

(2010) 07 PAT CK 0103
In the Patna High Court

Devendra Sharma

APPELLANT

Vs

The State of Bihar, The Transport Commissioner, Government
of Bihar and The District Transport Officer

RESPONDENT

Date of Decision : 09-07-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2010) 07 PAT CK 0103

Hon'ble Judges : Navin Sinha, J; Jyoti Saran, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Navin Sinha and Jyoti Saran, JJ.—We have heard learned Counsel for the petitioner. No one appears on behalf of the State.

2. A counter affidavit filed on behalf of the State is available on the record.

3. We have gone through the pleadings in the counter affidavit with the assistance of the learned Counsel for the petitioner.

4. The petitioner is the owner of a transport bus bearing BRE 7189. The Bus became non-functional due to deterioration, requiring major body works for which he gave his vehicle on 31.03.1988 to M/s Bhola Body Builders. The District Transport Officer on 26.6.1991 certified that vehicle stood endorsed in the necessary register for exemption from road tax because it was not plied from 4.4.1988. On 15.6.1991 the petitioner made an application to the District Transport Officer that because of financial difficulties he was not able to get the bus repaired expeditiously, but that it was now ready for plying. He therefore requested that his tax dues may be intimated to him in accordance with law and the endorsement of the vehicle as "not plying" be corrected as he now wished to ply the same. The District Transport Officer on 15.6.1991 endorsed on his application that according to memo dated 3.11.1990 no exemption in road tax was permissible for reasons of not plying of the vehicle beyond the period of

three months. The petitioner was, therefore, directed to deposit all arrears of road tax from 1.7.1988 to 13.6.1991. He questioned the same before the Transport Commissioner who rejected his claim by an order dated 30.7.1992 in Exemption Case No. 1 of 1991 leading to the present writ application.

5. Learned Counsel for the petitioner assailing the revisional order dated 30.7.1992 made a short submission that the order was contradictory. It accepts the stand of the petitioner based on a fact verification by the District Transport Officer from M/s Bhola Body Builders that the vehicle was in the garage for repairs from 31.3.1988 to 13.6.1991. It then goes on to rely upon a report of the District Transport Officer dated 11.12.1991 speculative in nature that the vehicle was in fact plying during that period which has intentionally been concealed by the petitioner. The report states that no body was willing to give him correct information and therefore, he "suspects" that the vehicle was plying during the aforesaid period also. The submission therefore, was that the revisional order is based on an unsubstantiated report in the realm of speculation rendering the finding perverse. There was no discussion of the materials upon which the conclusion that the petitioner had concealed and misrepresented facts had been arrived at.

6. The counter affidavit does not disclose any further materials with regard to any enquiry held by the respondents and the materials for their satisfaction to come to a finding of fact that the vehicle was in fact running during the period 1.7.1988 to 13.6.1991 to impose liability for road tax.

7. An order which adjudicates a matter, whether in the administrative jurisdiction or quasi judicial jurisdiction is required to be preasoned. A facet of natural justice, reasons Pare required to be supported by a discussion. The discussion pertains to the materials on which the reason is based. The discussion therefore, has to deal with the materials placed by both sides after due opportunity to both to meetfrthose materials to arrive at a conclusion by a process of reasoning on a final decision. It needs no further elaboration that the order of the Revisional authority dated 30.7.1992 is contradictory in itself. The enquiry done by the District Transport Officer from M/s Bhola Body Builders is neither disputed by the District Transport Officer or disbelieved by the Revisional authority. That the vehicle was parked for repairs in the workshop from 31.3.1988 to 13.6.1991.

8. If the order had contained the discussion why the disclosure made by the garage owner of the duration for what the vehicle was parked in garage was to be disbelieved and the reasons had been discussed in the order of the Revisional authority, the matter may have been entirely different. The situation that emerges is, that the District Transport Officer or the Revisional authority do not disbelieve the disclosure made by the Pgarage owner with regard to the duration for which the vehicle stood in his workshop for repairs. Simultaneously on an unfounded suspicion, without any materials in support of the same as to who made the disclosure that the vehicle was running during the aforesaid period, whether the petitioner was confronted with those materials, an unsubstantiated

finding has been arrived at, wholly perverse. The law stands well settled that suspicion can never take place of proof. No matter how grave the suspicion may be. In the present case we find it difficult to classify the suspicion as even grave. The suspicion of the District Transport Officer in the present case accepted by the Revisional authority pertains more to the realm of arbitrariness violating Article 14 of the Constitution of India on a mere ipse dixit of the District Transport Officer.

9. The counter affidavit as discussed is of no help and does not place any materials in support of the so called suspicion. This Court while admitting the writ application on 4.5.1993 had directed the petitioner to deposit 50% of the arrears of road tax demanded from 1.7.1988 to 13.6.1991 subject to the result of the case. His liability for the balance 50% was to be determined by this Court. In view of the discussion aforementioned, the petitioner is entitled to refund of the 50% tax deposited by him and he is not answerable to deposit the balance 50% for the period in question. We direct the aforesaid amount to be refunded to the petitioner within a maximum period of four months from the date of receipt/production of a copy of this order. If it is not refunded to him within the aforesaid period, the petitioner shall be entitled to claim interest upon the same from that date at the rate of 4% till payment.

10. The revisional order dated 30.7.1992 is accordingly set aside. The writ application stands allowed.