

HIGH COURT OF GUJARAT

RAMKRISHNA BUS TRANSPORT

Versus

STATE OF GUJARAT

Date of Decision: 30 June 1994

Citation: 1994 LawSuit(Guj) 167

Hon'ble Judges: [C K Thakker](#)

Eq. Citations: 1994 2 GLR 1371, **1995 1 GLH 520**, 1995 1 GCD 169

Case Type: Special Civil Application

Case No: 2866 of 1989

Subject: Constitution, Motor Vehicle

Editor's Note:

Constitution of India, 1950-Art.19(1)(g) & Art.304-Fundamental right to carry on business-Motor Vehicles Act, 1939 (IV of 1939)-S.42, S.63(7) & S.129(A)- Vehicles covered under S.63(7)-Seizing and detaining vehicles under S.129(A)-Motor Vehicles Act, 1988 (LIX of 1988)-Ss.63, S.66 & S.207-Gujarat Motor Vehicles Rules, 1989-Rule R.239-S.129(A) of the Old Act and S.207 of the New Act are similar and are not ultra vires the Constitution-The Officers have a power to sieze vehicles if the condi- tions of the permits are violated-Contract carriage permits would not entitle an operator to use it as stage carriage-The word may in the proviso to S.207(1) is directory and not mandatory. Motor Vehicles Act, 1939 (IV of 1939)-S.63 & S.42-Motor Vehicles Act, 1988 (LIX of 1988)-Ss.88, S.66 & S.207-Contract carriage permits under S.63 of Old Act (S.88 of New Act)-S.42 of Old Act (S.66 of New Act) prohibits against use of a vehicle except in accordance with the condi- tions of permit. Motor Vehicles Act, 1988 (LIX of 1988)-S.88 & S.207-Permit to use a Motor Vehicle as a contract carriage granted under S.88-Use of a Motor Vehicle in a given case is a question of fact-If Motor Vehicle is not used as per permit, provision of S.207 are attracted. Motor Vehicles Act, 1988 (LIX of 1988)-S.192 & S.207-Vehicle can be seized and detained under S.207 if believed that offence punishable under S.192 is committed. Motor Vehicles Act, 1988 (LIX of 1988)-S.207(1), proviso to S.207(1)- The word may used in S.207(1) and

proviso to S.207(1) should be read as may and not shall.

The petitioners did not challenged the vires of Sec. 207 of Motor Vehicles Act 1988 The provisions of Sec. 207 of the Motor Vehicles Act 1988 are similar to the provisions of Sec. 129A of Motor Vehicles Act 1939 In AIR 1983 SC 1225 the Supreme Court

Acts Referred:

[Constitution Of India Art 304, Art 19\(1\)\(g\)](#)

[Motor Vehicles Act, 1939 Sec 63, Sec 63\(7\), Sec 42, Sec 129A](#)

[Motor Vehicles Act, 1988 Sec 66, Sec 63, Sec 207, Sec 88, Sec 192](#)

[Gujarat Motor Vehicles Rules, 1989 R 239](#)

Final Decision: Petition dismissed

Advocates: [B N Keshwani](#), [N D Nanavati](#)

Cases Cited in (+): 3

Cases Referred in (+): 14

THAKKER, J.

[1] In all these petitions, the petitioners have challenged the action of the respondent authorities of detaining and seizing Motor vehicles under Sec. 129A of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Old Act") and under Sec. 207 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the New Act") inspite of their having All India Permits as contract carriages simply on the ground that the vehicles were not used as contract carriages. Common questions of fact and law have been raised in all petitions and it is, therefore, appropriate to decide them by a common judgment. For appreciating the controversy in question, few relevant facts of the petition first in point of time, i.e., Special Civil Application No. 2866 of 1989 may now be stated.

[2] That petition is filed by Ramkrishna Bus Transport and others for appropriate writ, direction and/or order under Art. 226 of the Constitution of India directing the respondents, their servants and agents including the authorised officers both of the Motor Vehicles Department and the Police Department not to seize and detain the petitioners' vehicles under Sec. 129A of the Motor Vehicles Act, 1939, if the vehicles are actually covered under All India Tourist Permit granted under Sec. 63(7) of the Old Act on the ground that the passengers had paid individual fare. Consequential prayers have also been made. Interim relief is also prayed restraining the respondent authorities from seizing and detaining the vehicles.

[3] It is the case of the petitioners that all the petitioners are citizens of India. They are registered owners of luxury omni buses having capacity of 35 passengers. They have obtained All India Tourist Permit in accordance with law. They were plying their vehicles numbers of which have been mentioned in para 2 of the petition. It is asserted that the petitioners do not ply vehicles as "stage carriages" but the vehicles are given on hire as per terms and conditions attached to the permit and as a whole to a single party of passengers having a specific designation, without stopping for picking up or setting down passengers at places en route. In case of tour organisers, the contract is a single contract between petitioners and tour organisers. Tour organisers make a consolidated payment to the petitioners for hiring the vehicle as a whole on time or distance basis for which a single receipt is furnished to them. Such vehicle is only for travel from one point to another on the route mentioned in the contract and in the permit, without picking up or setting down passengers en route. In the course of travel all along, no individual passengers were picked up or set down. In case of contract with a party, naturally, individual passengers pay individual fare to tour leader and such leader on behalf of the group will pay the entire amount to the petitioners. In case of tour organiser also, individual passengers pay individually to the tour organiser, who in turn will pay that amount and furnish details of the list of passengers to the petitioners. According to the petitioners, there is no provision either in the Act or in the Rules which prohibits payment by passengers to the leader of the party or to the tour organiser. A list of passengers is to be carried with the vehicle. There are sufficient means and particulars to verify the correctness or otherwise of the information by the authorities. The action is strictly in accordance with the provisions of the Act as also in conformity with the Bombay Motor Vehicles Rules, 1959.

[4] The petitioners have contended that power to seize and detain a public service vehicle is drastic and extraordinary power and could be granted only under the Act or Rules made thereunder. Since such provisions interfere with fundamental right of the petitioners to carry on business guaranteed by Art. 19(l)(g) read with Art. 304 of the Constitution of India, they must be construed strictly and in favour of subjects. Relying upon various provisions of the Act and the Rules as also conditions of permit, it was contended by the petitioners that the authorities have no power to seize or detain a vehicle en route in purported exercise of power under Sec. 129A of the Old Act. Such action would be wholly arbitrary, unlawful, illegal and ultra vires. With a view to harass the owners and organisers, the officers of the respondents detain vehicles and seize them en route which results into irreparable hardship, not only to the owners and organisers of tour programme but to passengers travelling therein. Such action is arbitrary, capricious and unreasonable. The petitioners have alleged that the owners and organisers have been asked to get the offence compounded and in case they refuse to get it compounded the vehicles were sought to be seized and detained

illegally ignoring the mandate of the Legislature as also the provisions of the Constitution. The petitioners were, therefore, constrained to approach this Court for getting appropriate relief under Art. 226 of the Constitution of India.

[5] It appears that the matter was posted for hearing on May 4, 1989 and this Court (Coram : M. B. Shah, J.) issued notice by making it returnable on June 28, 1989. Pursuant to the notice, respondents appeared and affidavit-in-reply was also filed on September 11, 1989 by I. R. Sevak, Joint Director of Transport, On September 14, 1989, rule was issued by this Court (Coram : R. J. Shah, J.). It was made returnable on September 29, 1989. Mr. Antani, Assistant Government Pleader appeared for the respondents and waived service of rule. In Civil Application No. 1317 of 1989, ad interim relief was granted and the following order was passed :

"Ad-interim relief to the effect that Omni Bus of the petitioners may not be detained or seized under Sec. 207 of the Motor Vehicles Act, 1988 solely on the ground that the passengers travelling by the said Omni Bus pay individual fares when the vehicle or vehicles of the petitioners are otherwise covered by valid All India Tourist Permit as well as by contract carriage permits issued under Sec. 88(8) of the Motor Vehicles Act."

It is not disputed by and between the parties that ad interim relief is continued and is operative till today. Thereafter, another petition was also filed in 1989, being Special Civil Application No. 7904 of 1989. Notice was issued on November 16, 1989 (Coram : M. B. Shah, J.). On December 5, 1989, the Court admitted that petition and passed the following order :

"Rule. If there is alleged contravention of any provisions of the Act or Rules or conditions of All India Permit, the respondents are directed not to seize or stop the vehicle en route. It would be open to the authority to detain the vehicle at the commencement, check-post or terminal point Further the authorities should apply their mind to proviso to Sec 207."

It is also undisputed fact that the above interim relief is operative till today.

[6] In affidavit-in-reply in Special Civil Application No. 2866 of 1989, the action was sought to be justified by the authorities. Relying upon various provisions of the Act, it was stated in the counter that since the vehicles plied by the petitioners cannot be said to be stage carriages, it was not permissible for them to carry passengers individually and since the act of the petitioners was contrary to law, it was open to the respondent authorities to detain and seize the vehicle. It was asserted that all the petitioners were using the vehicle as stage carriages in contravention of the provisions of Sec. 66(1) of the New Act and the authorities were constrained to take action under Sec. 207 of the

New Act. It was also stated that a notification dated April 29, 1980 was issued by the State Government authorising police officers not below rank of Inspector to seize and detain vehicles. A copy of the said notification is also annexed to the affidavit-in-reply. It was stated by the deponent that the Officers of the Motor Vehicles Department of the rank above the rank of Assistant Inspector of Motor Vehicles are competent to exercise power under Sec. 207 of the New Act read with Rule 239 of the Gujarat Motor Vehicles Rules, 1989. Support was also sought from the decision of the Division Bench in case of Rasiklal Damjibhai & Ann v. State of Gujarat & Ors; reported in [1989 (2)] XXX (2) GLR 1229. According to the deponent, therefore, there is no substance in the grievance of the petitioners that the action of the respondent-authorities is contrary to law and requires to be quashed and set aside by this Court in exercise of the powers under Art. 226 of the Constitution of India.

[7] It appears that a number of matters came to be filed in 1992 and in 1993. Rule was issued in almost all the matters and ad-interim relief was granted. My attention was drawn by the learned Government Pleader that in some petitions wider interim relief was also granted staying the prosecution as also against compounding of offences.

[8] I have heard M/s. B. N. Keshwani, M. D. Rana, B. R. Gupta, P. M. Thakkar, K. S. Nanavati, B. J. Jadeja, B. K. Parikh, Harm Raval, Y. N. Ravani, R. C. Jani, Sandip C. Shah, Rajesh Kakkad, M. I. Hawa, Y. S. Lakhani, H. D. Vasavada, S. K. Bukhari, Bharat B. Jani, Miss N. V. Panchal, A. S. Pandya, P. J. Yagnik, H. M. Parikh, E. E. Saiyad, N. P. Nanavati, J. N. Jadeja, C. J. Vin, M. N. Joshi, P. K. Jani, V. H. Patel, B. D. Karia, R. N. Mansuri, Jayesh Barot, N. M. Amin, C. L. Soni and P. H. Pathak extensively for the petitioners. I have heard Mr. N. D. Nanavati, Government Pleader and Mr. M. D. Pandya on behalf of the respondents.

[9] The learned Counsel for the petitioners raised the following contentions :

(1) Sec. 207 confers blanket, absolute and unfettered discretion on Police Officers and authorised persons. In absence of guidelines and norms, it is open to them at their sweet will to detain and seize vehicles.

(2) Sec. 207 does not empower Police Officers or authorised persons to detain or seize a vehicle.

(3) Petitioners are not using their vehicles as stage carriage but only as contract carriage and, hence, the case does not fall within the mischief of

Sec. 207.

(4) Even if it is assumed that the petitioners have committed illegality or irregularity, sufficient safeguards have been provided in the Act and the Rules and drastic action of seizure of vehicle is not warranted.

(5) Expression 'may' in proviso to Sec. 207 (1) must be read as shall and in case, the owner or person incharge of the vehicle produces the certificate of registration, it is incumbent upon or authorised person to release the vehicle forthwith.

(6) Interpretation put forward by the respondents would give fatal blow to carriage operators. It would frustrate underlying object of granting All India Permit.

(7) Intention of the Legislature is not to collect penalty by getting so-called offence compounded. If the owner has committed an offence, he can be dealt with according to law and that object can well be achieved by seizure of documents.

(8) Gujarat Tourism Development Department also used its vehicles as 'stage carriage' after obtaining permit for 'contract carriage'. Petitioners cannot be treated unequally and with an evil eye when the vehicles of the Gujarat Tourism Development have not been detained and seized.

(9) Seizure of vehicle en route creates insurmountable hardship to the passengers travelling in the vehicle including ladies and children. Section 207 must be construed in the light of practical difficulties and inconvenience to public at large.

(10) Abuse and misuse of power by Police Officers and authorised persons is writ large inasmuch as in almost all cases, vehicles have been detained and seized. There is not a single instance in which a certificate is seized and the vehicle is allowed to go.

[10] Mr. N, D. Nanavati, learned Government Pleader, on the other hand, contested the petitions and contended that :

(1) Petitions are premature and cannot be entertained at this stage inasmuch as no adverse action is taken so far against the petitioners.

(2) Constitutional validity and vires of Sec. 129-A of the Old Act (Sec. 207 of the New Act) has been upheld by the Supreme Court.

(3) Legislature has empowered Police Officers and authorised persons to detain and seize vehicles in certain circumstances. In absence of relevant facts and materials, they cannot be prevented from discharging statutory duties.

(4) Petitioners are using 'contract carriage' as 'stage carriage' and thereby contravene provisions of law. It is, therefore, open to the authorities to detain and seize a vehicle.

(5) 'May' in proviso to Sec. 207(1) should be read as 'may' and not 'shall'. The Legislature has conferred discretionary power on Police Officers and authorised persons. Intention of the Legislature can be gathered from the phraseology used by the Legislature.

(6) There is no colourable or mala fide exercise of power in detaining or seizing a vehicle. If an action is wrong in a given case, remedy is always available to the aggrieved party.

(7) Provisions regarding panel actions for breach of law would not disable the statutory authorities from exercising powers under Sec. 207 of the Act.

(8) The Court in exercise of extraordinary powers under Art. 226 of the Constitution cannot direct the authorities to exercise discretion in a particular manner.

[11] Before dealing with the contentions advanced at the bar, it would be necessary to refer to some of the relevant provisions of the Act. Section 2(7) defines 'contract carriage', while Sec. 2(40) defines 'stage carriage'. Clause (43) of Sec. 2 defines tourist vehicle. They read as under :

"2(7) "Contract carriage" means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum -

(a) on a time basis, whether or not with reference to any route or distance, or

(b) from one point to another,

and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes -

(i) a maxicab; and

(ii) a motorcab notwithstanding that separate fares are charged for its passengers.

2(40) "Stage carriage" means a motor vehicle constructed or adopted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey.

(43) "Tourist vehicle" means a contract carriage constructed or adapted and equipped and maintained in accordance with such specifications as may be prescribed in this behalf."

[12] Section 3 requires every person to have an effective driving licence to drive a motor vehicle in a public place. Sec. 4 prohibits a person under the age of eighteen years to drive a motor vehicle in a public place. Sec. 39 states that "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 Chapter IV 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".

[13] Section 66 enacts that a transport vehicle has to have a permit if such vehicle is to carry passengers or goods in any public place. Sub-sec. (1) of Sec. 66 is couched in negative words and it reads as under :

"66. Necessity for permits :- (1) No owner of a Motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or counter-signed by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used :

Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contract carriage :

Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a goods carriage either when carrying passengers or nor :

Provided also that a goods carriage permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him."

[14] Section 207 empowers Police Officers and other persons authorised by the State Government to detain a motor vehicle in certain circumstances and is material for the

purpose of deciding the controversy raised in these petitions. It, therefore, requires to be quoted in extenso :

"207. Power to detain vehicles used without certificate of registration, permit, etc.:-
(1) Any Police Officer or other person authorised in this behalf by the State Government may, if he has reason to believe that a Motor vehicle has been or is being used in contravention of the provisions of Sec. 3 or Sec. 4 or Sec. 39 or without the permit required by sub-sec. (1) of Sec. 66 or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, seize and detain the vehicle, in the prescribed manner and for this purpose take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle :

Provided that where any such officer or person has reason to believe that a Motor vehicle has been or is being used in contravention of Sec. 3 or Sec. 4 or without the permit required by sub-sec, (1) of Sec. 66, he may, instead of seizing the vehicle, seize the certificate of registration of the vehicle and shall issue an acknowledgement in respect thereof;

(2) Where a Motor vehicle has been seized and detained under sub-sec. (1), the owner or person in charge of the Motor vehicle may apply to the transport authority or any officer authorised in this behalf by the State Government together with the relevant documents for the release of the vehicle and such authority or officer may, after verification of such documents, by order release the vehicle subject to such conditions as the authority or officer may deem fit to impose."

[15] Before the New Act came into force on July 1, 1989, a similar provision was found in Sec. 129-A of the Old Act. Sec. 129-A as then stood read as under :

"129.-A. Power to detain vehicles used without certificate of registration or permit
Any police officer authorised in this behalf or other person authorised in this behalf by the State Government may, if he has reason to believe that a Motor vehicle has been or is being used in contravention of the provisions of Sec. 22 or without the permit required by sub-sec. (1) of Sec. 42 or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, seize and detain the vehicle, and for this purpose take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle :

Provided that where any such officer or person has reason to believe that a Motor vehicle has been or is being used without the permit required by sub-sec, (1) of

Sec. 47, he may, instead of seizing the vehicle, seize the certificate of registration of the vehicle and shall issue an acknowledgement in respect thereof :

Provided further that where a Motor vehicle has been seized and detained under this section for contravention of the provisions of Sec. 22, such vehicle shall not be released to the owner unless and until he produces a valid certificate of registration under this Act in respect of that vehicle."

[16] Now, I deal with the contentions raised by the learned Counsel for the parties.

Re : Ground 1 :

[17] It was contended by Mr. Keshwani that Sec. 207 confers extensive and uncanalised discretion on Police Officers and persons authorised by the State Government to detain and seize Motor vehicles. In absence of guidelines or norms, it is open to the authorities to exercise such drastic power at their whims and caprice. I am unable to uphold this contention for various reasons. Firstly, in none of the petitions, Constitutional validity or vires of Sec. 207 of the Act has been challenged. Even Mr. Keshwani made a clear and unequivocal statement at the Bar that he has not challenged and is not challenging the Constitutional validity of Sec. 207. Obviously, in that case, the matter could not have been placed before a single Judge. Secondly, Mr. Keshwani is not right in contending that discretion conferred on Police Officers or authorised persons is absolute or unfettered. Sufficient guidelines and norms have been laid down in Sec. 207 itself and the power has to be exercised only in certain circumstances and on existence of objective facts. The Police Officer or authorised person must have reason to believe about the existence of objective facts. Again, in case of abuse or misuse of power in individual cases, the aggrieved party can always approach higher authority or a competent Court for appropriate relief. Thirdly, the question is finally concluded by a pronouncement of the Supreme Court in Transport Commissioner, Andhra Pradesh, Hyderabad & Ors. v. S. Sardar AH & Ors., reported in AIR 1983 SC 1225 wherein vires of Sec. 129-A of the Old Act (Sec. 207 of the New Act) was upheld. Holding the provision infra vires, Chinnappa Reddy, J. observed :

"(I)f the provisions of the Motor Vehicles Act are read in conjunction with the provisions of the Code of Criminal Procedure and there is no getting away from the provisions of both the laws. - it is seen that there is no lacuna whatsoever in regard to the proper custody and disposal of the Motor vehicle seized under Sec. 129-A of the Motor Vehicles Act. The custody of the vehicle in the hands of the Police Officer or the authorised person is but temporary and he is, therefore, obliged to act and take all further steps in the matter with all expedition. If he releases the vehicles on being satisfied that no offence has been committed or if he releases the vehicle

on the offence being compounded, no further question arises. If, instead, he lays a complaint before the Court, the Court acquires instant jurisdiction over the vehicle to pass suitable orders. In the remote event of the Police Officer or the authorised person not taking any further action after seizing and detaining the vehicle, the owner of the vehicle is not without remedy. Art. 226 is always available but one does not have to presume that the Police Officer or the authorised person may not act according to law."

The Court concluded :

"We do not have the slightest hesitation in rejecting the contention that there is any infringement of the fundamental right guaranteed by Art. 19(l)(g) of the Constitution and in upholding the vires of Sec. 129-A of the Motor Vehicles Act."

In view of the above reasons, I do not find any substance in the contention of Mr. Keshwani and the contention is rejected.

Re : Ground 2 :

[18] It was then contended that Sec. 207 does not empower Police Officers or authorised persons to detain or seize a Motor vehicle. The contention cannot be accepted. Bare reading of Sec. 207 leaves no room of doubt that if any of the conditions specified therein is present, a Motor vehicle can be detained and seized.

[19] Now, it is not disputed that the petitioners are having contract carriage permits granted under Sec. 63 of the Old Act (Sec. 88 of the New Act.) Sec. 42 of the Old Act (Sec. 66 of the New Act) prohibits against use of a vehicle except in accordance with the conditions of permit granted by the authority. It is in negative words and mandatory in nature.

[20] In State of U. P. v. Bansraj, reported in AIR 1959 SC 79, the Supreme Court observed :

"The language of the section employs prohibitive or negative words and therefore, its legislative intent is that the statute is mandatory. The negative words convey a forbidding of the doing of the act prohibited and from the use by the legislature of the words "no owner of a transport vehicle shall use or permit the use" in Sec- 42(1)- a total prohibition against user of the vehicle except in accordance with the conditions of the permit is indicated. Further, the words "authorising the use of the vehicle in that place in the manner in which the vehicle is being used" have reference to the transport vehicle itself and not to the owner that is to say Sec. 42(1) does not only prohibit the owner from using the transport vehicle contrary to

the conditions of the permit but there is an express provision in the section that the permit authorises the use of the vehicle in the place and in the manner it is being used, and that it is to be used in accordance with the conditions of the permit. Thus, construed Sec. 42(1) contemplates not only prohibition against the user by the owner of the vehicle or his permitting its user in a manner contrary to the conditions of the permit but it also contemplates that the vehicle itself shall be used in the manner authorised by the permit. The prohibition, therefore, is not merely against the use by the owner but against the use contrary to the conditions of the permit of the vehicle itself. " (Emphasis supplied)

[21] Section 123 of the Old Act (Sec. 192 of the New Act) deals with offences and provides for penalties. It states that "whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of Sec. 22 or without the permit required by sub-sec. (1) of Sec. 42 or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used or to the maximum number of passengers and maximum weight of luggage that may be carried on the vehicle shall be punishable for a first offence with fine which may extend to two thousand rupees and for any second or subsequent offence with imprisonment which may extend to six months or with fine which may extend to three thousand rupees or with both." Now Sec. 42 of the Old Act (Sec. 66 of the New Act) requires the use of a transport vehicle in accordance with the conditions of permit. It prohibits an owner from using or permitting the use of a transport vehicle contrary to the conditions of permit. Dealing with these provisions, in Bansraj's case (supra), the Supreme Court stated :

"(When a transport vehicle is driven by anyone in contravention of the terms of the permit, it is in contravention of the provisions of Sec. 42(1). Section 42(1) is not a penalising section. For its breach Sec. 123 provides the penalties. The Legislature advisedly did not use the word 'owner' in Sec. 123 of the Act. Having by Sec 42(!) prohibited an owner from using or permitting the use of a transport vehicle contrary to the conditions of the permit and having clearly stated therein that the permit granted by the Regional or the Provincial Transport Authority authorised the use of the vehicle in the manner in which the vehicle was to be used, the Legislature provided punishment for anyone who drove a motor vehicle or caused or allowed a motor vehicle to be used or lets out a motor vehicle to be used in contravention of the provisions of sub-sec. (1) of Sec. 42. It is for this reason that the Legislature used the word 'whoever' and did not limit the punishment set out in Sec. 123 to the owner himself. The Legislature intended that no motor vehicle should be driven by anyone contrary to the provisions of Sec. 42(1) and that if it was driven in contravention of those provisions he was liable to punishment. The

two sections read together do not lead to the conclusion that Sec. 123 only makes the owner liable to punishment. The words "or causes or allows a motor vehicle to be used, or lets out a motor vehicle for use in contravention of the provisions of sub-sec. (1) of Sec. 42" may well refer to the owner. That is to say, this part of Sec. 123 punishes an owner for contravening the provisions of Sec. 42(1). The driving of the motor vehicle, however, is a different matter. It could be driven by the owner himself or by some one other than the owner. Therefore, the words "whoever drives a motor vehicle..... in contravention of the provisions of sub-sec. (1) of Sec. 42" would cover both the owner and one who is not the owner. What is made punishable is the driving of the motor vehicle by any one contrary to the provisions of Sec. 42(1). That is to say, the motor vehicle cannot be driven by anyone contrary to the conditions of the permit relating to that vehicle."

[22] Chapter V of the New Act provides for different kinds of permits that may be issued for different types of motor vehicles. It also contains a number of conditions which are specified therein. Now, Sec. 207 of the Act contemplates five situations in which a Police Officer or authorised person may seize and detain a motor vehicle. They are -

- (i) Where he has reason to believe that a motor vehicle has been or is being used in contravention of Sec. 3; or
- (ii) has been or is being used in contravention of the provisions of Sec. 4; or
- (iii) has been or is being used in contravention of the provisions of Sec. 39; or
- (iv) has been or is being used without the permit required by sub-sec. (1) of Sec. 66; or
- (v) has been or is being used in contravention of any condition of permit relating to the route on which or the area in which or the purpose for which the vehicle may be used.

The last three situations, i. e., contravention of the provisions of Sec. 39, Sec. 66(1) or contravention of any condition of permit relating to the route on which, the area in which or the purpose for which the vehicle may be used or to the maximum number of passengers and maximum weight of luggage that may be carried on the vehicle, have been made punishable under Sec. 192.

In *S. Sardar All's case* (supra), the Hon'ble Supreme Court held that "it is, therefore, clear that the power given to seize and detain the vehicle under Sec. 129A (Sec. 207 of the New Act) is to be exercised by the Police Officer or the

authorised person when he has reason to believe that an offence punishable under Sec. 123(1) (Sec. 192(1) of the New Act) has been or is being committed."

[23] In *Ishwar Singh Bagga v. State of Rajasthan*, reported in AIR 1987 SC 628, referring to *S. Sardar All*, the Supreme Court stated :

"The contravention of either Sec. 22 (Sec. 39 of the New Act) or Sec. 42(1) of the Act (Sec. 66(1) of the New Act) or any of the conditions mentioned in the permit would entitle an officer empowered under Sec. 129-A of the Act 'Sec. 207 of the New Act) to seize and detain the vehicle in question." (Emphasis supplied)

[24] In *Rasiklal Damjibhai & Am. v. State of Gujarat & Ors.*, reported in [1989 (2)] XXX (2) GLR 1229, the Division Bench of this Court, following *S. Sardar All* and considering various provisions of the Act and the Bombay Motor Vehicles Rules, 1959 held that if a person is found to ply his vehicle as a 'stage carriage' while holding a permit to ply the vehicle as a 'contract carriage', "it can safely be said that he was plying his vehicle without the permit since he was not holding any stage carriage permit". The Division Bench observed :

"A case of such a person can, therefore, be said to have been covered under the aforesaid Sec. 129-A of the Act as such a person is plying his Motor vehicle without the permit required by sub-sec. (1) of Sec. 42."

[25] In *Rasiklal's* case also, a similar contention was raised that since the petitioners were holding necessary permits their case could not fall under Sec. 129-A of the Act. Negating the contention, the Court stated :

"If a person has a permit of one kind, then that would not enable that person to ply a vehicle requiring a permit of a different kind. So. when a person plies a vehicle in a manner which requires a permit of a different kind from the kind of permit that he has, then it does not become a case of a breach of condition of the permit that he has, but becomes a case where he has no permit." (Emphaasis supplied)

[26] In my opinion, therefore, the contention that Police Officers or authorised persons have no power or authority to detain a Motor vehicle has no merit and requires to be rejected.

Re : Ground 3 :

[27] It is strenuously contended by the learned Counsel for the petitioners that they are not plying their vehicles as 'stage carriage'. Merely because the leader of the group or an organiser of the tour collects fare from individual passengers, the vehicle does not cease to be 'contract carriage' nor does it become 'stage carriage'. In this

connection reliance was placed on the decision of the High Court of Madras in N. Krishnaswami Chetty & Ors. v. Licensing Officer & Secretary, R. T. A., Chittoor, reported in AIR 1988 Mad. 274. In that case, the High Court of Madras held that merely because separate fares were collected from passengers individually, the 'contract carriage' would not become 'stage carriage'. On the other hand, Mr. N. D. Nanavati cited a recent decision of the Hon'ble Supreme Court in Brijendrakumar Chaudhari & Am. v. State of U. P. & Ors., reported in 1992 (4) SCC 703. In that case, it was held by the Supreme Court that if a contract carriage permit is granted in respect of a vehicle, the holder of such permit cannot pick up individual passengers. There must be a prior contract indicating the passengers to be carried. Referring to Roshanlal Gautham v. State of U. P., reported in AIR 1965 SC 991, the Court held that the contract shall prior and persons who are to be carried shall be known prior to the journey. The vehicle cannot suppose to pick up or set down the passengers not included in the contract anywhere during the journey. It was argued by the appellants that though under a contract carriage permit, only those passengers mentioned in the contract could be picked up and stopping on the route to pick up or set down passengers was prohibited, there could be several contracts inasmuch as the 'contract carriage' means a Motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract.

[28] Repelling the contention and referring to the definition of contract carriage, the Court observed :

"The definition makes it clear that in order that a vehicle could be used to transport passenger or passengers there must be a prior contract express or implied; that the contract must indicate as to who are the passengers to be carried; that the contract shall have been entered into by a person with the holder of the permit or any person authorised by him; and that the engagement under "a contract" is for use of the vehicle as a whole. It is not possible to read the words "under a contract" in the context as referring to both a single contract and more than one contract. If the construction placed by the learned Counsel is accepted there would be no distinction between stage carriage and contract carriage permit." (Emphasis supplied)

[29] Again, in my opinion, the question whether a Motor vehicle in a particular case was used as a 'contract carriage' or 'stage carriage' cannot be decided in absence of necessary facts and relevant materials. The decision will have to be taken in the light of evidence adduced before the authorities. In these cases, the say of the authorities is that the petitioners are using their vehicles as stage carriage though they are having permits to ply as contract carriage and, hence, such vehicles are liable to seizure and detention.

[30] As per the law laid down by the Supreme Court in Bansraj's case (supra), if a vehicle is driven in contravention of terms and conditions of permit Sec. 207 of the Act is attracted. According to the decision of the Division Bench in Rasiklal's case (supra), breach of condition of permit amounts to no permit at all. Hence, this contention cannot be accepted.

Re : Ground 4 :

[31] It was also contended by the learned Counsel for the petitioners that an action of detention and seizure of vehicle is very drastic in nature and in view of sufficient safeguards in the Act itself, such action is not warranted. I am afraid, the contention cannot be upheld.

[32] Chapter I[deals with licensing of drivers of motor vehicles while Chapter III provides for licensing of conductors of stage carriages. Chapter IV speaks of registration of motor vehicles. Chapter V makes provisions for control of transport vehicles. Chapter VIII deals with control of traffic; whereas Chapter XIII enacts law relating to offences and penalties and provides procedure thereof.

[33] Now, as held by the Supreme Court the power to seize and detain a vehicle can be exercised by a Police Officer or authorised person under Sec. 207 of the Act if he has reason to believe that an offence punishable under Sec. 192 has been or is being committed. The contravention of any of the conditions of permit would amount to driving of a vehicle without permit. Since it is the case of the respondents that the petitioners are having contract carriage permits and they are plying their vehicles as stage carriage, without be armed with valid permit for such use. Police Officers and authorised persons can seize and detain vehicles in exercise of powers under Sec. 207 of the Act. This contention also, therefore, requires to be rejected.

Re: Ground 5 :

[34] It was strenuously argued on behalf of the petitioners that even if it is assumed that a Police Officer or an authorised person has power to seize and detain a vehicle if any of the contingencies specified in Sec. 207(1) is established, he cannot continue with seizure and detention of such vehicle if the proviso to sub-sec. (1) of Sec. 207 is attracted and the conditions laid down therein are satisfied. In such cases, no alternative is left to a Police Officer or authorised person but to release the vehicle. In other words, according to the petitioners, "may" in proviso to sub-sec. (1) of Sec. 207 must be read as "shall".

[35] Now, as discussed hereinabove, sub-Sec. (1) of Sec. 207 enables Police Officers and persons authorised by the State Government to seize and detain a vehicle if he has

reason to believe that (i) a motor vehicle has been or is being used in contravention of the provision of Sec. 3; or (ii) has been or is being used in contravention of the provisions of Sec. 4; or (iii) has been or is being used in contravention of the provisions of Sec. 39; or (iv) has been or is being used without permit required by sub-sec. (1) of Sec. 66; or (v) has been or is being used in contravention of any condition of permit relating to the route on which or the area in which or the purpose for which the vehicle may be used.

[36] Thus, in case of contravention of or non-compliance with the provisions of Sec. 207(1), a Police Officer or authorised person 'may' detain or seize a vehicle.

[37] Proviso to sub-sec. (1) of Sec. 207 enacts that if such officer or person has reason to believe that, (a) a motor vehicle has been or is being used in contravention of Sec. 3; or (b) has been or is being used in contravention of Sec. 4; or (c) has been or is being used without the permit required under sub-sec. (1) of Sec. 66, he may instead of seizing the vehicle, seize the certificate of registration of the vehicle and shall issue an acknowledgement receipt thereof.

[38] Sub-section (2) of Sec. 207 provides that whenever a motor vehicle has been seized and detained under sub-sec. (1), the owner or person incharge of the motor vehicle may apply to the transport authority or any officer authorised by the State Government together with the relevant documents for the release of the vehicle and such authority or officer may after verification of such documents, by order release the vehicle subject to such conditions as the authority or officer may deem fit to impose.

[39] Conjoint reading of sub-sec. (1) of Section 207 and proviso thereof as also sub-sec. (2), leaves no room of doubt that a Police Officer or authorised person has power to seize and detain a vehicle in certain circumstances. If the facts enumerated in sub-sec. (1) of Sec. 207 of the Act are present, it is open to such officer to seize and detain a vehicle. No doubt, the power is discretionary in nature. It also cannot be disputed that Sec. 207(1) enables such officer or person to seize certificate of registration of vehicle instead of seizing the vehicle itself. The proviso uses the expression 'may.' Sub-sec. (1) of Sec. 207 also uses the same expression. The contention of the learned Counsel for the petitioners, however, is that 'may' in sub-sec. (1) of Sec. 207 should be read as such i. e. as 'may' only, whereas 'may' in proviso to sub-sec. (1) of Sec. 207 of the Act should be read as 'shall' or 'must.' A crucial question, therefore, is : Whether 'may' in proviso to sub-sec. (1) of Sec. 207 should be read as 'may' or 'shall'

[40] Now, it is true that the question as to whether a particular provision is mandatory or directory depends upon intention of the Legislature and not only upon the language in which it is used. The meaning and intention of the Legislature must be treated as

decisive and they are to be ascertained not only from the phraseology used but also by considering the nature, design and consequences which would flow from construing it one way or the other. Crawford on Statutory Construction : Art. 261.) It is also true that in certain circumstances, the expression 'may' can be construed as 'shall' or vice versa. At the same time, however, it cannot be ignored that ordinarily 'may' should be read as 'may' which is permissive and not obligatory. For the purpose of giving effect to the clear intention of the Legislature, 'may' can be read as 'shall' or 'must'.

[41] A number of decisions have been cited by the learned Counsel for the petitioners contending that 'may' must be read as 'shall'. I do not intend to burden this judgment by discussing all the authorities. They are as under

1. Raza Buland Sugar Co. Ltd, v. Muni. Board. Rampur, AIR 1965 SC 895;
2. Sardar Govindrao v. State of M. P., AIR 1965 SC 1222)
3. State of U. P. v. Jogendra Singh, AIR 1973 SC 2650;
4. Western India Match Co. v. Workmen, AIR 1973 SC 2650;
5. Textile Commissioner v. Sagar Textile Mills Pvt. Ltd., AIR 1977 SC 1516;
6. Supdt. & R.L.A., Govt, of W. B. v. Abani Maity, AIR 1979 SC 1029;
7. Alcock v. Chief Revenue Authority, AIR 1923 PC 138;
8. Julius v. Bishop of Oxford (1880) 5 AC 214.

[42] So far as the principle laid down in the aforesaid decisions is concerned, there cannot be two opinions about it and this Court is bound by the principle laid down by the Hon'ble Supreme Court. But the question is, whether the expression 'may' used in proviso to Sec. 207(1) should be read as 'shall' or 'must'. In my opinion, looking to the provisions of sub-sec. (1) and (2) of Sec. 207, read with proviso to sub-sec. (1) of Sec. 207 of the Act, there is no doubt in my mind that the intention of the Legislature is well reflected by construing 'may' as 'may', which is directory, permissive and enabling and not as 'shall' which is mandatory, obligatory and absolute. In my judgment, the reasons for such construction are not far to seek. As seen above, in certain circumstances, a Police Officer or authorised person can seize and detain a Motor vehicle in case of contravention of certain provisions of the Act. One of the circumstances contemplated by sub-sec. (1) of Sec. 207 is that a person driving a Motor vehicle in any public place may not be having effective driving licence (Sec. 3). Now, suppose in a given case, a Motor vehicle is being driven in a public place by a person not having effective driving licence. A Police Officer or authorised person in

exercise of power under Sec. 207(1), 'may' seize and detain the vehicle. If the contention of the petitioner is accepted and 'may' in proviso to Sec. 207(1) will be read as 'shall', if such person produces a certificate of registration of the vehicle, the Police Officer or authorised person cannot detain and seize vehicle and even though such person is not holding effective driving licence and under the Act, cannot drive a vehicle in any public place, such vehicle cannot be detained and seized. In other words, a Police Officer or authorised officer cannot prevent such person from driving the vehicle in any public place without effective driving licence and he will have to allow such person to commit offence punishable under the the Act. Such construction, in my opinion, would defeat the provisions of law and cannot be accepted.

[43] Similarly, a Police Officer or authorised person has power to seize and detain a vehicle, if there is violation of Sec. 4 of the Act. Section 4 provides that bo person under the age of eighteen years should drive a Motor vehicle in any public place. Take a hypothetical case. A person aged about 15 years is driving a Motor vehicle at a public place. Under Sec. 207(1), a Police Officer or authorised person is satisfied that a person driving the vehicle is of less than 18 years of age and, hence, cannot drive the vehicle in a public place. He, therefore, in exercise of his discretionary powers seizes and detains the vehicle. Such person is prepared to produce a certificate of registration. Contending that 'may' must be read as 'shall' in proviso to Sec. 207(1) such person insists that on production of the certificate of registration of vehicle, it is not open to the Police Officer or the authorised person to seize and detain the vehicle. If the argument of the petitioners will be accepted, the Police Officer or authorised person has no option but to allow such minor to plyx the vehicle at a public place by allowing him to go with the vehicle by seizing the certificate of registration by permitting him to commit an offence. Such interpretation, in my opinion, cannot be accepted. It is really absurd and would frustate the intention and object of the legislation.

[44] Thus, looking to the language in which the expression is used, the circumstances under which the power requires to be exercised and consequences which ensue, there is no doubt in my mind that 'may' at both the places, i' e., in sub-sec. (1) of Sec. 207 as well as in the proviso thereof, requires to be read as 'may', being permissive, directory and enabling and not obligatory, compulsive and absolute one.

[45] The matter can be looked at from a different angle also. Sub-sec. (2) of Sec. 207 enables the owner or person in charge of a Motor vehicle to apply to the transport authori or authorised officer for release of the vehicle. If ' may' in proviso to Sec. 207(1) will be read as 'shall' as contended by the petitioners, sub-sec. (2) will become redundant, futile and nugatory. If 'may' in proviso to Sec. 207(1) is read as 'shall' or 'must' and the Police Officer or authorised person is bound to release the vehicle as

soon as certificate of registration of the vehicle is produced, sub-sec. (2) of Sec. 207 will become otiose, redundant and superfluous. It is well settled that it cannot be presumed that the Legislature makes any provision which is unnecessary, needless or futile. Reading 'may' as 'may' in proviso to Sec. 207(1), both the provisions of Sec. 207(1) and (2) can be read harmoniously and can be given effect. In my opinion, therefore, 'may' in proviso to Sec. 207(1) should be read as 'may' and not 'shall'. The contention of the petitioners that 'may' in proviso to sub-sec. (1) of Sec. 207 must be read as 'shall' cannot be upheld.

Re : Ground 6

[46] It was further contended that if the interpretation put forward by the respondents would be accepted, it would adversely affect tourism. It would also frustrate the primary object of granting All India Tourist Permits.

[47] In my opinion, however, the provisions of Sec. 207 are abundantly clear and they are to be interpreted accordingly. Moreover, it is not open to the petitioners to ply their contract carriages as stage carriages by misusing All India Tourist Permits. In *B. A. Jayaram & Ors. v. Union of India & Ors.*, reported in AIR 1983 SC 1005, the Supreme Court had an occasion to consider the question. After referring to the counter-affidavit filed by the State of Karnataka and to a survey made by the Transport Commissioner of Maharashtra, the Court concluded :

"The petitioners, who are transport operators holding all India permits, deny that any of them was guilty of any malpractice or misuse of the permits held by them. But notwithstanding the petitioners' denial we do not have the slightest doubt that the allegations of misuse and malpractice made in the counter affidavit filed on behalf of the Karnataka Government, are generally and substantially correct. Complaints about the abuse of the scheme appear to have been made to the Central Government and the Transport Advisory Council also. We are also told that the question of meeting the challenge posed by these abuses is receiving the attention of the Central Government."

[48] In the instant cases also, according to the allegations of the respondents the petitioners are having All India Permits to ply vehicles as contract carriages. By misusing them, they are plying their vehicles as stage carriages. Hence, the contention has no force and is rejected.

[49] I may, however, hasten to add that I have not decided nor I intend to decide the truth or otherwise of the allegations made by the respondents against the petitioners. I am deciding the matters on principle on the assumption that the allegations levelled against the petitioners are true. In individual cases, correctness and veracity of such

averments will have to be examined and decided on merits in appropriate proceedings before competent authorities.

Re : Ground 7 :

[50] It was argued by the petitioners that the intention of the Legislature is not to raise income by forcing the owners and persons in charge of vehicles to get offences compounded. Nobody disputes this proposition. But if there is breach of provision of law for which a motor vehicle can be detained and seized, it cannot be contended that the vehicle should not be detained. If the law empowers a police officer or authorised person to detain and seize a vehicle, he has right to do so. This contention also, therefore, requires to be rejected.

Re : Ground 8 :

[51] It is the allegation of the petitioners that a similar contract carriage permit is granted to vehicles belonging to Gujarat Tourism Development Department. That Department plies its vehicle as stage carriages and yet they have not been detained and seized. Hence, the impugned action is arbitrary, irrational, discriminatory and violative of Art. 14 of the Constitution of India.

[52] The contention cannot be accepted. Firstly, Gujarat Tourism Development Department is not a party respondent in these petitions. Secondly, a copy of the permit said to have been granted in favour of the department has not been produced on record. Thirdly, if one operator is plying his vehicles in violation of statutory provisions, other operators relying upon Art. 14 of the Constitution of India cannot be allowed to commit breach of law. The Court cannot countenance such plea and permit other operators also to violate law by invoicing equality clause enshrined in Art. 14 of the Constitution. That is not the sweep of Art. 14.

[53] In *Lakshman Kumajibhal Barot v. Commissioner of Police, Ahmedabad & Am.*, reported in [1979 (2)] XX (2) GLR 563, the petitioner, who was serving as Police Sub-Inspector was suspended pending Criminal proceedings. He challenged the said action inter alia on the ground that the order was discriminatory inasmuch as several Police Officers who were involved in serious Criminal offences were not suspended. The action was thus violative of Art. 14 of the Constitution. Repelling the contention, P. D. Desai, J. (as he then was) stated :

"It is difficult to comprehend, under such circumstances, how the order of suspension can be challenged on the ground of violation of Art. 14 by reference to some other distinct cases of different Police Officers. One more thing. Merely because the authority has failed to suspend a person who ought to have been

suspended in the facts and circumstances of one case, it cannot be precluded from exercising the power of suspension in another like case, although suspension might be justified on the facts of that case, by invoking Art. 14. One or two or even series of cases where power of suspension ought to have been exercised but has erroneously not been exercised cannot be relied upon in order to claim the protection of Art. 14 in a subsequent case where the power might have been reasonably and bona fide exercised on legitimate grounds. That turfy is not the sweep of Art. 14." (Emphasis supplied)

[54] This contention also, therefore, has no merit and requires to be rejected. Re : Grounds 9 & 10 :

[55] It was also argued that seizure and detention of a vehicle en route would create insurmountable hardship to passengers, particularly to ladies and children. It was submitted that on the facts and in the circumstances, intervention of this Court under Art. 226 of the Constitution is called for when the power under Sec. 207 (1) of the Act has been exercised indiscriminately in all cases by seizing and detaining vehicles completely ignoring proviso to sub-sec. (1) of Sec. 207.

[56] Now, it cannot be gainsaid that detention of a vehicle en route would result into inconvenience to passengers. But then, the Court cannot direct Police Officers and authorised persons to ignore, overlook or disregard statutory provisions nor can restrain them from exercising powers in accordance with law. At the same time, however, Police Officers and authorised persons have to apply their minds to the proviso to sub-sec. (1) of Sec. 207 of the Act also. If the Legislature has conferred power upon them by enacting sub-sec. (1) of Sec. 207, by the same ink, proviso has been enacted and, hence, both sub-sec. (1) and proviso thereof should be read together. In fact, in A. 0, 478 of 1992, decided on November 27, 1992, I had directed the authorities to consider and keep in mind legislative intent as reflected in proviso to Sec. 207(1) of the Act. Again, as observed by the Supreme Court in S. Sardar All's case (supra), "one does not have to presume that the Police Officer or the authorised person may not act according to law." In my judgment, presumption would be otherwise, namely, that the Police Officer or authorised person will act according to law.

[57] Moreover, if the power has not been properly exercised in a given case, it is always open to the aggrieved party to challenge that action in accordance with law. In fact, while upholding the validity of Sec. 129-A of the Old Act in S. Sardar All's case (supra), the Hon'bie Supreme Court observed that sufficient safeguards have been provided in the Act as well as in the Code of the Criminal Procedure and in that remote event of Police Officer or authorised person not taking any further action after seizing

and detaining the vehicle, the owner of the vehicle is not without remedy. Art. 226 of the Constitution is always available in such" cases.

[58] As already held by me, the power conferred on Police Officers and authorised persons to detain and seize a motor vehicle is discretionary in nature. This Court, in exercise of extraordinary jurisdiction under Art. 226 of the Constitution cannot direct the statutory authorities to exercise their discretion in a particular manner. It would not only amount to transgressing of judicial limits but would also interfere with legislative provisions and render them nugatory. The discretion has to be exercised reasonably considering the facts and circumstances of the case on hand and no rule of universal application can be laid down. Again, if the power is abused, an appropriate action can be taken in accordance with law by the aggrieved party but in the light of specific provision in sub-sec. (1) of Sec. 207 read with sub-sec. (2) thereof, it cannot be contended that a Police Officer or authorised person has no power to seize and detain a vehicle or that after a vehicle is seized and detained, such officer or person will have no option but to release the vehicle under the proviso to sub-sec. (1) of Sec. 207 if certificate of registration is produced. In any case, in absence of necessary facts, relevant evidence and sufficient materials, no blanket direction can be given to the respondent authorities not to seize or detain a vehicle or to release the vehicle in case of application of proviso to Sec. 207(1).

[59] It was submitted by Mr. Keshwani that six single Judges have admitted petitions by issuing Rule and the petitions which are on Board for admission should also be admitted. He further stated that in some matters, after dismissal of Special Civil Applications, Letters Patent Appeals have been filed and they have been admitted. He submitted that in these petitions also, the hearing should be confined to admission stage only. In this connection, I have to observe that the matters were heard by this Court in March/April, 1994. I have heard learned Counsel for the petitioners extensively. Even after vacation, on June 15/16, when the matters were posted for hearing, I have heard the Counsel for the petitioners. I had also made it clear that I will be hearing the matters finally. Mr. Keshwani filed further affidavit-in-rejoinder on June 16, 1994 which was taken on record. In these circumstances, I am of the view that the petitions must be disposed of finally and accordingly they are disposed of by this judgment. Again, the points agitated in the present petitions have been finally adjudicated by various decisions of the Hon'ble Supreme Court as also of this Court.

Moreover, the preliminary contention of the learned Government Pleader Mr. N. D. Nanavati appears to me to be well founded that no adverse order is made nor prejudicial action is taken against any of the petitioners so far and the petitions are, therefore, premature and not maintainable. As and when such order is passed

or action is taken, it is always open to the aggrieved party to approach a competent Court in accordance with law including this Court.

In view of the foregoing reasons, I do not find any substance in any of the contentions raised by the learned Counsel for the petitioners and all the petitions are dismissed. Rule and/or notice issued in each matter stands discharged. Interim relief stand vacated. In the facts and circumstances of the case, however, there is no order as to costs.

The learned Counsels for the petitioners request for continuation of ad interim relief granted earlier and operative till today. In my opinion, the request is reasonable. Therefore, ad interim relief granted earlier is extended upto July 18, 1994.

Petitions dismissed;

Rule discharged.

