

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

Civil Writ Petition No. _____/2021

AZAD Taxi Union (Punjab)

....Petitioner

Versus

State of Punjab and others

....Respondents

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Urgent Form: 3.00

Total : Rs.

Note: 1) That the law points in the present petition are contained in Para No. 17 at Page 10 of the petition.

2. Relevant Rules/Act/Statutes:

- i) Constitution of India.
- ii) Motor Vehicles Act
- iii) Central Motor Vehicles Rules

3. Similar case,if any: No

4. No Vires of any Act/Rules is under challenge.

5. No sitting or Ex-MP/MLA is involved in the present petition.

6. Whether Caveat petition has been filed in this case: No.

Chandigarh

Dated:

(Raj kaushik)

Advocate P-365/01

Counsel for the Petitioner

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
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Court Fee

Chandigarh
Dated:

(Raj kaushik)
Advocate P-365/01
Counsel for the Petitioner

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

Civil WRIT PETITION NO _____ OF 2021

AZAD Taxi Union (Punjab) having its Head Office at Lala Lajpat Rai Market, near Gurdwara, Kalilgar Sahib, GT Road, Khanna, Punjab through Sh. Sharanjit Singh Kalsi, Vice President(Punjab)

...Petitioner

Versus

1. State of Punjab through The Principal Secretary to Govt., of Punjab, Department of Transport, Civil Secretariat-2, Sector 9, Chandigarh
2. The State Transport Commissioner, Punjab Near Mehfil Restaurant, Sector 17, Chandigarh

...Respondents

Chandigarh
Dated:

[RAJ KAUSHIK]
Advocate
Counsel for the petitioner

Civil Writ Petition under Articles 226 and 227 of the Constitution of India for the issuance of an appropriate writ, order or direction in the nature of MANDAMUS directing the respondents not to collect the additional fees as a consequence to the amendment of Rule 32 and Rule 81 of Central Motor Vehicles Rules, 1989 as the same has been declared to be illegal and set aside being unconstitutional, by this Hon'ble Court and further directions to the respondents to refund the entire amounts taken as an additional fees, after the scrapping of the amendment i.e. on 03.04.2017 to the members of the Petitioner Union.

And/Or

Any other Writ, Order or Direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

RESPECTFULLY SHOWETH:

1. That the petitioner is a Regd. Taxi Union and its members are operating their vehicles registered as Taxi on the authority of the permits granted by the Competent Authority to use the vehicles as Taxies. The present petition is being filed through the Vice President of the Union who is resident of State of Punjab and as such is entitled

to invoke the extra ordinary writ jurisdiction of this Hon'ble Court under Article 226/227 of the Constitution of India.

2. The the present writ petition is being filed by the Petitioner who is a Regd. Taxi Union in the State of Punjab and is espousing the cause of its members and as such the present writ petition is being filed by the petitioner Union seeking indulgence of this Hon'ble Court praying for directions to the Respondents to adhere with the judgments passed by the Hon'ble Court vide which the provision in the Central Motor Vehicles Rules have been declared to be illegal and still the Punjab Govt. is implementing the same despite legal notices sent to them.
3. That the grievance of the petitioner and necessity to file the present Writ Petition has arisen because of the inaction on the part of the Transport Authorities by still implementing the amendments of Rule 32 and Rule 81 of Central Motor Vehicles Rules, 1989 with reference to increase in fees vide Gazette Notification in G.S.R. 1183€ dated 29.12.2016 in respect of grant or renewal of certificate of fitness for motor vehicle as additional fee of fifteen rupees for each days of delay after expiry of fitness.
4. That the Central Govt. amended the Rule 32 and 81 of Central Motor Vehicles Rules, 1989, which is reproduced herebelow:-

'32. Fees. — The fees which shall be charges under the provisions of this Chapter shall be as specified in the Table below:

Provided that the States may levy additional amounts to cover the cost of automation and technology utilized for conducting the testing or providing value added services

TABLE

Sl.No.	Purpose	Amount	Rule	Section
(1)	(2)	(3)	(4)	(5)
9	Renewal of a driving licence for which application is made after the grace period.	Three Hundred rupees Note: Additional fee at the rate of one thousand rupees for delay of each year or part thereof reckoned from the date of expiry of the grace period shall be levied.		15

81. Fees. The fees which shall be charged under the provisions of this Chapter shall be as specified in the Table below:

Provided that the States may levy additional amounts to cover the cost of automation and technology utilized for conducting the testing or providing value added services.

Sl. No.	Purpose	Amount
4	Issue or renewal of certificate or Registration and assignment of new registration mark:.....
	(j) Any other vehicle not mentioned above	Three thousand rupees
	Note 1: Additional fee of two hundred rupees shall be levied if the certificate of registration is a smart card type issued or renewed in Form 23A. Note 2: In case of delay in applying for renewal of certificate of registration, an additional fee of three hundred rupees for delay of every month or part thereof in respect of motor cycles and five hundred rupees for delay of every month or part thereof	

	in respect of other classes of non transport vehicles shall be levied.	
6	Transfer of ownership	Half of the fee mentioned against Serial No.4 Note: In case of delay in submission of “No Objection Certificate”, an additional fee of rupees three hundred for delay of each month or part thereof in case of motor cycles and five hundred rupees for each month of delay or part thereof for other vehicles shall be levied.
7.	Change of residence	Half of the mentioned Serial No.4 Note: In Case delay in submission of “No Objection Certificate” for change of residence, an additional fee of rupees three hundred for delay of each month or part thereof in case of motor cycles and five hundred rupees for each month of delay or part thereof for other vehicles shall be levied.
11	Grant of renewal of certificate of fitness for motor vehicle	Two hundred rupees Note: Additional fee of fifty rupees for each of delay after expiry of certificate of fitness shall be levied

5. That the above said notification-amendment in the rules, had been put to judicial scrutiny in various Writ Petitions before the Hon’ble Madras High Court and the Hon’ble High Court was pleased to pass the orders on 03.04.2017 after discussing the entire factual and legal aspect of the matter. The operative part of the order is reproduced herebelow:-

“In view of the foregoing discussion, we find that the levy of additional fee under various heads as per the impugned notification is

without authority and such levy of additional fee is, therefore, liable to be struck down.

Copy of the order dated 03.04.2017 is attached as **Annexure P-1**

6. That Rule 39-A of the Punjab Motor Vehicles Rules, 1989 prescribed for imposition of the penalty as also talks about the imposition of fees as per Rule 81 of Central Motor Vehicles Rules, 1989. The same being relevant is reproduced herebelow:-

39A- Penalty for vehicle remained without fitness

The owner of a transport vehicle shall, if he fails to present his vehicle before the Board of Inspection of an authorised testing station, on or before the date of expiry of certificate of fitness or within such period so specified by Board of Inspection for its renewal, be liable to pay the following composition fee/penalties in addition to fee specified for renewal of certificate of fitness under rule 81 of the Central rules :-

Period of Delay	Amount of Penalty
(a) For each day upto 15 days	Rupees ten per day subject to maximum of Rupees Fifty.
(b) More than 15 days upto 3 months	Rupees ten per day subject to maximum of Rupees five Hundred
(c) More than 3 months up to 6 months	Rupees ten per day subject to maximum of Rupees One Thousand
(d) More than 6 months up to one year	Rupees ten per day subject to maximum of Rupees Two Thousand
(e) More than one year	Rupees Two thousand per year and Rupees ten for every additional day

Provided that the Government may by general or special order and subject to such condition as may be specified, exempt, any person or class of persons from payment of all or portion of penalty payable.

7. That in view of fact that the amendment to the Rule 32 and 81 of Central Motor Vehicles Rules, 1989 has been struck down by the Hon'ble High

court, therefore, there is no justification of levying the interest/penalty on the delay in getting fitness certificate.

8. That the matter in regard to the imposition of the additional fees/penalty had also been brought to the notice of this Hon'ble Court by filing CWP No. 5373 of 2020 and this Hon'ble Court was also pleased to direct that the levy of the additional fee/penalty is bad in the eyes of law. Copy of the order dated 17.02.2021 is attached as **Annexure P-2**
9. That on the basis of the order dated 17.02.2021 passed by this Hon'ble Court, the Govt, of Haryana had issued directions to make a provision in the software accordingly so that the additional fees mentioned in rule 32 and 81 of Central Motor Vehicles Rules in pursuance to the notification dated 29.12.2016 issued by the Govt. of India shall not be levied. Copy of the instructions dated 13.10.2021 is attached as **Annexure P-3.**
10. That still despite knowing the passing of the orders, the State of Punjab has not implemented the order and the Transport Authorities in the State of Punjab are still levying the penalty upon issuance of fitness certificate in case of delay, which amounts to the contempt of the Hon'ble Court.
11. That the State of Punjab/Transport Authorities who are collecting the additional fees in respect of delay in getting the fitness certificate, is acting against the orders passed by the Hon'ble High Court because the provisions in the amendment to the rules have been struck down by the Hon'ble High Court and since it was a Central Legislation/Amendment,

therefore, the entire States including the State of Punjab has to adhere the same.

12. That therefore, under the compelling circumstances, the petitioner had also issued the legal notices upon the respondents vide legal notice dated 28.04.2020 upon the respondents calling upon them not to levy the additional fees. Copy of the legal notice dated 28.04.2020 is attached as **Annexure P-4.**
13. That thereafter the petitioner also reminded the respondents vide legal notice datedand requested them not to levy the additional fees/penalty and also reminded them that failure to do so, would entail the contempt proceedings. Copy of the legal notice dated is attached as **Annexure P-5.**
14. That despite the receipt of the legal notice, still the respondents authorities did not stop levying the additional fees. Copies of two such receipts are attached as **Annexures P-6 and P-7.**
15. That thus in view of above, the petitioner prays that a general directions may kindly be issued to the respondents not to carry forward the implementation of amended Rules of Central Motor Vehicles Rules, which has been declared to be illegal and unconstitutional.
16. That the following substantial questions of law do arise in this

Petition:-

- i) Whether the petition deserves to be allowed in view of the grounds mentioned in the petition?
 - ii) Whether the levy of additional fees/penalty is permissible in law after declaring the amended rule as illegal?
16. That there is no right of appeal or revision and as such the petitioner has no other alternative remedy except to invoke the extra ordinary jurisdiction of this Hon'ble Court.
17. That the Petitioner has not filed any such Writ Petition on the same or similar grounds either in this Hon'ble Court or in the Hon'ble Supreme Court of India.

It is, therefore, respectfully prayed that this Hon'ble Court may be pleased to:-

- i) Issue an appropriate writ, order or direction in the nature of MANDAMUS directing the respondents not to collecting the additional fees as a consequence to the amendment of Rule 32 and Rule 81 of Central Motor Vehicles Rules, 1989 as the same has been declared to be illegal by this Hon'ble Court and further directions to the respondents to refund the entire amounts taken as an additional fees, after the scrapping of the amendment i.e. on 03.04.2017 to the members of the Petitioner Union.

- ii) issue any other Writ, Order or Direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.
- iii) service of advance notices upon the respondents may be dispensed with;
- iv) Records of the case may kindly be called for.
- v) filing of certified copies of Annexures may kindly be dispensed with.

Chandigarh
Dated:

Petitioner

Through

(RAJ KAUSHIK)

Advocates

Counsel for the Petitioner

Verification:-

Verified that the contents of above Writ Petition from Paras No. 1 to 11, 13 and 14 are true and correct to my knowledge and belief and that of para No. 12 is believed to be correct being based on legal advice. No part of it is false and nothing has been concealed therein.

Chandigarh
Dated:

Petitioner

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

Civil Writ Petition No. _____/2021

AZAD Taxi Union (Punjab) having its Head Office at Lala Lajpat Rai
Market, near Gurdwara, Kalilgar Sahib, GT Road, Khanna, Punjab
through Sh. Sharanjit Singh Kalsi, Vice President(Punjab)

....Petitioner

Versus

State of Punjab and another

....Respondents

Affidavit of Sharanjit Singh Kalsi, Vice
President(Punjab) AZAD Taxi Union (Punjab) having its
Head Office at Lala Lajpat Rai Market, near Gurdwara,
Kalilgar Sahib, GT Road, Khanna, Punjab

I, the above named deponent do hereby solemnly affirm and declare as
under:-

1. That the deponent is filing the present Petition before this
Hon'ble Court and is well conversant with the facts of the present
case.
2. That the deponent reiterates the contents made in Paras of the
application, which are true and correct as per the knowledge and
belief of the deponent.

Place: Chandigarh

Dated:

Deponent

Verification:-

Verified that the contents of my above affidavit are true and correct
to my knowledge and belief. No part of it is false and nothing material has
been kept concealed therein.

Place: Chandigarh

Dated:

Deponent