

**(1977) 07 AHC CK 0035**

**In the Allahabad High Court**

**Case No : Civil Miscellaneous Writ No. 291 of 1975**

GYAN DEO SHARMA and Others

APPELLANT

Vs

STATE OF U.P. and Another

RESPONDENT

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**Date of Decision : 27-07-1977**

**Acts Referred:**

**Citation : (1977) 6 CTR 240**

**Hon'ble Judges : Satish Chandra, J**

**Bench : Division Bench**

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## **Judgement**

Satish Chandra, J. - The petitioners operate stage carriage within the jurisdiction of the Passenger Tax Officer, Aligarh. They agreed to pay Passenger Tax on lump sum basis as prescribed by the Uttar Pradesh Motor Gadi (Yatri Kar) Adhiniyam, 1962 and its Rules. By U.P. Taxation Laws (Amendment) Act, 1972 (U.P. Act No. 11 of 1972), an additional tax was levied on every passenger at the rate of 10 paise on each fare provided the fare was not less than one rupee.

2. The petitioner say that they paid this additional tax on way-bill basis, namely calculating at the rate of 10 Paise per fare per journey. Their case is that they never entered into any agreement with the respondents to pay the additional tax on lump sum basis.

3. On 17th April, 1974, the State Government issued a notification increasing the lump sum amount by 25 per cent. The same day, the Government issued another notification whereby sub-rule (4-A) was added to Rule 5 of the Rules. This sub-rule provided that the lump sum payable in respect of the additional tax shall be calculated in accordance with the formula given there in and the amount so determined shall be added to the amount of the lump sum already payable. It seems that the Passenger Tax Officer made demands on the petitioners to pay additional amount on the basis that they were paying additional tax on lump sum basis, which hurt the petitioners, who have come to this Court. During the pendency of the writ petition, the State Government issued another notification on 16th June, 1975. By this notification, the pre-existing sub-rule (4-A) of the

Rule 5 was repealed and re-enacted. The re-enacted sub-rule (4-A) provides that the lump sum payable in respect of additional tax under sub-S. (3) of S. 3 of the Act shall be 25 per cent of the amount payable under sub-rule (3) and this amount shall also be payable along with the lump sum amount of the tax under sub-rule (3).

4. The petitioners grievance is that sub-rule 5 previous to the 1975 notification was applicable in cases where the additional tax was being paid on a lump sum basis. It was not applicable to those cases where the additional tax was being paid on the waybill basis. The petitioners further contended that they were paying additional tax on way-bill system and not on the lump sum basis. Hence the demand of the additional amount under sub-rule (4-A) of Rule 5 was illegal.

5. In the counter-affidavit, it has been averred that the petitioners, or at least most of them, had entered into agreements agreeing to pay additional tax on lump sum basis. In rejoinder, the petitioners have denied this. Neither the petitioners have produced any corroborative evidence to establish that they were paying the additional tax on way-bill nor unfortunately, have the respondents brought on the record any material to prove their case. The best evidence would have been the alleged agreements entered into by the petitioners agreeing to pay the additional tax on lump sum basis.

6. The legal position is quite clear, and the learned Standing Counsel also does not dispute, that the additional charge under sub-rule (4-A) of rule 5 cannot be levied on those operators who were paying additional tax on the way-bill system. In view of this legal position, it is apparent that the respondents cannot demand the additional amount under Rule 5 (4-A) from those operators who are, or were paying the additional tax on way-bill system. They can however, make that demand from those operators who agree, or had agreed to pay the additional tax on lump sum basis. Since it is not clear as to on which basis the petitioners are paying the additional tax, it is not a fit case in which this Court should issue any positive direction to the respondents. The Passenger Tax Officer, Aligarh, is however directed to act in accordance with the views expressed by us while making demands on the petitioners. The parties may, however, bear their own costs.