(2009) 05 SHI CK 0013

In the High Court Of Himachal Pradesh

Kanshi Ram APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 28-05-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Himachal Pradesh Motor Vehicles Taxation Act, 1972 — Section 3A, 3A(1)

Citation : AIR 2009 HP 91 : (2011) 7 RCR(Civil) 1485 : (2009) 2 ShimLC 252

Hon'ble Judges : Surjit Singh, J;R.B. Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Surjit Singh, J.—Challenge has been thrown in this petition under Article 226 of the Constitution of India to the provision of Section 3-A of the Himachal Pradesh Motor Vehicle Taxation Act, 1972 and notification dated 23rd December, 1999 (Annexure PD), issued under Sub-section (1) of Section 3-A of the Himachal Pradesh Motor Vehicle Taxation Act, 1972, by the Government of Himachal Pradesh. The aforesaid provision of Himachal Pradesh Motor Vehicle Taxation Act, 1972 and the notification dated 23.12.1999 are sought to be declared as ultra vires and further prayer has been made for quashing and setting aside the order dated 5.7.2004 (Annexure PM), passed by Secretary, State Transport Authority-cum-Appellate Authority, whereby the petitioner has been called upon to pay road tax at the rate prescribed for National Highway.

2. Relevant facts are like this. Petitioner is a permit holder for plying buses on two routes, i.e. Mandi-Kumarda road and Mandi-Dharampur road. When the permits were granted, both the routes were State roads. In the years 1998-99, portions of these two routes were declared National Highway by the Government of India. Earlier petitioner was being charged tax u/s 3-A of Himachal Pradesh Motor Vehicle Taxation Act, 1972 at the rates notified for State roads. After the road was declared National Highway by the Central Government, a demand was raised for payment of tax at the rates notified for National Highways in respect of

those portions of the routes which were declared National Highway. Petitioner filed appeal before State Transport Authority-cum-Appellate Authority, challenging the demand raised by the Regional Transport Authority. Appeal stands dismissed.

3. Petitioner has filed the present writ petition, alleging that the State does not have the competence to enact law for levy of road tax in respect of National Highway and hence a demand made by the respondents for tax in respect of the portions of the routes declared as National Highway, is illegal and liable to be quashed. Another submission made by the learned Counsel is that the tax is sought to be charged on the basis of total number of passenger seats in the buses, irrespective of the fact whether the seats are occupied or un-occupied and that levy of tax in respect of un-occupied seats is impermissible in view of the law laid down by the Hon''ble Supreme Court of India in State of Himachal Pradesh and Others Etc. Etc. Vs. Nurpur Private Bus Operators Union and Others Etc. Etc.,

4. For appreciation of the submissions made by the learned Counsel for the petitioner, it is desirable to make reference to the provision of Section 3-A of Himachal Pradesh Motor Vehicle Taxation Act, 1972. The same is re-produced below:

SECTION 3-A

LEVY OF SPECIAL ROAD TAX:

(1) In addition to the tax levied under Section-3, on and from the commencement of the Himachal Pradesh Motor Vehicles Taxation (Amendment) Act, 1999, there shall be levied, charged and paid to the State Government, a Special Road Tax on all transport vehicles specified in column (2) of Schedule-Ill, used or kept for use in Himachal Pradesh, and at such rates as may be specified by the State Government, by notification but not exceeding the rates specified in column (3) 6f Schedule-Ill of this Act.

**(2) The rates of special road tax, as may be specified under Sub-section (1), in respect of stage carriages shall be applicable to and charged on the entire distance covered as per time table fixed by the Regional Transport Authority and shall be payable monthly by such date as may be notified by the State Government from time to time."

(3) Where a transport vehicle is plied without a valid permit or in any manner not authorized by the permit to be plied, there shall be levied, charged and paid to the State Government further special road tax in addition to the tax payable under Sub-section (1), on such vehicles at the rates as may be specified by the State Government, by notification, but not exceeding the rates specified in column (3) of Schedule-Ill of this Act.

(4) Where a transport vehicle is registered in a State other than the State of Himachal Pradesh, enters and is used on any public road, or kept for use, in the

State of Himachal Pradesh, the special road tax shall become chargeable, on such entry in the prescribed manner.

Explanation:

For the purpose of special road tax levied under this Act, transport vehicles shall include non-transport vehicles when used as transport vehicles by the owner.

5. Under the above reproduced provision of Himachal Pradesh Motor Vehicle Taxation Act, 1972 (hereinafter referred to as the ''Act''), notification has been issued by the Government of Himachal Pradesh. The same is Annexure (PE). Notification prescribes different rates of tax for buses providing ordinary service, buses providing express/night service, buses providing Semi deluxe facilities and buses with Deluxe facilities. Tax, as per notification, is to be calculated on the basis of capacity of the bus, in terms of seats. Also, the notification provides for levy of taxation at different rates for different roads, i.e. National Highway, State roads and Rural roads.

6. Contention raised on behalf of the petitioner that State does not have the power to legislate for levy of taxes on motor vehicles, using National Highway, cannot be accepted. State legislature may enact law for levy of tax on vehicles, using the roads falling within its area, irrespective of the fact whether the roads are National Highway or State Highways by virtue of Entry 57 List-II of Schedule-VII of the Constitution of India.

7. Learned Counsel submits that it is the Union of India who alone can enact laws pertaining to National Highways. He has referred to Entry 23 List I of Schedule-VII. The entry reads that laws can be enacted by the Union of India for declaration of National Highways. It does not pertain to taxation of vehicles using National Highways. A similar question was raised before the Hon''ble Supreme Court in M/s. International Tourist Corporation etc. etc. v. State of Haryana AIR 1991 SC 774. In that case, States had levied tax on passengers and goods carried through roads in the States, including National Highways. Competence of States to enact law for levy of tax on the passengers and goods carried through National Highways was challenged by reference to Entry 23 and Entry 24 of List-I of Schedule VII. Rejecting the contention, Hon''ble Supreme Court has held that the State was competent to legislate for levy of tax in respect of user of National Highway, by virtue of Entry 56 of List-II.

8. The present is a case where tax is levied not on passengers or goods carried by road, but on the vehicles using or kept for using the roads in the State of Himachal Pradesh. The Act has been passed under Entry 57 of List-II of Schedule-VII. The Act provides for levy of tax for use of all roads whether National Highways or State roads. On the analogy of the law laid down by the Hon''ble Supreme Court in the aforesaid case of International Tourist Corporation etc. It can unhesitatingly be said that as in the case of law enacted in accordance with Entry 56 of List-II, the State is competent to enact law for taxing the vehicle using National Highways under Entry 57 of List II also.

9. Coming to the second submission of the learned Counsel for the petitioner, we are of the considered view that the tax being on motor vehicles and not on passengers or goods carried therein, occupation of seats for the purpose of levying and charging tax is not a relevant factor. Learned Counsel for the petitioner places reliance upon the judgment of the Hon''ble Supreme Court in State of Himachal Pradesh and Others Etc. Etc. Vs. Nurpur Private Bus Operators Union and Others Etc. Etc., in support of his contention, that tax cannot be charged in respect of unoccupied seats. The case involved interpretation of provisions of a different Act i.e. H.P. Passengers and Goods Taxation Act, 1955. That Act pertained to levy of tax on passengers and goods carried by road and not levy of tax on motor vehicles using or making use of roads, as in present case. Under that Act, tax was levied not on transporters but on the passengers or the owners of the goods carried in the vehicles and the bus owners/truck owners were only the agents of the State for collection of the Tax and paying the same to the State.

10. In the present case, tax is levied on the motor vehicles for user of road and it is payable by the transporters themselves. This taxation has no nexus with the carriage of the passengers or the goods and, therefore, the fact whether seats are occupied or unoccupied, is of little relevance. Notification (Annexure PD) though speaks of number of seats available in the vehicle for use by passengers, but it is only for the purpose of working out the quantum of tax payable by different vehicles, depending upon the capacity of passengers that may be carried in them.

For the foregoing reasons, we see no merit in the writ petition. Therefore, the same is dismissed.

In view of disposal of main petition, pending application(s), if any, are also disposed of.

