

(1968) 10 P&H CK 0029
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 777 of 1965

Sain Dass and Others

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 25-10-1968

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Punjab Passengers and Goods Taxation Act, 1952 — Section 2(I), 3

Citation : AIR 1969 P&H 305

Hon'ble Judges : R.S. Narula, J

Bench : Single Bench

Advocate : P.S. Jain and V.M. Jain, for the Appellant; J.C. Verma, for the Respondent

Judgement

1. Sain Dass and ten other petitioners came to this Court under Article 226 of the Constitution for having issued a writ in the nature of mandamus to quash the orders, instructions or rules, passed or framed by the respondents grouping the pick-up vans of the kind possessed by the petitioners in Karnal District with trucks as public carriers, for the purpose of levy and imposition of lump sum tax under the Punjab Passengers and Goods Taxation Act, 1952. When this case came up before the Motion Bench (S.B.C Kapoor and Dua, JJ>) on March 26, 1965, it was at first dismissed in limine after hearing learned counsel for the writ petitioners. A little later on the same day, Civil Writ Transport Co., Private Ltd., Amritsar v. State of Punjab, was admitted by the same Bench. It was then pointed out to the Bench by Mr. Pitam Singh Jain, learned counsel for the writ petitioners, that the objection contained in paragraph 16 of this writ petition was common with a similar objection contained in Civil Writ No. 780 of 1965 (Punj). Thereupon the Motion Bench reviewed the earlier ex parte order and passed the following order:-

"Mr. P. S. Jain has after the admission of C. W. No. 786 of 1965, (Punj), pointed out that the objection raised in paragraph 16 of his petition was also one of the

objections in writ petition 780 of 1965 (Punj). We, therefore, set aside the order of dismissal in limine and direct issue of notice. No stay".

The objection in paragraph 16 of this writ petition is couched in the following language:-

"That as a result of amendment to Rule 9 of the Rules enforced under Notification No. G. S. R. 1/P. A. 16/52/S, 22 Amd (5)/64, dated the 2nd January, 1964, respondent No. 1 has directed the payment of the tax within 30 days of the commencement of the quarter to which the payment relates, instead of 15 days of the close of the quarter. Thereby the payment is claimed in advance which is in violation of the basic principles of taxation and recovery of taxes and is thus illegal, without jurisdiction and void".

2. Mr. Pitam Singh Jain, learned counsel for the writ petitioners, concedes that in view of the decision of Mahajan J. in the case of Civil Writ No. 780 of 1965 (Punj) (Supra), following the judgment of a Division Bench in Civil Writ No. 907 of 1965 (Punj), Suraj Goods Carriers Private Ltd. Amritsar v. State of Punjab, the attack contained in paragraph 16 of the present writ petition does not survive. He, however, submits that he has two other points to raise in this case.

3. It is firstly contended that the impugned orders are hit by Article 14 of the Constitution, inasmuch as:-

(I) the classification of pick-up vans (popularly known as Tempos) with trucks in unreasonable; and

(ii) there has been discrimination between the owners of pick-up vans in Karnal district as compared with the owners of similar transport carriers in Sangrur, Bhatinda and Hissar districts, in the erstwhile united State of Punjab.

The grievance in this respect was that whereas the original lower rates of tax for Tempos were maintained in the three districts named above, they were raised in Karnal district by equating Tempos with trucks. It is, however, conceded that since after the filing of the writ petition, all the tempo-owners of the State of Haryana have been equated in this respect, and Tempos in all the districts of that State have been equated with trucks for the purposes of the said tax. Learned counsel for the Stated submits that the original difference which lasted for a very short time was due to some mistake. This point does not, therefore, survive for decision.

4. So far as the second attack under Article 14 of the Constitution is concerned, Counsel relies on certain observations made by their Lordships of the Supreme Court in Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another, . In that case it was held that in view of the requirements of Article 265 of the Constitution prohibiting the imposition of a tax otherwise than by the authority of law, any tax which is not imposed by the authority of law, must be struck down, and that any statutory law which contravenes Article 14 of the Constitution must be held to be invalid. In short, it was held that the guarantee of equal protection

of the laws must extend even to taxing statutes. There is no quarrel with the proposition of law referred to above. The only question is whether the said proposition has any application to the facts of the present case.

Counsel submits that this case presents a clear instance of illegal lack of classification, inasmuch as the vehicles of the petitioners with a carrying capacity of 22 maunds have been equated for purposes of the impugned imposition with trucks having carrying capacity of 200 maunds. It is further pointed out that whereas the operational area of the petitioners' vehicles is restricted to a radius of fifty miles, the operational area of heavy transport vehicles is the whole of the State. Counsel submits that lower rate of lump sum tax should have been charged in case of Tempos as compared with trucks in the same manner as the road tax levied on Tempos is only Rs. 70.35 P. per quarter as compared with trucks which are required to pay Rs. 218/- per quarter. Mr. Pitam Singh Jain also points out some other factors showing that the scope of income of the petitioners in respect of their vehicles is much lower than the scope of income of truck-owners.

5. On the other hand, Counsel for the State has submitted that this joint writ petition by eleven petitioners does not disclose the particulars of the motor vehicle possessed by each of the petitioners, the place where it is registered, and that the writ petition does not give necessary information to enable the State to give detailed reply to the points which are now sought to be made out. It has been further contended that the subject matter of tax under the charging section, i.e., Section 3 of the Punjab Passengers and Goods Taxation Act, is "Motor Vehicle" which is defined in Section 2(1) as a public service vehicle, or public carrier or a trailer attached to any such vehicle. Counsel submits that a Tempo is as much a motor vehicle as a truck and there is nothing in Section 3 which prohibits the same amount of tax being levied on every kind of a motor vehicle irrespective of its capacity or extent of operational area. Counsel has also denied the allegation of the writ petitioners to the effect that their earnings are lesser than those of truck-owners. It has been submitted on behalf of the State that in fact Tempo-owners earn much more than the truck-owners and it has been rightly pointed out that the tax in question not being a tax on income, the quantum of income earned by the owners of the vehicles in question is an entirely irrelevant consideration in judging the validity of the imposition. The tax is on a motor vehicle, and so long as the vehicles of the petitioners fall within the definition of "Motor Vehicle", they cannot complain about the quantum of tax in the matter of which, there is no question of equity or reasonableness.

The Supreme Court held in *Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another*, that if the Legislature has classified persons or properties in different categories which are subject to different rates of taxation with reference to income or property, such a classification would not be open to attack of inequality on the ground that the total burden resulting from such a classification is unequal. Their Lordships further held that different kinds of property may be

subject to different rates of taxation, but so long as there is a rational basis for the classification, Article 14 will not be in the way of such a classification resulting in unequal burden on different classes of property. The only cases in which the equal protection of laws was held to be violated were those in which the same class of property similarly situated is subject to an incidence of taxation which results in inequality. In the present case, no inequality has been created amongst the owners of Tempos in the State and the grievance of the petitioner about all the Tempo-holders being treated like truck-owners in the matter of taxation can hardly form the subject-matter of attack on the ground of violation of equal protection of laws. The vires and validity of the Act or its charging section have not been questioned before me. In these circumstances I do not find any force in even the second attack of the petitioners on the imposition in question.

6. The second ground pressed by Counsel is that the representations submitted by the petitioners to the authorities referred to in paragraph 12 of the writ petition since February, 1965, remain undisposed of. In reply to this allegation, it has been stated in the return of the respondents that the representations received from the petitioners are under consideration of the Government. In the replication filed by the petitioners emphasis has again been laid on this matter. In the reply to the replication filed by the State with the leave of the Court, its previous stand has been merely reiterated. This does not disclose any satisfactory state of affairs, and it is hoped that the appropriate authorities will now proceed to dispose of the representations of the petitioners as expeditiously as possible in accordance with law. Since no statutory provision under which the petitioners have a right to make those representations has been pointed out, it is impossible to give any direction in the nature of mandamus under Article 226 of the Constitution to the respondents to dispose of those representations within any fixed time.

7. No other point having been argued before me in this case, the writ petition fails and is, subject to the observations made above, dismissed. As, however, the question of law which was common to this case and several other cases had not been decided when the petition was filed, I make no order as to costs.

8. DVT/D.V.C.

9. Petition dismissed.