(1978) 04 AHC CK 0050

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 252 of 1975

Om Prakash Arora and others APPELLANT

Vs

State of U.P.and others RESPONDENT

Date of Decision : 28-04-1978

Acts Referred:

Uttar Pradesh Motor Gadi (Yatri Kar) Adhiniyam, 1962 — Rule 5(4A)

Citation : (1978) 04 AHC CK 0050

Hon'ble Judges : Satish Chandra, CJ and R.M.Sahai, J

Final Decision : Dismissed

Judgement

Satish Chandra, C.J.

The petitioners operate stage carriages. They agreed to pay passenger tax on lump sum basis as prescribed by the Uttar Pradesh Motor Gadi (Yatri Kar) Adhiniyam, 1962 and its Rules. By U''.P. Taxation Laws (Amendment) Act, 1972 (U.P. Act No. 11 of 1972) an additional tax was levied at the rate of 10 paise per passenger, provided the fare was not less than one rupee.

The Amending Act of 1972 that the provisions of the Act will apply likewise to additional tax with the result that Additional tax also became payable either on the waybill system or, in cases where the operators agreed to enter into such agreements, on lump sum basis.

On April 17, 1974 the State Government issued a notification increasing ''the lump sum amount by 25%. By another notification of the same date, subrule (4A) was added to Rule 5 of the Rules. This subrule provided the method of calculation of the increase of 25% to the additional tax.

On July 16, 1975 the State Government issued another notification whereby subrule (4A) of Rule 5 was repealed and reenacted. As so reenacted subrule (4A) provided the method of calculating the additional tax.

The petitioner''s case is that subrule (4A), as it stood originally or as it stands now after its repealing enactment, applies only to those cases where the operators have entered into an agreement to pay additional tax on lump sum basis. The passengers tax officer had no authority to demand payment of additional tax on any increase made to it in pursuance to the Government notifications from those operators who have not entered into any agreement to pay additional tax on lump sum basis. In many of these writ petitions, demands have been made which have been challenged on this ground.

In the counteraffidavits, it has been clarified that the stage carriage operators had and have an option to pay the ''tax or the additional tax on either of the two methods, namely, lump sum or way bill system. In those cases where they have chosen to pay it on the lump sum basis only, they have to pay additional demand made by virtue of the change in the rules. Those operators who were paying it on the waybill system, are not at all concerned with the increase in the additional tax. Such increase is confined only to those cases where additional tax is being paid on the lump sum basis. The learned Standing Counsel also argued that the authorities have no objection if the operators who were paying the additional tax on the waybill system continue to do so. Their grievance is that the operators are neither paying additional tax on the waybill system nor on the lump sum basis even where they have entered into agreements to pay the additional tax on lump sum basis. To some extent, this grievance is also justified.

The legal position is quite clear. It was made clear in a decision of this Court in Gyan Deo Sharma and others v. State of U. P. and another (1977 U.P.T.C. 539) which position was reiterated in P. S. Yadav v. State of U. P. and others (1978 U.P.T.C. 117) in these decisions, it was observed:

"The legal position is quite clear and the learned Standing Counsel also does not dispute that the additional charge under subrule (4A) of rule 5 cannot be levied on those operators who were paying additional tax on the waybill system. In view of this legal position, it is apparent that the respondents cannot demand the additional amount under Rule 5(4A) from (those operators who are, or were paying the additional tax on waybill system. Trey can however, make that demand from those operators who agree or had agreed to pay the additional tax on lump sum basis."

In some of the present cases, it is not clear whether the petitioners had entered into the agreement to pay the additional tax on the lump sum basis. It is also not clearly stated that the petitioners are continuing to pay the additional tax on the waybill system. Under the circumstances, it is difficult to grant any actual relief to the petitioners barring a direction that the Passenger Tax Officer concerned will act in accordance with the legal position mentioned above.

In some of the petitioners, it has been alleged that the petitioners were compelled or coerced into entering into an agreement to pay additional tax on lump sum basis. The respondents denied any coercion or compulsion. Since the facts are disputed, we are not in a position to grant any relief on''4that basis. If the petitioners had entered into any such agreements, they are bound to pay increased additional tax.

Subject to these observations, the petition fail and are accordingly dismissed. The parties shall, however, bear their own costs.

