
(2008) 04 AHC CK 0044
In the Allahabad High Court
Case No : C.M.W.P. No. 969 of 2008

Abdul Khaliq and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-04-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)

Motor Vehicles Act, 1988 — Section 207, 66

Uttar Pradesh Government Servants Seniority (Third Amendment) Rules, 2007 — Rule 8A

Citation : (2008) 6 AWC 6465

Hon'ble Judges : B.S. Chauhan, J;Arun Tandon, J

Bench : Division Bench

Advocate : G.K. Malviya, for the Appellant; S.P. Kesarwani, S.C., for the Respondent

Final Decision : Dismissed

Judgement

B.S. Chauhan and Arun Tandon, JJ.—This writ petition has been filed challenging the vires of the amendment made to the U. P. Motor Vehicles Taxation Act, 1997 by the U. P. Motor Vehicles Taxation (Amendment) Act, 2007 (U. P. Act No. 24 of 2007) to the extent to which the said amendment imposes additional tax liability for a minimum of 10 days per month in addition to the already existing monthly tax liability where a vehicle adopted to carry more than nine persons, excluding the driver, is kept for use without a permit u/s 66 of the Motor Vehicles Act, 1988 (called the Central Act hereafter), whether it is actually used or not. It also challenges the imposition of further additional tax of Rs. 1,000 per seat, if such vehicle is found plying without permit. This additional tax of Rs. 1,000 per seat apparently appears to be chargeable each time the vehicle is detected plying and it is imposable per seat in the vehicle whether that seat at that relevant point of time, is found occupied or unoccupied.

2. Sri G. K. Malviya, learned Counsel for the Petitioners has submitted that whereas the Central Act has been enacted by the Parliament under Entry 35 of

the List III (concurrent list) of the VIIth Schedule, the U. P. Motor Vehicles Taxation Act, 1997 has been enacted under Entry 57 of the List II (State List) of the VI Ith Schedule of the Constitution of India and the said entry 57 entitles a State Legislature to impose a compensatory tax only as held in Bolani Ores Ltd., It has been submitted that a compensatory tax means a tax whereby the State is entitled to reimburse itself for the services rendered. It has been argued that the vehicle plying without permit u/s 66 of the Central Act does not consume any additional resources of the State as compared to a similar vehicle plying with permit, and in any case it does not consume additional resources of the State to the extent to which additional tax liability has been imposed by the said amending Act. Reliance has been placed by the Petitioner's side on Hardev Motor Transport Vs. State of M.P. and Others, .

3. It has further been submitted by Sri Malviya that penalty for violating Section 66 of the Central Act is provided in Section 192A of the Central Act. The additional tax liability imposed under the U. P. Act transgresses the compensatory nature and assumes the character of a penalty and in that view of the matter it transgresses into a field occupied by Section 192A of the Central Act under the Concurrent List, which cannot be done without the Presidential assent being given to the State Act. Reliance has been placed by the Petitioner's side on M.P.A.I.T. Permit Owners Assn. and Another Vs. State of Madhya Pradesh,

4. Sri S. P. Kesarwani, learned standing counsel has raised the preliminary objection regarding maintainability of the writ petition contending that there are five Petitioners having different vehicles. No factual foundation has been laid anywhere in the entire petition to show that any cause of action has arisen to any of the Petitioners to approach this Court. It is nobody's case that the vehicle belonging to any of the Petitioners had ever been intercepted or seized in exercise of power u/s 207 of U. P. Motor Vehicles Act, 1988 or any penalty has been imposed. Thus unless the Petitioners suffer adversely from the alleged law, the question of entertaining the writ petition does not arise. The petition being pre-emptive is liable to be dismissed.

5. In reply, Sri G. K. Malviya, learned Counsel for the Petitioners has submitted that large number of identical petitions are pending and almost in all of them interim orders had been passed. Therefore, this Court is bound to maintain the parity and entertain the petition and grant interim relief.

6. We have considered the rival submissions made by learned Counsel for the parties and perused the record.

7. None of the Petitioners has stated anywhere in the petition that any action had been taken against either of them under the impugned legislation. None of the vehicles had ever been intercepted under the said law nor any penalty has been imposed. In such a fact situation, we have no hesitation to hold that the writ petition is pre-emptive in nature and in case any interim order is passed, the Petitioner would be at liberty to misuse the privilege thereof. The Respondent

authorities will be helpless in taking any action against either of the Petitioners because of the restraint order passed by this Court.

8. The Courts are meant to determine the real and living issues and not the academic questions as it would be a futile exercise. Vide Loknath Padhan Vs. Birendra Kumar Sahu, Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another, ; R.S. Nayak Vs. A.R. Antulay, ; Harsharan Verma Vs. Charan Singh and Others, Rajasthan Adult Education Association and Anr. v. Kumari Ashoka Bhattacharya and another AIR 1998 SC 336: 1998 (1) AWC 661 (SC) ; State of Rajasthan and Others Vs. Vatan Medical and General Store and Others etc. etc., Basant Kumar Vs. State of Rajasthan and Others, Arnit Das Vs. State of Bihar, and M.L. Binjolkar Vs. State of Madhya Pradesh,

9. So far as the interim order is concerned, we are of the view that when validity of law is being examined, as there is always presumption of validity, interim order should be passed in exceptional circumstances. The Hon''ble Supreme Court in the case of Bhavesh D. Parish and Ors. v. Union of India and another AIR 2000 SC 2047, has specifically laid down that there is a presumption of the legality of the statutory provisions and therefore merely because a challenge is made and some arguable point is raised by the Petitioner, he will not become entitled for any interim order.

10. In U. P. Avas Evam Vikas Parishad and Anr. v. Rajendra Kumar Agarwal and Ors. 2008 AIR SCW 1918: 2008 (2) AWC 1298 (SC), the Hon''ble Supreme Court considered the propriety of passing the interim order restraining the department from disturbing the seniority while challenging the validity of Rule 8A of U. P. Government Servants Seniority (Third Amendment) Rules, 2007 and held that even if in identical cases interim order had been passed by the Coordinate Bench, there was no justification to pass interim order by another Bench. Thus, it is not always necessary to keep parity in such matters.

11. In view of the above, the petition is liable to be dismissed.

12. At this stage, Sri G. K. Malviya, learned Counsel for the Petitioners prayed and is permitted to withdraw the writ petition. The writ petition is dismissed as withdrawn with liberty to file afresh, if the cause of action arises in respect of any of the Petitioners.