
(1989) 11 RAJ CK 0020
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1316 of 1989

Ashok Kumar

APPELLANT

Vs

Village Panchayat

RESPONDENT

Date of Decision : 05-11-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1989) WLN 36

Hon'ble Judges : M.B. Sharma, J;I.S. Israni, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. At the request of the learned Counsel for the parties, we proceed to dispose of the writ petition finally though, the case was admitted earlier and the case was posted for orders on the stay application.

2. The petitioner was granted a contract for the period from 1-4-1988 to 31-3-1990, by the Mining Department for Bajri under the Mining Mineral Concession Rules 1986, for the revenue village of Guhala, as is well known Bajri has to be taken from this bed of a river or a Nala as the case may be. After grant of the contract for the aforesaid period, the petitioner who is not a resident of the area which lies in the Gram Panchayat, Guhala, started mining operations and when he used to take Bajri in a truck or a tractor trolley, the non-petitioner, Panchayat started charging the development tax from such of the persons who were exporting Bajri. From the petitioner, the same tax was charged @ Rs. 5/- per trip and receipts like Annexure 1, 2, 3 were issued. The petitioner challenged the aforesaid action of the Panchayat on the ground that the tax which is being levied is without any authority of law. We had admitted the petition and notices were given to the non-petitioner but no reply was filed and only an application under Article 226(3) of the Constitution of India was filed for vacation of stay order. In the aforesaid application all that is stated is that the Gram Panchayat had in fact imposed vehicle tax (Vahan Kar) except on those vehicles which are

used for purposes of cultivation in exercise of the powers conferred by Clause (g) of Sub-section (1) of Section 64 of the Rajasthan Panchayat Act, 1953, (for short the Act) and the aforesaid tax is said to have been imposed in accordance with law. A Resolution to impose and levy tax was passed by the Gram Panchayat and under it vehicle tax at rate of Rs. 5/- per truck, Rs. 3/- per trolley and Re. 1 per camel cart was to be levied.

3. A look at the aforesaid Anxs. 1 to 3 will show that the printed forms are "Gram Panchayat, Guhala," & "Bajari Niryat Vahano Se Nikas Sulk." It will clearly appear that it is not a tax on the vehicle but a tax on the export of Bajri by vehicles out side the limits of the Gram Panchayat. A resolution Annexure R/1, dated 25-12-1988 on which reliance has been placed by the learned Counsel for the petitioner will show that resolution No. 4 is in respect of vehicle tax. In order to enable the non-petitioner to meet its expenses incurred amongst other things on supply of water, electricity etc. tax was upheld. It is also mentioned therein that except the vehicles which are used within the limits of Panchayat for cultivation, tax @ Rs. 5/- per truck, Rs. 3/-per trolley and Re. 1/- per camel-cart shall be levied. It is also mentioned that this vehicle tax should also be recovered from such of the persons using for export of Bajri. There is no material on record that in levying the aforesaid tax, the procedure mentioned in Rule 93(1) of the Rajasthan Panchayat (General) Rules, 1961, was followed. That apart even any vehicle tax within the meaning of Section 64(g) of the Act can only be imposed in such a manner as may be prescribed. A look at Rule 112 will show that when a Panchayat has decided to levy tax on vehicles under Clause (g) of Sub-section (1) of Section 64 and the procedure laid down in Rules 93 to 96 has been observed in respect thereon, the Panchayat shall cause to be prepared a register of vehicles liable to such tax, specifying therein the name and address of the owner of each such vehicle and the amount of the tax due in respect thereof Under Sub-rule (2) any person who keeps or plies any vehicle on hire whether he be the owner of such vehicle or a person who possesses it or has the loan of it or has the charge of it in any other capacity shall be deemed to be the person liable to pay the tax on the vehicle which is not a motor vehicle as aforesaid. Motor vehicle is defined in Section 2(18) of the MV Act. Motor vehicle means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises. Therefore, even if the Panchayat may have powers and has power to impose and levy vehicle tax u/s 64(g), it has no powers as is clear from Rule 113 of the Rules to levy any tax on a vehicle which is a motor vehicle. It can hardly be disputed that truck, tractor is motor vehicle and the Panchayat will have no jurisdiction to levy any vehicle tax. That apart even on such of the vehicles on which the Panchayat may be in a position to levy tax only tax can be levied after following the procedure prescribed and no tax be levied on a vehicle as and when the same comes within

the jurisdiction of the Panchayat. Tax can only be levied annually on those vehicles, on which tax can be levied as aforesaid which are kept within the area of Panchayat and not on those who may come within the area of Panchayat or may pass through it. Assuming that the receipts as aforesaid were wrongly given for the development tax, on the export, through vehicles of Bajri and in fact it was intended to charge vehicle tax as stated by learned Counsel as per the resolution referred to earlier, we are of the opinion that as stated earlier the vehicle tax could not have been levied on the motor vehicles in the manner it has been levied.

4. Consequently, we here by allow the writ petition, quash the resolution No. 4, dated 25th December, 1988 as modified on 22nd April, 1989, and declare that no vehicle tax u/s 64(g) of the Act can be levied on motor vehicle and on other vehicles, it can only be levied in accordance with law and in view of the observations made above.

5. Costs made easy.