

(1999) 08 PAT CK 0122

In the Patna High Court

Case No : CWJC No's. 2425 and 2426 of 1998 (R)

D.A.V. College Management Committee

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 24-08-1999

Acts Referred:

Bihar Motor Vehicles Taxation Act, 1994 — Section 15, 5, 6
Constitution of India, 1950 — Article 14, 21, 41, 45, 46
General Clauses Act, 1897 — Section 15, 21, 24

Citation : (2000) 1 PLJR 59

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Ram Balak Mahto, K.B. Sinha, S. Pipriwal, T. Sen, T. Kabiraj and R.M. Singh, for the Appellant; Sashi Anugrah Nr., R.K. Merathia, A.B. Mahto, Mrs. M. Patra and Mrs. Subha Jha, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In all these writ petitions the petitioners have prayed for a common relief of declaration that the notification bearing No. 2963 dated 15.5.98 by which the notification bearing No. 5331 dated 16.7.94 has been annulled, is unconstitutional and violative of Articles 14 and 21 of part III of the Constitution of India and Articles 41, 45 and 46 of part IV of the Constitution of India and, therefore, the said notification dated 14.5.98 is liable to be quashed. With the consent of the learned counsels for the parties, all these writ application are, therefore, being disposed of by this common order.

2. In CWJC No. 2425/98R the petitioner's case is that D.A.V. College Managing Committee is run by "Dayanand Anglo Vedic College Trust and Management Society, New Delhi and the schools run in different parts of India under the name of DAV Public School are affiliated to this trust and run under the guidance and administration of DAV College Managing Committee, Delhi. The DAV College Trust and Management Society is a non-profit making educational and charitable

organisation. The said committee and the Trust established schools in different parts of India with an object to advance, encourage and promote general education, music, fine-art and crafts right from LKG to class XII level. The Bihar Government gave no objection certificate for taking affiliation with C.B.S.C. (sic) for running schools in Ranchi. The petitioner's further case is that the petitioner's school possesses buses registered in its name and the said buses are being utilised for the purposes of carrying only its employees/students and staffs from their residences to the school and from the school to their residences vice-versa which will be evident from the certificate of registration of the buses. In 1994 the Govt. of Bihar came with a notification dated 16th July, 1994 in exercise of powers conferred by section 15 of the Bihar Motor Vehicles Taxation Act whereby exemption was granted in payment of road tax in respect of the buses owned and possessed by the recognised schools and colleges. Respondents No. 2, in terms of the notification issued tax token for the buses belonging to the petitioner. However, in the month of May, 1998 the respondent-State of Bihar from its Transport Department, came out with the impugned notification dated 14.5.98 whereby and whereunder the earlier notification dated 16.7.94 has been annulled with immediate effect. The petitioner, therefore, has challenged the impugned notification as being illegal, arbitrary and violative of Articles 21, 45 and 46 of the Constitution of India.

3. In all other writ petitions the petitioners have challenged the said impugned notification claiming, inter alia, that they are recognised schools/colleges and they have been utilising their vehicles only for the purposes of carrying students/staffs from their residences to the schools/colleges and vice-versa.

4. I have heard Mr. Ram Balak Mahto, learned Sr. counsel appearing for and on behalf of all the petitioners and Mr. Shashi Anugrah Narain, learned Advocate General.

5. Mr. Mahto, learned counsel appearing on behalf of the petitioners assailed the impugned notification firstly on the ground that by the impugned notification, the earlier notification granting exemption has not been withdrawn rather, it was annulled and, therefore, it is evident that it is total non-application of mind by the respondent-State while annulling the notification. Learned counsel submitted that exemption was granted in payment of road tax to the recognised schools and colleges with certain objectives while the notification was annulled arbitrarily and without considering the duty and obligation of the State. Learned counsel submitted that the State Govt. is duty bound to grant exemption in payment of road tax in respect of the motor vehicles registered in the names of Educational Institutions solely used for carrying the students of the staffs of that institution in order to discharge its duty and obligation as provided under Articles 21, 41, 45 and 46 of the Constitution as the State Govt. is not in a position to discharge its duty as provided under the above Articles of the Constitution at its own. Learned counsel further submitted that the impugned notification annulling the earlier notification is unreasonable, arbitrary based on total non-application of mind. In

this connection learned counsel relied upon decisions in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., and in the case of Paschim Banga Khet Mazdoor Samity and others Vs. State of West Bengal and another, . Learned counsel lastly submitted that the State Govt. without considering the matter, scope of grant of exemption to the motor vehicles used by the educational institutions and without application of fair and reasonable standard, has arbitrarily taken a decision to cancel the said notification with immediate effect.

6. On the other hand, learned Advocate General at the very outset submitted that there is no illegality committed by the State in withdrawing the exemption by the impugned notification and no one claim exemption as a matter of right. Learned counsel further submitted that when the respondent State has right to grant exemption, it has also the right to withdraw the same without assigning any reason. Learned counsel then drew my attention to the counter affidavit filed by the respondents and submitted that after grant of exemption, it came to the notice of the Government that the schools/colleges are enriching themselves and are taking undue advantages of the exemption. These private educational institutions are being run purely for earning income/profit and they have started misusing the facility given to them defeating the main purpose and object of exemption as a result of which the Govt. had to consider the matter and withdraw the said notification granting exemption, Learned counsel further submitted that the petitioners who are mostly private managed educational institutions, are charging high rate of transport charge from the students with a view to earn profit and on the other hand, they were also availing the benefit of exemption in payment of tax. Moreover, the petitioners were not passing the benefits granted by the Govt. to the students. These institutions have no rational rates of charging different kind of fee; such as tuition fee, annual fee, building fee, library fee, sports fee apart from capitation fee at the time of seeking admission in the institution. Learned counsel further submitted that the Govt. has no control over their rights of charging fees including bus fee too. It was further submitted that under the Act no government vehicle, either State or Central, even is free from tax liability and the government has to see the ways and means to improve the State economy. The rebate on tax payment causes heavy loss to the Govt. revenue. Keeping all these facts into consideration the Govt. decided to withdraw exemption. According to the learned counsel, therefore, there is no illegality in issuing the notification withdrawing exemption. The petitioners have no locus standi to challenge the said impugned notification.

7. Motor Vehicles Taxation Act, 1994 (hereinafter referred to as the Act) has been enacted to regulate imposition and levy of taxes on motor vehicles in the State of Bihar. Section 5 of the Act is the charging section which provides, inter alia, that every owner of a registered motor vehicle shall pay tax on such vehicle at the rate specified in schedule I. It further provides that every owner of a registered motor vehicle shall pay additional motor vehicles tax on such vehicle at the rate specified in schedule II. Subsection (3) of section 5 of the Act

empowers the State Govt. to increase the rate of tax specified in the schedule by issuing notification. Section 6 of the Act provides the rate of tax payable by manufacturer or a dealer of motor vehicles. The relevant provisions to be looked into for the instant case is section 15 of the Act which empowers the State Govt. to exempt certain motor vehicles from payment of tax. Section 15 reads as under :?

Power of the State Govt. to exempt certain motor vehicles from payment of Tax.? The State Govt. may by notification make an exemption, reduction in the rate or other modification in regard to the tax payable in respect of any motor vehicle or class of motor vehicles." From bare reading of the aforesaid provision it is manifest that a discretionary power has been vested with the State Govt. to exempt any motor vehicle or class of motor vehicles from payment of tax by issuing notification.

8. Similar was the provision under the Old Motor Vehicles Taxation Act, 1930. Section 10A of that Act read as under:?

Section 10A : Power of the State Govt. to exempt certain motor vehicles from tax.?The State Govt. may, by notification, make an exemption/reduction in the rate or other modification in regard to the tax payable in respect of any motor vehicle or class of motor vehicles.

9. It appears that in exercise of that power conferred by section 15 of the said Act of 1994 the State Govt. came with a notification dated 16.7.94 granting exemption to certain extent in payment of tax in respect of the vehicles owned and possessed by the educational institutions. The said notification reads as under:?

The 16th July, 1994. G.S.R. 24, dated the 22nd July, 1994.?In exercise of powers conferred by section 15 of the Motor Vehicle Taxation Act, 1994 the Governor of Bihar is pleased to direct that the Education Institution, Buses having seating capacity to be more than registered in the name of the institution and solely used for carrying students or staff of that institution, shall, for the purposes of determining tax liability, shall be treated to be having seating capacity of 7 only.

Explanation.?Educational Institution means an educational institution recognised by the State Govt./Central Govt. or statutory authorities created by the Central Govt./State Govt. This shall be deemed to come into effect with effect from 17th January, 1994.

10. In 1998 the State Government thought it proper to withdraw the benefit granted by the aforementioned notification and, therefore, the impugned notification dated 14.5.98 was issued by the Government. The said notification reads as under:?

The 14th May, 1998. No. 2963.? In exercise of power conferred by section 15 of the Motor Taxation Act, 1994 the notification No. 5331, dated 16th July, 1994 of the Transport Department is being annulled by the order of Governor of Bihar

with immediate effect. By order of Governor of Bihar.

11. The only question, therefore, falls for consideration is whether the impugned notification of 1998 is arbitrary exercise of power by the State Government and will amount to violation of Article 14 of the Constitution of India and is against the relevant provisions of the Directive Principles of the State Policy.

12. Mr. Mahto, learned counsel for the petitioners has not challenged the power of the State Government in issuing the notification. It is well settled that the power to rescind the notification is inherent in the power to issue notification without any limitations or conditions. Section 21 of the General Clauses Act, 1897 read with section 24 of the Bihar and Orissa General Clauses Act, 1917 makes it clear that power to make or issue any notification, order, scheme, rule, byelaws includes a power exercisable in the like manner to amend, vary, to rescind any notification, orders, schemes, rules or bye laws so made or issued. Nothing has been pointed out by the learned counsel showing that the State Govt. exceeded in the exercise of power u/s 15 of the said Act by issuing notification withdrawing exemption. It is well settled that judicial review on judicial discretionary action is not permissible unless it is satisfied that while exercising discretion the authority exceeded the statutory limit. In that view of the matter I am of the opinion that since the State Govt. has not exceeded its power beyond the statutory limit while issuing the impugned notification, the same is not subject to judicial review by this court.

13. Be that as it may, it is well settled that in interpreting a taxing statute, equitable consideration is entirely out of place nor can taxing statute be interpreted on any presumption or assumption. The court must look squarely at the words of the Statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed. It cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiency. It is clear from reading of the Act that charging section is always subject to State Government's power to issue notification u/s 15 of the Act exempting any specific vehicle from payment of road tax either wholly or partly; it can subsequently be withdrawn, rescinded, added to or modified at any time in public interest.

14. The ratio decided by the Apex Court and relied upon by Mr. Mahto, learned counsel, in Unnikrisnan case (supra) is not applicable in the facts and issue involved in the present case. In that case the Apex Court was considering as to what extent the unaided educational institutions conducting professional courses such as, medical, engineering can charge capitation fee while taking admission in such institution.

15. So far the petitioner's schools/ colleges are concerned, the State Govt. has no control over it in the matter of charging tuition fee and other fees including the transportation fee. These petitioners have been charging fee for giving education and buses fees from the students as per their own sweet will and/or as

per their assessment. From the counter affidavit it is appears that the petitioners have been charging bus fee ranging from Rs. 150 to Rs. 400 per month per student and there is no guideline to charge a reasonable bus fee from the students. The petitioners have not come out with a case that after 1994 when exemption was granted by the State Govt. in payment of road tax, the petitioners proportionately reduced the transportation fees from the students, rather, the uncontroverted fact is that the bus fees have been gradually increased by the petitioners-institutions. It is also not the case of the petitioners that for poor and down-trodden students, these institutions have not been charging any bus fee or have given any concession in payment of bus fee to those students.

16. Another decision relied upon by Mr. Mahto in the case of P.B. Khet Mazdoor Samittee (supra) is also of no help to the petitioners inasmuch as the duty of the State to provide adequate medical facilities to the people is an essential part of obligation, has nothing to do in charging road tax from the educational institutions in respect of the buses owned by them and used for carrying students on payment of bus fee. Having regard to the entire facts and circumstances of the case and the law discussed hereinabove, I do not find any merit in these writ petitions which are, accordingly, dismissed.