
(2000) 08 RAJ CK 0032

In the Rajasthan High Court

Case No : Civil Special Appeal No. 219 of 200 2 other appeals

Punjab Travels Co.

APPELLANT

Vs

Union of India and Co.

RESPONDENT

Date of Decision : 29-08-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 73, 74, 80, 81, 82

Rajasthan Motor Vehicles Taxation Act, 1951 — Section 3, 4, 4(1)

Citation : (2001) 3 RLW 1345 : (2000) 3 WLC 755 : (2001) 1 WLN 707

Hon'ble Judges : A.R. Lakshmanan, C.J;Rajesh Balia, J

Bench : Division Bench

Advocate : B.L. Maheshwari, R.K. Rathi and Dinesh Maheshwari, for the Appellant; Vineet Kothari, for the Respondent

Final Decision : Dismissed

Judgement

Balia, J.

(1). These three appeals raises common questions, in similar facts and circumstances, about the chargeability of tax under Rajasthan Motor Vehicles Taxation Act, 1951 in respect of vehicles plying in Rajasthan as tourist coaches having authorisation certificates issued under the Motor Vehicles (All India Permit for Tourist Transport Operators) Rules, 1993 (hereinafter referred to as "the Rules of 1993) framed under the Motor Vehicles Act, 1988, hence are heard and decided together Special Appeal (Writ) No. 219/2000:

(2). The petitioner-appellant is an approved tourist transport operator under the Rules of 1993. It holds permit in respect of vehicles in question from the State Transport Authority, Gujarat State, Ahmedabad. It holds an All India Tourist Permit under the Rules of 1993 which have been framed for giving effect to provisions of Sec. 88(9) of the Motor Vehicles Act, 1988 (a Central enactment) That is for providing issue of authorisation certificate in the case of any tourist coach by a State Transport Authority of issuing State without requiring counter signatures of corresponding State Transport Authority or Regional Transport

Authority of the State or States through which the tourist coach operates and charging of fees for such authorisation. These rules are primarily to minimise the procedural requirement of operating tourist inter-state transport. Any vehicle which is used or kept for use of public roads within the State of Rajasthan and is subject to tax under the Rajasthan Motor Vehicles Taxation Act, 1951 (hereinafter called, "the Act of 1951") which has been enacted by the State of Rajasthan. Under the said Act, by Notification dated April 29, 1995, amendment was made in Schedule "A" of the Act of 1951 providing rates of motor vehicle tax as well as Special Road Tax under Sec. 4-B by substituting the entry at Serial No. 6(2) with the following:-

"(2) Four wheeled contract carriage including Motor Cabs, Maxi Cabs, Omni Bus etc.-

(a)

For Car type Motor Cabs with seating capacity not exceeding 5 excluding driver
Rs. 1000/- per seat per annum

(b)

Motor Vehicles other than Car type Motor Cabs-

(i) With seating capacity not exceeding 12 excluding driver

Rs. 3,000/- per seat per annum.

(ii) With seating capacity exceeding 12 excluding driver but not exceeding 20 excluding driver and conductor-Ordinary vehicles

Rs. 4,000/- per seat per annum.

Other than ordinary vehicles

Rs. 5,000/- per seat per annum.

(iii) With seating capacity exceeding 20 excluding driver and conductor-Ordinary vehicles

Rs. 5,000/- per seat per annum.

Other than ordinary vehicles.

Rs. 10,000/- per seat per annum

(3). Schedule "A" at the relevant time prescribed maximum rate of tax at which State could notify the rate of tax leviable u/s 4-B, popularly known as Special Road Tax, on various types of vehicles. Item at Serial No. 6(2) concerns the rate of tax applicable to contract carriages. Following this amendment, the State Govt. issued Notification on 31st March, 1997 notifying the rate at which tax was payable on the contract carriage under Sec. 4(1) as well as 4-B which ply within the State on permits issued u/s 88(9) of the Motor Vehicles Act, 1988. The said

Notification is enclosed as Annx. 11 to the writ petition and reads as under:-

GOVERNMENT OF RAJASTHAN

TRANSPORT DEPARTMENT

No.F6.(179)/Pari/Tax/HQrs/95/I6 Jaipur, Dated : 31st March, 97

NOTIFICATION

In exercise of the powers conferred by clause (c) of sub sec. (1) of section 4 and Section 4-B of the Rajasthan Motor Vehicle Taxation Act 1951, (Rajasthan Act No. 11 of 1951) and in super session of all previous notifications issued in this behalf, the State Government hereby, with effect from 1.4.97 prescribes the rate of tax in the case of Transport Vehicles of other States and plying on permits issued u/s 88(9) of the Motor Vehicles Act 1988 specified in Col. No. 2 of the table appended here, at the rates specified against each in Col. No. 3 and Col. No. 4 thereof:-

S. No.

Description of Transport Vehicle

Rate of tax u/S. 4(1)(C)

Rate of tax u/S.4-8

1

2

3

4

1.

Transport Vehicles of other States plying on Tourist Permit

(i) With seating capacity upto 5 excluding driver

Rs. 15/ per seat

Rs. 50/-per day

(ii) With seating capacity mate than 5 excluding driver and upto 12 excluding driver

Rs. 25/-per seat

Rs. 175/-per day

(iii) With seating capacity more than 12 excluding driver and upto 40 excluding driver and conductor

Rs. 100/-per seat

Rs..800/-per day

(iv) With seating capacity more than 40 seats excluding driver and conductor.

Rs. 120/-per seat.

Rs. 900/-seat day.

Note-

1. On payment of tax for two days as a lumpsum, at the rates specified above, no further tax have to be paid within that calendar month, irrespective of the number of trips undertaken during that month.

2. In addition to lax payable under this notification there shall be paid by the owner or person having possession or control of a motor vehicle, any tax or penalty as was payable under this Act for any period prior to the coming into the force of this notification issued under the provisions of the Chapter V of the Rajasthan Finance Act, 1997 at such rates as were applicable to such vehicles from time to time.

By order of the Governor

Sd/-

(G.L. Gupta)

Deputy Secretary to Government."

(4). Following the aforesaid Notification prescribing rate of tax payable by the contract carriages playing on permits issued u/s 88(9) of the Motor Vehicles Act, 1988, the Transport Commissioner issued a circular that the recommendation made by the Surface Transport Ministry of the Union of India in its letter dated 30th August, 1993 has not been accepted by the State of Rajasthan as yet, and therefore, the tax on the permits issued under the Rules of 1993 is leviable in terms of the Notification dated 31st March, 1997, referred to above. The Notification dated 31st March, 1997 coupled with circular dated 29.1.99 (Annx. 10) were challenged by the petitioner-appellant in Writ Petition No. 4543 of 1999. That petition was dismissed by learned Single Judge on 28th January, 2000. Aggrieved with that order, the present appeal No. 219/2000 has been filed.

Appeal No. 175/2000:

(5). The petitioner-appellant in this case is a recognised tourist operator under the Rules of 1993. The permit has been Issued by State Transport Authority at Rajasthan, Jaipur, authorising the petitioner to operate in the State of Rajasthan, Gujarat, Maharashtra, Haryana, Madhya Pradesh and Delhi. The petition was filed before the Taxation Tribunal challenging the levy of tax u/s 4-B of the Rajasthan Motor Vehicle Taxation Act at rates specified under Notification dated 31st March, 1997 and the circular issued by the Transport Commissioner dated 29th Jan., 1999. The Original Application, filed before the Rajasthan Taxation Tribunal for

Rajasthan, stood transferred to this Court on its abolition and was registered as Writ Petition No. 2037/99. The said writ petition was dismissed by the learned Single Judge of this Court on 11.2.2000 following the decision rendered in Punjab Travels Pvt. Ltd. vs. U.O.I. & Ors. (1), referred to above. Hence this appeal. -

Appeal No. 208/2000:

(6). This appeal is also by a transporter operator who is an approved tourist transport operator under the Rules of 1993 and holds authorisation certificate from the State Transport Authority, Gujarat State, Ahmedabad. The appellant holds an All India Permit. The petitioner-appellant in Appeal No. 175/2000 and this appeal is the same. However, as it relates to different authorisation certificate issued by different authority, a similar original application was filed in respect- of authorisation issued by the STA, Ahmedabad challenging the levy of tax under the Rajasthan Motor Vehicles Taxation Act through notification at the rates provided under Notification dated 31st March, 1997 on identical grounds before the Rajasthan Taxation Tribunal, which on its abolition stood transferred to this Court as Writ Petition No. 3-134/99. The said writ was dismissed by a learned Single Judge on 3rd March, 2000 following the aforesaid decision rendered in Punjab Travels case (S.B. Civil Writ Petition No. 4543/99 (supra).

(7). Thus, all the three appeals challenge the levy of tax at the rates specified in the Rajasthan Motor Vehicles Taxation Act, 1951 on common grounds in respect of tax to be levied on tourist contract carriages operating under authorisation certificates issued under the Rules of 1993 within the State of Rajasthan.

(8). It has been contended by the learned counsel for the petitioners-appellants that in view of the decision taken in the meetings of the representatives of the Departments of Transport of all the States and Union Territories and with the officials of the Ministry of Surface Transport, Union of India, regarding National Permit Scheme for Tourist Coaches and Toll Tax, no tax in respect of tourist coaches exceeding the amount recommended in that meeting is leviable. In the said meeting, it has been agreed by the respective representatives of State Govts. that the permit holders under the Rules of 1993 shall be charged a composite fee at the rates;

"(a) For Motor Cabs upto 6 seats - Rs. 300/- per Quarter Per State (Other than Home State),

(b) for Maxi Cabs of 7 to 13 seats- Rs. 3000/- per Quarter Per State (Other than Home State) and

(c) For Omni Buses of 14 to 35 seats - Rs. 12,000/- per Quarter Per State (Other than Home State),

and this composite fee to be in lien of all taxes. It has been urged that an instruction to that effect was also issued to all Transport Secretaries to the respective State Govts. and Union Territory Administrators by the Joint Secretary to the Govt. of India from the Department of Surface Transport on 30th August,

1993 as reproduced hereinbelow:-

No. RT-11053/1/92/MVL (VOL. II) 30 Aug., 1993

To

All the Transport Secretaries of the State/Govts/Union Territory Administrations.

Subject: Scheme for national permits for tourist coaches.

Sir,

As you are aware, the Transport Development Council in its meeting held in January 1992 had recommended that an appropriate scheme may be worked out for operation of tourist cabs/coaches on the basis of an All India Permit. For this purpose, a Committee of State Transport Secretaries was formed and on the basis of recommendations/deliberations of this Committee, a scheme called the Motor Vehicles (All India Permit for Tourist Transport Operators) Rules 1993 has been finally notified vide Notification No. 541 dated 10th August 1993. A copy of the notification is enclosed for ready reference.

2. It may be mentioned that the State Governments had agreed that apart from the Home State Tax, the composite fee be charged from permit holders according to the following rates:-

- (a) For Motor Cabs upto 6 seats-Rs. 300/- per Qtr. Per State (Other than Home State)
- (b) For Maxi Cabs of 7-13 seats- Rs. 3000/- per Qtr. Per State (Other than Home State)
- (c) For Omni Buses of 14 to 35 seats-Rs. 12,000/- per Qtr. Per State (Other than Home State).

3. I am writing to request you to take necessary action to incorporate these provisions relating to composite fee in the State motor vehicles taxation rules and also issue necessary instructions/guidelines to the State Authorities for grant of permits. It may also be clarified that the composite fee is in lieu of all taxes.

Yours faithfully,

(C.S. KHAIRWAL)

JOINT SECRETARY TO THE GOVT. OF INDIA

Encl. As above."

(9). In view of the aforesaid, it is contended that each of the petitioners-appellants obtained tourist permits under the Rules of 1993 on payment of composite fee as stated above representing that no taxes would be payable inasmuch as the composite fee was chargeable in lieu of all taxes, the State Govt. is not entitled to charge anything other than the composite fee referred to

above, in lieu of all taxes. The provisions of the Notification dt. 31st March, 1997 do not govern the cases of the petitioners-appellants in all the three appeals, that is to say, on principle of promissory estoppel the State Govt. having agreed to charge composite fee at the rates specified hereinabove, in lieu of all taxes, is now estopped from not giving effect to the said decision/assurance and charging taxes at the rates specified in the Notification dated 31st March, 1997.

(10). The ancillary arguments have been raised. Firstly, as the permits in question have been issued under Rules of 1993 and not u/s 88(9), the Notification dated 31st March, 1997 which applies only to permits issued u/s 88(9) do not govern the cases of the permits issued under the Rules of 1993 on its own force and that the Transport Commissioner on his own has no authority to extend the application of the Notification dated 31st March, 1997 to such contract carriages operating under the Rules of 1993, rate of tax can be notified only by the State Govt. and not by the Transport Commissioner. Therefore, by issuing circular dated 29.1.99 the operation of Notification dated 31st March, 1997 cannot be extended to the vehicles plying under authorisation certificates held under the Rules of 1993, the issuance of circular dated 29.1.99 is without jurisdiction and deserves to be quashed.

(11). We may examine the second contention first. The contention of the appellants necessitates noticing the provisions of Sec. 88(9) of the Motor Vehicles Act, 1988 which reads as under:-

"Sec. 88(9)-Notwithstanding anything contained in sub- section (1) but subject to any rules that maybe made by the Central Government under sub-section (14), any State Transport Authority may, for the purpose of promoting tourism, grant permits in respect of tourist vehicles valid for the whole of India, or in such contiguous States not being less than three in number including the State in which the permit is issued as may be specified in such permit in accordance with the choice indicated in the application and the provisions of sections 73, 74, 80, 81, 82, 83, 84, 85, 86 and 89 shall, as far as may be, apply in relation to such permits."

(12). The Notification promulgating Rules of 1993 reads "In exercise of the power conferred by sub-section (14) read with sub-section (9) of section 88 of the Motor Vehicles Act, 1988". Sub-section (14) of Sec. 88 empowers the Central Govt. to make rules for implementing the provisions of Section 88 which deals with issue and validation for any permit to operate beyond the territory of concerned State which has issued permits. Sub- section (9) of Sec. 88 makes special provision for the purpose of promoting tourism empowering the State Transport Authority of a State to grant permits in respect of tourist vehicles valid for the whole of India or for such number of States not being less than three in number including the State in which the permit is issued. That is to say by sub-sec. (9) extra territorial authority has been conferred for the purpose of authorising operating of vehicles beyond the territorial jurisdiction of the authorising authority in connection with the tourist transport vehicles and that

has to be subject to rules framed by the Central Govt. under sub-section (14). The Rules of 1993 have been issued only to give effect to sub-sec. (9) of Sec. 88 and, therefore, any authorisation issued under Rules of 1993 can only be an authorisation or permit issued under sub-sec. (9) of Sec. 88. There is no other possible construction by which it can be said that the authorisation issued under the Rules of 1993 is not a permit issued u/s 88(9). The contention raised in this connection by the learned counsel for the appellants cuts the very foundation of the authority for promulgation of the rules of 1993. Rules of 1993 have been brought into existence for carrying out the purpose of sub-sec. (9) of Section 88. All authorisation certificate/permits issued under Rules of 1993 are under sub-sec. (a) of Sec. 88 notwithstanding that Sec. 88(9) has not been stated on the authorisation certificate/permits as the case may be. Therefore, the second contention of the learned counsel for the appellants that since the permits/authorisation issued to the appellants is not under sub-sec. (9) of Sec. 88, Notification dated 31st March, 1997 does not apply to the transport coaches plying within the State on its own force, is devoid of any substance and is rejected.

(13). The principal contention raised in these appeals is that as all the representatives of State Govts. have agreed in their meeting held under the auspices of the Surface Transport Ministry of the Union of India as a measure of tourism promotion to charge a composite fee in lieu of taxes and to such policy decision the State of Rajasthan was a party, it binds the State Govt to give effect to it and nothing exceeding composite fee can be charged by way of motor vehicle tax from the tourist operators plying vehicles under authorisation certificates issued under the Rules of 1993.

(14) This contention, in our opinion, must fail on the threshold. In order to raise a plea of promissory estoppel, it is a condition precedent that a promise must be held out by a person who is said to be bound by such promise towards a person or class of persons who claims the benefit flowing from such bondage. The minutes of 24th Jan., 1992 and the letter dated 30th August, 1993 on which the bedrock of the argument is founded falls too short of its character as a promise/assurance held out by State of Rajasthan to holders of tourist permits under the rules of 1993 of any sort as is claimed by the petitioner-appellants.

(15). It needs hardly any elaboration that Motor Vehicle Taxation Act is a legislation of distinct character and nature than the Motor Vehicles Act, 1988. Tax under the Motor Vehicles Act is a tax which is authorised to be imposed under Entry 56 of State List of Seventh Schedule of the Constitution of India, which is the exclusive domain of State Legislature concerned. The tax is for use of public roads within the State by the vehicles whether mechanically propelled or not and no authority vest in any other functionary to interfere with that legislative field of imposition of tax. Taxes within the State on motor vehicles for user of its public roads must, therefore, necessarily flow from- the statute imposing levy framed by legislation. That is the mandate of Article 265 that no taxes shall be levied or

collected except by authority of law. Thus, taxing a vehicle for user of roads within the State is exclusively within the preserve of law framed by the State Legislature authorising such levy. No other authority has been given jurisdiction to interfere with the authority except what has been permitted by law framed by the concerned legislation. The levy and exemption too are governed by such statute. In exercise of this power that the Legislature of the Rajasthan enacted Rajasthan Motor Vehicles Taxation Act, 1951. u/s 3 of the Motor Vehicles Taxation Act, the State Govt. has been empowered to grant exemption from levy by issuing notification in that regard. That is to say in the manner of exercising such authority of granting exemption from levy has also been provided by the law. By no other methodology an exemption can be claimed de hors the provisions of the Act. It is a common ground between the Parties that no such exemption notification has been issued by the State Govt. in exercise of its power under Sec. 3 for exempting the tourist operators from levy of tax under the Act with or without any other conditions.

(16). The minutes of 24.4.92 are not in the character of any promise held out to the tourist operators to act upon them but at best they can be construed as recommendations formulated by the representatives of the various States in a meeting held under the auspices of Surface Transport Ministry to take certain steps, as part of promoting tourism. In that meeting, the participants decided to take various measures, one of which was to take necessary steps for charging one uniform composite fee from the tourist transport operators in lieu of all taxes on vehicles within the each State territory. This was only a step suggested by the participants in the meeting to be placed before the respective Govts. for acceptance and taking necessary follow-up steps but it cannot be considered as promise or assurance held out to the prospective or existing tourist operators to act upon them. It may be pertinent to notice that even the participants were alive to the position of law that by this resolution and discussion, it is not possible to give effect to such policy decision. It was necessarily acknowledged that legislative intervention was needed to give effect to this policy decision taken by the participants at the meeting. The minutes of meeting dated 24th April, 1992 has been produced for the perusal of the Court by the appellants themselves as annexure. Conscious of this proposition, in Para 3 of the minutes, it has been recorded:

"As regards composite fee he pointed out that since the composite fee is in lieu of certain taxes it may not be within the jurisdiction of the Central Govt. to make any mention of the same in the Central Rules. He stated that this will be appropriately explain in the letter to the State Govts. which will serve as a guideline for this purpose."

(17). Following the minutes of 24th April, 1992, the Rules of 1993 were promulgated vide Notification dated 10th August, 1993 and for making follow-up action to give effect to the recommendation, a letter was issued to the respective Transport Secretaries to the State Govts. The said letter has been reproduced

hereinabove which clearly gives out that the Rules of 1993 have also been framed by the Central Govt. on the basis of the recommendations/deliberations of these committees and the said letter ends with a request:

"to take necessary action to incorporate these provisions relating to composite fee on the State Motor Vehicle Taxation Rules."

(18). This was clear indication that for charging composite fee in lieu of taxes leviable under the respective State Acts, amendments have to be made by a legislative action whether in the form of amending in the Act or otherwise having recourse to subordinate legislation without which the recommendations cannot be given effect to within the respective States.

(19). Thus, there was no promise held out to the tourist operators on the basis of minutes of 24th April, 1992 or the guidelines issued by the Central Govt. to the State Govts. that the vehicles under authorisation under Rules of 1993 will be subject to only composite fee in lieu of all taxes even in the absence of any necessary amendment in the law by the competent authority. It may be mentioned that the Transport Commissioner in his circular has clearly mentioned that State Govt. has not so far accepted the recommendations made by the committee for making necessary amendments in the rules or the Act to charge composite fee in lieu of all taxes on the vehicles within the State of Rajasthan. Therefore, it is futile to contend by the appellants that any promise was held to them in any form by the State Govt. of Rajasthan to charge composite fee in lieu of tax on the basis of which they could obtain tourist permit to avail of the benefit. It hardly further needs to be stated that unless existence of a promise or assurance by the person against whom it is sought to be enforced, the question of claiming relief on the basis of promissory estoppel and its consideration does not arise. The recommendation made on 24th Jan., 1992 can at best be construed to be desirability of adopting an uniform rate of tax on tourist coaches by all States in the form of composite fees in lieu of taxes at the rates recommended and for this purpose to make recommendations for respective States to take suitable legislative measures. In no circumstances it can be construed as an invitation to tourist operators to alter their position to their detriment on that premise. .

(20). In view of the conclusion, which we have reached that no promise or assurance existing on behalf of the State of Rajasthan to the tourist operators operating within the State of Rajasthan in terms of policy adopted by the State representatives in the meeting held at Delhi on 24th April, 1992, the question of examining the claim of the petitioners-appellants on the basis of the promissory estoppel further does not arise. The effective answer to the petitioner's claim otherwise is that there is no estoppel against Statute.

(21). In these circumstances, we are of the opinion that the decisions cited by the learned counsel for the appellants, where the reliefs have been granted on the principles of promissory estoppel, do not require any consideration. To quote

the words of Bhagwati, J. in *Union of India vs. Godfrey Phillips India Ltd.* (2), the case relied on by the learned counsel for the petitioners-appellants:

"The true principle of promissory estoppel is that where one party has by his word or conduct made to the other a clear and unequivocal promise or representation which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise or representation is made and it is in fact so acted upon by the other party, the promise or representation would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealings which have taken place between the parties."

(22). The appellants have failed to make out the existence of basic premise for invoking this principle, existence of a clear and unequivocal promise or representation on behalf of the State of Rajasthan which intended to create legal relations or affect a legal relationship to arise in the future on the basis of which the appellants were expected to act.

(23). We may also notice here that during the course of arguments it has been brought to our notice that in fact the State Govt. has in furtherance of the aforesaid suggestion sought to make necessary legislative changes by introducing a bill before the State Legislature. However, the same did not fructify. Thus, there was clearly no promise on behalf of the State to charge composite fee at the rates suggested in the meeting dated 24.1.92 in lieu of all taxes without necessary legislative sanction.

(24). As a result, these appeals fail and are hereby dismissed. There shall be no orders as to costs.