

(2003) 05 PAT CK 0063

In the Patna High Court

Case No : C.W.J.C. Nos. 9588, 9918 and 10332 etc. of 2002

Binay Shankar Tiwari and etc. etc.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 06-05-2003

Acts Referred:

Citation : (2003) 05 PAT CK 0063

Judgement

R.S. GARG, J.—This order shall dispose of C. W. J. C. No. 9588 of 2002 (Binay Shankar Tiwari v. The State of Bihar and others) along with the nine writ applications, the descriptions of which have been mentioned above.

2. In all the writ application except in C. W. J. C. No. 9918 of 2002 (Raj Kishore Singh and others v. The State of Bihar and others) the applications filed by the petitioners before us, for accepting the surrender of the vehicles in accordance with Section 17 of the Bihar Motor Vehicles Taxation Act, 1994 (hereinafter referred to as "the Taxation Act") have been rejected while in C. W. J. C. No. 9918/2002 no final orders on an application to accept the surrender have been passed.

3. The petitioners, various in number, are having different motor vehicles. The said motor vehicles are registered with the State Transport Authority/Regional Transport Officers. The vehicles undisputedly are in running conditions and if the surrender is not accepted then are liable to tax.

4. For the purpose of disposal of these writ applications, we will take the facts from C. W. J. C. No. 9588 of 2002. Vide Annexure-1 the petitioner submitted an application dated 26-7-2002 before the District Transport Officer, Ara in relation to Bus bearing Registration No. BR3P-6339 inter alia submitting that looking to the unprecedented tax hike he was unable to ply his bus and under these circumstances he was surrendering the vehicle. He also submitted that if the tax conditions do not improve then after obtaining required No Objection Certificate he would take the bus to another State. It was contended that after the surrender, the vehicle shall stand parked in front of his gate. In all cases though

in different forms but the applications seeking the relief of surrender have been filed.

5. The application of the petitioner in C. W. J. C. No. 9588 of 2002 was rejected on 3-8-2002. The rejection order observed that his application was not maintainable under Rule 7(1)(a) of the Bihar Motor Vehicles Taxation Rules, 1994 (hereinafter referred to as "the Rules") and u/s 48 of the Motor Vehicles Act. It was also observed that in accordance with Section 17(1) of the Taxation Act and in view of the Memo No. 1-2099/ 89-376 Patna dated 12-1-1990 and letter No. (4) 3106 Patna 15 dated 20-12-1990, the surrender of the vehicle could be accepted only under the following circumstances :--

"(a) If the vehicle is involved in any accident resulting in extensive damage;

(b) If the vehicle is seized by the police or under the order of the Court and remained in seizure for a period of one month; and

(c) Major repairs of the vehicles which is expected to take more than one month."

6. Vide Annexure-2 the petitioner was informed that as the surrender application was not referring to any condition of the above referred clauses, the application for surrender was not acceptable to the Department and the application was rejected. The petitioner was required to withdraw the papers and deposit the tax timely because failure may lead to penalty,

7. The petitioners submitted that their applications were in accordance with Section 17 of the Taxation Act and the Department could not reject the applications. They also submitted that rejection of grant of No Objection Certificate was also illegal because when an owner of a motor vehicle applying for a new assignment of a registration mark or where mass transfer of motor vehicles is to be accepted for any of the State other than the State of its registration, the registered owner shall apply for issuance of No Objection Certificate for sending it to the registering authority of the other State for its assignment, and therefore, the order passed by the authority is patently illegal. It is contended by the petitioner that after surrender of the vehicle he was insisting for issuance of No Objection Certificate on the ground that the petitioner shall remove the vehicle from the State of Bihar to any other State in order to make it possible for the petitioner to operate the bus.

8. The petitioner says that as far as surrender of the vehicle is concerned, the tax hike resulted in uneconomical operation compelling the petitioner to surrender the bus because the petitioner is unable to bear the said tax burden. According to him in terms of Section 17 of the Taxation Act and Rule 15 of the Taxation Rules, the petitioner was entitled to submit an application. It is contended that the petitioner's application was maintainable and the concerned Regional Transport Officer could not rely upon the circular letter issued by the Transport Commissioner or the State Govt. It is further submitted in the petition that the petitioner now is required to pay Rs. 64,000/- as tax in place of Rs.

64,00/- per quarter and the tax hike is impossible to bear with the petitioner, certainly it would fall u/s 17 of the Taxation Act. It is also contended that the petitioner has a right of profession and if he does not propose to continue with his business then the State authorities or any other authority cannot compel him to go on with the very same business. According to the petitioner, the surrender of the vehicle tantamounts to closure of the business and in such a case the State authorities cannot compel the petitioner to ply the vehicle, continue the business and pay the tax.

9. The respondents in their return have submitted that the application was not in accordance with law and was rightly rejected. According to them, for purposes of Section 48 of the Motor Vehicles Act the petitioner was obliged to make an application in form and was required to inform the concerned authority that he wanted to take out the vehicle to a particular State. According to them, the applicant did not even sought for No Objection Certificate but in fact was only stating that if the tax conditions are not improved, the petitioner may take out the vehicle to any other State. So far as the rejection of surrender is concerned, it is contended by them that the grounds for surrender of the vehicle do not fall within the provisions of Section 17 of the Taxation Act or the letter No. 3106 dated 20-11-1990 and as the hike in the tax is no ground to accept the surrender, the authority was justified in rejecting the application. According to the respondents by their letter No. 3355 dated 26-7-2000 the State Govt. has communicated to all the registering authorities of the State and has prescribed the cases under which the application of surrender may be considered. A copy of the said letter No. 3355 has been annexed as Annexure-A. It is also contended that the petitioner's application was rightly rejected because it was not fitting in the framework of law and the authority had no option but to reject the application. According to them the petitioner was obliged to furnish the relevant informations in the prescribed form, by specifying the name of the registering authority where he intended to get the vehicle transferred. According to them the permit was required to be surrendered before claiming the No Objection Certificate. They say that the original registering authority is empowered to reject such application; if on verification it appears to be not acceptable, then the same can be rejected by passing a reasoned order. It is also contended that in accordance with Section 17 of the Taxation Act a vehicle can be surrendered only in case of claiming tax exemption whereas in case of No Objection Certificate it is required to pay the tax. It is also contended by them that an application for surrender and an application for issuance of No Objection Certificate cannot survive together because each is destructive of other. In case of surrender the vehicle owner has no intention to get the vehicle transferred to another State while in case of No Objection Certificate, the vehicle owner does not surrender the vehicle but wants a No Objection Certificate so that he may take his vehicle to any other State. It is also contended in the counter that the petitioner did not make any application for issuance of No Objection Certificate u/s 48 of the Motor Vehicles Act, 1988 and Rule 7 of the Taxation Rules in the prescribed form with

requisite fee.

10. According to the State Govt. the application was not maintainable and was rightly rejected.

11. During the course of the arguments learned counsel for the parties have reiterated the submissions made in their respective pleadings and have referred to certain judgments which we shall consider in foregoing paragraphs.

12. Learned counsel for the petitioner placing strong reliance on Section 17 of the Taxation Act submitted that whenever any motor vehicle becomes incapable of use due to disability caused by mechanical breakdown or litigation or due to other causes prescribed by State Govt. for any period more than a month then on observance of Section 17 of the Taxation Act, he may make an application giving him an undertaking and for such period he would be exempted from the burden of the tax. It is also contended, referring to Section 19 of the Taxation Act that if an undertaking has been given then the Taxing Officer is obliged to make an enquiry as prescribed and if the undertaking is not found to be false till the expiry of the period for which exemption of payment of tax is claimed, the Taxing Officer shall after being satisfied dispose of the claim in the prescribed manner. He has also referred to Rule 15 of the Taxation Rules to contend that if a procedure is prescribed for making an enquiry in respect of temporary discontinuance of the vehicle then without observing the Rules the application could not be rejected. Referring to Rule 7 of the Taxation Rules it is contended that the owner of the vehicle can always apply for issuance of No Objection Certificate and on submission of such application, the Taxing Officer is obliged to verify from the records whether any tax is due against the vehicle, and if there are no arrears outstanding, the Taxing Officer shall be duty bound to issue No Objection Certificate and thereafter the new Taxing Officer after receiving the No Objection Certificate shall accept the taxes from the vehicle owner. It is contended that the petitioner's application for surrender and issuance of No Objection Certificate has been rejected unceremoniously, without making any enquiry and in contravention of law, therefore, the orders impugned deserve to be quashed.

13. In C.W.J.C. No. 9918 of 2002, it is contended that the authority is obliged to pass an order on the petitioners' application after receipt of the application and if it fails to pass the orders in accordance with law on these applications then this Court is competent to issue directions to the authority to act in accordance with law and issue directions.

14. On the other hand learned counsel for the State after referring to the very same provisions contended that an application for surrender can be made only in accordance with Section 17 of the Taxation Act or for any other cause prescribed by the Govt. According to him the State Govt. has prescribed the said three causes, which have been referred to in the orders impugned and as the petitioners' application does not come under any of the exemption clause, the

application was rightly rejected. For issuance of the No Objection Certificate it was contended that in fact there was no application for issuance of a No Objection Certificate. The application was that the petitioner was surrendering the vehicle and was proposing to get the vehicle transferred to any other State, if the tax conditions do not improve. It is further contended that unless an application in accordance with Section 48 of the Motor Vehicles Act and Rule 7 of the Taxation Rules is filed the authority would not be obliged to pass orders and. if such an application is entertained it would be worth rejection.

15. We have heard learned counsel for the parties at length and have perused the records also.

16. While we proceed to consider rival contentions it would also be necessary to refer to certain provisions of the Motor Vehicles Act, Taxation Act and Taxation Rules.

17. Section 39 falling under Chapter IV of the Motor Vehicles Act, 1988 relates to necessity for registration. It reads as under:--

"39. Necessity for registration.-- No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner :

Provided that nothing in this section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government."

18. A fair understanding of Section 39 would make it clear that unless the vehicle is registered in accordance with Chapter IV no person shall drive any motor vehicle nor the owner of the motor vehicle shall allow the vehicle to be driven in any public place or in any other place. The further condition is that the registration of the vehicle must be in currency and the vehicle carries a registration mark displayed in the prescribed manner. The proviso, however, exempts the motor vehicles which are in possession of a dealer subject to such conditions as may be prescribed by the Central Govt.

19. Section 40 of the Motor Vehicles Act prescribes that at what particular place the registration would be made while u/s 41 it is provided that how the registration would be made. Section 42 deals with the registration of motor vehicles of diplomatic officers etc. Section 43 considers the question of temporary registration while Section 44 requires the owner of the vehicle to produce the vehicle at the time of registration. Section 45 gives the discretion to the Registering Officer to refuse registration or renew the certificate of registration on certain grounds. Section 46 provides that where a vehicle is registered in any State of the country then the said vehicle would not be required

to be registered anywhere in India. Section 47 provides that when a motor vehicle registered in one State has been kept in another State for a period exceeding 12 months, the owner of the vehicle shall be obliged to apply to the registering authority of said State for the assignment of a new registration mark. Section 48 deals with No Objection Certificate. It reads as under :--

"(1) The owner of a motor vehicle when applying for the assignment of a new registration mark under Sub-section (1) of Section 47, or where the transfer of a motor vehicle is to be effected in a State other than the State of its registration, the transferor of such vehicle when reporting the transfer under Sub-section (1) of Section 50, shall make an application in such form and in such manner as may be prescribed by the Central Government to the registering authority by which the vehicle was registered for the issue of a certificate (hereinafter in this section referred to as the no objection certificate), to the effect that the registering authority has no objection for assigning a new registration mark to the vehicle or, as the case may be, for entering the particulars of the transfer of ownership in the certificate of registration.

(2) The registering authority shall, on receipt of an application under Sub-section (1), issue a receipt in such form as may be prescribed by the Central Government.

(3) On receipt of an application under Sub-section (1), the registering authority may, after making such inquiry and requiring the "applicant to comply with such direction as it deems fit and within thirty days of the receipt thereof, by order in writing; communicate to the applicant that it has granted or refused to grant the no objection certificate :

Provided that a registering authority shall not refuse to grant the no objection certificate unless it has recorded in writing the reasons for doing so and a copy of the same has been communicated to the applicant.

(4) Where within a period of thirty days referred to in Sub-section (3), the registering authority does not refuse to grant the No Objection Certificate or does not communicate the refusal to the applicant, the registering authority shall be deemed to have granted the No objection Certificate.

(5) Before granting or refusing to grant the no objection certificate, the registering authority shall obtain a report in writing from the police that no case relating to the theft of the motor vehicle concerned has been reported or is pending, verify whether all the amounts due to Government including road tax in respect of that motor vehicle have been paid and take into account such other factors as may be prescribed by the Central Government.

(6) The owner of the vehicle shall also inform at the earliest, in writing, the registering authority about the theft of his vehicle together with the name of the police station where the theft report was lodged, and the registering authority shall take into account such report while disposing of any application for No

Objection Certificate, registration, transfer of ownership of issue or duplicate registration certificate."

20. A fair understanding of Section 48 of the Motor Vehicles Act would simply show that if the owner of the vehicle is desirous of the registration of his vehicle in any other State then he would be required to make an application to the taxing/registering officer where his vehicle was originally registered and seek a No Objection Certificate. On receipt of such application, the registering authority would be required to make an enquiry and thereafter pass proper orders. Sub-section (4) of Section 48 says that where within a period of thirty days referred to in Sub-section (3), the registering authority does not refuse to grant the No Objection Certificate or does not communicate the refusal to the applicant, it shall be valid to deem that No Objection Certificate has been granted.

21. From the above provisions it would be clear that registration of a vehicle is mandatory and no person shall be allowed to ply the vehicle nor the owner shall cause the vehicle to be plied unless he holds a valid registration and the same is in currency. If the owner of the vehicle wants to take his vehicle to any other State for its registration then he would be obliged to make an application to the original registering authority for issuance of a No Objection Certificate, Rule 7 of the Taxation Rules deals with grant of a no objection certificate etc. Rule 7 reads as under :--

"7. Procedure for getting a No Objection Certificate etc.-- (1) If a owner of a vehicle other than a personalised vehicle is desirous of paying tax to Taxing Officer other than the one where tax last paid, he shall apply before the Taxing Officer for issuing a No Objection Certificate in Form "H." This application shall be presented before the Taxing Officer either in person or through registered post and shall be accompanied by two self-stamped envelopes, one addressed to the new Taxing Officer and the other to the owner himself.

(2) The Taxing Officer, after having received the application referred to in Sub-rule (1) above, shall verify from his records whether any tax is due against the vehicle. If there are no arrears outstanding, the Taxing Officer shall issue "No Objection Certificate" in Form I and forward the same to the new Taxing Officer through registered letter. One copy of this certificate shall also be delivered to the owner of the vehicle.

(3) The new Taxing Officer, after having received the "No Objection Certificate" shall accept the taxes from the owner.

(4) The Taxing Officer accepting the taxes will, at once inform the previous Taxing Officer as well as the owner of the vehicle."

22. According to Rule 7, if a owner of a vehicle other than a personalised vehicle wants to pay tax to a Taxing Officer other than the one where tax was last paid, he would be obliged to apply to the said Taxing Officer for issuing a No Objection Certificate in Form "H." Such application shall be submitted to the Taxing Officer

either in person or through registered post and shall be accompanied by two stamped envelopes, one addressed to the new Taxing Officer and the other to the owner himself. After receiving the application, the Taxing Officer shall verify from records that whether any tax is due or not. If there are no arrears, the Taxing Officer shall issue No Objection Certificate in Form "I" and forward the same to the new Taxing Officer through registered letter with one copy of the certificate to the owner. The new Taxing Officer after receiving the No Objection Certificate shall accept the tax from the owner and thereafter shall inform the previous Taxing Officer and the owner of the vehicle. According to Rule 7, an application has to be filed in Form "H."

23. In the present matter, the application does not meet the requirements of Section 48 of the Motor Vehicles Act or Rule 7 of the Taxation Rules. Even otherwise from perusal of the application/it would only appear that the petitioner had informed the Taxing Officer that because of the unprecedented and exorbitant tax hike he has surrendering his vehicle and if the tax conditions are not improve he would obtain No Objection Certificate and take his vehicle to any other State. In our opinion, the submissions made in Annexure 1 do not meet the requirements of Section 48 of the Motor Vehicles Act and Rule 7 of the Taxation Rules. Neither the application was in Form "H" nor it was annexed with necessary particulars. Even otherwise issuance of the No Objection Certificate would depend upon the fact that whether any tax was due or not against the vehicle. So far as the application in its original form contained in Annexure-1 is concerned, we must straightway say that the application was not in accordance with the provisions of law and could certainly be rejected.

24. Section 17 of the Taxation Act, which is material for the present matter, reads as under:--

"17. Prior intimation of a temporary discontinuance of use of a vehicle.-- (1) Whenever any motor vehicle becomes incapable of use due to disability caused by mechanical breakdown or litigation or due to other causes prescribed by State Government for any period more than a month, the owner shall on or before the date of expiry of the term for which the tax has been paid, furnish to the taxing officer an undertaking duly signed and verified in the prescribed form and specifying the period aforesaid and the place where the motor vehicle is to be kept along with the current registration certificate, fitness certificate, and tax token, and such other particular as may be prescribed and shall from time to time by furnishing, further undertaking give prior intimation to the concerned taxing officer of the extension, if any, of the said period and the changes, if any of the place where the motor vehicle shall be kept. The owner shall also surrender the permit of the vehicle to the transport authority which has granted permit to it with intimation to the taxing officer :

Provided that no such undertaking shall relate to a period exceeding six months at a time.

(2) If at any time during the period covered by an undertaking as aforesaid the motor vehicle is found being used or is kept at place in contravention of any such undertaking such vehicle shall for the purpose of this Act, be deemed to have been used through the said period without payment of tax.

(3) In the absence of any undertaking delivered under Sub-section (1) every motor vehicle liable to pay tax under this Act shall be deemed to have been used or kept for use within the State,"

25. Section 19 of the Taxation Act relates to disposal of the application for exemption. It reads as under :--

"19. Exemption and write off of taxes.--If an undertaking has been delivered under Sub-section (1) of Section 17 in respect of a motor vehicle and the period specified in the said undertaking comprises of any period for which tax has not been paid, the owner of a vehicle, shall file an application along with necessary papers before the taxing officer on or before the date the tax was last paid, and the taxing officer shall conduct due inquiry as prescribed and if the undertaking has not been found false till the expiry of period for which exemption of payment for tax is claimed, he shall after being satisfied dispose of the claim in the prescribed manner :

Provided that the taxing officer shall be competent to write off the arrears of the tax up to a maximum amount which may be prescribed by the State Government in case the arrears exceed the prescribed amount he may refer the matter along with necessary records, to the State Transport Com-missioner or to any officer authorised by the State Government."

26. The procedure for disposal of the application is given under Rule 15 of the Taxation Rules. It reads as under :--

"15. Procedure for enquiry in respect of temporary discontinuance of vehicles.--Following procedure shall be adopted by the Taxing Officer for enquiry in cases of temporary discontinuance from use of vehicles enumerated in Section 19.

(a) Immediately on receipt of undertaking specified in Section 17 along with enclosures the taxing officer shall initiate a case record.

(b) The taxing officer, either himself, or through motor vehicle Inspector or through any other officer of enforcement branch, not below the rank of Sub-Inspector, shall carry out physical verification of the parking place of the vehicle at least once a month in a random manner. He shall record the memo of inspection on the order sheet of the concerned case record indicating the present position of the vehicle.

(c) If the vehicle was always found on the parking place specified in the undertaking during the period of its temporary discontinuance from use, the Taxing Officer, if the amount of taxes for the concerned period does not exceed Rs. 4.000 shall be Competent to dispose of the case, otherwise shall forward the

case record with his clear opinion to the State Transport Commissioner or to the officer authorised by State Government in this behalf for decision.

(d) If the vehicle is not found on its parking place during inspection made by Taxing Officer or by the other officer mentioned in (c) above, the claim for exemption of taxes shall stand dismissed without prejudice to any other legal action which may be taken against the owner for filing false undertaking.

(e) On intimation by the owner that the vehicle is ready for plying on road again the Taxing Officer shall release the papers of the vehicle to the owner."

27. The petitioner submits that because of the tax hike it became almost impossible for him, therefore, he was entitled to make an application for surrender. It is also contended relying upon earlier judgment of this Court that the circular issued by the Transport Commissioner would be invalid because the other causes are required to be pre-scribed by the State Govt. it is also contended that unless an enquiry is made into the subject the application cannot be rejected and as the rejection is based on two grounds and assuming that one of the ground is valid then too the order being inseparable, the whole order rejecting surrender must go. On the other hand, learned counsel for the State has submitted that the circular memo issued by the Transport Commissioner and yet another circular issued by the State Govt. would come within the purview of the other causes prescribed by the State Govt. and as the cause shown by the petitioner was not fitting in the frame of the said clauses, the application was rightly rejected.

28. In the matter of Bolani Ores Ltd., the Supreme Court was considering the question relating to the nature of the tax. It observed that the Bihar Taxation Act is a regulatory measure imposing compensatory taxes for the purpose of raising revenue to meet the expenditure for making roads, maintaining them and for facilitating the movement and regulation of traffic. It was observed that validity of the taxing power under Entry 57, List II of the Seventh Schedule read with Article 201 of the Constitution depends upon the regulatory and compensatory nature of the taxes. While considering the Bihar and Orissa Motor Vehicles Taxation Act (2 of 1930) it was further observed that it is not the purpose of the Taxation Act to levy taxes on vehicles which do not use the roads or in any way form part of the flow of traffic on the roads which is required to be regulated. The Supreme Court further observed that the power of the State Govt. to impose tax is subject to the limitations that the power of taxation cannot exceed the compensatory nature which must have some nexus with the vehicles using the roads i.e. public roads. If the vehicles do not use the roads, notwithstanding that they are registered under the Motor Vehicles Act, they cannot be taxed. In the said matter, the Supreme Court was considering whether dumpers, rockers and tractors are motor vehicles and taxable under the Act. Considering the provisions of the Motor Vehicles Act and the Taxation Act, 1930, the Supreme Court observed that dumpers and rockers though registrable under the Act are not taxable under the Taxation Act as they are working solely within the premises of

the respective owners while in case of tractors, they are neither registrable under the Act nor taxable under the Taxation Act.

29. It would be necessary, to see that in the said matter, the Taxation Act, 1930 and the Motor Vehicles Act, 1939 were under consideration. Both the Acts have been repealed.

30. Section 39 of the Motor Vehicles Act, 1988 is in relation to driving on the public place or in any other place. Similarly the Taxation Act does not make any distinction between such vehicles. In any case the judgment of the Supreme Court would be binding on the parties where it says that the Taxation Act is a regulatory measure imposing compensatory taxes. The present Motor Vehicle Taxation Act has come into force in the year 1994. The provisions of the Act certainly are regulatory measures imposing compensatory taxes.

31. Learned counsel for the petitioner has placed his strong reliance on a judgment of the Supreme Court in the matter of Excel Wear and Others Vs. Union of India (UOI) and Others, . In the said matter, the Supreme Court had observed that right to carry on any business includes right to close it down and unreasonable restriction on right to close down the said business would not be saved by Article 19(b) of the Constitution of India.

32. In the matter of South Chotanagpur Division of Bihar Motor Transport Federation. Ranchi v. State of Bihar, 1991 BBCJ 390 , a Division Bench of this Court has followed the above referred judgment of the Supreme Court in the matter of Excel Wear and Others Vs. Union of India (UOI) and Others, . Their Lordships observed that a citizen has a fundamental right to carry on business which includes not to carry on business and such a person cannot be made liable to pay any road tax in terms of the provisions of Taxation Act, 1930. Their Lordships also observed that the Act provides for regulatory measures in imposing taxes for the purposes of raising revenue to meet the expenditure for making the road, repairing them and to facilitate movement and regulation of traffic. It was also observed that if a person does not intend to carry on any business in transporting goods or passengers by means of a public service motor vehicle, he cannot be made liable to pay any road tax in terras of the provisions of the said Act. In the said matter, also the circular dated 22-6-1988 issued from the office of the State Transport Commissioner, Bihar, Patna was under challenge. The said circular directed all the District Transport Officers to accept the surrender of the licences granted to them in terms of the provisions of the Taxation Act, 1930 only. The said applications fulfilled the following conditions.

"(a) If the vehicle is involved in any accident resulting in extensive damage;

(b) If the vehicle is seized by the police and had been in seizure for a period of one month; and

(c) Major repairs of the vehicles which is expected to take more than one month."

33. The Division Bench observed that 1930 Taxation Act explicits in terms of Sub-

section (1) of Section 9(A) and further observed that the Taxing Officer exercises a quasi-judicial function and by reason of Sub-section (3) thereto, the State Govt. or the Transport Commissioner had been empowered to supersede such an order in the event it comes to its knowledge that exemption in writing off has been secured by any owner by misrepresentation of fact or fraud. The power of the State Govt. or Transport Commissioner under Sub-section (3) of Section 9(A) of the said Act being statutory in nature, the same can be exercised only in independent cases. if the conditions precedent therefore exist. The said provision, therefore, also do not empower the respondent No. 2 to issue a general instruction as contained in Annexure-3 (dated 22-6-1988). The Division Bench held that the said notification dated 22-6-1988 must be held to be illegal and without jurisdiction. The Division Bench struck down the said notification. The Court directed that the Transport Officer shall proceed to decide each case independently without taking into consideration the aforementioned circular letters and in terms of the provisions of the said Act and the Rules framed thereunder.

34. From the order passed by the Regional Transport Authority, Bhojpur, Ara, it would clearly appear that it relied upon Memo No. 1-2099/89-376 Patna dated 12-1-1990 and letter No. (4) 3106 Patna 15 dated 20-12-1990 apart from placing his reliance upon Section 17(1) of 1994 Taxation Act. The circular of 1990 quoted above in the opening paragraphs of this judgment uses the very same language which was used in the earlier notification dated 22-6-1988. The Division Bench of this Court after giving detailed reasons had quashed the said notification. We fail to understand that once a notification providing certain grounds for accepting surrender had been quashed though the notification was issued under 1930 Act, how could the Transport Commissioner issue an identical notification under 1994 Act. The State Govt. in its reply has submitted that the State Govt. vide circular No. 3355 dated 26-7-2000 has prescribed the causes under which the application of surrender may be considered. The said circular dated 26-7-2000 has been annexed with the counter as Annexure-"A."

35. We must immediately on perusal of said Annexure "A," letter dated 26-7-2000 record our disapproval to the pleadings of the State Govt. Annexure "A" was not issued by the State Govt. but was issued by the Transport Commissioner, Bihar, Patna. He did not prescribe anything in Annexure "A" but was simply relying upon the departmental letter No. 3106 dated 20-12-1990. The letter dated 20-12-1990 appears to be a misquoting in the said letter because in fact the letter was issued by the Transport. Commissioner on 12-1-1990. in our opinion, the Transport Commissioner had no jurisdiction to issue such a circular, firstly because an identical circular was quashed by the High Court in the matter of South Chotanagpur Bihar Motor Transport Federation (1991 BBCJ 390) (supra) and secondly, because the other causes are to be prescribed by the State Govt. Section 17 of the Act provides that the other causes may be prescribed by the State Govt. The word "prescribed" has been defined in Section 2(1) of the Taxation Act, 1994. According to the definition,

"prescribed" means prescribed by Rules made under the Act. When the Act itself says that the word "prescribed" would mean what is prescribed by the Rules then the rules must prescribe the other clauses. Unfortunately the rules do not prescribe anything. Any circular issued by the Transport Commissioner would not be akin to rules. The rules are to be framed by the State Govt. under the powers conferred upon it u/s 39 of the Bihar Motor Vehicle Taxation Ordinance, 1993, The said Ordinance later on was replaced by the Bihar Motor Vehicle Taxation Act, 1994. Section 31 gives powers to the State Govt. to make rules for purpose of carrying into effect the provisions of the Act. Sub-section (2)(ii) provides that the State Govt. would prescribe the form of undertaking to be delivered u/s 17 and particulars to be stated therein, papers and documents to be appended thereto and the time within which such undertaking shall be delivered. The rule-making power of the State Govt. further says that in particular and without prejudice to the generality of the powers conferred under Sub-section (1) of Section 31, such rules may provide for all or any of the matters provided under Sub-section (2) of Section 31. Sub-section (2) is not restrictive but from the very language it would appear that it gives the example and in fact is exemplary in nature. The rule-making power is under Sub-section (1) of Section 321. When Section 17 of the Act says that the other causes are to be prescribed by the State Govt. then the State Govt. is obliged to prescribe the other causes. The circular letter under Memo No. 1-2099/89-376 Patna, dated 12-1-1990 and another letter No. (4) 3106 Patna 15, dated 20-12-1990 are patently beyond jurisdiction of the Transport Commissioner. There is patent violation of the provisions of law and latent lack of jurisdiction. Both these circulars/directions/letters run contrary to the earlier judgment of the High Court and the provisions of law. These cannot be allowed to stand and are accordingly quashed.

36. The question still would be whether the rejection order of surrender of the vehicle can be maintained or has also to go. The letters issued by the Regional Transport Officers say that the applications for surrender are not in accordance with Section 17(1) of the Taxation Act, 1994 and the circulars/ directions issued by the Transport Commissioner. We are of the considered opinion that if the rejection order is based on two grounds and one of the grounds is found to be invalid then too the Court shall be required to consider that whether the other ground would be sufficient to uphold the correctness and validity of the rejection order.

37. Section 17 of the Taxation Act, which has been quoted above, says that whenever any motor vehicle becomes incapable of use due to disability caused by mechanical breakdown or litigation or due to other causes prescribed by State Govt. for any period more than a month. The first ground provided u/s 17 is that the motor vehicle has become incapable of use due to disability caused by mechanical breakdown. The other cause provided by Section 17 is that the motor vehicle has become incapable of use due to litigation. The third or manifold causes would be as prescribed by the State Govt. If the State Govt. does not prescribe the other causes then so long as the further causes are not prescribed

the Act cannot be said to have become unworkable/non-functional. In the law the first two grounds would be the only available grounds seeking exemption from tax and for giving prior intimation for a temporary discontinuance of the use of the vehicle.

38. In the present matter, it is not the submission of the petitioner that the motor vehicle became incapable of use due to die-ability caused by mechanical breakdown or the motor vehicle became incapable of use due to litigation. If no third cause is prescribed u/s 17 then for seeking exemption and surrender of the vehicle, the owner of the vehicle will have to bring his case within the available causes. As the hike of the tax and prevailing uneconomic conditions to ply the vehicle is not a cause within the scope of Section 17 of the Taxation Act, 1994, the petitioner would not be allowed to say that his application for surrender ought to have been accepted. Section 19 of the 1994 Taxation Act would come into operation when an undertaking has been delivered under Sub-section (1) of Section 17 in respect of a motor vehicle, and the owner makes an application along with necessary papers. Section 19, in fact, provides procedure for disposal of the application filed u/s 17 of the Act and clothes the Taxing Officer with jurisdiction to grant exemption from payment of tax. If the application on its face is not maintainable and is worth rejection then obviously no enquiry is required. Rule 15 of the Taxation Rules, 1994 provides further procedure for making enquiry in cases of discontinuance from use of vehicles as enumerated u/s 19 of 1994 Taxation Act. The detailed procedure provided under Rule 15 read with Section 19, in our considered opinion, would come into operation if the application is prima facie maintainable. If on bare perusal of the application it appears that the application is not maintainable because it relies upon a ground not available under the Act for seeking exemption then such application can straightway be rejected.

39. The question that a right to carry on business would include a right to close down the business, in our considered opinion, would not be applicable to the present case. In the matter, of *South Chotanagpur Bihar Motor Transport Federation v. State of Bihar* (1991 BBCJ 390) (supra) the Division Bench was considering the question of the jurisdiction of the Taxing Officer. It was sought to be clipped by the Commissioner under the circular letter dated 22-6-1988. The Division Bench observed that if a person does not intend to carry on any business in transporting goods or passengers by means of a public service motor vehicle, he cannot be made liable to pay any road tax in terms of the provisions of the 1930 Act. The Division Bench also observed that only with that end in view, Sections 7 and 9-A of the Act (1930 Act) have been enacted. In terms of Section 7 a person is entitled to refund of tax when he produces a certificate signed by the Taxing Officer stating that the tax token granted in respect of the vehicle has been surrendered. In the present matter Section 17, in fact, has been enacted with the said avowed policy. It requires the owner to give a prior intimation that for a particular period not exceeding six months he would not use the vehicle on the public road or at any other place. The application must be in

accordance with law and as we have already observed must be within the framework of the Act itself. If the application does not come within the framework of Section 17 then simply because the application has been filed, the liability of the person would not become nil.

40. Section 7 of the Taxation Act, 1994 relates to payment of tax. It provides for the time for payment and extent of tax. The levy of tax would be u/s 5 of the Taxation Act, 1994. It reads as under :--

"5. Levy of tax.-- (1) Subject to other provisions of this Act, on and from the date of commencement of this Act, every owner of a registered motor vehicle shall pay tax on such vehicle at the rate specified in Schedule I.

(2) Subject to other provisions of this Act, on and from the date of commencement of this Act, every owner of a registered motor vehicle shall pay Additional Motor Vehicles Tax on such vehicle at the rate specified in Schedule II.

(3) The State Government may by notification from time to time, increase the rate of tax specified in the Schedules :

Provides that no such increase shall, during any year exceed fifty per cent. of the rate of taxes prescribed in the Schedule."

41. From Section 5 it would clearly appear that subject to other provisions of the Act, on and from the date of commencement of the Act, every owner of a registered motor vehicle shall pay tax on such vehicle at the rate specified in Schedule I. Section 5 makes it mandatory and requires every owner of a registered vehicle to pay tax. The tax is to be paid by the owner of a registered vehicle and he can claim exemption only u/s 17 of the Act. If the provisions of Section 17 of the Act do not apply then the liability of the owner of the vehicle shall continue,

42. In a single Bench judgment of this Court in the matter of Upendra Rai Vs. State of Bihar and Others, a learned single Judge of this Court observed that if the vehicle was in custody of police and the petitioner did not take any steps for release of the vehicle, during the period when the vehicle was seized and remained in custody of the police, it cannot be said that the vehicle was not fit for use on the road and the owner would be allowed to take the plea that because of breakdown or mechanical defect or any other defect, the vehicle was not used on the road. In such a case, exemption from tax would not be permissible.

43. In an almost identical situation the Supreme Court in the matter of Mahakoshal Tourist, Napier Town and Others Vs. State of Madhya Pradesh and Others, interpreted the words "used or kept for use in the State." In the said matter the Supreme Court was considering Section 14 of the Madhya Pradesh Act which reads as under :--

"14. Refund of tax.-- (1) Where-

(i) the tax for any motor vehicle has been paid for any month, quarter, half year or year and the motor vehicle has not been used during the whole of that month, quarter, half year or year or a continuous part thereof not being less than one month and written intimation of such non-use has been given in the prescribed form to the taxation authority in the manner prescribed prior to the commencement of the period of such non-use; or

(ii) the vehicle has been so altered as to entitle the owner to the refund of a portion of tax already paid,

a refund of the tax shall be payable at such rates and subject to such conditions as may be prescribed."

44. In the said matter the Supreme Court considered its earlier judgments in the matter of Bolani Ores Ltd., and in the matter of Travancore Tea Estates Co. Ltd. and Others Vs. State of Kerala and Others, and observed that an application for refund of tax must meet the requirements and the procedure for the purpose in the event of non-user of the vehicle must be specified. Their Lordships while interpreting the words "used or kept for use in the State" observed that the expression "used" or "kept for use" means either the actual use of the vehicle on the roads of the State of Madhya Pradesh or keeping the vehicle (which is in condition and capable of being used) available for use in the State, if so desired. Their Lordships observed that while plying outside the State in connection with a contract, a vehicle will, nonetheless, be within the import of "kept for use" in the State. It is immaterial for the purpose of Section 3 of Act 25 of 1991, whether a vehicle is actually being used or is kept for use in the State.

45. Paragraph 11 of the said judgment reads as under :--

"11. It was further pointed that the registered owner or any person having possession of or control of a motor vehicle for which a certificate of registration is current shall for the purpose of this Act be deemed to use or keep such vehicles for use in the State, except during any period for which the Regional Transport Authority has certified in the prescribed manner that the motor vehicle has not been used or kept for use. The presumption is that a motor vehicle for which a certificate of registration is current shall be deemed to be used or kept for use in the State. This is to ensure and safeguard the revenue of the State by relieving it from the burden of proving that the vehicle was used or kept for use on the public road of the State. At the same time, the interest of the bona fide owner is also safeguarded by enabling him to claim or obtain a certificate of non-use from the prescribed authority and, in that case, the owner is required to give intimation of non-use. We are in respectful agreement with these observations."

46. Their Lordships further observed that adequate provisions for ascertaining the liability, assessment and refund of tax leviable under the said Act have been made.

47. We are fortified in our view by the judgment of the Supreme Court in finding

that when the vehicle is a registered vehicle, it is used or kept for use in the State, then the registered owner is liable to pay the tax. The only exemption would be u/s 17 of the Act. If the provisions contained u/s 17 of the Act do not allow the authority to grant exemption or authorise the owner to claim exemption then such exemption application would not be maintainable. We have already observed that the applications submitted by the petitioners were not in accordance with law and as the same were not maintainable at the first look, without observing any further procedure, those applications could be rejected.

48. In view of the discussions aforesaid we do not find that the petitioners of C.W.J.C. No. 9918 of 2002 have made out any case for issuance of any direction. Even if we issue any direction to the authority, the application now will have to be dismissed in accordance with this judicial pronouncement.

49. All the writ applications, for the reasons aforesaid, are dismissed.

50. Before parting with the case, we must record our sincere disapproval against the circulars issued by the Transport Commissioner. The circular of 1990 is in teeth of the earlier judgment of this Court. It does not take into consideration that what is required to be prescribed by the Rules must be prescribed by the Rules only. It cannot be prescribed by issuing the circulars. Rules are to be made under the powers conferred upon the State u/s 31 of the 1994 Taxation Act. The Transport Commissioner may issue certain circulars which go in conformity with the Act but he cannot assume the jurisdiction when the law does not confer power in this regard upon him. When the Act says that the other causes are to be prescribed by the State Govt. then the State Govt. is obliged to prescribe such causes. We would also not approve the submission of the State Govt. that the State has prescribed the other causes in its letter dated 20-12-1990. The State authorities should not take us for a ride. The said letter was not issued by the State Govt. but was issued by the Transport Commissioner. In the said letter neither the State Govt. nor the Transport Commissioner prescribed the other causes. In fact, in the letter dated 20-12-1990 the Transport Commissioner had issued instructions to all the Regional Transport Officers that the earlier letters should be observed.

51. Though we are dismissing the writ application but we hereby direct the State Govt. that within a period of three months from today the State Govt. should provide the other causes or prescribe the other causes in conformity with the powers conferred upon it u/s 31 of the Act to make Section 17 more beneficent to the vehicle owners. The State Govt. may take into consideration that even if a vehicle is kept for use, the conditions may be that it cannot be used. In a given case, in a small place if a vehicle is kept for use and the area is flooded and at least for a period of one month or more a vehicle cannot be taken out then this situation may provide the ground for exemption for payment of tax. The State authority may still find such many, other ground seeking exemption from tax. Any other reasonable ground may also provide some solace to the vehicle owners in case of non-user of the vehicle. The State Govt. should not forget that it has a

public duty and it has to discharge the duty in accordance with law. We forewarn the Transport Commissioner that it should not issue such directions which are contrary to the judgments of this Court and contrary to law. We also inform him that what has to be done by the State Govt. must be done by the State and the Transport Commissioner should not assume the role of the State Govt. While dismissing all the ten writ applications, we require the State Government to observe this part of the order sincerely.

Nagendra Rai, J.

52. I agree.