(1977) 08 AHC CK 0049

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 896 of 1975

BHAGWAT SARAN RASTOGI and Others — APPELLANT

Vs

TOWN AREA COMMITTEE and Another — RESPONDENT

Date of Decision : 01-08-1977

Acts Referred:

Citation : (1977) 6 CTR 252

Hon'ble Judges : Satish Chandra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish Chandra, J. - The petitioner operate stage carriages. In the course of their operation they have to enter or cross territorial limits of Town Area Committee, Alapur, District, Budaun. The State Govt. on 26th November, 1971, issued a notification promulgating Town Area Transit pass Rules, 1971,. Relying on this notification the Town Area Committee, Alapur, started charging transit pass the petitioners at the rate of Rs. 2.50 per trip. Petitioners grievance is that this levy is illegal.

2. By another notification dated 15th July, 1972, the State Government published rules for the realization of tool tax being levied on certain commodities and persons on entering the limits of the town area. The Schedule includes laden motor, lorry and motor trucks. It also includes other laden conveyances. These entries in this notification came up for interpretation in Civil Misc. Writ No. 27 of 1975, Abid Ali & Ors. vs. Town Area Committee, Alapur & Anr. A Division Bench of this court decided the Writ petition on 23rt September, 1975. It held that the word laden in the context of the notification refers to a vehicle laden exclusively with goods. It does not include vehicles carrying passengers or bona-fide luggage of the passengers.

3. The notification imposing transit pass Fee Rules was considered and held illegal by a Division Bench of this Court in M/s. United Provincial Transport

Company, Allahabad vs. State of U.P. & Ors. In view of this decision the levy of transit pass fee cannot be upheld.

4. The petitioners stated in paragraph 6 of the Writ petition that while entering the limits of the Town Area, Alapur, the Stage-carriage Vehicles of the petitioners are laden with passengers and the bona fide luggage of the passengers and none of the vehicles of the petitioner are even laden exclusively with goods. The denial of this paragraph in the counter-affidavit is neither categorical not clear. We have no hesitation in holding that the allegations in paragraph 6 of the writ petition are justified. The respondent Town Area Committee has no jurisdiction to charge toll tax on the category of vehicles mentioned in paragraphs 6 of the writ petition.

5. In the result the writ petition succeeds and is allowed and the impugned notification levying the transit pass Fee Rules on the petitioners is quashed. The respondent Town Area Committee is further directed not to levy toll tax on the petitioners in respect of their vehicles, which carry passengers of bona fide luggage of the passengers. Petitioners will be entitled to their costs.