

The State Of Madhya Pradesh vs Rakesh Sethi . on 26 August, 2020

Equivalent citations: AIR 2020 SUPREME COURT 4156, AIR ONLINE 2020 SC 697

Author: S. Ravindra Bhat

Bench: L. Nageswara Rao, Hemant Gupta, S. Ravindra Bhat

1

REPORTABLE

IN THE SUPREME COURT OF INDIA
(CIVIL APPELLATE JURISDICTION)

CIVIL APPEAL NO. 7074 OF 2008

STATE OF M.P. & ORS.

... APPELLANT(S)

VERSUS

RAKESH SETHI & ANR.

... RESPONDENT(S)

JUDGMENT

S. RAVINDRA BHAT, J.

1. This appeal challenges a judgment of the Madhya Pradesh High Court which quashed Rule 55A of the Motor Vehicles Rules, 1994 (hereafter “the State Rules”) framed by the Madhya Pradesh State (hereafter “the state”) and published by it. The respondent (hereafter “the vehicle owner”) had approached the High Court, contending that the said rule was ultra vires the state’s power under the Motor Vehicles Act, 1988 (hereafter “the Act”), and the Central Motor Vehicle Rules, 1989 (hereafter “the Central Rules”). The High Court accepted his contentions.

2. The vehicle owner purchased the motorcycle in May, 2004 and applied for its registration on 25-05-2004 before the concerned registering authority, through the prescribed application in Form No. 20. By an order (of 27-05-2004), the registering authority rejected the application, stating that the vehicle owner’s claim for allotment of registration number ‘MP-KL-4646’ could not be accepted, as the petitioner had not paid the required fee prescribed for allotment of that number. The motorcycle was allotted another number (MP20-KL-5100) which the petitioner did not want. He therefore, approached the High Court in writ proceedings, contending that allotment of a particular

number on payment of a fee (provided in Rule 55A) was contrary to and inconsistent with the provisions of Section 41 and the powers conferred on the State Government to frame rules under Section 65 of the Act of 1988. He challenged the amendment incorporated in the State Rules of 1994 by a notification dated 15.02.2001. He also sought a direction to the registration authority that he should be assigned the number 4646 for his motorcycle. Under Rule 55A, this number was reserved by the State to be assigned by a separate procedure. The Rules, particularly Rule 55A prescribed not only the procedure but also a special fee for assigning such reserved numbers (which included 4646, which the vehicle owner insisted should be allotted to him). He contended that Rule 55A, was ultra vires the provisions of the Act.

3. Mr. Saurabh Mishra, learned counsel for the State relied upon the scheme of the Act, and highlighted that while Section 41(2) undoubtedly conferred the power to prescribe rules and also a fee to allot registration numbers, yet Section 41(6) was specific in that even while the Central Government was authorized to allot certain numbers to the State, the further or onward registration or assignment of those numbers as registration numbers was left to the State.

4. Learned counsel argued that the State Rules were framed by virtue of the powers conferred under section 65 of the Act, which empowers the State to inter alia, make rules with regard to issue or renewal of certificate of registration, as well as amounts to be charged for such registration. It was also argued that under Section 211 of the Act, the State is entitled to levy a fee with respect to applications submitted for issuing certificates, licenses or registrations and as the State fixed the procedure for allotment of registration mark by reservation exercising powers under Section 211, such procedure is in accordance with the law. It was argued by Mr. Mishra, that by virtue of Section 41 (6), the registering authority can assign to any vehicle for display on it, a distinguishing mark known as the registration mark. It is submitted that in this instance, since Rule 55A merely empowers the registering authority to assign a specific registration mark, on demand to the concerned person, the power exercised is relatable to Section 41(6), and the High Court's conclusions are erroneous.

5. It was pointed out by Mr. Mishra that the responsibility of assigning registration mark to motor vehicles is that of the State Government. He emphasized that Section 64

(d) of the Act empowers the Central Government to “prescribe the manner and the form in which the registration mark of the vehicles is to be displayed”. The Central Government has in fact, specified the form and the manner of display of registration marks on motor vehicles, under Rules 50 and 51 of the Central Rules. The issue raised by the petitioner relates to allocation of a particular registration series, which is within the exclusive domain of the concerned registering authority of the State. The Central Government is not concerned with the allocation of distinguished registration marks.

6. Learned counsel argued that the powers of the central government and the states were clearly delineated; no doubt, the Central Government had exclusive domain over the allocation of particular numbers or series of numbers to the states, and could prescribe the fee to be paid when applications are made for registration. However, under Section 41(6), once a series of numbers (or alpha numeric

series) is allotted to a state, the procedure to be followed and the fee to be prescribed for assigning the concerned numbers as registration of individual vehicles is that of the state. The registering authority is none other than a state designated official or agency.

7. Reliance was placed on *Offshore Holdings (P.) Ltd. v. Bangalore Development Authority*¹ by Mr. Mishra, who drew the attention of this court to observations that when two laws, one by the Centre and the other by the state, are alleged to be in conflict (or repugnant to each other) the court should not readily infer repugnancy, but should:

“ignore an encroachment which is merely incidental in order to reconcile the provisions and harmoniously implement them. If ultimately, the provisions of both the Acts can coexist without conflict, then it is not expected of the courts to invalidate the law in question.” (2011) 3 SCC 139.

8. This court had also observed that the doctrine of supremacy of federal laws under Article 254 should:

“normally be resorted to only when the conflict is so patent and irreconcilable that coexistence of the two laws is not feasible. Such conflict must be an actual one and not a mere seeming conflict between the entries in the two lists. While entries have to be construed liberally, their irreconcilability and impossibility of coexistence should be patent.”

9. Mr. Mishra also relied on other decisions of this court, highlighting that conflict of laws or repugnancy between state and central laws should not be readily inferred, under the Constitution, but rather, the courts should first attempt at harmonizing the two sets of apparently conflicting norms.² Counsel also relied on *Sarkari Sasta Anaj Vikreta Sangh v. State of M.P.*³ and urged that the course adopted by the state to assign specific registration numbers through a separate procedure, was in fact a result of popular demand, since many people wanted such specific registration numbers for numerological, astrological and religious reasons. He submitted that the state could have even resorted to its executive powers without framing a rule, since the task of assigning numbers fell within its domain, under the scheme of the Act.

10. It was argued that a reading of Section 211 along with Section 65(2)(d) and (k) clearly indicates that the State Government can make rules with regard to the subjects on which it is specifically empowered to do so. As far as the registration of motor vehicles and prescribing fees for registration are concerned, the power is of the State Government to prescribe rules for providing the procedure for assigning or renewing registration numbers, through the registering authority. Stressing that Section 211 was erroneously interpreted by the High Court, learned counsel submitted that it clearly empowered the state to prescribe a fee not otherwise provided, in respect of a service provided by it. Counsel argued that the state provided a separate service, i.e. allocating specific desired Fatehchand Himmatlal v. State of Maharashtra [(1977) 2 SCC 670]; *Union of India v. Shah Goverdhan L. Kabra Teachers' College* [(2002) 8 SCC 228] and *Girnar Traders v State of Maharashtra* [(2011) 3 SCC 1].

(1981) 4 SCC 471.

numbers to vehicle owners, for which it could well claim a fee, over and above the registration fee prescribed by the Central Government, under Section 41(2).

11. Learned counsel lastly submitted that the generality of the provisions of Section 65(1) and the deployment of the expression “without prejudice to the generality of provisions of sub-section (1)” in Section 65 (2), together with Section 65(2)(p) were meant to clothe the state government with the power to impose a fee for the kind of services involved in the present dispute. He relied on the judgment in *Academy of Nutrition Improvement v. Union of India*⁴ where this court had interpreted a *pari materia* expression (“in particular and without the generality of the foregoing power, such rules may provide for all or any of the following matters”⁵). This court had observed, in that judgment, as follows:

“Statutes delegating the power to make rules follow a standard pattern. The relevant section would first contain a provision granting the power to make rules to the delegate in general terms, by using the words ‘to carry out the provisions of this Act’ or ‘to carry out the purposes of this Act’. This is usually followed by another sub-section enumerating the matters/areas in regard to which specific power is delegated by using the words ‘in particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters.’ Interpreting such provisions, this Court in a number of decisions has held that where power is conferred to make subordinate legislation in general terms, the subsequent particularization of the matters/topics has to be construed as merely illustrative and not limiting the scope of the general power. Consequently, even if the specific enumerated topics in section 23 (1A) may not empower the Central Government to make the impugned rule (Rule 44-I), making of the Rule can be justified with reference to the general power conferred on the central government under section 23 (1), provided the rule does not travel beyond the scope of the Act.”

12. Service of notice of the present proceedings was complete, upon the respondent vehicle owner. He has however chosen to remain absent. Having regard to the public (2011) 8 SCC 274.

Section 2 (1), The Prevention of Food Adulteration Act, 1954.

importance of issues involved in the present case, Mr. Manoj Swaroop, learned senior counsel, was asked to assist this court as *amicus curiae* which he did, with much industry and ardor. The *amicus* urged this court not to disturb or interfere with the judgment under appeal. He outlined the scheme of the Act, and underlined Sections 41(1), (2), (3), (6) and (the now deleted⁶ s. 41(13)), and contended that there was a clear demarcation of powers of the state and central governments. Highlighting the delineation of rule making powers under Section 64 (by the central government) and under Section 65 (by the state government) it was submitted that the subject of prescription of fee for allotment of registration was exhausted; the central government had exclusive authority to prescribe the particulars required, the form to be used for applying⁷ and the form of registration

certificates for various kinds of vehicles 8. Thus, the state had no power to prescribe fees, much less prescribe by-rules for a procedure for assigning specific numbers to various applicants. It was argued that even the power of allocation of a sequence of numbers to individual states was reserved to the central government alone. These ruled out prescription of any further fee, or creation of a separate procedure for assigning specific numbers, and charging higher amounts from desirous applicants/ vehicle owners.

13. Mr. Swaroop argued that Section 211 states that if by any rule, the Central or the State Government is empowered to make under the Motor Vehicles Act, then the Central Government or the State Governments, notwithstanding the absence of any express provision, are empowered to provide for levy of such fees in respect of various items like applications, applications for amendment to the issue of certificates and other matters provided therein. It was argued that to levy a fee under Section 211, a provision should exist empowering the Central Government or the State Government to make such a rule. Such power cannot be exercised in regard to matters for which the Act does not give power to the State Government to make Rules. Since the power to prescribe a fee for By virtue of amendment through Act 32 of 2019, by Parliament.

Form 20, attached to the Central Rules.

Form 23 and 23A, attached to the Central Rules.

registration of a motor vehicle is vested in the Central Government under Section 41(2), the power to levy a fee under section 211 can be exercised by the State Government only if it is empowered under the Act to prescribe fees for the purpose of registration of a motor vehicle. The Act does not empower the State Government to levy fees for registration of a vehicle; therefore, no fees can be prescribed for allotment of a registration mark for a motor vehicle, exercising powers under Section 211. It was submitted that the so called right of assigning the registration number is only the last step in the process of allotment, for which the Central Government levies a fee under Section 41(2).

14. Mr. Swaroop argued that the state is conferred with power only to make rules providing the procedure for issue or renewal of certificate or recovery of amount or amounts under sub-section (13) of Section 14 i.e., to prescribe the amount to be paid for delay on the part of the owner to file an application for registration of motor vehicle under sub-section (1) of Section 41 or under sub-section (8) of Section 41 for renewal of motor vehicles registration. These provisions do not empower the state to make a rule fixing the fee to be charged for registration of a motor vehicle. It is, therefore, clear that under the Act, the power to prescribe a fee for registration of motor vehicles is only conferred on the Central Government, and in exercise of the such power, the Central Government has already fixed the fee under Rule 81 of the Central Motor Vehicle Rules, 1989.

15. Next, reliance was also placed on Sections 47(7), 49(4) and 50(5) of the Act. The amicus contended that these provisions specifically conferred powers upon the state to prescribe amounts as fee for transfer of registration of vehicles on their removal from one state to another; for obtaining no objection certificate from the registering authority, and upon transfer of ownership. He therefore, urged that the splitting up of an indivisible process, by drawing a distinction between

“allotment” of numbers by the Centre and their onward assignment by the state registering authority and the charging of a separate fee for the latter, was impermissible. The absence of specific provisions enabling the state to prescribe amounts as fees, for particular enumerated services, showed Parliamentary intent to exclude the state from levying a fee for “assigning” a registered number, for an act for which the Central government had prescribed a fee under Section 41(2). Counsel also urged that the provision of Section 41(2) had the effect of excluding the power of prescribing any fee in relation to registration of vehicles, including the state’s powers under Section 65 and 211.

16. Mr. Swaroop sought to contrast the provisions of the now repealed Motor Vehicles Act, 1939, with the Act. He contended that Section 41(2) manifested Parliamentary intent to exclude state power in respect of a subject matter, where such power had previously existed. He highlighted that under the old law, individual states were free to prescribe fees according to varying standards. The Act however, was an improvement, because a single power of one fee, could be prescribed under Section 41(2).

17. The amicus lastly relied on a notification issued by the Central Government⁹ which had assigned specified groups of letters “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, not exceeding four figures, to be used as registration mark.” It was urged that the notification, after setting out in tabular form, the letters assigned to various states and union territories, further directed that whenever the four figures referred to earlier “reached 9999, the next series shall begin with the alphabet ‘A’ followed by not more than four figures and thereafter with alphabet ‘B’ followed by not more than four figures and so on...”

18. Counsel asserted that this exercise exhaustively resulted in allotment of letters and numbers to the concerned states, which then merely had to follow a procedure of assigning them, on the basis of a pre-determined sequence. Under no circumstances could the state or the registering authority pick out a few or some numbers for special assignment, and charge a separate, higher fee.

S.O. 444(E) dated 12 June, 1989.

19. Learned counsel relied on *Distt. Council of United Khasi and Jaintia Hills v. Sitimon Sawian*¹⁰ where, this court construed the term “allot” and held that “The word “allot” according to standard dictionaries means, distribute by lot, or in such a way that the recipients have no choice; to assign as a lot or apportion to; and the word “allotment” means, apportioning; the action of allotting; share allotted to one; small portion of land let out for cultivation.”

20. It was submitted that allotment of a registration, and prescribing a fee, for that purpose, under Section 41(2) similarly enfolds within the term, the entire process, including the kind of application, payment of fee, the form to be used, etc. All these are within the domain of the Central Government; the state cannot segregate the last limb and seek to recover a fee for “assigning” the actual number to individuals. Learned counsel also relied on the judgment in *Indian Medical Assn. v. Union of India*¹¹, where it was held that “66. The word “allot”, in its verb form, is defined by Concise Oxford

Dictionary [8th Edn., Oxford University Press (1990)] to include the meaning of the act to give or apportion to, distribute officially to. Allotment is what results from such an act i.e. an apportionment. The word “reserve” is defined to also include the meaning of “order to be specifically retained or allocated for a particular person”, and the word “reservation” is the act or an instance of reserving or being reserved. The word “allocate” is defined to include the meanings of an act to assign or devote something for a purpose or to a person.” Mr. Swaroop lastly relied on the decision of this court in Jantia Hill Truck Owners Assn. v. Shailang Area Coal Dealer & Truck Owner Assn.¹²

21. The learned Additional Solicitor General, Mr. Vikramjit Banerjee, appearing for the Union, supported the state’s position. He urged that under Section 39 of the Act, every motor vehicle plying on roads should be registered. Section 40 of the Act, prescribes that such registration is made by the concerned registering authority of the State Government under whose jurisdiction the owner of the vehicle resides or has a (1971) 3 SCC 708 at p. 712.

(2011) 7 SCC 179 at p. 217.

(2009) 8 SCC 492 at p. 500.

place of business. It is the duty of the concerned registering authority of the State Government to assign a registration mark to the vehicle as per Section 41(6) of the Act. Every application for registration of motor vehicles should be accompanied with the fees as specified by the Central Government. The Central Government has already specified fees for registration of vehicles under Rule 81 of the Central Rules.

22. The ASG urged that Section 64(d) of the Act empowers the Central Government to prescribe the manner and the form in which the registration mark of the vehicles is to be displayed. Accordingly, the Central Government has specified the form and the manner of display of registration marks on the motor vehicles under Rules 50 and 51 of the Central Rules. The issue in this case, i.e. relating to the allocation of a particular registration number concerns the registering authority of the State Government, and not the Union. It was argued that under Section 65 of the Motor Vehicles Act, 1988, the State Governments are vested with the power to frame rules on issues pertaining to registration of motor vehicles, which are not covered under Section 64 of the Act. Under 65(2)(b) of the Act, the appointment, functions and jurisdiction of registering and other prescribed authorities fall under the purview of the State Government. Moreover, under Section 65(2)(b) of the Act, the States are vested with power to make rules on any other matter relating to registration of motor vehicles, which need to be specified. Allocation of a registration mark is the responsibility of the concerned State Government. The States are competent to make rules for this purpose.

Provisions of the Act

23. The relevant provisions of the Act are reproduced below:

“39. Necessity for registration.—No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public

place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner:

Provided that nothing in this section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government.

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.

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.

(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) In addition to the other particulars required to be included in the certificate of registration, it shall also specify the type of the motor vehicle, being a type as the Central Government may, having regard to the design, construction and use of the motor vehicle, by notification in the Official Gazette, specify.

(5) The registering authority shall enter the particulars of the certificate referred to in sub-section (3) in a register to be maintained in such form and manner as may be prescribed by the Central Government.

(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.

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; 1. Ins. by Act 54 of 1994, s. 19 (w.e.f. 14-11-1994).
- (e) the period within which and the form in which the application shall be made and the particulars and information it shall contain under sub-section (8) of section 41;
- (f) the form in which the application referred to in sub-section (14) of section 41 shall be made, the particulars and information it shall contain and the fee to be charged;
- (g) the form in which the period within which the application referred to in sub-section (1) of section 47 shall be made and the particulars it shall contain;
- (h) the form in which and the manner in which the application for “No Objection Certificate” shall be made under sub-section (1) of section 48 and the form of receipt to be issued under sub-section (2) of section 48;
- (i) the matters that are to be complied with by an applicant before no objection certificate may be issued under section 48;
- (j) the form in which the intimation of change of address shall be made under sub-section (1) of section 49 and the documents to be submitted along with the application;
- (k) the form in which and the manner in which the intimation of transfer of ownership shall be made under sub-section (1) of section 50 or under sub-section (2) of section 50 and the document to be submitted along with the application;

(l) the form in which the application under sub-section (2) or sub- section (3) of section 51 shall be made;

(m) the form in which the certificate of fitness shall be issued under sub-section (1) of section 56 and the particulars and information it shall contain;

(n) the period for which the certificate of fitness granted or renewed under section 56 shall be effective;

(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.

(p) any other matter which is to be, or may be, prescribed by the Central Government.

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—

(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);

(b) the appointment, functions and jurisdiction of registering and other prescribed authorities;

(c) the exemption of road-rollers, graders and other vehicles designed and used solely for the construction, repair and cleaning of roads from all or any of the provisions of this Chapter and the rules made thereunder and the conditions governing such exemption;

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

(e) the production of certificates of registration before the registering authority for the revision of entries therein of particulars relating to the gross vehicle weight;

(f) the temporary registration of motor vehicles, and the issue of temporary certificate of registration and marks;

(g) the manner in which the particulars referred to in sub-section (2) of section 58 and other prescribed particulars shall be exhibited;

- (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;
- (i) the forms, other than those prescribed by the Central Government, to be used for the purpose of this Chapter;
- (j) the communication between registering authorities of particulars of certificates of registration and by owners of vehicles registered outside the State of particulars of such vehicles and of their registration;
- (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;
- (l) the extension of the validity of certificates of fitness pending consideration of applications for their renewal;
- (m) the exemption from the provisions of this Chapter, and the conditions and fees for exemption, of motor vehicles in the possession of dealers;
- (n) the form in which and the period within which the return under section 62 shall be sent;
- (o) the manner in which the State Register of Motor Vehicles shall be maintained under section 63;
- (p) any other matter which is to be or may be prescribed.” *****

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.” Analysis and Conclusions

24. As is evident from the relevant extracts of the Act, Section 39 obliges every vehicle owner to secure a registration; every owner has to register his vehicle by approaching the registering authority (designated by the State by virtue of Section 65(2)(b)13 of the Act).

25. Section 41(1), the next in sequence, enables the Central Government to prescribe the form for application for such registration. There are two provisos to this; the

second proviso added in 2019 states that in case of a new motor vehicle, the application for registration in that State shall be made by the dealer of such motor vehicle, if the new motor vehicle is registered in the same State. By Section 41(2), the application for registration has to be accompanied by “such fee as may be prescribed by the Central Government.” By Section 41(3), the registering authority has to issue the certificate of registration in the name of the owner in such form containing the relevant particulars as prescribed by the Central Government.

26. Section 41(6) the interplay of which, with Section 41(2), is directly in issue – enacts that the registering authority “shall assign to the vehicle for display thereon a distinguishing 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”. Now, this provision is divided into two parts. Although the duty of the registering authority to assign the “distinguishing mark” has been enacted as the first event, in reality, in sequence, the allotment of groups of letters followed by such letters and figures (which find mention in the latter part of the provision), that are allotted to the State by the Central Government would be an event that occurs prior to the assignment of such distinguishing mark and number. The notification of 12.06.1989 Section 65(2)(b) of the Act reads as follows:

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

XXXX XXXX XXXX

(b) the appointment, functions and jurisdiction of registering and other prescribed authorities.

issued by the Central Government in exercise of this power to allocate numbers under Section 41(6) has allocated distinguished groups of letters to each individual State and UT. According to the notification, this group of letters is to be followed by the code number of the registering authority “to be allocated by the State Government or the Administrator of the UT”. The notification, after setting out the groups of letters, goes on to state that where four figures referred to earlier in it, (i.e. the notification) reaches 9999, the next series shall begin with the alphabet A followed by not more than four figures and thereafter with alphabet B, and so on. This notification from its facial reading clothes the state government or the UT administration, with the distinct task of allotting the code number and thereafter assigning the numerics (the four numbers in question).

27. The reasoning of the High Court, in its impugned judgment is that the field of prescribing the fee for an application for registration has been exclusively conferred upon the Union Government, thus excluding from its sweep any State power to claim any manner of fee or amount as part of that task. The amicus characterized the impugned Rule 55A as segregating and separating the last step in one indivisible process of allotment of a registration mark.

28. The High Court, in addition, also concluded that Section 211 was of no consequence and could not be pressed into service by the State Government inasmuch as the field of charging fees for allotment of registration numbers was fully occupied by Section 41(2). It also held that by the same logic, the state had no power to make rules under Section 65(2) to charge any fee in this regard. The amicus had made reference to Section 65(2)(k) which explicitly talks of the power of the State to prescribe the amount or amounts payable under Section 41(13); Section 47(7), Section 49(4) or Section 50(5). Each of these provisions was also relied upon to state that whenever Parliament intended to empower the State Government to charge fee or amounts, it did so expressly and that the rule of *expressio unius est exclusio alterius* applied in the circumstances.

29. This Court is of the opinion that the High Court, in its impugned judgement, lost sight of the true import of Section 211. The existence of specific provisions empowering the State (such as Sections 41(13), 47(7), 49(4) and 50(5)), means that the power of the State to claim or charge amounts is specifically recognized by express provisions. Further, there are certain services and functions for which the State is empowered to levy fees. It is precisely to cover these contingencies, i.e. where the service is rendered or some function performed, that the State is empowered by a residual provision (much like the Central Government with which it shares the power concurrently) to levy fees. In this respect, it would be useful to note that Section 211 is cast in wide terms and that 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. Clearly, therefore, the Parliament intended that contingencies not covered by a specific power to levy fees or amounts, which entailed some activity on the part of the State, including rendering of any service could be legitimately charged or subjected to the levy of fee or amounts.

30. The assignment of numbers by the registering authority, as seen earlier, through an official/agency or department notified by the State Government, cannot be seen as a mere step – albeit at the fag-end of the registration allotment process. In fact, though it is the culmination of the allotment process, it is nevertheless an important step. The state, in the opinion of this Court, is entitled to indicate its choice or manner of assigning by prescribing a particular set of procedures for the assignment of numbers. Thus, for instance, the assignment of the concerned “code” - to the individual registering authorities followed by the assignment of numerics may follow a predetermined pattern which may be district wise, state government department wise (in the case of publicly owned vehicles), different sequences for buses and heavy vehicles and so on. If such a predetermined choice can be made by prescribing the mode of assignment, it is both regulatory and at the same time indicative of State policy. Per se, the Court cannot brush aside the element of service which may be involved – especially if the general public or a sub-section of it, wishes to choose particular numbers for various considerations. Such “fancy” numbers or “auspicious” numbers may well therefore have to be set apart having regard to the peculiar socio-cultural needs of the people of the state. It is in such an event that the availability of such numbers and their reservation as a choice and the power of their assignment assumes importance. In the impugned Rule 55A14 in the 55A. Allotment of registration mark. - (1) On receipt of an application made 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 within the jurisdiction of Registering Authority, shall be reserved on payment of fee of Rs. 15,000/- (Rupees Fifteen Thousand) for each registration mark.

(b) For reservation of registration mark from number 10 to 100 in any series prevalent within the jurisdiction of the Registering Authority, on payment of fee of Rs. 12,000/- (Rupees Twelve Thousand) for each registration mark.

(c) For reservation of registration mark number, 101, 111, 123, 200, 202, 222, 234, 300, 303, 333, 345, 400, 404, 444, 456, 500, 505, 555, 567, 600, 606, 678, 700, 707, 777, 786, 789, 800, 808, 888, 900, 909, 999, 1000, 1001, 1010, 1111, 1112, 1212, 1213, 1221, 1234, 1313, 1314, 1331, 1414, 1415, 1515, 1516, 1616, 1617, 1661, 1717, 1718, 1771, 1818, 1819, 1881, 1919, 1929, 1991, 2000, 2002, 2020, 2021, 2112, 2121, 2122, 2222, 2223, 2323, 2324, 2332, 2345, 2424, 2425, 2442, 2525, 2526, 2552, 2626, 2627, 2662, 2727, 2728, 2772, 2828, 2829, 2882, 2929, 2930, 2992, 3000, 3003, 3030, 3113, 3131, 3132, 3223, 3232, 3233, 3333, 3334, 3434, 3435, 3443, 3456, 3535, 3536, 3553, 3636, 3637, 3663, 3737, 3738, 3773, 3838, 3839, 3883, 3939, 3940, 3994, 4000, 4004, 4040, 4041, 4114, 4141, 4142, 4224, 4242, 4243, 4334, 4343, 4344, 4444, 4445, 4545, 4546, 4554, 4567, 4646, 4647, 4664, 4747, 4748, 4774, 4848, 4849, 4884, 4949, 4950, 4994, 5000, 5005, 5050, 5051, 5115, 5151, 5152, 5225, 5252, 5253, 5335, 5353, 5354, 5445, 5454, 5455, 5555, 5556, 5656, 5657, 5665, 5678, 5757, 5758, 5775, 5858, 5859, 5885, 5959, 5960, 5995, 6000, 6006, 6060, 6061, 6116, 6161, 6162, 6226, 6262, 6263, 6336, 6363, 6364, 6446, 6464, 6465, 6558, 6565, 6666, 6667, 6767, 6768, 6776, 6789, 6869, 6886, 6969, 6970, 6996, 7000, 7007, 7070, 7071, 7117, 7171, 7172, 7227, 7272, 7273, 7337, 7373, 7374, 7447, 7474, 7475, 7557, 7575, 7576, 7667, 7676, 7677, 7777, 7778, 7878, 7887, 7979, 7980, 7997, 8000, 8008, 8080, 8081, 8181, 8182, 8228, 8282, 8283, 8338, 8383, 8384, 8448, 8484, 8558, 8585, 8586, 8668, 8686, 8687, 8778, 8787, 8788, 8888, 8889, 8989, 8998, 9000, 9009, 9090, 9091, 9119, 9191, 9192, 9229, 9292, 9293, 9339, 9393, 9394, 9449, 9494, 9495, 9559, 9595, 9596, 9669, 9696, 9697, 9779, 9797, 9798, 9889, 9898, 9899, 9999, on payment of fee of Rupees 10,000/- (Rupees Ten Thousand) for each registration mark.

(d) For reservation of any other number not specified in subclauses (a), (b) and (c) of this rule within thousand numbers from the last number assigned in serial order on payment of a fee of Rs. 2000/- (Rupees Two Thousand) for each registration mark.

(2) The Registering Authority while reserving the registration mark on the application of any person shall strictly adhere to the following guidelines :-

(a) The Registering Authority shall reserve the registration mark on the basis of 'first come first served' principle.

(b) If there is more than one application on a day for particular registration mark as specified above the reservation of registration mark shall be done in accordance with the serial number on the cash receipt regarding payment of the amount of fee.

present instance, introduced in 2001 through amendment by the State of M.P., prescribes four different fees – 15000/- for the registration marks 1 to 9 in any series prevalent within the jurisdiction of the registering authority; and 12000/- for reservation of marks from 10 to 100 in any series within the jurisdiction of the registering authority. For reservation of large series of numbers indicated in Rule 55A(c), 10000/- and 2000/- for reservation of any other number or numbers within 1000 from the last number assigned in the serial order.

31. In addition to charging such fees, the registering authority is enjoined by Rule 55A(2) to follow the principle of first-come-first-serve in reserving particular numbers; and to allot the registration mark reserved upon production of the vehicle along with the application in Form-20 (of the Central Rules), provided the vehicle is compliant with the provisions of the Act and Rules. By Rule 55A(d), the reservation of the mark would be cancelled if the vehicle is not produced for allotment within three months from the date of allotment. Obviously, this is meant to avoid abuse of the reservation process by trafficking in numbers, by providing finite time within which such numbers can be used.

32. Quite like in the case of fees for assignment of particular numbers, certain other services too are contemplated under the Act. Section 56(1)15 directs that no transport vehicle would be deemed to be validly registered unless it carries a certificate of fitness.

(c) The registration mark reserved shall be allotted on production of the vehicle alongwith the application in Form-20 of the Central Motor Vehicles Rules, 1989 and when the vehicle is found complying with the provisions of the Motor Vehicles Act, 1988 and the rules made thereunder for registration of a motor, vehicle.

(d) The reservation of registration mark shall stand automatically cancelled if the vehicle is not produced for allotment of registration number within three months from the date of reservation of registration mark.

(e) The amount of the fee paid for reservation of registration mark shall not be refundable.

(f) The registration mark cancelled under clause (d) can be re-reserved by the Registering Authority in accordance with the above procedure.

56. Re-assignment of registration number under certain condition. - (1) State Government may, by general or special order, direct all Registering Authority of the State, to reassign the new number under the Act, in place of number allotted under the Motor Vehicles Act, 1939 (No. 4 of 1939) in respect of all or any class of vehicles and also prescribe the manner and condition thereof, and the

provision of sub-section (6) of Section 41 of the Act shall apply in this respect. (2) State Government while issuing order under sub-rule (1), shall provide a reasonable time which shall not be less than six months within which the owner of such vehicle shall obtain new number. (3) No fee shall be charged for the assignment of new number under sub-rule (1), if the owner applies within the prescribed time. Where the application is received after the expiry of prescribed period, a late fee of Rs. 100/- shall be payable.

Such fitness certificate is to be issued by authorized testing stations [by Section 56(2)]. Section 43 enables the owner of a motor vehicle to apply to any registering authority or other authority which may be prescribed by the State Government to have the vehicle temporarily registered. This provision contains a non-obstante clause. Various provisions of the Act deal with orders of higher authorities and appellate authorities. Implicit with this is the power to issue copies of such decisions. Further, in cases where individuals or parties interested seek to duplicate or acquire extra copies of such orders, a separate category of service is provided. Likewise, wherever duplicates of documents such as Registration Certificates etc. are issued, necessarily, a service is performed. Rule 62 of the M.P. Rules of 1994 provided for fees to be charged in respect of various such services (temporary registration or extension thereof in different classes of vehicles); copies of miscellaneous applications, duplicate certificate of fitness for different classes of vehicles and so on. An overall reading of the M.P. Rules and the Act therefore clearly establishes that besides the express authorization to levy fees or collect amounts, both the Central Government and the State Government are empowered – in fact duty bound to extend certain services in the performance of such duties. Both these bodies, i.e. the Central and State Governments would therefore, be acting within their authority to charge or levy fees.

33. If there are any further doubts on this issue, the generality of the power under Section 65(1) to frame rules, in the opinion of this Court is sufficient along with Section 211, to conclude that the State Government has the authority to prescribe a fee for reserving certain numbers or distinguishing marks to be assigned as registration numbers. It has not been shown how the setting apart of or reservation of some numbers – here, a fraction of the large potential batch of numbers which the registering authority can otherwise assign to vehicles, is per se arbitrary or unreasonable. Neither were any such arguments urged before this Court.

34. This Court has in the past observed that whenever a State confers rule making power or empowers delegated legislation, i.e. and where or wherever the statute first lays out a general provision authorizing subordinate legislation or the framing of separate legislation to carry out the purposes of that Act, and uses the expression “in particular and without generality of the foregoing powers”, followed by another delegation which enumerates specific powers preceded by expressions such as “in particular and without the generality of the foregoing powers,” the particularization is only illustrative and does not subsume the general power. The State had relied upon the decision in *Academy of Nutrition* (supra) which was to that effect. There are other decisions as well on this issue.¹⁶

35. This court has, in the past, held that when a central enactment clothes the state with the power, or tasks it to do a thing such as grant of lease of minor minerals, an implicit power to charge lease

rent or royalty must be read into the state's power. In *D.K. Trivedi & Sons v. State of Gujarat*, the court held:¹⁷ "40. the grant of a mining lease would thus provide for the consideration for such grant in the shape of surface rent, dead rent and royalty. The power to make rules for regulating the grant of such leases would, therefore, include the power to fix the consideration payable by the lessee to the lessor in the shape of ordinary rent or surface rent, dead rent and royalty. If this were not so, it would lead to the absurd result that when the government grants a mining lease, it is granted gratis to a person who wants to extract minerals and profit from them. Rules for regulating the grant of mining leases cannot be confined merely to rules providing for the form in which applications for such leases are to be made, the factors to be taken into account in granting or refusing such applications and other cognate matters. Such rules must necessarily include provisions with respect to the consideration for the grant. Under Section 15(1), therefore, the State Governments have the power to make rules See *Afzal Ullah v. State of U.P.* (1964) 4 SCR 991 which held that:

"It is now well settled that the specific provisions such as are contained in the several clauses of Section 298(2) are merely illustrative and they cannot be read as restrictive of the generality of powers prescribed by Section 298(1) (vide *King Emperor v. Sibnath Banerji* (AIR 1945 PC 156]). If the powers specified by Section 298(1) are very wide and they take in within their scope bye-laws like the ones with which we are concerned in the present appeal, it cannot be said that the powers enumerated under Section 298(2) control the general words used by Section 298(1)." Refer also: *Rohtak & Hissar District Electric Supply Co Ltd v State of UP* 1966 (2) SCR 863; *Bharat Sanchar Nigam Ltd v. Telecom Regulatory Authority of India* and (2014) 3 SCC 222; *K. Ramanathan v. State of Tamil Nadu* (1985) 2 SCC 116.

(1986) Supp. SCC 20, at p. 54.

providing for payment of surface rent, dead rent and royalty by the lessee to the government."

36. In *Jaintia Hill Truck Owners Assn*¹⁸, this court had pertinently observed in the context of services rendered by weighment, through third party, agencies, where the state enabled charging of fee, that:

"28. Where the State or the State-controlled agencies render services for the purpose of effectuation of the provisions of a Central Act, it, in our opinion, is entitled to charge a reasonable amount in respect thereof. We may, in this behalf, refer to a decision of this Court in *T. Cajee v. U. Jormanik Siem* [AIR 1961 SC 276 : (1961) 1 SCR 750] . The question which arose for consideration therein was as to whether in absence of any law regulating the appointment and succession of chiefs and headmen, a notice issued to the respondent therein to show cause as to why he should not be removed from his office, was valid."

37. The decision cited in *Jaintia Hill* (supra) – i.e., *T. Cajee v U. Jormanik Siem*¹⁹ considered the validity of appointment of a village headman by an autonomous district council, under provisions of

the Sixth Schedule to the Constitution of India. The High Court upheld the argument that a conferment of legislative power (conferred upon the District Council) if not exercised, did not empower the council to issue appointment in the absence of rules. This court disapproved the High Court's reasoning and held that:

“With respect, it seems to us that the High Court has read far more into Para 3(1)(g) than is justified by its language. Para 3(1) is in fact something like a legislative list and enumerates the subjects on which the District Council is competent to make laws. Under Para 3(1)(g) it has power to make laws with respect to the appointment or succession of Chiefs or Headmen and this would naturally include the power to remove them. But it does not follow from this that the appointment or removal of a Chief is a legislative act or that no appointment or removal can be made without there being first a law to that effect. The High Court also seems to have thought that as there was no provision in the Sixth Schedule in terms of Articles 73 and 162 of the Supra, fn. 12.

1961 (1) SCR 750.

Constitution, the administrative power of the District Council would not extend to the subjects enumerated in Para 3(1). Now Para 2(4) provides that the administration of an autonomous district shall vest in the District Council and this in our opinion is comprehensive enough to include all such executive powers as are necessary to be exercised for the purposes of the administration of the district...”

38. The other decision, cited in Jaintia Hill (supra), i.e., Surinder Singh v. Central Government²⁰ states the proposition in the following terms:

“Where a statute confers powers on an authority to do certain acts or exercise power in respect of certain matters, subject to rules, the exercise of power conferred by the statute does not depend on the existence of rules unless the statute expressly provides for the same. In other words framing of the rules is not a condition precedent to the exercise of the power expressly and unconditionally conferred by the statute. The expression ‘subject to the rules’ only means, in accordance with the rules, if any. If rules are framed, the powers so conferred on authority could be exercised in accordance with these rules. But if no rules are framed there is no void and the authority is not precluded from exercising the power conferred by the statute.”

39. This court therefore, holds that the assignment of “distinctive marks” i.e. registration numbers to motor vehicles (which includes the power to reserve and allocate them, for a specific fee) is a distinct service for which states or their authorities (such as the registering authorities, in this case) are entitled to charge a prescribed fee. Rule 55A of the MP Rules is not therefore, in excess of the powers conferred upon the state, by the Act or the Central Rules.

40. This court notices that the impugned judgment proceeded on the assumption that the state was not competent to make the legislation. The use of that expression, at best can be characterized as misconceived. In the present case, the state of M.P. derived its powers to frame the concerned rules, through the provisions of the Motor Vehicles Act itself. The question, therefore, of repugnance as properly understood, did not arise; rather it was a case whether the state government, as one of the delegated authorities, (1986) 4 SCC 667.

was empowered through Parliamentary law to frame the rule that it did. At best, the issue that arose was whether the offending rule (Rule 55A) was ultra vires the Act or the Central Rules. In the opinion of this court, the impugned rule was within the ambit of the powers delegated to the state, and directly related to performance of its functions under Section 41(6), for which it could legitimately claim a fee, as was done through Rule 55A.

41. Before parting with this judgment, the court records its gratitude to Mr. Manoj Swaroop, Senior Advocate for acting as amicus and ably marshalling all arguments that could be mustered to assist this court.

42. The appeal has to succeed, in view of the above reasoning. The impugned judgment is therefore set aside. The appeal is accordingly allowed, but without an order as to costs.

.....J [L. NAGESWARA RAO]J [S.
RAVINDRA BHAT] New Delhi, August 26, 2020.