

(2003) 09 UK CK 0031

In the Uttarakhand High Court

Case No : Writ Petition No's. 454 and 781 (M/B) of 2003

Mohd. Ashfaq and Others

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 05-09-2003

Acts Referred:

Uttar Pradesh Motor Vehicles Taxation Act, 1997 — Section 6(1), 68(1), 68(2), 88, 88(5)

Uttar Pradesh Reorganisation Act, 2000 — Section 68, 87

Uttaranchal Motor Vehicles Taxation Reforms Act, 2003 — Section 30, 6(3)

Citation : (2004) 1 UC 136

Hon'ble Judges : S.H. Kapadia, C.J.; Rajesh Tandon, J

Bench : Division Bench

Advocate : Alok Singh, for the Appellant; N.B. Tewari, Learned C.S.C. for State of Uttaranchal, for the Respondent

Judgement

S.H. Kapadia, C.J.—Rule.

2. Respondents waived service.

3. Writ petition taken up for final hearing.

4. Both the writ petitions raise common question of fact and law and therefore, they are decided together. For the sake of convenience, facts in writ petition No. 454/2003 are reproduced below.

FACTS

5. On 15th November 1999, permits were given for plying buses on Deoband route valid upto 14th November 2004. These permits were given by Regional Transport Authority, Saharanpur in the State of Uttar Pradesh. The total length of the route is 174 k.ms., however, after reorganization of the State of Uttar Pradesh, 107 k.ms. have come in the territory of State of Uttaranchal and the remaining 67 k.ms. are still within the State of Uttar Pradesh. Therefore, the Deoband route traverses in two States. The Petitioners have been paying the tax

as well as the additional tax under the provisions of U.P. Motor Vehicles Taxation Act, 1997 to the Passenger Tax Officer, Saharanpur. They were paying tax prior to 9th November 2000 and they are paying tax even thereafter. The permits given to the Petitioners are valid for the whole Deoband route. The Petitioners are plying on the whole route, even after 9th November 2000. On 21/22nd November 2000, Additional Transport Commissioner, Uttaranchal issued a letter directing the Regional Transport Officer and Assistant Regional Transport Officers to realize tax and additional tax from the vehicles of Uttar Pradesh plying in the State of Uttaranchal. By letter dated 10th March 2003, the Bus Operators Association filed a representation to the Chief Secretary to nullify letters dated 22nd February 2002 and 22nd November 2002. However, Respondent No. 4, Assistant Regional Transport Officer, Uttaranchal has addressed a letter on 21.03.2003 to the Bus Union to pay tax and additional tax for the State of Uttaranchal failing which the vehicles shall be seized. According to this letter, since 107 k.ms. come with the territory of State of Uttaranchal, the bus operators were directed to pay proportionately the tax, as well as additional tax, on all vehicle of U.P. plying in the Uttaranchal. By this petition, the Petitioners have challenged the letter dated 21st March 2003 issued by Assistant Regional Transport Officer, Uttaranchal.

6. Mr. Alok Singh, learned Counsel for the Petitioners contended that u/s 68 of U.P. Reorganisation Act, 2000 a permit granted by Regional Transport Authority of State of U.P. before 9th November 2000, is deemed to be valid and effective in the transferred territory of Uttaranchal and the permit shall be valid and effective after 9th November 2000 subject to Section 88 of Motor Vehicles Act and it shall not be necessary to countersign such permits by Regional Transport Authority of Uttaranchal. He invited our attention to Section 88 of Motor Vehicles Act. u/s 88 of the Motor Vehicles Act, a permit granted by the Regional Transport Authority of one region, shall not be valid in any other region unless the permit has been countersigned by the Regional Transport Authority of the other region. u/s 88(5), every proposal to enter into an agreement between the States, to fix the number of permits which is proposed to be granted or countersigned in respect of each route, shall be published by each of the State Governments concerned in the official Gazette and in one or more news-papers in regional language. Such agreements shall relate to grant of permits or number of permits to be countersigned. Till today, the State of U.P. and the State of Uttaranchal have not entered into such agreement fixing the number of permits proposed to be granted or countersigned for each route or area. It was argued on behalf of the Petitioners that Assistant Transport Officer was not empowered to charge the tax and the additional tax from the Petitioners' vehicles without reciprocal agreement. That, after 9th November 2000, the route falls in two States and therefore, the Government of U.P. and Uttaranchal should enter into reciprocal transport agreement u/s 88 of the Motor Vehicles Act before levying taxes. It is argued that till today, the proposals of the State of U.P. and Uttaranchal in respect of reciprocal transport agreement, for single point tax system for plying

of vehicles on inter-state routes, have not been published, though the proposals have been drafted. It is argued that the Petitioners cannot be asked to pay the tax and the additional tax by State of Uttaranchal because the Petitioners have paid the tax and the additional tax to the State of U.P. for the entire route and therefore, the Petitioners cannot be asked to pay the tax twice over. The Petitioners state that they have no objection to pay the proportionate tax to the State of Uttaranchal and the proportionate tax to the State of U.P. but they cannot be asked to pay the tax twice over, particularly when they have paid tax for the entire route to the State of U.P.

7. Mr. N.B. Tewari, learned Chief Standing Counsel for the State of Uttaranchal, however, argued that Section 68 has no application. He argued that Section 68(2) gives exemptions in the matter of toll, entrance-fee or other charges after 9th November 2000. He contended, however, that in this case we are not concerned with the provision of Section 68(2) of the Act because Section 68(1) only deals with continuance of existing road transport permits, it does not deal with the power of the State of Uttaranchal to levy tax/additional tax. In this connection, Mr. Tewari placed reliance on Uttaranchal Motor Vehicles Taxation Reforms Act, 2003. He contended that u/s 6(1) of the Act, no public service vehicle shall be operated unless there has been payment of additional tax at the rate applicable to such vehicle. It is argued that in view of Uttaranchal Motor Vehicles Taxation Reforms Act, 2003, the Petitioners cannot be permitted to use 107 k.ms. out of 175 k.ms. route, which lies within the State of Uttaranchal without payment of taxes. He contended that the State of U.P. had no authority to charge, levy and recover the taxes/additional taxes for the entire route.

FINDINGS

8. The short point, which arises for determination, is whether Regional Transport Authority, Uttaranchal is entitled to levy additional tax on permit holders w.e.f. 09.11.2000. Petitioners obtained permits before 09.11.2000 from Regional Transport Authority, U.P. for the entire Deoband route admeasuring 174 k.ms. At that time, State of Uttaranchal was not in existence. On 09.11.2000, State of Uttaranchal came into existence. However, u/s 87 of U.P. Re-organization Act, any law enacted by State of U.P. before 09.11.2000 shall remain valid and effective till repealed by State of Uttaranchal. The Petitioners have been paying additional tax to Regional Transport Authority, U.P. under Uttar Pradesh Motor Vehicles Tax Act 1997 for the entire route. The Regional Transport Authority, U.P. has been recovering additional tax under that Act 1997 for the entire route. Till today the two Governments have not entered into reciprocal agreements as required u/s 88(5) of Motor Vehicles Act. It is only on 01.08.2003, that State of Uttaranchal has enacted Uttaranchal Motor Vehicles Tax Reforms Act, 2003. u/s 6(3), State of Uttaranchal is now authorized to levy additional tax to the extent of the route falling in the State of Uttaranchal. u/s 30 of Uttaranchal Motor Vehicles Reforms Act, 2003, U.P. Motor Vehicles Tax Act, 1997 is repealed. Hence after 01.08.2003, Petitioners will have to pay additional tax to State of

Uttaranchal to the extent of their plying the public service vehicles on the route falling in the area of this State of Uttaranchal. The Regional Transport Authority, U.P. has recovered additional tax from the Petitioners for the entire route upto 31.07.2003. Hence they will not be asked to pay the additional tax twice over. This is also because the State of Uttaranchal had not enacted the law before 01.08.2003. Hence all permit holders who have paid additional tax to Regional Transport Authority, U.P. before 01.08.2003, will not be asked to pay the said tax twice over by State of Uttaranchal. However, in view of Section 6(3) of Uttaranchal Motor Vehicles Tax Reforms Act, 2003 State of Uttaranchal will now be entitled to levy and recover additional tax after 01.08.2003. Taxes recovered by State of Uttaranchal from the permit holders (including Petitioners) would be entitled to refund, if they have been taxed twice over before 01.08.2003.

9. Accordingly, writ petition is disposed of. No order as to costs.