

(1989) 02 OHC CK 0001
In the Orissa High Court
Case No : O.J.C. No. 1687 of 1988

Prafulla Kumar Patnaik

APPELLANT

Vs

Regional Transport Authority and Others

RESPONDENT

Date of Decision : 27-02-1989

Acts Referred:

Motor Vehicles Act, 1988 — Section 22, 38, 39(1)
Orissa Motor Vehicles Taxation Act, 1975 — Section 10, 11, 12, 13, 14

Citation : (1989) 68 CLT 136

Hon'ble Judges : V. Gopalaswamy, J; D.P. Mohapatra, J

Bench : Division Bench

Advocate : B. Pal, S.C. Parija and A.C. Mohanty, for the Appellant; R.N. Sinha and S.N. Sinha for opp. party No. 3 and Standing Counsel (Transport) for opp. party Nos. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

D.P. Mohapatra, J.—The Petitioner, a transport operator, has filed this writ petition praying, inter alia, to quash the orders filed as Annexure- 2 and Annexure -2/A and further to direct the opposite party No. 2, the Regional Transport Officer, Koraput to grant temporary permit to him on the route Podwa to Indravati Via Koraput. The Regional Transport Authority, Koraput and the Orissa State Financial Corporation represented by its Managing Director have been impleaded in the writ petition as opposite parties 1 and 3 respectively.

2. The gist of the case set out in the writ petition is as follows:

The Petitioner was plying his bus bearing registration No. DRK 654 on the route Podwa to Indravati on the strength of permits granted by the Regional Transport Authority, Koraput or its Secretary, the Regional Transport Officer since December, 1984. The vehicle was hypothecated to the Orissa State Financial Corporation. Due to default in payment of dues authorities of the Corporation seized the bus from Jeypore Bus-stand on 23rd November, 1987 and took it to the garage of the Corporation situated at Cuttack. Soon thereafter, it is alleged

by the Petitioner, the authorities of the Corporation by their registered letter No. 4472(2) intimated to the Regional Transport Officer, about the temporary discontinuance in use of the bus from 23rd November, 1987 to 30th of June, 1988. The application is stated to have been submitted in Form "H" as prescribed under the provisions of the Orissa Motor Vehicles Taxation Act, 1975 (hereinafter referred to as the "Taxation Act"). It is relevant to mention here that the Petitioner had paid the tax for the month of November, 1987 and did not pay any tax for subsequent period. The bus of the Petitioner was released by the Corporation on 18th of April, 1988, after necessary repairs the vehicle was produced before the R.T.O. for grant of certificate of fitness as well as for temporary route permit to enable the Petitioner to ply the vehicle. The certificate of fitness in respect of the vehicle had expired on 30th November, 1987. The R.T.O. who is the taxing authority under the Taxation Act informed the Petitioner by his letter dated 15th of May, 1988, as per Annexure - 2 that he was to pay Rs. 75,806/- towards motor vehicle tax along with penalty thereon for the period from December, 1987 to May, 1988 and required the Petitioner to clear up the dues within fifteen days. Subsequently the said authority raised another demand of tax of Rs. 36,596/- for the period from 1-12-1987 to 30-6-1988 vide its notice No. 3673/88 dated 7-9-1988 as per Annexure - 2/A.

On getting the aforesaid intimations the Petitioner moved the authorities of the Corporation with request to pay the tax since the vehicle was admittedly in possession and in control of the Corporation during the period in question. The Manager (Recovery) of the Corporation by his letter dated 16th of May, 1988, as alleged by the Petitioner, requested the R.T.O. to permit the off-road for the Petitioner's vehicle since the same was in the garage of the Corporation during the period.

On the facts narrated above, the Petitioner contends that the demand of tax from him was illegal and unjust since off-road intimation as required under the provisions of the Taxation Act had been furnished by the authorities of the Corporation and that during the period in question the Petitioner had not kept the vehicle for use since it had been seized by the authorities of the Corporation and was throughout in their possession and control. The alternative submissions made by the Petitioner is that if it is held that there is liability for the tax in respect of the vehicle it is the Corporation that should be directed to bear the liability in the facts and circumstances of the case.

3. The other aspect of the Petitioner's case relates to refusal of the R.T.O. to grant temporary stage carriage permit for his vehicle after it was released by the Corporation. The gist of the case of the Petitioner on this aspect is that successive applications for temporary permits filed by him for the routes. Podwa to Indravati via Koraput and also Nandapur to Indravati were turned down by the R.T.O. arbitrarily, illegally and without any basis and justification though he was an old operator on the route till the seizure of his vehicle by the Corporation. It is the further cases of the Petitioner that he had even carried out the illegal

demands made by the R.T.O to deposit tax for the period mentioned in the applications for temporary permit and the said amounts were neither refunded nor adjusted for periods mentioned in subsequent applications and have been illegally retained by the authority. It is also contended that the last application for temporary permit was rejected giving the reason that there was no vacancy on the route Podwa to Indravati via Koraput on which another operator, one P.V.R. Patnaik, was granted a temporary permit. According to the Petitioner his applications for permit were rejected to accommodate the above named operator on the route.

4. The opposite parties 1 and 2, the transport authorities, in their counter affidavit have contested the claims of the Petitioner. Perusal of the affidavit shows that most of the facts discussed earlier in this judgment have been accepted by the opposite parties. Regarding the off-road intimation sent by the Corporation it is stated in the counter that intimation was received on 25-2-1988 seeking temporary discontinuance in use of the vehicle in question for the period from 23-11-1987 to 30-6-1988. It was not accepted since it was not sent in time and the necessary documents had not been sent with it. According to the opposite parties, the motor vehicle tax demanded from the Petitioner for the period from December, 1987 to May 1988 was Rs. 31,368/- which was revised to Rs. 36,596/ adding a sum of Rs. 5,228/- for the month of June, 1988 (vide Annexure - A/2) and the amount of penalty was Rs44,430/-. It appears from the counter affidavit that the fitness certificate for the vehicle was issued on 13-7-1988 when all the requirements were satisfied by the Petitioner.

Regarding the case relating to refusal to grant temporary permit to the Petitioner, it appears from the averments made in the counter affidavit that the main reason was the substantial arrears of motor vehicle tax outstanding against the Petitioner.

5. Though the two aspects of the dispute raised by the Petitioner have some links with each other it will be convenient to deal with them separately. I will first deal with the controversy relating to liability for motor vehicle tax. Section 3 of the Taxation Act which provides for the levy of tax reads as follows:

3(1) Subject to the other provisions of this Act, on and from the date of commencement of this Act there shall be levied on every motor vehicle used or kept for use within the State a tax at the rate specified in the Schedule.

(2) The State Government may by notification, from time to time, increase the rate of tax specified in the Schedule.

Provided that such increase shall not in the aggregate exceed fifty per cent of the rate specified in the Schedule on the date of publication of this Act in the Gazette.

(3) All references made in this Act to the Schedule shall be construed as reference to the Schedule as for the time being amended in exercise of the powers conferred by this section.

Explanation- An owner who keeps a transport vehicle for which the certificate of fitness and the certificate of registration are valid, or an owner who keeps any other motor vehicle, of which the certificate of registration is valid, shall, for the purposes of this Act be presumed to keep such vehicle for use:

Provided that if the taxing officer finds a motor vehicle having been used on any day during the period for which the registration certificate of a vehicle has been suspended or cancelled under the relevant provisions of the Motor Vehicles Act such vehicle shall be deemed to have been kept for use for the whole period without payment of tax.

Section 3A which was inserted in the Act by Orissa Act 2 of 1986 and provides for levy of additional tax is quoted hereunder:

3A.(1). Subject to the other provisions of this Act, on and from the 18th October, 1985, there shall be levied on every stage carriage and goods vehicle used or kept for use within the State, an additional tax at a rate specified in the Schedule.

(2) The State Government may, by notification from time to time increase the rate of additional tax specified in the Schedule.

Provided that such increase shall not in the aggregate exceed fifty percent of the rate specified in the Schedule as on the 18th October, 1985.

(3) The provisions contained in Sub-section (3) of Section 3 including the Explanation thereunder, Sub-sections (1) to (3) of Section 4, Section 6 and Sections 11 to 20 shall mutatis mutandis apply in relation to the additional tax payable under Sub-section (1) as they apply in relation to the tax payable u/s 3.

Under the provisions in Section 4 the tax is required to be paid in advance within such time and in such manner as may be prescribed, to the taxing officer by the registered owner or person having possession or control of the vehicle (emphasis supplied). The period in respect of which tax is to be paid under Sub-section (1) may be a year at the rate specified in the Schedule; or one or more quarters at one-fourth of the annual rate for each quarter; or any period less than a quarter expiring on the last date of any quarter at one-twelfth of the annual rate for every month or part of a month comprising such period. Under Sub-section (4) of Section 4, it is provided that at the time of making payment of tax for any period under Sub-section (1) a valid certificate of registration and a valid certificate of insurance in respect of the motor vehicle complying with the provisions of the Motor Vehicles Act, shall be produced before the taxing officer. Section 10 of the Act which deals with prior intimation of temporary discontinuance of use of a vehicle runs thus:

10(1). Whenever any motor vehicle is intended not to be used for any period the registered owner or person having possession or control thereof shall on or before the date of expiry of the term for which tax has been paid, deliver to the taxing officer, an undertaking duly signed and verified in the prescribed form and manner specifying the period aforesaid and the place where the motor vehicle is

to be kept along with such other particulars as may be prescribed and the registration certificate. Fitness certificate permit and tax token, then current and shall from time to time by delivering further undertakings give prior intimation to the concerned taxing officer of the extension, if any of the said period and the changes if any, of the place where the motor vehicle shall be kept:

Provided that no such undertaking shall relate to a period exceeding one year at a time.

(2) If at any time during the period covered by an undertaking as aforesaid the motor vehicle is found being used or is kept at a place in contravention of any such undertaking, such vehicle shall for the purposes of this Act, be deemed to have been used throughout the said period without payment of tax.

(3) In the absence of any undertaking delivered under Sub-section(1) every motor vehicle liable to tax under this Act shall be deemed to have been used or kept for use within the State.

6. From the provisions in Sections 3 and 3A of the Taxation Act it is manifest that tax is leviable on every motor vehicle used or kept for use within the State. Under the Explanation to section a an owner who keeps a transport vehicle for which the certificate of fitness and the certificate or registration are valid, or an owner who keeps any other motor vehicle, of which the certificate of registration is valid, shall be presumed to keep such vehicle for use. There is no controversy that the Petitioner's vehicle which was plying as a stage carriage is a transport vehicle and during the period for which the Petitioner was required to pay tax his vehicle had neither a stage carriage permit nor was it detected to be plying. Then it is to be seen whether the vehicle had a valid certificate of fitness and valid certificate of registration. As noticed earlier, the certificate of fitness for the Petitioner's vehicle expired on 30th November, 1987 and a fresh certificate was granted for the period from 16-7-1988 to 15-7-1989. Therefore from 1st of December, 1987 to 15th of July. 1988 there was no certificate of fitness of the vehicle. The other question relates to a valid certificate of registration. Section 38 of the- Motor Vehicles Act which deals with grant of certificate of fitness of transport vehicles, under Sub-section (1) provides that subject to the provision of Section 39, a transport vehicle shall not be deemed to be validly registered for the purposes of Section 22, unless it carries a certificate of fitness in form has set forth in the First Schedule, issued by the prescribed authority, to the effect that the vehicle complies for the time being with all the requirements of Chapter v. and the rules made the under. Where the prescribed authority refuses to issue such certificate it shall supply the owner of the vehicle with its reasons in writing for such refusal. Under Sub-section (3) of the said section, the issuing authority or other prescribed authority is empowered to cancel a certificate of fitness at any time, for reasons to be recorded in writing, if satisfied that the vehicle to which it relates no longer complies with all the requirements of the Act and the Rules made thereunder and on such cancellation the certificate of registration of the vehicle and any permit granted in respect of the vehicle under Chapter IV

shall be deemed to be suspended until a new certificate of fitness has been obtained. From the provisions in Sub-section (1) it is clear that the Petitioner's vehicle could not be said to have been validly registered during the period from 1st of December. 1987 to 15th of July. 1988 when there was no valid certificate of fitness, relating to it. It is not in dispute that during this period the vehicle was not detected at any time to be plying on the public road. Therefore applying the provisions the Explanation and the proviso u/s 3 of the Taxation Act, the Petitioner's vehicle cannot be said to have been used or kept for use during this period so as to attract levy of tax. On the aforesaid analysis the position is inescapable, that the notices issued by the R.T.O. under Annexures - 2 and 2-A requiring the Petitioner to pay motor vehicle tax for his vehicle for the period from 1-12-1987 to 30-6-1988 were not in accordance with the provisions of the Taxation Act and therefore are unsustainable.

7. Coming to the other aspect of the Petitioner's case relating to refusal to grant him temporary stage carriage permit to operate the vehicle in question, it is contended on behalf of the Petitioner that without any justifiable reason and purposely to harass him and to put him to serious financial loss the opposite party No. 2 repeatedly refused his applications for permit. The learned Standing Counsel appearing for the opposite parties, on the other hand contended that the Petitioner's requests for temporary permit could not be acceded to since huge amount was outstanding against him towards arrear motor vehicle tax and further since another operator, P.V.R. Pattnaik, had been granted temporary permit on the route, Podwa to Indravati in respect of the vehicle bearing registration No. OSK 4019. In the preceding paragraph, we have held that the demand of tax under Annexures 2 and 2/A was untenable. It is pertinent to mention here that by order dated 12-10-1988 in Misc. Case No. 4369 of 1988 arising out of this writ petition, a Bench of this Court directed. inter alia. that the opposite parties shall not take any steps directly or indirectly for realisation of money under demand in Annexure-2/A. and that the Petitioner shall be permitted to run the vehicle subject to payment of current tax and subject to compliance with the conditions for plying the vehicle. But after the order was passed the opposite parties did not permit the vehicle in question to ply. It is stated in the counter that the application for permit filed by the Petitioner after the aforementioned order was passed was not accepted since by then another operator (P.V.R. Pattnaik) had been granted a temporary permit on the route and there was no necessity for further service on the route. It is also stated in the counter affidavit that after the Petitioner's service was discontinued there was great pressure from the public for operating stage carriage on the route and there was even law and order problem". To us, it appears that the aforesaid stands taken by the opposite parties are inconsistent. If the need for stage carriage service on the route was so much that law and order situation arose on discontinuation of Petitioner's service then the plea that there was no necessity for such service is unacceptable. In course of submissions, it is fairly conceded by the learned Counsel and in our view rightly that the question of vacancy is,

not relevant for grant of temporary stage carriage permit since there is unlike in permanent stage carriage permit no limit fixed for grant of such permit. Another submission raised by the learned Standing Counsel, which in our view, is untenable, is that, the opposite parties could not properly understand the import of the order dated. 12-10-1988. If there was any real and bona fide difficulty in understanding the order, it would have been fair on the part of the opposite parties, a statutory authority and a public officer to approach the Court for clarification of the order before taking action in the matter and not to act in a manner which may suggest that they are out to frustrate the order or render it infructuous.

8. On careful consideration of the matter, we are of the view that no good ground has been placed before us for rejection of the successive applications for temporary stage carriage permit filed by the Petitioner on the route on which admittedly he had been plying his vehicle, for several years. However, it is not necessary for us to delve deeper into the matter as the learned Standing Counsel in the midst of his argument on this aspect of the case submitted on instruction of the R.T.O. who was present in the Court that the temporary stage carriage permit granted to another operator on the route podwa to Indravati is to expire on 28-2-1989, and thereafter there will be no difficulty in granting permit to the Petitioner to ply his vehicle on the said route if he makes proper application for it. To this, the learned Counsel for the petitioner stated that his client will file an application in the prescribed form for temporary stage carriage permit.

Therefore, considering the facts and the circumstances of this case and in view of the aforesaid, submissions made by the learned Standing Counsel, we are inclined to direct the opposite parties 1 and 2 to issue permit in favour of the Petitioner on proper application being filed in the prescribed form.

9. Though some argument was advanced regarding the quantum of tax that is due to be paid by the Petitioner for a period subsequent to that mentioned in Annexures 2 and 2/ A, we do not consider it necessary to go into it since that is not within the scope of the writ petition.

10. On the discussions in the foregoing paragraphs and the conclusion arrived therein, we allow the writ application and quash demand notices as per Annexures 2 and 2/A. If the Petitioner has paid any amount in pursuance to the said notices, the same shall be refunded to him forthwith. We further direct that on a proper application being made by the Petitioner the opposite parties shall issue a temporary stage carriage permit on the route podwa to Indravati expeditiously not later than three days from the date of receipt of the application. The Petitioner shall be entitled to a consolidated, sum of Rs. 750/- towards cost.

V. Gopalaswamy, J.

11. I agree.

Writ application allowed.