(1969) 01 P&H CK 0019

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 2215 of 1964

Manohar Singh Sethi and Others — APPELLANT

Vs

The State of Punjab and Others — RESPONDENT

Date of Decision : 31-01-1969

Acts Referred:
Punjab Passengers and Goods Taxation Act, 1952 — Section 6(2)

Citation : AIR 1969 P&H 342 : (1970) 2 ILR (P&H) 215

Hon'ble Judges : Bal Raj Tuli, J

Bench : Single Bench

Advocate : N.K. Sodhi, for the Appellant; S.K. Jain, General, for the Respondent

Judgement

Manohar Singh Sethi, petitioner was in operator of bus service on Bhatinda Khara via Bajakhanna route for which he was granted a route permit on 27th December, 1958. This route permit was cancelled by the Supreme Court in 1962. He did not file any returns under the Punjab Passengers and Goods Taxation Act 16 of 1952 (hereinafter called ''the Act''), although he had got himself registered under the Act with effect from 10th June, 1961, vide R.C. No. 375. On the route permit issued to him, he was authorised to run motor vehicle PNT 3339 from Bhatinda to Khara via Bajakhana. Later on this vehicle was replaced by vehicle PNT 4129 with effect from 10th April , 1962. The case of the petitioner is that he field returns under the said Act regularly but the case of the respondents is that he did not file any return with regard to the vehicle which he was plying on the route for which he had been issued route permit of 27th December, 1958. The petitioner even got his vehicle registered on the route on 27th May 1961. The Assessing Authorities under the said Act issued notices to the petitioner for filing returns and producingthe account-books for the determination of th passenger tax due from him but he never attended his office in spite of service. The Assessing Authority , Bhatinca, passed an order on 10th July, 1964 m unoisubg a consolidated penalty of Rs. 5,000 u/s 6(2) of the said Act for not filing the returns.

The petitioner file an appeal before the Deputy Excise and Taxation Commissioner, Patiala Division , Patiala, with an application that his apepal may eb heard without requiring him todeposit the amount of penalty imposed . Vide order dated 26th September, 1964, the Appellate Auyhority directed him to deposit the sum of Rs. 4,000 by the 15th of October , 1964 if he wanted to have his appeal heard. If no deposit was maade by that date, the appeal was to be dismissed in Limine without any further reference to him; The petitioner filed a revision petitione against that order before the Revisional Authority on 8th October, 1964 btubefore it could be decided, hefiled the present writ petition in this Court as the date 15 October,1964, was drawign near. It is stated in the return that therevision fo the petitioner wasdismissed in his absence on 13th October 1964. He himself went to the revisional Authority onthat date and requested that the revision might be heards on the same deay. He was asked to wait for a little while and when the papers were placed before the Revisional Authority, the petitioner was called but he was absent. The ex parte order dismissinghis revision was passed inthese circumstances.

2. The petitioner died during the pendency of this writ petition and his legal representatives were brought on the record who have prosecuted this writ petition. The penalty imposed u/s 6 (2) o fht Act has been challenged as arbitrate, illegal and mala fide for te following reasons:--

"(I) That the impugned order does not fall within the ambit of Section 6 of th Act It cannot be said that the petitioner did to file the returns at any time during the six years and th Assessing Authority by deliberately shutting his eyes to the true facts has given a distorted version to assume jurisdiction to impose the penalty.

(ii) That the penalty had to be worked up on objective data and in the manner prescribed in Section 6 (2) of the Act. The Assessing Authority was bound by law to first determine the tax payable by the petitioner and then to decide if any sum not exceeding Rs. 5 per day during which the default was alleged to have been committed should be imposed by way of penalty or not. The impugned order is clear negation of observance of the rule of law.

(iii) That notice under Form PTT 10 could not be issue in the matter of imposition of penalty an such a notice is contemplated by Rule 29 of the Punjab Passengers and Goods Taxation Rules, 1952 (hereinafter called ''the rules'') . According to this rule, no assessment for a period of more than three years following the close of the financial Year to which the assessment relates could be made. The claim for assessment of tax, if any, was clearly barred by time under the said rules.

(iv) That the penalty of Rs. 5000 imposed in an arbitrary manner cannot at all be said to be the best judgment assessment which type of assessment is not recognised under the Act.

(v) That Section 6 which purports to give power to impose a penalty and also to recover escaped tax is ultra vires of the constitution inasmuch as it offends Article 14 thereof. There is no guiding factor in the Act to regulate unbridled power given by the said Section. A rule made under the Act like Rule 29 is also ultra vires since no rule can go against the Statute or make a provision not warranted by the law under which the rule is clamed to have been made".

3. The return to the petition has been filed by the Assessing Authority in which it has been contended that the petitioner had not filed the returns for any period and, therefore, the penalty was imposed on him for good reason.

4. In my opinion, the impugned order imposing the penalty dated 10th July, 1964, copy annexure ''E'' to the writ petition, deserves to be quashed on the simple ground that it has not been passed in accordance with law. Section 6 of the Act which authorises the imposition of penalty is in the following terms:-

"6 (1) An owner may be required to keep such accounts and to submit such returns at such intervals and to such authority as may be prescribed".

(2) If any owner fails, without reasonable cause, to submit return or pay the tax due according to such return within fifteen days of the due date, the assessing authority may direct that such owner shall, by way of penalty, pay, in addition to the amount of tax payable by him, a sum not exceeding five rupees for every day during which the default continues.

(3) Any penalty imposed under sub-section (2) shall be without prejudice to any punishment that may be imposed under provision of Section 17.

(4) If the prescribed authority is satisfied that the tax has not been correctly levied, charged and aid, he may, after giving the owner a reasonable opportunity of being heard, proceed to levy the amount of tax due and recover the same".

According to the rules, the return period is one month and there turn can be filed within fifteen days of the closure of the month. The penalty u/s 6 (2) of the Act has to be imposed in respect of every day of default and at the rate not exceeding Rs. 5 per day. It is therefore, evidence that a consolidated sum cannot be imposed as penalty as has been done by the Assessing Authority, The days of default have to be determined and the rate at which the penalty is imposed has also to be prescribed in the order so that the Appellate Authority may come to the conclusion whether the penalty imposed is in order. The Assessing Authority has taken the date of issue of the route permit to the petitioner as the date of operation of the motor vehicle on that route permit by him. There was no evidence before the Assessing Authority to that effect. It has be enstated at the Bar by the learned counsel for the petitioner that a rival transport company, namely Gandhara Motor Transport Company Ltd., filed an appeal agent the issue of the route permit to the petitioner and obtained a stay order. The appeal was dismissed and thereafter Gandhara Transport Company filed a writ petition in this Court and thereafter a Letters Patent Appeal was filed and finally the appeal was filed in the Supreme Court of India which cancelled the route permit granted to the petitioner somewhere in 1962. It is claimed that during this period of litigation the petitioner had not pled his motor vehicle on the said route for considerable time. In view fo this avement as to facts, it was the duty, of the Assessing Authority to find out as to when the petitioner had started operation of his motor vehicle on the said route permit. Unless the number of days in default had been found and the rate of penalty had been determined , the order imposing penalty u/s 6 (2) of the Act could not be passed. It is not permissible to impose a consolidated amount by way of penalty.

5. Section 6 (2) of the Act provides for a penalty to be imposed in addition to the amount of tax which makes it incumbent on the Assessing Authority to make assessment as to the tax due from the defaulter. Without make in the assessment of the tax due the penalty cannot be imposed . Merely because the petitioner did not produce his accounts not did he attend the office of the Assessing Authority in response to the notice issued to him, did not relive the Assessing Authority fo the duty cast upon him by Section 6 of the Act . For all these reasons, I hold that the order of the Assessing Authority is not in accordance with law and there is an error apparent on the face of it. The order, therefore, deserves to be quashed.

6. For the reasons given above, this petition is accepted with costs. The impugned order of assessment dated 10th July, 1964 and the appellate order dated 26th September, 1964 are hereby quashed . The respondents will be at liberty to make fresh assessment in accordance with law keeping in view the observations made above. Counsel''s fee Rs. 100.

7. MVJ/D. V. C.

8. Petition allowed.

