
(1985) 01 GUJ CK 0026
In the Gujarat High Court

Abdul Kader Yakubbhai Shaikh

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 24-01-1985

Acts Referred:

Bombay Motor Vehicles Tax Act, 1958 — Section 3, 3(2), 38, 38(3)
Constitution of India, 1950 — Article 226, 226
Motor Vehicles Act, 1958 — Section 38

Citation : (1985) 2 GLR 718

Hon'ble Judges : D.H. Shukla, J

Bench : Single Bench

Judgement

D.H. Shukla, J.—The petitioner, Shri Abdul Kader Yakubbhai Shaikh, is the registered owner of a transport vehicle, namely, an auto rickshaw, bearing Registration Mark No. GTH 1607, The petitioner had paid the tax levied under the Bombay Motor Vehicles Act, 1958 (Bombay Act No. LXV of 1958, hereinafter known as the "Tax Act of 1958") upto 31-3-1974. It is the petitioner's case that he had put the same auto rickshaw for repairs of its engine before 31-3-1974 with one Shantilal Manilal Panchal, an auto rickshaw repairer at Ahmedabad. It is his further case that he is a man of moderate means and could not pay the repair charges for the rickshaw and therefore he could not procure the engine back from the repairer. The petitioner submits that the engine is still in possession and custody of the said repairer, Shantilal, who has retained the possession exercising his right of lien.

2. The petitioner could not intimate about the rickshaw being out of order to the respondent No. 3, the Taxation Authority and Regional Transport Officer, under Rule 5 of the Bombay Motor Vehicles Tax Rules, 1959, hereinafter known as the Tax Rules of 1959, since he was not conversant with the rules as he was a new entrant in the line.

3. The petitioner submits that the certificate of fitness for plying the rickshaw as contemplated u/s 38 of the Motor Vehicles Act, 1939, expired on 19-3-1975 and

the position was the same even at the point of time when the present petition was filed.

4. The respondent No. 3 issued a demand notice for the recovery of tax amounting to Rs. 300/- and a penalty of Rs. 75/ for the arrears of the tax for the period from 1-4-1974 to 31-3-1976. by an order dated 24-3-1975. I have pointed out to Mr. J. P. Patel, the learned Advocate for the petitioner, that there appears to be a typographical mistake in mentioning the date of the order as 24-3-1975 since it does not appear probable that the demand notice for the arrears of tax from 1-4-1974 to 31-3-1976 would be issued before 31-3-1976. Mr. Patel agreed that it may be so. I must point out at this stage that the petitioner has not produced this notice of demand allegedly dated 24-3-1975. I may also point out at this stage that the petitioner has not produced on record certain important documents which I will have occasion to refer to in this judgment. The petitioner has only produced at Annexure "A" a reply of the Regional Transport Authority dated 4-3-1977, which reply has been challenged in this petition. At Annexure "B". the petitioner has produced an order by which the stay was granted by the Director of Transport. In my opinion, this document does not have any direct bearing on the issues involved in this petition. At Annexure "C, the petitioner has produced a copy of the judgment in Tax Appeal No. 1/77, dated 23-2-1979. These are the only documents produced by the petitioner. I shall later on point out the relevant documents which have not been produced by the petitioner. It appears to me that the non-production is likely to be a deliberate act of withholding the document because this document, if produced, might go to show the laches on the part of the petitioner, which may prove fatal to his petition.

5. I was referring to the notice of demand, allegedly dated 24-3-1975, which as I have pointed out above, is not on record. Later on, the authorities issued a reminder dated 28-6-1976 and the respondent No. 3 issued a further letter dated 31-7-1976 together with a certificate for recovery of the amount of tax as arrears of land revenue. These letters of 28-6-1976 and a later letter dated 31-7-1976 are also not produced by the petitioner on record.

6. Thereafter, the petitioner made a representation in writing, dated 10-7-1976 contending, inter alia, that the said vehicle was not used by him from 1-4-1974 onwards and therefore the vehicle was not used nor kept for use and as such he was not liable to pay the said amount of tax and penalty as contemplated u/s 3 of the Act. I must again point that this representation in writing dated 10-7-1976 is also withheld by the petitioner for the reasons best known to him. The petitioner has also submitted in the same proceedings before the Administrative Officer an affidavit made by himself declaring that in view of the circumstances stated therein, the vehicle was not used for the period from 1-4-1974 and onwards, along with another affidavit made by the repairer Shri Shantilal Manilal Panchal to the same effect. I must further point out that the copies of these two affidavits are also withheld in this petition and that the petitioner has not even

called upon the respondents to bring on record his representations and the two aforesaid affidavits.

7. The petitioner presented on 21-9-1976 a declaration in Form "NT" along with the certificate of registration of the said vehicle, stating therein that the vehicle was not used from 1-4-1974 to 31-3-1977. A copy of the Declaration Form "NT" is also withheld in this petition and no attempt has been made to call upon the other side to produce the original of the said declaration form submitted by him on 21-9-1976.

8. Thereafter, the petitioner by his application dated 1-3-1977, addressed to the respondent No. 3, requested to intimate the amount of arrears of tax and penalty payable by him after considering his representation in writing, as stated above. A copy of the said application is also not brought on record and appears to have been withheld. The respondent No. 3 finally assessed the tax and penalty of Rs. 382-50 and Rs. 96/ respectively, for the period from 1-4-1974 to 30-9-1976, by order dated 4-3-1977 (Annexure "A") which is the impugned order in this petition.

9. The petitioner has not referred to in the petition any order passed on his application dated 10-7-1976 or on the production of the declaration in Form "NT", of 21-9-1976. I inquired of Mr. J. P. Patel, the learned Advocate for the petitioner, as to why he has not produced an order on his application dated 10-7-1976 and on Form NT presented on 21-9-1976, and he replied that the only order which the petitioner received was the order dated 4-3-1977, which is produced on the record, and since he has not received any other order, no order must have been passed on his earlier application dated 10-7-1976 and the declaration in Form "NT" dated 21-9-1976. I am not satisfied that the only order was dated 4-3-1977, which was passed on the petitioner's application dated 1-3-1977 and that because he had not received any other order or no order must have been passed on his earlier application dated 10-7-1976, nor on Form "NT" dated 21-9-1976, the petitioner made no inquiry in this connection and merely sat pretty not taking any steps to procure the order, or even to inquire whether any order was passed or not. Mr. Patel submitted to me that I should call upon the respondents to produce the order, if there was any. Under the circumstances of the case, I do not think that the request of Mr. Patel is justified when the petitioner has all along failed to take any action in the matter, right from 1976 till the matter was heard on 22-1-1985. Illiteracy is not always a good excuse when the petitioner is represented by a Senior Advocate who, with respect, has failed to discharge his duties to his client.

10. After the petitioner received a reply dated 4-3-1977, he preferred an appeal before the Director of Transport, Gujarat State, Ahmedabad, being Tax Appeal No. 1 of 1977, which was rejected by an order dated 23-2-1979 for the reasons stated therein. Hence, the present petition.

11. I was inclined to dismiss the petition on the two grounds, without entering

into the merits of the petitioner's grievance. The petitioner's conduct does not justify him to obtain a constitutional relief under Article 226 of the Constitution of India. The tax arrears are of a rather small amount of Rs. 382-50 ps. plus Rs. 96/- as penalty. I do not think that there is any question of principle involved for not paying the arrears. It is to be noted that arrears are for a period between 1-4-1974 and 30-9-1976, as stated in the petition, itself. The rickshaw was required to be given for repairs before 31-3-1974 and therefore according to the petitioner it did not attract any tax. If this be true, u/s 3(2) of the Tax Act of 1958, he was required to submit an application for exemption. Section 3(2) runs as under:

3.(2) Except during any period for which the Taxation Authority has, in the prescribed manner, certified that a motor vehicle was not used or kept for use in the State, the registered owner, or any person having possession or control, of a motor vehicle of which the certificate of registration is current, shall, for the purpose of this Act, be deemed to use or keep such vehicle for use in the State

In this connection, I must further note Rule 5 of the Tax Rules of 1959, which runs as under:

5. Certificate for non user - (1) A registered owner of, or any person who has possession or control of, a motor vehicle, not intending to use or keep for use such vehicle in the State and desiring to be exempted from payment of tax on that account shall, before the expiry of the current period for which the tax on such vehicle has been paid, for which a declaration of non-use as herein provided has been made, make a declaration in Form "NT" to the appropriate Taxation Authority along with the certificate of taxation.

(2) If the Taxation Authority is satisfied that the motor vehicle, in respect of which a declaration in Form "NT" has been made, has not been used or kept for use for the period mentioned in the declaration and for which tax has not been paid or for which a declaration of non-use as herein provided has been made, it shall certify that the motor vehicle has not been used or kept for use for such period.

(3) Notwithstanding anything contained in Sub-rules (1) and (2), if such owner or person proves to the satisfaction of the Taxation Authority that the motor vehicle was not used or kept for use during the period for which tax has not been paid, such Taxation Authority may certify that such vehicle has not been used or kept for use during such period.

Therefore, the petitioner should have obtained a certificate for non-use if his vehicle was out of order before 31-3-1974. He did not do anything of the sort till 21-9-1976 when he submitted a "NT" Form along with the declaration. He had submitted an application dated 10-7-1976, inter alia, contending that the said vehicle was not used by him on 1-4-1974 and onwards. The petitioner, therefore, did not make the required application before the tax became due for the period 1974-75, though his rickshaw became out of order before 31-3-1974. Barring

ignorance of the provisions of law, no other satisfactory reason is given as to why such statutory application was not made at the relevant time.

12. Over and above this, as I have pointed out earlier, two reminders were issued, namely, one dated 24-3-1975 and 28-6-1976. The copies of these letters are not produced and I also do not know whether these reminders were replied or not since there is no averment to that effect.

13. The petitioner made an application in writing dated 10-7-1976 along with which he produced two affidavits, but I do not find any order on that application on record and I am only told that no order must have been passed because no such order was received, and that the only order which was received the impugned order dated 4-3-1977. The appellate authority, it seems has rightly observed, in paragraph 3 of its order, "This is really a very shrewd contrivance employed by the appellant..." This contrivance was adopted to overcome the difficulty of the question of limitation. The petitioner, it appears, has succeeded before the appellate authority since the appellate authority has considered his appeal on merits, apparently in view of the "contrivance". So far as the constitutional relief under Article 226 of the Constitution, is concerned, it is the settled legal position that the petitioner should move his grievance in a court of law without any unreasonable delay if he wants to procure a relief under Article 22 of the Constitution of India. In my view, the petitioner has not only failed to move with reasonable despatch, but he has practised a contrivance before the appellate authority in order to get a time-barred appeal heard.

14. The petitioner has sought a writ under Article 226 of the Constitution of India, although he has not specified which special writ he wants the Court to issue. The only writ which could have been issued under the circumstances of the case would be the writ of certiorari since the petition is filed against a quasi judicial function exercised by an administrative officer, the .Director of Transport, Gujarat State, Ahmedabad. Limits of the certiorari jurisdiction are well settled. It is a settled legal position that the relief by issuance of the writ of certiorari is not meant to take the place of an appeal where the statute does not confer a right of appeal. Its purpose is only to determine on an examination of the record whether the inferior Tribunal has exceeded its jurisdiction or has not proceeded in accordance with the essential requirements of the law which it was meant to administer. The writ of certiorari would be granted if the Court is satisfied either that the quasi-judicial Tribunal has exceeded its jurisdiction or when there is an error apparent on the face of the record. Certiorari is not granted to review or re-weigh the evidence upon which the determination of the inferior Tribunal purports to be based. It does not lie even to cure a mistake of law unless such a mistake is apparent on the face of the record. Such an error of law must be manifest on the face of the record.

15. The aforesaid, therefore, are the limits of the certiorari jurisdiction. The necessary grounds for the issuance of the writ are not even pleaded in the petition. I am inclined to dismiss the petition on both of the aforesaid grounds.

However, in fact, I am not doing so as I find that the petitioner does not have force in the petition even on merit.

16. I have read the appellate order. I agree with the Appellate authority that he was justified in not entering into the facts, which did not appeal to the Taxation Authority. But that apart, at least so far as the writ jurisdiction is concerned, the Court as a matter of settled practice does not enter into disputed questions of facts. I, therefore, do not enter into the question as to whether the two affidavits, namely, one of the petitioner and another of Shri Shantilal Manilal Panchal, satisfactorily prove that the rickshaw was out of repair before 31-3-1974. Obviously, it appears that these affidavits did not satisfy the Taxation Authority, and so far as this Court is concerned, that should settle the matter on questions of facts.

17. The second unit of the petitioner's argument, and the one which Mr. Patel, the learned Advocate for the Petitioner, emphasised before me, is the interpretation of the relevant sections of the Tax Act of 1958 and the Bombay Motor Vehicles Act, 1939. In the first place, as pointed out above, the question of interpretation in this petition involves only a question of law, but it does not involve such a question of law which arises on account of a mistake apparent on the record of the case. Secondly, even on the question of interpretation, I agree with the interpretation put upon by the Appellate Authority. I do not want to reproduce his line of reasoning in my judgment. I may only add that Section 38(3) of the Motor Vehicles Act, 1939 provides as under:

38. (3) The issuing authority or other prescribed authority may for reasons to be recorded in writing cancel a certificate of fitness at any time, if satisfied that the vehicle to which it relates no longer complies with all the requirements of this Act and the rules made thereunder; and on such cancellation the certificate of registration of the vehicle and any permit granted in respect of the vehicle under Chapter IV shall be deemed to be suspended until a new certificate of fitness has been obtained.

18. Mr. Patel's submission was that the moment a vehicle got out of repair and the certificate of fitness expired (in this case on 19-3-1975), the registration ceases to be current and therefore Section 3(2) of the Tax Act of 1958 was not attracted in the present case. This argument is squarely met with by the interpretation of Section 38(3) of the Motor Vehicles Act, 1939 where it is required that the issuing authority must be made to cancel a certificate of fitness for which reasons are required to be recorded and when such a certificate of fitness is cancelled under this provision, the registration of the vehicle shall be deemed to be suspended until a new certificate of fitness has been obtained. Mr. Patel has not brought on record the fact for which the certificate of fitness was cancelled by the issuing authority u/s 38(3), but his argument proceeded on the ground that once the certificate of fitness expired, the same effect should follow. In view of the clear provisions of Section 38(3) of the Motor Vehicles Act, 1939, with respect, I cannot accept Mr. Patel's submission and his line of reasoning.

19. Mr. Patel wanted to rely on the Bombay High Court judgment reported in 1972 Maharashtra Law Journal, 469, but he has not been able to bring before me the same and therefore I do not have the benefit of the line of reasoning adopted in that case. I have independently inquired and the same volume is not available to me today, either from the Judges' Library or from the Lawyers' Library. Mr. Patel wants me to read a xerox copy of the judgment produced at Annexure "C" to the petition. Apart from the fact that it is not a certified copy of the judgment, but it is only a true copy, the said xerox copy is not legible, particularly internal page No. 3, and therefore I have not permitted Mr. Patel to read the said xerox copy of the judgment. Mr. Patel further submitted that he would try to find out from the Bombay Law Reporter if the judgment was published in the same journal, provided time was given to him.

20. This request is made when I am at the end of the judgment of an old petition of 1979 and therefore I am inclined to wait no more to complete my judgment. The result is that the petition is rejected. Rule is discharged with costs.