(2003) 02 AHC CK 0182

In the Allahabad High Court

Case No : C.M.W.P. No. 273 of 2003

Shambhu Nath Patel APPELLANT

Vs

Taxation Officer and Another RESPONDENT

Date of Decision : 18-02-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(40), 2(7)
Uttar Pradesh Motor Vehicles Taxation Act, 1997 — Article 1, 5

Citation : (2003) 5 AWC 3817

Hon'ble Judges : Prakash Krishna, J;M. Katju, J

Bench : Division Bench

Advocate : A.R. Dube, for the Appellant;

Final Decision : Dismissed

Judgement

M.Katju and P.Krishna, JJ.—Heard learned Counsel for the Petitioner and the learned standing counsel.

2. The Petitioner has prayed for a writ of mandamus directing the Respondents to charge additional tax at the rate given in the proviso to Article 1 (a) of Fourth Schedule of the Motor Vehicles Taxation Act, 1997 and for a writ of mandamus directing the Respondents not to compel the Petitioner to deposit additional tax at the rate given in Fourth Schedule of the Motor Vehicles Taxation Act, 1997.

3. The Petitioner is a registered owner of a bus, which carries the staff/ employees of Indian Farmers Fertilizer Co-operative Limited, Phulpur, district Allahabad from their houses in Allahabad city to the factory premises in Phulpur which is about 35 Km. away from Allahabad city. In this connection, they have entered into an agreement with I.F.F.C.O., a copy of which is enclosed as Annexure-1 to the writ petition.

4. Learned Counsel for the Petitioner submits that the vehicle of the Petitioner is a "stage carriage" and not "contract carriage" and hence, additional tax should be charged in accordance with Article 1 of the Fourth Schedule of Motor Vehicle

Taxation Act, 1997 and not in accordance with Article 5. We do not agree with this submission. In our opinion, the Petitioner''s vehicle is not a "stage carriage" but is a "contract carriage".

5. Section 2(7) of the Motor Vehicles Act, 1988, defines "contract carriage" as under:

(7) "contract carriage" means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract whether express or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum:

(a) on a time basis, whether or not with reference to any route or distance; or

(b) from one point to another, and in either case, without stopping to pick up or set down passengers not included into contract anywhere during the journey and includes-

(i) a maxi cab, and

(ii) a motor cab, notwith-standing that separate fares are charged for its passengers;

Section 2(40) of the Motor Vehicles Act defines "stage carriage" as under:

"Stage carriage" means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers either for the whole journey or for stages of the journey.

Under Section 2(40) of the Motor Vehicles Act "stage carriage" means a motor vehicle, which carries passengers for hire or reward at separate fare paid by or for individual passenger. The words "at separate fare" paid by or for "individual passenger" means that for the vehicle to be a stage carriage, passengers must pay fare individually. Thus, ordinarily the buses, which run between different towns, are "stage carriages" as every passenger has to pay for his own ticket separately.

6. On the other hand, "contract carriage" is one where the entire bus is taken on contract from the owner for a certain amount of money and it is not the individual passengers who pay the fare. Thus, for example when a person takes a bus for a marriage party from one city to another, this will be a "contract carriage". Similarly when a bus is taken on contract for carrying the workers from their residences to the factory and back, this again is not a "stage carriage" but a contract carriage because passengers are not charged separately or individually. Usually it is the company, which provides the bus service, as an amenity to the workers and it is not that the passengers have to buy tickets individually.

7. Thus, we are of the opinion that the Petitioner''s bus is a "contract carriage" and not "stage carriage".

8. Learned Counsel for the Petitioner has invited our attention to a Full Bench decision in Brijendra Chaudhary v. State Transport Authority AIR 1991 All 300. This decision in fact supports the view which we are taking in this case. In para 8 of the said Full Bench judgment, it has been held that in the case of "stage carriage", there is absence of prior contract by the passenger or passengers for the carriage to be used as a whole for fixed or agreed sum. Instead, in the case of "stage carriage" when it is boarded by the passengers on a route, they pay for the distance they propose to travel. In fact, this Full Bench decision also supports the view which we are taking that the Petitioner''s vehicle is not a "stage carriage" but is a "contract carriage". This is also the view of the Supreme Court in Roshanlal v. State of U.P. and Ors. AIR 1965 SC 991.

9. For the reasons given above, the writ petition fails and is dismissed.

10. There will be however, no order as to costs.

