(2004) 11 AHC CK 0104

In the Allahabad High Court

Case No : Writ Petition No. 2664 (M/B) of 2003

Lakhimpur Finvest Co. Ltd. APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 03-11-2004

Acts Referred:

Motor Vehicles Act, 1939 — Section 31A(5)
Motor Vehicles Act, 1988 — Section 2(8), 51, 51(5)
Uttar Pradesh Motor Vehicles Taxation Act, 1997 — Section 2, 20

Citation : (2005) 2 AWC 1608

Hon'ble Judges : Y.R. Tripathi, J;Pradeep Kant, J

Bench : Division Bench

Advocate : Ghaus Beg, for the Appellant; C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Pradeep Kant, J.—The petitioner, a finance company, has approached this Court against the order dated 6.5.2003 passed by the Assistant Regional Transport Officer (Administration), Lakhimpur Kheri, by means of which its prayer for granting fresh registration u/s 51(5) of the Motor Vehicles Act, 1988, hereinafter referred to as the Act, has been rejected.

2. The undisputed facts of the case are that the petitioner company, which is registered under the Indian Companies Act, 1956, has its Head Office at Lakhimpur. It deals with motor vehicle finance and, thus, supplies vehicles on the basis of hire-purchase agreement to the interested parties. The petitioner company also comes within the definition of the term "dealer" as defined u/s 2(8) of the Act. On the basis of hire-purchase agreement, a Mahindra and Mahindra Jeep was purchased by the respondent No. 4, for which the petitioner company advanced the finances. In pursuance of the said facility of providing finances, a hire-purchase agreement was entered into between the petitioner company and the respondent No. 4 on 19th July, 2002. The agreement provided for the payment of the amount advanced in given instalments at regular

intervals. In view of the terms and conditions as laid down in the hire-purchase agreement, the motor vehicle was handed over to the respondent No. 4 and the same was got registered in his name in accordance with the provisions of the Act. The name of respondent No. 4 was recorded as registered owner as per the hire-purchase agreement with the petitioner company in the certificate of registration. The said vehicle was used by the respondent No. 4 for some time as public service vehicle covered by All U. P. Permit issued by the Secretary, State Transport Authority, U. P. in his favour. It appears that the respondent No. 4 committed default in making the payment of instalments towards the amount advanced and, therefore, the petitioner company issued a notice dated 13.12.2002 for making the payment of dues, failing which it was to repossess the vehicle in accordance with the terms of the hire-purchase agreement. Respondent No. 4 did not respond to the said notice and, therefore, on 29th January, 2003, the petitioner company repossessed the aforesaid vehicle by taking it over from the respondent No. 4. The petitioner company also issued an auction notice on 5.2.2003, saying that in case the respondent No. 4 does not make the payment within seven days, the vehicle shall be auctioned as per provisions of the hire-purchase agreement. The petitioner company could not get the amount due from the respondent No. 4 and, therefore, it applied before the Regional Transport Officer for issuance of a fresh registration certificate in its favour as per provisions of Section 51(5) of the Act on 15.2.2003. A reminder was also sent on 3.3.2003 for issuing a fresh registration certificate, but the same has been refused by the Regional Transport Officer on the ground that there are dues regarding the tax and additional tax against the said vehicle and unless they are cleared by the petitioner company, fresh registration certificate cannot be granted.

3. In the counter-affidavit, the only defence, which has been taken, is that the petitioner company being a finance company and the vehicle being in its possession, would be deemed to be an "operator" within the meaning of Section 2 (g) of the U. P. Motor Vehicles Taxation Act, 1997 and, therefore, it is liable to make payment of taxes, which are due against the vehicle in question.

4. Section 2 (g) of the U. P. Motor Vehicles Taxation Act, 1997 defines the term "operator" and reads as under :

"(g) "operator" in respect of a transport vehicle means a person whose name is entered in the permit or in an authorization certificate issued under the Uttar Pradesh Motor Vehicles (Special Provisions) Act, 1976, and where there is no such permit or authorization certificate, the person whose name is entered in the certificate of registration in respect of such vehicle, and where the transport vehicle is subject of a hire-purchase agreement, the person in possession of the vehicle under that agreement and where any such person is a minor, the guardian of such minor ;"

5. The aforesaid section, thus, can be divided in the following three parts. "Operator" means as person :

(a) whose name is entered in the permit or in an authorization certificate issued under the Uttar Pradesh Motor Vehicles (Special Provisions] Act, 1976 ;

(b) where there is no such permit or authorization certificate, the person whose name is entered in the certificate of registration in respect of such vehicle ; and

(c) where the transport vehicle is the subject of a hire-purchase agreement, the person in possession of the vehicle under that agreement and where any such person is minor, the guardian of such minor.

6. Reliance has been placed by the learned counsel for the State on the aforesaid Clause (c) as marked by us in the definition of the term "operator" given in Section 2 (g) of the U. P. Motor Vehicles Taxation Act, 1997 to justify the refusal to grant fresh registration, on the ground that on the date when the tax is being collected, the petitioner company is in possession of the vehicle under the terms of the hire-purchase agreement, hence it is liable to clear off all the dues against the vehicle.

7. The argument, if accepted, would lead to anomalous result, as a finance company must be financing a number of motor vehicles, to various persons, under the hire-purchase agreement and if operators of those motor vehicles are allowed to ply them at the risk of non-payment of taxes, which are liable to be paid by them, when the vehicles are or were in their possession and at the same time, if such a defaulter operator also fails to repay the instalments then if the finance company under the terms of the hire-purchase agreement takes back the motor vehicle, in its possession, it will have to bear the responsibility of such a defaulter in the matter of tax dues also, for the period when the vehicle was not in the possession of the company, causing a huge liability upon the finance company, a proposition which can never be inferred from the above definition.

8. The aforesaid clause has to be read in conjunction with the clauses preceding the said clause and also one has to take into consideration the meaning and import of the term "operator". Even otherwise, there can be no quarrel that a person, whose name is entered in the permit or in an authorisation certificate issued under the U. P. Motor Vehicles (Special Provisions) Act, 1976 in respect of a transport vehicle, would be an "operator" and there is also no dispute that where no such permit or authorisation certificate has been issued, the person whose name is entered in the certificate of registration in respect of such vehicle shall be the "operator". In case of a transport vehicle which is subject-matter of a hire-purchase agreement, the "operator" would mean a person who was in possession of the vehicle or who has been in possession of the vehicle under the hire-purchase agreement during the period for which the tax has become due and has not been paid. By the fact of merely taking possession of the vehicle from the person to whom the financial assistance had been extended and who has failed to make repayment of the amount so advanced by committing default in paying the instalments, the finance company cannot be held to be responsible for the default in making the payment of tax for the period during which the

operator, namely the hire-purchaser was in possession of the vehicle or was using the same. It would be fastening the liability of tax upon a person, namely, the finance company who was neither in possession of the vehicle, nor was using the same, nor would it fall within the definition of the term "operator" as given hereinabove for the period in question. "Operator" in relation to a tax due for a particular period under the aforesaid provision would mean the person with whom the vehicle remained in possession If the motor vehicle is the subject-matter of a hire-purchase agreement or the persons who are the "operator" within the meaning of Section 2 (g) of the U. P. Motor Vehicles Taxation Act, 1997 and not the finance company.,

9. The right of finance company to retake possession of the vehicle on failure being committed by the hire-purchaser in making the payment of instalments is an independent right arising out of the agreement which has no relation with the possession, use and plying of the vehicle by the person in whose favour the registration certificate has been issued, nor it has any responsibility of making any payment of taxes which were to be paid by such operator, in case he fails to make payment of the same.

10. Under the provisions of Section 51(5) of the Act, a right has been conferred upon the finance company to get a fresh registration certificate, by following certain procedure and on satisfying the registering authority that the finance company has taken possession of the vehicle from the registered owner owing to the default under the provisions of the said agreement and that the registered owner refuses to deliver the certificate of registration or has absconded. Section 51(5) of the Act, which is relevant for the purpose, is reproduced below :

"(5) Where the person whose name has been specified in the certificate of registration as the person with whom the registered owner has entered into the said agreement, satisfies the registering authority that he has taken possession of the vehicle from the registered owner owing to the default of the registered owner under the provisions of the said agreement and that the registered owner refused to deliver the certificate of registration or has absconded, such authority may, after giving the registered owner an opportunity to make such representation as he may wish to make (by sending to him a notice by registered post acknowledgment due at his address entered in the certificate of registration) and notwithstanding that the certificate of registration is not produced before it, cancel the certificate and issue a fresh certificate of registration in the name of the person with whom the registered owner has entered into the said agreement :

Provided that a fresh certificate of registration shall not be issued in respect of a motor vehicle, unless such person pays the prescribed fee :

Provided further that a fresh certificate of registration issued in respect of a motor vehicle, other than a transport vehicle, shall be valid only for the remaining period for which the certificate cancelled under this Sub-section would have been in force."

11. Though Section 51 of the Act contains 9 Sub-sections, but it does not prescribe anywhere that in respect of a motor vehicle subject to the hire-purchase agreement if fresh registration is claimed by the finance company, then the finance company first would have to clear all the pending dues namely, tax and additional tax before getting the registration done, viz., for the period prior to the taking of possession from the hire-purchaser, when the vehicle was in possession of such purchaser.

12. In the case of State of Maharashtra and Others Vs. Sundaram Finance and Others, , the contention of the State before the Apex Court was that the finance company would be liable to pay the taxes (arrears of taxes) against the vehicle for which fresh registration has been sought u/s 31A (5) of the Motor Vehicles Act, 1939 (the provision is analogous to Section. 51 of the Motor Vehicles Act. 1988) and the Apex Court while considering the definition of the term ''"operator" as given in the Bombay Motor Vehicles (Taxation of Passengers) Act, 1958 (as amended in 1962) observed as under :

"6. In our view this interpretation is erroneous. As we read it, the amended definition of "operator" has to be read thus :

"Operator" means :

(a) any person whose name is entered in the permit as the holder thereof, and

(b) where a stage carriage is used or caused or allowed to be used without a permit, includes--

(i) a person in whose name the stage carriage is registered under the Motor Vehicles Act, or

(ii) the person having possession or control of such stage carriage."

13. The Apex Court upheld the order passed by the Division Bench of the High Court which had taken the view that the finance company could not be made liable for the arrears of passenger tax as ''operator'' of the vehicles.

14. An attempt has been made by the learned counsel for the State Sri Rakesh Bajpai to distinguish the aforesaid judgment of the Supreme Court on the basis of the definition of the term "operator" given in the U. P. Motor Vehicles Taxation Act, 1997 as against the definition given in the Bombay Motor Vehicles (Taxation of Passengers) Act. 1958. The definition of the term "operator" as given in the Bombay Motor Vehicles (Taxation, of Passengers) Act, 1958 is as follows :

"2. (4) operator means any person whose name is entered in the permit as the holder thereof ;"

15. This definition was amended in 1962, so that it read thus :

"2. (4) operator'' means any person whose name is entered in the permit as the holder thereof and where a stage carriage is used or caused or allowed to be used without a permit, includes the person in whose name the stage carriage is registered under the Motor Vehicles Act, 1939, or the person having possession or control of such stage carriage ;"

16. The amended definition of the term "operator" was thus read by the Apex Court as under :

"Operator" means :

(a) any person whose name is entered in the permit as the holder thereof and where a stage carriage is used or caused or allowed to be used without a permit, includes a person is whose name the stage carriage is registered under the Motor Vehicles Act, 1939. or

(b) the person having possession or control of such stage carriage."

17. In the definition of the term "operator" as given u/s 2 (g) of the U. P. Motor Vehicles Taxation Act, 1997, the clause ".............where the transport vehicle is the subject of hire-purchase agreement, the person in possession of the vehicle under that agreement............." has been put forward to assert that since on the date when the recovery of the tax was being made, the vehicle was in possession of the finance company, therefore, the company is liable for the payment of tax dues, whereas in the Bombay Act there was no such clause with respect to the vehicle being plied on hire-purchase agreement.

18. The argument is fallacious. In the Bombay Act, there was a clear stipulation that the person having possession or control of such stage carriage would be the "operator". This very clause has been considered by the Apex Court In the above case and the plea that the finance company would be the operator for the purpose of taxes due was rejected. A bare perusal and comparison of the two aforesaid clauses, one in the Bombay Act and the other in the U. P. Act of 1997 would reveal that in the Bombay Act, the requirement was only of actual possession and control of such stage carriage with any person, whereas in the U. P. Act of 1997, the possession should be under hire-purchase agreement. Thus, the Bombay Act, if interpreted in the manner the learned State counsel urged, would mean that any person, who is in possession or control of a stage carriage, would be liable to pay the tax. whereas this argument has not found favour with the Supreme Court. In U. P. Act of 1997, as already observed, whosoever be in possession of the vehicle under the hire-purchase agreement for the period during which the tax has become due and has not been paid, would be responsible for the payment and in case the finance company repossesses the vehicle on failure on the part of the hire-purchaser in making the payment of instalments as per terms of the agreement, the finance company would neither fall within the definition of the term "operator" for the purposes of realisation of the arrears of tax which had become due upon the hire-purchaser in whose possession and control the vehicle had been throughout, nor the said dues can be recovered '' treating the finance company as "operator" within the meaning of

Section 2 (g) as given in the U. P. Act of 1997.

19. The impugned order dated 6.5.2003, contained in Annexure-1 to the petition, thus cannot be sustained and is liable to be quashed, which is hereby quashed. We further direct that the Regional Transport Officer (Administration), Lakhimpur Kheri or any other authority competent under the Act and the Rules, shall reconsider the application of the petitioner for granting fresh registration u/s 51(5) of the Act and the registration shall not be refused merely on the ground that some arrears towards the tax/additional tax remain to be realised for the period during which the vehicle had been in possession and control of the hire-purchaser whose name was entered in the certificate of registration. However, this order will not come in the way of the respondent State for realising the amount of tax due from the person liable to pay the same and to proceed in accordance with the provisions of Section 20 of the U. P. Act of 1997 within a reasonable time.

20. The writ petition is allowed, Costs easy.

