IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

WEDNESDAY, THE 26TH DAY OF MARCH 2025 / 5TH CHAITHRA, 1947

WA NO. 694 OF 2020

(THE JUDGMENT DATED 16.07.2019 IN WP(C) NO.18588 OF 2018)

APPELLANTS/RESPONDENTS 1 TO 4 IN THE WPC:

1 THE TRANSPORT COMMISSIONER
TRANS TOWER, VAZHUTHACADU, THIRUVANANTHAPURAM-695 014.

2 THE DEPUTY TRANSPORT COMMISSIONER,
COCHIN, PIN-682 001.

3 THE REGIONAL TRNSPORT OFFICER (TAXATION OFFICER),
ERNAKULAM-682 011.

4 THE MOTOR VEHICLES INSPECTOR,
OFFICE OF THE REGIONAL TRANSPORT OFFICER, SULTHAN BATHERY, WAYANADU, PIN-673 592.

BY GOVERNMENT PLEADER SMT.RESMITHA RAMACHANDRAN

RESPONDENTS/PETITIONER & 5TH RESPONDENT IN THE WPC:

1 MOHAMMED SABAH
S/O N.P UMMER, DIRECTOR, UNILONG TRANSPORTING CO PVT LTD, THIRUMALAL THAYAR, OULGARATE VILLIANUR RD PUDUCHERRY-605001.

2 THE ASSISTANT REGISTERING AUTHORITY,
PUDUCHERRY-605001.

SRI.P.DEEPAK

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 26.03.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dr. A.K.Jayasankaran Nambiar, J.

It is submitted by the learned Government Pleader that the issue involved in this appeal has already been decided in favour of the appellant State by the Division Bench of this Court dated 19.11.2020 in W.A.No.972 of 2020 and connected cases.

Taking note of the said judgment of the Division Bench, a copy of which shall be annexed to this judgment, this appeal is allowed by setting aside the judgment of the learned Single Judge to the limited extent impugned therein and by following the earlier judgment of the Division Bench of this Court referred above.

Sd/-

DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-

EASWARAN S.
JUDGE

mns

"C.R."

JUDGMENT

[WA Nos.2242, 2406, 2411, 2422, 2428, 2429, 2434, 2436, 2448, 2455, 2456, 2457, 2459, 2460, 2469, 2472, 2474, 2479, 2492, 2503, 2514, 2554, 2555/2019 14, 35, 71, 452, 590, 668, 695, 702, 748, 768, 787, 788, 792, 819, 826, 882, 887, 901, 927 & 972/2020]

Dated this the 19th day of November, 2020

Shaffique, J.

These appeals have been filed by the officers of the State challenging judgment of the learned Single Judge disposing of the writ petitions filed by party respondents by issuing the following directions:-

> *"**37**. As a result of my above discussion I summarise my judgment on the issues noted above as follows:*
> *(a) Section 3(6) of Motor Vehicles Taxation Act, 1976 is within the competence of State legislature and Section 3(6) is not in any manner repugnant to Chapter IV of Motor Vehicles' Act, 1988 or ultra vires Act 1976. Section 3(6) therefore is valid and legal.*
> *(b) The registration of a non-transport vehicle and payment of registration fee under Act 1988 or payment of motor vehicle tax under a State legislature continues to be valid so long as the vehicle is kept and used in the State in which it is registered. These vehicles if enter State of Kerala and stay beyond the period stipulated by the State enactment, the vehicle is required to pay vehicle tax as per Section 3(6) read with Annexure III of Schedule of Act 1976.*

> *(c) The impugned orders calling upon the petitioners to register the subject vehicles in State of Kerala and pay life tax are set aside as illegal, arbitrary and violative of principles of natural justice, the matters are restored to the file of respective Regional Transport Officer/ respondents for consideration and disposal by keeping in view the principles stated supra.*
>
> *(d) The writ petitions filed challenging show cause notices are given four weeks' time from the date of receipt of copy of this judgment to file objections against proposed tax levy and are entitled to show that, firstly, the vehicle is not kept for use in State of Kerala beyond thirty days and, alternatively, vehicle is not at all used or kept for use in State of Kerala. The objection raised against proposed action is examined in detail and orders as are warranted by the circumstances of the case are passed. Respondents keeping in view the scope, character and purpose of incidence of vehicle tax, consider the objections and pass detailed orders, in all the matters now restored to file as well as where time is granted for filing objections to show cause notice."*

After a common judgment was delivered in WP(C) No. 33231/2018 and connected cases, similar matters were disposed of on the basis of the said judgment.

2. A batch of appeals came up for hearing and in matters where service has been complete, we heard the learned counsel appearing on either side. We have also requested the learned counsel appearing in other cases in which the appeals were being

filed, and in cases where service of notice are not complete, to address their arguments as well.

3. The factual aspects involved in these matters are short. The writ petitioners are persons who had purchased their vehicles from the Union territory of Puducherry. Alleging that those vehicles are plying in the State of Kerala, steps were taken by the respective Regional Transport Authorities in the State to cancel their registration. Notices in that regard had been issued by the Regional Transport Authorities to the writ petitioners and to conduct an enquiry in that regard which came to be challenged in separate writ petitions. According to the Regional Transport Authorities, the petitioners had produced false and fabricated documents to register the vehicles at Puducherry and the vehicles were not normally kept at Puducherry whereas the vehicles are normally kept in the State of Kerala. It is the contention of the State that the intention of the petitioners is only to evade payment of motor vehicles tax at the time of registration as provided under Motor Vehicles Taxation Act, 1976 (hereinafter referred as 'the Taxation Act'). In the process, petitioners also challenged Section 3(6) of the Taxation Act.

4. The learned Single Judge while rejecting the challenge

to Section 3(6) of the Taxation Act, held that the impugned orders calling upon the petitioners to register the vehicles in the State of Kerala and pay life tax are illegal, arbitrary and violative of principles of natural justice. All the matters were restored to the files of the respective Regional Transport Officers for fresh consideration and disposal. It was also held that the writ petitioners have to file their objections to the show cause notices within four weeks against the proposed levy of tax and they were entitled to show that the vehicles are not kept for use in Kerala beyond 30 days and alternatively the vehicle is not at all used or kept for use in State of Kerala.

5. The learned Special Government Pleader while impugning the aforesaid judgment submits that the only question that is required to be considered in the matter is regarding the finding of the learned Single Judge with reference to S.55 of the Motor Vehicles Act, 1988 (hereinafter referred as the 'MV Act'). The learned Single Judge held at paragraph 30.7 that the Transport Department of State of Kerala and its officers do not have jurisdiction under S.55(5) of the MV Act, to cancel the registration effected and completed in the Union Territory of Puducherry. He argued that the scheme of the statute permitted

any registering authority, anywhere in India, to conduct an enquiry, in a place where the vehicle is normally kept, to ascertain whether the registration was obtained from any other registering authority, by producing either false documents or by misrepresentation of facts, and if the said authority is so satisfied, it has the power to cancel the registration. But the certificate of registration can be cancelled only by the original registering authority on intimation from the concerned registering authority who cancels the registration.

6. On the other hand, learned counsel appearing on behalf of the respondents/writ petitioners would submit that the provisions of Section 55 (5) of the MV Act cannot be invoked by "any registering authority", which is rather clear from the use of the word "a registering authority" and "the registering authority" used in sub-section (5) of Section 55. It is argued that the registering authority in the State of Kerala cannot consider the validity of documents produced by the petitioners before the registering authority of another State or Union Territory.

7. Apparently, in the judgments which are impugned herein, the learned Single Judge had proceeded to consider the scope of S.55(5) and had restricted the right of the Regional

Transport Authorities in the State of Kerala to take any action for cancellation of registration in respect of vehicles which are already registered in the State of Puducherry.

8. Insofar as the State's challenge is only in respect of the jurisdictional authority of the registering authorities of the State to invoke power under Section 55(5) with reference to vehicles registered in another State/Union Territory, we do not think that we should go into the factual background of each and every case as the scope of appeal is very limited.

9. S.40 of the MV Act reads as under:-

> *"**40. Registration, where to be made.**—Subject to the provisions of section 42, section 43 and section 60, every owner of a motor vehicle shall cause the vehicle to be registered by a registering authority in whose jurisdiction he has the residence or place of business where the vehicle is normally kept".*

A bare reading of S.40 indicates that every owner of a motor vehicle has to register the vehicle before a registering authority in whose jurisdiction he has the residence or place of business where the vehicle is normally kept. Therefore, the place of registration apparently is with reference to the place where the vehicle is normally kept. It may be either his place of residence or place of business.

10. S.46 of the MV Act reads as under:-

> *"**46. Effectiveness in India of registration**.—Subject to the provisions of Section 47, a motor vehicle registered in accordance with this Chapter in any State shall not require to be registered elsewhere in India and a certificate of registration issued or in force under this Act in respect of such vehicle shall be effective throughout India."*

Section 46 of course is subject to S.47. S.47 relates to a situation where a motor vehicle registered in one State has been kept in another State, for a period exceeding twelve months in which event the owner of the vehicle is obliged to apply to the registering authority, within whose jurisdiction the vehicle then is, for the assignment of a new registration mark and he shall present the certificate of registration to that registering authority. For that purpose, either the owner will have to get a no objection certificate as contemplated u/s 48 from the Registering Authority who had issued a certificate of registration or should take steps as contemplated under the said provision. If there is failure to do so, S.47(5) indicates that action could be taken against the owner in terms of S.177.

11. S.49(1) of the MV Act reads as under:-

> *"**49. Change of residence or place of business:** (1) If the owner of a motor vehicle ceases to reside or have his place of business at the address recorded in the certificate*

of registration of the vehicle, he shall, within thirty days of any such change of address, intimate in such form accompanied by such documents as may be prescribed by the Central Government, his new address, to the registering authority by which the certificate of registration was issued, or, if the new address is within the jurisdiction of another registering authority, to that other registering authority, and shall at the same time forward the certificate of registration to the registering authority or, as the case may be, to the other registering authority in order that the new address may be entered therein."

If there is failure to comply with S.49(1), it entails action u/s 177 of the Act.

12. S.55 of the Act as it then was relates to cancellation of registration under various circumstances, which reads as under:-

***"55. Cancellation of registration.**—(1) If a motor vehicle has been destroyed or has been rendered permanently incapable of use, the owner shall, within fourteen days or as soon as may be, report the fact to the registering authority within whose jurisdiction he has the residence or place of business where the vehicle is normally kept, as the case may be, and shall forward to the authority the certificate of registration of the vehicle.*

(2) The registering authority shall, if it is the original registering authority, cancel the registration and the certificate of registration, or, if it is not, shall forward the report and the certificate of registration to the original registering authority and that authority shall cancel the registration.

(3) Any registering authority may order the examination of a motor vehicle within its jurisdiction by such authority as the

State Government may by order appoint and, if upon such examination and after giving the owner an opportunity to make any representation he may wish to make (by sending to the owner a notice by registered post acknowledgment due at his address entered in the certificate of registration), it is satisfied that the vehicle is in such a condition that it is incapable of being used or its use in a public place would constitute a danger to the public and that it is beyond reasonable repair, may cancel the registration.

(4) If a registering authority is satisfied that a motor vehicle has been permanently removed out of India, the registering authority shall cancel the registration.

(5) If a registering authority is satisfied that the registration of a motor vehicle has been obtained on the basis of documents which were, or by representation of facts which was, false in any material particular, or the engine number or the chassis number embossed thereon are different from such number entered in the certificate of registration, the registering authority shall after giving the owner an opportunity to make such representation as he may wish to make (by sending to the owner a notice by registered post acknowledgment due at his address entered in the certificate of registration), and for reasons to be recorded in writing, cancel the registration.

(6) A registering authority cancelling the registration of a motor vehicle under section 54 or under this section shall communicate such fact in writing to the owner of the vehicle, and the owner of the vehicle shall forthwith surrender to that authority the certificate of registration of the vehicle.

(7) A registering authority making an order of cancellation under section 54 or under this section shall, if it is the original registering authority, cancel the certificate of registration and the entry relating to the vehicle in its records, and, if it is not

> *the original registering authority, forward the certificate of registration to that authority, and that authority shall cancel the certificate of registration and the entry relating to the motor vehicle in its records.*
>
> *(8) The expression "original registering authority" in this section and in sections 41, 49, 50, 52, 53 and 54 means the registering authority in whose records the registration of the vehicle is recorded.*
>
> *(9) In this section "certificate of registration" includes a certificate of registration renewed under the provisions of this Act."*

The statute uses the words 'the registering authority', 'any registering authority' and 'a registering authority' in different sub sections of S.55. S.2(37) defines 'registering authority' as meaning, an authority empowered to register motor vehicles under Chapter IV, which includes Section 55, as well.

13. On a bare reading of S.55, it is rather clear that the registering authority can cancel the registration of a vehicle under various circumstances. As per sub-section (1) of S.55, when a motor vehicle is destroyed or rendered permanently incapable of use, the owner has to report the said fact to the registering authority within whose jurisdiction he has his residence or place of business, where the vehicle is normally kept, and shall also forward to the authority the certificate of registration of the vehicle. Sub section (2) provides that, if the

report is received by the original registering authority, he can cancel the registration and the certificate of registration. If it is not the original registering authority, he shall forward the report and the certificate of registration to the original registering authority in which event that authority shall cancel the registration. Therefore, even if a vehicle is registered within the jurisdiction of another registering authority, if the vehicle is destroyed or rendered permanently incapable of use, the obligation of the owner is to inform the registering authority within the jurisdiction of his place of residence or place of business where the vehicle is normally kept along with the certificate of registration. If the said authority is not the original registering authority, he shall forward a report to the original registering authority and the said authority will cancel the registration. Sub-section (3) contemplates a *suo motu* power to be exercised by any registering authority, if it is found on examination of a motor vehicle plying within its jurisdiction, and after notice to the owner of the vehicle, if he is satisfied that the vehicle is in a condition that it is incapable of being used in a public place and would be a danger to the public and it is beyond repair, he can cancel the registration. Sub-section (4) of S.55

contemplates yet another situation when a registering authority is satisfied that a motor vehicle has been permanently removed out of India, it shall cancel the registration. Here also, the word used is 'a registering authority'.

14. Sub-section (5) contemplates a different situation, which enables the registering authority to cancel the registration of a motor vehicle. If a registering authority is satisfied that the registration of a motor vehicle has been obtained on the basis of documents which were false in any material particular or by representation of facts which again was false in any material particular, the said registering authority shall, after giving the owner an opportunity to make such representation, cancel the registration. Action can also be taken if it is found that the engine number or chassis number differs from what is mentioned in the certificate of registration. Sub-section (6) of S.55 requires the registering authority cancelling the registration to communicate the said fact to the owner of the vehicle, and the owner has to provide the certificate of registration of the vehicle to the said authority. Sub-section (7) of S.55 further provides that a registering authority making an order of cancellation under Section 54 or "under this section" i.e., S.55, shall, if it is the

original registering authority, cancel the certificate of registration and the entry relating to the vehicle in its records, and, if it is not the registering authority, forward the certificate of registration to that authority, and that authority shall cancel the certificate of registration and the entry relating to the motor vehicle in its records. Sub-section (8) further indicates that the expression "original registering authority" means the registering authority in whose records the registration of the vehicle is recorded.

15. There cannot be any dispute about the fact that the original registering authority in these cases is the Regional Transport Authority at Puducherry. The question is, whether any other registering authority can conduct an enquiry with reference to any matters specified under sub-section (5).

16. Now coming to sub-section (5), again it starts with the words 'if a registering authority is satisfied'. We are of the view that sub-section (7) clarifies the point in dispute. It starts with the words 'a registering authority' making an order of cancellation and further indicates that "if it is the original registering authority", it can cancel the certificate of registration and the entry relating to the vehicle in its records. If it is not the original registering authority, it shall forward the certificate of

registration to that authority, and that authority shall cancel the certificate of registration and the entry relating to the motor vehicle in its records.

17. Apparently, sub-section (7) provides a procedure where the registering authority who passes an order of cancellation is either the original registering authority or it is not the original registering authority. S.55(1) contemplates a situation, where the vehicle is either destroyed or incapable of use and the procedure is mentioned under S.55(2). S.55(3) and (4) contemplates two different situations and the authority "any registering authority" appearing under sub-section (3) and "a registering authority" under sub-section (4) is only to "cancel the registration". Sub-section (7) applies in such instances, which differentiates between "an order of cancellation" and "cancel the certificate of registration and entry relating to the vehicle in its records". The distinction is only this. Any registering authority could make an order of cancellation. But the certificate of registration and the entry relating to the vehicle in its records can be cancelled only by the original registering authority.

18. It is permissible for a vehicle registered in one State to be used in any other State, but of course subject to the statutory

restrictions and compliance of local laws. For that reason itself, we cannot ascribe to the view that proceedings under S.55(5) could be initiated only by the original registering authority, and especially in the light of sub-section (7), which clarifies the jurisdictional fact.

19. It is pointed out by the counsel for petitioners that the original registering authorities were satisfied about their credentials at the time of registration and therefore another registering authority cannot overturn the said finding of fact. Validity of the materials relied upon at the time of registration are questions of fact, and it is possible that the original registering authority had placed reliance upon it and registered the vehicle. As already stated, a vehicle can be registered at a place where a person has his/her residence or place of business, where the vehicle is normally kept. Suppose a person's place of residence and business was in the State of Kerala and the vehicle is normally kept in the State, and if it is found that he has no place of residence or business in the place of original registering authority, it is a matter which requires enquiry in terms, with Section 55(5). Such enquiry can be conducted only by the registering authority, where the vehicle is normally kept, and the

said authority will have the jurisdiction to cancel the registration. Once such an order is passed, cancellation of certificate of registration and entry relating to the motor vehicle from the register can be made only by the original registering authority.

20. In the light of the aforesaid discussion, we are of the view that the learned Single Judge was not justified in arriving at a conclusion that the Transport Authorities of State of Kerala can only conduct an enquiry and if it is found that the record of the very registration is vitiated, report can be forwarded to the original registering authority under S.55(5) and it is for the said authority to conduct enquiry and cancel the registration. An apparent mistake that has arisen in the matter is on the understanding of the words 'making an order of cancellation' and cancelling the 'certificate of registration and the entry relating to the motor vehicle' in its records. An order of cancellation can be made by any registering authority if it is satisfied that any of the situations as described under sub-section (5) of S.55 is brought to the notice of the registering authority and if he is satisfied on enquiry that such a condition exists. Once the order of cancellation is made, it shall be forwarded to the original registering authority to enable that authority to 'cancel the

certificate of registration' and the 'entry relating to the motor vehicle' in its records.

In the result, the appeals are allowed setting aside the judgment of the learned Single Judge to the limited extent as discussed earlier.

Sd/-

A.M. SHAFFIQUE

JUDGE

Sd/-

GOPINATH P.

JUDGE

Rp

True Copy

PS to Judge