(1993) 05 P&H CK 0034

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 896 of 1993

Gill Bus Service (Registered), Amritsar and others APPELLANT

Vs

State of Punjab and another RESPONDENT

Date of Decision : 05-05-1993

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Passengers and Goods Taxation Act, 1952 — Section 3, 4
Punjab Passengers and Goods Taxation Rules, 1952 — Rule 9

Citation : AIR 1993 P&H 281

Hon'ble Judges : G.C. Garg, J;A.L. Bahri, J

Bench : Division Bench

Advocate : Jatinder Singh, Managing Partner, S.S. Sandhu, Managing Director, Charan Singh, Traffic Manager, Bhola Singh, Managing Director and Mr. Rachhpal Singh President, for the Appellant; P.S. Randhawa, Excise and Taxation Officer, for the Respondent

Judgement

1. The petitioners are operating Stage Carriage Services in the State of Punjab. They have called in question in this writ petition under Art. 226 of the Consti- -tution of India, the action of the respondent-: State in directing them to pay passenger tax on lump sum basis and have prayed for a direction to the respondents to accept the tax by way of affixation of passengers lax adhesive stamps on the tickets issued to the passengers. The case of the petitioners is that they are carrying on the business of operating Stage Carriage Permits granted by the authority under the Motor Vehicles Act. They are at liberty to pay passenger tax by way of affixation of passenger tax adhesive stamps and they cannot he forced to pay passenger tax on lump sum basis and that the demand raised by the respondents requiring the petitioners to pay passenger tax on lump sum basis is illegal and deserves to be quashed.

2. On notice of motion having been issued, the respondents have filed written statement wherein the stand of the respondents is that the payment of passenger tax by way of lump sum has become mandatory after the

proclamation of the Punjab Passengers and Goods Taxation Ordinance 1992 (Punjab Ordinance No. 3 of 1992) amending the proviso to Section 4 of the Punjab Passengers and Goods Taxation Act, 1952 (for thort ''the Act'') which now provides, inter alia, that the State Government shall accept in the prescribed manner a lump sum in lieu of the tax chargeable. Further the stand of the respondents is that by way of amendment brought about by Punjab Ordinance No. 3 of 1992 in the proviso to Section 4 of the Act, the words "may accept "have been replaced by the''words "shall accept" and, therefore, now the Government is left with no option but to accept the payment from the owners of Stage Carriages, Contract Carriages ''and Mini Buses by way of lump sum. It is specifically stated in para 12 of the written statement that the interpretation of the petitioners to the effect that they have an option to pay passenger tax by either of the two methods is incorrect and that the transporters have no option but to pay passenger tax in lump sum only. It is also asserted that the present rate of passenger tax is 45% of the value of fares but the option to pay the tax by fixation of adhesive stamps of passengers tax has been taken away by the Legislature by amending the proviso to Section 4 of the Act. On the aforesaid premises, notices of demand served upon the respondents were sought to be justified.

3. After hearing the petilioners and Mr. P.S. Randhawa, Excise and Taxation Officer, Amritsar II, we are of the view that this writ petition deserves to succeed. The Legislature in the State of Punjab enacated the Punjab Passengers and Goods Taxation Act, 1952 with a view to impose tax on goods and passengers carried by road by motor vehicles. This legislation was obviously, passed under Entry 56 of List II of the Seventh Schedule of the Constitution of India. Section 3 of the Act provides that there shall be levied, charged and paid to the State Government a tax on all fares''and freights in respect of all passengers carried and goods transported by motor vehicles at the rate of forty five per centum of the value of the fare of freights, as the case may be. Section 4 thereof, provides the method of collection of tax. Before the proclamation of Punjab Ordinance No. 3 of 1992, Section 4 of the Act read as under:--

"4. Method of Collection of tax -- The tax shall be collected by the owner of the motor vehicle and paid to the State Government in the prescribed manner:--

PROVIDED that the State Government may accept in the prescribed manner a lump sum in lieu of the tax chargeable--

(i) on freight in case of public and private carriers;

(ii) on fare in case of stage carriages, contract carriages and mini buses;

(iii) on fare, in case of transportation of passengers by stage carriages, contract carriages and mini buses on special occasion like fairs, pilgrimages to religious and historical places."

After proclamation of Punjab Ordinance 3 of 1992, Section 4 of the Act reads as under:--

"4. Method of Collection of tax -- The tax shall be collected by the owner of the motor vehicle and paid to the State Government in the prescribed manner:

PROVIDED that the State Government shall accept in the prescribed manner a lump sum in lieu of the tax chargeable--

(i) on fare in case of stage carriages, contract carriages and mini buses;

(ii) on fare in case of transportation of passengers by stage carriages, contract carriages and mini buses on special occasion like fairs, pilgrimages to religious and historical places.

Provided further that the State Government may accept in the prescribed manner a lump sum in lieu of the tax chargeable on freight in case of Public Carriers and Private Carriers."

Certain other amendments were also made by way of Ordinance aforesaid but the same are not relevant for disposal of this petition.

4. Section 5 of the Act provides for the method of levy of tax, which reads:

"5. Method of levy -- (1) Save as otherwise provided by this Act, no passenger shall be allowed to travel by the owner in a motor vehicle unless he is issued a ticket in the prescribed form for the journey, denoting that the lax has been paid:

PROVIDED that if a journey, begins outside the State, the tax shall become chargeable on entry within the State, in the prescribed manner.

(2) Save as otherwise provided by this Act, no goods shall be allowed to be carried in a motor vehicle unless the person in-charge of the vehicle or a passenger, as the case may be, has in his possession a receipt in the pre-scribed form issued by the owner of the motor vehicle, showing the freight charged and denoting that the tax due under the Act has been paid."

Proviso to Section 4 of the Act reproduced above, as it now stands after the amendment, provides that the State Government shall accept in the prescribed manner a jump sum in lieu of the tax chargeable. The mode of determination and payment of tax has been provided in Rule 9 of the Rules. Provisions of Rule 9 of the Rules, prior to its amendment on Nov. 13, 1992, to the extent relevant for purposes of disposal of this petition, read as under:--

"Rule 9: Mode of determination and payment of tax--

(1) The lump sum tax shall be determined in the following manner:--

The owner of a stage carriage and a contract carriage other than those specified in, sub-rules (7), (8) and (9), shall pay to the State Government tax in lump sum to be determined by the assessing authority on the basis of formula and in the manner hereinafter provided and after following the procedure specified in sub-rule (2), namely:--

Number of seats X number of scheduled kilometers X average occupancy, that is 75 per cent X rate of passenger tax X fare per kilometer.

XXX XXX XXX XXX XXX XXX XXX XXX (5) The lump sum amount of tak determined under sub-rule (1) for the whole year or part thereof, shall be split up into equal monthly instalments as the case may be, and each instalment shall be payable in cash by the owner in Government Treasury on or before the 7th day of the month following the month to which the payment relates."

5. By notification dated Nov. 13, 1992, the State Government in exercise of its powers conferred by Section 22 of the Act, amended Rule 9 of the Rules whereby in sub-rule (i), for the figure and words, "75 per cent", the figure and words "65 per cent" have been substituted and for sub-rule (5) the following has been substituted, namely:--

"(5) The lump sum amount of tax determined under sub-rule (1) for the whole year shall be split into equal quarterly instalments or part thereof as the case may be and each instalment shall be payable in advance and in cash by the owner in the Government Treasury on or before the 7th day of the, month of the beginning of the quarter or part thereof to which the payment relates."

6. The case of the respondents, as already noticed, is that after the amendment of Sec tion 4 of the Act, it is obligatory for the petitioners to pay passengers tax on lump sum basis as would work out in terms of Rule 9 as amended. A reference to the provisions of the Act and the Rules would show that prior to, amendment of proviso to Section 4 of the Act, it was provided that the State Government may accept in the prescribed manner a lump sum in lieu of the tax chargeable. An option was thus, available with the owners of the vehicles, which is not disputed by the respondents, either to pay passengers tax on lump sum basis as way be worked out in terms of Rule 9 ibid or by way of affixation of passengers tax adhesive stamps on the tickets issued to the passengers. Prior 10 the amend- ment of Section 4, even if an operation of Stags Carriage Services desired to pay passengers tax in tump sum, he could be denied this facility by the State Government as it was the option of the State Government to accept the payment of passengers tax in lump sum or not.

7. After the amendment in the proviso to Section 4, as brought about by Punjab Ordinance No. 3 of 1992, the word "shall" has been substituted in place of word "may". The effect of this amendment thus, is that the State Government is now obliged to accept the payment of tax in lump sum if an operator of Stage Carriage Services chooses to do so. The discretion that was earlier available with the State Government that it may or may not accept the payment of passenger tax on lump sum basis has been done away with, but the other mode of payment of tax by way of affixation of passengers tax adhesive stamps has not been taken away and the mode of such tax by way of affixation of adhesive stamps still continues to be on the statute book. Thus, in our view, even after proclamation

of Punjab Ordinance No. 3 of 1992, an operator of Stage Carriage Services has an option to pay passenger tax either by way of affixation of adhesive stamps on the tickets or by way of lump sum. In the case of payment of tax by way of affixation of adhesive stamps, they have to pay the tax in terms of the provisions of Section 3 of the Act and Rule 9 of the Rules framed under the Act. If, however, an operator of Stage Carriage Services wishes to pay passenger tax on lump sum basis, the mode, method and manner of payment of such tax and the rates thereof have been fully detailed in Rule 9 of the Rules, as amended, and the tax will have to be paid in that manner.

8. In the context of the above, can it be said that the State Government is right in its submission that after the amendment of Section 4 as brought about by Punjab Ordinance No. 3 of 1992, an operator engaged in State Carriage Services is obliged to pay passenger tax on lump sum basis and he has no option in the matter of payment of tax by way of affixation of adhesive stamps. The stand of the respondents cannot be accepted. As already observed above, mere insertion of word "shall" in place of word "may" in the proviso to Section 4 of the Act cannot lead to the conclusion that now it is obligatory for the operators carrying on Stage Carriage Services to pay passenger tax on lump sum basis only and by no other mode.

9. There is another aspect of the matter as well. The amendment as made in Section 4 of the Act has been challenged being unconsti-tutional and ultra vires. The Supreme Court had an occasion to deal with the: scope of Entry56 of List II of Schedule VIII of the Constitution under which the present Act has been enacted. In Rai Ramkrishna and Others Vs. The State of Bihar, , it was noticed that the expression "carried by road or on inland waterways" is an adjectival clause qualifying goods and passengers, that is to say, it is goods and passengers of the said description that have to be taxed under this entry and that usually, it would be inexpedient, if not impossible to recover the taxdirectly from the passengers. It was in this context observed that it would be expedient and convenient to provide for the recovery of the said tax from the owners of the vehicles themselves. It was also observed that the Legislature was competent to devise a machinery for the recovery of the said tax by requiring the bus operators or bus owners to pay the said tax.

10. Prior to the amendment, the trans porters operating stage carriage permits had an optioin to pay tax either by-affixation of passenger tax-adhesive stamps on the tickets, issued to the passengers after obtaining the stamps from the appropriate authority in advance or on lump sum basis as may be calculated in terms of the provisions of the Act. The Government was not bound to accept the payment in lump sum as it had the option either to accept the passenger tax on lump sum basis or not. Once it decides to accept the tax on lump sum basis, the transporter was obliged to pay the same in the manner provided by the Rules. This mode was perhaps provided as a convenient mode for payment of passenger tax on yearly basis irrespective of the fact whether the operator would

get more amount by way of collection of passenger tax or not. The lump sum payment of passenger tax was thus, an alternative method at the option of the owner of the vehicle for paying tax to the State Government by doing away with the cumbersome procedure of maintaining accounts in that behalf. No fault can be found with the manner provided by the rule-making authority in determining the amount of passenger tax payable on lump sum basis as detailed in Rule 9 of the Rules either prior to its amendment or thereafter as it was the option, firstly of the owner to choose either of the two ways of paying passenger tax i.e. by way of affixation of passenger tax adhesive stamps or in lump sum, and thereafter it was the option of the State Government either to accept or not to accept the payment of tax on lump sum basis. After the amendment, however, as already noticed, it has become incumbent upon the authority to accept passenger tax, in lump sum once the transporter decides to pay the tax in that behalf. The operator will have, however, to pay the tax on lump sum basis in the manner and mode as detailed in Rule 9 of the Rules and other provisions of the Act or the Rules framed thereunder. This had no reference to the actual number of persons carried by the transporters and there being no element of compulsion to pay tax on lump sum basis.

11. If the stand as taken by the State Government is accepted that after the amendment, a transporter is obliged to pay passenger tax on lump sum basis, it can straightway be concluded that there is an element of compulsion for the transporter to pay tax on lump sum basis and in our view this compulsion has rendered the provisions relating to the payment of tax on tump sum basis as invalid. In terms of Entry 56, as noticed above, the State Legislature has the power to levy and collect tax on passengers carried by road. The Legislature is, thus, competent to levy tax on passengers and nobody else. It could, however, devise a machinery for the recovery of the said tax by requiring the bus operators or its owners to collect tax and pay to the State Government as it would otherwise be impossible for the State Government to collect tax from each passenger. It in the garb of levy of tax on passengers could not tax the operators by requiring them to pay tax on lump sum basis without having regard to the number of passengers actually travelled. Say, for example, if in a bus only 20 passengers have travelled, the operator would be required to pay tax in respect of 20 passengers only who actually travelled in the bus whereas if the operator is required to pay tax on lump sum basis he will have to pay for more passengers and for the entire journey of the route on the basis of the formula as detailed in Rule 9 of the Rules, by taking the occupancy of the passengers at 65% which may not factually be there. In other words, it would be a tax on the transporter and not on the passengers or the goods. This is so discernible from the judgment of the Supreme Court in Rai Ramkrishna and Others Vs. The State of Bihar, . It is, however, a matter of common knowledge that the buses carrying passengers are over-loaded and carry more passengers than are permissible under the law and in any case are carrying more passengers than the percentage of occupancy taken for determination of payment of passenger tax on lump sum basis. But it is

only for the transporter to decide for himself as to whether he would like to pay tax on lump sum basis or on the basis of affixation of passenger tax adhesive stamps by keeping accounts. The two situations where the operator may decide to pay tax on lump sum basis and where he is compelled to make payment of tax on lump sum basis in terms of the formula as detailed in Rule 9 of the Rules, are entirely different. In the first situation, there is an option with the operator to pay tax in lump sum or otherwise whereas in the latter, he is forced to pay tax on lump sum basis irrespective of the actual collection of passenger tax made by him. In a similar situation, the Himachal Pradesh High Court Civil Writ Petition No. 664 of 1991 (The Nurpur Pvt. Bus Operators Union v. State) decided on October I, 1992, has taken a view that confining payment of tax under the Act to the mode of payment by lump sum was invalid. We are entirely in agreement with the reasoning given in the said judgment.

12. In the circumstances referred to above, the action of the respondents in directing the petitioners to pay passenger tax on lump sum basis instead of affixation of passenger tax adhesive stamps, cannot be sustained and is, therefore, quashed. Accordingly, the demand notice, Annexure P-3 creating a demand of payment of tax and similar other notices issued to the petitioners are quashed leaving it open to the petitioners to pay passener tax at their own option either on lump sum basis in the manner prescribed in Rule of the Rules or by way of affixation of passenger adhesive stamps, as hitherto is being paid. The writ petition is allowed accordingly. No costs.

13. Petition allowed.

