

(2006) 06 OHC CK 0019

In the Orissa High Court

Case No : O.J.C. No's. 16987, 17022, 17034, 17168, 17366 to 17369 and 17592 of 1998 and 393 of 1999

Balasore Bus Association and etc.

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 29-06-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 211, 212, 96, 96(1), 96(2)
Orissa Motor Vehicles (Third Amendment) Rules, 1998 — Rule 48

Citation : AIR 2006 Ori 163

Hon'ble Judges : R.N. Biswal, J;P.K. Tripathy, J

Bench : Division Bench

Advocate : D.B. Das, M.B.K. Rao, M.R. Tripathy and Ashok Kumar Rath, in OJC No. 17022/98, S.C. Parija and P.K. Behera, in OJC No. 17034/98, P. Behera, in OJC No. 17168/98 and Ashok Mohanty, T. Rath, S. Notia and G. Mishra, in OJC No. 16987/98, for the Appellant; Standing Counsel (Transport), for the Respondent

Final Decision : Dismissed

Judgement

R.N. Biswal, J.—The petitioners who are Bus and Truck Owners" Associations and some private bus and truck operators belonging to different parts of Orissa, have filed the aforesaid writ petitions raising substantially similar points of law and as such, they were heard analogously and a common judgment is passed thereon.

2. The issue raised for consideration of this Court in all these cases is validity of the notification dated 26-11-1998 of the Government of Orissa, Commerce and Transport Department bearing No. LC-1-16/ 98-16000/T bringing amendment to Orissa Motor Vehicles Rules, 1993 which was called as "Orissa Motor Vehicles (Third Amendment) Rules, 1998. The facts in O.J.C. No. 17368 of 1998 is taken as typical of the cases which has been filed by the Ganjam Bus Owners" Association through its Secretary. As per this case, opposite party No. 1 published a notification in Orissa Gazette on 25.8.1998 in which it proposed to amend the entire fees structure relating to fees for application of grant of permit,

renewal of permit, extension of permit, counter-signature of the permit and fees in respect of grant, renewal, extension, counter-signature and transfer of permit. A bare perusal of the amended Rule 48 would show that the fees for application as well as the fees for the permit of different kinds are highly exorbitant and excessive. In the pre-amendment Rules the fees for application of permit was fixed at Rs. 40/-, taking into consideration the cost of stationeries and other incidental expenses. Now, it has been enhanced to Rs. 500/- in respect of application for a permanent stage carriage permit and Rs. 100/- for an application for temporary permit. According to the petitioner no opportunity of being heard was afforded to it before the final publication of the impugned notification, whereby there was violation of the principle of natural justice. Moreover, the Motor Vehicles Act authorizes the State Government only to frame Rules relating to the fees to be paid in respect of application for permit, duplicate permit and plates. So, the impugned notification prescribing fees for grant, renewal, counter-signature and transfer of permit is without jurisdiction and beyond the scope of the statute. The impugned notification is made only to collect revenue, which is against the tenet of the Motor Vehicles Act. A comparative study of the fees prescribed under the Motor Vehicles Rules of different States go to show that nowhere in India such exorbitant fees have been prescribed for grant of permit and application for permit, as in the impugned notification. It is the further case of the petitioner that the service rendered by the authority collecting fees may not be in an exact proportion to the fees collected, but there must be casual relationship between the fees and the service rendered. In the case at hand, no service whatsoever being rendered by the State of Orissa in respect of fees collected, the entire concept of imposition of fees is highly unreasonable. Hence, the case to quash the impugned notification.

3. Opposite party No. 1 in its counter-affidavit filed through Gokula Chandra Nag, Joint Commissioner, Rail Co-ordination and Joint Secretary to the Government, Commerce and Transport Department states that it is legally competent to levy fees on motor vehicles under Sections 96 and 211 of the Motor Vehicles Act, 1988. As required u/s 212 of the said Act preliminary notification No. 10595, dated 22-8-1998 was published in the Official Gazette on 25-8-1998, inviting objections and suggestions, if any, to the proposed amendment. The objections/suggestions were to be made within 15 days from the date of publication. During this period State Government received 35 objections and after considering the same, published the final notification bearing No. 16000, dated 25-11-1998 revising both application and permit fees. Since there is no provision for personal hearing of the objections in the Motor Vehicles Act, they were not heard before revising the application and permit fees. According to opposite party No. 1, except the temporary permit fees enhanced in the year 1989, permit fees were not enhanced since 1980. Application fee for contract carriages was enhanced in the year 1990 and for other vehicles in the year 1989. There was no revision of fees of any category till, the impugned notification. Moreover, in the year 1980 the fare was 4.5 paise, 5 paise and 6 paise in respect of ordinary bus, express

bus and deluxe bus respectively. Since then, bus fare has been enhanced eight times on 1-7-1981, 1-1-1985, 18-10-1985, 1-11-1990, 1-11-1992, 8-4-1994, 1-9-1996 and 1-10-1997. Now, the rate of fare is 22 paise, 24 paise and 32 paise in respect of ordinary bus, express bus and deluxe bus respectively. So, it cannot be said that the petitioners are over-burdened with the enhanced fees. It is the further case of opposite party No. 1 that in the mean time, three Zonal Deputy Commissioner offices have been opened in three Revenue Divisions of the State and the Additional Regional Transport Offices at Rourkela, Baragarh and Bhubaneswar have been up-graded to Regional Transport Offices. After bifurcation of the districts, one new R.T.O. office has been opened at Rayagada, one Additional R.T.O. office at Angul and one Assistant R.T.O. office at Rajgangpur. Some new check gates were also opened at State border. By opening/upgrading R.T.O. offices etc. the Transport Administration was decentralized and came closer to the vehicle owners as well as the public in general to provide better service in the matter of granting permit, issuing license and fitness certificate etc. In order to prevent fatal road accidents, steps have also been taken to educate the public in road safety programme. On these score the Government has incurred expenditure to the tune of Rs. 8.11 crores for the year 1998-99 as against Rs. 75.21 lakhs in the year 1980-81. Thus, opposite party No. 1 has been spending much more than the fees collected. Accordingly, it pressed to dismiss the writ petitions. Opposite party No. 2 did not prefer to file any counter-affidavit.

4. At the outset, learned Counsel for the writ petitioners submit that as per the provision contained u/s 96(1)(vii) of the M.V. Act the State Government is empowered only to make rules with regard to fees to be paid in respect of application for permit, duplicate permit and plates. The said provision does not empower the State Government to levy fees in respect of grant, renewal, extension, counter-signature or transfer of permit. So, the impugned notification is beyond the competence of the State Government. Per contra, learned Counsel for the State submits that Entry-66 of List-II of 7th Schedule of the Constitution of India empowers the State Government to levy fees in all matters within its legislative competence. According to him, it cannot be said that the State Government is not competent to issue the impugned notification, amending Rule 48 of the Orissa Motor Vehicles Rules.

5. As per Sub-section (1) of Section 96 of the M.V. Act, 1988 any State Government may make rules for the purpose of carrying into effect the provision of Chapter-V, which deals with control of transport vehicles. Again, Sub-section (2) of the said section reads as follows:

Without prejudice to the generality of the foregoing power, rules under this section may be made with respect to all or any of the following matters, namely:

xx xx xx xx

6. So, it is clear that the matters as enumerated in Sub-section (2) are not

exhaustive. "Without prejudice to the generality of the foregoing power" (supra) implies that the State Government is empowered to make rules on matters beyond the items enumerated in Sub-section (2) of Section 96 of the M.V. Act. Therefore, the submission of the learned Counsel for the writ petitioners that the State Government is not competent to levy fees in respect of grant of permit, duplicate permit, renewal, extension, countersignature or transfer of permit is not tenable under law. Furthermore, as submitted by the learned Counsel for the State Entry 66 of List-II of 7th Schedule of the Constitution of India lays down that fees can be levied by the State Government in respect of any matter in the State List except fees taken in any Court. Entry-13 of the said list deals with roads, bridges, ferry and other means of communication, not specified in List-I. So, it is otherwise also within the competence of the State to levy fees in respect of grant of permit, renewal, extension, countersignature or transfer of permit.

7. Learned Counsel for the writ petitioners, next submit that as required u/s 212 of the M.V. Act prior publication of the draft rules is a must in each and every case. In the present case, the provisional notification of the draft rules as per Section 212 of the Act was published in the Official Gazette by opposite party No. 2 inviting objections and suggestions, if any. In response to it though 35 objections were filed, the same were not considered by the opposite parties. On perusal of the relevant records filed by the opposite parties, it is found that the objections have been taken into consideration.

8. Learned Counsel for the writ petitioners, next submit that the final publication of the amended rules was made without giving a chance of hearing to the objectors, whereby there was violation of the principle of natural justice. Per contra, learned Counsel for the State submits that there is no provision in the M.V. Act, or Rules framed thereunder to give personal hearing to the objectors before amending any rule. Objections/suggestions were invited in respect of the draft rules from the general public. The possibility that thousand of objections might have ushered in could not be ruled out. In that event it would not have been possible on the part of the State Government to give personal hearing to all the objectors and that is why perhaps the M.V. Act and Rules, framed thereunder are silent with regard to giving personal hearing to the objectors. So, only because no chance of hearing was given to the objectors, it cannot be said that the amended rules should be quashed. We are at one with the submission made by the learned Counsel appearing for the State.

9. Learned Counsel for the writ petitioners, next submit that unlike tax there is an element of quid pro quo (Give and Take) in fee. It is a charge for the special service rendered to a class of citizens by the Government or Governmental agency and is generally based on the expenses incurred in rendering service. In the present case, since different categories of fees have been enhanced in wide disproportion to the existing fees and there is no proportionate increase in the service rendered to the petitioners, the so-called fees to be collected would form a part of the general revenue of the State. In support of this submission the

decision in *The Chief Commissioner, Delhi and Another Vs. The Delhi Cloth and General Mills Co. Ltd. and Others*, is relied on, wherein it is held:

A fee in order to be legal fee, must satisfy the following two conditions:

- (i) There must be an element of quid pro quo that is to say, the authority levying the fee must render some service for the fee levied, however remote the service may be;
- (ii) that the fee realised must be spent for the purpose of the imposition and should not form part of the general revenues of the State.

In the case at hand, it is not the case of the writ petitioners that different categories of fees to be collected would form part of the general revenue of the State, for which the impugned notification is liable to be quashed. When broad and general co-relation between the totality of the fees collected and the totality of the expenses of the service rendered is established, the levy is regarded as fee and not tax. As averred in the counter filed by opposite party No. 1 three Zonal Deputy Commissioner offices were opened in three Revenue Divisions of the State. The Additional Regional Transport Offices were upgraded to Regional Transport Offices at Rourkela, Bargarh and Bhubaneswar. After bifurcation of districts, one new R.T.O. office at Rayagada, one Addl. R.T.O. office at Angul and one Asst. R.T.O. office at Rajgangpur were opened, some new check-gates were also opened at inter-State borders. By opening/upgrading R.T.O. offices etc. transport administration was decentralized and came closer to the transport operators to provide better service in the matter of granting permit, issue of licence etc. On all these scores. Government incurred expenditure to the tune of Rs. 8.11 crores, in the year 1998-99 when it was only Rs. 75.21 lakhs in the year 1980-81. Thus, the opposite parties have been spending much more than the fees collected from the transport operators. Furthermore, except temporary permit fee, enhanced in the year 1989, no permit fee has been enhanced since 1980. So, there is a long gap within which no permit fee has been enhanced. In addition to that in the year 1980 fare was Rs. 4.05 paise, Rs. 0.5 paise and Rs. 0.6 paise in respect of ordinary bus, express bus and deluxe bus respectively. In the meantime bus fare has been enhanced eight times on 1-7-1981, 1-1-1985, 18-10-1985, 1-11-1990, 1-11-1992, 8-4-1994, 1-9-1996 and 1-10-1997. Now, the rate of fare is 22 paise, 24 paise and 32 paise in respect of ordinary bus, express bus and deluxe bus respectively. So the revised fees cannot be said as exorbitant.

According to the learned Counsel appearing for the State, the fees which would be levied because of new amendment, in fact would ultimately be borne by the passengers, so the writ petitioners are not affected in support of his contention he relied on the decision in *Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others*, . In this decision, the subject-matter was in respect of levying tax. So, the same is not applicable to the present case.

Learned Counsel for the writ petitioners further submits that in other

neighbouring States like Bihar, Andhra Pradesh, West Bengal and Madhya Pradesh collection of application fees and permit fees is more or less similar to the pre-revised fees of our State. So the same ought not have been revised. Conditions for levying fees differ from State to State. The rate of fees also depends upon the service rendered. So, in our view, the rate of application and permit fee of other States cannot necessarily be a guiding factor in the present case.

Learned Counsel for the writ petitioners further submits that as per the impugned notification, fees in case of temporary permit is fixed at Rs. 1,700/- for a period of four months and for permanent permit it is at Rs. 12,500/- which is quite exorbitant in comparison to the pre-revised fees. As against this, learned Counsel for the State submits that in pre-revised rate an operator was required to pay Rs. 900/- for a temporary permit of four months duration and as such Rs. 13,500/- for five years, now, in the revised rate he is required to pay Rs. 27,000/- for a period of five years. In case of permanent permit for five years he was required to pay Rs. 500/- at the pre-revised rate; now, in the revised rate he has to pay Rs. 13,500/- for such a permit. So, when the operator was to pay Rs. 13,500/- for a temporary permit of five years duration at the pre-revised rate, now he is required to pay Rs. 27,000/-. But, if he takes a permanent permit he is required to pay Rs. 13,500/- at the revised rate, which is equal to the fee for temporary permit for five years" duration at the pre-revised rate. If he does not take the opportunity, he will have to pay Rs. 27,000/- for a temporary permit for five years. So, it cannot be said that the revised fees are highly exorbitant. We are in agreement with the learned Counsel for the State in this regard.

10. Accordingly, the writ petitions, being devoid of merit, are dismissed.

P.K. Tripathy, J.

11. I agree.