
(2001) 11 RAJ CK 0045

In the Rajasthan High Court

Case No : Civil Writ Petition D.R. (J) No. 3785 of 2001 and 2 Ors.

Rakesh Bansal

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 09-11-2001

Acts Referred:

Rajasthan Motor Vehicles Taxation Act, 1951 — Section 6(3)

Citation : (2002) 4 WLN 618

Hon'ble Judges : O.P. Bishnoi, J;N.N. Mathur, J

Bench : Division Bench

Advocate : K.K. Shah, for the Appellant;

Final Decision : Dismissed

Judgement

Mathur, J.—In this group of writ petitions, the petitioners have challenged the order of assessment dated 15.11.2001 (Annexure-4) and the demand notice in pursuance thereof dated 5.11.2001 (Annexure-3) issued by second respondent District Transport Officer, Sirohi. The petitioners have also challenged the constitutional validity of Section 6(3) of the Rajasthan Motor Vehicles Act, 1951.

2. Briefly stated the case is that the buses belonging to the petitioners are registered with the State of Gujarat. They have also been granted contract carriage permit for plying the buses in the State of Gujarat. However, the second respondent issued a notice dated 9.10.2001 demanding tax due against the respective buses on the ground that they were being plied within the territory of State of Rajasthan without paying tax and as such why the tax alongwith penalty thereon be not recovered from them. The petitioners have not produced the said notices. A copy of the reply to show cause notice has been produced as Annexure-1. The petitioners have denied to have plied the buses within the territory of State of Rajasthan and as such the payment of tax and the penalty thereon does not arise. The owners/representatives of the owners of the buses were heard by the second respondent, The assessing authority rejected the contention of the petitioners on the ground that there is an entry in the record of

the Municipal Board, Mount Abu as well as with the dealer of M/s. Hindustan Petroleum showing the movement of the subject buses within the territory of State of Rajasthan during the period April, 2001 to September, 2001. The assessing authority made an assessment of tax and also inflicted the penalty in accordance with the relevant provisions of law. Section 6(3) of the Rajasthan Motor Vehicles Act, 1951 as amended by the Rajasthan Finance Act, 2001 reads as under:-

"Section 6(3): Where as transport vehicle of other State, other than that referred to in Sub-section (4) plies in Rajasthan without paying the tax leviable under this Act, the defaulter shall be liable to pay in addition to the tax a penalty which shall not be less than four times of the amount of tax due."

3. It is contended by the learned counsel that offending provision Section 6(3) is discriminatory, which in the case of default in payment of tax, the taxing authority has been given power to determine the penalty as it deems proper but in case of Rule 6(3), there is no discretion with the assessing authority except to impose a penalty four times of the amount of tax due.

4. In order to appreciate the contention of the learned counsel Rule 8 is also extracted as follows:-

"Rule 8: The Taxation Officer shall satisfy himself that every declaration or additional declaration presented to him is complete in all respects and that the correct amount of tax of additional tax, as the case may be, has been paid, according to the schedules appended to the Act and in case of return, if any, owner of a stage carriage liable to pay monthly tax u/s 4B fails to submit a return as required under Rule 6 for any month within the time prescribed or if the return submitted by him appears to the Taxation Officer to be incorrect or incomplete, he shall after notice in Form MTO and giving a reasonable opportunity of being heard to the owner, determine the amount of tax payable by the owner for the period for which the return was either not filed or found to be incorrect and shall serve a notice on the owner in form MTO alongwith a certified copy of the order requiring him to pay the tax and penalty so determined forthwith. If the owner fails to pay the determined tax and penalty forthwith or the disputed amount is stayed by the competent authority u/s 14 of the Act, he shall be liable to pay on the amount of tax not paid or an amount of tax stayed if found due later on."

5. A bare reading of the offending provision i.e., Section 6(3) and Rule 8 shows that both the provisions operates in different situations. Rule 8 pertains to delayed payment of tax whereas Section 6(3) deals with the theft of tax. It is well settled that in deciding the question whether a tax law is discriminatory or not, it is to be bear in mind that State has a wide discretion in selecting the persons or object whom it will tax and the statute is not open to attack on the ground that it taxes some persons or objects and not others. In considering the validity of the statute, the presumption is in favour of the constitutionality and

the burden is upon whom who attacks it to show that there has been a clear transgression of constitutional provisions. For sustaining the presumption of constitutionality, the court may take into consideration the matters of common knowledge, matters of common report, the history of times and may assume other state of fact which can be concealed. It must always be presumed that legislature understands and correctly appreciates the different situations.

6. In the instant case, it is a known fact that the buses were being plied to the tourists spots from different States and some of the bus owners make efforts to enrich themselves by evading the payment of tax of visiting States. Thus, vehicles are required to make an entry at the check post of the Municipality. They are also required to fill in petrol/diesel from the petrol pumps. The only way to deal with the tax evaders is that as and when they are found moving without paying tax, they are visited with heavy penalty. Thus, we find no merit in the contention raised by the learned counsel challenging the constitutional validity of Section 6(3) of the Rajasthan Motor Vehicles Act, 1951.

7. As regards the merit of the case, the assessment has been made on the basis of official record of Municipal Board, Mount Abu. There appears to be no reason to doubt the record of the Municipal Board. There is also entry of the subject buses from dealer of M/s. Hindustan Petroleum. Thus, there is prima facie evidence of theft of tax. The question of fact can better be decided by the appellate authority. It is not disputed that the petitioners have resorted to remedy of appeal.

8. At this stage, it is submitted by the learned counsel that the petitioners will be required to deposit 50% of the demand at the time of filing of appeal and, therefore, the same may be waived. We do not find any justified reason to waive the statutory requirement, more particularly, in favour of the person against whom there is a prima facie case of theft of tax.

9. We do not consider it a fit case to invoke the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India. All the four writ petitions are dismissed being devoid of merit.