(1978) 01 RAJ CK 0017

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1491 of 1971 and 123 others

Jafruallah Khan APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 25-01-1978

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 226, 228A, 301

Citation : (1978) RLW 44 : (1978) WLN 16

Hon'ble Judges : A.P. Sen, Acting C.J.;R.L. Gupta, J

Bench : Division Bench

Judgement

A.P. Sen, Actg. C.J.

1. This batch of 124 writ petitions raise common question &, therefore, are disposed of by this common order.

2. The petitioners who provide transport facilities by runnin (sic) carriages, challenged the constitutional validity of the third proviso (sic) Rule (1) of Rule 8 of the Rajasthan Passengers and Goods Taxation Rules, 1959 (hereinafter referred to as the Rules''), and Notification No S.O. 21 dated 2-9-71, issued by the State Government thereunder, which provides for the manner in which the tax chargeable u/s 3 of the Rajasthan Passengers and Goods Taxation Act, 1959 (hereinafter referred to as ''the Act''), shall be paid, by affixing stamps on the tickets for fire to be issued to the passengers, is violative of their fundamental rights guaranteed under Articles 14 and 19(1)(g) and as infringing Articles 301 and 304 of the Constitution. The matters were accordingly placed before a Full Bench of 5 Judges as required by Article 228A of the Constitute on 10-8-77. At the hearing before the Full Bench, learned Counsel appearing for the petitioners conceded that there was no question of vires involved and, therefore, the petitions have now been placed for hearing on merits before the Division Bench.

3. The petitions give rise to two important questions, namely:

(i) Whether the third proviso to Sub-rule (1) of Rule 8 of the Rules is ultra vires the State Government as it is contrary to the charging provisions contained in Section 3 and the scheme of the Act?

(ii) Whether, on a proper construction of Rule 8D(3) of the Rules, the letter ''T'' in the formula E ? T ? R = ML means the number of one way trips allowed or expected to be made by the stage carriage on the route during the period for which a lump sum is calculated or means both way trips from one termini of the route to the other i.e. both coming and going for the purposes of determination of a lump-sum payable in lieu of the tax chargeable on fare in case of stage carriages?

4. At the very outset, we mist reject all the writ petitions mentioned above except : D.B. Civil Writ Petitions Nos. 31 to 33, 63 to 67, 75 to 91, 101 102, 142, 157, 159, 173, 196, 199 of 1972 and 2034/71, 200/72, 219/72, 321/72, 387 to 389 of 1972, 456/72 & 1637 of 1971, on the ground that the petitioners have not availed of the alternative remedy of an appeal provided by Section 28 of the Act. These petitions have directly been filed against the orders of assessment passed by the assessing authority. Article 226(3), as substituted by Section 38 of the Constitution (Forty Second Amendment) Act, 1976 interdicts the Court from entertaining any petition under Article 226 of the Constitution if the petitioner has an alternative remedy provided by law for the redress of any injury referred to in Sub-clause (b) and Sub-clause (c) of Clause (1) of Article 226. Even on general principles, we decline to entertain these writ petitions as the petitioners have an alternative remedy by way of an appeal. These writ petitions must accordingly fail on that ground alone. That apart, even on merits, these petitions must fail for reasons we shall presently state.

5. Section 3 of the Act provides that there shall be levied, charged and paid to the State Government a tax on all passengers and goods carried by Motor Vehicles, at such rate not exceeding 30% of the value of the fare or freight etc.

6 Section 4 o f the Act, which provides for the method of collection of tax reads,-

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 in case of public goods vehicles the State Government may accept a lump-sum in lieu of the tax chargeable on freight in the manner prescribed;

Provided further that in case of stage carriages or contract carriages the State Government may accept a lump-sum in lieu of the tax chargeable on fare in the manner prescribed.

7. Rule 8 of the Rules, so far as material, reads as follows:

8 Method of payment of tax. - (1) The tax chargeable under the Act shall be paid in the manner provided for in Sub-rules (2) and (3) of Rule 10.

Provided xxx xxx xxx Provided xxx xxx xxx

Provided further that the State Government may by notification direct that such class of owners as may be specified in the notification, shall pay tax by affixing to the ticket or goods receipts in the manner provided in these Rules or notified by the State Government, a stamp or stamps of the appropriate value issued by the State Government for the purposes of the Act;

Provided also that the owner of stage carriage may at his option pay tax in lump-sum in accordance with the provisions of Rule 8-D.

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8. The relevant provisions of Rule 8D which lay down the method for payment of a lump-sum in lieu of the tax chargeable on fare in case of stage carriages read as follows:

8D. Lump-sum in lieu of tax on stage carriages, - A lump-sum in lieu of stage carriages may be accepted by the State Government in the following manner:

(1) An application for acceptance of lump sum in lieu of the amount of tax shall be made to the Assessing Authority concerned in Form RPGT 19, duly supported by an affidavit twenty days in advance of the period for which agreement is to be made.

(2) Subject to the provisions of Clause (II) an agreement to accept a lump-sum in respect of any further period shall be for a period of one year or for the unexpired period of the currency of the permit, which ever is less.

(3) The maximum lump sum shall be determined according to the following formula, namely:

F ? T ? R = ML

Explanations. - In this formula-

(i) ''F'' means the total fare normally payable in respect of one way trip on the entire route for the full seating capacity of passengers and fifty percent of the standing capacity thereof, if any allowed;

(ii) ''T'' means the number of one way trips allowed or expected to be made by the stage carriage on the route during the period for which the lump-sum is calculated;

(iii) ''R'' means the rate of tax levied u/s 3 to be expressed in the form of a fraction such as when the rate of tax is 25% of the fare ''R'' would mean.

''257100; and

(iv) ''ML'' means maximum amount of lump sum to be so determined;

(4) The actual amount of lump sum to be accepted shall be exterminated by the Assessing Authority keeping in view the estimated amount of tax to be received as determined under Clause (3). Provided further that the actual amount of

lump sum to be fixed shall not, notwithstanding anything in the proceeding proviso, be less than the tax assessed in respect of the vehicle in the preceding year and if no assessment has been made such tax as is shown as payable in the returns for that year.

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9. Shr Chhangani learned Counsel for the petitioners contends that the third proviso to Sub-rule (1) of Rule 8 of the Rules is ultra vires he State Government, as it makes it obligatory for the stage carriage operators to buy the stamps before the collection of the fare from the passengers and the impugned notification makes the requirements of the proviso mandatory and, therefore, the stage carriage operators have no option but to purchase stamps for affixing them on the tickets to be issued to the passengers. It is urged that the method of payment of tax, as provided by Section 4 of the Act, is wholly reversed by framing Rule 8(1) of the Rules read with the third proviso thereof. It is further urged that the rule-making power of the State Government u/s 21 of the Act must be consistent with the provisions of the Act. It is also urge that Rule 8(1) read with the third proviso changes which entails a heavy and unreasonable burden on them, as they have to invest their money which is required to be paid by them in purchase of stamps in advance and which may or may not be realized from the passengers who are the real tax payers under the Act and, therefore, it imposes an unreasonable restriction on the freedom of trade guaranteed under Articles 19(1)(g) and 304(b) of the Constitution. We are afraid, none of these contentions can be accepted. The petitioners having abandoned their contention regarding the alleged constitutional validity of the third proviso to Sub-rule (1) of Rule 8 before the Full Bench, cannot be permitted to raise the contention now. Besides, the contention is, in our opinion, wholly devoid of substance.

10. On a plain reading of Section 4 of the Act, it is clear that the tax leviable on passengers an goods u/s 3 of the Act has to be paid to the State Government in the prescribed manner. The word "prescribed" is defined in Section 2(g) of the Act, as meaning "prescribed by Rules made under this Act". Section 21 of the Act confers power on the State Government to make Rules consistent with the Act, for securing the payment of tax and generally for the purposes of carrying into effect its provisions Rule 8 only provides for the method of payment of tax. The tax chargeable under the Act has to be paid in the maner provide for in Sub-rules (2) and (3) of Rule 10 of the Rules. In the case of owners of motor vehicles used for transport of passengers i.e., operators providing transport facilities by running stage carriages, the operators are required to pay the tax by affixing to the ticket or goods receipt, a stamp or stamps of the appropriate value issued by the State Government for the purposes of the Act. In the case of public goods vehicle, motor-cabs, or cycle rickshaws (including scooters) and three-wheeled motor vehicles of all kind, tax has to be paid in a lump-sum as may be fixed by the State Government from time to time by notification in this behalf under the first proviso to Rule 8(1) of the Rules. In such cases, payment of the lump-sum

to the Government shall be made in the manner laid down in Rule 8(1). The third proviso to Rule 8(1) is designed to facilitate the mode of recovery. Under the Act, the stage carriage operators act as collecting agents for the State Government. The third proviso only provides for a convenient mode of payment. It enables the stage carriage operators to buy stamps for affixing them on tickets to be issued to the passengers It cannot be said, by any stretch of imagination, that the third proviso reverses the method of collection provided for by Section 4 of the Act or changes the incidence of tax from the passengers on the operators of stage carriages. The tax is ultimately recovered from the passengers while issuing the tickets. Merely because these operators are required to purchase the stamps in advance does not change the real character of tax.

11. In Sainik Motors, Jodhpur and Others Vs. The State of Rajasthan, , their Lordships upheld the validity of Section 4 find proviso there of and held that they do not offend against Article 301 and Article 304 of the Constitution because there is no compulsion on the stage carriage operators to pay lump-sum. In dealing with the question, their Lordships adverted to the first proviso of Rule 8 with respect to payment in a Jump sum and observed that it creates an option. The lump sun paymentis a convenient mode by which an amount is payable per year irrespective of whether the tax would be more or less if calculated on actual fares and freights The operators pay in lump sum if they so choose, to avoid having to maintain accounts and to file returns and the Government accept it to avoid having to inspect accounts and to keep a check. The rates which are prescribed for a lump-sum payment per year'' are for those who wish to avail of them. Their Lordships further observed that the Act and the Rules must be read harmoniously & from reading this, it is plain that the apparent mandatory language of the Rule 8 and the notification still retains the permissible character of Section 4. According to their Lordships, Rule 8 only lays down what amount of the lump sum must be if lump sum payment is being made in lieu of the tax calculated on actual fares and freights.

12. By parity of reasoning, the validity of the third proviso, which is in challenge in these writ petitions, must be upheld. The third proviso is but another facet of the method of collection i.e., by purchase of stamps to be affixed on the tickets to be issued to the passengers, nor offends against the provisions of Section 4 of the Act or in any way, infringes the fundamental right to carry on the trade and business under Article 19(1)(g) or places any restrictions on freedom of trade and commerce intercourse amongst the States. The stage carriage operators have still an option to adopt the alternative method of payment of tax i.e. to pay a sumo sum, in lieu of the tax chargeable on fare in case of stage images, calculated in the manner provided by Rule 8D, by reason of the fifth proviso to Sub-rule (1) of Rule 8. The petitioners are also at liberty not to run their stage carriage unless they comply with the method of collection of tax as provided for by Section 4 of the Act read with Rule 8(1) and the third proviso thereof of the rules.

13. Next, the question is as to the mode of determination of the lump sum according to formula F ? T ? R ML as laid down in Rule 8D(3) of the rules. According to Shri Lodh, learned Counsel for the petitioners, the controversy is as to the precise meaning of the word ''trip'' in the letter ''T'', He contends that in common parlance, the ordinary meaning of the word ''trip'' means a journey to a destination and back i.e. both way, coming and going We are afraid, there is a fallacy in the argument. The contention does not take note of the Explanation to Rule 8D(3). It defines the letter ''T'' to mean one way trips allowed and expected to be made by the stage carriage on the route. No doubt, the word ''trip, may have different shades of meaning, but in the context of Rule 8D it can, therefore, have only one meaning viz., one way trip i.e. a journey to a destination in one direction only. In the Random House Dictionary of the English Language p. 1406, the following meaning is given.

(i) A run made by a boat, train, bus or the like between two points.

(ii) A single course of journey taken as a part of one s outwork etc.

(iii) Trip, expedition, journey etc. are terms for a course of travel made for a particular place usually for some specific purpose; trip is the general word, indicating any distance and returning by walking or any means of locomotion for either business or pleasure; a trip to Europe; a vaction trip; a Bus trip.

That is the common meaning of the word trip. Even if the word ''trip'' was susceptible of meaning a return journey i.e. both coning and going, the expression "one way trip" is destructive of the argument that it means a journey both ways. If the word ''trip'' means a journey both ways i.e. coming and going that meaning is qualified by the use of the words "one way". Further more, if the word ''trip'' in the letter ''T'' has that meaning, fare cannot be one way, it has to be both ways. That construction of ours finds support from the letter ''F''. The expression "one way trip" occurs in both the Idlers ''F'' and ''T'' and they must have the same meaning If any different meaning is given to the word ''trip'' in letter ''T'', then it would lead to patent absurdity.

14. While setting aside the assessment made by the Assistant Commercial Taxes Officer in exercise of his suo-moto powers of revision, the learned Additional Commissioner, Commercial Taxes, rightly observes:

The most important point for consideration is whether one return ''trip'' on the sanctioned route of the vehicle should be counted as one trip or two trips for calculating the maximum amount of lump sum. The term trip implies a journey to a destination and back But the qualifying word of "one way" restrict the scope of the word to a journey in one direction only. The return journey will thus be a second one way trip. The assessing authority has for calculating the maximum lump sum taken both the journey from the starting point to the destination and the return from that point to the initial starting point as trip, with the result that the number of one way trips taken in calculation is only one half of the actual number. The assessing authority has taken the number of return journey to be the number of one way trips. This interpretation and the calculation of lump sum amount in accordance there to were clearly wrong and against the provisions of law. A journey from A to B will be one way trip. The return from B to A will be second one way trip. Thus a return trip will be 2 one way trips.

15. In our judgment, that is the only construction possible of the letter ''T'' in the formula F ? T ? R : ML as laid down in Rule 8D of the Rules, in view of the Explanation thereto.

16. In that view, there is no need for us to deal with the subsidiary point taken by Shri Lodha, learned Counsel for the petitioners that the orders in revision passed by the learned Additional Commissioner, Commercial Taxes were vitiated because he approached the problem with a predetermined mind. It is pointed out that though he considered these cases on 22-9-71, the impugned orders purported to have been delivered on 24-9-71, were, in fact, already prepared and cyclostyled on 21-9-71 and only the date was altered by hand. The respondents in their reply have controverter this fart No useful purpose will be served in remitting the revisions to the Additional Commissioner, Commercial Taxes for a decision afresh, as we agree with the construction placed by him on the letter ''T'' in the formula as laid down in Rule 8D(3) of the Rules. In our view, it will only be an exercise in futility to send back casts to him.

17. The result, therefore, is that all the writ petitions fail and are dismissed. There shall be no order as to costs.

