

(2000) 04 PAT CK 0074

In the Patna High Court

Case No : L.P.A. No's. 29 to 36 and 403 of 2000 (R)

D.A.V. College Managing Committee and Others etc.

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 06-04-2000

Acts Referred:

Bihar Motor Vehicles Taxation Act, 1994 — Section 15
General Clauses Act, 1897 — Section 21

Citation : AIR 2000 Patna 285 : (2000) 48 BLJR 1741

Hon'ble Judges : Sanat Kumar Chattopadhyaya, J;Deoki Nandan Prasad, J

Bench : Division Bench

Advocate : Ram Balak Mahto, Krishna Bahadur, Sanjoy Piprawall, T. Kabiraj and T. Sen, for the Appellant; R.K. Marathia, Govt. Pleader, Shobha Jha, Jr. Counsel Govt. Pleader and Asit Baran Mahato, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Chattopadhyaya, J.—As common question of law is involved in all the appeals, they have been heard together and are being disposed of by this common judgment, as agreed by the parties, at the admission stage itself.

2. Mr. Ram Balak Mahto, learned senior counsel, has advanced the argument on behalf of the appellants in L.P.A. No. 403 of 1993 (R) and other counsels in different appeals have adopted his argument.

3. Before dealing with the grievances made by the appellants it would be appropriate to portrait the factual backgrounds of the case.

4. All the appellants (to be referred as "the petitioners" for convenience) filed various writ applications of the same nature challenging the notification dated 14-5-1998 by reason of which the State Government withdraw the exemption granted to the petitioners-Institutions earlier by notification dated 16-7-1994. The petitioners, who are private educational institutions run their schools for imparting education to the students of the town of Ranchi. All the schools

admittedly are recognised by the State Government. These schools possess their own vehicles registered in their names and the said vehicles carry the employees, students and staffs from their residences to the schools and from their schools to their residences, which is evident from the certificate of registration of the respective buses.

In exercise of its powers u/s 15 of the Bihar Motor Vehicles Taxation Act, 1994 (hereinafter referred to as "the Taxation Act") the Government of Bihar issued a notification dated 16th July, 1994, by reason of which exemption was granted to the institutions in payment of road tax in respect of the vehicles owned and possessed by those recognised schools and colleges. However, this exemption was withdrawn by the State Government by notification dated 14-5-1998 annulling its earlier notification dated 16-7-1994 with immediate effect.

All the writ petitioners have impugned the notification dated 14-5-1998, inter alia, contending that being recognised schools/colleges they are utilising their vehicles only for the purpose of carrying its employees/students and staffs from their residences to the schools/colleges and vice versa and, as such the impugned notification annulling the earlier notification is unconstitutional and is in violation of Articles 14 and 21 of Part III and Articles 41, 45 and 46 of Part IV of the Constitution of India and thus they prayed for quashing the notification dated 14-5-1998.

5. The learned single Judge noticing different provisions of the Constitution as well as Motor Vehicles Act and the Taxation Act has come to a conclusion that the State Government, which had earlier granted exemption to these educational institutions, has power to withdraw the same exemption and the petitioners cannot have any right to continue with the said privilege. In arriving at this conclusion the Writ Court found on facts that the students/staffs of the institutions are not being benefitted by the said exemption granted to the educational institutions and on the contrary these institutions are making profit at the cost of the students,

6. Mr. Mahto, firstly, contended that issuance of impugned notification clearly shows non-application of mind by the State inasmuch as earlier exemption was granted in payment of road tax to the petitioners Institutions with certain objectives and the notification has been annulled by the respondent-State arbitrarily and without considering the duty and obligation under the Constitution. Elaborating his argument with reference to Articles 41 and 42 of the Constitution he submitted that the State Government is under an obligation to grant exemption in payment of road tax in respect of the vehicles registered in the name of the educational institutions, which are solely used for carrying the students and the staffs of those institutions. According to him under Articles 21, 41, 45 and 46 of the Constitution the State Government is duty bound to impart education to the students in the State of Bihar and when it is not in a position to discharge its constitutional duty and obligation, it must come with a helping hand to the educational institutions which are imparting required education to the

students at large and by doing so these institutions are performing the duties and obligations, which are required to be done by the State Government itself. In support of his argument, learned counsel has mainly relied on the well known decisions of the Supreme Court in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., : (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 contends that this aspect of the matter has not been considered by the learned single Judge.

7. Secondly, referring to Section 5 of the Taxation Act learned counsel contends that the vehicles possessed by the petitioners-Institutions cannot be treated as transport vehicles for payment of tax at the rate specified in Schedule I of the Taxation Act, 1994. He urged that when there is a basic difference in the definition of "private service vehicles", "public service vehicles" and "Transport vehicles" the buses possessed and owned by the educational institutions cannot be directed to pay taxes as provided in Part C of Schedule I of the Taxation Act. In support of this contention reliance has been placed on a decision of the Allahabad High Court in the case of All Indian Public School's Welfare Society, Ghaziabad and another Vs. State of U.P. and others, .

8. Mr. Marathia, learned Government Pleader No. II countering the argument of Mr. Mahto submits that the power of the State Government to withdraw the privilege granted to the educational institutions cannot be questioned because this power is inherent in the State Government in granting exemption or any fiscal benefits. Referring to Section 21 of the General Clauses Act, 1897 and Section 24 of the Bihar and Orissa Act, 1917, he submits that power to issue any notification/orders/scheme/rules or bye laws also includes a power exercisable to amend, vary or rescind any such notification etc. He further contends that Articles 41, 42 and 45 of the Constitution of India are directive principles of State policy, which finds place in Part IV of the Constitution. According to him these are mere directives and not justiciable and, as such, the educational institutions like the appellants cannot enforce those directives through a Court of law. Elaborating his argument learned State counsel has referred to various statements made in the counter affidavit filed in the writ applications. According to him when the exemption was granted in 1994, the State Government was of the view that having received this fiscal benefits the school authorities in turn will give that benefit to the students, who had no option but to travel by school buses for covering the distance from their respective houses to the school. It has been found by the State Government that taking undue advantage of this exemption, instead of giving any facility to the students, the school authorities are increasing the fares of such buses year after year. It was also come to the knowledge of the State Government that the schools, which are mostly privately managed educational institution were not only charging a very high rate of bus/transport from the students with a view to earn a profit but those vehicles are also used for other purposes for deriving income/profit. The learned counsel submits that

when the State Government was satisfied from various sources that benefit on payment of tax was derived by these institutions but the same was not passing to the students, it decided to withdraw the exemption realising that the very intention of the State Government in granting such exemption to the educational institutions has been frustrated. Moreover, according to him, due to mushroom growth of private educational and health institutions, which are being run purely for earning income/ profit, the Government ultimately decided that exemption to these institutions is not worth continuing and, as such, withdrew such benefit in order to improve its own economy. According to him on account of such long terms subsidies given to such institutions, State/Central Government is facing financial crisis to the extent of taking heavy loans from different institutions and foreign financial institutions. In sum and substance, the argument of Mr. Marathia is that when the State Government is convinced that the students of such educational institutions are not getting any benefit from the exemption granted to their schools, it decided to withdraw the said facility by the impugned notification and this policy of the State Government cannot be interfered with by this Court.

Mr. Marathia next contended that Section 5 of the Taxation Act, inter alia, contemplates that every owner of a registered motor vehicle shall pay tax on such vehicle at the rate specified in Schedule I and, such, even the registered Government vehicle is required to pay tax and no such exemption granted to any such Government vehicles. According to him the learned single Judge noticing all aspects of the matter has rightly dismissed the writ applications and no interference is called for.

9. In backdrop of these facts, the contention urged on behalf of the parties may now be considered. The right of the Government to withdraw or modify fiscal benefits granted earlier is well recognised in law. In the case of *Arvind Industries and others Vs. State of Gujarat and others*, their Lordships in almost similar circumstances has observed that "..... the Government is entitled to grant exemption to industries having regard to the industrial policy of the Government- Government is equally free to modify its industrial policy and grant, withdraw or modify fiscal benefits from time to time."

The power of the State Government to exempt certain motor vehicles from payment of tax is contemplated u/s 15 of the Taxation Act, 1994. It provides that "the State Government 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." The word "may" used in this section, in my view, is discretionary, meaning thereby, each and every motor vehicle cannot as a matter of right ask for exemption from payment of tax. If the State Government is of the opinion that any such motor vehicle or class of motor vehicles is required to get such benefits, it may grant such exemption and as soon as such exemption is granted exemption token is issued by the Taxing Officer to the said vehicle. Mr. Mahto fairly admits this power of the State

Government of withdrawing any fiscal benefit granted earlier.

10. However, the point for consideration is as to whether in view of directive principles of the State policy the State Government is under an obligation to continue with such exemption even if it is satisfied that such exemption granted to the educational institutions is being misused and students/ staffs are not being benefitted from it ?

11. Article 41 of the Constitution lays down that the State shall make effective provision for securing the right to work, to education and to public assistance within the limits of its economic capacity and development. There is no denial of the fact that it is the duty of the State under these directives not only to establish educational institutions but also to effectively secure the right to education. As has been held by the Apex Court even though this right is not a fundamental right and is not judicially enforceable as such, once the State, by legislative or administrative action, provides facilities for education, its action must conform to the standard of equality and rationality underlying Article 14. However, it depends upon the economic capacity and development of a particular State. Moreover, there is no allegation that in taking the decision to withdraw the exemption, the State has shown any discrimination. Similarly Art, 45 mandates the State Government to try to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of 14 years. Similarly, under Article 46 special care need be taken by the State for promoting of the weaker section of the people and in particular, of the Scheduled Castes and the Scheduled Tribes and also shall protect them from social injustice and all forms of exploitation.

12. In these backgrounds if the facts of the instant case are considered it will be clear that the appellant Institutions have not made any grievance to the effect that the State Government has failed to comply with these constitutional directives in letter and spirit. Their grievance is that when the State Government is not in a position to impart same standard of education, which are being provided by these educational institutions, it has no right to withdraw the exemption granted earlier. In my view, this argument is not sustainable. It is true that in this State the standard of education in the Government schools is not so high as it should have been but that does not mean that these private educational institutions must go on getting such benefit from the State Government even where it is found that the same fiscal benefit is not passing to the students and on the contrary taking advantage of that exemption these institutions are making huge profit year after year.

13. Similarly, in my view, second contention raised by Mr. Mahto is not tenable in law. Section 39 of the Motor Vehicles Act prohibits a person to drive any motor vehicle without any registration of the same in accordance with Chapter IV. It further contemplates that no owner shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered. Thus, it is clear that each and every motor vehicle must be registered before it is driven

or allowed to be driven on road. Section 5 of the Taxation Act on the other hand provides that every owner of a registered motor vehicle shall pay tax on such vehicle at the rate specified in Schedule I of the Taxation Act a conjoint reading of these two provisions clearly indicates that a vehicle must be a registered one and owner of a registered vehicle must pay tax on such vehicle. Therefore, the buses run by these educational institutions must be registered and the respective institutions being owner of those buses must pay the required tax as laid down under the Taxation Act. In view of Section 2(47) of the Motor Vehicles Act an educational institution bus is a transport vehicle and it must also have a registration certificate. It cannot be denied that being registered transport vehicle it is also required to pay tax as contemplated u/s 5 of the Taxation Act. Item 4 of Part C of Schedule I appended to Taxation Act merely indicates the rate in which transport vehicles are required to pay annual tax. So far private service vehicles are concerned, they are meant for carrying more than 6 persons excluding the Driver and ordinarily used by or on behalf of its owner of such vehicle for the purpose of carrying persons for, or In connection with, his trade or business otherwise than for "hire or reward" but it does not include a motor vehicle used for the public purposes. Road tax for such private service vehicles is also indicated in Schedule II Part C of the Taxation Act. Similarly, definition of public service vehicle is that any motor vehicle used or adapted to be used for carriage of passenger for hire or reward which includes a maxi cab, a motor cab, contract carriage and stage carriage. Thus, the argument of Mr. Mahto that the buses possessed by the educational institutions cannot be directed to pay taxes as provided in Part C of Schedule I of the Taxation Act, in my view, is not well founded. These differences have been made, in my view, only to specify the rate of taxes in relation to these type of vehicles. The decision of the Allahabad High Court in the case of All Indian Public School's Welfare Society, Ghaziabad and another Vs. State of U.P. and others, relied on by Mr. Mahto, in my view, is not applicable to the facts and circumstances of the present case. In the aforesaid reported decision the point for consideration was as to whether buses owned by recognised educational institutions and used exclusively for conveyance of pupil to and from the institution do not come within the purview of "public service vehicle" so as to liable to pay additional taxes u/s 6 of the U.P. Motor Vehicles Taxation Rules. 1998. By notification dated 28-4-1999 the Government granted exemption from payment of such additional tax to the stage carriage owned by recognised educational Organisation and used exclusively for the transporation of pupil of the institution. Whether that notification could be operated retrospectively was the second contention raised before Allahabad High Court. Referring to Section 6 of the U.P. Motor Vehicles Taxation Act, 1997, the High Court held that no additional tax can be levied against those registered "educational institutions buses". Thus, the question before the Allahabad High Court was completely a different one inasmuch as the point as to whether the State Government can withdraw the exemption earlier granted was not an issue before the Court.

14. From the aforesaid analysis, I find that exercising its discretion u/s 15 of the Taxation Act, the State Government earlier granted exemption to the buses possessed by these educational institutions. But as far back as in Sept. 1993, it was noticed by the Transport Authority that educational institutions were not given the benefit of such exemption to its pupil, which was made available to these institutions by the State Government. It was found, for instance, that if students travel from Morhabadi to St. Marya School situated at Doranda, the distance should be 8 Kilo Metre and the students will be required to pay about Rs. 58/- per month, whereas the school of St. Mary was charging the fare from the students at the rate of Rs. 90/- to Rs. 120/- per month. It was also found that though by notification dated 16th July. 1994, it was made clear that exemption was granted to the educational institutions buses having seating capacity more than 7 registered in the name of the institutions and solely used for carrying students/staffs of that institutions, shall, for the purposes of determining tax liability shall be treated to be having seating capacity of seven only, but the school buses are carrying students and staff more than its usual capacity. Thus, according to the Transport Authority the educational institutions were given exemption so that there may not be any excess financial liability upon the students. To this effect a letter was written to the Principal of St. Marry School on 16-9-1993 by the Transport Authority, which is Annexure-3 to L.P.A. No. 403/99R. The learned single Judge, in my view, has rightly found that it is not the case of the appellants-educational institutions that after 1994 when exemption was granted by the State Government in payment of road tax, proportionately transportation fees from the students were reduced, rather uncontrovertedly the bus fees have been gradually increased by these institutions. It was also not the case of the appellants before the writ Court that they were not charging any bus fee from poor and downtrodden students or were give any concession in payment of bus fees to those students. Reliance of Mr. Mahato in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , in my view, is misplaced. The question before the Apex Court was that as to what extent unaided educational institutions imparting education in medical engineering etc. can charge capitation fee while taking admission in such institutions. There is no denial of the fact that so far these educational institutions are concerned, the State Government has no control over them in respect of charging tuition fees and other fees including the transportation fees. In my view, the State Government has absolute right to decide as to whether exemption in payment of road tax should be given to these educational institutions even when it is found that after receiving such exemption no such benefit is given to the students in respect of transportation fees and on the other hand such fees are being increased by the school authorities without any rhyme or reason. Similarly the decision in the case of Paschim Banga Khet Mazdoor Samity and others Vs. State of West Bengal and another, is quite distinguishable in the facts and circumstances of the present case. The decision in the case of Hindustan Aeronautics Limited etc. Vs. Registering Authority and Others, , also stands on a different footing. Their Lordships, in that case, has

explained the meaning of the word "Plying for hire" as mentioned in Entry 4 of S. 3 of the Orissa Act 2 of 1986. The point for consideration in the instant appeals were not subject matter before the Supreme Court.

15. The last but not the least the High Court has some limitation in exercising its power under Article 226 of the Constitution when a policy decision is taken by the Government. In the case of Gyan Prakash Vs. Union of India (UOI) and Others, the Apex Court has clearly laid down that unless the policy decision of the Government violates some provisions of Constitution, such as Article 14, the Court will not interfere with the said administrative policy of the Government,

16. Giving my anxious consideration to the facts and circumstances of the case and the laws thereto, I am of the view that no case has been made out by the appellants to interfere with the order of the learned single Judge.

17. In the result, I find no merit in these appeals and accordingly all the appeals are dismissed.

D.N. Prasad, J.

18. I agree.