(1997) 08 RAJ CK 0058

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 616 of 1996

Ramavtar and Others — APPELLANT

Vs

State of Rajasthan and Others — RESPONDENT

Date of Decision : 04-08-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 301, 304, 32
Motor Vehicles Act, 1988 — Section 88

Citation : (1997) 3 RLW 1511 : (1998) 1 WLC 351 : (1997) 2 WLN 136

Hon'ble Judges : B.R. Arora, J;A.K. Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.R. Arora, J.—The special appeal and the writ petition raise a common controversy : whether this Court can adjudge the authority and power of the State of Haryana and its functionaries and the Excise and Tax Commissioner, Haryana (Chandigarh) to levy and collect the taxes (passenger and road tax) from the motor vehicles covered under the All India Tourist Permits granted by the Regional Transport Authorities in Rajasthan when these vehicles pass through the State of Haryana for going to Delhi and Haridwar on National Highway No. 8 but neither any passenger is picked-up nor dropped in the territory of Haryana ? Since the controversy raised in both these cases is the same, we, therefore, propose to decide the Preliminary Issue regarding the maintainability of the writ petitions by this common judgment.

2. The writ petitioners are holding All India Tourist Permits granted in their favour by the Regional Transport Authorities in Rajasthan u/s 88 of the Motor Vehicles Act, 1988. The petitioner-appellants in Special Appeal No. -616/1996 (Ramavtara and Ors. v. State of Rajasthan and Ors.) are holding six All India Tourist Permits while petitioner Lokendra Kumar Kothari is holding two All India Tourist Permits, out of which one is valid in respect of the State of Rajasthan, Punjab, Maharashtra, Delhi and Haryana while the other permit, which he is holding, is

valid for Rajasthan, Delhi, Gujarat, Haryana and Maharashtra. The buses operated by the petitioners on these sanctioned tourist permits are duly registered in the State of Rajasthan and they have paid the authorisation fees as required under Rule 83 of the Rules in the State of Rajasthan.

3. While travelling from Rajasthan to Delhi or to Haridwar, the motor vehicles pass through the portion of National Highway No. 8 which lies in the territory of the State of Haryana. These'' tourist vehicles, which are owned by the petitioners, neither pick-up any passenger nor drop any passenger on any portion of the route lying in the State of Haryana but the buses have to pass through the territory of Haryana out of sheer geographical necessity. While passing through the territory of the State of Haryana on National Highway No. 8, the collecting agencies of the State of Haryana are collecting passengers tax from the travelling people under the Punjab and Haryana Passengers Taxation Act and the Rules framed thereunder. The petitioners, by the writ petitions challenged the act of the non-petitioners in forcefully collecting the unauthorised tax on transit from the petitioners and the passengers in respect of the vehicles and have prayed for the following reliefs:

(a) it may kindly be declared that the petitioner who is plying his vehicles on the national highway No. 8 passing through the State of Haryana under corridor conditions is not liable to pay tax to the non-petitioners.

(b) it may kindly be declared that the State of Haryana has no right to impose tax on the vehicles which pass through its territory under the All India Tourist Permit when no passenger is either picked-up or dropped within its territory.

(c) it may be further declared that the so-called tax is directly on the petitioner''s business and, therefore, it is hit by Articles 301 and 304 of the Constitution.

(d) that the tax so imposed by the non-petitioners is confiscatory and not compensatory and is also against the public purpose and such imposition of the tax is on the petitioner who is a transporter and, therefore, unreasonable and deserves to be quashed.

(e) it is further prayed that the non-petitioners may kindly be directed to refund to the petitioner the amount which has so far been recovered from him;

(f) it be further held that no tax can be levied on and recovered from the petitioner by the non-petitioners in connection with the permit in question even on the alternative basis for the period which has already expired.

(g) any other writ, order or direction, which the circumstances of the case warrant, may kindly be passed in favour of the petitioner.

(h) cost of this writ petition may kindly be awarded in favour of the petitioner.

4. The writ petition filed by Ramavtar and others was dismissed by the learned Single Judge by His judgment dated 8.11.96 by holding that this Court has no jurisdiction to adjudicate the dispute raised by the petitioners in the writ petition.

Aggrieved with this order the petitioners have filed the special appeal challenging this order passed by the learned Single Judge. Since the question regarding maintainability was, also, involved in the writ petition filed by Lokendra Kumar, therefore, the Division Bench ordered for connecting S.B. Civil Writ Petition No. 3646/1996 (Lokendra Kothari v. State of Rajasthan and Ors.) with the special appeal. This is how that both these cases came-up for consideration before us.

5. A preliminary objection has been raised by the learned Counsel for the respondents that this Court has not territorial jurisdiction to adjudicate the dispute since the levy of the passenger-tax is being made under the provisions of Punjab & Haryana Goods and Passengers Taxation Act, 1952 and the Rules made thereunder as the vires of the Act and the Rules made by the Punjab State Legislature are applicable to the States of Punjab and Haryana and the Punjab & Haryana High Court can, only, decide the dispute. The grant of tourist permits by the Regional Transport Authorities in Rajasthan does not absolve the petitioners from the liability of passengers tax imposed u/s 3 of the Punjab and Haryana Goods and Passengers Taxation Act, 1952.

6. The contention of the learned Counsel for the writ petitioner and the appellant is that (i) they have not challenged the vires of the Punjab and Haryana Passengers and Goods Taxation Act, 1952 as applicable to the States of Punjab and Haryana but their case is that in the facts and circumstances of the case the impugned tax is not leviable in respect of the operation of the motor vehicles by the petitioners in so far as the portion of the National Highway No. 8 falling in the State of Haryana is concerned because the petitioners do not ply their motor vehicles in the territory of the State of Haryana; (ii) the State of Haryana through its collecting agencies is collecting them passengers tax and causing unnecessary harassment to the passengers by detaining the vehicles in the mid of the journey at the odd hours, thereby resulting in a lot of inconvenience and hardships to the travelling public and as a result of its wrongful detention of the vehicles and imposition of unauthorised and illegal tax, the petitioners are suffering regular and tremandous losses in the business and it is also causing harassment to the passengers; (iii) the impugned act of the non-petitioners in forcibly recovering the unauthorised tax in transit from the passengers and in respect of the vehicles is wholly illegal, without authority of law and is violative of the fundamental rights and is confiscatory in nature; (iv) part of cause of action has arisen in the State of Rajasthan because the All India Tourist Permits were issued by the Regional Transport Authorities in Rajasthan and the principal place of business of the writ petitioners is in the State of Rajasthan and the necessary authorisation has been issued by the Regional Transport Authority of the State of Rajasthan, the buses are used and kept for the use of the State of Rajasthan and the continuous journey starts from Rajasthan and ends in Delhi or Haridwar and neither any passenger is taken in between nor any passenger is dropped in the territory of Haryana.

7. We have considered the submissions made by the learned Counsel for the

parties.

8. The short controversy involved in the present cases, which requires adjudication at this state, is : whether this Court can entertain and adjudicate the dispute ? Article 226, before the addition of Clause (2) contained two limitations, namely, (i) that the writ can only be issued within the territory over which the High Court has jurisdiction; and (ii) only to persons or authorities within that territory while the jurisdiction of the Supreme Court, under Article 32 of the Constitution of India, to issue writs extends to whole of the country but is limited to issuing writs for the enforcement of the fundamental rights and no other purposes. The jurisdiction of the High Court, in the matter of issuing a writ, normally extents through out the State for which it is established. For Clause (1) of Article 226 of the Constitution of India, the situs of the cause of action is immaterial and it is the location or the residence of the respondent which gives territorial jurisdiction to the High Court. Clause (2) of Article 226 provides that the powers conferred by Clause (1) to issue direction, orders or writ to any government, authority or person may, also, be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such powers, notwithstanding that the seat of such government or authority or the residence of such person is not within whose territory.

9. Clause (2) of Article 226 introduces an additional basis of jurisdiction and provides that the power concerned by Clause 1 to Article 226 can also, be exercised by any High Court exercising the jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for exercise of such powers. To exercise the power under Clause (2) to Article 226, the situs of cause of action is material and not the territorial jurisdiction. Jurisdiction depends on the person or the authority or the government passing the older being within those territories and the residence and the location of the person affected by the order is immaterial and has no relevance. What Article 226(1) requires is that the residence of the person and the location or the seat of the Authority or the Government concerned. The writ issued by the Court cannot run beyond the territories subject to its jurisdiction and only those authorities or the government are ameanable to the jurisdiction of the Court by the residence or location within those territories. But in view of Clause (2) to Article 226, the writs can be issued against those authorities or the government, also, though the seat of such government or the authority is not within the territory for which the High Court is established; but the cause of action, wholly or in pail, arises for the exercise of such power. Thus, the jurisdiction to issue a writ can be exercised firstly, by a Court within whose jurisdiction a person or the authority or in appropriate cases any government, resides or located; and secondly, also by a Court within whose jurisdiction the cause of action, wholly or in part, arises for the exercise of such power notwithstanding that the seat of such government or the authority or the residence of such person is not within whose jurisdiction.

10. The respondents are charging the tax on the basis of the Act, 1952. The Government of Haryana and the Excise and Taxation Commissioner of the Government of Haryana are not located within the jurisdiction of this Court and, therefore, we have to see whether any cause of action, wholly or in part, arises for the exercise of such power within the territory of the State of Rajasthan ?

11. Though the tourist permits have been issued by the Regional Transport Authorities in Rajasthan, the authorisation fees have been deposited in the State of Rajasthan, the business of the petitioners are their residence are, also, in the State of Rajasthan, the buses start from Rajasthan and pass through the territory of the State of Haryana for going to Delhi and Haridwar but the taxable event occurs only when the vehicles enter into the territory of Haryana. It is true that the vehicle is in transit through the State and does not take up or leave the passengers in the State of Haryana and it is only on account of geographical need that during transit the buses have to pass through the State of Haryana.

12. It is neither necessary nor desirable to adjudicate the vires of the provisions of the Act, 1952 and the question whether the State of Haryana has a right within its territory to levy the tax on the motor vehicles if the tourist vehicle holding All India Tourist Permit u/s 88 of the Motor Vehicles Act choose to visit the State of Haryana in the course of its plying on tour from the State of Rajasthan to Delhi or Haridwar and whether the tax has to be paid in the State of Haryana: that matter can be adjudicated only by the Punjab & Haryana High Court and not by any other High Court since the taxable event occurs in that State.

13. The Scheme for the grant of All India Tourist Permit is designed to promote All India and Inter-Statal Tourist Traffic and if the tax is levied by all the enroute States, the burden will be very heavy and whether it will frustrate the object of promotion of the Inter-State Traffic and whether the cases of the petitioners fall within the exemption Clause under Rule 8(v) of the Punjab Motor Vehicles Rules, can be decided by the Punjab & Haryana High Court. We are not deciding these issues, also, because we are of the opinion that no cause of action, wholly or in part, for the exercise of such power occured in the State of Rajasthan and the taxable event occurs only after the entry of the motor vehicle in the State of Haryana and, therefore, these matters and the vires of the Act and the Rules can be adjudicated only by the Punjab & Haryana High Court, in whose jurisdiction and territory the Offices of the respondents No. 2 and 3 are located.

14. Neither the tax was charged from the petitioners nor any demand has been raised by the respondents in the State of Rajasthan. Even no notice has been issued nor any vehicle of the petitioners has been seized or taxed in the territory of Rajasthan. Whatever action has been taken by the respondents or. the tax collected by the respondents No. 2 and 3, that has been done in the territory'' of the State of Haryana and, therefore, no cause of action, wholly or in part, for the exercise of powers under Article 226 arises in the State of Rajasthan and as such this Court has no jurisdiction to issue a writ against the respondents No. 2 and 3,

whose Offices are not located in the territory, in relation to which this Court may exercise its jurisdiction.

15. In : Kana Ram and Vs. The Regional Transport Authority and Another, the petitioners were granted the Stage-carriage permit on an inter-statal route by the Regional Transport Authority, Jaipur. This permit was counter-signed by the concerned Regional Transport Authority of Faridabad-Hissar, which authorised the permit-holders to ply the buses. The Regional" Transport Authority in Haryana State thereafter stopped counter-signing the permit without any order in this regard. A writ petition was filed by the petitioner against the action of the State of Haryana not counter-signing the permits. A preliminary objection was raised regarding the territorial jurisdiction. The Division Bench of this Court relied-upon its earlier judgment reported in : Mohammed Shafi and Others Vs. The State of Rajasthan and Others, and held that the part of the cause of action arose within the State of Rajasthan because a reciprocal agreement has been entered into between the two States in respect of plying the vehicles on Inter-Statal routes which, no doubt, lies partly in the State of Rajasthan.

16. The same view was reiterated by the Division Bench of this Court in : New Vijay Laxmi Bhambhu Transport Company and Another v. Stale Transport Commissioner and Ors. 1996(1) WLC (Raj.) 500.

17. These two judgments, on which reliance has been placed by the learned Counsel for the writ petitioner and the appellants, are not applicable to the present controversy because in those cases the reciprocal agreements have been entered into between the two States in respect of playing of the vehicles on the Inter-Statal routes and, therefore, the cause of action, for the exercise of powers, partly accrued in the State of Rajasthan. But in the present case, the cause of action, for the exercise of power, wholly or in part, does not arise in the State of Rajasthan. The taxable event occurs only with the entry of the motor vehicle in the State of Haryana and whatever action has been taken or proposed to be taken by the respondents, are being taken in the State of Haryana. Neither any demand has been raised nor any tax has been collected nor any action is taken in the State of Rajasthan. The learned Single Judge was, therefore, justified in dismissing the writ petition filed by the appellant-petitioners by holding that this Court has no jurisdiction to entertain such writ petition.

18. In the result, the preliminary objection raised by the respondents is, maintained and the writ petition filed by petitioner Lokendra Kothari is dismissed. We see no infirmity in the" judgment passed by the learned Single Judge and as such, the appeal filed by appellant-petitioners Ramavtar and others, is, also, dismissed.

