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(2005) 08 GUJ CK 0036

In the Gujarat High Court

Case No : Special Criminal Application No. 915 of 2005

Saurabh Pareek APPELLANT

Vs

The State of Gujarat and Another RESPONDENT

Date of Decision : 22-08-2005

Acts Referred:

Bombay Motor Vehicles Tax Act, 1958 — Section 14
Bombay Motor Vehicles Taxation Rules, 1959 — Rule 29
Criminal Procedure Code, 1973 (CrPC) — Section 451

Citation : (2005) 25 GLH 471

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : Premal R. Joshi, for the Appellant; Gohil, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Jayant Patel, J.—Rule. Mr. Gohil, Ld. APP for the respondent-State waives service of rule on behalf of the respondent-State. With the consent of Ld. advocates appearing for both sides matter is taken up for final hearing today.

2. The short facts of the case are that the petitioner is having bus which is registered with the RTO authorities at Rajasthan. As per the registration granted to the petitioner, the bus is bearing Reg. No. RJ-14-1P-6467. The said bus is having seating capacity of 33 persons including the driver and 10 sleepers. The copy of the registration certificate is placed on record at annexure SA to the petition at page 20. It appears that when the aforesaid bus entered the Gujarat State, at the check post upon declaration amount of Rs. 28,095/- as tax was deposited by the petitioner of the vehicle in question for a period of one month, i.e. June, 2005. It appears that thereafter on 21.6.05 when the said vehicle was passing from Ahmedabad to Rajasthan it was intercepted by the RTO authority and the bus was detained by the RTO authority and the memo bearing No. 1077872 was issued. As stated in the memo, it was alleged that the vehicle was

used as stage carriage. Another ground was that there was unauthorised alteration of extra seats and sleepers fitted in the bus to avoid tax of Gujarat. As per the RTO authority, Gujarat, six seats are additionally provided than the prescribed seats at the time of registration, which is, of course, denied by the petitioner. Thereafter, as per the communication, dated 23.6.05 the RTO authority has communicated to the petitioner through the concerned RTO officer that the petitioner is liable to pay tax of Rs. 88,000/- with penalty of Rs. 25,000/- and interest at the rate of 2% per month. Against the said decision, there is also appeal provided as per section 14 read with Rule 29 of Bombay Motor Vehicles Tax Act, 1958 and it is the case of the petitioner that the appeal is also preferred and the said appeal is pending. At that stage, the petitioner has approached this court by preferring the present petition for the relief inter alia to declare that the action of the respondents in detaining and seizing the vehicle is illegal, arbitrary and the petitioner has also prayed for directing the respondent-authorities to release the vehicle pending the petition and it is further prayed that the respondent authorities may be directed to prefer the complaint before the court of Ld. Magistrate pending the petition.

3. I have heard Mr. Joshi for the petitioner and Mr. Gohil, Ld. APP for respondent-State authorities. It has been submitted on behalf of the petitioner that when the bus of the petitioner was registered with the RTO authorities at Rajasthan, as per the provisions of the Motor Vehicles Act, the seaters as well as sleepers are provided as per the specification of the Rajasthan in accordance with the Rules framed by the Rajasthan Govt. It has been submitted that if the specifications for seaters and sleepers are different in Gujarat State and/or are not meeting with the requisite specification prevailing for operating of bus in Gujarat State, same can not be a valid ground for detaining the vehicle. It has been further submitted that the assessment of tax is made by the RTO authorities of Gujarat on the basis of inspection made by the RTO authorities at Rajasthan and though there is no material available, detention of the bus is made as if the bus has operated within Gujarat State continuously from the date of registration till the date of interception. Mr. Joshi also submitted that when the bus is registered in Rajasthan, even if it does not meet with the requirements of specification in Gujarat, the vehicle can not be detained on such ground. He, therefore, submitted that the action of the authority of detaining the vehicle is unjust and arbitrary and the vehicle of the petitioner deserves to be released.

4. On behalf of the respondent-State it has been submitted by Mr. Gohil, Ld. APP that the specifications provided for seater and sleeper by the Rajasthan Govt are of larger size and consequently more than one passenger per seat or per sleeper are travelling in the bus or are allowed to travel by the bus operator. It has been submitted that since the tax is to be charged on the basis of capacity of the bus with the specified seats and sleeper, it is not possible for the authority to collect the tax on the basis of per passenger. It has been submitted that had the seaters/ sleepers been provided as per the specification of Gujarat State, there will be more tax which the bus operators of Rajasthan are avoiding even though the bus

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is operated in Gujarat territory. It has also been submitted that since the seaters and sleepers were not found of the specified size as prevailing in Gujarat State, the bus was detained and thereafter the petitioner was intimated regarding the assessment of tax made and if the payment is made on the basis of assessment of tax the respondent has no objection for releasing the bus. So far as the forwarding of memo of complaint to the concerned court is concerned, it has been submitted by the Ld. APP that the same shall be submitted within a period of two weeks, if such direction is given by this court. It has also been submitted on behalf of the respondent-State that the appeal is pending and therefore this court may not finally decide the question regarding the taxation liability and the petitioner has remedy available under law for adjudication on final taxation liability of the vehicle in question.

5. As such, in normal circumstances, when it is a matter of prosecution under Motor Vehicles Act (hereinafter referred to as the Act) whether the offence is committed or not is to be finally decided by the concerned court after conducting the trial and if the case is made out, the conviction may follow. However, the peculiar circumstances in the present case or the case of such type is that the bus/coach which is detained for the alleged contravention will remain un-used until appropriate order is passed by the Ld. Magistrate u/s 451 Cr.P.C for the custody. Further, if the bus is allowed to remain in custody with the RTO authority until final order is passed by the concerned trial court, it may be practically impossible for the RTO authority to preserve the custody of the bus, and it may also result into incurring huge expenses for preserving the custody of such bus. In addition to the above, as the bus is to remain in custody of the RTO authority, until the order is passed by the concerned criminal court for handing over of the custody to the owner of the vehicle, the owner of the vehicle may also lose income which may be generated by operating the bus on the road. If the bus/coach is allowed to be operated on the road, it may also generate revenue to the State in the form of tax. If the bus remains in stagnant position without there being any operation, it may cause loss to the State in the form of tax and may cause loss to the vehicle owner also in the form of contract charges/ fare and the State in addition thereto would be required to incur huge expenses for the purpose of maintenance of custody of such bus/vehicle. Therefore, considering the aforesaid peculiar facts and circumstances, I find that this court may not accept the contention of the State not to entertain the petition merely on the ground that there is alternative remedy available to the petitioner u/s 451 of Cr.P.C for getting the custody of the vehicle pending trial.

6. The contention of Mr. Joshi, Ld. advocate for the petitioner that once the vehicle is registered as per the specification provided in the registration of the RTO authority of the concerned State as per the Act, it may not be detained by the RTO authority of the other State merely on the ground that the seaters or sleepers are not meeting with the specifications provided in Gujarat State deserves consideration. It is true that if the bus is registered with the RTO authority in one State, if, is allowed to operate in the other State, in normal

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circumstances, the detention by the RTO authority of the Gujarat State may not be permissible merely on the ground that the seaters or the sleepers provided therein are not meeting with the specifications as are available in the State of Gujarat. Reference may be made to the decision of this court in the matter of Monmohjar Lal Anjana v. State of Gujarat reported in 2005(1) GLH 122 whereby the view taken is that once the competent authority of the concerned State has certified the capacity as prevailing in that State, the owners of the vehicles are entitled to carry such weights as per registration certificate even in other States of the country.

7. The grievance voiced on behalf of the respondent-State is that in one seat two passengers are allowed to occupy by the bus operators or the owners since the specification of seaters/sleepers provided in the State of Rajasthan are of larger size in comparison to the Gujarat State and consequently the passengers are allowed to travel in excess of the prescribed number of seats for seater and for sleeper. It was also submitted on behalf of the respondents that as the tax is to be collected on the basis of capacity of seaters or sleepers, as the case may be, unless the specifications provided in the State of Gujarat are taken into consideration, it is difficult for the RTO authorities in the State of Gujarat to control the attitude on the part of the bus operators of avoiding tax as prevailing in the State of Gujarat, and therefore, the basis is taken of seaters and sleepers as per the specification provided in State of Gujarat for the purpose of collecting/ charging the tax.

8. It is true that in normal circumstances if the number of passengers travelling in a bus is upto the seating or sleeper capacity provided in the bus as per the certificate of registration, there may not be any valid cause for the RTO authorities in Gujarat State to detain the vehicle on such ground. To say in other words, as per the present case, if the number of passengers travelling in the seater is not exceeding 32 + 1 driver and the sleeper is not exceeding 10, it may not be proper on the part of the RTO authorities of the Gujarat State to detain the vehicle merely on the ground that the seaters or sleepers, as the case may be, are not meeting with the requirement of specifications provided and prevailing in the Gujarat State. However, if it is found by the RTO authorities of Gujarat State that the number of passengers travelling in a bus, may be as seater or sleeper, is exceeding the prescribed capacity mentioned in the registration certificate, then in that case, the RTO authorities of Gujarat State may be justified in detaining the vehicle on the ground of avoiding tax as it may fall due in Gujarat State. As observed earlier, mere detention of the bus on the check post or at the time of inspection may result into difficulties, and may also result into causing inconvenience to the passengers travelling in the bus. It may be, if there is any attempt on the part of the bus operator to avoid the tax, it may invite prosecution and it may also authorise the RTO authorities of Gujarat State to intercept, inspect and also to detain the bus for some time till the inspection is completed and consequently may also authorise the RTO authorities of Gujarat State for launching prosecution subject to finalisation of criminal case

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by the concerned court. However, considering the facts and circumstances, it appears that if the bus/coach is released unconditionally without payment of any tax/penalty, as the case may be, the enforcement of provisions of the Act may be frustrated. Therefore, I find that proper care is required to be taken to see that the vehicle is not detained for an indefinite period resulting into eventuality, as referred hereinabove and, at the same time, before the vehicle is actually released by the RTO authorities of Gujarat State proper tax/penalty is collected provisionally subject to finalisation of tax liability or the prosecution, as the case may be.

9. The aforesaid takes me to examine the proper mode for assessment of collection of tax provisionally in the event the number of passengers travelling in the bus are found to be exceeding the prescribed seaters/sleepers. It appears that if the number of passengers travelling in the bus exceeds the prescribed seater/sleeper capacity, it would be reasonable for the RTO authorities to provisionally consider the capacity of the bus for the seater or sleeper, as the case may be, as per the actual number of passengers travelling. To say, in other words, if the number of passengers travelling in the bus at the time of inspection is found to be exceeding the capacity for which the licence is granted by the RTO authorities, may be of other State, then, in that case, the RTO authorities making inspection would be justified in collecting the tax provisionally from the owner of the bus/driver on the ground that when the bus is actually used for a particular number of passengers which is exceeding the licensed capacity of the bus for carrying the passengers. As in the present case, the licensed capacity of the bus was 33 seaters including the driver and ten sleepers, consequently, passengers for which the licensed capacity can be said as 32 passengers for seater and 10 passengers for sleeper. If, at the time of inspection, it is found that number of passengers, either as seater or sleeper, is exceeding the licensed capaciy, may be, as seater or sleeper, the RTO authorities would be justified in collecting the tax provisionally on the basis of actual number of passengers found in the bus as per the rate of tax prescribed for such purpose. It deserves to be recorded that such would apply only in the case of inspection when it is found that actual number of passengers travelling in the bus is exceeding the licensed capacity of the bus for carrying the passengers and such would not apply where the number of passengers, if found, is less than the licensed capacity of the bus. I am inclined to take such view because though it may not be required for the bus operator to have the seats as per the specification provided in Gujarat State for the buses for which registration is granted in other States, no one can be allowed to evade the liability of tax prevailing in the State, if the bus is to operate in Gujarat State, because the taxing event is on per passenger basis. It is true that as per Bombay Motor Vehicle Tax Act three categories are designated for licence to carry a particular number of passengers, may be 12, 20 or exceeding 20 but the tax to be collected at a slab provided therein for every passenger. The categorisation of the bus is on the basis of their licence to carry a particular number of passengers, but the tax is to be paid for every passenger for which

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licence to carry is granted. The moment it exceeds the number of passengers than the licence granted, it may call for payment of additional tax for every extra passenger as per the rate prescribed. If such is not read, it may result into leaving the room to the bus operator to carry more number of passengers than the prescribed licensed capacity without paying proportionate additional tax for such purpose or without paying additional tax for such extra passengers than the licensed capacity. Therefore, I find that it would be reasonable to hold that when at the time of inspection it is found by the RTO authorities that the number of passengers travelling in the bus is exceeding the licensed capacity of that bus, may be registered in Gujarat or in Rajasthan, the RTO authorities would be justified in collecting the additional amount of tax provisionally for all such additional passengers who are permitted to travel exceeding the licensed capacity. Of course, such collection of tax would be subject to finalisation of criminal prosecution or the assessment of tax which may finally be concluded in the appropriate proceedings as per the provisions of relevant Act.

10. Much grievance was raised on behalf of the petitioner that even if such collection of tax is permitted by the RTO authorities in Gujarat for passengers exceeding the licensed capacity, same should not be from the date of registration granted to the bus, but it should be from the date of inspection or at the time when inspection has taken place. Mr. Gohil, Ld. APP for the State submitted that when at the time of inspection it is found that the number of passengers travelling in a bus are exceeding the licensed capacity, it would be reasonable for the RTO authorities of Gujarat State to come to conclusion that such passengers are being carried exceeding the licensed capacity from the date of registration and therefore the assessment of tax would also be from the date of registration.

11. So far as the bus or the vehicle for which the registration is granted in the other State and holding National permit are concerned, unless there is any evidence available on record that immediately after the registration the vehicle is used for operating in Gujarat State, it may not be proper on the part of RTO authorities of Gujarat to make assessment of tax for additional passengers from the date on which the registration is granted. At the most, if the record is available for entering and operation of the vehicle in Gujarat State, the RTO authorities may make assessment for such additional passengers for the period during which the bus has operated in Gujarat. If such record is not available and at the first inspection it is found that the additional passengers are travelling exceeding the licensed capacity then in that case such collection of tax, may be provisional, would be at the time of inspection, and may further be extended for the period during which the bus is to operate in Gujarat State. However, the situation may be different, in case such bus is registered in Gujarat and has operated in Gujarat. The exact amount of tax liability on the bus operator may vary from case to case and can be finalised only if such evidence is produced on record and is considered but, till finalisation of such aspects, I find that if, at the time of inspection, it is found that the number of passengers is exceeding the licensed capacity of the vehicle concerned, the RTO authorities making inspection

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would be justified in collecting the tax provisionally from the operator of the vehicle, may be the owner or driver, for the period during which the bus has operated in Gujarat State by taking the basis of every additional passenger exceeding the licensed capacity, in the manner as referred hereinabove.

12. All the aforesaid are with a view to see that the bus may not be required to be detained for a longer period and the passengers may also not be put to hardship and the expenses for preservation of the vehicle can also be avoided by the RTO authorities, but such colletion of tax provisionally has to be subject to final order which may be passed in the assessment of tax proceedings by the competent authority or the criminal prosecution, in case such proceedings are lodged before the criminal court.

13. In view of the aforesaid observations and discussion, I find that the following directions deserve to be issued:

(i) If a bus/vehicle is registered in the State other than Gujarat and the seats are provided as per the specification prevailing in the said State where the registration has been granted, it would not be necessary for such vehicle owner to re-alter the seats as per the specifications provided for such seats in Gujarat State, but the same shall be on condition that :

(a) if it is found by the RTO authorities of Gujarat State that the number of passengers travelling in the vehicle are exceeding the licensed capacity granted at the time of registration, the vehicle owner/operator would be required to pay the additional tax, per additional passenger, as prevailing in the State of Gujarat for the period during which the vehicle has operated in Gujarat;

(b) In respect of the vehicles which are registered in Gujarat, though the seats may be as per the specifications prevailing in Gujarat State, but, if it is found by the RTO authorities that the actual number of passengers travelling in the vehicle are exceeding the licensed capacity then, in that case, the RTO authorities shall be justified in collecting tax provisionally for each additional passenger and the period of assessment shall be for the utilisation of the vehicle in Gujarat State, may be from the date of registration or also as the facts and circumstances, may so demand;

(c) it would also be open to the RTO authorities of the Gujarat State to launch prosecution, as may be permissible in law, for breach of provisions of Motor Vehicles Act or relevant provisions, and also to finally assess the tax through the competent authority as provided under the Act, including the procedure of appeal or the revision, as the case may be. However, if the operator of the bus is ready to provisionally deposit the amount of tax and also the proportionate penalty for the said purpose, as assessed by the RTO authorities, as per the observations and directions referred hereinabove, the bus shall be released by the RTO authorities and the collection of provisional tax and penalty shall be subject to finalisation of assessment proceedings of tax and the criminal prosecution, if any, or, as the case may.

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14. So far as the present bus of the petitioner is concerned, Mr. Gohil, Ld. APP for the State under the instructions of Mr. Damani, RTO, Mehsana, states that the provisional assessment of penalty in the present case would not exceed Rs. 10,000/- and he states that if the petitioner deposits the amount of Rs. 10,000/-, which would be subject to finalisation of tax proceedings and the criminal prosecution, if any, the bus of the petitioner shall be released immediately. Hence, direction accordingly, for the bus of the petitioner herein.

15. In all the cases, where the vehicles are detained on account of breach of the provisions of Motor Vehicles Act which may invite prosecution, the memo shall be forwarded to the concerned criminal court by the concerned RTO at least within a period of fifteen days from the date of detention of the vehicle.

16. In the present case, as the vehicle was detained earlier, the memo shall be forwarded to the concerned criminal court within a period of one week from today.

17. Petition is allowed to the aforesaid extent. Rule is made absolute accordingly. DS permitted.

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