.02.2024 issued by the Respondent No. 1 i.e. Commissionerate of Transport, Maharashtra State, Mumbai may kindly be called for;
>
> b. After considering the legality, validity and proprietary of the same, writ of certiorari or any other writ, order, or direction in the like nature may kindly be passed thereby quashing and setting aside the clause 4 (i) of Circular bearing No. 10 of 2024 dated 21.02.2024 (Exhibit G) issued by the Respondent No. 1 i.e. the Commissionerate of Transport, Maharashtra State, Mumbai, and further the Respondent No. 2 may kindly be directed to process and allow the application dated 14.03.2024 filed by the present

> Petitioner for registration of his new vehicle i,e. Mahindra XUV-700 AX7L, Manual Transmission Diesel Car under BH-series;
>
> c. That this Hon'ble Court may kindly be pleased to hold and declare that the clause 4 (i) of Circular bearing No. 10 of 2024 dated 21.02.2024 issued by the Respondent No. 1 i.e. the Commissionerate of Transport, Maharashtra State, Mumbai is bad in law and is null and void;"

10. On behalf of respondent nos.1 to 3, reply affidavit of Jitendra B. Patil, Additional Transport Commissioner, is placed on record. The affidavit makes an attempt to justify the impugned action on the part of respondent nos.1 to 3 in not granting registration to the petitioner's vehicle under the BH Series. The affidavit, however, takes a peculiar stand which is not borne out by the Circular, namely that there would be loss of revenue in the event registration under the BH Series is granted to vehicles, who do not comply with the requirements of the Circular. The justification so furnished can be seen in paragraph 5 and 6 of the reply affidavit. Further stand taken in paragraph 7 of the said Affidavit is that the said Circular is merely in the nature of guidelines, to ensure that the object for which the Central Rules are amended, is achieved. Thereafter, the affidavit has proceeded to set out percentage of tax at the time of registration and the decision to issue the circular is stated to be on considerations keeping in view the interest of the State revenue.

11. Further, in paragraph 10 of the reply affidavit, it is contended that those employees who are not normally transferred to other States are also claiming the benefit of BH series, who claim to be working in Govt. Service or Pvt.

Organizations having offices in more than 4 states. It is stated that, as such, the intent with which the Central Government had made provisions regarding BH series is being misused to pay tax at a "lower rate" as compared to those vehicles which are registered in MH series. In paragraph 11 of the reply affidavit, it is contended that such registrations are not only a cause of loss of revenue to the government exchequer, but also there is a misuse of the said provisions, which unless regulated persons would obtain registration under the BH Series by making untrue declaration.

12. In paragraph 12 of the affidavit it is contended that payment of Road Tax under BH series is made for two years and for such reasons the numbers of registration under the BH series are increasing exponentially, consequently, the State is expecting substantially huge revenue loss. A table is formulated in paragraph 12 of the affidavit setting out the tax revenue forgone as estimated for the last three years. Thereafter, the affidavit proceeds to contend that the Circular, although does not outrightly ban the registration of vehicles under BH series, it provides for the points to be taken into consideration by the registering authority to ascertain the eligibility of the person who desires to avail registration of his vehicle under the BH series.

13. It is on such backdrop, we have heard the learned counsel for the parties.

14. Mr. Dande has made submissions in support of the petitioner's case that the impugned Circular is arbitrary and illegal and contrary to the Rules. It is

submitted that the case as made out in the affidavit filed on behalf of respondent nos.1 to 3, is in the teeth of the said Rules, as framed by the Central Government making provisions for the BH series registration. It is contended that in any case as to what has been pleaded in the affidavit, can never be a reason to nullify the said Rules. It is his further submission that the reasons which are set out in the reply affidavit are not borne out by the Circular. Therefore, the attempt on the part of the Commissioner to justify the Circular by such affidavit is wholly against law. Mr. Dande submits that such an affidavit ought not to be accepted which is an attempt to explain the impugned Circular on materials which is not referred and provided in the Circular. It is his submission that what was expected from respondent nos.1 to 3 was to comply with the Central Rules, and that once the petitioner's application satisfied the Central Rules, it should have been considered and processed as per the Central Rules, as the same were binding on the Commissioner, for issuance of registration to the petitioner's vehicle under the BH Series. It is submitted that serious prejudice has been caused to the petitioner on account of the impugned actions of respondent nos.1 to 3, as the new vehicle as purchased by the petitioner cannot be put to use for a long period which is lying at the petitioner's doorstep. He ultimately submitted that the actions of the respondents in taking a position contrary to the Central Rules is also contrary to the provisions of Article 256 of the Constitution, apart from being arbitrary and violative of Article 14 of the Constitution.

15. On the other hand, Ms. Vyas the learned Additional Government Pleader has supported the impugned decision of respondent nos.1 to 3 in denying registration of petitioner's vehicle, as also on the impugned circular issued by the Commissioner. She has drawn our attention to several details on the loss of revenue being caused, which according to her, is the basis on which the Circular has been issued. However, on a query regarding the power of the Commissioner to issue the Circular. Ms. Vyas is not in a position to point out any specific provision under the Motor Vehicles Act which enables the Commissioner to issue such Circular. Further, Ms. Vyas is not in a position to counter the petitioner's case on the scope of the Circular exceeding the statutory rules passed by the Central Rules, which is wholly silent on any revenue aspects, which is sought to be explained in the reply affidavit filed by the Additional Transport Commissioner. It is however, submitted that the petitioner nevertheless would be required to comply with the Circular and without such compliance the prayer for grant of registration of BH Series cannot be considered by respondent no.2.

Analysis

16. Having heard the learned counsel for the parties and having perused the documents on record, we may at the outset observe that the Central Government has framed the Rules in question which govern the registration of the vehicles under the BH Series. Such Rules are framed in exercise of the

powers conferred under clauses (a), (d) and (p) of Section 64 of the Central Motor Vehicles Act, 1988. We have noted the relevant rule being Rule 2(cb) of the said Rules, which would apply to the petitioner's case, which provides that the applicant seeking registration of his/her vehicles would be required to *inter alia* furnish an Official Identity Card, that he is in the service of the State Government. It is not in dispute that the petitioner submitted his Official Identity Card as required under the Central Rules. Nevertheless, the registration of the petitioner's vehicle under the BH Series has been denied.

17. Thus, the requirement under the Central Rules being fulfilled by the petitioner, the next question would be whether was it right and proper for respondent nos.1 to 3 to apply/impose on the petitioner, conditions as incorporated under the impugned Circular. To appreciate as to what is provided for by the impugned Circular, it would be necessary to note the said Circular, which reads thus:

(Official translation)

"Exhibit 'G'

Regarding the "Fully Built" non-transport vehicles pertaining to "BH Series".

(Emblem)

[The Truth Alone Prevails]
GOVERNMENT OF MAHARASHTRA
Office of the Commissioner, Transport,
5th Floor, Telecom Building No.2,
Mahatma Gandhi Road, Fountain, Mumbai – 400 001.
Tele. No. 022-20827103

E-mail ID: dycommr.inspect@gmail.com

No. MVR-1121 / C.R. – 272 / D.2(4)/ 2021 / Outward No. 2239. Date: 21.02.2024.

READ :

1) Notification bearing No. C.S.R. 594(E), dated 26.08.2021, issued by the Central Government.

2) Letter bearing No. O.T.C. - 0414 / C.R. - 330(A) / D. 2(1) /M. No. 11525, dated 13.09.2021 of this Office.

3) Circular bearing No. 65/2021, No. O.T.C. / D.3 / "BH Series" / 85 / 2021 / Outward No. 11694, dated 17.09.2021 issued by this Office.

CIRCULAR NO. 10/2024

1. By the Notification No. G.S.R. 594(E), dated 26.08.2021, issued by the Central Government, a provision has been made for the persons working in a Private Sector as well as in the Government Offices / Departments to make an application for getting Motor Vehicle Registration Number in "BH" Series and also for an assessment of tax for such vehicles.

2. The said Notification has come into force w.e.f the date 15.09.2021.

3. For getting a Motor Vehicle Registration sign (Number) in "BH" Series, the Applicant who is working in a "Private Sector" is required to annexe a "Working Certificate" in Form No. 60 to his application, whereas the Applicant who is working in a Government Office is required to annexe (a copy of) his Office Identity Card to his application.

As regards the Applicant making an application as per Form No.60, it is necessary that the Private Company / Institution in which s/he works must have at least 4 or more offices in the State or in the Union Territory.

As per the new proviso under Rule No.48, the Applicant shall be at liberty to make an application for Registration Number in "BH" Series.

4 As regards the assessment of Vehicle Tax for the "Fully Built" non- transport vehicles as per the new Rule 51-B, all the

Heads of the Offices have been informed about the same by the Circular bearing No. 65/2021 issued by this Office under No. O.T.C. / D-3 / "BH Series" / 85 / 2021 / Outward No. 11694, on the date 17th September, 2021.

By the aforesaid Circular, all the Regional Offices had been informed about the procedure to be followed for registration of a vehicle in "BH Series". However, as various Offices are facing difficulty and as there is a confusion about the procedure while taking an action as mentioned above, the belowmentioned instructions should be followed:

i. **As regards the Vehicle-holder from a Private Institution or Government Service who claims that his Private Institution / Government Office has offices in various States of India, the Certificate in respect of his stay and also his Payment slips during his previous service tenure in various States, shall be obtained and the fact viz. before submitting application, whether the vehicle holder was previously working in the very department/ company in other State wherein he is presently working, shall be ascertained and only thereafter, his vehicle shall be held as valid for registration in "BH Series". However, if the application is made merely mentioning that the Company wherein he is working, has branches in four States or that he may be transferred to other States then, even on that ground, the said vehicle shall not be registered in "BH Series".**

ii. The benefit of "BH series" shall be given to only one vehicle of each person.

iii. In order that the benefit of "BH Series" is received by the eligible persons only, the proofs viz. If the vehicle owner has paid the amount for purchase of the vehicle, from out of the amount in his own Bank Account, then the documents in respect thereof or if he has purchased the same by availing a loan, then, the documents in respect of payment made by the Finance Provider in the name of the Applicant to the Vehicle Distributor, shall be verified. However, if the Applicant does not submit information as mentioned hereinabove or if any discrepancy is found in the proofs submitted by him then, his application shall be rejected.

iv. If Four wheeler vehicles of the value of Rs. 25 lakhs or above and also the two wheeler vehicles of the value of Rs.2 lakhs or above, are received for registration in "BH series" then, the IT returns of such vehicle holders or Statements of their Bank Accounts shall be verified and after ascertaining as to whether, the said vehicle holders are

really financially capable to purchase the said vehicles, decision shall be taken regarding registration thereof.

v. While registering the vehicles of the staff from Indian Security Forces, in "BH Series", only the copies of their Identity Cards issued by the Security Forces, shall be obtained and no other documents shall be demanded from them/shall be verified.

vi. Similarly, it shall be verified as to whether the vehicle holders whose vehicles have been registered in "BH series" and the period of more than two years has elapsed after registration thereof, have paid the tax for the further period. If the vehicle holders have not paid tax for further period then, Demand Letters shall be sent to such vehicle holders and if the vehicle holders have not paid the tax even thereafter then, necessary action regarding recovery of tax, shall be taken against such vehicle holders under section 12 (B) of the Mumbai Motor Vehicles Tax Act, 1958 and also as per Rule 51(B) of the Central Motor Vehicles Rules, 1989.

vii. The aforesaid procedure shall be brought to the notice of all Vehicle Distributors located within the purview of your Office and the same shall also be given extensive publicity in local News Papers.

(Signature Illegible)
(Vivek Bhimnavar) (I.A.S.)
Commissioner, Transport,
Maharashtra State, Mumbai.

To,

All Regional Transport Officers,
All Deputy Regional Transport Officers."

18. From a bare reading of the aforesaid Circular it appears that, by such Circular, the Commissioner of Transport has foisted requirements in clause 4.1 which in fact are not the requirements under the 2021 Central Rules, as noted by us hereinabove.

19. We may observe that, in the absence of any power conferred on the Commissioner to super impose conditions on any applicant seeking registration of the vehicles, which are not conditions under Central Rules (Supra), the Commissioner could not have issued such circular. Once the statutory rules are in vogue, and they are applicable, there is a constitutional mandate under Article 254, read with Article 256, to implement the Central Law. Any contrary decision of the nature as taken by the Commissioner in the impugned circular would be rendered bad and illegal. If the Motor Vehicles Act provides for an independent power with the State to frame rules, and such rules if framed are inconsistent to the rules framed by the Central Government, in that event only after an assent of the President, such rules can be notified, failing which it would bring about a situation of a direct conflict in the statutory regime not recognised by law. Thus, it was not permissible to the Commissioner, to impose conditions by such circular to regulate registration of BH Vehicles, which would nullify the Central Rules or create a regime which is contrary to the Central Rules or defeat the provisions of the Central Rules. In this context, it would also be appropriate to refer to Articles 254 and 256 of the Constitution, which read thus:

> **"254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States**
>
> (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by

> Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.
>
> (2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.
>
> **256. Obligation of States and the Union**
>
> The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose."

20. The impugned Circular issued by the Commissioner when tested on the touchstone of the aforesaid constitutional provisions is clearly in excess of the jurisdiction and without any authority in law.

21. We also find that what has been sought to be explained in the reply affidavit is in fact not borne out by the Circular namely the case of the Commissioner on the loss of revenue to the State Exchequer is permitting registration of motor car in BH Series as set out in the reply affidavit.

22. In this regard, it would be appropriate to note the relevant contents of the affidavit which read thus:

"5. It may be noted that the taxation under BH series (Rule 51 B of CMVR) and state laws is different. Registering the vehicles under BH series affect the revenue of the State Government as tax rate is lower in many cases. Vehicles registered under BH series is required to pay vehicle taxes every two years or in multiple of it, to the State, where it is located during that period (Rule 51 B of Central Motor Vehicles Rules, 1989). Tax structure mentioned in Rule 51 B is as follows :-

Sr. No.	Invoice Price	Motor vehicles Tax for BH series	Remarks
1.	Below Rs.10 lakh	8% of Invoice Price **Excluding GST**	2% extra charge shall be levied for diesel vehicles. Electric vehicles shall be charged 2% less tax.
2.	Rs.10-20 lakh	10% of Invoice Price **Excluding GST**	
3.	Above Rs.20 lakh	12% of Invoice Price **Excluding GST**	

7. It is submitted that, it was therefore, felt necessary to issue guidelines to ensure that only eligible individuals benefit from this notification. Thus, the Transport Commissioner's office has issued the said circular dated 21.02.2024 in the nature of guidelines to ensure that the object for which the Central Rules are amended is achieved. It is submitted that these guidelines are issued in furtherance of the object with which the Central Rules are modified.

8. Additionally, it is submitted that, the biannual tax payment system for BH series registered vehicles poses a significant challenge in recovering the amount from a large number of vehicle owners even after two years. It is submitted that Maharashtra Motor Vehicles Tax Act introduced as per power conferred to State Govt under Entry 57 of List II of the VIIth Schedule of the Constitution of India. As per Maharashtra Motor Vehicles Tax Act, 1958 and Rules made thereunder the percentage of tax at the time of Registration is as follows:-

		Cost of the Vehicle	Tax Rate (OTT on Invoice price including GST)
Motor Cars (Petrol)	Individual	Upto 10 lakh	11%
		10-20 lakh	12%
		20 lakh and more	13%

Motor Cars (Diesel)	Individual	Upto 10 lakh	13%
		10-20 lakh	14%
		20 lakh and more	15%

9. It is submitted that the Tax Schedule of Maharashtra State will be affected by the amendment made in the said GSR. The comparison statement of the rate of tax for diesel vehicles as per the notification with the Schedule of Maharashtra tax as follows :-

	MAHARASHTRA STATE TAX RATE	TAX RATE FOR BH SERIES
Cost of the vehicle below 10 lakhs	13% of invoice price **(Including GST)**	10% of Invoice Price **Excluding GST**
Cost of the vehicle below 10 to 20 lakhs	14% of invoice price **(Including GST)**	12% of Invoice Price **Excluding GST**
Cost of the vehicle above 20 lakhs	15% of invoice price **(Including GST)**	14% of Invoice Price **Excluding GST**

11. It is submitted that, not only it is a loss of revenue to the Government Exchequer, but also in a way it amounts to misuse of the provision by giving untrue declaration. This is in clear contravention of the objective of the said Central Government rules.

12. It is further submitted that, payment of Road Tax under BH series is made for two years. It is also submitted that quantum of registration in BH series is increasing exponentially and therefore the state is expecting substantially huge revenue loss.

- The Tax revenue forgone estimated for last three years is as follows:

Sr. No.	Tax Multiplier (Approx.)	FY	No. of BH Series vehicles Registered in State of Maharashtra	Tax Forgone Amount
1	83,333	21-22	2611	**21,75,82,463/-**
2	83,333	22-23	19031	**1,58,59,10,323/-**
3	83,333	23-24	29325	**2,58,21,45,372/-**
Total	-	-	50,967	**4,24,72,33,011/-**

13. It is submitted that, after considering the facts and the short fall of in revenue receipts and also on account of misuse of the provisions of BH series the Transport Commissioner office has issued the impugned circular No 10 of 2024 dated 21.02.2024. The said circular does not outright ban the registration of vehicles under BH series, but lays down the points to be taken into consideration by the registering authority in order to ascertain the eligibility of the person who desires to avail registration of his vehicle in BH series. The circular is indicative and not restrictive in nature.

14. It is submitted that the Petitioner is Judicial Officer of State of Maharashtra and has purchased Mahindra XUV 700 AX7 L DSL MT7 STR BS 6 vehicle (Invoice Price 22,97,990/- Rupees) He is claiming that he may be posted / transferred in following Court:-

a. Civil or Criminal Court throughout the State of Maharashtra

b. Union territory of Goa in registry of Hon'ble Bombay High Court

c. Union territory of Daman & Diu in civil or criminal Courts.

d. Union territory of Delhi in registry of Hon'ble Supreme Court

Hereto annexed and marked as Exhibit-1 is a copy of the Working Service Certificate submitted by the Petitioner before the Dy. RTO, Pimpari Chinchwad. It is submitted that, from the Homologation data, the Cost of the vehicle which is purchased by the Petitioner for non BH Series is 22,97,990/- and for BH series is 16,20,946/-. Hence tax calculation is as follows :-

	For BH Series	**For Regular Registration**
Cost of the Vehicles	16,20,946/- **Without GST**	22,97,990/- **With GST**
	Two year Tax Rs.32,419/- (16,20,946 x 12% = 1,94,514) 1,94,514 x 1.25 x 2/15 = **32,419)**	**One time tax <u>Rs.3,44,698/-</u>** (22,97,990 x 15%)

15. It is submitted that, as the impugned circular does not provide for a situation where a newly appointed candidate in an organization with a job profile which requires him to be transferred to different states. The Respondents are suitably amending/ modifying the aforesaid guidelines to ensure that that benefit of BH registration can be availed."

23. We are of the clear view that the attempt on behalf of Respondent Nos. 1 to 3 to defend the impugned Circular is by taking the aforesaid stand in the reply affidavit, which is not borne out by the Circular, would be in the teeth of the settled principles of law as laid down by the Supreme Court in **Mohinder Singh Gill vs. Chief Election Commissioner, New Delhi**[1], wherein the Supreme Court has clearly held that the validity of the order impugned has to be tested on the basis of reasoning contained in the order, and that the authorities are not supposed to supplement the same by means of extraneous material or affidavit before the Court. This judgment in *Mohinder Singh Gill* (supra) has been followed recently by the Supreme Court in ***Babanna Machched v/s. Union of India and others.***[2] wherein the Supreme Court has reiterated the said position when it observed as follows:-

> "22. At the same time in **Mohinder Singh Gill vs. Chief Election Commissioner, New Delhi**, it has been provided that the validity of the order impugned has to be tested on the basis of the reasoning contained therein and that the authorities are not supposed to supplement the same by means of extraneous material or affidavit before the courts."

24. We may further observe that it is a well settled position in law, as enunciated in the decision of the Privy Council in ***Nazir Ahmad v/s. Emperor,***[3] that where a power is given to do a certain thing in a certain way, the thing

---

1 (1978) 1 SCC 405

2 (2024) SCC Online SC 121

3 AIR 1936 PC 253

must be done in that way or not at all. Other methods of performance are necessarily forbidden. Such principle has been followed and reiterated by the Supreme Court in catena of judgments, including two recent judgments i.e. ***Noor Mohammed v/s. Khurram Pasha***[4] and ***Harbhajan Singh v/s. State of Haryana & Others.***[5] In our considered view, the impugned action as also the Circular are even otherwise flawed and illegal when tested on such principles.

25. Mr. Dande would also be justified in placing reliance on a similar situation which had arisen before the Division Bench of the High Court of Karnataka at Bengaluru, in the case of ***The Principal Secretary to Government Transport Department and Ors. vs. Ranjith K.P. and Ors.***[6] wherein a stand similar to the one taken by respondent nos.1 to 3 in the present case was taken by the State of Karnataka, to justify the decision not to grant a BH series registration for the ground of loss of revenue. The Division Bench considering the provisions of the Motor Vehicles Act, observed that the provisions of the Central Act were binding on the State Government and accordingly dismissed the Writ appeal filed by the State Government, thereby confirming the judgment of the learned single Judge, who had issued a direction to register the vehicle of the respondent under the BH Series. In rejecting such contentions as urged on behalf of the State Government, and referring to the constitutional

---

4 (2022) 9 SCC 23

5 (2022) SCC Online SC 1264

6 Writ Petition Nos.191 of 2023 (MV) and 196 of 2023 (MV) decided on 27th July 2023

provisions of Article 256 of the Constitution of India, the following observations were made by the Court:

> "13. Section 64 of the M.V. Act provides for power of the Central Government to make rules for the purpose of registration of vehicles as contemplated under Section 41 of the M.V.Act. While Section 65 of the M.V. Act provides for power of the State Government to make rules other than those specified under Section 64.
>
> 14. Thus, once the rules framed in furtherance to Section 65 of the M.V. Act by the Central Government are made applicable, the State Government has to implement the same in view of the constitutional mandate provided under Article 256 of the Constitution of India which reads as under:
>
> > "256. Obligation of the State and the Union - The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and by any existing laws which apply in that State and the executive power of the Union shall extend to the giving of such direction to the State as may appear to the Government of India to be necessary for that purpose.
>
> 16. The justifications that are being offered by the appellants-State authorities for exclusion of the motor vehicles belonging to the employees of Private Sector Companies/ organisations are;
>
> > (i) That MORTH has issued only a notification and it has not enacted any law warranting its implementation by the State in accordance with Motor Vehicles Act, Rules and the Karnataka Motor Vehicles Taxation Act, 1957. As such, State is within its jurisdiction to exclude private employees from BH - series registration.
> >
> > (ii) that the implementation of notification would cause loss to the State exchequer as it would effect its power and authority to impose and collect tax on the motor vehicles.
> >
> > (iii) That the employees are either temporarily engaged or working on part time/contract basis and it would be difficult for the State to keep track of their movement.
>
> 17. The above reasoning of the appellant-State authorities cannot be countenanced firstly, as noted above in furtherance to

its object of providing seamless process of transfer of vehicles from one State to another State for voluntary registration under BH- series, the Central Government has amended the Central Motor Vehicles Rules, 1989 and the same is a legislation required to be implemented by the State Government. Secondly, the appellant-State authorities having already implemented the notification in respect of categories of non-transport motor vehicles specified thereunder except in respect of non-transport motor vehicles belonging to employees of private Sector, cannot contend to state that it would not implement the notification since it is not a law enacted by MORTH. Once the appellant-State authorities have opted to implement the notification the same has to be given effect in its entirety. Thirdly, amended rule No.51B lays down principle for motor vehicle tax to be imposed by the State and Union Territories and as noted by learned Single Judge at paragraph 19 of the impugned order, the concerned Minister for Road Transport Highways of India has clarified that though the motor vehicles would pay tax for a period of two years or in multiples of it, at 25% higher rate, the same is being remitted to respective State/Union Territories online, and this has not been disputed by the appellant-State authorities. This being the factual position, there is no question of any loss to the State exchequer as rightly concluded by the learned Single Judge. Besides, its only an apprehension of the State in not reaching its target in collecting the tax. A mere apprehension cannot lend credible reason for not implementing the law. Fourthly, the reasoning that private sector employees are appointed on temporary/contract basis and that their continuity in service is not assured, is not acceptable inasmuch as the same logic would also apply even for employees of other sectors who are given benefit of the BH-series registration. That apart, the levy of motor vehicle tax is for two years or in multiples of two and that the amended Motor Vehicles Rules, 2021 has also taken care of a situation where the owner of vehicle bearing BH series is required to intimate the registering authority of his place of residence in Form 33 within 30 days, electronically through the portal in case the vehicle is being kept in the State other than where the vehicle was earlier registered.

23. Thus, even in the instant case, in view of the notification issued by the MORTH providing for registration of motor vehicles under BH series and framing /amending corresponding rules under Central Motor Vehicles Act (20th Amendment) Rules, 2021 which also provide for principle for motor vehicle tax, as noted above, it is not available for the State Government to contend that it would not implement the notification. Such a stand is not justified or supported by any provisions of law. For the aforesaid reasons and analysis we are of the considered view that appellants have not made out any

> grounds for interference with the impugned order, accordingly, appeals are dismissed."

26. We are in complete agreement with the view as taken by the High Court of Karnataka in the aforesaid decision.

27. We also find that in the year 2017, a Division Bench of this Court in ***Shivpujan Kumar S/o Gopikisan Singh & Anr. vs. The State of Maharashtra & Ors.***[7] was confronted with an issue as to whether the State Government had the statutory power to impose the eligibility conditions. The Division Bench, rejecting the stand taken by the transport department, observed that, unless there is a specific provision under the said Act or under the Rules framed in exercise of the powers under the Act, empowering the State Government to prescribe any qualifications for the applicants who wanted to apply for Contract Carriage Permits, in respect of auto rickshaws, the State Government could not have lawfully imposed the conditions as impugned in such proceedings. The Court observed that the State Government is under a mandate to act within four corners of the said Act and the Rules framed thereunder. It was also observed that nothing prevented the State Government from exercising the Rule making power, if it was otherwise permissible in law, for empowering the Transport Department to impose such condition, as a condition precedent for grant of permit. It was observed that, only by giving an excuse of public interest, the State Government cannot circumvent the

7 (2017) SCC OnLine Bom 4115

provisions of the said Act and the Rules framed thereunder. The ratio of such decision is squarely applicable in the facts of the present case as we are more than certain that the Transport Commissioner has acted wholly without jurisdiction in issuing the Circular in question.

28. Mr. Dande would also be justified in relying upon the decision of the Supreme Court in ***Pancham Chand and Others vs. State of Himachal Pradesh and Others***[8] wherein the Supreme Court, in the context of the issue which had arisen under the Motor Vehicles Act, had observed that the Act is a self contained Code. All the authorities mentioned therein are statutory authorities. They are bound by the provisions of the Act. They must act within the four corners thereof. It was observed that the State, although, had a general control, but such control must be exercised strictly in terms of Article 162 of the Constitution of India. It was held that all governmental orders must comply with the requirements of a statute as also the constitutional provisions, as the Constitution envisages a rule of law and not rule of men. The observation as made by the Supreme Court in paragraph 18 of the report are certainly applicable in the facts of the present case.

29. In the light of the aforesaid discussion, to us, it is clear that the petitioner's legal rights to be entitled to have a registration for his vehicle under the BH series have been completely negated by the impugned action taken by

8 (2008) 7 SCC 117

respondent nos.1 to 3. the impugned action in denying such registration is wholly without jurisdiction. Further, referring to the impugned Circular, the petitioner was denied registration of his vehicle under the BH Series. As held by us the impugned Circular, in law, has no legs to stand, hence, the same could not have been foisted on the petitioner.

30. In the aforesaid circumstances, the petition needs to succeed. It is accordingly allowed by the following order:

ORDER

a. Circular No.10 of 2024 dated 21st February 2024 is declared to be illegal, arbitrary and unconstitutional. It is hereby quashed and set aside.

b. Respondents are directed to grant registration to the petitioner's vehicle under the BH series within a period of one week from the day a copy of this order is available.

c. Rule is made absolute in the aforesaid terms.

d. No costs.

(FIRDOSH P. POONIWALLA, J.) (G. S. KULKARNI , J.)