(2004) 08 DEL CK 0041

In the Delhi High Court

Case No : CWP 4025 of 2001

I.S. Goel and Another APPELLANT

Vs

The Commissioner - Transport and Another RESPONDENT

Date of Decision : 16-08-2004

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 12, 4, 57, 57(1), 58(1)
Delhi Motor Vehicles Rules, 1993 — Rule 31
Delhi Motor Vehicles Taxation Act, 1962 — Section 13, 13(2), 16, 3
Delhi Motor Vehicles Taxation Rules, 1963 — Rule 31(1)
Motor Vehicles Act, 1988 — Section 3, 39, 40, 44, 47(1)

Citation : (2004) 3 ACC 6 : (2004) 113 DLT 407 : (2004) 76 DRJ 343

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Ramesh Chandra, Geeta Mehrotra and Rama Rani, for the Appellant; Zubeda Begum, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—The vehicular pollution in Delhi became a major environmental problem and the Supreme Court considered its impact in public interest petitions filed to control such pollution. In WP(C) 13029/85 M.C. Mehta v. Union of India and Ors., directions were issued for conversion to CNG fuel for plying buses. The life span of these commercial vehicles was also specified as eight years.

2. The result of the directions passed by the Supreme Court was that the prohibited vehicles had to stop plying w.e.f. 1.4.2000. The concerned Department of the Government of NCT of Delhi thus issued orders to the owners of such vehicles and one such letter issued to the petitioners is as under:

"" ORDER

The bus (Transport Vehicle) No. DL1P 1090 owned by you had been registered on 01-Jan-1992 under the provision of Sec.39 of Motor Vehicle Act, 1988.

Whereas this bus/ vehicle has already been covered over 08 years on 01-Jan-2000.

And whereas the Hon''ble Supreme Court of India has passed order of 28-07-1998 that no bus (Transport Vehicle) more than 08 years old shall ply in NCT of Delhi after 31st March 2000 except on clear fuel CNG and thus the said transport vehicle is covered by the directions issued by the court in Writ Petition (Civil) No. 13029 of 1985 on vehicular pollution.

Whereas the Registration Certificate of the said Transport Vehicle (bus) stands automatically cancelled on 01-Apr-2000 u/s 55 of the Motor Vehicle Act, 1988 and Rules framed there under.

And, Therefore, the owner as per record of the Transport Deptt. is directed to surrender the Registration Certificate, Fitness Certificate and Permit of the aforesaid bus (Transport vehicle) for cancellation of registration (after taking tax clearance from the Accounts Branch of the Transport Department) immediately, failing which the said bus (Transport Vehicle) shall be impounded and strict action be taken in accordance with the law, rules and regulations.''''

3. Public notices were also issued for all such vehicles to be taken off the road and to remove outside the jurisdiction of the National Capital Territory of Delhi. No Objection Certificate was to be issued on deposit of certain documents for such transfer. The public advertisement was in the following terms:

''''PUBLIC NOTICE

ATTENTION:

owners and OPERATORS OF

TRANSPORT PASSENGER VEHICLES

The owners of the transport/commercial passenger vehicles are informed that their diesel/petrol driver vehicles which are more than 8 years old (and not converting on CNG mode) and affected by the orders of the Hon''ble Supreme Court of India in the matte of M.C. Mehta V/s Union of India and Ors. are required to go off the road and to move out of the jurisdiction of the NCT of Delhi. Against these vehicles, Transport Department will issue ''No Objection Certificate'' within three working days from the date of depositing the required complete original documents to the office of the MLO (HQ)/Registering Authority in case of light and heavy passenger transport vehicles and MLO (A/R and Taxi Unit) at Burari in case of autos and taxis.

The original documents to be submitted are indicated below:-

i. Certificate of Registration.

ii Original permit surrender slip.

iii Certificate of Fitness.

iv Up to date Motor Vehicle Tax Clearance Report (TCR) from the date of registration of the vehicle.

v Challan Clearance Report from Delhi Traffic Police.

vi Challan Clearance from Enforcement branch of Transport Department.

vii Theft Clearance Report from National Crime Record Bureau, R.K. Puram, New Delhi.

The owners are further informed that if they have failed so far to negotiate selling their vehicles to the buyers from outside Delhi, they may deposit their Original documents (i.e. RC, Permit or Surrender Slip and Fitness) to MLO (HQ) or MLO (A/R and Taxi Unit)/Registering Authority respectively in case of non-use of the vehicle for Tax exemption on production of the original copy of the Tax Clearance Report issued by Asstt. Accounts Officer (Recovery), Accounts Branch from the date of registration of the vehicle to the date of deposit of documents as stipulated u/s 13(2) of the Motor Vehicles Taxation Act, 1962 and Rule 31(1) of the Delhi Motor Vehicles Taxation Rules, 1963. Please note that without depositing the original documents (as delineated above and period for which tax exemption is not less than 30 days, no tax exemption could be granted under the law.

sd/-

(G.S. CHATURVEDI)

JOINT DIRECTOR (OPS and SECTT)

TELEPHONE NO.3930740.''''

4. The petitioners are engaged in travel business and are controlled by the same set of persons. The petitioners own a number of vehicles which were run on diesel and were more than eight years old. The petitioners contend that the Registration Certificate of all such vehicles thus stood automatically cancelled in pursuance to the orders received in May 2000 and quoted aforesaid. The petitioners thus claimed that from the said date, the petitioner are thus not liable to pay any road tax in respect of the vehicles which were taken off the road.

5. The disputes in the present writ petition have arisen on account of the rival contentions by the parties in respect of the interpretation of the provisions of the Delhi Motor Vehicles Taxation Act, 1962 (hereinafter referred to as ''the Taxation Act''), the public notices, the directions of the Supreme Court and the provisions of the Motor Vehicles Act, 1988 (hereinafter referred to as ''the MV Act''). The charging section of the Taxation Act giving authority to levy tax is Section 3 which is as under:

''''3. Levy of tax --(1) Subject to the other provisions of this act, on and from the commencement of this Act, there shall be levied and collected on all motor vehicles used or kept for use in Delhi, a tax at the rate specified in Schedule I.

(2) The Administrator may, by notification in the Official Gazette, increase from time to time, the rate specified in Schedule I in relation to any motor vehicles;

Provided that the rate as so increased shall in no case exceed the rate as so specified by more than twenty-five per cent thereof''''.

6. The contention of the petitioners based on the aforesaid provision is that unless a motor vehicle is used or kept for use in Delhi, the same cannot be subjected to levy of tax. Since the plying of such vehicles was prohibited w.e.f. 1.4.2000 in terms of the orders of the Supreme Court of India and the registration stood automatically cancelled, there can be no liability to pay any road tax on this basis. The tax is stated to have already been paid up to 30.6.2000 in advance.

7.The petitioners submit that since there were large number of such vehicles, all of them could not be sold at one go and had to be sold from time to time dependent on the willingness of a buyer. At the stage of sale of these vehicles for use outside Delhi, these vehicles had to be registered outside Delhi after obtaining a No Objection Certificate as was required u/s 48 of the MV Act. Section 48 is as under:

''''48. No objection certificate.--(1) The owner of a motor vehicle when applying for the assignment of a new registration mark under sub-section (1) of section 47, or where the transfer of a motor vehicle is to be effected in a State other than the State of its registration, the transferor of such vehicle when reporting the transfer under sub-section (1) of section 50, shall make an application in such form and in such manner as may be prescribed by the Central Government to the registering authority by which the vehicle was registered for the issue of a certificate (hereinafter in this section referred to as the no objection certificate), to the effect that the registering authority has no objection for assigning a new registration mark to the vehicle or as the case may be, for entering the particulars of the transfer of ownership in the certificate or registration.

(2) The registering authority shall, on receipt of an application under sub-section (1), issue a receipt in such form as may be prescribed by the Central Government.

(3) On receipt of an application under sub-section (1), the registering authority may, after making such inquiry and requiring the applicant to comply with such directions as it deems fit and within thirty days of the receipt thereof, by order in writing, communicate to the applicant that it has granted or refused to grant the no objection certificate:

Provided that a registering authority shall not refuse to grant the no objection certificate unless it has recorded in writing the reasons for doing so and a copy of the same has been communicated to the applicant.

(4) Where within a period of thirty days referred to in sub-section (3), the registering authority does not refuse to grant the no objection certificate or does

not communicate the refusal to the applicant, the registering authority shall be deemed to have granted the no objection certificate.

(5) Before granting or refusing to grant the no objection certificate, the registering authority shall obtain a report in writing from the police that no case relating to the theft of the motor vehicle concerned has been reported or is pending, verify whether all the amounts due to Government including road tax in respect of that motor vehicle have been paid and take into account such other factors as may be prescribed by the Central Government.

(6) The owner of the vehicle shall also inform at the earliest, in writing, the registering authority about the theft o his vehicle together with the name of the police station where the theft report was lodged, and the registering authority shall take into account such report while disposing of any application for no objection certification, registration, transfer of ownership or issue of duplicate registration certificate.''''

8. A reading of the aforesaid provision shows that on receipt of such an application, the registering authority may make an enquiry and require an applicant to comply with certain directions in terms of sub-section (3) after verifying that all amounts due to the government including road tax have been paid as stipulated in sub-section (5).

9. The petitioners claim to have approached the Accounts Department for no dues report and a computerized print-out was issued showing that dues up to 30.6.2000 had been paid. However, amounts were shown outstanding for the quarters thereafter along with penalty. This amount is stated to be Rs.1669/- along with penalty of a similar amount.

10. The petitioners contend that in view of the provisions of Section 3 of the Taxation Act, such amount could not have been demanded and the fact that the petitioners did not surrender the original Registration Certificate is of no consequence since the same were deemed to have been cancelled and is required to be delivered to the purchaser at the time of sale. The petitioners addressed a communication dated 6.6.2001 and received a response dated 18.6.2001 stating that the petitioners are required to pay the tax in terms of Section 48(5) of the MV Act read with Rule 57(1)(c) of the Central Motor Vehicles Rules, 1989 (hereinafter referred to as ''the said Rules''). Such tax had to be paid up-to-date and only thereafter the No Objection Certificate could be issued. The said Rule 57 is as under:

''''57. Transfer of ownership of vehicle purchased in public auction

(1) The person who has acquired or purchased a motor vehicle at a public auction conducted by or on behalf of the Central Government or a State Government shall make an application in Form 32 within thirty days of taking possession of the vehicle to the registering authority accompanied by--

(a) the appropriate fee as specified in rule 81;

(b) the certificates of registration and insurance;

(c) the certificate or order confirming the sale of the vehicle in his favor duly signed by the person authorised to conduct the auction; and

(d) the certified copy of the order of the Central Government or State Government authorising the auction of the vehicle.

(2) Where the vehicle auctioned is a vehicle without any registration mark or with a registration mark which on verification is found to be false, the registering authority shall, subject to the provisions of section 44, assign a new registration mark to the vehicle in the name of the Department of the Central Government or State Government auctioning the vehicle and thereafter record the entries of transfer of ownership of the vehicle giving the name and address of the person to whom the vehicle is sol.''''

11. However, simultaneously vide the said letter, attention of the petitioners was drawn to Section 13(2) of the Taxation Act which empowered the taxation authorities to grant exemption from payment of motor vehicles/road tax in case the complete documents were deposited and the period of exemption sought is more than 30 days. Section 13 of the Taxation Act is as under:

''''13. Exemptions-- (1) Where the registered owner or the person having possession or control of a motor vehicle is an agriculturist and that motor vehicle has been designed for agricultural operations and is used solely for such operations in relation to his own land then, that vehicle shall be exempt from the payment of the tax.

Explanations-- For the purposes of this sub-section the expression '''' agricultural operations'''' includes, --

(i) tilling, sowing, harvesting, crushing of any agricultural produce or any other similar operation carried out for the purpose of agriculture;

(ii) transport of manure, seeds, insecticides and other like articles required for work in the land from the market to the land; and

(iii) transport of any agricultural produce from the land to the place of storage or from the place of storage to the market.

(2) When the registered owner or the person having possession or control of a motor vehicle has given previous intimation in writing to the taxation authority that the motor vehicle would not be used in any public place for a particular period, being not less than one month, and deposits the certificate of registration of such motor vehicle with the taxation authority and obtains an acknowledgment Therefore from that authority, he shall be exempt from the payment of the tax for that period.

(3) Where the Administrator is of the opinion that it is necessary or expedient in the public interest so to do, he may, by notification in the Official Gazette, and

subject to such conditions as he may specify in the notification, exempt either totally or partially any class of motor vehicles other than those falling under sub-section (1) or any motor vehicles belonging to any class of persons from the payment of the tax.''''

12. The petitioners, however, contends that the question of exemption did not arise in the present case as the case of exemption would arise only if tax was payable. The petitioners have further claimed in the writ petition that a Certificate of Fitness is also sought u/s 56 of the MV Act and the prescribed authority insisted upon levying of penalty/late fee of Rs.20/- per day before issuing the Certificate of Fitness. This penalty/late fee is sought to be claimed by the authorities under Rule 31 of the Delhi Motor Vehicles Rules, 1993, which is as under:

'''' 31. Issue/Renewal of certificate of fitness :

(1)When a transport vehicle is produced for the issue/renewal of the certificate of fitness after the expiry of last certificate of fitness and no intimation is given regarding its non-use by the owner of the vehicle by surrender of its registration certificate to the registering authority, the vehicle shall not be deemed to be validly registered u/s 40 and in addition to fresh registration fee a late fee at the rate of Rupees twenty per day shall also be paid by the vehicle owner before the issue/renewal of the certificate of fitness u/s 56 of the act.

(2) At the time of the issue/renewal of registration certificate or certificate of fitness, the vehicle owner shall submit a proof of residence as given under rule 4 of the Central Motor Vehicles Rules, 1989.''''

13. The petitioner thus submits that the question of application of the Rule 31 would arise only in cases where a vehicle is required to be registered in Delhi and not where such registration is not to be renewed in Delhi. It is stated that in fact in respect of such vehicle, a Zero Fitness Certificate is being issued mentioning that the inspection unit had no objection against the vehicle obtaining an NOC u/s 48 of the MV Act. It is stated that there is no requirement of such Zero Fitness Certificate.

14. The writ petition has thus been filed seeking quashing of the demand for any tax or penalty in respect of such vehicles, restraint order against the respondents from demanding any Certificate of Fitness, a Zero Fitness Certificate or any late fee in respect thereof and for issuance of the No Objection Certificate without insistence of the payment of the aforesaid amounts.

15. The respondents have referred to the directions passed by the Hon''ble Supreme Court and do admit that w.e.f. 1.4.2000, there was a bar on plying of such buses. It is, however, submitted that in such cases, the petitioners were duty-bound to surrender the certificate of registration for cancellation and wide publicity was given for this. The object of this is stated to be to prevent continued use of old buses contrary to the directions passed by the Supreme

Court of India. In case of non-submission of the documents, the statutory levies such as Motor Vehicles Tax/Road Tax are required to be paid. This stringent procedure is stated to have been prescribed to deter misuse by the registered owners. The communication of May, 2000 is stated to have ma be it clear that the surrender of the original documents was required after taking tax clearance report from the Accounts Branch which the petitioners failed to do.

16. In view of the continued liability to pay the tax, the requirement of Section 48(5) of the MV Act is stated to have been not met for issuance of the No Dues Certificate. This is to be read with Rule 58(1)(c) of the Rules requiring evidence of payment of Motor Vehicles Tax. There is also a requirement u/s 58(1)(d) for No Tax Due certificate in case tax is not payable for a certain period.

17. It is submitted by the respondents that Section 56(1) of the MV Act requires a Fitness Certificate and the validity of the same is throughout India as provided in sub-section (5) of the said Section. Thus, a valid certificate of fitness was required for purposes of taking the vehicle outside the National Capital Territory of Delhi and in the absence of the same, it could not be validly registered. No exemption had been sought by the petitioners u/s 13(2) of the MV Act.

18. The primary contention of the respondents is that the respondents cannot be faulted with for providing that the Registration Certificate should be submitted to the authorities since the object was to see to the proper implementation of the orders of the Supreme Court and in violation of such surrender of certificates, a presumption could be drawn that the petitioners were either misusing the vehicle or at least the vehicle was capable of being misused.

19. A plea has also been taken that the order of taxation authority was appealable u/s 16 of the Taxation Act read with Rule 12 of the Rules and thus the present proceedings were not appropriate for determining the controversy in question. The order is apparently appealable but in my considered view since the matter has been pending for quite some time and interim directions have been issued, I see no reason now to relegate the petitioners to an appellate remedy and not to decide the matter on merits.

20. The respondents have also filed affidavits to show that a large number of buses were found violating the Supreme Court orders and running on the road as also the fact that the petitioner itself has, in fact for certain buses owned by it, surrendered the certificates.

21. Interim directions were granted in favor of the petitioners for transfer of the vehicles subject to the petitioners depositing the amount of road tax and late fee. The levy of penalty was stayed. In terms of the order dated 31.1.2002, this amount was directed to be released to the respondent authorities subject to the condition that in case it is found that the amount was levied without authority of law, it could carry interest at the rate of 12% per annum.

22. In my considered view, the complete dispute revolves around the

requirement stipulated by the respondents for submission of the Registration Certificate, original Fitness Certificate etc. as a pre-condition for the tax not to be levied u/s 3 of the Taxation Act.

23. Section 3 of the Taxation Act provides for the levy of tax in respect of motor vehicles. Such tax can be levied only for vehicles used or kept for use in Delhi. There can be no doubt that in view of the directions passed by the Supreme Court of India, there was an interdict against use of such vehicles in Delhi. The contention of the petitioners is thus based on this interdict whereby there is a prohibition of the Supreme Court rendering the vehicles incapable of use in Delhi. The plea is based on the fact that though the vehicle was lying in Delhi, it could not have been kept for use in Delhi once there was a prohibition to ply the vehicles on the road. Being a taxation statute, undoubtedly it has to be construed strictly.

24. The fact, however, remains as apparent from the data supplied by the respondents that there were efforts to ply various vehicles by bus operators in Delhi contrary to the directions of the Supreme Court of India. A requirement was thus stipulated for deposit of the original Registration Certificate to prevent such misuse. In case a vehicle owner did not submit the certificates, a presumption was sought to be drawn that the vehicle was being kept for use in Delhi, albeit unauthorizedly.

25. A wide publicity was given to this aspect of requirement of submission of the Registration Certificate in original. Not only this, personal communications were addressed to all such vehicle owners. There is no doubt that though such Registration Certificates were deemed to have been cancelled, the certificates were capable of being misused since under sub-section (5) of Section 56 of the MV Act, the Certificate of Fitness is effective and valid throughout India. In terms of the Supreme court directions, the bus could not ply in Delhi and thus had to be registered in an area where it could ply. The bus had to be thus re-registered before the appropriate registering authority.

26. The petitioners had in fact submitted documents in respect of some of the vehicles earlier and even subsequently but only made an issue in respect of the buses forming subject matter of the present writ petition.

27. In my considered view, it was in furtherance of the directions of the Supreme Court and its implementation and to enforce strictly the said orders that the respondent authorities rightly asked for submission of the original Registration Certificate and the Fitness Certificate. The plea of the petitioners that such original certificate would be required at the time of transfer is without basis since it was provided that a No Objection Certificate would be issued within three days of the deposit of the original documents and the necessary documents would be made available at the relevant time. Thus, for the grant of the No Objection Certificate u/s 48 of the MV Act, the deposit of the original Registration Certificate was made a pre-condition. It may also be noticed that sub-section (3)

of Section 48 provides that on receipt of any application for No Objection Certificate, the registering authority may require an applicant to comply with certain directions as it deems fit. In the present case, even prior to the same, a general direction had been issued requiring the original certificates to be deposited for grant of the No Objection Certificate.

28. The effect of the non-deposit of the original Registration Certificate by the petitioners is deemed to be a continuing liability on the part of the petitioner and thus when verification under sub-section (5) of Section 48 in respect of any government dues including road tax was made, the petitioners were shown in arrears for the quarters after June, 2000.

29. It is also to be noticed that the petitioners were informed in terms of the communication dated 18.6.2001 that if in a given case the petitioners were desirous of seeking exemption, an application u/s 13(2) of the Taxation Act had to be made The petitioners failed to do this on the ground that since there was no tax liability which could arise in case of the petitioners, there was no reason for the petitioners to apply for exemption.

30. In so far as the Certificate of Fitness is concerned, even for the vehicle to be taken outside Delhi for registration, there should be a Fitness Certificate. However, the Fitness Certificate cannot permit plying of the vehicle in Delhi. It is in the case peculiar circumstances arising from the directions passed by the Supreme court of India that the Zero Fitness Certificate was being issued. The fee recovered for the same cannot thus be challenged.

31. It is the unreasonable insistence of the petitioners not to comply with the directions to surrender the Registration and Fitness Certificate to prevent the plying of vehicles in Delhi which directions arose on account of the directions of the Supreme Court to prevent such plying, that the liability has arisen in case of the petitioners since it was deemed as if the petitioners were using the vehicle, albeit unauthorisedly. This deeming arose from the failure of the petitioners to submit the relevant documents. It may also be noticed that the total amount payable by the petitioners which was deposited in court and released to respondent was to the tune of Rs.7790/- and Rs.5190/-. It is thus not the quantum which is of much consequence but the insistence of the petitioners that it is not liable to pay the amount even on its failure to comply with the directions for deposit of the original Registration Certificate and the Fitness Certificate.

32. I find no infirmity with the decision of the respondents to interfere in exercise of jurisdiction under Article 226 of the Constitution of India.

33. Dismissed. Interim orders stand vacated.

34. Parties are left to bear their own costs.

