(2000) 03 PAT CK 0080

In the Patna High Court

Case No : C.W.J.C. No. 3100 of 1998 (R)

Nand Kishore Pandey APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 28-03-2000

Acts Referred:
Bihar Motor Vehicles Taxation Act, 1994 — Section 17(1)

Citation : AIR 2001 Patna 222 : (2000) 3 PLJR 248

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In the Instant writ application, petitioner has prayed for quashing the order dated 14-7-1998/17-7-1998 passed by respondent No. 2, Secretary, Department of Transport, Government of Bihar, Patna affirming the order dated 23-2-1998 passed by respondent No. 3-Joint Commissioner, State Transport, Government of Bihar. Patna, whereby and whereunder the1 petitioner''s application for exemption in payment of Road tax from 1-4-1992 till date of Issuance of fitness certificate has been rejected. Copies of orders have been filed and annexed as Annexures-4 and 5 to the writ application.

2. Facts of the case are not much in dispute. Petitioner owned and possessed commercial vehicle (trekker) bearing No. BR-17A-5575 which was purchased by him from B.P. Agarwalla and Sons, Dhanbad Branch after getting finance from the State Bank of India. The vehicle was registered in the name of the petitioner and certificate of registration was issued on 7-1-1991 and necessary road permit was also issued in the name of, the petitioner by North Chhotanagpur Regional Transport Authority, Hazaribagh. It appears that the petitioner''s vehicle was forcibly taken away by one Yogendra Singh and the signature of the petitioner was forcibly taken on blank paper and the petitioner was confined in his village house. The said Yogendra Singh got ownership of the vehicle transferred in his name and informed the petitioner that the vehicle belongs to him. Petitioner''s

case is that he was kept confined till 14-7-1992 and, therefore, he lodged First Information Report with the police station on 15-7-1992 and a criminal case was instituted being Case No. 318/92. Petitioner said to have informed the District Transport Officer, Dhanbad about the illegal and forcible seizure of the vehicle by the said Yogendra Singh. The said vehicle was accordingly seized in a criminal case and thereafter Yogendra Singh filed an application for release of the vehicle but the same was rejected. The release matter ultimately came up before this Court and the vehicle was finally released in favour of the petitioner by order of this Court dated 11 -8-1993 in Cr. Revision No. 99/93. After release of the vehicle in favour of the petitioner he made an application before the Transport Authority for the change of name of ownership which was transferred in the name of Yogendra Singh by the District Transport Officer. Dhanbad. When nothing was done by the authority, petitioner moved this Court by filing C.W.J.C. No. 439/95-R. The said writ application was disposed of on 17-5-1995 with a direction to the petitioner to file application before respondent-authority for cancellation of the ownership in the name of Yogendra Singh and for transfer of ownership in the name of the petitioner. In compliance of the said order petitioner moved the Transport Authority again and ultimately petitioner''s name was entered in the owner book and duplicate certificate was issued in favour of the petitioner cancelling owner book of Yogendra Singh. The change in the ownership was done by the respondent-authority on 5-7-1995. Petitioner then made an application for grant of fitness certificate for plying the vehicle but the fitness certificate was not granted on the ground that Road tax was not paid from 10-5-1992. Petitioner then moved the District Transport Officer for exemption in payment of road tax for the period 1-4-1993 to 6-4-1997. The matter ultimately came to respondent No. 3 who by order dated 23-3-1998 rejected the application holding that necessary application for exemption of tax was made for the first, time on 18-7-1995 although vehicle came in possession of the petitioner on 21 -8-1993. Petitioner then preferred an appeal before respondent No. 2, who disposed of the appeal on 14-7-1998 and affirmed the order'' passed by respondent No. 3 holding that in absence of any evidence of the user of the vehicle petitioner is not entitled to get any exemption and further held that necessary application ought to have been filed within 30 days in terms of the Section 17(1) of the Bihar Motor Vehicles Taxation Act, 1994.

3. I have heard Mr. K.N. Prasad, learned Senior Counsel for the petitioner and Mr. A. Sahay, learned Government Advocate. I have also gone through the counter-affidavit filed by the respondents. Respondents'' case is that since the vehicle after release came in possession of the petitioner on 21-8-1993, he is liable to pay road tax from 1-4-1993 to 6-4-1997. It is further stated that petitioner filed a petition for remission of tax on 18-7-1995 but he kept silent on the point of payment of tax or even for tax remission from the date of taking delivery of vehicle in question.

4. Government Advocate drawn my attention to Section 17(1) of the said Act and submitted that admittedly vehicle was released in favour of the petitioner on

21-8-1993 and, therefore, application for remission of tax ought to have been filed within 30 days from that date but application was filed on 18-7-1995. According to learned counsel respondent-authority rightly rejected the claim of the petitioner for waiver of road tax.

5. Admittedly, the ownership of the vehicle stood in the name of the petitioner prior to 4-7-1992 and the road tax and the fitness certificate was issued and paid up to March, 1993. However, the vehicle said to have been forcibly taken away by one Yogendra Singh who get his name entered in the owner book and the ownership of the vehicle was transferred on 4-7-1992 by the respondent-authority. Thereafter, a criminal case was instituted at the instance of the petitioner and the vehicle was ultimately released by the order dated 11-8-1993 passed by this Court in Cr. Revision No. 99/ 93. Accordingly, vehicle came in possession of the petitioner in August, 1993 but the ownership of the vehicle stood in the name of Yogendra Singh. Petitioner, therefore, immediately filed an application for transfer of ownership of the vehicle but the said application remain pending and no order was passed by the Transport Authority. Petitioner was, therefore, compelled to move this Court again by filing C.W.J.C. No. 439/95-R. The said writ application was disposed of on 17-5-1995 with a direction to the petitioner to file a petition for cancellation of ownership of Yogendra Singh and for transfer of ownership in his name. In terms of the direction of this Court petitioner again moved Transport Authority and ultimately the ownership of the vehicle standing in the name of Yogendra Singh was cancelled and duplicate owner book was issued in favour of the petitioner on 5-7-1995. Immediately after issuance of owner book in favour of the petitioner he made application on 18-7-1995 for remission of tax on the ground stated herein before. From perusal of the impugned orders it appears that the authority have proceeded on the basis that when vehicle was released in favour of the petitioner on 21-8-1993 he should have made an application for remission within 30 days from the date of release of the vehicle. In my opinion both the authorities have not correctly applied the law in the facts and circumstances of the case. As noticed above, although vehicle was released on 21-8-1993 in favour of the petitioner but the ownership remained in the name of Yogendra Singh and that is why the petitioner immediately moved Transport Authority for the transfer of ownership. That application was kept pending by the authority for about 2 years and the petitioner was compelled to move this Court by filing C.W.J.C. No. 439/ 95-R. It was only after this Court issued appropriate direction to the authorities for disposing of the petitioner''s application the matter was taken up and the ownership of the vehicle was transferred in favour of the petitioner on 5-7-1995. It appears from the order dated 15-2-1997 passed by District Transport Officer. Dhanbad that a report was called for from the Motor Vehicle Inspector on the question whether the vehicle was plied on the road or not by the petitioner, but neither any report was submitted by the Inspector nor any material was brought on record to the effect that the vehicle was kept on use on the road. However, when the matter was pending before respondent No. 3, a report was submitted

by the Motor Vehicle Inspector. In the said report, he stated that he had no knowledge or information about the use of the Motor Vehicle on the road. In spite of the materials brought on record the respondent-authorities have rejected the application for remission of tax on the ground that the said application ought to have been filed within 30 days from the date of release of the vehicle. In my opinion, the approach of the authorities are totally illegal, arbitrary and unjustified. It has been rightly contended by the petitioner that unless ownership of the vehicle is transferred in the name of the petitioner he shall not be in a position to make application for remission of road tax. Although vehicle was released in favour of the petitioner on 21-8-1993 but the ownership of the vehicle was transferred on 5-7-1995 for no fault of the petitioner. In that view of the matter, the impugned orders passed by the respondent-authorities cannot be sustained in law.

6. For the reasons aforesaid, this writ application is allowed and the impugned orders passed by respondent-authorities are set aside. It is held that petitioner is entitled to remission in payment of road tax as claimed by the petitioner. The respondent-authorities are, therefore, directed to allow remission in payment of road tax for the period claimed by the petitioner and grant fitness certificate and road permit in accordance with law.