
(1992) 11 PAT CK 0028
In the Patna High Court
Case No : Criminal W.J.C. No. 234 of 1987

M/s Basudeo Prasad Lallan Kumar and Another	APPELLANT
Vs	
The State of Bihar and others	RESPONDENT

Date of Decision : 19-11-1992

Acts Referred:

Bihar Finance Act, 1981 — Section 31(2), 31(2)(a), 31(3)

Citation : (1992) 1 PLJR 445

Hon'ble Judges : B.N. Agrawal, J

Bench : Single Bench

Advocate : Ramesh Kumar Agrawal, for the Appellant;

Final Decision : Allowed

Judgement

B.N. Agrawal, J.—Heard the parties. This writ application has been filed for quashing the order dated 13.4.1987, contained in Annexure-2, whereby penalty of rupees 5,166/- has been imposed against the petitioners u/s 31 (3) of the Bihar Finance Act, 1981 (hereinafter referred to as the "Act").

2. Undisputedly the petitioners were carrying 150 bags of rice, which were loaded at Atara within the State of Uttar Pradesh for being carried to Muzaffarpur within the State of Bihar. During the course of inter State trading the said stock of rice along with the Truck was seized within the district of Patna as it is said that the petitioners' representative did not produce the declaration form as required u/s 31 (2) (a) of the Act as amended in the year, 1984. Prior to the year, 1981 there was no requirement of carrying declaration form along with the articles when the same were being carried out in a vehicle. By amendment in Section 31 (2) (a), which was made in the year, 1984 a person transporting goods was required to carry with him declaration in such form as may be prescribed by the Commissioner. After the amendment the Commissioner of Commercial Taxes by notification dated 28th of December, 1985 prescribed a form of declaration for inter State trade.

3. The validity of the said notification, by which form was prescribed for declaration was challenged before this Court and a Full Bench of this Court in the case of Harihar Prasad Debuka vs. State of Bihar and others, (1987 Patna Law Journal Reports, 106) quashed the same being violative of the provisions of the Constitution. The judgment was delivered by the Full Bench on 18.11.1986. Against the Full Bench judgment matter was taken to the Apex Court by the State of Bihar and by judgment dated 21.2.1989 in the case of State of Bihar and others vs. Harihar Prasad Debuka etc. (1989 PLJR 59 (S.C.) it has reversed the said Full Bench Judgment delivered by this Court.

4. In the present case petitioners were found carrying the article on 10.4.1987 without any declaration form. On 10.4.1987 since the notification have been struck down by this Court the provisions of Section 31 (2) of the Act requiring a person to carry declaration form while transporting an article was not workable. In view of the Full Bench judgment the petitioners on 10.4.87 were under a bona-fide belief that they were not required as to carry any declaration form while transporting an article. It can not be said that he has violated the provisions of Section 31 (2) (a) of the Act. In view of the aforesaid facts the aforesaid order of penalty can not be allowed to be maintained.

5. The truck in question was released on finishing security bonds in favour of respondent no. 3 pursuant to the order dated 17.4.1987. Since the penalty order is being quashed the authorities can not detain the truck in question, as such the petitioners should be discharged from the liability of security bonds. In the result, this application is allowed, the order imposing penalty against the petitioners, contained in Annexure-2 is hereby quashed and the petitioners are discharged from the liability of security bonds.