

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 7074 OF 2008

IN THE MATTER OF :

STATE OF M.P. & ORS.

.... APPELLANTS

VERSUS

RAKESH SETHI & ANR.

.... RESPONDENTS

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Submitted by:

15.08.2020

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WRITTEN SUBMISSIONS ON BEHALF OF RESPONDENT NO.1

BY MANOJ SWARUP (AMICUS CURIAE)

(A) BRIEF ABOUT THE WRIT PETITION FILED BY RESPONDENT NO.1 BEFORE THE HIGH COURT (YEAR 2004):-

In the Writ Petition filed before the High Court, Respondent No.1 had clearly called in question:-

- (i) reservation of particular registration number and
- (ii) additional fee being charged for being 'allotted' particular registration number.

High Court at page 16, para 14 of the SLP Paper Book noticed both these contentions. Also, High Court in the operative part at Page 23 of the SLP Paper Book, struck down the impugned notification 'prescribing fee to be charged for registration of motor vehicles by means of reservation'.

It is clarified that it is not as if Respondent No.1 had applied for assignment of reserved registration mark. Case of the Petitioner in the Writ Petition was that he applied for registration of motorcycle by application and number MP-KL 4646 was available against his application in serial order. His further case is that this was declined by an order passed by Registering Authority saying that this number cannot be assigned without payment of special fee. The case is that under Section 41 one Application is contemplated and only one fee is leviable.

(B) RELEVANT PROVISIONS FROM THE MOTOR VEHICLES ACT, 1988

CHAPTER IV- REGISTRATION OF MOTOR VEHICLES

Section 41 is extracted below:-

“41. Registration, how to be made.— (1) *An application by or on behalf of the owner of a motor vehicle for registration shall be in such form and shall be accompanied by such documents, particulars and information and shall be made within such period as may be prescribed by the Central Government:*

Provided that where a motor vehicle is jointly owned by more persons than one, the application shall be made by one of them on behalf of all the owners and such applicant shall be deemed to be the owner of the motor vehicle for the purposes of this Act.

[Provided further that in the case of a new motor vehicle, the application for registration in the State shall be made by the dealer of such motor vehicle, if th new motor vehicle is being registered in the same State in which the dealer is situated.] [2019 AMENDMENT]

(2) *An application referred to in sub-section (1) shall be accompanied by such fee as may be prescribed by the Central Government.*

(3) *The registering authority shall issue to the owner of a motor vehicle registered by it a certificate of registration in such form and containing such particulars and information and in such manner as may be prescribed by the Central Government.*

(4) xxxx

(5) xxxx

(6) *The registering authority shall **assign** to the vehicle, for display thereon, a distinguishing mark (in this Act referred to as the registration mark) consisting of one of the groups of such of those letters and followed by such letters and figures as are **allotted to the State by the Central Government** from time to time by notification in the Official Gazette, and displayed and shown on the motor vehicle in such form and in such manner as may be prescribed by the Central Government.*

[Provided that in case of a new motor vehicle, the application for the registration of which is made under the second proviso to sub-section

(1), such motor vehicle shall not be delivered to the owner until such registration mark is displayed on the motor vehicle in such form and manner as may be prescribed by the Central Government.] [2019 AMENDMENT]”

It is submitted that Section 41(1) contemplates only one application for the registration of the Motor Vehicle.

Second proviso to Section 41(1) makes it clear that the owner of the vehicle has no role to play till the stage of the vehicle is registered. This is for the reason that the dealer of the motor vehicle is required to move the Application for registration. So much so that under proviso to Section 41(6) it is mandated that the motor vehicle shall not be delivered to the owner until such registration. *[2019 AMENDMENT]*

That Section 41(2) leaves no doubt that ‘such fee’ i.e. fees for registration would be as prescribed by the Central Government. This is fees for registration. Registration takes place in the following steps:-

- (i) An application is made for registration to the Registering Authority – please refer Section 41(1) of the Act, Rule 47 and Form 20 of the Central Motor Vehicles Rules, 1989.
- (ii) The above application is required to be accompanied by such documents, particulars and information as prescribed by Central Government – please refer Section 41(1) of the Act.
- (iii) The above application for registration is required to be accompanied by such fee as may be prescribed by Central Government – please refer Section 41(2) and Rule 81 of the Central Motor Vehicles Rules, 1989.
- (iv) Registering Authority is required to issue a certificate of registration including registration mark in name of the owner in such form and containing such particulars as prescribed by Central Government – please refer Section 41(3) of the Act, Rule 48, and Form 23/ 23-A of Central Motor Vehicles Rules, 1989.

The above are the various steps which start with an application for registration and ends with the issuance of the certificate of registration. For this entire exercise, the registration fee is prescribed in Section 41(2). This fee is mandated to be prescribed by the Central Government. The fee so prescribed by the Central Government is precisely for the service of registration to be rendered by the Registering Authority, till issuance of certificate of registration (which includes registration mark). The applicant i.e. the owner of the vehicle gets the registration number as an 'end product'. That 'end product' is the service rendered by the Registering Authority for which fee is prescribed in Section 41(2) of the Act.

The endeavour of the State Government – Appellant is to break-up the above mentioned steps and to contend that at the stage of Section 41(6) of the Act, they are making 'allotment' and therefore rendering service, is mis-placed. This is a complete bundle of steps required to be taken, right from Application to issuance of the registration number. This cannot be broken up into parts and then charged separately for.

It is submitted that Section 41 of the Act contemplates only one application. There is no second application contemplated (as is mooted by the Madhya Pradesh Motor Vehicles Rules, 1994 in Rule 55A. Rule 55A of Madhya Pradesh Motor Vehicles Rules, 1994 contemplates a separate application for issuance of reserved registration number).

Under Section 41(3) of the Act the registration certificate mentions the registration number which is also called as the registration mark/distinguishing mark. This is borne out from Section 41(6) of the Act.

Analysis of Section 41(6) of the Act would reveal that it mentions three different authorities, Registering Authority, State Government and the Central Government. Registering Authority has been designated as the competent authority under the Act.

So also, Section 41(6) of the Act distinctly mentions 'assign' and 'allot'. Initially Central Government would 'allot' the registration numbers to the State Government. Thereafter, the registering authority would 'assign' to the vehicle, the registration number.

The power to 'assign' the registration mark to the vehicle is given to the Registering Authority of such letters and figures 'allotted' to State Government by Central Government, through notifications. There is no such power to the State Government to re-allot/reserve the letters and figures once already allotted to State Government by Central Government.

No separate application is contemplated under Section 41(6) of the Act. No separate fee is contemplated under Section 41(6) of the Act. For the entire exercise of registration, fee is specifically mentioned in Section 41(2) of the Act.

This Hon'ble Court had occasion to consider two questions:-

- (i) Whether registration is a post-sale event?
- (ii) When is sale of a motor vehicle complete either in the office of the dealer or at the time when registration takes place in the registering authority?

In the process of answering this question, scheme of Motor Vehicles Act, 1988 was examined. This Hon'ble Court in Commissioner of Commercial Taxes, Thiruvananthapuram, Kerala v. K.T.C. Automobiles, reported as (2016) 4 SCC 82 held as follows:-

"10. ...Section 41 in particular leaves no manner of doubt that application for registration of a motor vehicle is required to be made by or on behalf of the owner in the prescribed form along with prescribed fee within a specified period. The registering authority after being satisfied with all statutory compliances, has a corresponding duty to issue a certificate of registration in the form prescribed by the Central Government....."

"20.... Such transfer of possession can take place only when the vehicle reaches the place where the registering authority will be obliged to inspect for the purpose of finding out whether it is a roadworthy and registerable motor vehicle and whether its identification marks tally with those given in the sale invoice and the application for registration....."

That High Court of Allahabad appears to have directly considered this question in Smart Chip Ltd & Ors. v. State of UP & Ors reported as AIR 2003 All 80 (DB):

"57. In our opinion no State Government can prescribe a format for tender or Smart Card and charge a fee which is contrary to the Rules. In our opinion the State Government does not have any power to prescribe the form, manner and content of information of the registration certificate or the fee to be charged for issuing

registration certification of a motor vehicle, since the Central Govt has already done so in the Motor vehicle Rules. The State Government by issuing a tender cannot prescribe the form contents of information, and fee contrary to the Rules.”

That wherever State Government was to be given leeway to prescribe fee it has been so specifically done in the Act. For instance, Section 41(13) may be perused as extracted below. (This has been now deleted by the 2019 amendment.)

“41. Registration, how to be made

(13) For the purposes of sub-section (11), the State Government may prescribe different amounts having regard to the period of delay on the part of the owner in making an application under sub-section (1) or sub-section (8)”

Section 46 is extracted below:-

“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.”

Submission in regard to Section 46 of the Act is that the registration is effective throughout the Country. Therefore, uniform fee for registration throughout the Country. One registration number, one prescribed fee.

Section 64 is extracted below:-

“64. Power of Central Government to make rules.—The Central Government may make rules to provide for all or any of the following matters, namely:—

(a) the period within which and the form in which an application shall be made and the documents, particulars and information it shall accompany under sub-section (1) of section 41;

- (b) the form in which the certificate of registration shall be made and the particulars and information it shall contain and the manner in which it shall be issued under sub-section (3) of section 41;
- (c) the form and manner in which the particulars of the certificate of registration shall be entered in the records of the registering authority under sub-section (5) of section 41;
- (d) the manner in which and the form in which the registration mark, the letters and figures and other particulars referred to in sub-section (6) of section 41 shall be displayed and shown;xxxxx.....

(o) the fees to be charged for the issue or renewal or alteration of certificates of registration, for making an entry regarding transfer of ownership on a certificate of registration, for making or cancelling an endorsement in respect of agreement of hire-purchase or lease or hypothecation on a certificate of registration, for certificates of fitness for registration marks, and for the examination or inspection of motor vehicles, and the refund of such fees.”

It is submitted that Section 64 (o) of the Act specifically gives the power to make rules in regard to fees to be charged for issuance of certificate of registration by the Central Government.

Section 65 is extracted below:-

“65. Power of State Government to make rules.—(1) A State Government may make rules for the purpose of carrying into effect the provisions of this Chapter other than the matters specified in section 64.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

.....xxxxxxxx.....

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

.....xxxxxxxx.....

(h) the exemption of prescribed persons or prescribed classes of persons from payment of all or any portion of the fees payable under this Chapter;

.....xxxxxxxx.....

(k) the amount or amounts under sub-section (13) of section 41 or sub-section (7) of section 47 or sub-section (4) of section 49 or sub-section

(5) of section 50;”

That all of the Section 64 is specifically excluded from the ambit of Section 65 of the Act. In regard to Section 65(d) of the Act it is submitted that it is with respect to issue of certificate of registration. There is no reference to fee here.

Fee is covered completely by Section 41(2) and Section 64(o) of the Act.

Section 64(h) and Section 65(k) of the Act are the permissible power of the State Government to prescribe fee/amount. There is no dispute on this, further this does not include the registration fee.

In regard to both Section 64 and Section 65 of the Act it is submitted that both the Sections are still confined to rule making authority. In the present case, the power to prescribe fee for registration of the Motor Vehicle is specifically provided in Section 41(2) and conferred exclusively on the Central Government. Once this is done, then in exercise of any power under Section 64 and Section 65, Section 41(2) of the Act cannot be violated.

Other Sections where State Government have been given leeway to prescribed fee in the Chapter – IV - Registration of Motor Vehicles are:-

(i) *“47. Assignment of new registration mark on removal to another State:*

(4) A State Government may make rules under section 65 requiring the owner of a motor vehicle not registered within the State, which is brought into or is for the time being in the State, to furnish to the prescribed authority in the State such information with respect to the motor vehicle and its registration as may be prescribed.

...xxxx..

(7) For the purposes of sub-section (5), the State Government may prescribe different amounts having regard to the period of delay on the part of the owner in making an application under sub-section (1).” (ii) “49. Change of residence or place of business.—

(4) For the purposes of sub-section (2), a State Government may prescribe different amounts having regard to the period of delay in intimating his new address.”

(iii) *“50. Transfer of ownership*

(5) For the purposes of sub-section (3), a State Government may prescribe different amounts having regard to the period of delay on the part of the transferor or the transferee in reporting the fact of transfer of ownership of the motor vehicle or of the other person in making the application under sub-section (2)...”

CHAPTER XIV MISCELLANEOUS

Section 211 is extracted below:-

“211. Power to levy fee.—Any rule which the Central Government or the State Government is empowered to make under this Act may, notwithstanding the absence of any express provision to that effect, provide for the levy of such fees in respect of applications, amendment of documents, issue of certificates, licences, permits, tests, endorsements, badges, plates, countersignatures, authorisation, supply of statistics or copies of documents or orders and for any other purpose or matter involving the rendering of any service by the officers or authorities under this Act or any rule made thereunder as may be considered necessary:

Provided that the Government may, if it considers necessary so to do, in the public interest, by general or special order, exempt any class of persons from the payment of any such fee either in part or in full. “

It is submitted that Section 211 of the Act specifically states that it applies where the Central Government or the State Government is empowered to make any rule under this Act.

This is placed in Chapter XIV which is titled MISCELLANEOUS. As against Section 41(2) of the Act which is placed in the specific Chapter IV dealing with REGISTRATION OF MOTOR VEHICLES. Therefore, it is submitted that Section 41(2) is specific and Section 211 of the Act is residuary and general in its application and operation.

It is therefore submitted that the opening words of Section 211 make it abundantly clear that for its application the State Government must be empowered to make any rule under this Act. On the contrary, Section 41(2) of the Act specifically reserves this power exclusively to the Central Government. So, State Government is not empowered to prescribe/make rule in regard to fee for registration of motor vehicle.

Section 211 of the Act is a miscellaneous power in regard to levy of fee for ‘applications, amendment of documents, issue of certificates etc.’ Therefore, these documents have been enlisted generally however fees in regard to registration of a Motor Vehicle is specifically so provided in Section 41(2) of the Act. Therefore for registration of a Motor Vehicle, Section 41(2) being the special provision would govern and would leave Section 211 of the Act inapplicable in such a case.

It is further submitted that Section 211 of the Act is only a miscellaneous power to levy fee. (There is no contemplation of levy of any fee in Section 41(6). It is only for allotment and consequent assignment).

Further, Section 211 cannot be pressed into service to levy a fee which will be violative of the mandate of Section 41(2) of the Act. Anything which has been specifically provided in Section 41(2) namely, fee for registration of motor vehicle cannot be violated by exercise of residuary miscellaneous power of Section 211 of the Act. If State Government is permitted to levy separate fee in regard to reservation of a registration mark (which is component of the process of registration), it would violate the mandate of Section 41(2) of the Act. The harmony between Section 41(2) and Section 211 of the Act would be established if Section 41(2) is allowed to exclusively govern the area of fee in regard to registration of motor vehicle and this particular area is left out from the operation of Section 211 of the Act. This is for the reason that Section 41(2) specifically provides for levy of fee by the Central Government.

It is also relevant to examine the definition of ‘prescribed’ in the Motor Vehicles Act, 1988:-

“2. Definitions.—In this Act, unless the context otherwise requires,—

.....xxxxx

(32) “prescribed” means prescribed by rules made under this Act;”

Further it is relevant to submit that there are two main aspects in the Motor Vehicles Act 1988, Chapter II – Licensing of Drivers of Motor Vehicles and Chapter-IV Registration of Motor Vehicles. There is a similar scheme of one time prescribed fee at the time of application itself for the whole process under Sections 8(2) & 9(2) for grant of driving/learner’s licence which is similar to the Section 41 (2) of the Act.

(C) RELEVANT RULES FROM CENTRAL MOTOR VEHICLES RULES, 1989:

CHAPTER III - REGISTRATION OF MOTOR VEHICLES

“47. *Application for registration of motor vehicles.—*

(1) An application for registration of a motor vehicle shall be made in Form 20 to the registering authority within a period of 73[seven days] from the date of taking delivery of such vehicle, excluding the period of journey and shall be accompanied by—

(a) sale certificate in Form 21;

(b) valid insurance certificate;xxxx...

(e) proof of address by way of any one of the documents referred to in rule 4;

(f) temporary registration, if any;xxxxx.....

i) appropriate fee as specified in rule 81.”

“48. *Issue of certificate of registration.—*

On receipt of an application under rule 47 and after verification of the documents furnished therewith, the registering authority shall, subject to the provisions of section 44, issue to the owner of the motor vehicle a [certificate of registration in Form 23 or Form 23-A, as may be specified in the Notification issued by the concerned State Government or Union Territory Administration] [within the period of thirty days from the receipt of such an application]:

[Provided that where the certificate of registration pertains to a transport vehicle it shall be handed over to the registered owner only after recording the certificate of fitness in Form 38 [within the period of thirty days from the date of receipt of such an application.]”

“50. Form and manner of display of registration marks on the motor vehicles.—

*(1) On or after commencement of this rule, the registration mark referred to in sub-section (6) of section 41 shall be displayed both at the front and at the rear of all motor vehicles clearly and legibly in the form of security license plate of the following specifications, namely:—
...“*

The reading of the above rules makes it clear that these have been made pursuant to Section 41 of the Act. A person applies for registration in Form 20 (please see Rule 47). Certificate of Registration is issued in Form 23 or Form 23A.

“81. Fees.- The fee which shall be charged under the provisions of this chapter shall be as specified in the table below:

<i>SI. No.</i>	<i>Purpose</i>	<i>Amount</i>	<i>Rule</i>	<i>Sec.</i>
1...xxx..				
4.	Issue, renewal of certificates of registration and assignment of Registration mark:		47(1), 52(1) 54(1), 76(1) new	
	<i>Invalid carriage</i>	<i>Twenty rupees</i>		
	Motorcycle	Sixty rupees		
	<i>Light Motor Vehicle:</i>			
	<i>(i) Non- Transport</i>	<i>Two hundred rupees</i>		
	<i>(ii) Light Commercial Vehicle</i>	<i>Three hundred rupees</i>		
xxx.....”			

It is submitted that Certificate of Registration is granted in Form 23 or 23-A. This Form 23 or 23-A mentions at the top, the Registration number of the vehicle,

apart from other details i.e. chassis number, engine number. It is for procurement of this Certificate of Registration under Form 23 or 23-A and for rendering of this service, the fee for registration is charged. That fee for registration is provided under Section 41(2) of the Act and prescribed under Rule 81 (ibid) of the Central Motor Vehicles Rules, 1989.

(D) COMPARATIVE ANALYSIS OF THE EARLIER REGIME UNDER THE MOTOR VEHICLES ACT, 1939

It is submitted that there was a different scheme under the 1939 Act.

Section 24 of the Old Act, 1939 (equivalent to Section 41 of the New Act of 1988):-

“SECTION 24: REGISTRATION HOW TO BE MADE

(1) *An application by or on behalf of the owner of a motor vehicle for registration shall be in Form E as set forth in the First Schedule, shall contain the information required by that form, and shall be accompanied by the **prescribed fee**:*

[Provided that where a motor vehicle is jointly owned by more persons than one, the application shall be made by one of them on behalf of all the owners and such applicant shall be deemed to be the owner of the motor vehicle for the purposes of this Act.]

(2) *The registering authority shall issue to the owner of a motor vehicle registered by it a certificate of registration in Form G as set forth in the First Schedule and shall enter in a record to be kept by it particulars of such certificate.*

(3) *The registering authority shall assign to the vehicle, for display thereon in the prescribed manner, a distinguished mark (in this Act referred to as the registration mark) consisting of 125 [one of the groups of such of those letters as are allotted to the State by the Central Government from time to time by notification in the Official Gazette,] followed by a number containing not more than four figures.*

[Provided that the figures aforesaid shall be shown in Arabic numerals and the letters and figures aforesaid shall be shown]- (a) in the case of transport vehicles, in black on a white ground;

(b) in the case of motor vehicles temporarily registered in red on a yellow ground;

(c) *in the case of motor vehicles in the possession of dealers, in white on a red ground;*

(d) *in other cases, in white on a black ground.]*

(4) *xxxx*

(5) *xxxx*

(6) *Where in the case of a certificate of registration issued under this Act before the commencement of the Motor Vehicles (Amendment) Act, 1978, in respect of a motor vehicle, other than a transport vehicle, the period of fifteen years referred to in sub-section (4) has expired at such commencement, the holder of such certificate shall apply for the renewal of the said certificate in Form F as set forth in the First Schedule to the registering authority within six months from such commencement or within such extended period not exceeding six months as the authority may, on sufficient cause being shown, allow, and such application shall contain the information required by that Form and shall be accompanied by the prescribed fee.*

(7) *The registering authority may, on receipt of an application under subsection (5) or sub-section (6), renew the certificate of registration for the prescribed period.”*

Section 41 the Old Act, 1939 (equivalent to Sections 64 & 65 of the New Act of 1988)

SECTION 41: POWER TO MAKE RULES

(1) A State Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for-

(a) the conduct and hearing of appeals that may be preferred under this Chapter,[the fees to be paid in respect of such appeals and the refund of such fees];

....

(d) the temporary registration of motor vehicles, and the issue of temporary certificates of registration and marks;

...

(e) the manner in which registration marks and the particulars referred to in [sub-section [(2)] of section 36-], and other prescribed particulars shall be exhibited:

(f) **the fees to be charged for [the issue or renewal] or alteration of certificates of registration,** [for making or cancelling an endorsement in respect of an agreement of hire-purchase or hypothecation on a certificate of registration], for certificates of fitness for registration marks, and for the examination or inspection of motor vehicles, and the refund of such fees;...”

Section 132A the Old Act, 1939 (equivalent to Section 211 of the New Act of 1988),

“SECTION 132A: POWER TO LEVY FEE

Any rule which the Central Government or the State Government is empowered to make under this Act may, notwithstanding the absence of any express provision to that effect, provide for the levy of such fees in respect of applications, amendment of documents, issue of certificates, licences, permits, tests, endorsements, badges, plates, counter- signatures, authorisation, supply of statistics or copies of documents or orders and for any other purpose or matter involving the rendering of any service by the officers or authorities under this Act or any rule made thereunder as may be considered necessary: Provided that the Government may, if it considers necessary so to do, in the public interest, by general or special order, exempt any class of persons from the payment of any such fee either in part or in full.”

It is submitted that under the Motor Vehicles Act, 1939 in Section 41, individual State Governments had been authorised to prescribe Rules for fee in respect of issuance of certificate of registration.

(E) DIFFERENT SCHEME HAS BEEN BROUGHT BY THE MOTOR VEHICLES ACT, 1988.

For Objects and Reasons of the Motor Vehicles Act, 1988 may be seen. The relevant part reads thus:-

“Statement of objects and Reasons. - *The motor vehicles Act, 1939 (4 of 1939), consolidates and amends the law relating to motor vehicles. This has been amended several times to keep it up to date.*

The need was, however, felt that this Act should, now inter alia, take into account also changes in the road transport technology, pattern of passenger and freight movements, developments, of the road network in the country and particularly the improved techniques in the motor vehicles management.

.....xx...

3. A Working Group was, therefore, constituted in January, 1984 to review all the provisions of the Motor Vehicles Act, 1939 and to submit draft proposals for a comprehensive legislation to replace the existing Act. This Working Group took into account the suggestions and recommendations earlier made by various bodies and institutions like Central Institute of Road Transport (CIRT), Automotive Research Association of India (ARAI), and other transport organisations including, the manufacturers and the general public, Besides, obtaining comments of State Governments on the recommendations of the Working Group, these were discussed in a specially convened meeting of Transport Ministers of all States and Union territories. Some of the more important modifications so suggested related for taking care of –

(a) the fast increasing number of both commercial vehicles and personal vehicles in the country ;

(b) the need for encouraging adoption of higher technology in automotive sector;

*(c) **the greater flow of passenger and freight with the least impediments so that islands of isolation are not created leading to regional or local imbalances;***

...xxx....”

Islands of isolation and regional or local imbalances were sought to be eliminated and therefore Section 41(2) of the 1988 Act brings a uniform regime for fee to be

prescribed by the Central Government i.e. one fee structure for registration of Motor Vehicle, throughout the Country.

(F) OTHER SUBMISSIONS:

There has to be specific authorisation in the Act for levy of fee. It is submitted that this Hon'ble Court has settled the position in law that for levy of fee, there has to be a specific enabling power in that regard in the statute. Also there have to be sufficient guidelines in that regard. Reference is invited to Gupta Modern Breweries v. State of J&K & Ors., reported as (2007) 6 SCC 317 (para 20).

Quid Pro Quo necessary for levy of fee:

It is submitted that commensurate service/quid pro quo has been settled position for levy of fee. For the entire exercise of registration starting from application for registration and culminating in the issuance of the certificate of registration, one fee is prescribed in Section 41(2).

Regarding registration, there is no service being rendered outside Section 41 of the Act. For quid pro quo, following precedents are cited:-

- (i) Commissioner, Hindu Religious Endowments,
Madras v. Sri
Lakshmindra Thirtha Swamiar of Sri Shipur Mutt, reported as AIR 1954
SC 282. (Para 46)
- (ii) Gupta Modern Breweries v. State of J&K & Ors., reported as (2007) 6 SCC
317 (Para 33).
- (iii) Jindal Stainless Ltd. & Ors. v. State of Haryana & Ors., reported as (2006)
7 SCC 241 (Para 40 & 41)

The aspect of quid pro quo can also be considered in the following context:-

- Central Government prescribes fee Rs.60/- for the registration of motor cycle. This includes all the steps from the application for registration till the issuance of certificate of registration.
- State Governments wants to charge Twenty thousand, one lac or even Five lacs Rupees and more for the aspect of reservation/allotment of particular registration mark.
- It is submitted that this levy cannot be called as fees. The aspect of quid pro quo/proportionality to service rendered is completely absent herein. Merely because other States are undertaking similar exercise, is no justification for exercising a power which is absent in the Act.

(G) NOTIFICATION ISSUED BY THE CENTRAL GOVERNMENT UNDER SECTION 41(6) OF THE ACT:

Central Government has issued Notification dated 12.06.1989 under Section 41(6) of the Act, 1988 (Enclosed herewith as **ANNEXURE- 1**). This notifies that each state is allocated particular alphabets for incorporation in the registration number. This is to be followed by a code of the registering authority. This is further to be followed by a numerical number from 1 to 9999. The language of this Notification reads as thus:-

“.....In exercise of the powers conferred by sub-section (6) of section 41 of the Motor Vehicles Act, 1988 (59 of 1988), the Central Government hereby allots to the States and Union Territories specified in column (1) of the Table below, the groups of letters specified in the corresponding entry in column (2) thereof, for use as registration mark for each State and Union Territory to be followed by the code number of the Registering Authority to be allotted by the State Government or, as the case may be, the Administrator of the Union Territory and not exceeding four figures, to be used as registration mark.”.....

AND

“...2. Where the four figures referred to in paragraph 1 reaches 9999, the next series shall begin with alphabet ‘A’ followed by not more than four figures and thereafter with alphabet ‘B’ followed by not more than four figures and so on until all the alphabets, excluding ‘I’ and ‘O’ are exhausted.”

It is submitted that the above leaves nothing to doubt that the exercise of Section 41 is to be carried out in the stipulated manner.

Also, this Notification assigns a specific duty to the State Government. This confines the State Government to that aspect, which is neither the aspect of ‘assign’/ ‘allot’ nor ‘levy of fee’.

(H) THE IMPUGNED NOTIFICATION DATED 15.02.2001 ISSUED BY GOVERNMENT OF MADHYA PRADESH (PAGE 74 OF THE SLP PAPER BOOK)

The relevant part of the impugned notification is extracted below:-

“Amendment

In the said rules:

(1) *After rule 55, the following rule shall be inserted namely:*

“55-A Allotment of registration Mark;

(i) *On receipt of an **application** make in writing by any person to the registering authority **for reservation of registration mark**, the registering authority shall reserve the registration mark in the following manner:*

(a) *Registration marks from 1 to 9 in any series prevalent with the jurisdiction or registering authority, shall be reserved on payment of fee of Rs. 15000/- (Rupees Fifteen Thousands) for each registration mark.*

(b) *For reservation of registration mark from number 10 to 100 in series prevalent within the jurisdiction of the registering authority, on payment of fee of Rs. 12000/- (Rupees Twelve Thousand) for each registration mark.*

(c) *xxxx”*

The Registration authority while reserving the registration mark on the application of any person shall strictly adhere to the following guidelines:

(a) *xxxx*

(b) *xxxx*

(c) *The **registration on mark reserved shall be allotted** on production of the vehicle along with the application in Form-20 of the Central Motor Vehicle Rules, 1989, and when vehicle is found complying with the provision of the Motor Vehicle Act, 1988 and the rules made there under for registration of a motor vehicle.*

.... xxxx”

It is submitted that the State Government has assumed to itself the function of ‘allotment’. This is contrary to Section 41(6) of the Act.

It is submitted that once the Central Government has ‘allotted’ the registration mark to the State Government, the further exercise of State Government for ‘allotment’ of registration mark by way of reservation is completely misconstrued and no such power is given to the State Government.

So also, the impugned notification contemplates specifically a independent application to be made for reservation of the registration mark. This aspect is directly contrary to Section 41(1) of the 1988 Act which contemplates only one application to be prescribed by Central Government. In the same light is Rule 47 of Central Motor Vehicle Rules, 1989 which stipulates an application in Form 20.

Therefore, the impugned notification issued by State of Madhya Pradesh is ultra vires Section 41 of the Motor Vehicles Act, 1988. There is no scope for any

such 'allotment' or 'application for issuance of reserved registration mark' under the Motor Vehicles Act, 1988.

Thus submitted.

(MANOJ SWARUP)
Senior Advocate
Amicus Curiae

Dated: 15.08.2020

ANNEXURE - 1

Under Section 41(6)

Registration Mark on Vehicles for States and Union Territories

S.O. 444(E), dated 12-6-1989. – In exercise of the powers conferred by sub-section (6) of section 41 of the Motor Vehicles Act, 1988 (59 of 1988), the Central Government hereby allots to the States and Union Territories specified in column (1) of the Table below, the groups of letters specified in the corresponding entry in column (2) thereof, for use as registration mark for each State and Union Territory to be followed by the code number of the Registering Authority to be allotted by the State Government or, as the case may be, the Administrator of the Union Territory and not exceeding four figures, to be used as registration mark.

TABLE

States/Union Territories (1)		Group of Letters (2)
1.	Andaman and Nicobar	AN
2.	Andhra Pradesh	AP
3.	Arunachal Pradesh	AR
4.	Assam	AS

1. Inserted by S.O. 468(E), dated 19-2-2014.

2

5.	Bihar	BR
6.	Chandigarh	CH
¹ [6-A]	Chhattisgarh	CG]
7.	Dadra and Nagar Haveli	DN
8.	Daman and Diu	DD
9.	Delhi	DL
10.	Goa	GA
11.	Gujarat	GJ
12.	Haryana	HR
13.	Himachal Pradesh	HP
14.	Jammu and Kashmir	JK
² [14-A]	Jharkhand	JH]
15.	Karnataka	KA
16.	Kerala	KL
17.	Lakshadweep	LD
18.	Madhya Pradesh	MP
19.	Maharashtra	MH
20.	Manipur	MN
21.	Meghalaya	ML
22.	Mizoram	MZ
23.	Nagaland	NL
¹ [24.	Odisha	OD]
25.	Pondicherry	PY
26.	Punjab	PB
27.	Rajasthan	RJ
28.	Sikkim	SK
29.	Tamil Nadu	TN
² [29-A]	Telangana	³ [TS]]
30.	Tripura	TR
31.	Uttar Pradesh	UP
⁴ [31-A]	Uttarakhand	UK]
32.	West Bengal	WB

2. Where the four figures referred to in paragraph 1 reaches 9999, the next series shall begin with alphabet 'A' followed by not more than four figures and thereafter with alphabet 'B' followed by not more than four figures and so on until all the alphabets, excluding 'I' and 'O' are exhausted:

1. Inserted by S.O. 1080(E), dated 30-11-2000, published in the Gazette of India, Ext., Pt. II, S. 3(ii), dated 30-11-2000.

2. Inserted by S.O. 14(E), dated 5-1-2001, published in the Gazette of India, Ext., Pt. II, S. 3(ii), dated 5-1-2001.

1. Substituted by S.O. 1401(E), dated 21-6-2012.

2. Inserted by S.O. 1324(E), dated 19-5-2014 (w.e.f. 2-6-2014).

3. Substituted by S.O. 1486(E), dated 9-6-2014.

4. Substituted by S.O. 606(E), dated 19-4-2007.

⁵[Provided that the letters shall be in English and the figures shall be in Arabic numerals:
Provided further that the State Government may direct by notification that an additional plate displaying the letters and figures in any other specified Indian language out of those mentioned in English Schedule of the Constitution, may also be displayed on the motor vehicle, if so desired by the owner of the vehicle:

Provided also that in all cases the letters and figures shall be painted in reflecting colors and shall be shown, -

(a) in the case of transport vehicles other than those under the Rent a Cab Scheme, 1989, in black on white ground;

(b) in the case of motor vehicles temporarily registered, in red on yellow ground;

(c) in the case of motor vehicles in the possession of dealers, in white on a red ground;

(d) in other cases, in white on a black ground;

(e) in the case of transport vehicle under the Rent a Cab Scheme, 1989, in yellow on a black ground.]

3. This notification shall into force on the first day of July, 1989.
